

4310-MR-W

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of an information collection (1010-0154).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is notifying the public that it has submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements under the Endangered Species Act Biological Opinions, issued by the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and are titled: “Notices to Lessees and Operators (NTLs) – Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program; Vessel Strike Avoidance and Injured/Dead Protected Species Reporting; and, Marine Trash and Debris Awareness and Elimination.” This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATE: Submit written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB email: (OIRA_DOCKET@omb.eop.gov); or by fax (202) 395-6566; identify with (1010-

0154).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- Public Connect on-line commenting system, <https://ocsconnect.mms.gov>. Follow the instructions on the website for submitting comments.
- Email MMS at rules.comments@mms.gov. Identify with Information Collection Number 1010-0154 in the subject line.
- Fax: 703-787-1093. Identify with Information Collection Number 1010-0154.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference “Information Collection 1010-0154” in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the NTLs that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Notices to Lessees and Operators (NTLs) – Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program; Vessel Strike Avoidance and Injured/Dead Protected Species Reporting; and, Marine Trash and Debris Awareness and Elimination.

OMB Control Number: 1010-0154.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 et seq. and 43 U.S.C. 1801 et seq.), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will

apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

As a Federal agency, we have a continuing affirmative duty to comply with the Endangered Species Act (ESA). This includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species as well as a procedural duty to consult with the FWS and NOAA Fisheries before engaging in a discretionary action that may affect a protected species.

The MMS follows these procedural requirements by conducting formal consultations with FWS and NOAA Fisheries prior to lease sales. Consultations on OCS lease sales 181, 184, and the 5-year multisale (2002-2007) program in the Central and Western Planning Areas of the Gulf of Mexico (GOM) resulted in no-jeopardy biological opinions from the FWS and NOAA Fisheries. In their biological opinions, NOAA Fisheries determined that some activities associated with the proposed action (lease sale and related exploration, development, and production activities) may adversely affect (harm) sperm whales and sea turtles in the action area and that certain reasonable and prudent measures are necessary to minimize the potential for incidental take of these animals. To be exempt from the prohibitions of Section 9 of the ESA (which prohibits taking listed species), MMS must implement and enforce nondiscretionary terms and conditions. The ESA also requires monitoring and reporting. Monitoring programs resulting from ESA

interagency consultations are designed to (1) detect adverse effects resulting from a proposed action, (2) assess the actual level of incidental take in comparison with the level of anticipated incidental take documented in the biological opinion, (3) detect when the level of anticipated take is exceeded, and (4) determine the effectiveness of reasonable and prudent alternatives and their implementing terms and conditions.

To provide supplementary guidance and procedures, MMS issues Notices to Lessees and Operators (NTLs) on a regional or national basis. Regulation 30 CFR 250.103 allows MMS to issue NTLs to clarify, supplement, or provide more detail about certain requirements. To implement the nondiscretionary terms and conditions of these biological opinions, the MMS issued three NTLs, as follows (note that the NTL numbers were removed since they will be reissued after renewal):

- Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program,
- Vessel Strike Avoidance and Injured/Dead Protected Species Reporting,
- Marine Trash and Debris Awareness and Elimination.

It should be noted that it has now become common practice for OCS lessees and operators to subcontract the marine mammal observation and monitoring activities associated with the requirements of the Seismic Survey Mitigation Measures and Protected Species Observer Program NTL.

MMS has been working on rulemaking, 1010-AD10, to incorporate the requirements in the NTLs into our regulations. Once final rulemaking becomes effective, the burden hours for this collection will be consolidated into the primary collection of 30 CFR 250 subpart B, 1010-0151. We will then submit to OMB a request to discontinue this

collection.

MMS will use the information collected to report annually to NOAA Fisheries the effectiveness of mitigation, any adverse effects of the proposed action, and any incidental take, in accordance with 50 CFR 402.14(i)(3). MMS engineers, geologists, geophysicists, environmental scientists, and other Federal agencies (FWS, NOAA Fisheries, etc.) also will analyze the information and data collected under these NTLs to better evaluate the potential impacts to listed species and to plan operations in a manner that will further reduce and/or avoid adverse impacts to protected species on the OCS.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, annually, and on the 1st and 15th of each month for the marine mammal observation reports.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees and operators.

