

INITIAL STATEMENT OF REASONS

TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 2.9.1 PERMITS FOR GEOPHYSICAL SURVEYS

PROBLEM STATEMENT

The Legislature adopted Assembly Bill (AB)1274 (Stone, 2015) (Public Resources Code section 6212.3) to ensure that geophysical surveys conducted on state lands under the jurisdiction of the California State Lands Commission (Commission or CSLC), including granted and ungranted tidelands and submerged lands and the beds of navigable waterways, do not cause harm or damage to aquatic life or to the marine and coastal environment. The Legislature found that improved and updated regulations governing permit conditions can protect marine life from impacts of geophysical surveys and improve public transparency, particularly as it relates to notifying the public in advance of surveys. Thus, AB 1274 charged the Commission with the responsibility to adopt regulations for granting geophysical survey permits.

Additionally, the Commission adopted a Mitigation Monitoring Program (MMP) along with a Mitigated Negative Declaration (MND) (CSLC MND No. 751, State Clearinghouse No. 2013072021, adopted September 20, 2013) and Addendum for its Low-Energy Offshore Geophysical Permit Program (OGPP). The adoption of regulations implements protective elements into regulations in order to protect the environment and carry out the purpose of AB 1274.

BENEFITS

The regulations will accomplish the goals of AB 1274, including promoting efficiency and consistency for the Commission and for the regulated community in the application, processing, and administration of permits for geophysical surveys. The regulations will also protect species and resources and will facilitate the coordination of Public Trust uses (e.g., recreation, navigation) on State lands. The regulations will also provide transparency to the regulated community and the public regarding the requirements for, and the timing and location of, geophysical surveys.

ECONOMIC IMPACT ASSESSMENT

The following are the results of the Economic Impact Assessment analyzing the proposed action. Further details of the assessment can be found in the Form STD.399 and Economic Assumptions Worksheet included in the rulemaking file.

- (1) The proposed action will not impact the creation or elimination of jobs within the State of California. The geophysical survey industry has existed for years in the State of California. Until the introduction of AB 1274, the Commission maintained a limited permit program that initially was targeted towards geophysical surveys intended for mineral exploration on state lands. Staff estimate that approximately

85 geophysical survey businesses and operations will be affected by the proposed action. Further, staff have found that that proposed action will have annual compliance costs of up to \$34,787 for each operator. Staff believes that these costs will likely be paid by the contractor or party sponsoring the geophysical survey and that the overall cost will be spread over numerous annual surveys, thus limiting the cost impact on a survey-by-survey basis. While staff acknowledges the cost of compliance, staff has not seen any evidence that costs will impact job elimination or creation. This is because: (1) compliance will be universal amongst all operators, meaning the increase will be universal and should not itself harm competitiveness amongst survey operators bidding for projects; (2) most surveys are conducted as part of larger infrastructure or public works projects that can account for increased compliance costs during the budgeting and bidding process; and (3) the need for surveys will persist for infrastructure projects, research, and mineral exploration in state waters and no alternatives are known to staff that will cause geophysical survey operators to lose projects due to the added compliance costs of the proposed action.

- (2) The proposed action will not impact the creation or elimination of existing businesses within the State of California. The geophysical survey industry has existed for years in the State of California. Until the introduction of AB 1274, the Commission maintained a limited permit program that initially was targeted towards geophysical surveys intended for mineral exploration on state lands. Staff estimate that approximately 85 geophysical survey businesses and operations will be affected by the proposed action. Further, staff have found that that proposed action will have annual compliance costs of up to \$34,787 for each operator. Staff believes that these costs will likely be paid by the contractor or party sponsoring the geophysical survey and that the overall cost will be spread over numerous annual surveys, thus limiting the cost impact on a survey-by-survey basis. While staff acknowledges the cost of compliance, staff has not seen any evidence that costs will impact job elimination or creation. This is because: (1) compliance will be universal amongst all operators, meaning the increase will be universal and should not itself harm competitiveness amongst survey operators bidding for projects; (2) most surveys are conducted as part of larger infrastructure or public works projects that can account for increased compliance costs during the budgeting and bidding process; and (3) the need for surveys will persist for infrastructure projects, research, and mineral exploration on state waters and no alternatives are known to staff that will cause geophysical survey operators to lose projects due to the added compliance costs of the proposed action.
- (3) The proposed action will not impact the expansion of businesses currently doing business within the State of California. The geophysical survey industry has existed for years in the State of California. Until the introduction of AB 1274, the Commission maintained a limited permit program that initially was targeted towards geophysical surveys intended for mineral exploration on state lands. Staff estimate that approximately 85 geophysical survey businesses and operations will be affected by the proposed action. Further, staff have found that that proposed action will have annual compliance costs of up to \$34,787 for each operator. Staff believes that these costs will likely be paid by the contractor or party sponsoring

the geophysical survey and that the overall cost will be spread over numerous annual surveys, thus limiting the cost impact on a survey-by-survey basis. While staff acknowledges the cost of compliance, staff has not seen any evidence that costs will impact job elimination or creation. This is because: (1) compliance will be universal amongst all operators, meaning the increase will be universal and should not itself harm competitiveness amongst survey operators bidding for projects; (2) most surveys are conducted as part of larger infrastructure or public works projects that can account for increased compliance costs during the budgeting and bidding process; and (3) the need for surveys will persist for infrastructure projects, research, and mineral exploration on state waters and no alternatives are known to staff that will cause geophysical survey operators to lose projects due to the added compliance costs of the proposed action.

