

RECORD OF DECISION

Adoption of the Bureau of Ocean Energy Management's Final Programmatic Environmental Impact Statement for Issuance of Incidental Take Authorizations associated with Geological and Geophysical Activities that may be conducted in Various Locations throughout the Bureau's Mid-and South Atlantic Outer Continental Shelf Planning Areas

Prepared By:

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Office of Protected Resources

Silver Spring, Maryland

I. PURPOSE

The National Environmental Policy Act (NEPA), regulations published by the Council on Environmental Quality, and National Oceanic and Atmospheric Administration's (NOAA's) NEPA implementing procedures, Administrative Order (NAO) 216-6A, require all proposals for major federal actions to be reviewed with respect to environmental consequences on the human environment. They also encourage the use of programmatic NEPA documents and tiering to streamline decision making in staged decision-making processes that progress from programmatic analyses to site-specific reviews. 40 CFR §§1500.4(i); 1502.4; and 1502.20. This document addresses the National Marine Fisheries Service's (NMFS) determination to adopt the Bureau of Ocean Energy Management's (BOEM) Final Programmatic Environmental Impact Statement (PEIS) for proposed Geological and Geophysical (G&G) activities in the Mid-and South Atlantic Outer Continental Shelf (OCS) Planning Area pursuant to 40 CFR §1506.3. The Final PEIS evaluated the direct, indirect, and cumulative impacts of issuing permits for potential G&G survey activities in the Mid-and South Atlantic OCS.

Primary focuses of the Final PEIS included a review of impacts of proposed geophysical survey activities on 34 species of marine mammals (including five listed as threatened or endangered under the Endangered Species Act (ESA)),¹ estimates of marine mammal acoustic exposure across all years considered in the PEIS (a nine-year activity projection), and identification of standard mitigation measures. NOAA, through the National Marine Fisheries Service (NMFS)² served as a cooperating agency in preparation of the Final PEIS due to its legal jurisdiction and special expertise in conservation and management of marine mammals, including its responsibility to authorize incidental take of marine mammals under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1631 *et seq.*). NMFS has reviewed

¹ At the time of publication of the PEIS, there were six ESA-listed marine mammal species occurring in the AOI (North Atlantic right whale, blue whale, sei whale, fin whale, sperm whale, and humpback whales). Since publication, NMFS divided the formerly globally-listed humpback whale into 14 Distinct Population Segments (DPSs) under the ESA (81 FR 62259; 8 September 2016). The only humpback whale DPS occurring in the AOI (West Indies DPS) has been delisted.

² NMFS served as the lead within NOAA under this cooperating agency agreement, and coordinated internally to address all resources of concern under NOAA's jurisdiction to ensure the NEPA and other regulatory processes are effective, efficient, and completed in a timely manner.

the Final PEIS and determined that it meets the requirements of the CEQ regulations (40 CFR Part 1500-1508) and NAO 216-6A. NMFS has further determined, after independent review, that the Final PEIS has satisfied NMFS's comments and suggestions in the NEPA process. NMFS will be required to review and, if appropriate, issue authorizations for the incidental take of marine mammals under the MMPA as BOEM implements its permit program.

The purposes of this Record of Decision (ROD) are: (1) to adopt the Final PEIS to support NMFS's analysis associated with issuance of incidental take authorizations (ITAs) pursuant to Section 101(a)(5)(A) or (D) of the MMPA and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216), and (2) in accordance with 40 CFR §1505.2, to announce and explain the basis for its decision to review and potentially issue ITAs under the MMPA on a case-by-case basis, if appropriate, guided by the analyses in the Final PEIS and mitigation measures specified in BOEM's 2014 ROD. NMFS, however, can prescribe separate or distinct mitigation measures specific to any future actions concerning G&G survey activity under the MMPA, but finds these mitigation measures—including additional protections for North Atlantic right whales and other requirements under Alternative B (described below)—to be an appropriate starting point at the programmatic-level stage in reducing harassment and other acoustic effects to marine mammals and their habitat. Project level review may require deviation from the mitigation measures specified in BOEM's ROD based on specific environmental conditions and issues, such as occurrence and status of marine mammal species and the need to adequately minimize impacts to those species. BOEM's Final PEIS covers a period of nine years, during which NMFS anticipates receiving ITA applications from various applicants at any time. NMFS will use the Final PEIS as the basis for tiering its site-specific NEPA reviews for requests to issue ITAs to applicants in association with the conduct of G&G survey activities in accordance with Alternative B of the Final PEIS and BOEM's ROD specifying mitigation measures. NMFS anticipates both relying on and incorporating by reference much of the information and analyses in the Final PEIS as it reviews site-specific actions and the NEPA processes for those actions.