Estimated Reporting and Recordkeeping “Hour” Burden: The estimated annual “hour” burden for this information collection is a total of 1,002 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, MMS assumed that respondents perform certain requirements in the normal course of their activities. MMS considers these to be usual and customary and took that into account in estimating the burden.

NTL Title	Reporting, Posting, or Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program.	Submit to MMS observer training requirement materials and information.	½ hour	24 reports x 4 vessels = 96	48
	Training certification and recordkeeping.	½ hour	20	10
	If used, submit to MMS information on any passive acoustic monitoring system prior to placing it in service.	1 hour	3	3
	Submit to MMS marine mammal observation report(s) (This includes observer duty and training and are the occasional activities done in-house and not subcontracted out.)	345 hours*	2 reports	690
Vessel Strike Avoidance and Injured/Dead Protected Species Reporting.	Submit injured/dead protected species report.	½ hour	2 reports	1
Marine Trash and Debris Awareness and Elimination.	Submit request for training video.	½ hour	100 requests	50
	Submit annual report to MMS on training process and certification.	½ hour	200 records	100
	Training recordkeeping.	½ hour	200 records	100
	Post placards on vessels and structures. (Exempt from information collection burden because MMS is providing exact language for the trash and debris warning, similar to the “Surgeon General’s Warning” exemption.)			
Total Hour Burden			623 responses	1,002 hrs

Estimated Reporting and Recordkeeping “Non-Hour Cost” Burden: We have identified three non-hour costs associated with this IC that were originally estimated as hour burdens. As previously explained, typically these activities are now subcontracted to other service companies with expertise in these areas. Therefore, in this submission we have significantly reduced the corresponding hours and put the majority of the costs associated with these requirements in the “non-hour cost” burden. To allow for the potential in-house reporting by lessees/operators, we have retained a minimal hour burden in the hour burden table. It should be noted that the costs identified are

associated with the NTL: Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program.

- Observer training – 8 hrs @ \$37.50 hr = \$300 x 72 observers = \$21,600
- Submit observation report/form – 1 hr @ \$52 hr = \$52 x 200 reports/forms = \$10,400
- Observation duty – 8 hrs x 3 observers = 24 x 4 vessels = 96 hrs x 365 days/yr = 35,040 hours x \$52 hr = \$1,822,080.

Therefore, we estimate that the annual non-hour cost burden is \$1,854,080.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .”

Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 10, 2006, we published a Federal Register notice (71 FR 27268) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received several comments in response to these efforts. The following discusses the comments and MMS's responses.

Comment A: We request that the MMS demonstrate that the monitoring and reporting requirements of NTL 2004-G01, Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program, have in fact been approved by OMB under the PRA.

Response A: As a means to implement non-discretionary terms and conditions imposed by NOAA in their July 2002 biological opinion for Lease Sale 184 and subsequent Endangered Species Act section 7 consultations, MMS sought emergency information collection (IC) approval from OMB. OMB issued the emergency IC approval (OMB Control Number 1010-0154) on 3/26/2003, for 180 days with an expiration date of 9/30/2003. MMS issued NTL 2003-G08 "Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program" with an effective date of 6/5/2003. MMS then began the process of obtaining the standard 3-year OMB IC approval for the NTL. During that process, MMS expanded the scope of the NTL to cover additional marine mammals and water depths less than 200 meters in the Eastern Planning Area of the Gulf of Mexico. OMB IC approval for the NTL with revised scope was granted (1010-0154) on 12/05/03. MMS reissued the NTL (after the effective date

of the OMB IC approval) in 2004, with a 2004 NTL number, NTL 2004-G01 (which means the first NTL issued by the Gulf of Mexico Regional Office in the year 2004).

Comment B: We request that MMS demonstrate that there are no costs to comply with the monitoring and reporting requirements of NTL 2004-G01.

