

**STATEMENT OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

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Chairman Gosar, Ranking Member Lowenthal, and Members of the Subcommittee, I am pleased to appear before you today to discuss the Bureau of Ocean Energy Management's (BOEM) oversight of geological and geophysical (G&G) surveys on the Outer Continental Shelf (OCS). Such surveys support BOEM's mission to ensure the responsible development of conventional and renewable offshore energy and marine mineral resources while protecting the environment.

Background

Geological and geophysical data is critically important to understanding the bathymetry of the ocean floor, as well as the vast area underneath. There are numerous technologies that can be employed to gather this data, which is used for a variety of purposes, including hydrocarbon exploration and production, aiding in siting renewable energy structures by characterizing the ocean floor, locating potential sand and gravel resources for coastal restoration projects, identifying possible seafloor or shallow depth geologic hazards, and locating potential archaeological resources and potential hard bottom habitats that should be avoided. One common method of procuring this data is with seismic surveys; those surveys use sound waves, sent through the ocean floor, to map the subsurface.

BOEM scientists are experts in the use of the newer survey data to make more informed decisions concerning potential oil and gas lease sales, ensure appropriate development of OCS energy resources, and assure the receipt of fair market value for any leasing of public lands. Modern two-dimensional (2D) and three-dimensional (3D) acquisition and processing techniques can provide data sets that significantly enhance subsurface imaging, leading to improved oil and gas resource assessments and more informed administration of regulatory responsibilities.

G&G surveys are not used exclusively for oil and gas exploration. Seismic surveys and geologic coring are also helpful in identifying sand used for restoration of our Nation's beaches and barrier islands following severe weather events and for protecting coasts and wetlands from erosion. Recent examples of BOEM's sand restoration projects include New Jersey, where Long Beach Island has been restored in response to erosion caused by Hurricane Sandy; Louisiana, where 1,100 acres of marsh, dune, and beach habitat at Whiskey Island have been reconstructed; and Florida, where a final environmental assessment on a shoreline restoration project in Brevard County totaling over 1.7 million cubic yards of sand was recently completed in response to erosion caused by Hurricane Matthew. Seismic and geologic coring surveys also provide information that is vital to the siting and development of offshore renewable energy facilities.

G&G surveys also help to advance fundamental scientific knowledge and are currently conducted in the Gulf of Mexico and in countries around the world.

One of the principle environmental issues with seismic surveys is the potential impact of associated noise on various marine species. Our environmental studies program was one of the earliest Federal pioneers in sponsoring research on ocean sounds beginning in the early 1980s such as funding a 1985 study on the effects of drilling noise on whales in the Beaufort Sea. Since 1998, BOEM has partnered with academia and other experts to invest more than \$50 million on protected species and noise-related research. BOEM has funded, developed, and overseen critical studies on marine mammals, such as evaluation of seismic survey impacts on endangered sperm whales, and has conducted numerous expert stakeholder workshops to discuss what is known and to identify further information needs on acoustic impacts in the ocean.

Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) Streamlining Effort

On March 28, 2017, Executive Order 13783 entitled “Promoting Energy Independence and Economic Growth” was issued by the President. The Executive Order called for executive agencies to immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend or rescind those that are found unduly onerous. Additionally, on April 28, 2017, the President issued Executive Order 13795 entitled, “Implementing an America-First Offshore Energy Strategy” (April 28, 2017). The Executive Order calls for the Secretary of the Interior to “develop and implement, in coordination with the Secretary of Commerce and to the maximum extent permitted by law, a streamlined permitting approach for privately funded seismic data research and collection aimed at expeditiously determining the offshore energy resource potential of the United States.” E.O. 13795 further states that “The Secretary of the Interior and the Secretary of Commerce shall, to the maximum extent permitted by law, expedite all stages of consideration of Incidental Take Authorization requests, including Incidental Harassment Authorizations and Letters of Authorization, and Seismic Survey permit applications under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*” To further implement this guidance, on May 1, 2017, Secretary of the Interior Zinke issued Secretarial Order 3350 entitled, “America-First Offshore Energy Strategy.”

The directive in the Executive Order for a streamlined permitting approach is predicated on industry and other stakeholder complaints of ramifications from exceedingly long, unpredictable and inconsistent processes for agencies to reach permitting decisions, mainly under the Marine Mammal Protection Act (MMPA) but also to a lesser degree under the Endangered Species Act (ESA).

In an effort to implement this direction, a streamlining team led by BOEM and consisting of Department of the Interior solicitors and BOEM and Bureau of Safety and Environmental Enforcement (BSEE) staff, was created to address and establish ways in which to build greater efficiencies, predictability and consistency in implementation of the ESA and MMPA for BOEM and BSEE activities through a combination of process oriented solutions, enhanced research, and possible statutory/regulatory approaches. Specifically, the streamlining team developed a set of

recommendations aimed at reducing undue burdens and increasing decision timeline predictability, while still ensuring needed environmental protections are set in place. While these recommendations are focused on permitting for oil and gas activities, most of them also benefit other ocean activities, such as construction, offshore wind facilities, sand mining, and naval operations.

