

**Comments by the Center for Regulatory Effectiveness (“CRE”) on
“Geological and Geophysical Exploration Activities on Federal and State
Waters of the Gulf of Mexico” (“G&G Scoping”),
<http://www.gpo.gov/fdsys/pkg/FR-2013-05-10/pdf/2013-11226.pdf> .
Comments filed electronically on July 9, 2013, at [gomggeis@boem.gov](mailto:gonggeis@boem.gov)., and at
<http://www.regulations.gov>, ID: BOEM-2013-0034-0001.**

I. Executive Summary

Current and historical oil and gas geological and geophysical exploration (“G&G”) in the Gulf of Mexico (“GOM”) has not harmed marine mammals or other species. There is no basis for regulating G&G more stringently. In light of the current and historical record, the Services should consider regulating GOM G&G less stringently.

Any more stringent regulation of GOM G&G would require a new Information Collection Request (“ICR”) under the Paperwork Reduction Act (“PRA”); a new Notice to Lessees (“NTL”); a new Protected Species Stipulation; and OMB Approval.

Any new Environmental Impact Statement (“EIS”) for GOM G&G will have to comply with Information Quality Act Guidelines (“IQA Guidelines”), as explained by the National Academy of Sciences (“NAS”) in its recent report *Assessing Risks to Endangered and Threatened Species from Pesticides* (“NAS Report”), pages 6, 31, 34, available online at <http://www.thecre.com/forum1/?p=6116> .

Marine Vibroseis (“MarVib”) is a promising new technology. While MarVib will likely never replace seismic airguns, NMFS should more fully recognize the advantages of MarVib in any proceeding involving regulation of offshore oil and gas G & G. The public should have notice of and an opportunity to comment on this proceeding. The record for this proceeding should be transparent, and the proceeding should comply with IQA Guidelines. NMFS should always assess the practicability of any changes in acoustic criteria or in any other G&G regulatory requirements

Sperm whales should not be listed in the GOM as a Distinct Population Segment (“DPS”) under the endangered species Act (“ESA”) for the reasons stated in CRE’s previous comments to NMFS, which are available online at <http://thecre.com/pdf/sperwhcomments.pdf> , and which are incorporated herein by reference. If NMFS continues to explore a possible DPS listing for GOM sperm whales, then NMFS should also explore a possible ESA delisting for such a DPS. The current record does not demonstrate that GOM sperm whales are endangered under the ESA.

II. NO NEED AND NO BASIS FOR MORE STRINGENT G&G REGULATION IN THE GOM

Seismic has been the Government’s primary concern when regulating GOM G&G. For years, BOEM and the National Marine Fisheries Service (“NMFS”) have used a 500 meter exclusion zone to regulate oil and gas seismic in the GOM. BOEM has repeatedly and correctly pointed out that current regulation under the NTL is adequate. More stringent regulation is unnecessary. For example, BOEM recently stated:

“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 CPA, which is directly adjacent to the EPA, 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.”¹

BOEM has correctly emphasized the adequacy of the current regulatory scheme for GOM seismic. This regulatory scheme relies on the NTL and on the Protected Species Stipulation in leases, which requires compliance with the NTL:

“The lessee and its operators, personnel, and subcontractors, while undertaking activities authorized under this lease, must implement and comply with the specific mitigation measures outlined in...NTL No. 2012-JOINT-G02 (Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program)...”²

The Protective Species Stipulation, which requires compliance with the NTL’s 500 meter exclusion zone, “provide[s] protection by ensuring the animals remain a safe distance from the operations or the activity ceases”:

“Effectiveness of the Lease Stipulation
The Protected Species Stipulation has been used on leases since 2001, and the resource agencies with the primary responsibility for the protection of the species [e.g., NMFS and FWS] helped to create it. The stipulation minimizes certain activities and stops others

¹ Bureau of Ocean Energy Management’s Draft Environmental Impact Statement (“DEIS”), for the Gulf of Mexico, Outer Continental Shelf (“OCS”), Eastern Planning Area (“EPA”) Lease Sales 225 and 226, page 2-22. The DEIS is available online at <http://boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx> .

