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September 24, 2010

Correspondence Control Unit
Attention: Information Quality Complaint Processing
U.S. Fish and Wildlife Service
1849 C Street, NW, Mail Stop 3238-MIB
Washington, D.C. 20240

Rowan W. Gould,
Acting Director U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street NW, Room 3012
Washington, DC 20240

Re: Request for Correction of Information in the Final Hatchery and Stocking
Program Environmental Impact Report/ Environmental Impact Statement
Published January 2010

Dear Mr. Gallagher:

This letter and the enclosed Detailed Request List constitute a Request that the United States Fish and Wildlife Service (FWS) correct information included in Final Hatchery and Stocking Program Environmental Impact Report/ Environmental Impact Statement (EIS/EIR). This report is currently being disseminated by the FWS at: <http://www.fws.gov/cno/press/release.cfm?rid=52>

This Request for Correction of Information (Request) is hereby submitted under the Information Quality Act (IQA)¹ Guidelines issued by both the Department of the Interior

¹ Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. No. 106-554; H.R. 5658) provides in full the following:

(a) IN GENERAL.—The Director of the Office of Management and Budget shall, by not later than September 20, 2001, and with public and Federal agency involvement issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) CONTENT OF GUIDELINES.—The guidelines under subsection (a) shall (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and (2) require that each

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(DOI)² and the Office of Management and Budget (OMB), and is consistent with the requirements of the FWS guidelines under the IQA.³ The OMB's IQA guidelines (OMB Guidelines) provide the blueprint for ensuring the quality of information disseminated by the agencies subject to the IQA mandates. In its own IQA guidelines, the DOI has adopted administrative measures that are primarily procedural in nature, but incorporated OMB's substantive IQA requirement as well. Since the DOI has adopted IQA guidelines of its own, which adopt OMB's substantive requirements as a whole, and the FWS references the substantive requirements of those agencies' IQA guidelines in applying its own information quality standards,⁴ for the sake of clarity, all references will be made to OMB Guidelines in the discussion below.

The Council for Endangered Species Act Reliability (CESAR), and the California Association for Recreational Fishing (CARF) are affected organizations and their members are affected persons within the meaning of the OMB Guidelines. CESAR is a California nonprofit, public interest organization whose mission is to bring scientific rigor to regulatory decisions undertaken pursuant to environmental statutes and to ensure consistent application of these statutes throughout all industries and sectors. CARF's mission is to promote recreational fishing, develop public awareness and appreciation of our aquatic natural resources, encourage balanced management of fisheries, ensure that public and private stocking of waters provide a variety of fishing experiences, help minimize adverse effects on wild fishery stocks, and promote legislation and regulations which preserve and improve fishing opportunities within California. CESAR's and CARF's members enjoy and participate in recreational fishing throughout California and are among the beneficiaries of the state's hatchery program.

The IQA provides that agencies may not disseminate substantive information that does not meet a basic level of quality. The more important the information, the higher the quality standards to which it must be held. The EIS/EIR is highly influential information as it was written to advise the State of California, the California Commission on Fish and Game, the California State Legislature, the FWS, Congress, the Secretary of the Interior

Federal agency to which the Guidelines apply (A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency by not later than 1 year after the date of issuance of the guidelines under subsection (a); (B) establish administrative mechanisms allowing affected persons to see and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and (C) report periodically to the Director (i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and (ii) how such complaints were handled.

² 67 Fed. Reg. 36642 (May 24, 2002).

³ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (republished Feb. 22, 2002). As directed by the DOI, FWS Guidelines include the OMB Guidelines.

⁴ See http://www.FWS.gov/info_qual/

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and the general public as to the effects of continuing or altering California's hatchery program as it is currently operated by the California Department of Fish and Game (DFG) and private stocking operations.

While the FWS may use existing guidelines to implement the requirements of the IQA, the standards and procedures used by the FWS must ensure that the administrative mechanisms for information resources management and administrative practices satisfy the standards and procedural requirements of the OMB Guidelines. As a practical matter, the FWS has explicitly incorporated the OMB Guidelines as part of its own IQA guidelines. The EIR/EIS fails to meet these requirements and requires correction accordingly.⁵

BACKGROUND

This Request first discusses the context in which the EIS/EIR should be evaluated as highly influential information, then reviews the IQA requirements in a general context, and finally, provides specific responses to questions posed by the FWS in its instructions for requesting correction of information.

1. The highly influential nature of the information included in the EIS/EIR is evident when considered in the context of persons affected, the economic costs to persons involved with husbandry of the affected species, loss of economic benefits associated with the species, and the clear and substantial impact on important public policies and important private sector decisions.

The highly influential nature of the information included in the EIS/EIR will result in costs over \$500 million and will have a clear and substantial impact on important public policies and important private sector decisions.

- **Potentially Catastrophic Costs To The California Economy**

The information included in the EIS/EIR will affect an industry that generates an estimated \$2 billion annually in fresh and saltwater fishing trips and equipment. For the \$1.1 billion freshwater fishing re-spending multiplier is 1.8 resulting in \$1.42 billion in California alone. Total employment associated with these numbers is estimated at 15,300 jobs. The preferred alternative will result in a 20% reduction in stocking in the initial years.⁶ Assuming a direct relationship between the number of fish available and the expenditures on salt and freshwater fishing, this reduction represents roughly \$800 million in direct revenues associated with trout and salmon recreational fishing that would be lost as a result of information in the EIS/EIR.

