

**Center for Regulatory Effectiveness’ (“CRE”) Comments on ICR 1010–0151, Bureau of Ocean Energy Management (“BOEM”), <http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/pdf/2014-26464.pdf>.  
Comments submitted December 8, 2014, to  
Desk Officer for the Department of the Interior at  
OIRA\_submission@omb.eop.gov (email); and to the BOEM  
Information Collection Clearance Officer, Arlene Bajusz, Bureau  
of Ocean Energy Management, [arlene.bajusz@boem.gov](mailto:arlene.bajusz@boem.gov).**

## **I. EXECUTIVE SUMMARY**

The requested ICR covers BOEM’s current information collection requirements for offshore oil and gas Geological and Geophysical Activities (“G&G”), including the use of seismic airguns.

CRE does not oppose this ICR because it only covers and authorizes current, time-tested monitoring and reporting requirements.

We are filing these comments to inform OMB/OIRA that BOEM is planning an information collection that would significantly increase the burden of BOEM’s monitoring requirements for G&G activities, including seismic, in the Gulf of Mexico. The U.S. National Marine Fisheries Service (“NMFS”) is cooperating with BOEM in developing these new monitoring requirements, which both Agencies refer to as the Long Term Monitoring Plan (“LTMP”). BOEM has published a request for information on this LTMP.<sup>1</sup>

CRE commented to BOEM on the LTMP. Attachment A to these ICR comments is a copy of CRE’s comments to BOEM on the LTMP. CRE’s BOEM comments are incorporated by reference herein.

The new burden and new requirements that would be imposed by the LTMP are not discussed in, covered or authorized by any approved or requested BOEM ICR, including the ICR that is currently before OMB/OIRA for review: BOEM ICR 1010–0151.

The LTMP’s new burden and requirements are not discussed in, covered or authorized by any approved or requested NMFS ICR.

Consequently, as pointed out in CRE’s attached comments to BOEM, the Agencies will have to develop and request a new ICR for public comment and OMB/OIRA review before they could implement the LTMP.

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<sup>1</sup> 79 FR 66402, <http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/html/2014-26520.htm>.

CRE's attached LTMP comments to BOEM--and prior CRE submissions to OMB, BOEM and NMFS--demonstrate that seismic operations have no significant impact on marine mammals; and that the existing monitoring program is very extensive, protective, and in no need of replacement. Consequently, the heavy new burden that would be imposed by the LTMP could not be justified, and no ICR for the LTMP should be approved if and when BOEM and/or NMFS request one.

CRE will comment on that LTMP ICR if and when the Agencies request it. At this point, CRE asks that OMB/OIRA issue Terms of Clearance for BOEM ICR 1010-0151 which state that OMB/OIRA "is only approving this ICR for current G&G monitoring and mitigation requirements in the Gulf of Mexico (<http://www.boem.gov/2012-JOINT-G02/>). This ICR does not authorize the Long Term Monitoring Plan ("LTMP") discussed at 79 FR 66402, <http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/html/2014-26520.htm>."

## **II. THE LTMP IS NOT AND SHOULD NOT BE AUTHORIZED BY ANY ICR**

CRE's BOEM comments, which are Attachment A hereto, explain in detail that neither BOEM nor NMFS have authorized or requested ICRs for the LTMP. CRE's comments also explain that an ICR should not be granted for the LTMP because it is not the least burdensome alternative necessary for the proper performance of the Agencies' duties. Current monitoring and mitigation requirements are less burdensome and adequate.<sup>2</sup>

CRE has made and demonstrated this point several times in the recent past. Some examples follow:

1) THE STATE OF SEISMIC REGULATION IN THE GULF OF MEXICO, Center for Regulatory Effectiveness (January 2013);<sup>3</sup>

2) CRE's Comments to OMB/OIRA on Bureau of Safety and Environmental Enforcement Agency Information Collection Activity ICR (October 24, 2012);<sup>4</sup>

3) CRE's Comments to OMB on NOAA/NMFS' ICR for MMPA Takes (February 27, 2014);<sup>5</sup> and

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<sup>2</sup> Attachment A, pages 2-7.

<sup>3</sup> Attachment B hereto,

<http://www.thecre.com/forum13/wp-content/uploads/2014/12/BOEM-CRE-GOM.pdf>, incorporated by reference herein.

<sup>4</sup> Attachment C hereto, <http://www.thecre.com/forum13/wp-content/uploads/2014/12/BOEM-CRE-comment.pdf>, incorporated by reference herein.