- (4) The proposed action will not impact worker safety within the State of California. The proposed action will not significantly alter the conduct of geophysical survey activities in any fashion that would affect worker safety. Although requirements will be introduced that affect how a survey must operate with relation to avoidance of marine mammals and sea turtles, staff does not anticipate that these will result in any increase or decrease in worker safety as it imparts no particular requirements upon workers stationed on vessels.

Based on the information above, the proposed rulemaking will not have a significant adverse economic impact on business.

TECHNICAL, THEORETICAL OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON

- 1) Mitigated Negative Declaration (CSLC MND No. 751, State Clearinghouse No. 2013072021, adopted September 20, 2013) and Addendum (adopted April 23, 2014) for its Low-Energy Offshore Geophysical Permit Program.
- 2) 200 kHz Commercial Sonar Systems Generate Lower Frequency Side Lobes Audible to Some Marine Mammals by Deng ZD, Southall BL, Carlson TJ, Xu J, Martinez JJ, et al. (2014).
- 3) National Oceanic and Atmospheric Administration, Endangered Fish and Wildlife, Notice of Intent to Prepare and Environmental Impact Statement (Vol. 70, Federal Register, page 1871).

BENEFITS OF THE PROPOSED REGULATIONS

Commission staff has determined that the proposed regulations will benefit:

- 1) The State's environment by:
 - accomplishing the goals of AB 1274, which directs staff to promulgate regulations to ensure that geophysical surveys conducted for scientific and

research purposes on state lands under the jurisdiction of the Commission do not cause harm or damage to aquatic life or to the marine and coastal environment; and

- protecting species/resources and facilitate the coordination of Public Trust uses on state lands.

2) The regulated community and public by:

- promoting efficiency and consistency in the application, processing, and administration of permits for geophysical surveys; and
- providing transparency regarding the requirements for, and the timing and location of, geophysical surveys.

DOCUMENTS INCORPORATED BY REFERENCE

The proposed rulemaking incorporates one document by reference in its entirety—the “Pre-Survey Notification Form,” dated September 5, 2018.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The proposed regulations implement performance standards based on the types of geophysical survey equipment chosen for use by a survey operator. The Commission invites interested persons to submit comments on potential alternatives to the proposed regulations during the written comment period.

PRE-RULEMAKING CONSULTATION

The regulation is reasonably necessary to accomplish the goals of AB 1274 and assist in meeting the statutory requirement that geophysical survey permits performed on State lands include conditions that ensure public safety and protection of the environment (Public Resources Code section 6212.3).

In the preparation of these proposed regulations (including the associated nonexclusive permits) for the Geophysical Survey Permit Program (Program), Division of Environmental Planning and Management (DEPM), Mineral Resources Management Division (MRMD), and Legal staffs of the California State Lands Commission (Commission) held two informal comment periods and formed a cross-interest, multi-disciplinary Technical Advisory Group (TAG) to facilitate discussions on the development of the proposed regulations.

The first informal comment period on the proposed regulations was held from March 7, 2016 to April 6, 2016. The purpose of this informal comment period was to allow stakeholders, including members of the public, geophysical survey operators, scientists, resource-related state and federal agencies, and non-governmental organizations (NGOs), to provide feedback on the draft regulations. A cover letter explaining the background of the Program and how to provide comments was posted on the Commission's website along with the proposed regulations. The comments received during this comment period prompted the development of a TAG to facilitate discussions on the development of the proposed regulations. The following groups participated in the TAG:

- Geophysical survey permittee representatives and other operator representatives. Specifically, California Resources Corps; California State University, Monterey Bay; David Evans and Associates, Inc.; EcoSystems Management Associates, Inc.; eTrac, Inc.; Fugro Pelagos, Inc.; MBC Applied Environmental Sciences, Monterey Bay Aquarium Research Institute; Oceaneering International, Inc.; Scripps Institution of Oceanography; TerraSond Limited; Tetra Tech, Inc.; and University of California, Santa Barbara.
- Researchers specializing in underwater noise impacts to marine wildlife. Specifically, Dr. Brandon Southall (Southall Environmental Associates, Inc.).
- NGOs. Specifically, the Center for Biological Diversity.
- Resource-related state and federal agencies. Specifically, the Bureau of Ocean Energy Management, California Department of Fish and Wildlife, Monterey Bay National Marine Sanctuary, National Oceanic and Atmospheric Administration's National Marine Fisheries Service, and U.S. Geological Survey.