⁵Specifically 16 U.S.C. §1536(a). 8 70 Fed. Reg., *supra*, at p. 2675.

⁶ Page 5-19-20 and 7-19 of the EIR/EIS

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Further, the costs associated with the potential harm, which will result in 20% of the biomass of stocked trout and salmon being removed from the ecosystem, could be catastrophic. Stocked fish have been part of the food web in California waters for over 100 years. It is not inconceivable that starvation of piscivorous species could result from this precipitate reduction in biomass, as well as other predators and prey as the 20% reduction in biomass makes its way up and down the food chain. These consequences were not considered and could be catastrophic, as well as illegal under the Endangered Species Act, if listed species are affected.

- **Clear and Substantial Impact on Important Public Policies**

However, the economic losses are dwarfed by the significant public policy implications of outlawing an industry with the consequent cessation of recreational activity that has existed for over 100 years based on nothing other than pure speculation.

The information in the EIR/EIS particularly as it applies to statements regarding the effect of private stocking represents a departure from standard practices in such a way that the entire aquaculture trade, in the United States alone, is threatened. The information in the EIS/EIR, to the extent that there is support for its conclusions, is based on plausible scenarios unsupported by anything other than assumptions and preferences of the authors, untrammelled by the rigor of data or empirical testing and represents a significant departure from existing regulatory practices, which are based on data and empirically established relationships. This in effect is an environmental regulatory action based purely on staff policy preferences, speculation, and inference rather than rigorous data-based science.

The EIS/EIR is a highly influential scientific assessment. The regulations and potential statutes which would reference the EIS/EIR as the basis for their contents will have a clear and substantial impact on important public policies and important private sector decisions.

The EIS/EIR recommends both legislation and regulations as "mitigation" for the effects of California's 100 year old hatchery program. In July, the DFG has proposed regulations to the California Fish and Game Commission. The recommended regulations and legislation will have significant consequences to the following:

- Property owners of thousands of privately stocked ponds and lakes, some of which have been stocked for over 100 years
- Recreational fishers including those in urban areas of Southern California where the majority of freshwater fishing depends on private stocking;
- Related businesses that support recreational fishing;

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- Fish producers who may be driven out of business; and
- Subsistence fishers and their low income communities, which could experience up to a 100% decrease in available local fish, could have significant economic consequences and would be disproportionately affected by a decrease in fish availability.

2. The OMB Guidelines and Final Bulletin refine and add definition of terms which DOI has adopted and to which the FWS must adhere.

As refinements of the IQA, which had little detailed information, OMB's implementing bulletins contain the necessary definitions to determine what is required of the FWS when disseminating information such as that contained in the EIS/EIR. If the information included in the EIS/EIR is not corrected now, its inaccurate, incomplete, biased and unclear information will influence determinations on regulations of these species and adversely affect listed species, low income and subsistence fishers, the environment, and CESAR and CARF members.

A. OMB GUIDELINES

SUMMARY: These final guidelines implement section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658). Section 515 directs the OMB to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." By October 1, 2002, agencies were required to issue their own implementing guidelines that include "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency[,]" which does not comply with the OMB Guidelines. These guidelines apply to federal agencies subject to the Paperwork Reduction Act (44 U.S.C. §3502(1)). Federal agencies must develop information resources management procedures for reviewing and substantiating the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, agencies must establish administrative mechanisms to allow correction of information disseminated by the agency that does not comply with the OMB or agency guidelines.

The OMB Guidelines stress the importance of agencies implementing the standards in a common sense and workable manner. Agencies are required to apply the guidelines in a manner appropriate to the nature and timeliness of the information to be disseminated, and incorporate them into existing agency information resources management and administrative practices. The FWS has done so in citing back to its existing requirements for information quality.

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The IQA denotes four substantive terms regarding information disseminated by Federal agencies: quality, utility, objectivity, and integrity. The OMB Guidelines provide definitions that are designed to establish a clear meaning so that both the agency and the public can readily judge whether a particular type of information to be disseminated does or does not meet these terms. In the guidelines, OMB defines "quality" as the encompassing term, of which "utility", "objectivity", and "integrity", are the constituents. "Utility" refers to the usefulness of the information to the intended users. "Objectivity" focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. "Integrity" refers to security the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. OMB modeled the definitions on the longstanding definitions in OMB Circular A-130, but tailored them to fit into the context of the IQA guidelines.

This Request addresses specific failures of the DOI and FWS to meet the quality requirements of the OMB Guidelines with respect to the accuracy, completeness, clarity, and unbiased representation of the information included in the EIS/EIR.

The EIS/EIR is highly influential information as defined in the OMB Guidelines. Its continued dissemination without correction has adversely affected members of CARF and CESAR and will result in costs exceeding \$500 million, as well as have a clear and substantial impact on important public policies and important private sector. The statements presented below and the enclosed document entitled Detailed Request List present CARF and CESAR detailed and specific comments with respect to the statements contained in the in this matter.

B. SPECIFIC RESPONSES TO REQUEST FOR CORRECTION PROCEDURES

The DOI's version of the IQA Guidelines advises specific information be provided as part of the request for correction. The following is a list of the specific information requirements and our responses.

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1. Specific reference to the information being challenged

This request challenges the Final Hatchery and Stocking Program Environmental Impact Report/ Environmental Impact Statement published January 2010 prepared for the DFG (State Clearinghouse #2008082025) and the FWS This report is currently being disseminated by the FWS at:

<http://pubs.FWS.gov/of/2009/1202/pdf/OF09-1202.pdf>.

