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 extension and 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 is titled: ''Notices to Lessees and Operators Numbers 2003–G08, 2003–G10, and 2003–G11.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by October 30, 2003.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0154). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, at (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the Notices to Lessees that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Notices to Lessees and Operators Numbers 2003–G08, 2003–G10, and 2003–G11.

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.

The Department of the Interior, MMS, as a Federal agency, has 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 these NTLs have been renumbered and reissued):

- NTL 2003–G08—Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program
- NTL 2003–G10—Vessel Strike Avoidance and Injured/Dead Protected Species Reporting
- NTL 2003–G11—Marine Trash and Debris Awareness and Elimination

The 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 in the OCS.

On March 26, 2003, the OMB approved MMS's request under emergency processing procedures to collect the information required by these NTLs and assigned OMB Control Number 1010–0154. Since the ''emergency'' processing of this information collection, MMS has worked with representatives from NOAA Fisheries, American Petroleum Institute, and the Offshore Operators Committee to fully develop these programs and has revised and renumbered the NTLs as follows:

- NTL 2003–G08, ''Implementation of Seismic Survey Mitigation Measures and Protected Species Observer Program'' (previously NTL 2002–G07 with Addendum 1), has been revised to include the entire Protected Species Observer Program section, adding criteria for visual observers, observer training, and methods of observing and reporting observations. It also provides for an experimental (voluntary) passive acoustic monitoring program.
- NTL 2003–G10, ''Vessel Strike Avoidance and Injured/Dead Protected Species Reporting'' (previously NTL 2003–G07), has been revised to list specific guidelines operators should follow to avoid death or injury to marine mammals and sea turtles in lieu of a formal observer program.
- NTL 2003–G11, ''Marine Trash and Debris Awareness and Elimination'' (previously NTL 2003–G06), has been

revised to allow options for training; require an annual training certification letter to MMS in lieu of individual certifications; and allow flexibility in posting placards.

The full development of these programs, and their subsequent requirements, has significantly increased the burden hours of the already approved information collection. Therefore, with this submission, MMS is requesting a renewal of the approved collection and the noted revisions.

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 22,305 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 no. and name	Reporting, posting, or recordkeeping requirement	Hour burden	Average no. annual responses	Annual burden hours
2003–G08 Implementation of Seismic Survey Mitigation Measures and Protected Species Observer.	Submit protected species observation reports/forms (including observer, survey, sighting, shut-down, borehole, and passive acoustic monitoring reports).	1 hour/report	200 sightings reports	200
	Actual visual observation on duty	8 hours/day × 3 observers/vessel = 24.	8 vessels × 110 (30% in seismic mode × 365 days) = 880.	21,120
	Submit to MMS observer training requirement materials and information.	½ hour	24 reports × 8 vessels = 192.	96
	Observer training	8 hours	8 vessels × 9 observers (in vessel pool) = 72.	576
	Training certification and recordkeeping	½ hour	100	50
	Submit to MMS information on passive acoustic monitoring system before its use (voluntary program).	1 hour	3	3
2003–G10 Vessel Strike Avoidance and Injured/Dead Protected Species Reporting.	Submit injured/dead protected species report	½ hour/report	20 reports	10
2003–G11 Marine Trash and Debris Awareness and Elimination.	Write to obtain training video (optional)	½ hour/record	100 requests	50
	Submit annual report to MMS on training process and certification.	½ hour/record	200 records	100
	Training recordkeeping	½ hour/record	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.)			0
Total Burden			1,967 reports	22,305 hours

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: MMS has identified no ''non-hour cost'' burdens associated with the collection of information.

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: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) 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 use of automated collection techniques or other information technology.

To comply with the public consultation process, on May 14, 2003, MMS published a **Federal Register** notice (68 FR 25904) announcing that MMS would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In a letter dated July 10, 2003, the Offshore Operators Committee (OOC), an organization of some 115 companies that essentially conduct all of the OCS oil and gas exploration activities in the Gulf of Mexico, submitted comments on this collection. The following discusses the comments and MMS's responses.

Comment 1: OOC states that the reporting and compliance requirements used in the **Federal Register** notice are underestimated. OOC notes that no hour burden has been calculated for conducting the required observations; training the observers; and then reviewing, approving, and filing the reports with the MMS. *MMS Response:* Because the protected species observer program is now fully developed and constitutes a new requirement from the biological opinions from NOAA Fisheries, all observation time is now calculated into the burden. Time spent training observers to do the required tasks is also included, as well as time for industry review and approval of required reports. As a result of discussions, these three NTLs have been revised, and the total information collection burden has been adjusted to 22,305 hours.