II. INTRODUCTION AND BACKGROUND

In 2009, BOEM began preparing the PEIS to evaluate environmental impacts associated with G&G survey activities that may be conducted in the Atlantic Ocean within BOEM's Mid-and South Atlantic OCS Planning Areas in support of oil and gas, renewable energy, and marine minerals programs. The Final PEIS describes G&G activity across what BOEM refers to as the Area of Interest (AOI), which includes the Mid-and South Atlantic Planning Areas and covers an area of 854,779 square kilometers (km²) that ranges from Delaware to Florida and extends from the coastline to 350 nautical miles (nmi) offshore. G&G surveys provide information for government and industry to evaluate the potential for offshore oil, gas, or methane hydrate resources, locate marine mineral resources, site renewable energy structures, identify geologic hazards, and other uses. These G&G survey activities are subject to permits, notices, authorizations, or conditions of approval (COAs) from BOEM. Therefore, BOEM oversees G&G data acquisition and executes their permitting authority pursuant to 30 CFR parts 550, 551, 580 and 585, Section 11, Subsections 8(k) and 8(p) of the Outer Continental Shelf Lands Act and Section 388(a) of the Energy Policy Act of 2005.

BOEM completed the PEIS in February 2014 and issued a ROD on July 11, 2014. BOEM determined a programmatic³ approach was most appropriate because (1) data obtained from G&G surveys supports multiple programs and efforts, (2) G&G survey activities can occur over large geographical areas, and (3) limitations existed in available information and uncertainty regarding timing and actual survey locations within the AOI, as well as the specific type of G&G surveys to be conducted by future applicants. Therefore, the analysis in the Final PEIS supports BOEM's planning-level decisions associated with their oversight and permitting authority for G&G data acquisition and establishes the framework and parameters for subsequent analyses based on the programmatic review. The Final PEIS, along with other detailed information and documentation, is available for review on BOEM's website: <https://www.boem.gov/Atlantic-G-G-PEIS/>.

Using this programmatic approach, BOEM identified and prepared a qualitative analysis of environmental impacts (and where possible, a quantitative analysis) covering a range of various G&G survey activities to be conducted in support of the oil and gas, renewable energy, and marine minerals programs. Of particular importance, BOEM collaborated with NMFS, as a cooperating agency, to prepare a detailed evaluation of impacts of G&G activities, including the use of airguns on marine mammals, conducted exposure estimates based in part on NMFS's historic acoustic thresholds for marine mammal harassment, and developed standard mitigation for geophysical survey activities. In the future, BOEM also intends to prepare sufficient "tiered" analyses for site-specific future actions, as appropriate. Since BOEM anticipated that permitted activities could impact marine mammals within the AOI, BOEM collaborated with NMFS to assess effects to marine mammals with the intention of establishing a baseline, programmatic environmental effects analysis that could be used to support NMFS's analysis under NEPA and the MMPA for potential, future authorizations of incidental take of marine mammals for these same activities. At the time, the Final PEIS included the best scientific information on marine mammal density and distribution in the AOI, and other components related to acoustics and marine mammal sensitivity to noise from G&G activity.