² E.g., Lease Stipulations, Consolidated Central Gulf of Mexico Planning Area, Oil and Gas Lease Sale 216/222, Final Notice of Sale, Stipulation No. 8 – Protected Species.

when those actions have the potential to impact marine mammals or sea turtles. These avoidance criteria provide protection by ensuring the animals remain a safe distance from the operations or the activity ceases.”³

The Government has repeatedly and consistently emphasized that the current and historical regulatory scheme, which relies on a 500 meter exclusion zone, adequately protects marine mammals and other species during GOM seismic. For example, BOEM recently stated in another GOM environmental impact statement that

“... 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.”

“Although there will always be some level of incomplete information on the effects from routine activities under a [GOM] CPA proposed action on marine mammals, there is credible scientific information, applied using acceptable scientific methodologies, to support the conclusion that any realized impacts would be sublethal in nature and not in themselves rise to the level of reasonably foreseeable significant adverse (population-level) effects. Also, routine activities will be ongoing in the CPA proposed action area as a result of active leases and related activities. As of May 2012, there are 4,377 active leases in the CPA. Within the CPA, there is a long-standing and well-developed OCS Program (more than 50 years); there are no data to suggest that routine activities from the preexisting OCS Program are significantly impacting marine mammal populations.”⁴

³ DEIS, Page 2-35.

⁴ 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; Volume II, page 4-710; available online at <http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx>. BOEM reiterated these conclusions in its 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.

The National Academy of Sciences' National Research Council agrees with the Department of Interior that "there are no documented or known population-level effects due to sound," and has concluded with regard to the entire OCS that "[T]here have been no known instances of injury, mortality, or population level effects on marine mammals from seismic exposure...."⁵

NMFS also agrees that "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."⁶

In sum,

- the record does not include any evidence of harm from GOM G&G;
- the record does not discuss what if any benefits would result from more stringent regulation of GOM G&G; and
- the record does not discuss the costs and other burdens to the industry from more stringent regulation of GOM G&G.

In light of the current and historical record, BOEM and NMFS should consider whether less stringent regulation of GOM G&G is appropriate.

CRE has prepared a Memorandum entitled "The State of Seismic Regulation in the Gulf of Mexico," which discusses in detail the Government's long-standing and successful reliance on the NTL and the 500 meter exclusion zone. This memorandum is incorporated by reference into these CRE comments on the G&G Scoping.⁷

III. MORE STRINGENT G&G REGULATION IN THE GOM WOULD REQUIRE A NEW NTL, A NEW PROTECTED SPECIES STIPULATION, NEW ICR REVIEW, AND OMB APPROVAL

BOEM would have to revise the current NTL and Protected Species Stipulation before BOEM could regulate GOM G&G more stringently.

⁵ See, e.g., Outer Continental Shelf Oil & Gas Leasing Program, 2007-2012 Programmatic Environmental Impact Statement, page V-64 (MMS April 2007), available online at <http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/2007-2012-Draft-Environmental-Impact-Statement.aspx> .

⁶ 75 FR 49759, 49795 (Aug. 13, 2010), available online at <http://edocket.access.gpo.gov/2010/2010-19962.htm> .

⁷ This Memorandum is available online at http://www.thecre.com/forum13/wp-content/uploads/2013/03/State_of_Marine_Sound_Regulation1.pdf , and it is incorporated herein by reference.

In addition, BOEM would need a new ICR that has been reviewed and approved by OMB under the PRA. OMB-approved ICRs are necessary for the agencies' regulation of offshore seismic because that regulation depends in large part on the monitoring and compliance reports sent by operators to federal agencies.