Two TAG meetings were held on October 18, 2016 and December 12, 2016. During these meetings DEPM, MRMD, and Legal staffs facilitated information sharing, discussion, and deliberation over the risks posed to California waters and wildlife from geophysical survey operations, as well as the administrative elements of the regulations. Feedback from the TAG, including the comments received during the first comment period, were considered in the preparation of a second draft of the proposed regulations. A second draft was distributed to members of the TAG for a second informal comment period held from June 1, 2017 to June 16, 2017. The comments received during this informal comment period were considered in the preparation of the proposed regulations.

PURPOSE

The purpose of the proposed regulation is to accomplish the goals of AB 1274 by adopting Article 2.9 of Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR), specifically:

- Adopt sections 2100.01, 2100.02, 2100.03, 2100.04, 2100.05, 2100.06, 2100.07, 2100.08, 2100.09, and 2100.10.

The purpose of this article is to establish conditions to ensure that geophysical surveys performed on State lands, including granted and ungranted tidelands and submerged lands and the beds of navigable waterways, address and minimize potential impacts to aquatic life or to the environment as required by statute.

NECESSITY

The proposed regulations are reasonably necessary to accomplish the goals of AB 1274, which directs staff to promulgate regulations to ensure that geophysical surveys conducted for scientific and research purposes on State lands under the jurisdiction of the Commission do not cause harm or damage to aquatic life or to the marine and coastal environment. These regulations will establish the rules of surveys pre-operation, operation, and post-operation.

Title 2, Division 3, Chapter 1, Article 2.9.1 Permits for Geophysical Surveys

The following is the initial statement of reasons for each of the regulations. Prior to the explanation for each provision, the text of the regulation is set forth and underlined.

§ 2100.01 [reserved]

SPECIFIC PURPOSE OF THE REGULATION

Article 2.9.1 is a subsection of article 2.9, titled "Exploration Permits." This section is designed to reserve space for a future rulemaking.

NECESSITY

It may be necessary to integrate elements of the proposed geophysical permit program with other exploratory permits issued by the Commission, in the future. This reservation allows for information to be added in a future rulemaking without causing the renumbering of other sections. This is intended to add flexibility for future proposed rulemakings.

§ 2100.02 Purpose and Applicability

- a. The purpose of this article is to establish requirements to ensure that geophysical surveys performed on State sovereign lands, including granted and ungranted tidelands and submerged lands and the beds of navigable waterways, address and minimize potential impacts to aquatic life or to the environment as required by statute.
- b. This article shall apply to all geophysical surveys on State sovereign lands under the jurisdiction of the California State Lands Commission or legislatively granted tidelands and submerged lands.

Note: Authority cited: Sections 6108 and 6212.3, Public Resources Code. Reference: Sections 6212.3 and 6826, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to specify the purpose and applicability of the proposed regulations. The intent of subsection (a) and (b) is to reiterate that the Commission was charged with the responsibility to adopt regulations for granting geophysical survey permits, as specified in AB 1274, (codified as Public Resources Code § 6212.2) for activities performed on State sovereign lands that protect marine life from the impacts of geophysical surveys and improve public transparency.

NECESSITY

Subsection (a) is necessary because it specifies the purpose of the regulations. Public Resources Code section 6212.3 authorizes the Commission the discretion to issue geophysical permits. The Commission seeks to include provisions within the permits that ensure public safety and protection of the environment. The Low-Energy OGPP MND identified the potential for significant impacts to the marine environment from geophysical surveys, if mitigations are not applied. This subsection identifies the context and purpose of the regulations to assist with interpreting the regulations.

Subsection (b) is necessary to specify the locations and lands where a geophysical permit will be required. The scope of authority for this provision is found in Public Resources Code section 6212.3 (a).

§ 2100.03 Definitions

As used in these regulations:

- a. “Autonomous vehicle” means an uncrewed vehicle that operates independently of, and without tethers or connecting cables to, a crewed vessel.
- b. “Biological survey” means a scientific study of organisms to assess the condition of an ecological resource.
- c. “Commission” means the California State Lands Commission.
- d. “Geophysical survey” or “survey” means the systematic collection of geophysical data for spatial analysis, within a pre-determined area of study, by reflecting sound or pressure waves off the ocean floor, and analyzing such data to develop an approximation of the physical features of the surface or subsurface of the ocean floor.
- e. “Haul-Out Site” means land habitat that is used by pinnipeds for periods of rest, molting, and as rookeries for mating and pupping.
- f. “High-energy equipment” means geophysical equipment that produces acoustic energy and is an air or water compression device (e.g., airgun, water gun).