<sup>5</sup> Attachment D hereto, <http://thecre.com/pdf/mmnoaaicr.pdf>, incorporated by reference herein.

4) CRE's Comments on BOEMRE ICR 1010-0151 (August 30, 2011).<sup>6</sup>

BOEM's time proven current procedures include ramp-up requirements that allow sensitive animals to leave the area before they could possibly be harmed by seismic:

“For all seismic surveys, including airgun testing, use the ramp-up procedures described below to allow whales, other marine mammals, and sea turtles to depart the exclusion zone before seismic surveying begins.”<sup>7</sup>

The current monitoring and mitigation program includes extensive reporting requirements.<sup>8</sup> A federal court recently dismissed environmental NGO challenges to these monitoring and mitigation requirements, explaining that

“BOEM issued certain Notices to Lessees (“NTL”) to insure that protective measures are taken when engaging in ancillary activity. ...Such measures include seismic survey mitigation measures and protected species observer programs. *See* JOINT NTL No. 2012-G02, January 1, 2012. **Thus, BOEM has taken steps to insure that its actions do not cause harm to endangered species....**”<sup>9</sup>

The current monitoring requirements are increasingly burdensome. The previously approved ICR has an annual hour burden of 190,480 hours. BOEM requests 432,512 hours in the ICR now being reviewed by OMB/OIRA. This is more than a 100% increase without any change in seismic monitoring or mitigation requirements.<sup>10</sup>

The ICR respondents are already spending more than twice the time they spent in the past keeping BOEM updated on their activities, and there is no reason to change a system that is operating well. The large increase in hours that would result from the LTMP would be unnecessarily burdensome and, if requested, should not be approved. Current monitoring requirements are all that's necessary to protect the environment and to serve the Agencies' needs.

As CRE demonstrates in Attachments A through E hereto, the LTMP is not necessary for the proper performance of the Agencies' duties.

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<sup>6</sup> Attachment E hereto, <http://www.thecre.com/creipd/wp-content/uploads/2011/09/mmboemreicrcomments251.pdf>, incorporated by reference herein.

<sup>7</sup> JOINT NTL No. 2012-G02, page 5, at <http://www.boem.gov/2012-JOINT-G02/>.

<sup>8</sup> Id. pages 5-9, at <http://www.boem.gov/2012-JOINT-G02/>.

<sup>9</sup> Pages 51 and 54 of court opinion available at <http://thecre.com/pdf/mmdcopinion.pdf> (emphasis added).

<sup>10</sup> [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201403-1010-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201403-1010-001).

## CONCLUSION

This requested ICR does not cover the LTMP. Neither BOEM nor NMFS have any approved or requested ICRs that authorize the LTMP.

CRE has made a number of submissions all of which demonstrate that (1) that seismic operations have no significant impact on marine mammals and (2) that the existing monitoring program is very extensive, protective, and in no need of replacement or supplement. Consequently, no ICR for the LTMP should be approved if and when BOEM and/or NMFS request one.

OMB/OIRA should issue Terms of Clearance for BOEM's requested ICR 1010-0151, which state that OMB/OIRA "is only approving this ICR for current G&G monitoring and mitigation requirements in the Gulf of Mexico (<http://www.boem.gov/2012-JOINT-G02/>). This ICR does not authorize the Long Term Monitoring Plan ("LTMP") discussed at 79 FR 66402, <http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/html/2014-26520.htm>."

We thank you for the opportunity to submit these comments. Please contact Jim J. Tozzi (202-265-2383) with any questions.

**The Center for Regulatory Effectiveness**  
**[WWW.TheCRE.com](http://www.thecre.com)**

# Attachment A

**Center for Regulatory Effectiveness' ("CRE") Comments on  
Bureau of Ocean Energy Management's ("BOEM") Request for  
Information on the Development of a Long Term Monitoring  
Plan for Marine Mammals ("LTMP") in the Gulf of Mexico  
("GoM")**

**Center for Regulatory Effectiveness’ (“CRE”) Comments on  
Bureau of Ocean Energy Management’s (“BOEM”) Request  
for Information on the Development of a Long Term  
Monitoring Plan for Marine Mammals (“LTMP”) in the Gulf  
of Mexico (“GoM”),  
79 FR 66402, <http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/html/2014-26520.htm> .  
Comments filed December 8, 2014, at [www.regulations.gov](http://www.regulations.gov),  
BOEM\_FRDOC\_0001-0288.**

**I. EXECUTIVE  
SUMMARY**

BOEM and NMFS should not proceed with the LTMP. BOEM and NMFS have correctly concluded that seismic and other Geological and Geophysical (“G&G”) activities in the GoM are not hurting marine mammals under current regulation. The Government has successfully regulated GoM G&G for decades without an LTMP. There is no need for one now.