2. A statement specifying why the complainant believes the information fails to satisfy the standards in the Departmental or OMB guidelines.

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The report is inaccurate, incomplete, biased and unclear. A detailed list of requested corrections is attached to this letter and is hereby incorporated by reference.

- 3. How a complainant is affected by the challenged information. The complainant may include suggestions for correcting the challenged information, but that is not mandatory.*

CESAR is a California nonprofit, public interest organization whose mission is to bring scientific rigor to regulatory decisions undertaken pursuant to environmental statutes, to ensure consistent application of these statutes throughout all industries and all sectors, and to fulfill the educational goals of its members and provide educational information on the federal and state endangered species statutes and their application to the general public in the process. The contents of the EIS/EIR fail to meet the statutory and regulatory requirements of NEPA and the failures are significant with the potential to profoundly affect the natural environment of which the hatcheries are a part.

CARF and its members will suffer immediate direct and indirect economic harm, and longer term harm due to the replacement of the use of rigorous scientific data and analysis with ad hoc opinion based on arbitrary assumptions rather than data or data-based analysis.

- 4. The name and address of response of the person filing the complaint. This information is used at the complainant's request for the purpose of responding to the challenge initiated by the individual.*

All questions and correspondence related to this request may be directed to:

On behalf of CARF:

Maureen F. Gorsen, Esq.
Alston + Bird, LLP
1115 Eleventh Street
Sacramento, CA 95814
Phone: (916) 498-3305
Email: maureen.gorsen@alston.com

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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>

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.

NEPA's definition of "affected environment," which is the NEPA equivalent of "baseline" is as follows :

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

The U.S. Fish and Wildlife Service's NEPA Reference handbook states that the affected environment description should include the following:

Briefly describe the area in which the proposed action is to occur. If the action will occur on a National Wildlife Refuge or National Fish Hatchery, attach the Refuge/Hatchery public information leaflet to help orient the reader to the general vicinity. For site-specific proposals, include page-sized maps of the general area and the project site. This section should focus on those resources which would be affected through implementation of the proposed action or its alternatives; it should not be a detailed description of the environment at large. The EA [or EIS] need only supply as much information as is needed for the reader to understand the discussion in section pertaining to the anticipated changes in the affected resources from implementation of the various alternatives. Particular mention should be made of the presence (or absence) of any endangered or threatened species or their critical habitat, historic or cultural resources, parklands, prime or unique farmlands, wetlands, 100-year floodplains, wild and scenic rivers, or other ecologically critical areas (e.g., wilderness areas, research natural areas, etc.).

The CEQA definition of the baseline is as follows:

An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published², or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines

² Emphasis added

whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

The EIS/EIR however states that:

Instead it represents what DFG has been undertaking in its hatchery and stocking programs over the past 5 years (2004-2008) and is considered the baseline.

The statement regarding the baseline is **inaccurate**. Law and regulation define the baseline, not analytical preference as is the case. The baseline is highly influential information. Its definition shapes the entire document as it defines the conditions against which all other actions are measured.

Failure to accurately characterize the baseline introduces error into the entire EIR/EIS analysis. Accordingly, we request that the EIR/EIS be corrected to characterize the baseline as required by law.

Correction Request 3 (page 4-4 and related pages)

Request correction of the statement that hatchery operations may incidentally 'take' listed fish by impairing essential behavioral patterns as no information to substantiate the statement is included in the EIS/EIR.

The statement is **inaccurate** as it fails to properly include the acknowledgement that the impairment must actually kill or injure the wildlife to rise to the prohibited level of 'taking'. Further, the statement is **biased** as it implies such harm occurs as a result of hatchery operations and yet provides no substantiating information.

We request that this **inaccurate and biased** statement be removed.

Correction Request 4 (page 4-8 and related pages)

Request the general term 'decision species' be removed as it is unclear, inaccurate, and biased.

The EIR/EIS uses the term 'decision species' to reference 85 species which were presumably identified largely on the basis of staff preferences. Of the 85 'decision species' less than half (32) are actually protected under the law. Of the 32 that are protected either under state or federal law, only 12 are protected by both state and federal law.

The nomenclature 'decision species' is **inaccurate**. Under no law or regulation do all the identified species as a whole govern any decision; neither the FWS nor the DFG has the authority to regulate activities based on the presence or absence of these species. It is true that

the subset of 32 species protected by either or both the state and federal laws are truly 'decision species'; however to refer to the entire 85 species as such is **unclear, biased, and inaccurate**.

Accordingly, we request that references to 'decision species' be removed as there is no authority for basing decisions on all 85 species identified as such.

Correction Request 5 (page 4-27)

Request correction of the assumption that there are adverse environmental impacts of hatchery effluents and that the range of those effects as the basis for making determinations as to significance of the effects of the hatchery program.

The EIS/EIR makes the following statements:

Hatchery effluents are discharged into rivers or river tributaries (except for the Fillmore Hatchery, for which discharge water is used for irrigation of nearby fields) and therefore potential effects will be focused on downstream aquatic communities.

In a comprehensive study on the quality and fate of fish hatchery effluents during the summer low flow season it was reported that while hatchery effluents do cause changes in downstream aquatic communities, in most cases recovery was observed within 0.2 miles downstream (Kendra 1989).

The downstream hatchery vicinity of 3 miles therefore is a conservative value that will capture any significant impacts arising due to hatchery operations.

