

AGENCY ACTIONS IMPACT SEISMIC PERMITTING IN GULF OF MEXICO

Implementation challenges with the new Marine Mammal Protection Act (MMPA) Incidental Take Regulation (ITR) for seismic surveying in the Gulf of Mexico (GOM) have drastically slowed permitting. The ITRs are the permitting gateway to allow for environmentally responsible geological and geophysical (G&G) activities. As a result, companies cannot readily obtain the required Letters of Authorization (LOAs) from the National Marine Fisheries Services (NMFS) or G&G permits from the Bureau of Ocean Energy Management (BOEM) in a timely manner, if at all.

These delays have commercial, operational, and safety implications. G&G activities are critical for safe and efficient drilling, production, and pipeline transportation in the GOM. Modern G&G imaging enables engineers to visualize the sub-surface without having to drill and to identify potential hazards to be avoided.

HOW DID THIS HAPPEN?

Following a decade plus of work, NMFS issued an ITR for GOM G&G activities in April 2021.

This new regulatory framework was added to the existing BOEM G&G permitting process.

- Industry and other experts have long raised concerns with NMFS and BOEM that the ITRs rely on faulty “incidental take” modeling that uses overly conservative assumptions that lead to exponential overestimates of take.
- Instead of calculating the “best” available scientific estimate of potential impacts, NMFS has forced the model to provide worst case estimates that are not substantiated by real life observations or experience.
- Further, industry has raised concerns with NMFS for several years about how to appropriately account for rare species when issuing LOAs.

For six months ITR implementation seemingly proceeded well; however, the inflated number of modeled incidental takes for some species, coupled with the agency’s inaction regarding how to appropriately authorize takes for rare species, has created an unworkable permitting process in the GOM.

Since mid-October, NMFS has drastically slowed LOA issuance, mainly because the number of “incidental takes” authorized for killer whales (the least frequently reported species in both the 2002-2008 and 2009-2015 protected species observer datasets)^{1,2} had nearly exceeded the number of killer whale takes authorized for the first year under the new regulations.

¹ Milne, S. et al. (2019). International Protected Species Observer Data Analysis Report. Prepared under contract for the International Association of Oil & Gas Producers. Houston, TX, USA, reported only five groups and a total of 21 individuals sighted by protected species observers in the US Gulf of Mexico between 2009 and 2017, with a mean group size of 4.2 individuals.

² Barkaszi, M.J. and C.J. Kelly. 2018. Seismic survey mitigation measures and protected species observer reports: synthesis report. U.S. Dept. of the Interior, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, New Orleans, LA. Contract No.: M17PD00004. OCS Study BOEM 2019-012. 220p., reported 10 groups totaling 49 individuals with a mean group size of 5.44 between 2002-2015 in the delphinid data deemed acceptable for statistical analysis.



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DECISIONS ARE NOT CONSISTENT WITH REAL-WORLD OBSERVATIONS

Although killer whales are only very rarely encountered in the GOM, NMFS has chosen to issue seven killer whale takes (a typical group size, but higher than observed during industry operations) on every LOA. This decision has resulted in an unrealistically high number of authorized takes for a species only very infrequently and unpredictably encountered in the GOM. This has transpired even though NMFS has stated that it does not anticipate that this many killer whale takes will actually occur.

Based upon the LOAs issued to date, NMFS predicts significantly more encounters with killer whales during year one of ITR implementation than have been observed by industry in the GOM for more than a decade. The following table compares the actual data of killer whales observed over many years against NMFS's predictions for just one year of G&G activity.

Source	Time Frame	Total Individuals	Total Groups	Mean Group Size
Milne et al. (2019)	2009-2017	21	5	4.2
Barkaszi et al. (2012)	2002-2008	20	5	5
Barkaszi and Kelly (2018)	2009-2015	29	5	5.8
Authorized for GOM ITR Year 1	April 2021-April 2022	60	N/A	7 (Used as mean group size in issued LOAs)

- NMFS's estimate is:
 - » Unrealistic based upon data collected by industry over the past decade.
 - » Inconsistent with the best available science.
- NMFS has used alternative methods for issuing take of rarely sighted species in other regions, including "pooling" rare species takes for research purposes, and simply not including take of rarely sighted species for authorizations in the North Atlantic for wind farm development.

WHAT ARE THE POTENTIAL IMPACTS?

Failure to properly address rare species may result in future LOA requests being denied, thereby materially increasing cost and time to acquire necessary seismic data to facilitate the safe and expeditious exploration for, and production of, oil and gas in the Gulf of Mexico.

- Without action, on-lease and off-lease G&G activities in affected areas of the GOM will be severely limited.
- A recent Calash study projects that reduced G&G activity in the GOM could lead to reduced offshore exploration, discovery of new reserves, project development, and spending levels and that this could lead to lower production, employment levels, and growth in GDP and government revenues.
- Further delays in GOM energy exploration and development will only serve to hinder supplies which will negatively affect consumer energy costs that are already rising as inflation takes hold. Continued supplies from the GOM will help mitigate supply disruptions elsewhere.
- For producing assets requiring on-lease G&G data, operational safety and continued production may be compromised if timely acquisition of necessary G&G data is delayed.

HOW CAN THIS BE RESOLVED?

We urge Congressional oversight of NMFS in their GOM ITR implementation, including fixing technical errors in the ITR and compelling the agency to resume processing LOAs or provide legal justification for limiting the number of LOAs they intend to issue.