The LTMP cannot be implemented without an Information Collection Request (“ICR”) approved by the Office of Management and Budget/Office of Information and Regulatory Affairs (“OMB/OIRA”). BOEM and the National Marine Fisheries Service (“NMFS”) do not have approved ICRs for the LTMP.

OMB/OIRA should not approve ICRs for the LTMP because the LTMP is not the least burdensome alternative necessary for the proper performance of the Agencies’ duties. Current monitoring requirements are less burdensome and adequate.

If BOEM and NMFS nevertheless proceed with the LTMP, then they will have to demonstrate that the LTMP meets Information Quality Act (“IQA”) Guidelines and the Paperwork Reduction Act’s (“PRA”) practical utility requirements. Any BOEM or NMFS’ statements that current monitoring requirements are inadequate, and that new more stringent requirements are necessary to protect marine mammals, would violate the IQA Guidelines and practical utility requirements because those statements would be inaccurate.

If BOEM and NMFS nevertheless proceed with the LTMP, then they should perform pre-dissemination review of their compliance with the DQA Guidelines and practical utility requirements. The public should be allowed to comment on this pre-dissemination review before it is final.

Finally, the LTMP would be implemented through rules promulgated by NMFS. Those rules are subject to the requirements of Executive Order 13563, including cost benefit analyses and justifications. Given the success of current regulation, there would be few if any benefits from the LTMP that would justify its costs.<sup>1</sup>

## **II. THE LTMP CANNOT BE IMPLEMENTED WITHOUT AN OMB/OIRA-APPROVED ICR, AND NMFS AND BOEM DON'T HAVE AN ICR FOR THE LTMP**

According to BOEM's Federal Register notice:

“The LTMP will focus on the potential impacts to marine mammals from geological and geophysical data acquisition activities, including seismic surveys. This LTMP is a required element of BOEM's petition for rulemaking under the Marine Mammal Protection Act (MMPA).”<sup>2</sup>

BOEM's Federal Register notice further explains that the LTMP will include and rely on new and presumably more stringent monitoring requirements for G&G activities in the GoM. The LTMP's new monitoring requirements will be implemented through NMFS' GoM Take rules that BOEM has requested under the MMPA.<sup>3</sup>

These new monitoring requirements are supposed to “result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities, and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable...”<sup>4</sup>

These new monitoring requirements are also supposed to include “a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s)...”<sup>5</sup>

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<sup>1</sup> Executive Order 13563 is available online at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf> .

<sup>2</sup> 79 FR 66402 (Nov. 3, 2014), at <http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/html/2014-26520.htm> .

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

CRE assumes that BOEM and NMFS are contemplating monitoring requirements in the LTMP that are more stringent than those currently required in the GoM.

BOEM and NMFS need a new ICR approved by OMB/OIRA before they can impose these new G&G monitoring requirements. Neither BOEM nor NMFS currently have an approved ICR that covers and authorizes the LTMP. The BOEM ICR pending at OMB/OIRA does not cover and authorize the LTMP.<sup>6</sup> BOEM and NMFS could not have an approved or proposed ICR for the LTMP because no one currently knows what the LTMP monitoring requirements will be.

If BOEM and NMFS insist on proceeding with the LTMP—notwithstanding the complete absence of any evidence that would support such an action-- then they should perform pre-dissemination review of their compliance with the DQA Guidelines and practical utility requirements. The public should be allowed to comment on this pre-dissemination review before it is final. Since NOAA and BOEM have well-established pre-dissemination review programs there should be no start-up time for compliance.<sup>7</sup>

BOEM has already acknowledged the need for a new ICR before BOEM could impose more stringent monitoring and mitigation requirements on GoM oil and gas. During OMB/OIRA's review of BOEM's currently effective ICR for GoM seismic, BOEM stated to OMB/OIRA:

“We received two comments in response to the Federal Register notice...The second comment, from the Center for Regulatory Effectiveness, requested that we should state that we are not submitting any ICRs for seismic regulations that are more stringent than current regulations, including NTL 2007 G02. Response: For the renewal of this ICR, we are not requesting anything more stringent than in current NTL 2007-G02 and 30 CFR 250, subpart B regulations, which are covered under OMB Control Number 1010-0151. We have no plans, at this time, to change the content of or the resultant burdens imposed by NTL 2007-G02. Therefore, BOEMRE should move forward with the required information collection to ensure compliance with OMB deadlines. If the lawsuit settlement or

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<sup>6</sup> In addition to these comments to BOEM, CRE has filed the same and other comments on BOEM's pending ICR at OMB/OIRA. These ICR comments were filed with the Desk Officer for the Department of the Interior at [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) (email); and with the BOEM Information Collection Clearance Officer, Arlene Bajusz, Bureau of Ocean Energy Management, 381 Elden Street, HM-3127, Herndon, Virginia 20170, [arlene.bajusz@boem.gov](mailto:arlene.bajusz@boem.gov). These CRE comments to OMB are on ICR 1010-0151 Bureau of Ocean Energy Management Information Collection; Submitted for OMB Review, <http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/pdf/2014-26464.pdf>. A copy of CRE's comments to BOEM is attached to these comments to OMB/OIRA, and is incorporated by reference herein.

<sup>7</sup> See document at [http://thecre.com/pdf/Emerging\\_Information\\_Quality\\_Act-Pre-Dissemination\\_Review\\_&\\_Documentation\\_Form.pdf](http://thecre.com/pdf/Emerging_Information_Quality_Act-Pre-Dissemination_Review_&_Documentation_Form.pdf) for an example of NMFS' pre-dissemination review procedures.



resulting decree requires changes to the NTL and/or DOI regulations, information collection coordination and OMB approval will occur **before** any NTL is reissued or regulations are promulgated.”<sup>8</sup>

The LTMP would significantly change current NTLs and/or DOI regulations. Consequently, the LTMP will require a new OMB/OIRA approved ICR that covers and authorizes those changes.

For similar reasons, NMFS will need a new OMB/OI5A approved ICR that covers and authorizes any monitoring changes imposed by GoM Take Rules under the MMPA. Those monitoring changes are not covered and authorized by any currently approved or pending NMFS ICR.<sup>9</sup>

It should be noted that OMB’s authority under the Paperwork Reduction Act is absolute: if OMB does not approve an ICR, no party needs to submit the data to any government agency, and they cannot be penalized for failing to take such an action.

### **III. OMB/OIRA SHOULD NOT APPROVE AN ICR FOR THE LTMP BECAUSE THE LTMP IS NOT THE LEAST BURDENSOME MONITORING NECESSARY FOR THE PROPER PERFORMANCE OF THE AGENCIES’ FUNCTIONS**

OMB/OIRA’s ICR rules state:

“To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed

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<sup>8</sup> BOEM’s statement to OMB/OIRA is in response to previous CRE comments. Those previous CRE comments are incorporated herein by reference. These previous CRE comments are: CRE’s comments on the September 30th ICR at [www.regulations.gov](http://www.regulations.gov) , Docket ID # BOEM-2011-0011-0003 , <http://www.regulations.gov/#!documentDetail;D=BOEM-2011-0011-0003>; CRE’s comments on the October 21st ICR at [www.regulations.gov](http://www.regulations.gov), Docket ID # BOEM-2011-0036-0003, <http://www.regulations.gov/#!documentDetail;D=BOEM-2011-0036-0003>; and CRE’s comments at <http://www.thecre.com/creipd/wp-content/uploads/2009/06/CRE-Comments-on-BOEM-DEIS-Gulf-of-Mexico-2-131.pdf> .

<sup>9</sup> CRE’s comments on NMFS’ ICR for Applications and Reporting Requirements for the Incidental Take of Marine Mammals by Specified Activities (other than Commercial Fishing Operations) under the Marine Mammal Protection Act (“MMPA”), OMB Control Number: 0648–0151, are available at <http://www.thecre.com/pdf/mmnoaicr.pdf> . These previous CRE comments are incorporated by reference herein.

collection of information: (i) is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives....”

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“(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition: (1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and (2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under § 1320.11 or § 1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.”<sup>10</sup>

The LTMP collection of information is unnecessary, and it is not the least burdensome alternative. BOEM and NMFS have repeatedly and correctly concluded that GoM G&G as currently regulated does not harm marine mammals. There is no need for long term monitoring of non-existent effects. Current monitoring and other mitigation requirements, as prescribed in JOINT NTL No. 2012-G02, are all that's necessary to protect marine mammals.<sup>11</sup> This conclusion is supported by many years of study and by many statements by BOEM and NMFS.