Multiple sources of information were sought on the ranges and critical habitat for special-status species that might be affected by hatchery discharges, hatchery water diversions, or escape of hatchery fish; this information was overlain with the hatchery vicinity to determine the potential for effects. A potential for effect was assumed if any of the special-status species identified in Table 4-1 was known to occur in the hatchery vicinity.

Even though Chapter 2 of the EIR/EIS notes that all the hatcheries that make covered discharges have NPDES permits, the statements identified above, and the application of the 3 mile definition of 'vicinity' ignores the existence of the permits. In addition, although the language used implies that the 'vicinity' measure was used as a screening tool, in fact, no additional analysis or review was completed and effects (sometimes significant) were assumed based on this measure.

The statements regarding the presumption of an effect is **inaccurate** as independent research indicates that even during periods of low flows, 0.2 miles is the area of influence. Further, as

required by law, individual NPDES permits would have identified and addressed any adverse impacts from the hatcheries discharges. The EIR/EIS does not note any violations of the existing NPDES permits.

The statements regarding the presumption of an effect are **biased**. While the EIR/EIS acknowledges the existence of studies indicating that 0.2 miles during low flows is the area of influence, it fails to apply that information in its analysis of the significance of the effects of hatchery effluents. Further, as required by law, individual NPDES permits would have identified and addressed any adverse impacts from a given hatchery's discharge. The EIR/EIS does not note any violations of the existing NPDES permits.

The statements regarding presumption of effects are **incomplete and unclear**. The language on page 4-27 implies that the 3 mile vicinity definition is merely a screening tool to identify potential effects. However, in the impact section of the EIR/EIS, an effect is presumed based simply on presence/absence of species within the 'vicinity' as defined in this section, with no further qualitative or quantitative information or analysis. The statements in this section are **incomplete and unclear** in that they fail to explain the importance of this definition of "vicinity" to the analysis of impacts and consequent determination of significance of effects.

We request the discussion be corrected to do the following:

- Explain that 'vicinity' definition results in a presumed effects;
- Explain that the contents and existence of NPDES permits were not considered in the identification of effects;
- Replace the assumption of effects within a 3 mile downstream area and 0.25 mile upstream area with an effect range of 0.2 miles downstream and use that distance as a screening tool with quantitative and qualitative information to determine whether effects occur and the significance of those effects.

Correction Request 6 (page 4-38 and related pages)

Request removal of the statement that aquaculture chemicals delivered to surface waters in hatchery water discharges may have a significant effect³ or provision of identifiable quantitative, qualitative or performance level of indication that such significant effects are occurring under the current hatchery operations.

Request correction of the statement as it is inaccurate, incomplete, biased and unclear.

³ EIR/EIS, Page 4-38, BIO-8

The statement is **inaccurate** as there is no indication that there are any significant effects occurring as a result of aquaculture chemicals entering surface water. The statement is **biased** in that it asserts significant effects when in fact the EIS/EIR states:

The water quality analysis (see Chapter 3) concluded that DFG hatchery discharges containing aquaculture treatment chemicals and drugs cause less-than-significant impacts on water quality⁴. This evaluation, conducted for the majority of the treatment chemicals and drugs used at the hatcheries, was based on the lowest guidance concentration values identified by the RWQCBs for the protection of aquatic life.

The statement is incomplete and unclear as it ultimately concludes a significant effect while the EIS/EIR water quality discussion concludes the opposite, that there are no significant effects as the levels are below the regulatory limits identified by state and federal law.

Correction Request 7 (pages enumerated below)

Request removal of the following EIS/EIR statements related to the release of invasive species by hatcheries as they are inaccurate, incomplete, biased, and unclear:

- *Effects Due to the Spread of Invasive Species through Hatchery Discharge are significant;*⁵
- *Effects Due to Distribution of Invasive Species by Anglers as a Result of the Trout Stocking Program are significant;*⁶
- *Impacts of Introducing Aquatic Invasive Species into Native Ecosystems as a Result of the Salmon and Steelhead Stocking Program are significant;*⁷
- *Effect of distribution of Invasive Species by Anglers is significant;*⁸
- *Impacts of Introducing Aquatic Invasive Species into Native Ecosystems Through Fishing in the City Program Stocking are significant;*⁹
- *Impacts of Introducing Aquatic Invasive Species to Wild Populations of Native Fish and Native Amphibian Populations and Their Habitats through Private Stocking Permit Fish Release are significant;*¹⁰
- *Impacts of Distribution of Invasive Species by Anglers as a Result of the Private Stocking Permit Program are significant;*¹¹

⁴ EIR/EIS, Page 4-38, Emphasis added

⁵ EIR/EIS, Page 4-42; BIO-10

⁶ EIR/EIS, Page 4-123; BIO-123

⁷ EIR/EIS, Page 4-170; BIO-203

⁸ EIR/EIS, Page 4-208; BIO-224

⁹ EIR/EIS, Page 4-211 BIO-229

¹⁰ EIR/EIS, Page 4-217; BIO-238

¹¹ EIR/EIS, Page 4-218; BIO-240

- *Impacts from Introduction of Invasive Species and Pathogens on Supplemental Evaluation Species are significant;*¹²
- *Impacts of Invasive Species and Pathogens Released through Stocking Salmon and Steelhead on Supplemental Evaluation Species;*¹³
- *Impacts of Invasive Species and Pathogens Released through Fishing in the City Program Stocking on Supplemental Evaluation Species are significant;*¹⁴
- *Impacts from Introduction of Invasive Species and Pathogens on Supplemental Evaluation Species are significant;*¹⁵

The statements are **inaccurate** as they fail to meet the significance criteria under NEPA and CEQA. The EIR/EIS fails to provide any information related to quantitative or qualitative measures demonstrating any effects. The 'analysis' of the impacts merely states that such occurrences are 'plausible'. The EIS/EIR provides no examples of public or private hatchery spread invasive species. Because there is no basis in fact for the assertions made relative to spread of invasive species by the hatchery program, the statements are **biased**.

