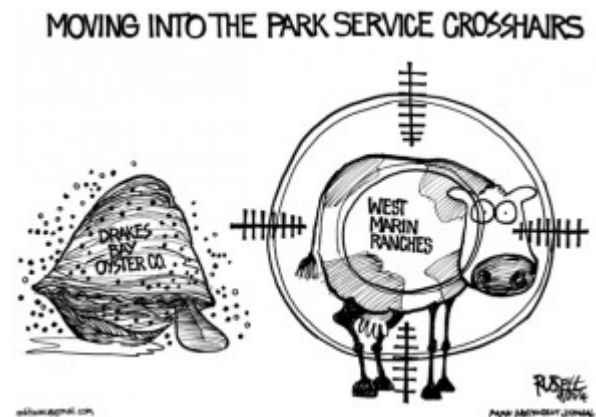


# Weaponizing NEPA



*Cartoon by George Russell, first published in the Marin IJ September 28, 2014*

*Op-ed below by Sarah Rolph, first published in the West Marin Citizen October 2, 2014*

**Federal agencies planning a project that might impact the environment** are required to use the process outlined in the National Environmental Policy Act (NEPA). While NEPA is a formal process, its essence is common sense: gather the relevant information, think about it, then make a decision based on the facts. Public agencies must also document and publish the decision, and they must allow for public participation at the beginning, the middle, and the end of the process.

When it fell to Point Reyes National Seashore to consider, in 1998, the renovation and expansion of the historic oyster farm in Drakes Estero—a project that called for major construction—the agency naturally invoked NEPA. The process was straightforward. The park received 11 letters about the project, two of which supported the proposed action (construction of a new facility). The rest of the letters expressed concerns, which were addressed. In response to concerns about potential growth of the operation, it was explained that growth was not planned. Concerns about potential contamination from “foreign oyster stock” were addressed with policies and protocols. Concerns about debris were addressed with a clean-up plan. Concerns about long-term impacts were dismissed: “the NPS has concluded that there will not be any new impacts in the estuary as a result of the alternative chosen,” but as an additional assurance, plans were put in place for additional monitoring and research.

With these planned mitigations, the project was approved by the Seashore with a NEPA finding of “no significant impact on the environment.” The project was also approved unanimously by the Point Reyes National Seashore/Golden Gate National Recreation Area Citizens Advisory Commission.

All this is summarized clearly in a few paragraphs of the relevant documents.

## **A horse of a different color**

By contrast, when the Park Service at Point Reyes National Seashore created an Environmental Impact Statement (EIS) to study whether to renew the Special Use Permit for Drakes Bay Oyster

Company, its use of the NEPA process was anything but straightforward.

Unlike the 1998 EA, which is easy to read and was prepared by three people (then-Superintendent Don Neubacher, assistant planner Anne Clemmons, and Tod Carr, Planner, Marin County Community Development Agency), the 2012 DBOC EIS is enormous, difficult to wade through, and was created by the staff of a huge consulting firm on a multi-million-dollar contract.

That difference alone seems quite peculiar, given that the 1998 EA was for a major construction effort whereas the 2012 EIS was for a simple permit renewal with no change in operations.

Much more significant is that the resulting DBOC EIS is known to contain [scientific misinformation](#), including [falsified data](#); a formal scientific misconduct complaint about that data falsification is being stonewalled by the Feds even though it is based on solid evidence obtained via FOIA.

*UPDATE: On January 18, 2015, Newsweek reported the NPS/USGS data falsification in [this blockbuster story](#). The story puts scientist Brent Stewart on the record about the falsification of his data.*

Also worth noting is that the public-comment process for the DBOC EIS was tainted at the beginning, turned into a full-blown misinformation campaign in the middle, and ignored at the end. (At the beginning, zealots were allowed an inordinate amount of say in the scope of the project; in the middle, organized interests used the public-comment process to mislead the public and elected officials, as I documented in my [amicus brief to the Ninth Circuit](#); at the end of the process, NPS did not provide the required 30-day comment period before publishing the Final EIS.)

The result, so far, of this corruption of the NEPA process, is that the Park Service is getting its way. It used the NEPA process and the resulting publicity to dupe a portion of the public into believing that the Lunny family's farming practices have harmed Drakes Estero, when nothing could be further from the truth. And its government lawyers successfully made fraudulent scientific arguments in court by quoting the agency's false charges as codified in the EIS.

In short, in 2012 the Park Service at Point Reyes used NEPA as a weapon.

Now they appear to be doing it again.

### **A questionable need**

The Park Service at Point Reyes has invoked NEPA to create what they are calling the Ranching Comprehensive Management Plan/Environmental Assessment, or "Ranch CMP."

Why is this process being initiated? Is there a sudden need for a ranching plan?

The Park Service tells us the purpose of the Ranch CMP is "to establish a comprehensive framework for the management of existing ranch lands administered by Point Reyes National Seashore under agricultural lease/special use permits (lease/permits), with terms up to 20 years."

It says this new framework is needed for these reasons:

- To articulate a clear vision for ranching on existing ranch lands administered by Point Reyes National Seashore.