NOAA served as a cooperating agency and participated in the development of BOEM's PEIS because the scope of BOEM's proposed action and alternatives included activities that have the potential to impact protected resources for which NMFS has jurisdiction and special expertise. In this capacity, NMFS provided BOEM with technical assistance and input regarding the analysis of impacts to several resources, including, but not limited to, critical habitat and threatened and endangered species pursuant to the ESA, marine mammals pursuant to the MMPA, Essential Fish Habitat (EFH), fishery resources pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and National Marine Sanctuaries pursuant to the National Marine Sanctuaries Act (NMSA). Information about BOEM's programmatic approach and requirements for further environmental review are in Chapter 1.7.5. in BOEM's Final PEIS; a description of effects on marine mammals are in Chapter 2.2.3.2., Chapter 4.3.2., and estimates of marine mammal acoustic exposures are in Appendix E. Other information and analysis of impacts to protected resources are described in Chapter 4.1. - 4.4. and Appendices D, H, I, and J.

³ The concept of "programmatic" NEPA analyses is included in the CEQ Regulations, which addresses analyses of "broad actions" and the "tiering" process. 40 C.F.R. 1508.28. Programmatic NEPA reviews add value and efficiency to the decision-making process when they inform the scope of decisions and subsequent tiered NEPA reviews. Programmatic NEPA analyses can facilitate decisions on agency actions that precede project-specific decisions and action. They also provide information and analysis that can be incorporated by reference in future, tiered NEPA reviews.

At the time BOEM completed the Final PEIS and issued a ROD in 2014, NMFS had not received any applications from G&G companies or others requesting ITAs to conduct specific G&G survey activities analyzed in the 2014 Final PEIS. Project-specific requests for MMPA authorizations were thus not evaluated at the time.

III. ENVIRONMENTAL REVIEW SUMMARY

NMFS determined BOEM's 2014 Final PEIS to be comprehensive in analyzing the broad scope of G&G survey activities, and that the evaluation of the direct, indirect, and cumulative impacts on the human environment, including the marine environment, is adequate to support NMFS's consideration for future issuance of ITAs to G&G companies and other potential applicants through tiering and incorporation by reference. NMFS further determined that subsequent issuance of ITAs for G&G survey activities is likely to fall within the scope of the analysis in the 2014 Final PEIS, particularly since the impacts of the alternatives evaluated by BOEM (1) assess impact over a much longer period of time (*i.e.*, nine years) than is analyzed by NMFS for any given ITA, (2) encompass many of the same factors NMFS historically considered when reviewing ITAs for geophysical surveys or related activity (*i.e.* marine mammal exposures, intensity of acoustic exposure, monitoring and mitigation factors, and more), and (3) are substantially the same as the impacts of NMFS issuance of any given ITA for take of marine mammals incidental to future applicants' G&G survey activities. The 2014 Final PEIS also addresses NOAA's required components for adoption as it meets the requirements for an adequate EIS under the CEQ regulations and NAO 216-6A and reflects comments and expert input provided by NMFS as a cooperating agency. For example, the Final PEIS includes:

- a discussion of BOEM's proposed action and purpose and need for the action and a discussion of the MMPA authorization process necessary to support implementation of the action;
- evaluation of a reasonable range of alternatives to the proposed action, including a no action alternative, and alternatives to mitigate adverse effects to marine mammals;
- a description of the affected environment including the status of all marine mammal species likely to be affected;
- a description of the environmental impacts of the proposed action and alternatives, including direct, indirect, and cumulative impacts on marine mammals and projected estimates of acoustic exposure;
- identification and evaluation of reasonable mitigation measures to avoid or minimize adverse impacts to marine mammals;
- a summary of the Final PEIS, including the issues to be resolved, and the major conclusions and areas of controversy including those raised by the public; and
- a listing of agencies consulted.

Per the cooperating agency commitment, BOEM provided NMFS with preliminary versions of the draft and final PEIS documents for review, and NMFS provided comments in support of the analysis regarding areas of NOAA's subject matter expertise and jurisdiction. NMFS also circulated BOEM's draft and final documents to relevant NMFS Regional Offices and other NOAA line offices, compiled comments received, and submitted them to BOEM. Subsequently,

BOEM and NMFS participated in comment resolution meetings, in which BOEM addressed NMFS comments or resolved any outstanding issues.