Response B: The initial standard IC request for this NTL went out for public comment with a 60-day (68 FR 25905 May 14, 2003) and 30-day (68 FR 56313 September 30, 2003) *Federal Register* notice. In the standard IC request, MMS states “...Agencies must also estimate the “non-hour cost” burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operations, maintenance, and purchase of service components...” MMS did receive a comment expressing concern about the possible costs associated with these NTLs. However, the commenter did not identify any specific non-hour cost estimates associated with the activities. Therefore, in the 2003 submission to OMB requesting a standard three-year extension of the emergency approval, MMS reported that we had not identified any non-hour cost burdens associated with the NTLs. OMB granted the three-year approval with the current December 31, 2006, expiration date.

During this current 2006 renewal process, we again published the 60-day comment notice in the *Federal Register* (71 FR 27268, 5/10/2006). We received the above comment pertaining to the non-hour cost burdens. Based upon this comment, and the previous 2003 comment expressing concern over the costs associated with the requirements imposed by these NTLs, MMS has further investigated both the hour and

non-hour cost burdens. Our findings revealed that lessees and operators now routinely subcontract the marine mammal observation and monitoring activities detailed in one of the NTLs. This results in “non-hour” cost burdens (\$1,854,080) in the form of service contracts, rather than in-house company employees performing these duties with corresponding “hour” burden costs. Therefore, in this ICR we have adjusted all of our estimates accordingly for both the hour and non-hour cost burdens.

Comment C: We request that MMS confirm our understanding that the proposed extension of OMB No. 1010-0154 indicates that MMS does not intend or foresee any changes in the NTL 2004-G01 monitoring, reporting, and mitigation requirements. Any new requirements would require a new ICR, would require a new public comment period, and would have to pass the practical utility test.

Response C: After OMB renews this collection, MMS will reissue NTL 2004-G01 with no changes in requirements. Should MMS need to impose new requirements, MMS would seek OMB IC approval and provide notice for public comment. However, the NTL will be reissued with a current year NTL number (which will have either a 2006 or 2007 to signify the year that the NTL was issued, and a different G number, signifying the alphanumerical order of an NTL) and will display the new OMB approval expiration date and a revised PRA paragraph to reflect the re-estimated IC hour and non-hour cost burdens.

Comment D: One commenter posed a question concerning the validity of observers and their qualifications.

Response D: This comment does not pertain to the information collection burden of

the requirements. But, in response, it should be noted that all visual observers must have completed a protected species observer training course. MMS will not sanction particular trainers or training programs. Training is offered by independent entities. However, basic training criteria have been established and must be adhered to by any entity that offers observer training. Operators may utilize observers trained by third parties, may send crew for training conducted by third parties, or may develop their own training program. All training programs offering to fulfill the observer training requirement must: (1) furnish to MMS, at the address listed in the NTL titled, Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program, a course information packet that includes the name and qualifications (i.e., experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material; (2) furnish each trainee with a document stating successful completion of the course; and (3) provide MMS with names, affiliations, and dates of course completion of trainees. The training course must include the following elements: overview of the MMPA and the ESA as they relate to seismic acquisition and protection of marine mammals and sea turtles in the GOM; overview of seismic acquisition operations in the GOM; overview of seismic mitigation measures (NTLs) and the protected species observer program in the GOM; discussion of the role and responsibilities of the protected species observer in the GOM, including the legal requirements (why you are here and what you do), professional behavior (code of conduct), integrity, authority of protected species observer to call for shut-down of seismic acquisition operations, assigned duties - what can/cannot be asked of the observer, reporting of violations and coercion; identification of GOM marine mammals

and sea turtles, with emphasis on whales; cues and search methods for locating marine mammals, especially whales, and sea turtles; data collection and reporting requirements - forms and reports to MMS on the 1st and 15th of each month, whale in exclusion zone/shut-down report within 24 hours.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the ADDRESSES section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

Public Comment Procedures: MMS's practice is to make comments, including the names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure "would constitute an unwarranted invasion of privacy." Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. However, we will not consider anonymous comments. Except for proprietary information, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or

businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated.

E.P. Danenberger, Chief
Office of Offshore Regulatory Programs.