- g. “Low-energy equipment” means geophysical equipment that produces acoustic energy and falls into one of the following categories: subbottom profilers (e.g., mini-sparkers, boomers, chirp, and general subbottom profiler systems), echosounders (e.g., single beam and multibeam echosounders), and side-scan sonars.
- h. “Marine waters” means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Rivers and Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.
- i. “Marine Wildlife Monitor” or “MWM” means a person responsible for monitoring for marine wildlife, including marine mammals and turtles, and ensuring geophysical survey activities are conducted in compliance with the Commission’s Geophysical Survey Permit Program for minimizing the risk of injury and disturbance to marine wildlife.
- j. “OGPP” means the Offshore Geophysical Permit Program.
- k. “Passive equipment” means equipment that does not produce acoustic or pressure wave energy, including but not limited to magnetometers, gravity meters, fluorimeters, and optical sensors.
- l. “Pre-Survey Notification Form” means the Pre-Survey Notification Form dated September 6, 2018, incorporated herein in its entirety.
- m. “Remotely operated vehicle” or “ROV” means a tethered underwater mobile device operated by a crew aboard a vessel.
- n. “Sovereign lands” means the lands the State holds in trust for the benefit of the people of California subject to the common law Public Trust Doctrine and includes the beds of California’s navigable waterways to the ordinary low-water mark, as well as the State’s tide and submerged lands along the coastline and offshore islands from the ordinary high-water mark line to 3 nautical miles offshore.

Note: Authority cited: Sections 6108 and 6212.3, Public Resources Code. Reference: Sections 6212.3 and 6826, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to define key terms that are used throughout the language of the regulations to clarify the overall intent of the proposed regulations.

NECESSITY

This section is necessary to define specific terms that are used throughout the regulatory text to describe fundamental components of the regulations. Without clarification, many of these terms can be subject to differing interpretation. These definitions are therefore necessary to ensure the regulations precisely express the intended meanings of these terms. Subsection (a) is necessary because the use of autonomous underwater vehicles utilizing acoustic equipment operating above 200 kilohertz (kHz) is exempt from the

permit requirements and the elements describing this device are necessary to knowing whether its use requires or does not require a permit. Subsection (b) similarly clarifies the elements of an activity exempt from the permit requirement. Subsection (c) is necessary to avoid confusion regarding which commission is referenced. Subsection (d) is necessary because it provides the elements the Commission determines are necessary to meet the test of whether an activity is a geophysical survey and must be permitted. To be a geophysical survey, an activity must involve (1) the systematic collection of geophysical data for spatial analysis; (2) include a pre-determined area of study; (3) involve reflecting sound or pressure waves off the ocean floor; and, (4) conclude with a permittee analyzing such data to develop an approximation of the physical features of the surface or subsurface of the ocean floor. If one or more of these elements is not present, it is not a geophysical survey for purposes of these regulations. Subsection (e) is intended to define and remove ambiguity as to the characteristics of a haul-out site. Subsections (f) and (g) are necessary because they define the types of equipment that are regulated and, in conjunction with section 2100.05, will determine, based on equipment type, what form of permit will be issued. The impact of low-energy equipment types are analyzed in the Low-Energy OGPP MND. Subsection (k) and (m) are necessary because they also define equipment types and activities that both are included and excluded from the permit requirements as identified in section 2100.04 of these regulations. Subsections (h) and (n) are necessary because it makes more specific the areas where the conduct of a geophysical survey requires a general permit under these regulations. Subsection (l) is necessary to legally incorporate the document by reference.

§ 2100.04 Requirement for a Permit

- a. All geophysical surveys on State sovereign lands under the jurisdiction of the Commission or on legislatively granted tidelands or submerged lands must be permitted by the Commission prior to commencement of survey activities, except those listed in subsection (b).
- b. A permit is not required for the following activities:
 1. Geophysical surveys utilizing passive equipment as the only means of data collection.
 2. Use of autonomous vehicles equipped with low-energy equipment operating at 200 kilohertz or higher.
 3. Biological surveys during which the collection of geophysical data by means of low-energy equipment is incidental.
 4. Geophysical surveys performed in support of dredging to maintain or increase the depth of navigation channels, anchorages, or berthing areas.
- c. The fee for a permit under this article is \$5,000.

Note: Authority cited: Sections 6108, 6212.3, and 6218, Public Resources Code.
Reference: Sections 6212.3 and 6826, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to specify who must obtain a permit from the Commission to conduct geophysical surveys on lands under the Commission's jurisdiction, including legislatively granted tidelands and submerged lands. The proposed regulations would not apply to activities as specified in subsection (b). The scope of the proposed regulations is specific to the Commission's jurisdiction; thus, regulating the collection of non-geophysical data is outside the Commission's delegated authority. Further, certain activities are excluded, see (b)(1) and (2) because their conduct is innocuous and has no significant environmental impact. Subsection (b)(4) was expressly excluded from permit requirements by statute in Public Resources Code section 6212.3. Subsection (c) is being introduced to establish a non-refundable fee that will be collected in order to pay for the program costs borne by the Commission to monitor and enforce permit conditions.

NECESSITY

Subsection (a) is necessary to specify who must obtain a permit from the Commission to conduct geophysical surveys on lands under the Commission's jurisdiction, including legislatively granted tidelands and submerged lands. Subsection (b) is necessary to specify which activities and equipment types are not subject to the provisions of the proposed regulations.

Subsection (b)(1) is necessary because passive equipment, including remotely operated vehicles, is used to collect geophysical data, but does not emit acoustic energy. The overall purpose of the Low-Energy OGPP MND was to disclose and analyze the impacts to marine life from low-energy geophysical surveys, including noise, wildlife-vessel interactions and collisions, and oil spills. Because passive equipment does not emit acoustic energy, the use of such equipment poses no acoustic impact to marine life. Therefore, a permit to utilize passive equipment is not required.

