



August 31, 2016

VIA Email and U.S. Mail

Abigail Ross Hopper, Director
Bureau of Ocean Energy Management
U.S. Department of the Interior
Bureau of Ocean Energy Management
1849 C Street
Washington, DC 20240

Eileen Sobeck, Assistant Administrator
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3226

Re: Request for Status Report on Incidental Take Regulations Governing Geophysical Surveys in the Gulf of Mexico

Dear Ms. Hopper & Ms. Sobeck:

We write on behalf of the American Petroleum Institute ("API") and the International Association of Geophysical Contractors ("IAGC") (together, the "Associations") requesting information on the status, issues, and outlook of work by the Bureau of Ocean Energy Management ("BOEM") and the National Marine Fisheries Service ("NMFS") (together, the "Agencies") on Marine Mammal Protection Act ("MMPA") incidental take regulations ("ITRs") governing geophysical surveys in the Gulf of Mexico. We also write to express our concern about ongoing delays with respect to the Agencies' work on these ITRs and the potential effect of those delays on overall progress toward the issuance of the regulations and compliance with the schedule described in the *NRDC v. Jewell* settlement agreement. As trade associations representing the entities that must obtain authorizations under these ITRs, we have a significant interest in ensuring that the regulations are finalized in a lawful and timely fashion.

Work on these ITRs has been underway for more than a decade. As you know, BOEM's predecessor agencies submitted a petition for these regulations in 2002 and submitted revised petitions in 2004 and 2011. A 2013 settlement agreement entered into by BOEM and other parties, including the Associations, established a December 2015 deadline for final action on a

BOEM petition, either the revised petition submitted in 2011 or another revised petition. The settlement agreement was subsequently amended to provide the Agencies additional time to take final action, with a new deadline now set for September 2017.

We understand that BOEM intends to submit a revised petition and that NMFS anticipates issuing ITRs in response to the petition. However, to our knowledge, BOEM has not yet completed the initial step of submitting a revised petition to NMFS. To meet the September 2017 deadline for NMFS's final action, assuming that the final action will be issuance of ITRs, a number of actions must therefore occur, including (but not limited to):

- BOEM must submit the revised petition to NMFS;
- the revised petition must be made available for stakeholder and public comment;
- a draft National Environmental Policy Act ("NEPA") document reviewing NMFS's action must be published for stakeholder and public comment;
- the proposed ITRs must be made available for stakeholder and public comment;
- NMFS must consider revisions to the NEPA document from stakeholder and public comments;
- NMFS must consider revisions to the ITRs from stakeholder and public comments;
- a final NEPA document reviewing NMFS's action must be published;
- completion of Endangered Species Act ("ESA") Section 7 Consultation and issuance of a final Biological Opinion; and,
- the final ITRs must be published.

Considering the substantial amount of work yet to be completed and the lack of evident progress to date, and given the impending federal election cycle and the resulting change in administrations, the Associations have significant concerns that NMFS's final action will be delayed beyond September 2017. Accordingly, we respectfully request that the Agencies provide us with information on the status, issues, and outlook for progress, setting forth specific dates by which BOEM and NMFS intend to complete the actions listed above. We ask that the Agencies include details on what work has been completed to date on each of these actions and, if no action has been taken, why there has been a delay. In addition, it has come to our attention that one potential source for delay stems from the Agencies' consideration of a new research proposal. While our industry fully supports reliance on the best available science to inform management decisions, in the absence of other explanations or justification of delay, we urge the agencies to move forward with the rulemaking process, and incorporate new science as it becomes practicable to do so. As always, the Associations stand ready to assist the Agencies in addressing any matters related to the interpretation, use and application of science in operations and regulation.

Finally, the Associations request a response to our May 17, 2016 letter to NMFS requesting written confirmation that the Associations are "applicants" for purpose of the ESA

Section 7 consultation for these ITRs. The Associations plainly meet the statutory and regulatory definition of an “applicant” and, as such, are entitled to the opportunity to constructively inform the Section 7 process. A copy of our letter is attached for your reference. Unlike the underlying ITR petition, NEPA and MMPA decision-making process, confirmation that the Associations are applicants for purposes of ESA consultation is not complex, does not require the exercise of agency expertise and judgment, and certainly does not necessitate the more than 90 days and counting that the Associations’ request has been held in abeyance without explanation.

We greatly appreciate the work that both BOEM and NMFS staff has dedicated to this issue, and we recognize that developing these ITRs is a complex task. We also appreciate that BOEM and NMFS staff have been willing to meet with the Associations and our members to discuss these issues over the years that the Agencies have been working on the ITRs. Nonetheless, these regulations are an issue of great significance to our members and, absent sufficient explanation or justification for these unresolved issues, we are greatly concerned about the possibility of further delay.

Sincerely,



Andy Radford
American Petroleum Institute
Sr. Policy Advisor - Offshore



Nikki Martin
International Association of Geophysical Contractors
President

Attachment

cc: The Honorable John Thune, Chairman, Senate Commerce Committee
The Honorable Lisa Murkowski, Chairman, Senate Energy Committee
The Honorable Rob Bishop, Chairman, House Committee on Natural Resources
Mr. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs,
NMFS
Ms. Cathy Tortorici, Chief, ESA Interagency Coordination, NMFS
Mr. David Bernhart, Asst. Regional Administrator, NMFS Southeast Region
Ms. Donna Wieting, Director, Office of Protected Resources, NMFS

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Ms. Jolie Harrison, Chief, Permits and Conservation Division

Office of Protected Resources, NMFS

Dr. William Brown, Chief, Office of Environmental Programs, BOEM

Dr. Walter Cruickshank, Deputy Director, BOEM

Dr. Jill Lewandowski, Chief, Division of Environmental Assessment, BOEM