BOEM has already published over 60 different environmental studies or records of decision for GoM oil and gas.<sup>12</sup>

NMFS has conducted annual marine mammal stock assessments since 1995.<sup>13</sup>

The Government, industry and academics produced a multi-year, multi-million dollar GoM sperm whale seismic study and report.<sup>14</sup>

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<sup>10</sup> 5 CFR 1320.5(d), (e), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/inforeg/5\\_cfr\\_1320.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/inforeg/5_cfr_1320.pdf) .

<sup>11</sup> JOINT NTL No. 2012-G02 is available at <http://www.boem.gov/2012-JOINT-G02/> . It includes monitoring and reporting requirements.

<sup>12</sup> See BOEM's list of environmental studies in the GoM <http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx> .

<sup>13</sup> NMFS' Stock Assessments are at <http://www.nmfs.noaa.gov/pr/sars/region.htm> .

<sup>14</sup> The Sperm Whale Seismic Study and Report are at <http://seawater.tamu.edu/SWSS/> .

After all this study and more, the Government has repeatedly and correctly concluded that there is no evidence of harm to marine mammals from GoM seismic.<sup>15</sup> There is no record supporting a contrary conclusion.

As NMFS stated, “To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to airgun pulses, even in the case of large airgun arrays.”<sup>16</sup>

As BOEM recently stated about GoM oil and gas:

“... NTL 2012-JOINT-G02, ‘Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program,’ minimizes the potential of harm from seismic operations to marine mammals. These mitigations include onboard observers, airgun shut-downs for whales in the exclusion zone, ramp-up procedures, and the use of a minimum sound source. Therefore, no significant cumulative impacts to marine mammals would be expected as a result of the proposed exploration activities when added to the impacts of past, present, or reasonably foreseeable oil and gas development in the area, as well as other ongoing activities in the area.

Within the [GoM] WPA, there is a long-standing and well-developed OCS Program (more than 50 years); there are no data to suggest that activities from the preexisting OCS Program are significantly impacting marine mammal populations. Therefore, in light of the above analysis for a WPA proposed action and its impacts, the incremental effect of a WPA proposed action on marine mammal populations is not expected to be significant when compared with non-OCS energy-related activities.”<sup>17</sup>

BOEM reached and stated the same correct conclusion in many other environmental studies.<sup>18</sup> BOEM reached this correct conclusion despite BOEM’s assumption that “there

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<sup>15</sup> See, e.g., CRE Comments on U.S. Bureau of Ocean Energy Management’s (“BOEM”) Request for Information and Comments on the Preparation of the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Program, Attachment page 2, at <http://thecre.com/pdf/boemcommentscombined.pdf> ; BOEM Science Officer Article, at <http://www.thecre.com/forum13/?p=1743> .

<sup>16</sup> 75 FR 49760, 49795 (August 13, 2010), at <http://www.gpo.gov/fdsys/pkg/FR-2010-08-13/pdf/2010-19962.pdf> .

<sup>17</sup> Gulf of Mexico OCS Oil and Gas Lease Sales: 2012-2017; Western Planning Area Lease Sales 229, 233, 238, 246, and 248; Central Planning Area Lease Sales 227, 231, 235, 241, and 247; Final Environmental Impact Statement; Volume I, page 4-215, available online at <http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx>

<sup>18</sup> E.g., Bureau of Ocean Energy Management’s Draft Environmental Impact Statement for the Gulf of Mexico, Outer Continental Shelf Eastern Planning Area Lease Sales 225

will always be some level of incomplete information on the effects from routine activities under a [GoM] CPA proposed action on marine mammals.”<sup>19</sup> The information that does exist is sufficient to show no harm.