Subsection (b)(2) is necessary because autonomous vehicles are increasingly being used for scientific and commercial offshore operations. These types of vehicles are unmanned, not tethered to a survey vessel, and programmed to navigate through the water and collect data, including chemical, physical, and biological information. Autonomous vehicles can vary in size, ranging from portable and lightweight to several meters in length, and are often powered by specialized batteries, fuel cells, or rechargeable solar power. Under the proposed regulations, a permit from the Commission is not required for the operation of an autonomous vehicle equipped with low-energy equipment operating at frequencies of 200 kHz or higher. As stated above, the overall purpose of the Low-Energy OGPP MND was to disclose and analyze the impacts to marine life from low-energy geophysical surveys. Frequencies of 200 kHz or greater are above the known functional hearing ranges of, and are thus not audible to, marine mammals; therefore, sounds at these frequencies would not be expected to cause physical or behavioral impacts. As described in Deng et al. (2014; Deng, Z.D., Southall, B.L., Carlson, T.J., Xu, J., Martinez, J.J., et al. 2014. 200 kHz Commercial Sonar Systems Generate Lower Frequency Side Lobes

Audible to Some Marine Mammals. PLoS ONE 9(4): e95315) active geophysical equipment with an operational frequency of 200 kHz or greater can produce sounds at secondary frequencies that fall within the functional hearing ranges of, and can thus be detectable by, marine mammals; however, while these sounds may be detectable by some marine mammals, they are well below all levels that may cause physical injury (Deng et al. 2014). In the MND, behavioral effects were determined to be less than significant for geophysical surveys that fall under the Low-Energy OGPP; survey- and species- specific factors described in the MND that would raise a behavioral impact to a significant level are not permitted under the Low-Energy OGPP. The potential for behavioral effects caused by sounds at secondary frequencies would not be increased as a result of the proposed regulations and would remain insignificant due to the short duration of OGPP surveys and the transitory nature of the vehicle. These factors, taken together, make it extremely unlikely that a marine mammal would experience sound levels that would increase a behavioral effect from less than significant, even though the sound may be detected. Further, the use of autonomous vehicles eliminates the risk of vessel collisions with marine wildlife and potential for oil spills that exist with traditional geophysical surveys. Therefore, a permit is not required for the operation of an autonomous vehicle equipped with low-energy equipment operating at 200 kHz or higher.

Subsection (b)(3) is necessary because the equipment types used to collect geophysical data are also used to collect other types of data, including biological information. The scope of the proposed regulations is specific to the Commission's jurisdiction; thus, regulating the collection of non-geophysical data is outside the Commission's delegated authority. Therefore, a permit to collect non-geophysical data is not required.

Subsection (b)(4) is necessary because it identifies an activity that would otherwise require a permit if not statutory exempted per Public Resources Code section 6212.3. The inclusion of this statutory exemption prevents the reader from having to find and read the statute to locate it.

Subsection (c) is necessary because it established a fee appropriate and necessary to cover the staff costs associated with issuance of the permit and to monitor and enforce permit compliance. Under California Public Resources Code section 6218, the Commission can establish reasonable fees for services performed by it, not exceeding the actual cost to the state for such services. The \$5,000 fee will be collected as a condition of issuing a permit. Based on the cost assumption worksheets and the for STD 399, as part of the rulemaking file, these fees will offset program costs without exceeding those costs borne by the Commission in administering the proposed regulations. Commission staff believe that it is appropriate that the regulated community bear the costs of regulating geophysical survey activity.

§ 2100.05 Permit Types

a. The Commission may issue only the following permit types:

1. General Offshore Geophysical Survey Permit

- A. This nonexclusive permit authorizes geophysical survey activity during the permit term.
- B. A General Offshore Geophysical Survey Permit is required for geophysical surveys utilizing low-energy equipment conducted in marine waters under the jurisdiction of the Commission.

2. Project-Specific Geophysical Survey Permit

- A. This nonexclusive permit authorizes geophysical survey activity related to a specifically defined survey or surveys.
 - B. A Project-Specific Geophysical Survey Permit is required for geophysical surveys utilizing low-energy equipment not conducted in marine waters or high-energy equipment anywhere within the Commission's jurisdiction.
- b. Assignment: A permit issued under this article may not be assigned or transferred. A permittee may subcontract part or all of the work to be performed, however, no subcontract shall relieve the permittee of its responsibilities or obligations herein.
 - c. Insurance: During the term of a permit, the permittee shall maintain and provide evidence of a program of self-insurance or valid proof of liability insurance in an amount no less than \$1,000,000 per occurrence.

