

Center for Regulatory Effectiveness

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Mr. James H. Lecky
Director, Office of Protected Resources
Department of Commerce
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, MD 20910
Email: jim.lecky@noaa.gov

RE: NMFS Should Comply with all Applicable “Good Government” Laws When NMFS Develops and Issues Take Rules for Oil and Gas Exploration in the Gulf of Mexico

Dear Director Lecky:

I am sending you this letter because you are identified as the contract person for NMFS’ issuance of rules authorizing the taking of Marine Mammals incidental to oil and gas exploration activities in the Gulf of Mexico.¹ On behalf of the Center for Regulatory Effectiveness, I request that NMFS comply with all applicable “Good Government” laws during the Agency’s development and issuance of these rules. These laws include:

- 1) The pre-dissemination review and certification requirements of NMFS’ Information Quality Guidelines;² and
- 2) OMB’s Peer Review Bulletin, which was issued under the Information Quality Act (“IQA”) and other authorities.³

¹ RIN: 0648-AQ71, available online at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=0648-AQ71>.

² See, e.g., [http://swr.nmfs.noaa.gov/ocap/Information Quality Act-Pre-Dissemination Review & Documentation Form.pdf](http://swr.nmfs.noaa.gov/ocap/Information%20Quality%20Act-Pre-Dissemination%20Review%20&%20Documentation%20Form.pdf), and <http://www.sefsc.noaa.gov/iqa/iqa.jsp> and [http://www.cio.noaa.gov/Policy Programs/IQ Guidelines 110606.html](http://www.cio.noaa.gov/Policy_Programs/IQ_Guidelines_110606.html) (Part II).

³ OMB’s Peer Review Bulletin is available online at [http://www.cio.noaa.gov/Policy Programs/OMB Peer Review Bulletin m05-03.pdf](http://www.cio.noaa.gov/Policy_Programs/OMB_Peer_Review_Bulletin_m05-03.pdf).

I also request that the NMFS staff and contractors be briefed on compliance with these laws if this briefing has not already occurred. NMFS is well versed in these requirements.⁴

Compliance with Pre-dissemination Review and Certification Requirements

I recently testified on Marine Spatial Planning to NOAA's Science Advisory Board. There I requested that the SAB be briefed on the IQA standards for scientific information.⁵

I make a similar request here. The GOM Take Rules are extremely important. They affect not only marine mammals, but also the energy security of our country. They must be based on data and science that meet the standards of NMFS' demanding information quality standards. One way to help ensure this goal is to follow the IQA pre-dissemination review and certification process before NMFS publishes these rules.

Compliance with OMB's Peer-Review Bulletin

We have not found the GOM Take rules include on the list of rules that NMFS will peer review in accordance with OMB's Peer Review Bulletin.⁶ This is surprising because the Bulletin requires peer review of all Influential Scientific Information, with more stringent peer review requirements for Highly Influential Scientific Assessments.

OMB's Bulletin defines "Influential Scientific information" as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions."⁷

OMB's Bulletin defines "Highly Influential Scientific Assessments" in two stages. First, "Highly Influential" is defined as scientific information that

“(i) could have a potential impact of more than \$500 million in any year, or
(ii) is novel, controversial, or precedent-setting or has significant interagency interest.”⁸

Second, "Scientific Assessment" is defined as

⁴ See, e.g., <http://www.sefsc.noaa.gov/iqa/iqa.jsp>.

⁵ See article available online at <http://www.thecre.com/creipd/?p=195>.

⁶ NMFS' list of rules to be peer reviewed is available online at http://www.cio.noaa.gov/Policy_Programs/prplans/PRsummaries.html.

⁷ Bulletin, page 11, available online at http://www.cio.noaa.gov/Policy_Programs/OMB_Peer_Review_Bulletin_m05-03.pdf.

⁸ Bulletin, page 39, available online at http://www.cio.noaa.gov/Policy_Programs/OMB_Peer_Review_Bulletin_m05-03.pdf.

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“An evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. These assessments include, but are not limited to, state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments.”⁹

Based on what we understand to be NMFS’ plans for the GOM Take Rules, they are a Highly Influential Scientific Assessment subject to the most stringent requirements in the OMB Peer Review Bulletin. They will certainly be “novel, controversial, or precedent-setting.”

We thank you for your attention to our requests, and we look forward to your response.

Sincerely,



Jim Tozzi
Member, Board of Advisors

cc:

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⁹ Bulletin, page 11, available online at http://www.cio.noaa.gov/Policy_Programs/OMB_Peer_Review_Bulletin_m05-03.pdf