- To implement the Secretary of the Interior's direction to pursue issuance of lease/permits with terms up to 20-years.
- To address concerns related to tule elk impacts to existing ranch operations
- To provide clear guidance and streamline processes for park and regulatory review of proposed ranching activities, including best management practices that promote protection of park resources.

This is pretty thin gruel.

One doesn't generally need an environmental assessment to clarify one's vision. Nor does it make sense that NEPA would be required to implement former Secretary Salazar's simple, documented direction to issue 20-year permits. And if the Park Service at Point Reyes needs "clear guidance" from itself about how to manage the Seashore, it seems like it would make more sense to complete the General Management Plan (GMP), which is supposed to be the guiding document for every Park unit.

### **Where is the GMP?**

The GMP for Point Reyes National Seashore is reportedly in the process of being updated. The most recent post on the Seashore website, from 2008, reports: "The process at this point has synthesized the public comments we have received over the years through various meetings and workshops. In addition, the NPS has completed studies and background information to inform the planning process; most of these efforts are now completed. With this additional information and public comment, the park has prepared for public review a draft GMP that will be released this fall/winter. As with all planning efforts for the National Seashore, we will notify all interested parties on our mailing list when the Draft GMP/EIS is available. We will also post it on our website for easy access."

Well, where is it? Has the GMP been scrapped? Why is a separate ranch plan being created now?

The one thing on this bullet list that everyone agrees does need action is the elk problem. But why on earth is a new plan required? There is already an elk management plan, created in 1998.

True, that plan has serious flaws. It dismisses seemingly key points—for example, the authors discard the issue of carrying capacity (how many elk the land can support), which would seem to be the fundamental consideration, in favor of an ad hoc approach.

### **Mismanaging an introduced species**

The result of this ad hoc approach has been an ecological disaster. Putting aside the very real concerns of the ranchers for the well-being of their farm animals, the elk are also in danger here. They are dying of thirst and starvation because the Park Service did not back up its romantic notions about a free-ranging herd of majestic elk with sound management practices.

But while the 1998 elk management plan does not appear to have been based on good science, it does discuss the potential for elk predation in the Pastoral Zone, and notes the need for potential remediation should this occur. Why has the Seashore broken that promise? For years the ranchers have been asking the Park Service to act on the elk problem, and for years their pleas have fallen on deaf ears. The Park Service is claiming it doesn't have the authority to take the actions it spelled out

for itself in its own elk management document.

The Park Service appears to be using the NEPA process to duck its responsibilities, hiding behind a planning process instead of taking the necessary action.

### **There they go again**

Also troubling is that organized interests are once again corrupting the public-comment process.

Well over half of the correspondence about the Ranch CMP, duly tallied by the Park Service in its Public Comment Analysis Report, is either an exact match for, or a variant of, an anti-ranch form letter.

These anti-ranch letters are probably the result of an email campaign by the Center for Biological Diversity and the Turtle Island Restoration Network. The underlying content of the anti-ranch form letter is similar to the signed letter from the two groups, and the Center sent out a press release claiming “Public Overwhelmingly Supports Free-ranging Tule Elk Herd at Point Reyes National Seashore.” (Another clue is that Turtle Island touts its global members; that mailing list would explain the unusual number of international comments—about 400 comments were received from outside the U.S.—13% of the total. Only about 25% of the comments are even from California. These do not seem like normal distributions for public scoping comments on a ranch-management process in West Marin.)

This is the same playbook used by the anti-oyster-farm zealots during the NEPA process used to frame DBOC: Create the sort of public comments you want to see by sending an alarming mailing to your list, then tout the result in a press release.

The repetitive anti-ranch comments are clearly the result of a misinformation campaign: “Private ranching operations do not benefit the public for which this National Seashore was created”—actually, the Seashore was created largely to preserve the ranches; “Since the early 70s, ranchers have been paid millions of dollars and were supposed to vacate the land”—actually, the ranchers were promised that they could stay on their ancestral land as long as the family wanted to remain in ranching; the ranchers “want to kill every animal in sight”—actually, a fence would be fine; the ranchers just want the elk to stop eating the forage the ranchers are paying rent for.

In addition to the 3,019 pieces of correspondence sent in via the Internet, the Park Service received 62 surface-mail letters. (There were also 10 comments made on the form provided at the public meetings, and some comments on the flip charts at those meetings.)

The contrast in tone and content between the campaign-driven comments and the substantive scoping letters could not be more stark. Where the campaign comments are achingly clueless and disturbingly negative, the substantive letters from informed individuals are useful and intelligent. The letters from ranchers are particularly polite and businesslike.

It’s clear from reviewing the correspondence that the ranchers know much more about the issues at hand than the Park Service does. As one letter from a ranching family puts it, “It would, certainly, be more helpful if more of the NPS employees had a better knowledge of agriculture. We have such a difficult time explaining the need for most of the practices we need to survive. Some of the smallest

items are of such great importance to succeeding in producing a product.”

For a full appreciation of the facts on the ground, read the [letter from the Point Reyes Seashore Ranchers Association](#). And make sure to read its [Attachment A](#); you’ll learn that the law shows that NEPA was never required here at all.