

**CENTER FOR REGULATORY EFFECTIVENESS (“CRE”)
COMMENTS
ON NATIONAL MARINE FISHERIES SERVICE’S (“NMFS”)
DRAFT GUIDELINES FOR ASSESSING MARINE MAMMAL STOCKS
(“GUIDELINES”), AND CRE’S COMMENTS ON
GUIDELINES FOR ASSESSING MARINE MAMMAL STOCKS:
REPORT OF THE GAMMS III Workshop (“GAMMS REPORT”),
NOAA–NMFS–2012–0007, 77 FR 3450 (JAN. 24, 2012),
<http://www.nmfs.noaa.gov/pr/pdfs/fr/fr77-3450.pdf> ,
SUBMITTED ELECTRONICALLY TO <http://www.regulations.gov> ,
ON MARCH 23, 2012**

I. Executive Summary

NMFS should revise the *Guidelines* and *GAMMS Report* to discuss and comply with Information Quality Act (“IQA”) requirements.¹ For example:

- NMFS should produce a record showing that the *Guidelines* and *GAMMS Report* comply with the IQA Pre-dissemination review requirements;
- All models that the *Guidelines* or *GAMMS Report* use or rely on should be peer reviewed in order to determine their compliance with Council for Regulatory Environmental Modeling (“CREM”) Guidance;
- The method used by the *Guidelines* and *GAMMS Report* to estimate population uncertainty violates the IQA accuracy and reliability requirement; and, as a final example,
- The *Guidelines* and *GAMMS Report* violate the IQA accuracy and reliability requirements by telling staff to make up abundance data and PBR when measured data don’t exist.

In addition, NMFS should revise the *Guidelines* and *GAMMS Report* to delete any suggestion that marine mammal Stock Assessment Reports (“SARs”) should discuss oil and gas seismic effects. Any such suggestion is inappropriate because:

¹ NMFS’ *GAMMS Report* is available online at http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms3_nmfsopr47.pdf . NMFS’ *Guidelines* is Appendix IV to the *GAMMS Report*, and it is also available online at http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms3_nmfsopr47.pdf .

- Oil and gas seismic operations do not cause mortality or serious injury to marine mammals; and
- Oil and gas seismic operations do not cause a decline or impede recovery of any strategic stock.

The *Guidelines* and *GAMMS Report* should also be revised to delete any suggestion that a mere “disturbance” or “non-serious injury” is sufficient to be included in marine mammal SARs. SARs should only include events--in particular commercial fishing events--which cause mortality or serious injury, or which can be shown to cause the decline or impede the recovery of a strategic stock. This has been NMFS’ position in the past, it is correct, and it should not be changed.

II. The *GAMMS Report* and *Guidelines* Should Be Revised to Discuss and Comply with Information Quality Act Requirements

The *GAMMS Report* and the *Guidelines* tell how to perform NMFS’ information disseminations, and they are themselves NMFS’ information disseminations. Consequently they must comply with NMFS’ Information Quality Act requirements.²

For example, the *GAMMS Report* and the *Guidelines* should discuss and comply with NMFS’ IQA Guidelines.³

The *GAMMS Report* and the *Guidelines* should also be revised to discuss and comply with NMFS’ *Instruction on NMFS DATA DOCUMENTATION*, which states at pages 11-12 that all NMFS data disseminations must meet NMFS’ IQA guidelines.⁴

² These requirements are in part included in NMFS’ IQA Guidelines, which are available online at http://www.cio.noaa.gov/Policy_Programs/IQ_Guidelines_011812.html , and elsewhere. See “PART I...SCOPE,” of this document for their applicability to the *GAMMS Report*, to the *Guidelines*, and to the SARs themselves.

³ NMFS’ IQA guidelines are available online at *Policy Directive on Policy on the Data Quality Act, available online at* <https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/policies/04-108.pdf> . See also *NMFS INSTRUCTION on Data Quality Act, SECTION 515 PRE-DISSEMINATION REVIEW AND DOCUMENTATION GUIDELINES*, available online at <https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/procedures/04-108-03.pdf> , which also applies and which should also be discussed in the *GAMMS Report* and *Guidelines*.

⁴ This NMFS *Instruction* is available online at <https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/procedures/04-111-01.pdf> .