IV. PROPOSED ACTION AND ALTERNATIVES SUMMARY

A. BOEM's Proposed Action

BOEM's proposed action is to permit G&G survey activities in support of oil and gas, renewable energy, and marine minerals programs throughout the entire Mid-and South Atlantic Planning Areas. The Mid-and South Atlantic Planning Areas description is in Chapter 1.3.2. and details concerning BOEM's alternatives and the proposed action are provided in Chapter 2 of BOEM's 2014 Final PEIS.

B. NMFS's Proposed Action

Sections 101(a)(5)(A) and (D) of the MMPA give NMFS the authority to authorize the incidental but not intentional take of small numbers of marine mammals by harassment, provided certain determinations are made and statutory and regulatory procedures are met. If applicants requested ITAs from NMFS associated with G&G activity covered in BOEM's proposed programmatic action (*i.e.*, a series of potential G&G permits over time), this would require NMFS to take corresponding action to issue or deny potential MMPA ITAs. NMFS's proposed action would therefore be a direct outcome of applicants' requests for an ITA related to actions covered by BOEM's Final PEIS and would authorize take of marine mammals incidental to a subset of the G&G survey activities analyzed in BOEM's 2014 Final PEIS.

To authorize the incidental take of marine mammals, NMFS evaluates the best available scientific information to determine whether the take would have a negligible impact⁴ on marine mammal species or stocks, be within small numbers of species' or stock abundance, and whether the activity would have an unmitigable impact on the availability of affected marine mammal species or stocks for subsistence use. NMFS cannot issue ITAs if it would result in more than a negligible impact on marine mammal species or stocks or would result in an unmitigable impact on subsistence uses. NMFS must also prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the species or stocks of marine mammals and their habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance. ITAs must include additional requirements or conditions pertaining to monitoring and reporting, in large part to better understand the effects of such taking on the species.

To be clear, this ROD does not make any decision on any specific ITA application, but instead documents NMFS's intention to (1) carry out its statutory and regulatory duties under the MMPA as BOEM makes requests over time, and (2) to use the Final PEIS as a basis for tiering and incorporation by reference in project-specific NEPA and MMPA reviews.

C. Alternatives Considered by BOEM

BOEM analyzed three alternatives in their Final PEIS, the action alternatives (Alternatives A and B) and the No Action alternative (Alternative C).

⁴ NMFS defines "negligible impact" as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." (50 CFR § 216.103)

- 1) Under Alternative A (Proposed Action), BOEM would proceed with authorizing G&G survey activities for all three program areas with time area closures and standard mitigation as described in Chapter 2.1. in BOEM's 2014 Final PEIS.
- 2) Under Alternative B (Preferred Alternative), BOEM would proceed with authorizing G&G survey activities for all three program areas with additional time-area closures, geographic separation of simultaneous seismic surveys, and use of passive acoustic monitoring (PAM), and standard mitigation as described in Chapter 2.2. in BOEM's 2014 Final PEIS.

Alternatives A and B are identical with respect to the G&G activities that could be conducted and the expected activity levels. They differ only in that Alternative B would expand the time-area closure for the North Atlantic right whale (NARW), add a time-area closure offshore Brevard County Florida to protect nesting sea turtles, consider a 25-mi separation between concurrent seismic surveys, require passive acoustic monitoring (PAM) during seismic surveys and PAM or similar equipment during some HRG surveys.

- 3) Under Alternative C (No Action Alternative), BOEM would not authorize G&G survey activities in support of the oil and gas program, and no oil and gas exploration would occur in the AOI. However, BOEM would authorize G&G survey activities in support of the renewable energy and marine minerals programs and these G&G survey activities would continue as they have in the past on a site-specific basis, as described in Chapter 2.3. in the Final PEIS.

