



February 2, 2017

**VIA Email**

Mr. Samuel D. Rauch, III  
Acting Assistant Administrator for Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**Re: Applications for MMPA Incidental Harassment Authorizations for Geophysical Surveys in the Atlantic Ocean**

Dear Mr. Rauch:

We write on behalf of the International Association of Geophysical Contractors (IAGC), the American Petroleum Institute (API), and, specifically, IAGC members who have applied to the National Marine Fisheries Service (“NMFS”) for incidental harassment authorizations (“IHAs”) under Section 101(a)(5)(D) of the Marine Mammal Protection Act (“MMPA”) for geophysical surveys in the Atlantic Ocean.<sup>1</sup> These IHA applicants received letters from NMFS, on or about January 13, 2017, stating that “NMFS does not intend to continue processing” their IHA applications. The letter states that NMFS’s stoppage of these regulatory processes is due to “BOEM’s denial [of survey permit applications] and the related fact that there is no reasonably foreseeable start date for [the] specific activity.” As explained below, NMFS’s unilateral and indefinite stoppage of these regulatory processes is unwarranted and unlawful.

First, NMFS has no authority under the MMPA or its implementing regulations to halt the processing of IHA applications simply because the permits for the underlying activities have been denied. Those permits—which are the subject of an entirely separate permitting process, involving a different statute and a different agency—may be administratively appealed, and it is far from certain that those permits will not ultimately be issued to the applicants. Indeed, applicants often apply for IHAs while the permitting of their underlying activities is in a state of incompleteness and uncertainty.

Second, after the submittal of an IHA application, NMFS is required to “determine the adequacy and completeness of a request.” *Id.* § 216.104(a) and (b)(1). If the application is determined to be adequate and complete, then NMFS must begin the public review process by publishing notice of a proposed IHA in the Federal Register. *Id.* § 216.104(b)(1). Conversely, if the application is determined to be incomplete, it “will be returned to the applicant with an

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<sup>1</sup> These members are ION GeoVentures, Spectrum Geo Inc., TGS-NOPEC Geophysical Company, and WesternGeco, LLC.

explanation of why the application is being returned.” *Id.* § 216.104(b)(3). NMFS has not determined that the Atlantic IHA applications are inadequate or incomplete, and it has not returned the applications. Because NMFS has not taken action under § 216.104(b)(3), the only lawful option for NMFS is to proceed with the publication process stated in § 216.104(b)(1).

Third, NMFS continues to violate its statutory obligation to publish a proposed authorization, in response to each IHA application, “not later than 45 days after receiving” the applications. 16 U.S.C. § 1371(a)(5)(D)(iii) (emphasis added). As of the date of this letter, it has now been 554 days (and counting) since NMFS published notice of its receipt of the Atlantic IHA applications. 80 Fed. Reg. 45,195 (July 29, 2015). This delay is inexcusable.

For these reasons, we demand that NMFS immediately complete the processing of each of the four lawfully submitted Atlantic IHA applications and promptly publish proposed authorizations in the Federal Register, as it was required to do well over a year ago.

Sincerely,



Nikki Martin  
International Association of Geophysical Contractors  
President



Andy Radford  
American Petroleum Institute  
Sr. Policy Advisor – Offshore

CC:

Donna Wieting, Director, Office of Protected Resources, NOAA  
Senate Commerce Committee Chairman John Thune  
House Natural Resources Committee Chairman Rob Bishop