

## **Center for Regulatory Effectiveness**

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March 16, 2006

Mr. David Cottingham  
Executive Director  
Marine Mammal Commission  
4340 East-West Highway  
Room 905  
Bethesda, MD 20814

Re: Request that MMC Publish and Comply with Information Quality Act Guidelines

Dear Mr. Cottingham:

On behalf of the Center for Regulatory Effectiveness (“CRE”), I request that the Marine Mammal Commission (“MMC”) comply with the Information Quality Act (“IQA”), 44 U.S.C. § 3516 note, by publishing and complying with IQA Guidelines.

Before publishing final IQA Guidelines, the MMC should propose draft Guidelines, allow public comment on the draft Guidelines, and send the draft Guidelines to the Office of Management and Budget (“OMB”) for review and approval.

Until the MMC completes this statutorily required process, the MMC should not disseminate any substantive information.

### **THE MMC HAS NOT PUBLISHED ANY IQA GUIDELINES**

We have searched the Internet and the *Federal Register*. We can not find any evidence that the MMC has published IQA guidelines. Please tell us where they are, if we have somehow missed them.

**THE IQA REQUIRES THAT MMC  
PUBLISH AND COMPLY WITH IQA GUIDELINES**

The IQA applies to all federal agencies and commissions that are subject to the Paperwork Reduction Act (“PRA”).<sup>1</sup> The MMC is subject to the PRA.<sup>2</sup> Consequently, the MMC is also subject to the IQA.

The IQA required that, by October 2002, the MMC publish draft IQA Guidelines; send them to OMB for review; allow public comment on them; and publish final IQA Guidelines.<sup>3</sup>

The MMC has not complied with these requirements. The MMC is violating the law with virtually every piece of information that the MMC disseminates. We note, for example, the various documents posted on the MMC website under “Reports” and “Sound Program.”<sup>4</sup>

**THE MMC SHOULD NOT DISSEMINATE ANY SUBSTANTIVE INFORMATION  
UNTIL THE MMC HAS COMPLIED WITH THE IQA**

If our analysis and conclusions are correct, then the MMC should obviously and immediately take all steps necessary to comply with the IQA. Those steps include:

- Develop and publish draft IQA Guidelines;

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<sup>1</sup> 67 FR 8452, 8453 middle column (Feb. 22, 2002) (OMB’s government-wide IQA guidelines). Other federal commissions have published their IQA Guidelines. See, e.g., Federal Communications Commission IQA Guidelines at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-02-277A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-277A1.pdf); Federal Trade Commission IQA Guidelines at <http://www.ftc.gov/os/2002/08/sec515guides.pdf>; Securities and Exchange Commission IQA Guidelines at <http://www.sec.gov/about/dataqualityguide.htm>; and other commission and agency guidelines posted on the OMB website at [http://www.whitehouse.gov/omb/inforeg/agency\\_info\\_quality\\_links.html](http://www.whitehouse.gov/omb/inforeg/agency_info_quality_links.html).

<sup>2</sup> The head of each “agency” must ensure PRA compliance. The term “agency” is defined to include “any independent regulatory agency” and any “establishment in the executive branch of the Government,” except specifically identified entities that do not include MMC. 44 U.S.C. §§ 3502 (1), 3506(a). The MMC is an independent agency of the executive branch. MMC Annual Report to Congress for 2004, page 1.

<sup>3</sup> E.g., 67 FR at 8459 middle column.

<sup>4</sup> [www.MMC.gov](http://www.MMC.gov).

## Center for Regulatory Effectiveness

- Solicit public comment on the draft IQA Guidelines;
- Send the draft IQA Guidelines to OMB for review and comment; and
- Publish final IQA Guidelines after reviewing public and OMB comments and after responding to those comments.

Until and unless the MMC complies with the IQA requirements, the MMC should not disseminate any substantive information. For example, the MMC should not disseminate its Report to Congress on acoustic effects on marine mammals until and unless the MMC has complied with the IQA requirements.<sup>5</sup> Until and unless the MMC has complied with these requirements, there is no way that the MMC can demonstrate that it has met the IQA quality standards.

Please contact the undersigned with the MMC's response to this CRE request and with any questions regarding it.

Sincerely yours,

/S/

Jim J. Tozzi

Member, CRE Board of Advisors

CC: MMC Commissioners  
MMC General Counsel Michael L. Gosliner  
Acting Deputy Administrator Donald R. Arbuckle, OMB/OIRA

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<sup>5</sup> See discussion of this report at <http://www.mmc.gov/sound/>.