

**Comments by the Center for Regulatory Effectiveness (“CRE”) on Bureau of Ocean Energy Management (“BOEM”) Request for Information and Comments on the Preparation of the 2019–2024 National Outer Continental Shelf (“OCS”) Oil and Gas Leasing Program, <https://www.boem.gov/82-FR-30886/>**

**Comments Submitted August 17, 2017, at [www.Regulations.gov](http://www.Regulations.gov), BOEM–2017–0050.**

These are CRE’s initial comments on BOEM’s 2019-2024 Leasing Program. CRE begins by commending BOEM’s express commitment to complying with all relevant Executive Orders including E.O. 13795, the Executive Order on Promoting Energy Independence and Economic Growth.<sup>1</sup>

CRE next comments on BOEM’s regulation of seismic exploration during offshore oil and gas exploration. CRE recently addressed this subject in comments filed with the National Marine Fisheries Service (“NMFS”) on Taking Marine Mammals Incidental to Geophysical Surveys in the Atlantic Ocean.<sup>2</sup> These previous CRE comments on NMFS’ proposed Atlantic IHAs are incorporated by reference into CRE’s comments on BOEM’s 2019-2024 OCS Leasing Program.<sup>3</sup>

As discussed in CRE’s comments to NMFS, CRE commends the Federal Government for opening up parts of the Atlantic to oil and gas exploration. We also commend NMFS for proposing to issue Incidental Harassment Authorizations (“IHAs”) for the seismic exploration necessary to locate Atlantic oil and gas deposits.

CRE also commends and supports other aspects of the proposed Atlantic IHAs, including a 500-meter exclusion zone as a mitigation measure. CRE agrees with NMFS that this is an appropriate standard.<sup>4</sup> BOEM has used it for decades in the Gulf of Mexico with no evidence of environmental harm. We recommend that BOEM continue to use this 500-meter exclusion zone for offshore oil and gas seismic.

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<sup>1</sup> See 82 FR 30886, 30887, col. 1 (July 3, 2017), at <https://www.boem.gov/82-FR-30886/> for BOEM’s commitment to compliance.

<sup>2</sup> 82 FR 26244 (June 6, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-06-06/pdf/2017-11542.pdf>.

<sup>3</sup> CRE’s comments on NMFS’ Atlantic IHAs are available at <http://www.thecre.com/creipd/wp-content/uploads/2017/07/mmjuly5commentsfinal.pdf>.

<sup>4</sup> See 82 FR 26244, 26252 (June 6, 2017), at <https://www.gpo.gov/fdsys/pkg/FR-2017-06-06/pdf/2017-11542.pdf>

CRE also agrees that Passive Acoustic Monitoring should be required during offshore oil and gas seismic.<sup>5</sup>

However, CRE does not agree with NMFS' proposed use of its new Acoustic Guidance.<sup>6</sup> CRE's recently filed comments on other NMFS IHAs explained why neither NMFS nor BOEM nor anyone else should use the Acoustic Guidance.<sup>7</sup> Those already filed comments are incorporated by reference.

CRE also recently filed comments with NOAA/NMFS on the Acoustic Guidance's non-compliance with Executive Order 13795. These comments are incorporated by reference.<sup>8</sup> They explain that use of the Acoustic Guidance Conflicts with Section 10 of Executive Order 13795 for the following and other reasons.

First, the Acoustic Guidance is unnecessary to ensure that oil and gas seismic is safe and environmentally responsible.

Second, the Acoustic Guidance will discourage energy exploration and production.

Third, the Acoustic Guidance has many other flaws that preclude its use. These flaws include

- violations of OMB's Peer Review Bulletin;
- violations of Information Quality Act ("IQA") Guidelines;
- violations of President Trump's Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs;
- violations of OMB's Guidance Document Bulletin and implementing memoranda; and
- violations of the Marine Mammal Protection Act ("MMPA") requirement that all mitigation requirements be "practicable."

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<sup>5</sup> See 82 FR 26244, 26313 (June 6, 2017), at <https://www.gpo.gov/fdsys/pkg/FR-2017-06-06/pdf/2017-11542.pdf>

<sup>6</sup> For an example of this use, see 82 FR 26244, 26253 (June 6, 2017), at <https://www.gpo.gov/fdsys/pkg/FR-2017-06-06/pdf/2017-1142.pdf> (NMFS refers to this as "NMFS's new technical acoustic guidance").