Note: Authority cited: Sections 6108 and 6212.3, Public Resources Code. Reference: Sections 6212.3 and 6826, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of subsection (a) is to describe the two types of permits issued by the Commission to conduct geophysical surveys on state lands, including granted and ungranted tidelands and submerged lands and the beds of navigable waterways. Because the lands and resources under the Commission's jurisdiction are wide and varied, one permit cannot cover all geophysical activities that may occur, and equipment that may be employed, on State lands. In addition, different equipment types, depending on whether they are high or low energy, may require different permit terms and conditions, including mitigation measures, specific to the activity being conducted. Therefore, two permits are proposed, which would cover the range of possible geophysical survey activities anticipated to occur in State waters under the Commission's jurisdiction: (1) the General Offshore Geophysical Survey Permit, which covers low-energy survey activities analyzed in the Low-Energy OGPP MND; and (2) the Project-Specific Geophysical Survey Permit, which covers low-energy geophysical activities not conducted in marine waters or analyzed in the Low-Energy OGPP MND, or high-energy geophysical surveys anywhere within the Commission's jurisdiction.

The specific purpose of subsection (b) is to assist in meeting the statutory requirement that geophysical permits include conditions that ensure public safety and protection of the environment (Public Resources Code section 6212.3) by requiring permittees to

maintain and demonstrate that they will have financial resources to compensate third parties and/or the State in the event the permittees' survey activities result in harm to persons, property, or the environment.

The specific purpose of subsection (c) is to make the General Permit non-transferable. A permittee may not transfer or assign their General Permit to another party. The permittee may sub-contract for work, up to and including the conduct of the geophysical survey as long as the permittee remains responsible for the conduct of those operations.

NECESSITY

This section is reasonably necessary to differentiate the types of geophysical survey permits issued by the Commission. Because the lands and resources under the Commission's jurisdiction are wide and varied, one permit cannot cover all geophysical activities that may occur, and equipment that may be employed, on State lands. In addition, different equipment types, depending on whether they are high or low energy, may require different permit terms and conditions, including mitigation measures, specific to the activity being conducted. Therefore, as described below, two permits are proposed: (1) General Offshore Geophysical Survey Permit and (2) Project-Specific Geophysical Survey Permit.

As described in subsection (a)(1), the General Offshore Geophysical Survey Permit is a nonexclusive permit whose activities fall within the scope of the Low-Energy OGPP MND, which disclosed and analyzed the environmental impacts associated with low-energy geophysical surveys and identified feasible mitigation measures to reduce or avoid environmental impacts found to be potentially significant. The terms and conditions of the permit, including the mitigation measures, are specific to the types of activities analyzed and impacts disclosed in the MND.

As described in subsection (a)(2), the Project-Specific Geophysical Survey Permit is a nonexclusive permit that covers low-energy geophysical activities not conducted in marine waters or analyzed in the Low-Energy OGPP MND, or high-energy geophysical surveys anywhere within the Commission's jurisdiction. Because these activities were not analyzed in the MND, additional analysis would be required under CEQA which would inform permit terms and conditions specific to the activities being conducted.

Insurance provisions are a standard, widely used contractual mechanism for providing legal and financial protection to parties who may be subject to legal claims seeking financial remedies. Subsection (b) is reasonably necessary because it provides a mechanism to (1) provide resources to compensate the State and/or third parties in the event that a permittee's activities result in harm to persons, property, or the environment, and (2) protect the State and its taxpayers from potential liability should legal and/or financial claims arise connected with a permittee's survey activities. For example, in the past, claims over damage to fishing equipment have arisen in connection with surveys conducted under the Low-Energy OGPP. This provision also provides flexibility to the regulated community by allowing permittees the choice of self-insuring or obtaining a liability insurance policy.

Subsection (c) is reasonably necessary because it clearly identifies the limits on the General Permit's transferability. The Commission approves the issuance of each permit for a specific operator and that operator must meet the operational and notice requirements of the permit. Ensuring that the permit cannot be easily transferred to a third party is essential to the Commission's ability to monitor permit compliance and to identify operators that are in and out of compliance with the requirement to conduct geophysical surveys only with a permit. Flexibility is granted by means of allowing a permittee to contract for another party to provide services related to the geophysical survey; however, the permittee may be held responsible for violations, if any, that result from the sub-contractor's work.

§ 2100.06 Permit Term

- a. General Offshore Geophysical Survey Permits will be valid for 3 years from the date authorized by the Commission.
- b. Project-Specific Geophysical Survey Permits will be valid for a period not to exceed 3 years.

Note: Authority cited: Sections 6108 and 6212.3, Public Resources Code. Reference: Section 6212.3, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to specify the permit terms for the two types of geophysical survey permits issued by the Commission. Permit terms allow Commission staff to define the period over which geophysical activities can occur; to reevaluate the terms and conditions of an operator's permit at predefined intervals; and amend, if necessary, permit conditions in light of new scientific information and the administrative needs of the Commission.

NECESSITY

Subsection (a) is reasonably necessary for Commission staff to reevaluate an operator's permit terms and conditions on a 3-year basis in light of new scientific information and the administrative needs of the Commission.

Subsection (b) is reasonably necessary because the length of the permit term is specific to the activity analyzed pursuant to CEQA, including the time period over which the survey is conducted.

