

Center for Regulatory Effectiveness

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January 27, 2016

RE: NMFS' Compliance with Executive Orders 12866 and 13563

Dear Ms. Schiffer:

On November 18, 2015, CRE sent NMFS and BOEM a petition asking the agencies to comply with Executive Orders 12866 and 13563 during their development of marine mammal Take Rules for offshore oil and gas in the Gulf of Mexico ("GOM"). OMB has designated those GOM Take Rules to be "economically significant" under the Executive Orders.¹

NMFS and BOEM have not yet responded to CRE's Petition. We request that they respond as soon as possible. Their response should include a schedule for submitting the draft GOM Take rules--including a draft Regulatory Impact Analysis ("RIA") for the rules--to the Office of Management and Budget for review.

Executive Orders 12866 and 13563 mandate these requested actions. For "economically significant" rules, these Executive Orders require a very stringent cost benefit analysis (called a "Regulatory Impact Analysis" or RIA), and they require OMB

¹ A copy of CRE's Petition is available online at <http://www.thecre.com/forum13/wp-content/uploads/2015/11/mmltmpcommentspetition18nov15-002.pdf>. OMB's designation of GOM Take Rules as economically significant under Executive Orders 12866 and 13563 is at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=0648-BB38> and <http://www.reginfo.gov/public/Forward?SearchTarget=Agenda&textfield=0648-BB38>.

The GOM Take rules are being developed by NMFS and BOEM under the Marine Mammal Protection Act ("MMPA"). See <https://www.federalregister.gov/articles/2013/05/10/2013-11226/outer-continental-shelf-ocs-geological-and-geophysical-exploration-activities-in-the-gulf-of-mexico> for BOEM's discussion of this MMPA rulemaking.

review and approval before the rules can be proposed or promulgated. An RIA must be part of both the proposed and final “economically significant” rules reviewed by OMB.

Because OMB has classified the Gulf of Mexico Take rules as “economically significant” under the Executive Orders,² both the proposed and final GOM Take rules are subject to stringent RIA requirements and OMB review before they can be proposed or promulgated.

BOEM has proposed a Long Term Monitoring Plan (“LTMP”) that would be part of the GOM Take Rules.³ Consequently, this LTMP is also subject to the RIA and other Executive Order requirements.

According to the latest Unified Agenda, NMFS intends to propose GOM Take Rules by January 2017. That doesn’t leave much time for NMFS and BOEM to develop a draft RIA, and submit it to OMB for review and possible approval, before proposing GOM Take Rules by this date. Despite this short time frame, the Agencies have not taken any public action to comply with the RIA requirements, or with any of the other requirements of Executive Orders 12866 and 13563.

In light of these urgent concerns, CRE requests that NMFS and BOEM

- publish a schedule for submitting draft GOM Take Rules and a draft RIA to OMB for review;
- consider any public comment regarding those drafts before the Agencies submit the drafts to OMB;
- publish a date for submitting final Rules and a final RIA to OMB for review;
- publish a study plan for the RIA and rules, and consider public comment on that plan; and
- publish a plan for public participation in the development of the RIA and rules.

CRE believes that the Agencies’ Regulatory Compliance Officers should assist and encourage NMFS and BOEM’s compliance with these important tasks.

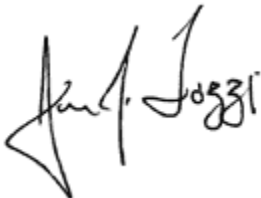
CRE requests a meeting with you and whomever you deem appropriate to discuss our Petition and the Agencies’ compliance with Executive Orders 13563 and 12866.

² <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=0648-BB38> ; and <http://www.reginfo.gov/public/Forward?SearchTarget=Agenda&textfield=0648-BB38> .

³ See, e.g., 79 FR 66402 (Nov. 7, 2014), <https://www.gp.gov/fdsys/pkg/FR-2014-11-07/html/2014-26520.htm>, where BOEM states: “This LTMP is a required element of BOEM's petition for rulemaking under the Marine Mammal Protection Act (MMPA).”

THE CENTER FOR REGULATORY EFFECTIVENESS

Thank you for your time and assistance.

A handwritten signature in black ink, appearing to read "Jim J. Tozzi". The signature is stylized with a large, sweeping initial "J" and "T".

Jim J. Tozzi, Ph.D
Member, CRE Board of Advisors

cc:

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