Before it split into BOEM and BSEE, BOEMRE responded to CRE's comments on BOEMRE's seismic regulation ICR 1010-0151. BOEMRE's response stated that BOEMRE would need and request a new ICR if it ever intends to regulate offshore seismic activities in a manner more burdensome than required at the time it responded to CRE's comments. BOEMRE's response defines the burden and scope of seismic information collection authorized by ICR 1010-0151, which was approved by OMB after and based on BOEMRE's response to CRE.

BSEE subsequently asked OMB to approve a new seismic regulation ICR which, according to BSEE "does not change the burden hours or make any other modifications to what was previously approved [under ICR 1010-0151], other than to remove the collections under the purview of BOEM" in order to accommodate the split of regulations from the Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEMRE") to BOEM and BSEE."⁸ BSEE's ICR Supporting Statement to OMB for this new seismic ICR reads in part as follows:

"Another commenter [CRE] requested that we [BSEE] should state that we are not submitting any ICRs for seismic regulations that are more stringent than current regulations, including NTL 2007-G02. We believe that this comment is not germane to current BSEE regulatory requirements because when BOEMRE split into the new bureaus of BOEM and BSEE, the regulatory requirements pertaining to seismic requirements are now under BOEM purview. Nonetheless, we agree with BOEM's response that the public will be given the opportunity to comment on modifications made to any information collections as a result of changes to NTL 2007-G02 and 30 CFR 250, subpart B regulations. BOEM's actual reply was:

*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 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.*⁹

OMB's approval of this BSEE ICR states:

⁸ 77 FR 58858 (Sept. 24, 2012), available online at <http://www.gpo.gov/fdsys/pkg/FR-2012-09-24/html/2012-23386.htm> .

⁹ Click on Supporting Statement A at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201202-1014-004 , and read BSEE's response to Question 8 in the Supporting Statement.

“Terms of Clearance: The public will be given the opportunity to comment on substantive modifications made to any information collections as a result of changes to NTL 2007-G02 and 30 CFR 250, subpart B regulations.”¹⁰

Consequently, any “substantive modifications” to the current NTL would have to be preceded by public notice and comment as well as OMB review and approval, and may not be approved by OMB.

NMFS has indicated that it intends to significantly change the acoustic criteria that it has historically used for oil and gas seismic.¹¹ Such a significant change would require a new ICR to implement the changed information collection requirements. BOEM has already acknowledged the need for a new ICR for any change in acoustic criteria. There is no difference between NMFS and BOEM in this respect.

IV. BOEM and NMFS Should Follow the NAS Report on Data Quality

In April 30, 2013, the National Academy of Sciences released its report *Assessing Risks to Endangered and Threatened Species from Pesticides* (“NAS Report”).¹² The NAS prepared this report at the request of NMFS, the Environmental Protection Agency, the Fish and Wildlife Service, and the Department of Agriculture.

This NAS report reviews and discusses the “the best scientific and commercial data available” standard under the ESA.¹³ In reviewing and discussing this standard, the NAS Report at page 31 explains that “all federal agencies are expected to comply with the Office of Management and Budget (OMB) guidelines on objectivity, utility, and integrity of disseminated information”:

“OMB (67 Fed. Reg. 8452 [2002]) describes those attributes as follows: ‘Objectivity’ focuses on the extent to which information is presented in an accurate, clear, complete and unbiased manner; and, as a matter of substance, the extent to which the information is accurate, reliable and unbiased. ‘Utility’ refers to the usefulness of the information to the intended users. ‘Integrity’ refers to security, such as the protection of information from unauthorized access or revision, to ensure the information is not compromised through corruption or falsification.

The Services and EPA (EPA 2002; FWS 2007) have separately published information quality guidelines (IQGs) that follow closely the government-wide OMB guidelines. Similar basic principles for achieving a scientifically credible assessment are prescribed

¹⁰ Available online at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201202-1014-004 . There are no substantive differences between NTL 2007-G02 and its successor NTL.

¹¹ Page 4-13, at http://www.nmfs.noaa.gov/pr/permits/eis/arctic_sdeis_vol2.pdf .