The *GAMMS Report* and *Guidelines* should also be revised to discuss and comply with NMFS' ***Instruction on SECTION 515 PRE-DISSEMINATION REVIEW AND DOCUMENTATION FORM.***⁵

The *GAMMS Report* and the *Guidelines* should also be revised to discuss and comply with NMFS' ***Instruction*** on ***GUIDELINES FOR AGENCY ADMINISTRATIVE RECORDS***, which states at pages 2-3 that:

“The AR [Administrative Record] first must document the process the agency used in reaching its final decision in order to show that the agency followed required procedures. For NOAA actions, procedural requirements include...the Information Quality Act....”⁶

The *GAMS Report* and the *Guidelines* should also be revised to discuss and comply with NMFS' ***DIRECTIVE on Data and Information Management***, which states at page 3:

“(General Policy and Requirements

A. Data are among the most valuable public assets that NMFS controls, and are an essential enabler of the NMFS mission. The data will be visible, accessible, and understandable to authorized users to support mission objectives, in compliance with OMB guidelines for implementing the “Information Quality Act” (IQA)...”⁷

NMFS recently revised an Information Collection Request (“ICR”) Supporting Statement in response to CRE’s comments. NMFS revised the Supporting Statement for this ICR to state that the specific NMFS IQA guidance listed above applies to NMFS’ Take actions under the Endangered Species Act.⁸ This guidance also applies to the *GAMMS Report* and to the *Guidance*, as well as to the SARs themselves; consequently, NMFS should also revise the *GAMMS Report* and *Guidelines* to discuss and comply with this guidance.

⁵ This NMFS ***Instruction*** is available online at <https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/procedures/04-108-02.pdf> .

⁶ This NMFS ***Instruction*** is available online at <https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/procedures/30-123-01.pdf> .

⁷ This NMFS ***Directive*** is available online at <https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/policies/04-111.pdf> .

⁸ See page 4 footnote 1 of document available online at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201202-0648-011 (click on “Supporting Statement A”).

The *GAMMS Report* and the *Guidelines* should also be revised to state that these IQA requirements apply to any third party information that NMFS uses or relies on in the *GAMMS Report* or *Guidelines*.⁹

The *GAMMS Report* and the *Guidelines* rely heavily on models: *e.g.*, trend models; PBR models; state-space models; uniform-based uncertainty projection; and distribution models. The IQA requires that these models be peer reviewed to determine whether they meet EPA's CREM guidance, as NMFS did (at CRE's request) for the AIM model.¹⁰ There should be a record for all these models demonstrating their IQA compliance, and demonstrating their compliance with EPA's CREM guidance. All peer reviews should comply with OMB's Final Information Quality Bulletin for Peer Review.¹¹

The peer reviewers should be advised of the IQA requirements. They should also be advised of EPA's CREM Guidance for models.¹² OMB has advised other agencies to incorporate their IQA guidelines into their charges to peer reviewers. NMFS should do the same for all peer review of the models and for all peer review of other aspects of the *GAMMS Report*, the *Guidelines*, and the SARs.¹³

If NMFS believes that any of the above-cited IQA requirements do not apply to the *GAMMS Report* or the *Guidelines*, then we ask that NMFS say so and explain why in a response to CRE's comments.

⁹ See, *e.g.*, NMFS' letter to CRE available online at http://thecre.com/pdf/NOAA-IWC_Letter.pdf.

¹⁰ See AIM peer review at http://www.nmfs.noaa.gov/pr/pdfs/permits/lfa_aim_review.pdf.

¹¹ The OMB Peer Review Bulletin is available online at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>.

¹² EPA's Council for Regulatory Environmental Modeling (CREM) Guidance is available online at <http://www.epa.gov/crem/cremlib.html>

¹³ OMB recently told EPA, "Since the development of Agency Information Quality (IQ) guidelines required by statute, many agencies have been using [peer review] charge language that tracks with the standards of their own IQ guidelines. For example, such language often focuses on whether or not the information in question is accurate, clear, complete, transparently and objectively described, and scientifically justified. We believe it may be useful for EPA to follow a similar approach and incorporate some of the language from your IQ guidelines into the formulation of the [peer review] charge questions." OMB document available online at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cts=1331655089425&ved=0CCUQFjAA&url=http%3A%2F%2Ffoaspub.epa.gov%2Ffeims%2Ffeimscomm.getfile%3Fp_download_id%3D495502&ei=P3FfT-jzLsPh0QGw18SuBw&usg=AFQjCNGd_cMw9iCZalNgLZzgBTspzJwzcg&sig2=Q_vr76vteXyCY3lWiOb98w

We also ask that the *GAMMS Report* and *Guidelines* be revised to discuss and comply with any and all of NMFS' IQA requirements/guidance that apply to the *GAMMS Report* and to the *Guidelines*, but which are not cited or referenced in CRE's comments.

