

Center for Regulatory Effectiveness' ("CRE") Comments on Information Collection Request ("ICR") OMB Control Number 1010–0048, at <https://www.govinfo.gov/content/pkg/FR-2020-09-23/pdf/2020-20948.pdf>

Comments filed October 23, 2020, with the Office of Management and Budget's Desk Officer for the Department of the Interior at <https://www.reginfo.gov/public/do/PRAMain> , then at https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=201910-1010-001 ; and with Bureau of Ocean Energy Management ("BOEM") Information Collection Clearance Officer, Anna Atkinson, at anna.atkinson@boem.gov .

CRE disagrees with BOEM's response to CRE's previously filed comments on this proposed ICR. BOEM's response stated that:

"On December 19, 2019, the Center for Regulatory Effectiveness commented that BOEM should withdraw its petition to the National Marine Fisheries Service to issue a regulation governing the taking of marine mammals in the Gulf of Mexico.

BOEM Response: This comment is outside the scope of this information collection renewal. NMFS has the authority to authorize incidental take under the Marine Mammal Protection Act and the Endangered Species Act. BOEM has petitioned NMFS for the development of regulations governing incidental take of marine mammals related to conducting geophysical surveys during oil and gas exploration activities in the GOM. BOEM has identified areas where there is the potential to impact its mission under OCSLA in the GOM, and potentially other regions and programs, and its ability to manage the development of OCS energy and mineral resources in an environmentally responsible and practical way. The NMFS proposed Incidental Take rulemaking, which is a separate process from this information collection renewal, allowed for public comments. "¹

BOEM's response is incorrect. CRE's withdrawal comment is very much "within the scope of" and relevant to this ICR renewal. The information collections covered by this ICR demonstrate the wealth of data that BOEM has collected on oil and gas seismic for decades. CRE has repeatedly pointed out to BOEM and the National Marine Fisheries Service ("NMFS") that these data have supported long-standing regulations that have adequately protected the environment for decades.² BOEM's request to NMFS for

¹ 85 FR 59824 col. 1, at <https://www.govinfo.gov/content/pkg/FR-2020-09-23/pdf/2020-20948.pdf> .

² See, e.g., CRE comments at <https://www.thecre.com/forum13/?p=8822> and <https://www.thecre.com/forum13/?p=8476> .

Marine Mammal Protection Act Take rules for the Gulf of Mexico (“GOM”) can only result in unnecessary regulation and information collections which are duplicative of this ICR and which do not minimize the burden on the responding public. This violates the goals of the PRA, which include: “Minimize the burden on the public when collecting information...Ensure that an Information Collection does not duplicate already existing information, or duplicate effort....”³ The PRA

“and its implementing regulation ([5 CFR 1320external icon](#))...seek to reduce the burden placed upon non-Federal entities (the public) and prevent Federal agencies and their programs from collecting unnecessary information.”⁴

GOM Take rules are inconsistent with the PRA’s goals and intent.

We note that NMFS has withdrawn the BOEM Take Rule Petition from OMB review under Executive Order 12866. OMB review and approval are necessary for NMFS to promulgate the withdrawn rules. BOEM could and should simplify this matter by withdrawing its Take Rules petition entirely from NMFS. Continuing with the petition will result in new information collections that violate the PRA because they are duplicative and do not minimize burden.

If BOEM does continue with the GOM Take Rule petition, then OMB should impose terms of clearance on this ICR. Those terms should state that this ICR will have to be repropose for comment if and when OMB approves and NMFS promulgates final GOM Take rules. Comment will be necessary to accurately assess the impact of the new Take Rules on this ICR’s burden as well as its compliance with the Information Quality Act and the PRA’s practical utility requirement.

We thank you for the opportunity to submit these comments.

Jim J. Tozzi, PhD

The Center for Regulatory Effectiveness

³ <https://www.cdc.gov/os/integrity/reducepublicburden/index.htm>

⁴ Id.