



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, MD 20910

THE DIRECTOR

JUN -7 2006

Mr. Jim J. Tozzi
Center for Regulatory Effectiveness
Suite 700
11 Dupont Circle N.W.
Washington, D.C. 20036-1231

Dear Mr. Tozzi:

I am writing in response to the Center for Regulatory Effectiveness (CRE) white paper entitled "U.S. Government Agencies Cannot Use an IWC Scientific Committee Report Because it Does Not Meet Data Quality Act Standards" (CRE report) that you provided to NOAA's National Marine Fisheries Service (NMFS). The CRE report states that the 2004 International Whaling Commission (IWC) report of the Scientific Committee's Standing Working Group on Environmental Concerns fails to meet the requirements of the Information Quality Act (IQA) and therefore cannot be used or relied upon by federal agencies, including NMFS.

The agency has reviewed the CRE white paper, the 2004 IWC Report of the Scientific Committee and the Brazilian study cited in the 2004 IWC report (the Engel study).¹ We have concluded that the language in the Scientific Committee report and Annex K to that report mischaracterized the conclusions of the Engel study. That language is imprecise because it could reasonably be read to indicate that the Engel study concluded that seismic airgun surveys being conducted in the vicinity of the Abrolhos Bank off Brazil caused an unusual increase in the strandings rate of adult humpback whales in this region in 2002.

To rectify any misperceptions that may arise from the language in the IWC Scientific Committee report and Annex K, agency staff participating in this year's Scientific Committee meeting will recommend that the IWC Standing Working Group on Environmental Concerns clarify that the Engel study did not make a conclusive connection between the 2002 humpback whale strandings in Brazil and the seismic survey work being conducted in the vicinity at the time.

While NMFS agrees with the CRE regarding the 2004 IWC Scientific Committee report and Annex K, the agency does not share the CRE's view that the Engel study, in conjunction with a report produced by the oil and gas industry,² supports the conclusion that oil and gas seismic airgun surveys did not cause the unusual increase in humpback whale strandings off Brazil in 2002. In the agency's view, the Engel study was inconclusive on the issue of the cause of the 2002 stranding event, but did not affirmatively rule out seismic surveys as a possible cause.

¹ *Are Seismic Surveys Responsible for Cetacean Strandings? An Unusual Mortality of Adult Humpback Whales in Abrolhos Bank, Northeastern Coast of Brazil* (Engel et al., 2004).

² *Further Studies of 2002 Abrolhos Bank, Brazil Humpback Whale Strandings Coincident with Seismic Studies*, produced by the International Association of Geophysical Contractors.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



As the CRE report points out, the NOAA Information Quality (IQ) Guidelines, developed pursuant to the Information Quality Act, specifically address the use of third party information, such as reports of the IWC Scientific Committee. The NOAA IQ Guidelines recognize the use of third party information from both domestic and international sources is a common practice at NOAA. Although third party sources may not be directly subject to the IQA, information from such sources, when used by NOAA to develop information products or to form the basis of a decision or policy, must be of known quality and consistent with NOAA's IQ Guidelines. When such information is used, any limitations, assumptions, collection methods, or uncertainties concerning it will be taken into account and disclosed.

Provided that information from international sources, such as the IWC is of known quality and consistent with NOAA's IQ Guidelines, and NMFS accounts for and discloses any limitations, assumptions, collection methods, or uncertainties regarding those reports, then NMFS may use such information to support agency actions. Prior to releasing or relying on third party information, such as IWC Scientific Committee reports, NMFS must conduct a pre-dissemination review to determine that it is of known quality and consistent with NOAA's IQ Guidelines.

Thank you for your interest in NMFS' program activities. We are committed to the use of the best scientific information available to support the agency's mission domestically and in the international arena.

Sincerely,



William T. Hogarth, Ph.D
Assistant Administrator
for Fisheries

Dr. Doug DeMaster, F/AKC

Dr. Steven Murawski, F

Dr. Nicky Grandy