The *GAMMS Report* and *Guidelines* violate the IQA Guidelines in their method for calculating population uncertainty. They calculate a stock's "minimum population size" by using an "uncertainty projection" that would be employed in years 1-8 from the date of the last population survey for a given marine mammal stock. This "uncertainty projection" would assume that the stock is declining (by the maximum rate ever observed – 10% per year) each year after the last survey was performed and, after year 8 is reached, the stock will be assumed to have decreased at 10% per year over an 8-year period, unless other data indicates otherwise. There is no assumption built into this model that would account for the possibility that the stock size remained constant or increased. In addition, NMFS assumes a certain percentage decrease in a stock's minimum population size that would be incorporated into the stock assessments each year after a survey has been performed. The yearly and 8-year assumed decreases would be employed even for stocks that have shown a pattern of increase in previous years.¹⁴

This proposed approach to estimating population uncertainty violates NMFS' IQA requirements that the *GAMMS Report* and *Guidelines* disseminate accurate and reliable information.¹⁵

The *GAMMS Report* and *Guidelines* also recommend that "informed interpolation (e.g. based on habitat associations) may be used, as appropriate and supported by existing data, to fill gaps in survey coverage and estimate abundance and PBR over broader areas." In other words, they authorize and encourage NMFS' staff to make up data.¹⁶

Encouraging and authorizing staff to make up data violates NMFS' IQA requirements that the *GAMMS Report* and the *Guidelines* disseminate accurate and reliable information.¹⁷

¹⁴ E.g., pages iv to vi, 8-16, *GAMMS Report*, available online at http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms3_nmfsopr47.pdf.

¹⁵ NMFS' IQA Guidelines are available online at http://www.cio.noaa.gov/Policy_Programs/IQ_Guidelines_011812.html. The IQA accuracy and reliability requirements are discussed in the guidelines at "**PART I...DEFINITIONS,**" and at "**PART II... INFORMATION QUALITY STANDARDS AND PRE-DISSEMINATION REVIEW.**"

¹⁶ E.g., pages viii, 38-39, 73, *GAMMS Report*, available online at http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms3_nmfsopr47.pdf.

¹⁷ NMFS' IQA Guidelines are available online at http://www.cio.noaa.gov/Policy_Programs/IQ_Guidelines_011812.html. The IQA accuracy and reliability requirements are discussed in the guidelines at "**PART I...DEFINITIONS,**" and at "**PART II... INFORMATION QUALITY STANDARDS AND PRE-DISSEMINATION REVIEW.**"

**III. Oil and Gas Seismic and other Operations
Are Not Causing Mortality or Serious Injury to Marine Mammals,
And They Are Not Causing a Decline in or
Impeding Recovery of any Strategic Stock;
Consequently, They Should Not be Included in SARs**

The *GAMMS Report* appears to suggest that SARs can include “non-serious injury or disturbance” to marine mammals by anthropogenic ocean noise:

“To date, NMFS has not included information on human-related non-serious injuries or disturbance in the Reports because their purpose considered to date is to assess human-related mortality and serious injury. There is interest in using PBR estimates for assessing the relative severity of human-related impacts besides those from commercial fisheries to a marine mammal stock. In some cases (e.g. Steller sea lions, northern fur seals), applications for scientific research permits have been evaluated in comparison to a stock’s PBR level to support an argument that the harassment takes requested are likely to be minor. The number of potential mortalities or injuries proposed for issuance under a Letter of Authorization could be compared to a PBR level prior to issuing the permit. Two related NRC reports have recommended that a PBR-type approach be *used in assessing injury and disturbance related to noise impacts*, with weighting factors for severity of injury and/or significance of injury and disturbance (e.g., behavioral response) related to noise impacts, to improve the understanding of cumulative effects of human activities on marine mammal stocks.”¹⁸

For several reasons, ocean noise from oil and gas seismic or other operations should not be included in SARs. One reason is that these oil and gas operations do not cause mortality or serious injury to marine mammals; nor do they cause a decline in or impede recovery of any strategic stock of marine mammals.