¹² *Assessing Risks to Endangered and Threatened Species from Pesticides* (“NAS Report”), pages 6, 31, 34. A prepublication copy of the complete NAS Report is available on CRE’s website at http://thecre.com/pdf/NAS--Assessing_Risks.pdf .

¹³ *E.g.*, NAS Report, pages 6, 31, 34.

in the IQGs from the agencies; the agencies are committed to ensuring the quality of evaluations and the transparency of information from external sources used in their disseminated assessments and actions (EPA 2003; NMFS 2005). They also recognize that a high level of transparency and scrutiny is needed for influential information that is expected to have a substantial effect on policies and decisions (EPA 2002; NMFS 2004; FWS 2007) [citing the Agencies' DQA Guidelines].”

The NAS report at page 34 provides the following additional guidance on data quality:

- “● Given that stakeholders are aware of and can provide valuable and relevant data, the committee encourages provision for their involvement at the early stage and throughout the ERA [ecological risk assessment] process. Stakeholder data are expected to meet the same data relevance and quality standards as all other data.
- To ensure that the best data available are used, information should first be screened for relevance and then subjected to quality review.
- The agencies should, at a minimum, subject all information to a review based on OMB criteria of ‘objectivity, utility and integrity.’ Information sources that fail any of the criteria can be used at the discretion of the risk assessor, provided that their limitations are clearly described.
- Comparisons of all information sources with the relevance and quality attributes should be documented in the risk assessment and described in the overall characterization of uncertainties.”

BOEM’s Federal Register notice for the G&G Scoping states that it is for a programmatic environmental impact statement (“PEIS”) which

“will be prepared cooperatively with NMFS to serve as the requisite environmental analysis under NEPA for the National Marine Fisheries Service’s (NMFS) Marine Mammal Protection Act (MMPA) rulemaking governing authorization for unintentional marine mammal takes during G&G activities in GOM waters. It will also provide information for future decisions regarding Outer Continental Shelf Lands Act (OCSLA) permit and MMPA authorization actions, in addition to informing consultations under the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and other statutes.”¹⁴

Consequently, the NAS report’s discussion of information quality is directly applicable to NMFS’ work on the G&G scoping and on additional development of a PEIS for GOM G&G. BOEM and the Department of the Interior also follow OMB’s IQA Guidelines.¹⁵ So the NAS Report’s discussion of data quality during the ecological risk assessment process should also

¹⁴ 78 FR 27427 (May 10, 2013), at <http://www.gpo.gov/fdsys/pkg/FR-2013-05-10/pdf/2013-11226.pdf> .

apply to BOEM. BOEM should also follow the NAS' guidance on data quality during BOEM's work on the G&G scoping and on additional development of a PEIS for GOM G&G.

V. NMFS Should Carefully, Expressly and Transparently Consider The Effect of Any New Acoustic Criteria or other Regulation on Marine Vibroseis (“MarVib”)

NMFS and BOEM have announced their intent to assess MarVib for use in the Gulf of Mexico and elsewhere. MarVib is a promising new technology that may supplement but will never replace seismic airguns. A recent environmental assessment of MarVib explains:

“For purposes of this assessment, marine seismic surveys with future-generation MarVib systems are assumed to differ from airgun-based surveys in several major ways. • The sound signal transmitted at or near each grid location (“shotpoint”) is expected to be longer in duration (seconds vs. 10s of milliseconds for an airgun pulse) but will have a substantially lower source pressure level. • Total acoustic energy transmitted at each location may be similar to that with airguns, or perhaps somewhat reduced if the necessary geophysical data can be recovered from a lower-energy signal through enhanced signal processing possible with MarVib. (Most of the conclusions in this assessment make the precautionary assumption that total transmitted acoustic energy per location will be similar to that with airguns. If a lower source energy level can be used, this would further reduce the environmental effects.) • The rise time of the MarVib signals will be slower than that of airgun pulses, and MarVib signals will be “non-pulse” whereas airgun signals are impulsive, at least near the source. • As noted above, a major design goal for MarVib, as compared to airguns, is a faster decrease (roll-off) in source spectrum levels at frequencies above ~100 Hz or, if possible, above a somewhat lower inflection point. This would substantially reduce the biological effects, particularly on species that are most sensitive to higher frequency sounds and not very sensitive to low- frequency (LF) sounds, e.g., the odontocete cetaceans.”¹⁶