Current monitoring requirements include the Protected Species Observer Program, which includes extensive training, observing and reporting requirements.<sup>20</sup> BOEM is also relying more and more on passive acoustic monitoring and reporting.<sup>21</sup>

BOEM’s burden estimate for its current seismic ICR at OMB/OIRA includes the following long list of current G&G monitoring and reporting requirements:<sup>22</sup>

			27 responses	6,550 hours
			\$382,872 non-hour costs	
<b>Seismic Survey Mitigation Measures and Protected Species Observer Program NTL</b>				
NTL; 211 thru 228; 241 thru 262	Submit to BOEM observer training requirement materials and information.	1.5 hours	2 sets of material	3
	Training certification and recordkeeping.	1 hour	1 new trainee	1
	During seismic acquisition operations, submit daily observer reports semi-monthly.	1.5 hours	344 reports	516
	If used, submit to BOEM information on any passive acoustic monitoring system prior to placing it in service.	2 hour	6 submittals	12
	During seismic acquisition operations, submit to BOEM marine mammal observation report(s) semi-monthly or within 24 hours if air gun operations were shut down.	1.5 hours	1,976 reports	2,964
	During seismic acquisition operations, when air guns are being discharged, submit daily observer reports semi-monthly.	1.5 hours	344 reports	516
	Observation Duty (3 observers fulfilling an 8 hour shift each for 365 calendar days x 4 vessels = 35,040 man-hours). This requirement is contracted out; hence the non-hour cost burden.	3 observers x 8 hrs x 365 days = 8,760 hours x 4 vessels observing = 35,040 man-hours x \$52/hr = \$1,822,080.		
<b>Subtotal</b>			<b>2,673 responses</b>	<b>4,012 hours</b>

and 226, page 2-22 and 2-35, available online at <http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx>; Gulf of Mexico OCS Oil and Gas Lease Sales: 2013-2014, Western Planning Area Lease Sale 233, Central Planning Area Lease Sale 231, Final Supplemental Environmental Impact Statement; BOEM Gulf of Mexico OCS Region, pages 4-30 and 4-130, available online at [http://www.boem.gov/uploadedFiles/BOEM/BOEM\\_Newsroom/Library/Publications/2013/BOEM%202013-0118.pdf](http://www.boem.gov/uploadedFiles/BOEM/BOEM_Newsroom/Library/Publications/2013/BOEM%202013-0118.pdf).

<sup>19</sup> *Id.*, Volume II, page 4-710.

<sup>20</sup> JOINT NTL No. 2012-G02, page 3-7, at <http://www.boem.gov/2012-JOINT-G02/>.

<sup>21</sup> *Id.*, pages 8-9.

<sup>22</sup> Supporting Statement A, pages 8-9, at

[http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201403-1010-001](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201403-1010-001)

			<b>\$1,822,080 Non-Hour Costs</b>	
<b>Vessel Strike Avoidance and Injured/Protected Species Reporting NTL</b>				
NTL; 211 thru 228; 241 thru 262	Notify BOEM within 24 hours of strike, when your vessel injures/kills a protected species (marine mammal/sea turtle)	1 hour	1 notice	1
<b>Subtotal</b>			<b>1 response</b>	<b>1 hour</b>
<b>General Departure</b>				
200 thru 299	General departure and alternative compliance requests not specifically covered elsewhere in Subpart B regulations.	2	25 requests	50
<b>Subtotal</b>			<b>25 responses</b>	<b>50 hours</b>
<b>TOTAL BURDEN</b>			<b>4,265 Responses</b>	<b>432,512 Hours</b>

Courts agree with BOEM that there is no harm from G&G under current regulation. In *Oceana v. BOEM*, Oceana and other environmental groups challenged two oil and gas lease sales in the GoM, including seismic airgun operations authorized by the leases.<sup>23</sup> The plaintiffs claimed that seismic and other aspects of the leases violated the NEPA and the ESA. The court rejected the plaintiffs’ claims and granted summary judgment motions filed by the Government and industry interveners. The court explained that with regard to seismic:

“BOEM took efforts to insure that Lease Sale 216/222 itself would not jeopardize any listed species, while it awaited (awaits) NMFS’s Biological Opinion.... And with respect to endangered species generally, BOEM included a list of six actions lessees must take to insure that its lease activities ‘prevent or minimize harm to the environment,’ including ‘maintain[ing] a distance of 90 meters or greater from whales,’ and ‘employ[ing] mitigation measures . . . for all seismic surveys.’ Such lease stipulations show that BOEM set out to minimize harm to the endangered species in the Gulf of Mexico, and therefore insure no-jeopardy.”

