



October 2, 2017

**VIA Email and U.S. Mail**

Ms. Donna Wieting  
Director, Office of Protected Resources (F/PR)  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**Re: Applicant Status for ESA Section 7 Consultation for Incidental Take Regulations  
Governing Geophysical Surveys in the Gulf of Mexico**

Dear Ms. Wieting:

We write on behalf of the American Petroleum Institute (“API”) and the International Association of Geophysical Contractors (“IAGC”) (together, the “Associations”) regarding the Endangered Species Act (“ESA”) Section 7 consultation for incidental take regulations governing geophysical surveys in the Gulf of Mexico. On May 17, 2016, the Associations submitted the attached letter asserting our status as “applicants” for this consultation and formally requesting written confirmation of that status. After nearly 17 months we have not yet received the requested confirmation. Accordingly, we resubmit our request here and look forward to your prompt reply so that the Associations can begin working to constructively inform the Section 7 process.

**THE ASSOCIATIONS**

API is a national trade association representing over 625 member companies involved in all aspects of the oil and natural gas industry, particularly offshore exploration and development in the Gulf of Mexico. IAGC is the international trade association representing geophysical services companies that support and provide critical data to the oil and natural gas industry. IAGC members play an integral role in the successful exploration and development of offshore hydrocarbon resources through the acquisition and processing of geophysical data. Collectively, the Associations represent almost all of the stakeholders engaged in the exploration and development of offshore oil and gas resources in the Gulf of Mexico. As particularly relevant here, these stakeholders are the regulated entities that will obtain authorizations under the incidental take regulations that are issued for geophysical surveys in the Gulf of Mexico.

### **SUMMARY OF REQUEST**

At the time of our May 2016 letter, we understood that the National Marine Fisheries Service (“NMFS”) would soon issue a notice in the Federal Register regarding the Bureau of Ocean Energy Management’s submission of a petition for regulations under Section 101(a)(5)(A) of the Marine Mammal Protection Act that address the authorization of incidental take associated with geophysical surveys on the outer continental shelf of the Gulf of Mexico (the “ITR”). That notice was issued on December 8, 2016. 81 Fed. Reg. 88,664. If NMFS determines that issuance of the requested ITR is a federal action that may adversely affect ESA-listed species, NMFS is required under the ESA to initiate and complete Section 7 consultation to ensure that the effects of the requested ITR are not likely to jeopardize the continued existence of ESA-listed species or adversely modify their critical habitat (the “ITR Consultation”).

Our May 2016 letter detailed the applicable ESA Section 7 regulations and a federal court decision holding that an association plaintiff “directly affected” by the “actions” subject to an ESA Section 7 consultation was an applicant for purposes of the consultation. Like the association in that case, the Associations represent operators who will be “directly affected” by the action at issue—*i.e.*, the ITR and future letters of authorization, the ITR Consultation, and the resulting biological opinion and incidental take statement. The Associations will also provide operational and technical input during the consultation process that, respectfully, cannot be provided by BOEM or any other federal agency, as well as other information such as scientific data of which the agencies may not be aware.

Accordingly, in our May 2016 letter we respectfully requested that NMFS promptly confirm, in writing, the Associations’ applicant status for the ITR Consultation. That status confers on the Associations the reasonable opportunity to participate in the consultation process, including a timely and fair opportunity to review and comment on drafts of the biological opinion. We respectfully resubmit that request here, and we continue to look forward to productively working with NMFS throughout the ITR Consultation.

Sincerely,



Andy Radford  
American Petroleum Institute  
Sr. Policy Advisor - Offshore



Nikki Martin  
International Association of Geophysical Contractors  
President

cc: Mr. Chris Oliver, Assistant Administrator, NOAA Fisheries  
Ms. Jolie Harrison, Chief, Permits and Conservation Division (F/PR1)  
Ms. Cathy Tortorici, Chief, ESA Interagency Coordination (F/PR5)  
Mr. David Bernhart, Asst. Regional Administrator, NMFS Southeast Region  
Dr. Jill Lewandowski, BOEM, Division of Environmental Assessment Chief