<sup>7</sup> See CRE's filed comments at <http://www.thecre.com/forum13/?p=4561> ; and at <http://www.thecre.com/forum13/?p=4463> .

<sup>8</sup> CRE's comments to NMFS on the Acoustic Guidance's noncompliance with the Executive Order are available at <http://www.thecre.com/creipd/wp-content/uploads/2017/07/mmfiled17julycomments.pdf> .

The Acoustic Guidance cannot be used to regulate for these and other reasons. The other reasons include the fact that neither NMFS nor BOEM has OMB-approved Information Collection Requests for the Acoustic Guidance.

CRE also recommends that BOEM consider the letter from the House Committee on Energy and Commerce to Attorney General Sessions and EPA Administrator Pruitt.<sup>9</sup> This congressional letter advises EPA to develop “written guidelines” that prevent sue-and-settle consent decrees from subverting the rulemaking, congressional and OMB review processes that Congress has established. CRE recommends that BOEM/Interior also develop such written guidelines, and allow public comment on them.

Finally, the 2019-2024 OCS Leasing Program will have to be supported by an Environmental Impact Statement that analyzes the impacts of various alternatives. BOEM recently published a Gulf of Mexico Geological and Geophysical Activities Programmatic Environmental Impact Statement (“2017 PEIS”).<sup>10</sup> This PEIS concluded that impacts from oil and gas G & G are “moderate.” This conclusion lacks record support, and conflicts with BOEM’s other impact conclusions for oil and gas G & G in the GOM.

For example, marine mammals and sea turtles are the primary species of concern when assessing GOM G & G. In contrast to BOEM’s 2017 PEIS, *in the same year* BOEM’s 2017 Multisale EIS for GOM oil and gas concluded that impacts on marine mammals and sea turtles are “negligible” or “none” or “minor.”<sup>11</sup>

Numerous supplemental EISs have reached similar conclusions. For example, a previous BOEM EIS for GOM G& G concluded that

“Routine events related to a WPA or CPA proposed action are not expected to have adverse effects on the size and productivity of any marine mammal species or population in the northern GOM.”

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“Routine activities resulting from a WPA or CPA proposed action have the potential to harm sea turtles, although this potential is unlikely to rise to a

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<sup>9</sup>This letter is available at

<https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/114/letters/20170629EPADOJ.pdf>.

<sup>10</sup> <https://www.boem.gov/Gulf-of-Mexico-Geological-and-Geophysical-Activities-Programmatic-EIS/#Final>.

<sup>11</sup> *E.g.*, Gulf of Mexico OCS Oil and Gas Lease Sales: 2017-2022 (OCS EIS/EA BOEM 2017-009), Final Multisale Environmental Impact Statement, Vol. I, page xviii, at <https://www.boem.gov/BOEM-EIS-2017-009-v1/> ;

Vol. II, pages 4-282, 4-307, 4-324 at <https://www.boem.gov/BOEM-EIS-2017-009-v2/> .

level of significance due to the activity already present in the Gulf of Mexico and mitigations that are in place.”<sup>12</sup>

The “mitigations that are in place” relied on in the above quote are essentially those required by Alternative A of BOEM’s 2017 PEIS. <sup>13</sup> Given their demonstrated effectiveness and the absence of any significant harm under them, BOEM should require the Alternative A mitigations in BOEM’s 2019-2024 OCS Leasing Program.

In other words, BOEM should agree with its “negligible” or “none” or “minor” impact conclusions-- and not BOEM’s erroneous, unsupported and conflicting “moderate” conclusion-- when BOEM produces the EIS for BOEM’s 2019-2024 OCS Leasing Program.

We thank you for this opportunity to comment.

Respectfully submitted,

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<sup>12</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 (OCS EIS/EA BOEM 2012-019), Vol. I, page xiii, at [https://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/BOEM-2012-019\\_v1.aspx](https://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/BOEM-2012-019_v1.aspx).

<sup>13</sup> See, *e.g.*, Vol. I pages xi-xii, at <https://www.boem.gov/BOEM-2017-051-v1/>.