D. Alternatives Considered by NMFS

In accordance with NEPA and CEQ Regulations, NMFS is required to consider a reasonable range of alternatives to a Proposed Action. Since NMFS is adopting BOEM's Final PEIS, it reviewed the document to determine whether it met this requirement. NMFS has determined that the Final PEIS's analysis of alternatives is adequate for purposes of NEPA and the CEQ regulations and has therefore chosen not to supplement the Final PEIS by developing and evaluating additional alternatives. The Final PEIS thus supports NMFS's decision at a programmatic level to evaluate a reasonable range of alternatives for supporting BOEM's permitting program by considering, and if appropriate, issuing ITAs. The Final PEIS and this ROD do not authorize any ITA for any specific permit request. For requests to issue ITAs under the MMPA as BOEM's permit program is implemented, NMFS will independently consider and evaluate the no action alternative and other reasonable course(s) of action on a project-by project basis. While NMFS will consider the alternatives analysis in the Final PEIS in order to conduct project-specific decision-making, it will not be constrained by it, as project-specific issues may require deviation as appropriate.

V. ANALYSIS SUMMARY

The environmental consequences to the marine environment and protected resources are important to the evaluation leading to the decision to issue any given ITA. In particular, because NMFS's action is specific to authorizing incidental take of marine mammals, the key factors relevant to, and considered in a decision to issue any given ITA, are related to NMFS's statutory mission under the MMPA. NMFS assisted BOEM with development of the PEIS by providing technical information and subject matter expertise on marine mammals and their habitat to help

evaluate the effects of G&G survey activities in the PEIS. Key factors and findings analyzed by, and contributed to by NMFS, are discussed below:

A. Key Factors

1. Considering Effects to ESA-listed Species and Critical Habitat: BOEM requested formal consultation with NMFS under the ESA on May 29, 2012 for activity covered in the PEIS, and NMFS formally initiated consultation on August 6, 2012. NMFS delivered a finalized Biological Opinion on July 19, 2013. In the Biological Opinion, NMFS concluded that the proposed action is not likely to jeopardize the continued existence of listed species, nor destroy or adversely modify North Atlantic right whale critical habitat. In the PEIS, BOEM acknowledged that reinitiating consultation with NMFS may be necessary in the future under the timeframe of this PEIS, if and when: (1) authorized incidental take is exceeded, (2) new information reveals that proposed actions may affect listed species or critical habitat in a manner or extent not considered in the Biological Opinion, (3) a change to agency action affects listed species or critical habitat, or (4) new species are listed or critical habitat designated that may affect an action.

Furthermore, BOEM considered mitigation measures specific to North Atlantic right whale critical habitat, the only marine mammal species with a critical habitat designation at the time of publication of the PEIS (described below). BOEM also gave specific reference to ESA-listed marine mammals and analyzed impacts to these species.

2. Mitigation and Monitoring Requirements: Both agencies are required to review and consider mitigation that minimizes or avoids an impact. Specific to NMFS's statutory obligations under the MMPA, NMFS must consider mitigation measures specific to its proposed action to achieve the least practicable adverse impact on species or stocks and their habitat. BOEM has required the following general mitigation measures for G&G surveys as part of its permitting program: guidance for vessel strike avoidance, guidance for marine debris awareness, avoidance of sensitive seafloor resources, guidance for activities in or near National Marine Sanctuaries, and guidance for military and NASA coordination. Furthermore, BOEM has also prescribed mitigation that NMFS finds will be particularly beneficial and relevant in helping to mitigate and reduce impacts to marine mammals. Specifically, these include: closures to seismic activity in North Atlantic right whale critical habitat and other related important habitat areas; maintaining and monitoring an exclusion zone of 500 m; requirements for both visual and acoustic monitoring; protocols for ramp-up of airguns; and shutdowns for marine mammals within the acoustic exclusion zone. NMFS, however, can prescribe separate or distinct mitigation measures specific to any future actions concerning G&G survey activity under the MMPA, but finds these mitigation measures—including additional protections for North Atlantic right whales and other requirements under Alternative B—to be an appropriate starting point at the programmatic-level stage in reducing harassment and other acoustic effects to marine mammals and their habitat.

