

Fourth, to the extent the DPEIS contemplates shutdowns for all marine mammals except dolphins approaching the vessel to bow-ride, implementation of such a measure is impractical. We are aware of no mitigation measures applicable to offshore exploration activities in which an observer is required to subjectively determine the intent of a marine mammal (*i.e.*, the intent to bow-ride or to approach a vessel). Determining marine mammal intent from great distances is very difficult for experienced marine mammal biologists in controlled scientific experiments, let alone for observers who will be attempting to determine dolphin intent over vast distances in the ocean environment. Based on observation reports, PSOs will be unable to confidently assess animal behavior or “intentions” because they cannot accurately determine species within the expanded exclusion zone.³³ The result is that observers will likely, out of caution, call for shutdowns in almost all instances where dolphins are observed within the exclusion zone.

In sum, any shutdown requirement applicable to dolphins in the GOM would broadly and substantially impact seismic operations without any corresponding environmental benefit and without any scientific support. The Associations respectfully request that BOEM clarify in its final PEIS that no such requirement is included in any of the alternatives.

6. Passive acoustic monitoring

Under Alternatives B-F, BOEM would require the use of Passive Acoustic Monitoring (“PAM”) as part of the Seismic Airgun Survey Protocol in certain circumstances. *See* DPEIS at 2-43. PAM is one of several monitoring techniques that offers a monitoring capability during periods of poor visibility or night conditions. PAM complements (rather than replaces) traditional visual monitoring. However, towed commercially available PAM systems can be highly variable and less robust than other in-sea integrated PAM capabilities/equipment. In addition, overall performance and capabilities of PAM are dependent on factors such as technical specification of equipment, operational setting, availability of experienced and trained personnel, and the species of marine mammals present in a given area. Mandatory use of PAM may substantially increase survey cost, require the placement of more personnel on vessels (*i.e.*, four dedicated PAM observers onboard), and potentially increase entanglement risk due to more gear being towed in the water. The Associations therefore urge BOEM to make the use of PAM optional in all alternatives, as recommended in Alternative A. *See Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1088 (9th Cir. 2013) (an agency need not consider a mitigation measure with a “prohibitively high cost” that “makes it infeasible”); *see also* 46 Fed. Reg. at 18,031 (“mitigation measures must be developed where it is feasible to do so”).

³³ *See Attachment B*. It is well known that different species will exhibit different behaviors. For example, Risso’s dolphins generally avoid vessels and rarely bow-ride, rough-toothed dolphins generally avoid vessels but do bow-ride, and common dolphins are frequent bow-riders. *See* K. Wynn & M. Schwartz, *Guide to Marine Mammals and Turtles of the U.S. Atlantic and Gulf of Mexico* (2009).

7. National standards for PSOs

The DPEIS states that observer qualifications addressed in NOAA Technical Memorandum NMFS-OPR-49, *National Standards for a Protected Species Observer and Data Management Program: A Model Using Geological and Geophysical Surveys* (Nov. 2013) (“Observer Standards”) “may be required for future activities.” DPEIS, Appx. B at B-16. Although we appreciate the agencies’ attempt to clarify and standardize observer guidelines and requirements, the Observer Standards are flawed in a number of respects. It is imperative that the agencies consider public input on the Observer Standards and make the revisions necessary to ensure that the standards are workable, accurate, and appropriate before they are required. The standards should encourage adaptive technology, remote monitoring, reduction of health, safety, and environmental risks, and use of an updated reporting form that provides substantive data from observations to inform the need (if any) for additional or revised mitigation measures. The letter by IAGC, API, and NOIA, dated May 2, 2014, addressing the Observer Standards more specifically states our concerns with the Observer Standards and offers constructive solutions. See Attachment D. We appreciate BOEM’s consideration of our concerns.

8. Non-duplicative surveys and lowest practicable source

With respect to potential measures regarding non-duplicative surveys and use of the lowest practicable source, the DPEIS states:

The goal of these measures is to reduce the overall sound source levels in the AOI, which could be effective in achieving this goal. Overall reduction in sound input may have wide-scale benefits. As noted in Chapter 1, under the terms of the Settlement Agreement, BOEM convened two panels to determine the feasibility of including refined standards for these two requirements; however, the panels’ work on these matters is still in process and was not available at the time the analysis for this Programmatic EIS was completed.

DPEIS at 2-39. However, this characterization is incorrect because the panels’ work on these two issues has concluded and this description is not consistent with the panels’ findings. The DPEIS should be updated to reflect the panels’ findings. Consistent with those findings, the Associations’ position is that these measures would have no meaningful beneficial impact.

In addition, Appendix L incorrectly states that “[a] duplicative seismic survey is a deep-penetration geophysical survey, as defined in [the Settlement Agreement], whose acquisition parameters, design, technology, and geospatial surface location metrics make it essentially the same as an existing seismic survey.” DPEIS, Appx. L at L-14 (emphasis added). The Settlement Agreement does not define a duplicate seismic survey as being “essentially” the same as an