

Center for Regulatory Effectiveness

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P. Michael Payne
Chief
Permits
Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service (NMFS)
1315 East-West Highway
Silver Spring, MD 20910-3225

COMMENTS BY THE CENTER FOR REGULATORY EFFECTIVENESS (“CRE”) ON UNIVERSITY OF TEXAS, INSTITUTE OF GEOPHYSICS (“UT”), INCIDENTAL HARASSMENT AUTHORIZATION (“IHA”) FOR LOW-ENERGY SEISMIC SURVEY IN THE NORTHEASTERN PACIFIC OCEAN

(Comments filed June 23, 2008, by first-class mail and electronically to PR1.0648XB70@noaa.gov)

Dear Mr. Payne:

CRE appreciates the opportunity to submit these comments.

We do not oppose the UT IHA because we do not believe that the proposed UT seismic activities will harm marine mammals.

We do, however, request that the final IHA issued by NMFS to UT be consistent with the two-tiered regulatory scheme set forth in the attached **CRE White Paper: The National Marine Fisheries Service Should Regulate Seismic Under the Marine Mammal Protection Act In a Two-Tier Manner.**

The CRE White Paper focuses on regulation of seismic in the Gulf of Mexico; however, its principles apply everywhere that seismic occurs, including the northeastern Pacific Ocean, which is the area proposed for the UT seismic operations. Consequently, the White Paper’s two-tiered approach should apply to all regulation of seismic.

As explained in detail in the White Paper, any final IHA issued to UT for the proposed seismic operations should:

- *Use Line Transect Analysis to estimate exposures including: (1) the number of line miles (or line kilometers) traversed, (2) estimated radial distance to the edge of a safety, impact, or exclusion zone; and (3) the densities of marine mammals present. No models should be used to estimate exposures before the models meet Data Quality Act (“DQA”) guidelines; before they meet Council for Regulatory Environmental Modeling (“CREM”) guidelines; and before they pass external peer review. No models should be used before they have been demonstrated to be more reliable than the currently approved and used methodology: Line Transect Analysis*
- *Use average density numbers to estimate marine mammal exposures to seismic. Do not use maximum density numbers.*
- *Explain that **exposure** to seismic does not necessarily equate to **harassment** and a **taking** under the MMPA. Explain that “simple exposure to sound, or brief reactions that do not disrupt behavioral patterns in a potentially significant manner, do not constitute harassment or ‘taking’. By potentially significant, we mean ‘in a manner that might have deleterious effects to the well-being of individual marine mammals or their populations.’”¹ Factor this explanation into NMFS’ use and discussion of Line Transect Analysis. Also factor into exposure estimates the fact that whales do not sit still and therefore do not get the full dose of sound on every shot.*
- *Regulate at 180 dB and 500 meters unless and until other levels are shown DQA compliant and necessary. These standards have been consistently applied in the Gulf of Mexico and elsewhere without harm to marine mammals.*
- *Require Passive Acoustic Monitoring (“PAM”) if and when PAM is demonstrated to be accurate and reliable after public comment on the issue.*

We encourage NMFS to regulate seismic in the GOM and elsewhere through the promulgation of five-year rules. We urge NMFS to follow the Tier II recommendations of our White Paper when NMFS develops seismic rules. We believe that the May 9, 2008 memo from Josh Bolten, White House Chief of Staff,² may preclude the proposal of such rules before the end of 2008. Consequently, we urge NMFS to follow the Tier I recommendations of our White Paper when

¹ The quoted language is from the Request by the University of Texas for an Incidental Harassment Authorization to Allow the Incidental Take of Marine Mammals during a Low-Energy Marine Seismic Survey in the Northeast Pacific Ocean, June–July 2008, pages 86-87, available online at http://www.nmfs.noaa.gov/pr/pdfs/permits/utig_iha.pdf, (hereinafter cited as UT IHA).

² Found at http://www.whitehouse.gov/omb/inforeg/cos_memo_5_9_08.pdf.

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NMFS issues individual IHAs in the absence of seismic rules.

We once again thank you for the opportunity to submit these comments.

Sincerely,

Scott Slaughter

Attachment