3. Sound Field and Acoustic Exposure Estimate Modeling: BOEM conducted modeling that showed the radial distance of ensonified areas to certain thresholds, described in detail in Appendix D of the PEIS. In brief, BOEM modeled exposure levels within 21 distinct acoustic propagation regions in the Atlantic specific to each season at varying water depths and bottom types (*i.e.* sand and clay). BOEM modeled distances to exposure thresholds using a large airgun array (5,400 in³) that was a representative airgun array size but not specific to any survey.

To calculate marine mammal exposure estimates, BOEM then overlaid density from the U.S. Navy's Navy Operating Area (OPAREA) Density Estimates (NODEs) database with the acoustic modeling to produce seasonal surface density plots. Results of the acoustic modeling and region-specific density estimates were input into Marine Acoustic Inc.'s Acoustic Integration Model (AIM), a software package that simulated marine animals (*i.e.*, animats) behaving in specific ways. Animat positions relative to the acoustic source (*i.e.*, range, bearing, and depth) were used to extract received level estimates. Using this information, the number of animats per species that exceeded a given exposure criterion were determined, and then scaled according to density estimates. In doing so, BOEM produced their own exposure estimates for marine mammal species for each year of projected activity.

4. Cumulative Impacts: BOEM evaluated potential cumulative impacts to marine mammals in the AOI based on 10 different and foreseeable activities in the AOI, including (1) oil and gas development; (2) renewable energy development; (3) marine minerals use; (4) geosequestration; (5) LNG terminals; (6) commercial and recreational fishing; (7) military range complexes and civilian space program use; (8) shipping and marine transportation, including research vessels; (9) dredged material disposal; and (10) new cable infrastructure. Three broader cumulative impact sources also were identified: (1) climate change; (2) cumulative noise in the sea; and (3) cumulative vessel activity. BOEM then identified six impact-producing factors that could affect marine mammals, including: (1) increased anthropogenic noise in the ocean, including underwater noise from sonars, explosives, dredges, vessel traffic, and other active sound sources; (2) discharges of drilling fluid, produced water, and other effluents from drilling rigs; (3) the physical presence of offshore structures; (4) accidental releases of trash and debris; (5) vessel collisions; and (6) a risk of a crude oil spill from a well blowout or accidental releases of fuel or other hazardous materials from accidents (smaller accidental events or low-probability large scale catastrophic events). BOEM then considered the magnitude of cumulative effect on marine mammals on a scale of negligible to major.

5. Impacts to Marine Mammals: BOEM assessed impacts to marine mammals through both acoustic exposure estimates and a qualitative assessment based on a review of literature primarily on acoustic impacts to marine mammals. As described above, using representative sound source modeling, propagation characteristics, and information regarding marine mammal occurrence, BOEM estimated acoustic exposures for each potential marine mammal species in the AOI, based on a nine-year projection of survey effort levels (Appendix E of the PEIS). BOEM's acoustic exposure modeling included some conservative assumptions, which was seen as a preferable approach as compared to potentially underestimating impacts (*e.g.*, the representative acoustic source selected in this model was larger than many sources employed in G&G surveys, among other factors). This acoustic exposure estimate fed into BOEM's qualitative assessment of impacts to marine mammals.

BOEM's qualitative assessment provided a description of all five ESA-listed marine mammal species under NMFS's jurisdiction that could occur within the AOI, as well as descriptions of all non-listed marine mammal species, including the auditory and vocalization range of these species. BOEM then went on to review potential acoustic impacts to marine mammals, such as masking, stress, and behavioral response. BOEM provided a qualitative review of impacts to these species from vessel and equipment noise, vessel traffic, aircraft traffic and noise, impacts of trash and debris, and impacts of accidental fuel spills on marine mammals. Finally, BOEM conducted an impact analysis on marine mammals from various components (*e.g.*, seismic

airguns, or vessel noise) as anywhere from negligible to major, treating marine mammals as a resource category that could be impacted by these impact-producing factors.