§ 2100.07 Pre-Survey Requirements, Survey Operations, and Post-Survey Requirements

- a. Pre-Survey Requirements: The following shall be required prior to the commencement of a geophysical survey.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to alert the permittee of the existence of pre-survey requirements that must be completed by the permittee prior to commencing the geophysical survey activities authorized under this permit.

NECESSITY

Prior to the commencement of geophysical survey activities, there are several administrative requirements, as well as measures included in the Low-Energy OGPP MND's MMP, that must be implemented and completed. This section is reasonably necessary because it alerts and directs attention to those requirements and measures for permittees in a centralized location that can be referenced throughout the permit term, thereby simplifying compliance for permittees and enforcement for Commission staff. These requirements and measures are outlined and described in the subsections that follow.

1. General Marine Wildlife Contingency Plan (MWCP): The Permittee shall have a General MWCP on file with the Commission that includes, at a minimum, current and up-to-date measures that specify the:
 - A. Distance, speed, and direction transiting vessels will maintain when in proximity to a marine mammal or reptile, including pinniped haul-out sites, as outlined in (b)(4) of this section;
 - B. Location and authority of marine wildlife monitors (MWMs) aboard the survey vessel;
 - C. Methods of reducing noise levels generated by geophysical equipment, as outlined in (b)(6) of this section;
 - D. How safety zones will be calculated by the Permittee and enforced by the MWM(s), when applicable, as outlined in (a)(5)(D) of this section; and
 - E. Observation recording procedures and reporting requirements in the event of an observed impact to marine organisms, as outlined in (b)(7) of this section.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to define the minimum information required in a General MWCP. General MWCPs are a requirement of the General Permit application, and are reviewed by Commission staff in accordance with the above permit condition. Once a General MWCP is approved, it is kept on file for the permit term. New or updated General MWCPs are submitted every 3 years by permittees during the permit renewal process. The MWCP is a mitigation required by the Low-Energy OGPP MND and therefore is a requirement of this permit.

NECESSITY

This subsection is reasonably necessary to fulfill a requirement of the General Permit application. General MWCPs also include several CEQA-required mitigation measures from the Low-Energy OGPP MND's MMP, including MM BIO-2: Marine Wildlife Monitors (MWMs), MM BIO-3: Safety Zone Monitoring, MM BIO-5: Soft Start, MM BIO-6: Practical Limitations on Equipment Use, MM BIO-7: Avoidance of Pinniped Haul-Out Sites, and MM BIO-8: Reporting Requirements – Collisions. The intent of a General MWCP is to provide guidance to vessel operators, crew members, and MWMs to avoid significant impacts to marine wildlife while transiting to and from a survey area and collecting geophysical data within the permit area. With the incorporation of the above-mentioned mitigation measures into a General MWCP, potential impacts to marine wildlife from geophysical survey activities within the permit area would be less than significant.

2. General Oil Spill Contingency Plan (OSCP): The Permittee shall have a General OSCP on file with the Commission for each survey vessel that includes, at a minimum, current and up-to-date measures that:
 - A. Specify the steps to be taken in the event of a spill, including names, phone numbers, and locations of nearby emergency medical facilities, wildlife rescue/response organizations (e.g., Oiled Wildlife Care Network), containment procedures, and cleanup procedures;
 - B. Describe crew training and equipment testing procedures;
 - C. Describe the quantities and location of spill response equipment aboard the vessel; and
 - D. Specify that vessel fueling shall only occur at an approved docking facility (i.e., no cross-vessel fueling shall be allowed). Submission of a California Department of Fish and Wildlife (CDFW) Office of Spill Response and Prevention-approved OSCP shall comply with the requirements of this subsection.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to define the minimum information required in a General OSCP. General OSCPs are a requirement of the General Permit application and are reviewed by Commission staff in accordance with the above permit condition. Once a General OSCP is approved, it is kept on file for the permit term. New or updated General OSCPs are submitted every 3 years by permittees during the permit renewal process. Additionally, an applicant or permittee may choose to submit an OSCP that has been previously approved by the California Department of Fish and Wildlife, Office of Spill Response and Prevention to fulfill this requirement and avoid duplicate efforts. In addition, the OSCP is a mitigation required by the Low-Energy OGPP MND and therefore is a requirement of this permit pursuant to CEQA.

NECESSITY

This subsection is reasonably necessary to fulfill the requirements of the General Permit application and Low-Energy OGPP MND's MMP. The MMP includes the following measures, which are incorporated into an OSCP: MM HAZ-1: Oil Spill Contingency Plan (OSCP) Required Information and MM HAZ-2: Vessel Fueling Restrictions. The intent of a General OSCP is to provide guidance to vessel operators, crew members, and MWMs in the event of a spill, and to ensure that accidental release of petroleum or non-petroleum products during survey activities is minimized. With the incorporation of the above-mentioned mitigation measures into a General OSCP, potential spill impacts to marine wildlife from geophysical survey activities within the permit area would be less than significant.

3. Pre-Survey Notices: The Permittee shall follow the complete notification procedure set forth in section 2100.08 for all proposed geophysical surveys.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to notify the permittee of the requirements to provide agency and harbormaster pre-survey notices and to direct the permittee to section 2100.08 for details of how to comply.