Correction Request 7 (pages enumerated below)

Request removal of the following statements related to the release of pathogens by hatcheries as they are inaccurate and biased:

The EIR/EIS states:

- *Pathogen Effects on Native Amphibian Populations through Hatchery Discharge are significant;*¹⁶
- *Impacts of Introducing Pathogens to Native Amphibian Populations as a Result of the Trout Stocking Program are significant ;*¹⁷
- *Impacts of Introducing Pathogens to Native Amphibian Populations as a Result of the Salmon and Steelhead Stocking Program are significant ;*¹⁸
- *Impacts of Introducing Pathogens to Native Amphibian Populations through Fishing in the City Program Stocking are significant.*¹⁹
- *Impacts of Introducing Pathogens to Wild Populations of Native Fish and Their Habitats through Private Stocking Permil Fish Releases are significant;*²⁰

¹² EIR/EIS, Page 4-228; BIO-252

¹³ EIR/EIS, Page 4-233; BIO-263

¹⁴ EIR/EIS, Page 4-235; BIO-266

¹⁵ EIR/EIS, Page 4-237; BIO-270

¹⁶ EIR/EIS, Page 4-31; BIO-12

¹⁷ EIR/EIS, Page 4-109 BIO-107

¹⁸ EIR/EIS, Page 4-170 BIO-202

¹⁹ EIR/EIS, Page 4-211 BIO-228

²⁰ EIR/EIS, Page 4-216 BIO-236

- *Impacts of Introducing Pathogens to Native Amphibian Populations and Their Habitats through Private Stocking Permit Fish Releases are significant;*²¹
- *Impacts from Introduction of Invasive Species and Pathogens on Supplemental Evaluation Species are significant;*²²
- *Impacts of Invasive Species and Pathogens Released through Stocking Salmon and Steelhead on Supplemental Evaluation Species are significant;*²³
- *Impacts of Invasive Species and Pathogens Released through Fishing in the City Program Stocking on Supplemental Evaluation Species are significant;*²⁴
- *Impacts from Introduction of Invasive Species and Pathogens on Supplemental Evaluation Species are significant;*²⁵

The EIR/EIS provides no statement to substantiate the existence of any example of a pathogen being transmitted via a hatchery program. The EIR/EIS only speculates about the plausibility of such an occurrence. In its review of over 100 years of operation, the EIR/EIS pointed to no qualitative or quantitative evidence of transmission of invasive species or pathogens have ever occurred. The statements are **inaccurate**.

After a speculative discussion of possibility and plausibility of such transmission, the EIS/EIR states that such releases have a significant effect, when in fact, there is no evidence that supports the conclusion. The only effect is that imagined by the authors of the EIR/EIS. However, by identifying the effect as existing at the time of publication, the authors inject **bias** into already inaccurate statements.

Correction Request 9 (pages enumerated below)

Request removal of the following inaccurate, incomplete and biased statements related to the significance of predation, competition, and non-target effects on salmon/steelhead populations due to hatchery releases.

The EIR/EIS states:

- *Predation and Competition Effects from Stocked Trout on Steelhead DPSs (Except Northern California DPS and Klamath Mountains Province DPS) and Chinook Salmon ESUs are significant;*²⁶
- *Effects from Trout Stocking Program due to NonTarget Harvest on Central Valley DPS Steelhead, Central California Coast DPS Steelhead, SouthCentral Coast DPS Steelhead,*

²¹ EIR/EIS, Page 4-216 BIO-237

²² EIR/EIS, Page 4-228 BIO-252

²³ EIR/EIS, Page 4-233 BIO-263

²⁴ EIR/EIS, Page 4-235 BIO-266

²⁵ EIR/EIS, Page 4-237 BIO-270

Page 4-73 BIO-49

*and Southern California DPS Steelhead are significant;*²⁷

- *Effects from the Trout Stocking Program due to and NonTarget Harvest on Klamath-Trinity River SpringRun, Sacramento River WinterRun, Central Valley SpringRun, and California Coast Chinook Salmon ESUs are significant;*²⁸ *Predation and Competition Effects from Stocked Salmon and Steelhead on Coho Salmon, Southern Oregon/Northern California Coast ESU are significant;*²⁹
- *Predation and Competition Effects from Stocked Salmon and Steelhead on Chinook Salmon, Upper KlamathTrinity Rivers ESU are significant;*³⁰
- *Predation and Competition Effects from Stocked Salmon and Steelhead on Chinook Salmon, Central Valley SpringRun ESU are significant;*³¹
- *Predation and Competition Effects from Stocked Salmon and Steelhead on Chinook Salmon, Central Valley Fall/Late Fall-Run ESU are significant;*³²
- *NonTarget Harvest Effects on Central Valley Falland Late Fall-Run Chinook Salmon ES due to the Salmon and Steelhead Stocking Program are significant;* U³³
- *NonTarget Harvest Effects on Upper KlamathTrinity Rivers Chinook Salmon ESU due to the Salmon and Steelhead Stocking Program are significant;*³⁴
- *Effects on Steelhead, Northern California DPS, from Stocking Salmon and Steelhead are significant;*³⁵