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“[W]ith respect to ancillary activities, BOEM issued certain Notices to Lessees (“NTL”) to insure that protective measures are taken when engaging in ancillary activity. . . . Such measures include seismic survey mitigation measures and protected species observer programs. *See* JOINT NTL No. 2012-G02, January 1, 2012. Thus, BOEM has taken steps to insure that its actions do not cause harm to endangered species while it engages in interim consultation with NMFS on the updated Biological Opinion. It has therefore independently insured no-jeopardy and satisfied the requirements of section 7(a) of the ESA.”<sup>24</sup>

<sup>23</sup> The court’s opinion is available at <http://thecre.com/pdf/mmdcopinion.pdf> .

<sup>24</sup> *Id.*, pages 51 and 54 (footnotes omitted).

The court's opinion reinforces BOEM and NMFS' repeated statements that oil and gas seismic under current and long-standing regulation does not injure marine mammals or anything else.

BOEM's Science Officer recently published an article, which emphasizes that

"To date, there has been no documented scientific evidence of noise from air guns used in geological and geophysical (G & G) seismic activities adversely affecting marine mammal populations or coastal communities."

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"We expect survey operators to comply with our requirements and, if they do, seismic surveys should not cause any deaths or injuries to the hearing of marine mammals or sea turtles."<sup>25</sup>

#### **IV. BOEM AND NMFS WILL HAVE TO SHOW THAT THE LTMP COMPLIES WITH THE IQA GUIDELINES AND THE PRA PRACTICAL UTILITY REQUIREMENTS**

In addition to demonstrating that the LTMP is necessary (which it is not), BOEM and NMFS will also have to demonstrate to OMB/OIRA that the LTMP will generate information that meets the IQA quality standards of accuracy, reliability, reproducibility, and utility. In addition, BOEM and NMFS will have to demonstrate that data generated from the LTMP meets the PRA's requirement that ICRs have practical utility.

OMB/OIRA's IQA guidance is unambiguous and unequivocal on these requirements:

"...we note that each agency is already required to demonstrate the 'practical utility' of a proposed collection of information in its PRA submission, i.e., for draft information collections designed to gather information that the agency plans to disseminate. Thus, we think it important that each agency should declare in its guidelines that it will demonstrate in its PRA clearance packages that each such draft information collection will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality standards. It is important that we make use of the PRA clearance process to help improve the quality of information that agencies collect and disseminate. Thus, OMB will approve only those information collections that are likely to obtain data that will comply with the OMB and agency information quality guidelines."<sup>26</sup>

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<sup>25</sup> <http://www.thecre.com/forum13/?p=1743> .

<sup>26</sup> Page 12 of OMB IQA Guidance at [http://www.whitehouse.gov/sites/default/files/omb/inforeg/iqg\\_comments.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/iqg_comments.pdf) .

Independent of the IQA/PRA interface, OMB/OIRA's ICR rules require that BOEM and NMFS demonstrate that the LTMP will generate accurate, reliable, reproducible and useful information.

The ICR rules state that “[t]o obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information...has practical utility.”<sup>27</sup>

The ICR rules define the term practical utility as “the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability....”<sup>28</sup>

If BOEM and/or NMFS make statements that current monitoring requirements are inadequate, and that an LTMP is necessary to protect marine mammals, then for reasons discussed above, those statements would violate the IQA and practical utility requirements for accuracy.

We wish to emphasize this point; in order to justify the LTMP one has to first demonstrate that the existing program is inadequate. Such a finding would violate the IQA accuracy requirements.

## V. RECOMMENDED ACTIONS

BOEM and NMFS should not proceed with the LTMP. Current monitoring requirements are less burdensome and all that's necessary to protect marine mammals.

If BOEM and NMFS do proceed with the LTMP, then they should request new ICRs that cover the LTMP. Those new ICRs should be subject to public comment. BOEM and NMFS should not try to implement the LTMP until and unless the new ICRs have been reviewed and approved by OMB/OIRA.

If BOEM and NMFS do proceed with the LTMP, then they should perform pre-dissemination review of compliance with the IQA Guidelines and the PRA's practical utility requirements. The public should be allowed to comment on this pre-dissemination review before it is final.

If BOEM and NMFS do proceed with the LTMP, then they should perform a cost benefit analysis, as required by Executive Order 13563, to determine whether the benefits of the LTMP, if any, justify its costs.

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<sup>27</sup> 5 CFR 1320.5(d)(1)(iii).

<sup>28</sup> 5 CFR 1320.3(l).

We thank you for the opportunity to submit these comments, and we look forward to the Agencies' response to our comments. Please contact Jim J. Tozzi (202-265-2383) with any questions.

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