This MarVib Assessment further explains that

“The sound signals expected to be emitted by next-generation MarVib systems will differ in important ways from airgun signals. Differences include being non-pulse rather than impulsive in character, having reduced peak pressure but increased signal duration and probably increased duty cycle, and having well controlled spectral properties.

Non-Pulse Signals: This is expected to be an important mitigating factor inherent to MarVib sources. As a result, marine mammals should tolerate exposure to higher cumulative energy levels from MarVib than from airguns before auditory impairment would be expected. The

¹⁵ <http://www.boem.gov/Environmental-Stewardship/Environmental-Studies/Quality.aspx> .

¹⁶ Environmental Assessment of Marine Vibroseis, LGL Ltd. and Marine Acoustics Inc, (April 2011) (“MarVib Assessment”), page viii, at [http://www.soundandmarinelife.org/Site/Products/EA%20of%20MarVibr-LGL&MAI-20Apr'11\(final\).pdf](http://www.soundandmarinelife.org/Site/Products/EA%20of%20MarVibr-LGL&MAI-20Apr'11(final).pdf) .

same is probably true for at least some other types of marine animals. Southall et al. estimated that the cumulative energy exposure would need to be ~17 dB higher with non-pulse than with impulse sound before PTS (auditory injury) would occur.”¹⁷

The MarVib Assessment modeled potential PTS and TTS from MarVib in the Gulf of Mexico, and concluded:

“The specific distances out to which TTS or PTS might extend would depend on the circumstances. However, for the MarVib scenarios in the northern Gulf of Mexico examined in this assessment (§ 6.2.6.3), PTS would be limited to very close distances, if it occurs at all, and the number of individual animals that might incur PTS would be very small or zero. In the modelled scenarios, PTS is expected in <1 individual of each of the three representative species that were considered (sperm whale, bottlenose dolphin, Bryde’s whale). In an actual seismic survey in which • some animals avoid the approaching seismic source and • real-time mitigation measures are implemented, even fewer cases of hearing impairment would be expected. It has not been demonstrated that, in realistic field conditions, a MarVib source (or airguns) would cause TTS or PTS in any type of marine animal. For cetaceans and perhaps pinnipeds, it can be inferred from available data that TTS and (less likely) PTS might occur in the occasional animal that is very close to a MarVib source during at least one transmission. For sea turtles, fish, and invertebrates, it is unknown whether these auditory effects could occur in animals close to a MarVib source. If hearing impairment is possible, it would be limited to close distances. In the case of benthic-dwelling animals, this would mean that these theoretical auditory effects would only be possible in shallow water or if the source were towed close to the bottom.”¹⁸

Consequently, there is no rational basis for using revised acoustic criteria, or for imposing any other requirement, that would impede use of MarVib. In order to ensure that this does not happen, NMFS should expressly address MarVib in any proceeding to consider new acoustic criteria. The public should have notice of and an opportunity to comment on this proceeding. The record for this proceeding should be transparent, and the proceeding should comply with IQA Guidelines.¹⁹

Of course, these same requirements should apply to any and all proceedings to consider new acoustic criteria.

¹⁷ *Id.*, page xii.

¹⁸ *Id.*, page X.

¹⁹ The NOAA/ NMFS IQA Guidelines are available online at <https://grunt.sefsc.noaa.gov/iqa/> and at http://www.cio.noaa.gov/services_programs/info_quality.html . BOEM and Interior IQA Guidelines_ are available online at <http://www.boem.gov/Environmental-Stewardship/Environmental-Studies/Quality.aspx> and at http://www.doi.gov/ocio/information_management/iq.cfm .