The National Academy of Science’s National Research Council concluded with regard to the entire Outer Continental Shelf that:

“[T]here have been no known instances of injury, mortality, or population level effects on marine mammals from seismic exposure....”¹⁹

The U.S. Bureau of Ocean Energy Management (“BOEM”) recently issued a Final Supplemental Environmental Impact Statement for a Gulf of Mexico OCS Oil and Gas Lease Sale. This final

¹⁸ Page 59, *GAMMS Report* (emphasis added), available online at http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms3_nmfsopr47.pdf.

¹⁹ See, e.g., Outer Continental Shelf Oil & Gas Leasing Program, 2007-2012 Final Environmental Impact Statement, page V-64 (MMS April 2007), available online at <http://www.boemre.gov/5-year/2007-2012DEIS/VolumeII/5and6-ConsultationPreparers.pdf>

SEIS for the GOM concluded that, despite more than 50 years of oil and gas seismic and other activities, “there are no data to suggest that activities from the preexisting OCS Program are significantly impacting marine mammal populations”:

“Overall, within the CPA [GOM Central Planning Area], there is a long-standing and well-developed OCS [oil and gas] Program (more than 50 years); there are no data to suggest that activities from the preexisting OCS Program are significantly impacting marine mammal populations.”²⁰

NMFS has reached a similar conclusion about oil and gas seismic in the Arctic. For example, a recent NMFS Biological Opinion concluded that marine mammals are flourishing and increasing in the Arctic despite increasing oil and gas seismic activities there:

“Data indicate that bowhead whales are robust, increasing in abundance, and have been approaching (or have reached) the lower limit of their historic population size at the same time that oil and gas exploration activities have been occurring in the Beaufort Sea and, to a lesser extent, the Chukchi Sea.”

“To our knowledge, no whales or other marine mammals have been killed or injured by these past seismic operations, and the BCB population of bowhead whales continues to increase at an annual rate estimated more than 3 percent.”²¹

NMFS has emphasized that “to date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to [seismic] airgun pulses, even in the case of large airgun arrays.”²²

In sum, marine mammals have thrived during many years of seismic and other oil and gas activities. These activities do not cause marine mammal mortality or serious injury; nor do they cause a decline in or impede recovery of any strategic stock. Consequently, they

²⁰ Page 4-231 of document available online at <http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx> . Click on “Gulf of Mexico OCS Oil and Gas Lease Sale: 2012; Central Planning Area Lease Sale 216/222; Final Supplemental Environmental Impact Statement; [Volume I](#): Chapters 1-4; [Volume II](#): Chapters 5-8, Appendices, and Keyword Index.”

²¹ Pages 64-65, ENDANGERED SPECIES ACT: SECTION 7 CONSULTATION BIOLOGICAL OPINION, Incidental harassment authorization to allow for incidental takes of marine mammals during shallow hazards survey in the Chukchi Sea, Alaska, 2011 (NMFS 2011), available online at http://www.nmfs.noaa.gov/pr/pdfs/permits/statoil_biop2011.pdf .

²² 75 FR 49795-96 (Aug. 13, 2010), page 49795, available online at <http://edocket.access.gpo.gov/2010/2010-19962.htm> .

should not be included in the SARs. The *Guidelines* and *GAMMS Report* should be revised to delete any suggestion, indication, conclusion or other statement to the contrary.

