Dear Editor:

Sandy Calhoun's letter concerning the future of Drake's Bay Oyster Company was refreshingly free of the ad hominem attacks and vitriolic rhetoric that often surround this issue. But his conclusions were incorrect. A continuation of the oyster business beyond 2012 would directly violate the Wilderness Act and Park Service regulations, each of which prohibits commercial enterprises such as mariculture in designated wilderness.

For the past 36 years, the oyster business has operated as a non-conforming use within a designated federal wilderness area under a Reservation of Use and Occupancy. But according to a 2004 Department of Interior legal opinion, the Seashore is obligated "to steadily continue to remove all obstacles to the eventual conversion of these lands and waters to wilderness status." Consequently, the Park may not issue a new oystering permit when the Reservation expires in 2012.

Mr. Calhoun disregarded these basics and instead contended that certain rights held by the State of California-- the public right to fish and mineral rights – constitute non-conforming uses that will forever prevent the Estero's conversion to wilderness. But neither of these interests is non-conforming. First, recreational fishing is not prohibited by the Wilderness Act. Second, designated wilderness areas often include outstanding mineral interests, many of which are not viable. The 1964 Wilderness Act directed managing agencies to issue regulations that would harmonize mining activities with wilderness restrictions as much as possible. This and related provisions would not have been included if private or state ownership of mineral rights prevented wilderness designation. And when Congress passed the Point Reyes Wilderness Act, it again rejected the argument that the state's mineral rights rendered Drake's Estero unsuitable for wilderness designation. Instead, it sided with a large coalition of state legislators and environmental groups in Marin which advocated against this view.

Moreover, the state has never leased the mineral rights and is unlikely to do so. The statute defining the mineral rights provides that "no well or drilling operations of any kind shall be conducted upon the surface of such lands." Moreover, because the Estero is within the California Coastal Sanctuary, state agencies are barred – absent a national emergency--from issuing mineral leases there.

Therefore, the only non-conforming use in the Estero is the oyster business.

The oyster company's state allotment to continue oystering until 2029 does not override the Wilderness Act or the Reservation of Use and Occupancy. In a 2007 letter, the California Department of Fish and Game (DFG) acknowledged that it lost authority over the Estero when the state conveyed it to the Park Service in 1965. The letter further affirmed that the oystering allotment is contingent upon the operator's compliance with the Reservation of Use and Occupancy. Accordingly, in the absence of a new federal use permit, the oystering allotment will expire at the same time as the Reservation of Use and Occupancy.

The Park has not changed its position on the mariculture operation in recent years. The 1980 General Management Plan correctly stated that the oyster business "is under a reservation of possession" and has a DFG permit for oyster culture. The fact that it did not address the operation's long term future is not surprising given that there were 32 years remaining on the Reservation of Use and Occupancy. Any ambiguity in a 1998 Environmental Assessment of the oyster operation is readily explained by the fact that it preceded the legal clarification recently provided by the Department of the Interior and the DFG.

Nor have the attitudes within the environmental community shifted. During the 1976 hearings on the Pt. Reyes Wilderness Act, the wilderness proponents-- including State Senator Peter Behr, Assemblyman John Burton, the Wilderness Society, the Golden Gate National Recreation Citizens Advisory Committee, EAC, the Environmental Forum, Marin Conservation League, the Inverness Association and the Tomales Bay Association—all wanted the Estero designated as wilderness while expressing a preference to have the oystering continue as a non-conforming use. And so it has for the last 36 years. None of these groups argued that the mariculture should continue beyond the expiration of the Reservation of Use and Occupancy.

So Sandy Calhoun is unfortunately mistaken in his opinion that the mandates of the Wilderness Act can be reconciled with a continuation of the oyster business beyond November, 2012. But as he suggested, to weaken the Act for the sake of commercial interests could have disastrous consequences for other designated wilderness areas around the country, not to mention lands protected in other ways.

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A more detailed version of this letter with supporting documentation can be seen at www.savedrakesbay.org.