Comment 2: OOC is especially concerned about original NTL 2003–G06, Marine Trash and Debris Awareness and Elimination (now revised to be NTL 2003–G11) and states that the recordkeeping requirements of this NTL are overly burdensome and unnecessary, that the hourly burden is underestimated, and that existing regulations and programs adequately address elimination of marine debris, placarding of facilities, and training of personnel. OOC states that NOAA Fisheries wants feedback from MMS on the effectiveness of existing programs rather than creation of new programs. *MMS Response:* MMS received biological opinions from NOAA Fisheries on Western Gulf of Mexico (GOM) Lease Sale 184, as well as on the multi-lease sale proposal for the Central and Western GOM. These opinions contain ''nondiscretionary terms and conditions'' requiring MMS to implement additional programs to eliminate marine trash and debris. Implementation of such programs is required in order for MMS to proceed with its proposed Federal action of holding lease sales. However, in the future, MMS will facilitate earlier dialogue with affected parties on such issues as addressed in these biological opinions; we will open discussion on ways to satisfy NOAA Fisheries requirements while working with affected industry.

After extensive meetings and discussions with OOC, industry, and NOAA Fisheries representatives, MMS had revised the original NTL. The revised NTL in this submission significantly reduces the burdens by allowing lessees and operators to use a slide show in conjunction with annual training and to certify compliance with these requirements by submitting an annual report to MMS that describes their training process and that they have followed this process for the previous calendar year.

Comment 3: OOC states that the time and cost of meeting the training and recordkeeping requirements are substantial. In addition, OOC states that there are ''non-hour cost'' burdens associated with these requirements. *MMS Response:* OOC refers to additional time incurred in the review, approval, and file keeping aspects of the reports. As stated above, MMS has revised the NTLs and has incorporated the training and recordkeeping aspects into the burden. MMS has also calculated the time for industry to review and approve required information. OOC also refers to ''non-hour cost'' burdens to generate, maintain, and disclose this information. Comments were not specific enough to include as an element of burden in this submission.

Comment 4: OOC is concerned with the NTL process in general and notes that the NTLs have been revised at least twice during the last 7 months. OOC states that these revisions have caused additional work to industry. OOC believes these NTLs exceed the scope of MMS regulations and create compliance requirements on industry without an opportunity to provide comments on the new requirements. *MMS Response:* MMS recognizes industry concerns about the use of NTLs and their associated burdens; however, the requirements in these NTLs are necessary because of the biological opinions issued. In the future, MMS will work with affected groups early in the process. We understand the burden these requirements place on industry. However, MMS has a continuing duty to comply with the ESA, including a substantive duty not to carry out any agency action that is likely to jeopardize protected species as well as a procedural duty to consult with the Services (FWS and NOAA Fisheries) before engaging in a discretionary action that may affect a protected species. Lessees and operators in the GOM also must comply with the ESA.

Prior to OCS Lease Sales 181, 184 and 185, the MMS followed these procedural requirements by conducting a formal consultation with FWS and NOAA Fisheries, after which both Services issued biological opinions. The biological opinions issued by NOAA Fisheries for Sale 184 and Sale 185 advised the MMS that the proposed action (lease sale and related exploration, development, and production activities) was expected to impact (harm) sperm whales and sea turtles in the action area as a result of such OCS activities and that certain 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, MMS must comply with the nondiscretionary terms and conditions, which outline required reporting and monitoring requirements. In order to monitor the impact of incidental take, the MMS must report the progress of the action and its impact on the species to NOAA.

These three NTLs were issued in an effort to comply with the biological opinions and thus enable MMS and industry to proceed with OCS Lease Sale 184 as well as others in a timely manner. MMS has met often with representatives of OOC, industry, and NOAA Fisheries to address their concerns about these NTLs. Although all concerns were not resolved, changes were made to the subject NTLs. The majority of the revisions of the NTLs resulted from feedback from industry and MMS's effort to allow time and flexibility for lessees and operators to comply with NOAA's requirements.

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 October 30, 2003.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law. However, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson, (202) 208–3976.

Dated: September 8, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

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