

Correspondence Control Unit
September 24, 2010
Page 8

On behalf of CESAR:

Craig Manson, Esq.
Council for Endangered Species Act Reliability
1990 3rd Street, Suite 400
Sacramento, CA 95811
Phone: (916) 341-7407

An explanation of how the information does not comply with FWS, DOI, or OMB guidelines and, if possible, a recommendation of corrective action

The IQA requires that federal agencies ensure the quality, objectivity, utility and integrity of information (including statistical information) disseminated by the agency. The guidelines promulgated as a result of the IQA by OMB and the DOI define "quality" as being a combination of utility, objectivity, and integrity. The DOI definition of "objectivity" states:⁷

Objectivity includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.

The information presented in the EIS/EIR is biased, inaccurate, and incomplete. The conclusions and statements included fail to meet the standards for highly influential information under the FWS, DOI and OMB IQA Guidelines. Generally, the EIS/EIR has the following failings:

- It is **incomplete** as it fails to identify and consider all the effects of the alternatives being considered in the EIR/EIS;
- It is **biased** as it represents only adverse effects and misrepresents their significance;
- It is **inaccurate** as it mischaracterizes and misrepresents the significance of the effects identified; and
- Is **biased, inaccurate, and incomplete** as it fails to examine significant effects of the 20% reduction in hatchery production on the ecosystem, the food web and protected species that rely on the hatchery fish as a food supply.

Attached to this Request are specific and detailed requests for correction of statements in the EIS/EIR with supporting documentation.

⁷ <http://www.fws.gov/informationquality/topics/IQAguidelines-final82307.pdf>

Correspondence Control Unit
September 24, 2010
Page 9

CONCLUSION

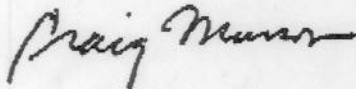
For the reasons stated above and in the attachment, CESAR and CARF strongly urges the FWS to adhere to the legal requirements of the IQA in evaluating this Request. As required specifically in the Guidelines, please notify us within 10 business days of your receipt of this letter.

Thank you for your attention to this matter.

Sincerely,



Maureen Gorsen, Esq.
Partner
(On behalf of CARF)



Craig Manson
(On behalf of CESAR)

Enclosure: Consolidated IQA Detailed Request List

- cc: Hon. Nancy Sutley, Chairman, Council on Environmental Quality
- Hon. Ken Salazar, Secretary, Department of the Interior
- Hon. Cass Sunstein, Administrator, Office of Information and Regulatory Affairs
- Small Business Administration, Office of the Advocate
- Jim Kellogg, President, California Fish and Game Commission
- Richard B. Rogers, Commissioner, California Fish and Game Commission
- Michael Sutton, Commissioner, California Fish and Game Commission
- Daniel W. Richards, Commissioner, California Fish and Game Commission
- Michael Sutsos, Commissioner, California Fish and Game Commission
- Hon. Lester Snow, Natural Resources Secretary, State of California
- California Senators
- California Assembly Members

DETAILED REQUEST LIST

The following requests are specific requests for correction of highly influential information that is contained in the EIR/EIS. This information will materially affect decisions governing the hatchery program and will have significant and novel public policy impacts as well as economic effects in excess of \$500 million.

The contents of the EIS/EIR are the result of several underlying errors, the specific requests for correction all flow from these 3 fundamental errors:

1. The EIS/EIR fails to properly identify the baseline and as a result, all comparative effects are inaccurate;
2. While acknowledging the significance criteria required by CEQA and NEPA, the EIS/EIR fails to comply with the regulatory requirements, and instead relies on speculation and inference unsupported by factual data or expert information;
3. The EIS/EIR fails to actually consider ALL the effects of the alternatives to the current stocking program described in the EIR/EIS.

REQUESTS

Correction Request 1 (page 1-3)

Request the statement that the Court ordered preparation of an EIR/EIS be corrected to accurately represent the narrow scope of the Court's ruling with respect to the hatchery program.

The EIS/EIR states:

However, the court order that directed preparation of this EIR/EIS mandated that DFG analyze its current fish stocking program¹.

This statement is a mischaracterization of the court's direction and fails to acknowledge that DFG was not required to do any more than complete environmental analysis under the state CEQA law on its own hatchery program. The statement is overbroad and false as this was not mandated by the court order and thus it is **inaccurate**. The statement is also inaccurate as it implies the Court's ruling applies to the operation of federal facilities.

Further, the failure to accurately characterize the narrow scope of the Court's ruling compared to the expansive scope of the resultant EIS/EIR results in information that is **biased** in that it leads

¹ EIS/EIR, Page 1-3

the reader to imagine the agencies had no discretion in the scope of the preparation of a document. It is also **biased** in that it implies that the court questioned the operation of federal facilities.

The information is also **unclear** and **incomplete** as it fails to explain why the agencies determined an EIS was necessary when only an analysis under CEQA was ordered by the Court, such an analysis would not produce an EIS. Federal agencies have been funding operation of a number of the subject hatcheries for decades. CEQA does not apply to federal activities and as some of the hatcheries provide mitigation for federal activities as authorized by Congress it is **unclear** as to why they have become part of the EIR/EIS.

Incomplete in that it fails to include an explanation of why federal facilities whose purpose is mitigation were included in the review when the court did not include them. **Unclear and incomplete** in that the distinction between federal and state facilities is not at all clear. Biological opinions have been developed for each of the federal hatcheries, as well as National Pollutant Discharge Elimination System (NPDES) permits. The information is neither complete nor transparent with respect to the status of federal environmental documentation for these hatcheries individually or for the federal hatchery program(s) as it affects the hatcheries which are the subject of this EIR/EIS. The information is **neither complete nor transparent** with respect to the nexus between the narrow order of the court and the expansive and far reaching conclusions and recommendations included in the EIS/EIR.

The IQA requires that highly influential information and scientific assessments be clear, unbiased, complete, and accurate and that supporting analysis be transparent. The statements regarding the need for and EIR/EIS are none of these. Therefore we request the statement be corrected.

Correction Request 2 (EIR/EIS Impact page 2-1 and related discussions)

Request that the "affected environment" and "baseline" used in the EIS/EIR be corrected to comply with the requirements of NEPA and CEQA, respectively.