VI. Do Not List GOM Sperm Whales as a DPS; Consider GOM Sperm Whales for ESA Delisting

Sperm whales live in the GOM and are listed as endangered under the ESA. Consequently, sperm whales will have to be considered in any PEIS for GOM G&G.

NMFS recently published its ninety-day finding on a petition to list GOM sperm whales as a DPS under the GOM:

“We, NMFS, announce a 90-day finding on a petition from WildEarth Guardians to list the sperm whale (*Physeter macrocephalus*) as an endangered or threatened distinct population segment (DPS) in the Gulf of Mexico. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. As a result, we hereby initiate a status review of sperm whales in the Gulf of Mexico to determine whether the petitioned action is warranted.”²⁰

CRE previously filed comments with NMFS on its ninety-day finding. CRE’s comments opposed the listing, and are incorporated herein by reference.²¹

Congress intended “that the authority to list DPSs be used...sparingly.”²² As explained in detail in CRE’s incorporated comments, GOM sperm whales should not be listed as a DPS under the ESA for the following reasons:

First, there is no evidence that sperm whale populations are decreasing.

Second, whaling caused sperm whale reduction, and whaling has been banned for years in the GOM and globally. The International Union for Conservation of Nature’s (“IUCN”) Red List of Threatened Species explains with regard to the sperm whale:

“The cause of the population reduction in this species (commercial whaling) is reversible, understood, and is not currently in operation. ...A peer-reviewed publication (Whitehead 2002) provides a model-based estimate of global trend that can be used to evaluate the population.... The results suggest little chance that the population would meet the criteria for Endangered or for Least Concern.”²³

Third, the International Whaling Commission (“IWC”) does not recognize a DPS for GOM sperm whales.²⁴

²⁰ 78 FR 19176 (2013), at <http://www.gpo.gov/fdsys/pkg/FR-2013-03-29/html/2013-07355.htm>

²¹ CRE’s sperm whale comments are at <http://thecre.com/pdf/sperwhcomments.pdf> .

²² DPS Listing Petition, page 3, at http://www.nmfs.noaa.gov/pr/pdfs/petitions/spermwhale_gom_dps.pdf .

²³ <http://www.iucnredlist.org/details/41755/0> .

²⁴ NMFS’ ESA Section 7 Consultation Biological Opinion on the U.S. Navy Atlantic Fleet's conduct of active sonar training along the Atlantic Coast of the United States and in the Gulf of

Fourth, the current data are too flawed and incomplete to support a DPS for GOM sperm whales. NMFS' Sperm Whale Plan includes the investigations necessary to determine whether a GOM DPS for sperm whales is warranted. Those investigations are not complete.²⁵ Consequently, a DPS Listing for GOM sperm whales based on the current record would be premature and would not meet Information Quality Guidelines.

Fifth, there is no evidence of anthropogenic injury to any GOM sperm whale.

If NMFS continues to explore a possible DPS listing for GOM sperm whales, then NMFS should also explore a possible ESA delisting for such a DPS. The current record does not demonstrate that GOM sperm whales are endangered under the ESA. Like the rest of the GOM, they seem to be thriving. The additional data developed through NMFS' planned studies of GOM sperm whales should inform a decision as to whether an ESA delisting is appropriate.

We thank you for the opportunity to submit these comments, and we look forward to BOEM and NMFS' response.

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Mexico from January 2012 to January 2014, Page 93,

http://www.nmfs.noaa.gov/pr/pdfs/consultations/biop_navy_afast_loa2012.pdf .

²⁵ FINAL RECOVERY PLAN FOR THE SPERM WHALE (NMFS, December 2010)(“Sperm Whale Plan”), pages IV-7, I-4, V-4 to V-5, at

http://www.nmfs.noaa.gov/pr/pdfs/recovery/final_sperm_whale_recovery_plan_21dec.pdf .