The *Guidelines* and *GAMMS Report* should also be revised to delete any suggestion that mere “disturbance” or “non-serious injury” is sufficient to be included in marine mammal SARs. SARs should only include events which cause mortality or serious injury, or which can be shown to cause the decline or impede the recovery of a strategic stock. This has been NMFS’ position in the past, it is correct, and it should not be changed:

“To date, NMFS has not included information on human-related non-serious injuries or disturbance in the Reports because their purpose considered to date is to assess human-related mortality and serious injury.”²³

NMFS’ position is consistent with the MMPA’s legislative history. For example,

“In specifying the stocks, it is expected that the secretary will have some substantive reason to believe that anthropogenic mortality is the problem.”²⁴

As another example,

“I believe this reauthorization will strengthen our efforts and further reduce the mortality and serious injury to our marine mammals.”²⁵

IV. THE *GUIDELINES* AND *GAMMS REPORT* SHOULD BE LIMITED TO COMMERCIAL FISHING EFFECTS

The marine mammal SARs requirements are imposed by Section 117 of the MMPA. The legislative and administrative history of these SARs requirements demonstrate that their purpose is to protect marine mammal stocks from commercial fishing.

Section 117 reads in part as follows:

Not later than August 1, 1994, the Secretary shall, in consultation with the appropriate regional scientific review group established under subsection (d), prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction

²³ Page 59, *GAMMS Report* (emphasis added), available online at http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms3_nmfsopr47.pdf.

²⁴ 140 Cong. Rec., No. 32 (Monday, March 21, 1994) (Sen. Johnson’s remarks), available online at <http://www.gpo.gov/fdsys/pkg/CREC-1994-03-21/html/CREC-1994-03-21-pt1-PgS6.htm> .

²⁵ 140 Cong. Rec., No. 35 (Thursday, March 24, 1994) (Sen. Kerry’s remarks), available online at <http://www.gpo.gov/fdsys/pkg/CREC-1994-03-24/html/CREC-1994-03-24-pt1-PgS20.htm> .

of the United States. Each draft stock assessment, based on the best scientific information available, shall...

(3) estimate the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey....²⁶

This language was added by the 1994 amendments to the MMPA. The 1994 House Bill included its marine mammal SARs requirement in a section entitled, **“TAKING OF MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.”**²⁷

The 1994 Senate Bill included its marine mammals SARs requirement in a section which has the identical title, **“TAKING OF MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS.”**²⁸

The Senate Report for the 1994 Senate Bill provides the following

“SUMMARY OF MAJOR PROVISIONS

The primary purpose of the legislation is to establish criteria for identifying and prioritizing marine mammal stocks most affected by interactions with commercial fishing operations. Emphasis is placed on the need for immediate action to protect those stocks that interact with commercial fisheries and are in decline or at low population levels. In addition, the intentional killing of marine mammals by commercial fishermen is prohibited. Major provisions of s. 1636, as reported, include...

2. Regulatory regime.-a new section 117 is added to the MMPA...to govern the interactions between commercial fisheries and marine mammals.

3. Stock assessment.-the Secretary would be required to prepare and issue a stock assessment for each marine mammal stock....²⁹

The legislative history repeatedly emphasizes that the goal of the 1994 MMPA amendments is to better regulate the interaction of marine mammals and commercial fishing. For example,

“The driving force in moving the Marine Mammal Protection Act amendments of 1994 was, in fact, the need to establish such a new

²⁶ 16 U.C.C. 1386(a)(3).

²⁷ H.R. 2760 [Report No. 103-439], available online at <http://www.gpo.gov/fdsys/pkg/BILLS-103hr2760rh/html/BILLS-103hr2760rh.htm> .

²⁸ P.L. 103-238, S. Rep. 103-220, available online at http://www.thecre.com/pdf/20050320_sr_103-220.pdf .

²⁹ *Id.*

regime to govern the interactions between marine mammals and commercial fisheries.”³⁰

As another example,

“The legislation before us today contains a new regime for protecting marine mammals in the course of commercial fishing with the following provisions: specific timetables and procedures for conducting marine mammal stock assessments.... The substitute amendment also reiterates the longstanding goal of the Marine Mammal Protection Act, ‘to reduce incidental mortality and serious injury from commercial fishing operations to insignificant rates approaching zero,’ establishing a 7-year timeline for that goal.”³¹

NMFS’ administrative history of implementing MMPA section 117 shows a similar focus on and concern with the impact of commercial fisheries on marine mammals through mortality and serious injury.³²

NMFS explained the purpose of Section 117 soon after its enactment:

³⁰ Congressional Record, Volume 140, Number 47 (Tuesday, April 26, 1994) (Sen. Kerry remarks), available online at <http://www.gpo.gov/fdsys/pkg/CREC-1994-04-26/html/CREC-1994-04-26-pt1-PgS73.htm> .

