



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910  
THE DIRECTOR

OCT 10 2017

Andy Radford  
Senior Policy Advisor - Offshore  
American Petroleum Institute  
1220 L St NW Suite 900  
Washington, DC 20005

Ms. Nikki Martin  
President  
International Association of Geophysical Contractors  
1225 North Loop West, Suite 220  
Houston, Texas 77008

RE: Applicant Status for the Endangered Species Act Section 7(a)(2) Consultation for Incidental Take Regulations Governing Geological and Geophysical Surveys in the Gulf of Mexico Outer Continental Shelf

Dear Mr. Radford and Ms. Martin:

Thank you for your letter concerning our Endangered Species Act Section (ESA) 7(a)(2) consultation for Marine Mammal Protection Act (MMPA) incidental take regulations governing geological and geophysical surveys in the Gulf of Mexico Outer Continental Shelf. Your letter requests applicant status for the American Petroleum Institute and the International Association of Geophysical Contractors (Associations) on the subject consultation.

The National Marine Fisheries Service (NMFS), Office of Protected Resource's (OPR) ESA Interagency Cooperation Division, in coordination with the Southeast Regional Office, is leading the development of a programmatic Biological Opinion that will address all aspects of oil and gas activities in the Gulf of Mexico Outer Continental Shelf. The proposed action analyzed in the programmatic Biological Opinion includes geological and geophysical surveys, leasing/development, and decommissioning and the issuance of the MMPA incidental take regulations.

The joint NMFS – U.S. Fish and Wildlife implementing regulations for section 7 define “applicant” as any person (as person is defined in the ESA) who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action. 50 CFR 402.02. The joint *Endangered Species Consultation Handbook* identifies that determining applicant status may be appropriate for applicants seeking a permit or authorization for a discrete action but is not appropriate with regard to programmatic consultations. The *Handbook* (p. 2-12) also states that “users of public resources [...] are not parties to programmatic section 7 consultations dealing with an agency’s overall management operations, including [...] program level consultations. However, users who are a party to a discrete action [...] may participate as applicants in the section 7 process.” Therefore, we do not believe your Associations qualify for applicant status.

We want to offer another method to fulfill your request to provide review and comment on the draft programmatic Biological Opinion. Federal action agencies have discretion regarding whether to allow



public review and comment on draft Biological Opinions. Barring any competing exigencies that may arise, the OPR Permits and Conservation Division, one of the federal action agencies for this consultation, will post the draft programmatic Biological Opinion for public review and comment as part of their public regulatory process for the incidental take regulations. You will have the opportunity to provide review and comment on the draft programmatic Biological Opinion at that time.

In addition, we also intend to continue to engage (through the Permits and Conservation Division) your Associations and companies that may have an interest in applying for future letters of authorization in the development of the monitoring and adaptive management plan for the MMPA regulations, and in the evaluation of mitigation measures and their practicability for implementation.

We hope these opportunities to work with your Associations will result in a more informed consultation development process. If you have any questions or would like to talk further, please do not hesitate to call me at 301-427-8400 or by e-mail at [donna.wieting@noaa.gov](mailto:donna.wieting@noaa.gov).

Sincerely,

A handwritten signature in black ink that reads "Chris Oliver". The signature is written in a cursive, flowing style.

Chris Oliver  
Assistant Administrator  
National Marine Fisheries Service



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910  
THE DIRECTOR

Andy Radford  
Senior Policy Advisor - Offshore  
American Petroleum Institute  
1220 L St NW Suite 900  
Washington, DC 20005

OCT 10 2017

Ms. Nikki Martin  
President  
International Association of Geophysical Contractors  
1225 North Loop West, Suite 220  
Houston, Texas 77008

RE: Applicant Status for the Endangered Species Act Section 7(a)(2) Consultation for Incidental Take Regulations Governing Geological and Geophysical Surveys in the Gulf of Mexico Outer Continental Shelf

Dear Mr. Radford and Ms. Martin:

Thank you for your letter concerning our Endangered Species Act Section (ESA) 7(a)(2) consultation for Marine Mammal Protection Act (MMPA) incidental take regulations governing geological and geophysical surveys in the Gulf of Mexico Outer Continental Shelf. Your letter requests applicant status for the American Petroleum Institute and the International Association of Geophysical Contractors (Associations) on the subject consultation.

The National Marine Fisheries Service (NMFS), Office of Protected Resource's (OPR) ESA Interagency Cooperation Division, in coordination with the Southeast Regional Office, is leading the development of a programmatic Biological Opinion that will address all aspects of oil and gas activities in the Gulf of Mexico Outer Continental Shelf. The proposed action analyzed in the programmatic Biological Opinion includes geological and geophysical surveys, leasing/development, and decommissioning and the issuance of the MMPA incidental take regulations.

The joint NMFS – U.S. Fish and Wildlife implementing regulations for section 7 define “applicant” as any person (as person is defined in the ESA) who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action. 50 CFR 402.02. The joint *Endangered Species Consultation Handbook* identifies that determining applicant status may be appropriate for applicants seeking a permit or authorization for a discrete action but is not appropriate with regard to programmatic consultations. The *Handbook* (p. 2-12) also states that “users of public resources [...] are not parties to programmatic section 7 consultations dealing with an agency’s overall management operations, including [...] program level consultations. However, users who are a party to a discrete action [...] may participate as applicants in the section 7 process.” Therefore, we do not believe your Associations qualify for applicant status.

We want to offer another method to fulfill your request to provide review and comment on the draft programmatic Biological Opinion. Federal action agencies have discretion regarding whether to allow

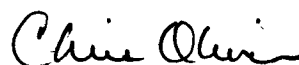


public review and comment on draft Biological Opinions. Barring any competing exigencies that may arise, the OPR Permits and Conservation Division, one of the federal action agencies for this consultation, will post the draft programmatic Biological Opinion for public review and comment as part of their public regulatory process for the incidental take regulations. You will have the opportunity to provide review and comment on the draft programmatic Biological Opinion at that time.

In addition, we also intend to continue to engage (through the Permits and Conservation Division) your Associations and companies that may have an interest in applying for future letters of authorization in the development of the monitoring and adaptive management plan for the MMPA regulations, and in the evaluation of mitigation measures and their practicability for implementation.

We hope these opportunities to work with your Associations will result in a more informed consultation development process. If you have any questions or would like to talk further, please do not hesitate to call me at 301-427-8400 or by e-mail at [donna.wieting@noaa.gov](mailto:donna.wieting@noaa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Chris Oliver".

Chris Oliver  
Assistant Administrator  
National Marine Fisheries Service