Over the past six months BOEM and the National Marine Fisheries Service (NMFS) leadership and staff have met to discuss possible procedural and statutory/regulatory approaches for streamlining. BOEM has shared specific options with NMFS for their review and input. BOEM, BSEE, and NMFS are committed to creating a streamlining framework that could lead to the implementation of process-oriented solutions and guidance for administering and implementing the ESA and MMPA for oil and gas activities and G&G permitting specifically. BOEM is committed to continue the streamlining efforts with NMFS and the U.S. Fish and Wildlife Service and to continue to communicate and coordinate with other stakeholders, such as the Navy and industry, on this issue as the process moves forward.

G&G Permitting in the Atlantic

S.O. 3350 included a directive for the expedited consideration of appealed, new, or resubmitted seismic permitting applications for the Atlantic; BOEM has resumed the evaluation of the Atlantic G&G permit applications. Five NMFS Draft Proposed Incidental Harassment Authorizations (IHAs) were published in the Federal Register on June 6, 2017, starting a 30-day public comment period that was further extended and closed on July 21, 2017. NMFS is currently processing the Atlantic IHAs. In addition, BOEM is also working with NMFS to finalize the associated ESA Section 7 consultation covering both BOEM seismic permits and NMFS MMPA IHAs. This ESA Section 7 consultation is being treated by NMFS as a subset of the existing programmatic G&G Consultation initially completed in July 2013 and re-initiated by BOEM in October 2015. Once this smaller consultation is complete, it is BOEM's understanding that NMFS will complete the re-initiated Programmatic consultation.

G&G Permitting in the Gulf of Mexico

In the Gulf Of Mexico Region (GOMR), from 2011-2016, BOEM issued 251 G&G permits (approximately 42 annually); the majority related to oil and gas. BOEM's overall permitting approval process takes approximately 60 days to complete once an application is deemed "complete." This includes conducting a NEPA analysis, associated environmental reviews, and consultations for ESA, Coastal Zone Management Act (CZMA), Essential Fish Habitat (EFH) and National Marine Sanctuaries Act (NMSA). A seismic survey permit covers a 1-year period.

In addition to the above required permits and associated environmental reviews for seismic surveys, MMPA authorization of industry activity may be needed as well. Under the MMPA, "take" from harassment of marine mammals is permitted only if either an Incidental Harassment Authorization (IHA) or Incidental Take Regulations (ITRs) are in place. IHAs are usually applied for individual, one time activities. IHAs are valid for one year. NMFS has 120 days (by statute) to issue an IHA, which includes a 30-day public comment period. ITRs can be issued to accommodate similar or multiple activities taking place over time, which is the case in the

GOMR where multiple surveys occur year-in and year-out. In the GOMR, an ITR, if issued, would cover multiple oil and gas related G&G activities for a 5 year period. (ITRs are valid for 5 years only and then must be re-issued). Under an ITR, applicants (industry) seek annual Letters of Authorization (LOAs) pursuant to the rule. The ITR timelines are not prescribed by statute, but NMFS estimates a 12-18 month timeframe. The ITR process includes 2 comment periods for the public, which are usually 30 and 60 days. There is no comment period associated with LOA issuance.

In the GOMR, even though G&G permits have been issued, the process to issue ITRs for oil and gas related G&G activities has gone through multiple starts and stops to address evolving issues since the first petition was submitted in 2002. Following a BOEM/NMFS restart in 2013, in October 2016, BOEM petitioned on behalf of industry, and at the request of NMFS, to create a more efficient process for addressing exposures and takes to marine mammals from cumulative oil and gas related seismic activity in the GOM. Having a rule in place would allow NMFS to address impacts to marine mammals from seismic surveys programmatically versus survey-by-survey, which in theory, would reduce the workload for NMFS, allowing industry operators to receive their MMPA authorizations in a timely manner.

Based on the October 2016 petition, NMFS submitted a draft proposed ITR to OMB for review on October 2, 2017. OMB is still reviewing the proposed ITR.

In a June 2010 lawsuit, NRDC v. Jewell, filed against DOI and oil and gas industry representatives, several environmental conservation groups claimed DOI failed to prepare an environmental impact statement.

The settlement of NRDC v. Jewell, filed in the U.S. District Court for the Eastern District of Louisiana, allows permits to be issued in the GOM pursuant to the NRDC settlement. Under the settlement, Industry Intervenors agreed to abide by the mitigation measures described in the settlement agreement, which include measures such as passive acoustic monitoring, time area closures, and minimum separation distances between surveys, among others. During the stay, Plaintiffs agreed not to challenge the permitted surveys that abide by the above mitigation measures. Under the settlement agreement and stay, permits in the GOM are not conditioned on the applicant processing/obtaining an IHA.

Outside of the NRDC Settlement Agreement, BOEM includes (and has included in the past) a suite of mitigation measures for G&G permits as they relate to marine mammals. These measures provide protection to marine mammals by requiring G&G operations to avoid and minimize impacts to and take of marine mammals.

GAO Seismic Survey Report

Lastly, the Government Accountability Office recently published a Report titled: *OFFSHORE SEISMIC SURVEYS: Additional Guidance Needed to Help Ensure Timely Reviews* (GAO-18-60: Published: Dec 11, 2017. Publicly Released: Jan 4, 2018). BOEM worked closely with the GAO investigators and authors to provide accurate and up-to-date information for this report. The report did not implicate BOEM nor did it make any recommendations for BOEM action.

Conclusion

Mr. Chairman, thank you again for the opportunity to be here today to discuss the Bureau's effort to execute its missions to safely and responsibly reduce our dependence on foreign oil and create jobs through the development of important energy resources. I am happy to answer any questions that you or members of the Subcommittee may have.