

Center for Regulatory Effectiveness' Comments on BOEM's Information Collection Request to Implement Its Permitting Program for Seismic Operations in the Outer Continental Shelf¹

Summary

BOEM should withdraw its petition to NMFS to issue a regulation governing the taking of marine mammals in the Gulf of Mexico. Such an action is required not only by the Information Quality Act but also by the Paperwork Reduction Act, which governs the issuance of the Information Collection Request for which BOEM is seeking public comment.

Justification

1. The President has issued Executive Order 13795 directing the affected agencies to develop a streamlined permitting program for operations in the Gulf of Mexico (GOM).
2. To the contrary of the Executive Order, and in response to the BOEM petition, NMFS has proposed a rule which:
 - (a) is based upon unvalidated proprietary models;
 - (b) refuses to utilize the *line transect* methodology used by virtually all of its field offices to estimate "takes" including its Southeast Fisheries Science Center, Northeast Fishery Science Center and Pacific Islands Science Center;
 - (c) violates the Information Quality Act and its related directives issued by OMB; and
 - (d) ignores the contribution that the mitigation measures mandated by BOEM's permitting program make to the safeguarding of marine mammals. BOEM's permitting program, which is based upon the statutory requirements in OCSLA, as amended (43 U.S.C. 1340), is the foundation for numerous studies that have concluded there have been no adverse impacts on marine mammals from seismic operation in the GOM under BOEM mitigation requirements. Nonetheless, NMFS has not incorporated the impacts of the aforementioned BOEM program into its proposed rule.

¹ OMB ICR Control Number 1010-0048; Docket ID: BOEM-2017-0016; 84 FR 57472 (October 25, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-10-25/pdf/2019-23247.pdf>.

It should be noted that BOEM's initial petition to NMFS was based on the use of the *line transect* methodology but was then changed to use mathematical models with no explanation for doing so.

3. The Paperwork Reduction Act, which governs the review of the ICR proposed by BOEM, requires OMB to ensure that BOEM's and NMFS' efforts to regulate OCS seismic oil and gas exploration complement each other because these efforts depend on information collections from two different agencies. In particular, OMB opined in a *Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies*, entitled

"Information Collection under the Paperwork Reduction Act"

"What does OMB evaluate during its review of proposed collections...

OMB coordinates efforts across Federal agencies in shared areas of interest and expertise."²

4. In furtherance of the Directive set forth in paragraph 3 and because of the transgressions articulated in paragraph 2, BOEM should withdraw its petition to NMFS to initiate an additional permitting program for the GOM until its program is deemed compliant with the Information Quality Act and the Paperwork Reduction Act. CRE has made numerous filings to both agencies on the points set forth above, and on related points.³

We appreciate the opportunity to present our views on this matter.

[Jim J. Tozzi](#)

Center for Regulatory Effectiveness

² OMB Memo, page 5, at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRA_Primer_04072010.pdf (emphasis added).

³ See, e.g., CRE's Comments to OMB/OIRA on BOEM's Requested Seismic ICR, at <https://www.thecre.com/forum13/?p=1885> ; CRE's IQA Alert Supplement, at <https://www.thecre.com/forum13/?p=9178>; and CRE's IQA Alert, at <https://www.thecre.com/forum13/?p=8881>.