The statements above are **inaccurate** as they fail to consider the contribution of the millions of tons of biomass contributed by hatchery stock and consumed by non-hatchery populations. The statements are **inaccurate and biased** as they are based on an analysis that ignores the contribution to food supply for protected Evolutionarily Significant Units (ESU) within California and only considers potential predation, competition and non-target effects on protected species. The analysis fails to consider the converse, which is that protected species have an abundant food supply as a result of fish stocking that is less able to compete and thrive. Further, the analysis fails to consider that abundant stocks of hatchery fish reduce pressure on protected fish from predators such as fishing birds and fish-eating mammals. If hatchery fish are

²⁷ Page 105 BIO-103

²⁸ Page 4-106 BIO-105

²⁹ Page 4-139 BIO-145

³⁰ Page 4-141 BIO-147

³¹ Page 4-142 BIO-150

³² Page 4-143 BIO-151

³³ Page 4-160 BIO-190

³⁴ Page 4-161 BIO-192

³⁵ Page 4-201 BIO-215

induced less hardy, less adapted, and less able to compete in California waters, and their existence provides a pressure release for predators accustomed to consuming protected species.

While it is clear there is a significant effect from hatchery production, that effect has been in existence for over 100 years and has beneficial effects as well as those associated with predation, competition, and non-target effects. However, the analysis and the information included on the significance of the effects is **incomplete** as the EIR/EIS fails to consider the contributions of hatchery fish with respect to providing prey for protected species and relieving pressure from predation by piscivorous and omnivore mammals, birds, amphibians and fish.

Correction Request 10 (pages enumerated below)

Request removal of the following inaccurate, incomplete and biased statements related to the significance of genetic effects on salmon/steelhead populations due to hatchery releases.

The EIR/EIS states:

*Genetic Effects on Central Valley Spring/Run Chinook Salmon ESU from Stocking Salmon and Steelhead are significant;*³⁶

*Genetic Effects on Chinook Salmon, Central Valley Fall/Late Fall-Run ESU, from Stocking Salmon and Steelhead are significant;*³⁷

*Genetic Effects on Chinook Salmon, Upper Klamath/Trinity Rivers ESU, from Stocking Salmon and Steelhead are significant;*³⁸

*Genetic Effects on Coho Salmon, Southern Oregon/Northern California Coast ESU, from Stocking Salmon and Steelhead are significant;*³⁹

*Genetic Effects on Steelhead, California Central Valley DPS, from Stocking Salmon and Steelhead are significant;*⁴⁰

*Effects on Steelhead, Northern California DPS, from Stocking Salmon and Steelhead are significant;*⁴¹

*Genetic Effects on Steelhead, Klamath Mountains Province DPS, from Stocking Salmon and Steelhead are significant;*⁴²

³⁶ Page 4-178 BIO-207

³⁷ Page 4-183 BIO-208

³⁸ Page 4-192 BIO-211

³⁹ Page 4-195 BIO-213

⁴⁰ Page 4-197 BIO-214

⁴¹ Page 4-201 BIO-215

⁴² Page 4-203 BIO-216

We request correction of these statements as they are **inaccurate**. The assertions of effects and their significance is purely conjecture, there is no quantitative or qualitative basis for the determination of significance. The statement is **biased** as it implies that there are effects to 'native' stocks when in fact, there is no basis for assertions that hatchery fish have any adverse effect on the genetic fitness of non-hatchery stock. The statements require correction because the analysis upon which they are based is **incomplete**. The analysis fails to account for the over 100 years of stocking that has taken place throughout the state and to acknowledge and quantify the genetic purity (or lack thereof) of the native or wild trout and salmon. It is incredible that after 130+ years of planting hatchery fish, with no qualitative or quantitative information to support them, assertions made over the past 30 years that hatchery fish are out competing wild or native salmon and steelhead stocks to such an extent as to threaten their existence are given credence. That the EIR/EIS repeats these unfounded assertions as fact, without acknowledging there is no analytical or factual basis for them is **biased, inaccurate, and incomplete**.

The EIR/EIS references the All-H Analyzer Tool⁴³ as the basis of the significance of the genetic effects. However, this tool is merely a mechanism for inserting assumptions and determining the effect of those assumptions. The predictive power of the tool is only as good as the assumptions which form the basis of the analysis. In the case of salmon genetics, there are little quantitative or qualitative bases for the supposition that hatchery stock have an adverse effect on native stock.

Accordingly, we request that the findings of significance be corrected or that qualitative and quantitative information or analysis sufficient to support a finding of significance be provided or cited in the EIR/EIS with sufficient transparency to enable a qualified member of the public to reproduce the results.

Correction Request 11 (pages enumerated below)

Request removal of the following inaccurate and biased statements that the hatchery program has significant predation/competition effects on a number of species.