B. Findings

The analysis in BOEM's 2014 Final PEIS adequately addresses, on a programmatic level, the potential direct, indirect, and cumulative impacts to marine mammals and their habitat resulting from the use of active acoustic sources deployed during G&G surveys and properly addresses NOAA's comments and input. In its PEIS, BOEM analyzed possible cumulative impacts, potential impacts from acoustic exposure, including harassment and other acoustic impacts, as well as impacts from entanglement, vessel strike, or other consequences of the proposed G&G survey activities. BOEM also modeled and estimated marine mammal acoustic exposure from a variety of potential G&G survey activities covered in BOEM's PEIS. BOEM used these exposure estimates, combined with qualitative scientific information and its impact rating evaluation, to conclude that none of the alternatives will result in any adverse population level effects on any of the affected species or stocks. This modeling found that airguns have the potential to result in both disruption of behavioral patterns and auditory injury, but that no mortalities are expected and most exposures will result in behavioral effects only.

As noted, NMFS has a statutory responsibility to independently review and evaluate each request for authorization to incidentally take marine mammals pursuant to Sections 101(a)(5)(A) and (D) of the MMPA. While NMFS intends to tier to and incorporate by reference the effects analysis in the Final PEIS, it will use the best current scientific information available when it reviews individual applications including any updated information on species occurrence and status.

VI. ROD'S COMPLIANCE WITH CEQ REGULATIONS

The CEQ regulations specify the contents of a ROD. 40 CFR §1505.2. NMFS has reviewed the ROD prepared by BOEM selecting Alternative B of the Final PEIS. The ROD clearly stated the decision being made, and identified Alternative B as both the preferred and environmentally preferable alternative. BOEM also compared and contrasted alternatives addressing preferences including effects to marine mammals. The ROD also discusses all practicable means to avoid or minimize harm to marine mammals likely to be caused by Alternative B and commits to implementing them on a case-by-case basis. NMFS has determined that BOEM's ROD is adequate and complies with the CEQ regulations. NMFS concurs with selection of Alternative B as it is environmentally preferable, is predicted to result in less adverse impacts to marine mammals, including the endangered North Atlantic right whale, and includes appropriate standard mitigation measures that can be modified and/or supplemented on a case-by-case basis to support review and issuance of MMPA ITAs.

VII. PUBLIC INVOLVEMENT SUMMARY

During the development of BOEM's PEIS, the public had opportunities to comment on the scope of the PEIS during the initial scoping period (January-March 2009), a second scoping period (April-May 2010)⁵, the public comment period for the Draft PEIS (March-July 2012)⁶, and the Final PEIS (March-April 2014)⁷. NMFS participated in public meetings and assisted BOEM with

⁵ Scoping periods include public meetings held at multiple locations.

⁶ The public review began on March 30, 2012 for 60-days and was extended until July 2, 2012.

⁷ Public review began on March 7, 2014 and concluded on April 7, 2014.

addressing the public's concerns associated with the analysis of impacts on marine mammals and other marine resources. The details and explanations concerning public involvement and public comments associated with the development of BOEM's PEIS is provided in Chapter 5 of the Final PEIS. NMFS will adopt the Final PEIS without further public involvement or circulation in accordance with 40 CFR §1506.3(c) since NMFS was a cooperating agency and is satisfied that BOEM adequately addressed its comments and suggestions.

VIII. CONCLUSION

Based on the foregoing explanation and determinations, this ROD documents NMFS's decision to adopt BOEM's PEIS (analyzing the impacts of G&G permitting), in accordance with 40 CFR §§1506.3 and 1505.2. In addition, this ROD announces NMFS's decision to issue ITAs under the MMPA on a case-by-case basis, if appropriate, consistent with the analyses in the Final PEIS and mitigation measures specified in the BOEM ROD (as well as the requirements of the MMPA), acknowledging that project-level review may require clarification and deviation based on updated information and unique issues and circumstances.

Signed: _____



Date: _____

FEB 23 2018

Donna S. Wieting
Director, Office of Protected Resources
National Marine Fisheries Service.