

## TIME TO MODERNIZE THE MARINE MAMMAL PROTECTION ACT

The Marine Mammal Protection Act (MMPA) was enacted in 1972 in response to increasing concerns about the decline in some species of marine mammals. The Act was originally intended to help marine mammal populations that were in decline as a result of human activities, such as overhunting, overfishing, incidental catch, and unscrupulous trade.

The MMPA is now over 50 years old. When the MMPA was drafted, it was never envisioned to regulate underwater sound. Today, the energy geoscience industry is heavily restricted by the Act, and tasked with performing increasingly complex models and calculations that do little to protect wild marine mammals.

The geoscience industry does not seek to be exempt from the original intent of the Act, but rather it seeks modernization of the MMPA to implement a decision-making process based on the best available science.

### What's Wrong With MMPA?

#### Overlapping Regulations

- Instances of overlap between the jurisdictions of the MMPA, the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA) have proven difficult for the agencies, the courts, and the regulated community to navigate.
- The MMPA sets the most rigorous, conservation-oriented standards of all these statutes, thus making additional reviews and administrative processes under the ESA and NEPA unnecessary and redundant.

#### Arbitrary Limits

- The MMPA puts an arbitrary five-year limit on “incidental take regulations,” which requires applicants to petition for a new set of regulations every five years.
- The result is an unnecessary and burdensome administrative process that creates delays and even creates opportunities for litigation driven by extreme anti-energy activists.

#### Arbitrary Language

- The MMPA includes numerous instances of vague and ambiguous language which lead to regulatory uncertainty, inconsistent application by agencies, endless delays and much litigation.

*“Negligible impact” is not defined in the statute and is vaguely defined in the regulations.*

*“Small numbers” is not defined in the statute, attempts to define through regulation have been struck down by the courts, and the term is less rigorous than “negligible impact”.*

*“Least practicable impact” is not defined in the statute or in the implementing regulations. As a result, it is not consistently applied by agencies or courts, and gives little guidance to operators.*

### Little Regulatory Accountability

- The current regulatory process allows for inexplicable delays with minimal oversight or transparency when MMPA authorizations are not issued in a timely manner for geoscience surveying in some U.S. waters.
- There is little accountability in the current procedural requirements, meaning that MMPA authorizations for energy exploration are unjustly delayed by the implementing agencies.

*In January 2018, the Government Accountability Office (GAO) released a report on offshore seismic surveys which found that delays in the issuance MMPA authorizations were a result of bureaucratic dysfunction and unnecessary stalling.*

### Selective Application

- The misapplication of MMPA processes to the energy exploration industry and the efforts of anti-energy opportunists have almost entirely halted U.S. offshore surveying activity outside the western and central Gulf of America.

*In one instance, approval for Atlantic Incidental Harassment Authorizations (IHA) for the industry were delayed over 1,200 days following the completion of a thorough review process.*

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EnerGeo Alliance urges changes to the MMPA to clarify existing language, enable timely application decisions, and modernize to reflect technological advancements.

More on [www.modernizemmpa.com](http://www.modernizemmpa.com)