The EIR/EIS states:

- *Predation and Competition Effects from Stocked Trout on Oregon Spotted Frog are significant;*⁴⁴
- *Predation and Competition Effects from Stocked Trout on California RedLegged Frog are significant;*⁴⁵
- *Predation and Competition Effects from Stocked Trout on Foothill YellowLegged Frog are significant;*⁴⁶

⁴³ Appendix F

⁴⁴ Page 4-87 BIO-69

⁴⁵ Page 4-88 BIO-71

⁴⁶ Page 4-89 BIO-72

- *Predation and Competition Effects from Stocked Trout on Mountain Yellow Legged Frog are significant;*⁴⁷
- *Predation and Competition Effects from Stocked Trout on Northern Leopard Frog are significant;*⁴⁸
- *Predation and Competition Effects from Stocked Trout on San Francisco Garter Snake are significant;*⁴⁹
- *Predation and Competition Effects from Stocked Trout on Willow Flycatcher are significant;*⁵⁰
- *Predation and Competition Effects from Stocked Salmon and Steelhead on Steelhead, Klamath Mountains Province DPS are significant;*⁵¹
- *Predation and Competition Impacts from Fishing in the City Program— Stocked Fish on Sensitive, Native, or Legally Protected Fish and Wildlife Species are significant;*⁵²
- *Predation and Competition Impacts from Fish Released Under Private Stocking Permits on Sensitive, Native, or Legally Protected Fish and Wildlife Species are significant;*⁵³
- *Predation and Competition Impacts from Stocked Trout on California Black Rail are significant;*⁵⁴
- *Predation and Competition Impacts from Stocked Salmon and Steelhead on California Black Rail are significant;*⁵⁵
- *Predation and Competition Impacts from the Private Stocking Program on Supplemental Evaluation Species are significant;*⁵⁶

The statements are **inaccurate** as the EIR/EIS does not meet the applicable of thresholds of significance under either CEQA or NEPA. There is neither quantitative nor qualitative information that supports a determination that the effects are significant. The statements are **biased** in that they assume both the adverse effects and the significance of those effects with no basis for the assumptions.

Correction Request 12 (Impact Analysis)

Request that the finding that disturbance of riparian systems due to use of vehicles and foot travel to access fishing locations as a result of the trout stocking program will have significant effects be corrected as it is inaccurate, biased, and incomplete.

⁴⁷ Page 4-91 BIO-74

⁴⁸ Page 4-93 BIO-75

⁴⁹ Page 4-97 BIO-83

⁵⁰ Page 4-99 BIO-87

⁵¹ Page 4-137 BIO-139

⁵² Page 4-209 BIO-226

⁵³ Page 4-214 BIO-233

⁵⁴ Page 4-223 BIO-243

⁵⁵ Page 4-230 BIO-254

⁵⁶ Page 4-236 BIO-269

Anglers have been fishing for hatchery fish throughout the state for over 135 years. The EIR/EIS acknowledges that numbers of anglers has been decreasing. It is not analytically possible for the EIR/EIS to conclude that the impact from anglers is increasing and therefore, causing a significant impact. The EIR/EIS fails to provide any evidence that current anglers are more destructive than past anglers. The statement is **inaccurate, biased, and unclear**.

Correction Request 13 (Impact Analysis)

Request the impact analysis be corrected to include multiple important impacts of changes to the hatchery program examined under options 2 and 3 as the impact analysis is incomplete.

The impact analysis fails to examine the impact of the following changes to the hatchery program. These changes are significant and provide important information necessary to make an informed decision under CEQA and NEPA.

Impacts which were not examined:

- Loss of prey to piscivorous species. For 130+ years the hatcheries have been providing a prey base for a number of species which are piscivorous. The EIS/EIR examines the impacts of changing the amount, timing and placement of hatchery stocks, but fails to analyze the loss of prey. The impacts to local ecosystems will result in decreases of 20% to 100% of the biomass. These impacts, which would essential be a regulatory famine, were not identified, nor were they examined;
- Loss of prey to protected species. If the genetics hypotheses are correct, and hatchery fish are less fit, they are more likely to become prey to protected species and other predators than vice versa. Removing this more readily available source of prey from piscivorous predators will instantly decrease the food supply statewide by at least 20%
- Loss of hatchery prey will increase pressure on protected species from piscivorous predators;
- Loss of subsistence fishing opportunities. The EIS/EIR did not examine the disproportionate consequences to low income populations and low income communities of the state which could experience disproportionate effects as 100% decreases in stocking immediately with no guarantee of fish population recovery could significantly decrease the availability of subsistence fishing as a food supply.
- Loss of mitigation required by law for operation of water project facilities. The hatchery stocking is required by law. The EIR/EIS references literature, which documents that in some areas 90% of salmon are the product of hatcheries or progeny of hatchery fish. This statistic confirms that hatchery production is replacing and mitigating for populations lost

due to construction of water project facilities.⁵⁷ There is a potential for cessation of water project operation due to inadequate mitigation through fish stocking which could result in decreases in water supply for the 25 million people throughout the state that rely on project water;

- Decrease in observed species. A 20% drop in hatchery fish could result in a significant decrease in observed species populations which would include protected species. This would entail attendant regulatory controls being put on all projects that have effects on the species with observed population decreases. These effects although obviously significant, were not examined.

Correction Request 14 (Impact Analysis) – Request correction of the statement that no information is available on private stocking activities as the DFG requires permittees to collect the information, therefore it is available.

The statement is **inaccurate** as information on private stocking programs is available and required by the DFG.

The statement is **incomplete** as it fails to acknowledge that while DFG requires the collection of the data, it does not compile, monitor or store the information;

The statement is **unclear**. While the data is collected for private stocking sites, the DFG has many methods for aggregating the data for analytical purposes without violating privacy rights.

