

Center for Regulatory Effectiveness

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June 16, 2016

Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

Re: NOAA is Forcing Oil and Gas Companies Out of the Gulf of Mexico

Secretary Pritzker:

Inching its way through the NOAA bureaucracy is an arcane document titled *Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammals* (Acoustic Guidance) which will force many oil and gas companies to terminate their operations in the Gulf of Mexico. Since it is guidance it has not reviewed by the White House Office of Management and Budget and since it very complex it has not been called to the attention of policy officials; therefore a need for your timely intervention. The US Energy Information Administration states: "Gulf of Mexico federal offshore oil production accounts for 17% of total U.S. crude oil production".

Why should the public be concerned about Acoustic Guidance issued by NOAA? In a nutshell the Acoustic Guidance defines the size of the acoustic exclusion zone, the geographic area which must be kept clear of whales and in which exploration efforts must terminate if whales are seen to enter the area. The size of the exclusion zone has been fixed for many years and numerous peer-reviewed scientific studies have demonstrated that oil and gas seismic exploration has not injured marine mammals as so [stated](#) (Part II) by the National Academy of Science, the Department of Interior and NOAA.

The proposed changes to Acoustic Guidance will, in many instances, arbitrarily increase the size of the exclusion zone by a factor of 10. This artificially large zone means seismic operations will have to be continuously shut down even though a marine mammal is nowhere near the seismic operation.

Even more troubling is the fact that the Acoustic Guidance will be issued jointly with the “Take “ regulations; regulations which will determine the number of supposed injuries to marine mammals, which in fact do not exist. Any increase in the exclusion zone will result in a corresponding increase in “takes” and the resultant large, and unrealistic, “take” numbers will invite a public outcry against oil and gas exploration.

The combination of the Acoustic Guidance and the “Take” regulation will force many companies out of the Gulf of Mexico notwithstanding the fact that there has been more than 40 years of seismic operations with no injury to marine mammals. The termination will occur if NOAA continues to be successful in deluging decision-makers with opaque, disparate and self-serving information.

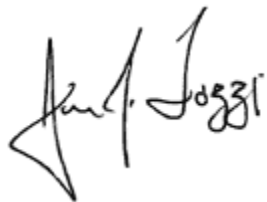
Is this really sound public policy? We think not.

Serving in its role as a [nationally](#) recognized regulatory watchdog, CRE has [notified](#) NOAA of the deficiencies in its draft Acoustic Guidance. We do not expect NOAA to address our concerns.

Consequently we are merely requesting that you compel NOAA to comply with the Data Quality Act. More specifically the DQA requires NOAA to subject its proposed Acoustic Guidance to the detailed requirements of a “Highly Influential Scientific Assessment” as specified in the OMB regulations implementing the said Act and as forcefully set forth in the aforementioned CRE notification to NOAA.

In that the [Department of Justice](#) has notified the courts that OMB has the authority to be the ultimate decision-maker on issues dealing with the Data Quality Act, we encourage you to seek the advice and counsel of [OMB](#) Director Donovan.

Respectfully,

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

[Jim Tozzi](#)
Center for Regulatory Effectiveness