³¹ Congressional Record Volume 140, Number 47 (Tuesday, April 26, 1994)(Sen. Hollings remarks), available online at <http://www.gpo.gov/fdsys/pkg/CREC-1994-04-26/html/CREC-1994-04-26-pt1-PgS73.htm> .

³² See, *e.g.* , pages 1, 4, 11-14, 31-32, 37, 63, 71, Barlow, Jay, Steven L. Swartz, Thomas C. Eagle, and Paul R. Wade. 1995. U.S. Marine Mammal Stock Assessments: Guidelines for Preparation, Background, and a Summary of the 1995 Assessments U.S. Dep. Commer., NOAA Tech. Memo. NMFS-OPR-6, available online at <http://www.nmfs.noaa.gov/pr/pdfs/SARs/guidelines1995.pdf> ; and Pages 1-2, 3, 15-18, 24-26, 35-36, 41, 46, 53, 59-60, 71-72, Wade, Paul R. and Angliss, Robyn P. 1996. Report of the Guidelines for Assessing Marine Mammal Stocks (GAMMS) Workshop. Seattle, WA. NOAA Tech. Memo. NMFS-OPR-12, available online at http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms_report.pdf ; and 2 Pages 1, 2, 8-10, 20-21, 2005 revisions to guidelines: NMFS. 2005. Revisions to Guidelines for Assessing Marine Mammal Stocks (GAMMS II) [pdf]. 24p., available online at <http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms2005.pdf> .

“Appendix I. Summary of MMPA sections and regulations relevant to Stock Assessments

This appendix summarizes parts of the written text of the U.S. Marine Mammal Protection Act (MMPA) that are relevant to the stock assessment process. Included here are the stated goals of the MMPA definitions of terms, and portions of Sec. 117 (Stock Assessments) and Sec. 118 (Taking of Marine Mammals Incidental to Commercial Fishing Operations)....

The Marine Mammal Protection Act was amended by Congress in 1994. These amendments included Sec. 117, which outlines the requirement that NMFS develop Stock Assessments for all marine mammal stocks which occur in U. S. waters and sets up three Scientific Review Groups to ensure that the assessments include the best available scientific information. These amendments also included Sec. 118, which replaced Sec. 114, and provides a new regime for managing incidental interactions between marine mammals and commercial fisheries. *Secs. 117 and 118 are directly related, as the information provided in the SARs is necessary for NMFS to properly implement four major parts of Sec. 118: the List of Fisheries, Take Reduction Teams and Take Reduction Plans, and the progress of fisheries towards the Zero Mortality Rate Goal. In addition, information provided in SARs is also used to assess whether a permit can be issued to some commercial fisheries to incidentally seriously injure or kill endangered or threatened species (Sec. 101(a)(S)(E)).*³³

As NMFS pointed out, the purpose of the MMPA SARs requirement is to help protect marine mammals from being killed or seriously injured by commercial fishing, and to help protect marine mammal stocks from being diminished or hindered from recovery by commercial fishing. Oil and gas seismic operations do not kill or seriously injure marine mammals, and they do not diminish marine mammal stocks or hinder their recovery. Consequently, there is no basis, authority, or need for including oil and gas seismic operations in SARs.

V. CONCLUSION

Revise the *Guidelines* and *GAMMS Report* to discuss and comply with IQA requirements.


Revise the *Guidelines* and *GAMMS Report* to delete any suggestion that marine mammal SARs should discuss oil and gas seismic effects.

³³ Page 41, 1996 GAMMS workshop report: Wade, Paul R. and Angliss, Robyn P. 1996. Report of the Guidelines for Assessing Marine Mammal Stocks (GAMMS) Workshop. Seattle, WA. NOAA Tech. Memo. NMFS-OPR-12, available online at http://www.nmfs.noaa.gov/pr/pdfs/SARs/gamms_report.pdf

Revise the *Guidelines* and *GAMMS Report* to delete any suggestion that a mere “disturbance” or “non-serious injury” can be included in SARs.

CRE thanks you for the opportunity to submit these comments, and we look forward to the Agency’s response.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jim Tozzi". The signature is stylized with a large, sweeping initial "J" and a distinct "T".

Jim Tozzi
Member, CRE Board of Advisors