The statement is **biased** as it designed to support the conclusion that the DFG has no alternative other than regulations, when in fact, the data is collected and available and all that need occur is for DFG to receive it in aggregated form to protect privacy.

Correction Request 15

Request correction of the statement that private hatchery activities form a minimal component of the California Recreational Fishing Industry.

DFG stocks only salmonids, no warm water fish. About 50% of all inland fisheries in CA are supported by private stocking. Private sector provides about 35-40% of the trout caught in CA, including most trophy fish. The private hatchery fish comprise an essential and high value part of the recreational trout fishery. Statements that the private hatchery program is a minimal

⁵⁷Barnett-Johnson, R., Grimes, C. B., Royer, C.; Donohoe, C; Identifying the contribution of wild and hatchery Chinook salmon (*Oncorhynchus tshawytscha*) to the ocean fishery using otolith microstructure as natural tags; Can. J. Fish. Aquat. Sci. 64: 1683-1692 (2007)

component of California's Recreational Fishing Industry are **inaccurate, incomplete, and biased**.

Correction Request 16 (Private Stocking Mitigation Measures)

Request the private stocking mitigation measured in the EIR/EIS be removed as they are inaccurate, biased, and unsubstantiated.

The EIR/EIS states:

Mitigation Measure BIO233a: Eliminate Private Stocking Exemption

To reduce the effect of private stocking where DFG permits are currently not required, DFG shall recommend to the Fish and Game Commission that regulations be modified to remove the exemption for private stocking permits described in Title 14, California Code of Regulations, Section 238.5, subsections (c) and (f) by December 1, 2010. The removal of this permit exemption would allow DFG staff to review each proposed stocking location in the context of site - specific information about the stocking location, including information detailing potential use of the site by decision species. With this review capability, DFG staff could screen stocking locations for decision species populations prior to stocking. This mitigation, combined with the mitigation listed below, would reduce the potential impact to less than significant. Absent this revision of Section 238.5, impacts would remain significant and unavoidable.⁵⁸

Mitigation Measure BIO233b: Implement Private Stocking Permit Evaluation Protocol

When water bodies are proposed for stocking under the private stocking permit program, DFG staff will review each site for the presence of the decision species using the private stocking permit evaluation protocol included in Appendix K (Figure K - 2). Where decision species may occur, the biologist shall consider whether the proposed stocking would result in a substantial adverse effect, as defined in the section of this chapter titled "Significance Criteria," on any decision species listed in Table 4 - 1 of this document. If a substantial adverse effect would occur, the biologist shall deny the permit.⁵⁹

Mitigation Measure BIO236: Require Aquaculture Products Stocked in Waters of the State to be Certified Free of Disease

DFG shall recommend to the Fish and Game Commission that it modify existing regulations in CCR Title 14 section 238.5 (b) which currently reads '(b) Live aquaculture products shipped to Inyo or Mono counties must be certified by the department as disease and parasite - free before being stocked in waters in those counties.'

⁵⁸ EIR/EIS, Page 4-215, BIO-233

⁵⁹ EIR/EIS, Page 4-215, BIO-233

The recommended modification to CCR Title 14, section 238.5 is as follows:

*'(b) Live aquaculture products stocked into waters of the State, or reared or held in waters that discharge to waters of the State, must be annually certified by a certified laboratory or other laboratory acceptable to DFG as disease and parasite free before being stocked or reared in waters of the State. These health certifications shall be submitted to DFG as part of the application for private stocking permits.'*⁶⁰

Mitigation Measure BIO238: Require and Monitor Invasive Species Controls for Private Stocking Permits

*To avoid the spread of invasive species from private stocking permit activities, DFG shall recommend to the Fish and Game Commission that 14 CCR section 238.5 be amended to require invasive species monitoring and reporting at private aquaculture facilities planning to stock fish into waters of the State. Quarterly monitoring shall be conducted by a qualified and acceptable company or person using DFG standard protocols. Reports shall be submitted with any application for a private stocking permit. Aquatic invasive species subject to monitoring currently include NZMS, quagga mussel and zebra mussel. Other species may be added to this list as warranted.*⁶¹

The EIR/EIS only speculates that significant impacts will occur and does not provide scientific data or analysis to substantiate the existence of significant impacts from private stocking operations or the mitigation measures.

Mitigation measures BIO233a and BIO233b were included in the EIR/EIS to mitigate predation and competition impacts from fish released under the private stocking program. No biological studies were performed and no quantitative data was collected to support the conclusion that private stocking programs would have a significant predation and competitive impact and thus, require these mitigation measures. The EIR/EIS partially relies on the analysis done for DFG's trout stocking program, but that analysis is likewise faulty and without scientific basis, and is not specific to the private stocking program's locations or types of fish stocked by private stocking operations.

Mitigation measure BIO236 was included in the EIR/EIS to mitigate impacts of introducing pathogens and invasive species from private stocking permit fish releases. No substantiating information or analysis was included to support significance determination or the inclusion of the mitigation measure.

Mitigation measure BIO238 was included to mitigate impacts from introducing aquatic invasive species to wild populations of native fish and native amphibians from private fish stocking

⁶⁰ EIR/EIS, Page 4-216, BIO-236

⁶¹ EIR/EIS, Page 4-217, BIO-238

releases. The EIR/EIS presents no evidence that transmitting invasive species from private aquaculture facilities to state waters has occurred.

Because none of these statements (mitigation measures) are based on substantiating data or information, they are **inaccurate and biased**.