NECESSITY

This brief reference clearly and concisely notifies permittees of where information is located in the regulations on how to comply with pre-survey requirements aimed at notifying agencies and the public of upcoming surveys. A reference is made here in order to ensure that the permittee understands that section 2100.08 is a part of the Pre-Survey requirements.

4. Permits or Authorizations from Federal, State, and Local Agencies: The Permittee shall obtain any permits or authorizations from other federal, state, and local agencies as are necessary. For proposed operations in or potentially affecting Marine Protected Areas, the Permittee shall coordinate with the Commission, CDFW, and any other permitting agencies having jurisdiction regarding such operations prior to commencing survey activities.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to emphasize that the permittee is responsible for consulting with and obtaining all necessary permits or authorizations from federal, state, or local agencies that may be required to conduct low-energy geophysical surveys in the permit area. Additionally, this section fulfills a requirement of the Low-Energy OGPP MND's MMP, which includes MM BIO-9: Limitations on Survey Operations in Select Marine Protected Areas (MPAs). This measure emphasizes the importance of early consultation with CDFW and obtaining the necessary permits or authorizations to conduct geophysical surveys in MPAs.

NECESSITY

Other permits or authorizations, in addition to this permit from the Commission, may be

required to conduct geophysical survey activities in the permit area. This inclusion is reasonably necessary to inform the permittee that a permit from the Commission may not be the only entitlement that may be necessary to perform a particular survey. It is also necessary to provide Commission staff with an ability to view and verify the existence of those permits, upon request. It is the permittee's responsibility to obtain all necessary permits or authorizations; failure to do so may result in survey delays. Additionally, this section fulfills a requirement of the Low-Energy OGPP MND's MMP, which includes MM BIO-9: Limitations on Survey Operations in Select Marine Protected Areas (MPAs). MPAs, which have been established along the California coast, were created in response to the Marine Life Protection Act and are managed by CDFW. MPAs protect the diversity and abundance of marine life, the habitats they depend on, and the integrity of marine ecosystems; therefore, it is critical that permittees consult with CDFW to ensure that survey activities occurring in MPAs do not result in significant impacts. Failure to consult with and obtain a permit or authorization from CDFW for activities in MPAs may result in survey delays.

5. Pre-Survey Notification Package: The Permittee shall complete and electronically submit the following to the Commission, subject to section 2100.08.

A. Pre-Survey Notification Form: The Permittee shall complete and electronically submit the Pre-Survey Notification Form.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of the Pre-Survey Notification Form is to facilitate permittee compliance with the pre-survey requirements, the Low-Energy OGPP MND's MMP, and the submission deadline. The Pre-Survey Notification Form, as discussed below, requests summary information regarding survey location and characteristics so that Commission staff can verify that the permittee will follow the use and operational requirements of the permit.

NECESSITY

This subsection is reasonably necessary to help facilitate permittee compliance with the pre-survey requirements and submission deadline. The Pre-Survey Notification Form was developed as a reference for permittees to ensure that all required pre-survey materials and survey-specific information are submitted to the Commission for review 21 days prior to the proposed survey start date. The cover sheet, includes "yes" and "no" check boxes next to each item to be submitted to the Commission (e.g., MWM résumés), U.S. Coast Guard Local Notice to Mariners, and harbormaster's offices of regional harbors near the survey area, as well as survey-specific information (e.g., location of pinniped haul-out sites within or near the survey area). As discussed below, the information requested on this form is essential to verifying that a survey is being planned to be compliant with the terms of the permit. This section also alerts permittees that completion and submission of the Pre-Survey Notification Form is a pre-survey requirement.

- B. Survey Location: The Permittee shall provide a navigation chart of the survey area, including survey track lines, as well as the coordinates or a shapefile for the proposed survey track lines. The bounding coordinates for the survey area are acceptable if the track lines are not known. All coordinates shall be submitted in decimal degrees.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to provide visual information to Commission staff regarding the location and path of the proposed survey. This will assist Commission staff in verifying permit compliance with locational and environmental conditions of the permit.

NECESSITY

The pre-survey track line or bounding coordinates provided by the permittee visually orient Commission staff and others reviewing the Pre-Survey Notification Package to the upcoming survey's location and allows Commission staff to confirm the survey's location in relation to MPAs and other potentially sensitive areas. In addition, the provided coordinates are integrated into the Commission's geodatabase, which tracks surveys and permit compliance.

- C. MWM Qualifications: The résumés of proposed MWMs shall be submitted by the Permittee to the Commission. MWM's must have expertise and prior experience conducting the monitoring requirements in (b)(5) of this section. Depending on the type of equipment used and its operational frequency, the number of required MWMs on a vessel will vary:

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to define the number of MWMs required aboard the survey vessel and the expertise necessary to serve as a MWM during low-energy geophysical surveys permitted by the Commission.

NECESSITY

MWMs serve a vital role in observing for marine wildlife and implementing the Low-Energy OGPP MND's MMP, including safety zone monitoring, which ensures that the potential impacts of low-energy geophysical surveys on marine wildlife and the coastal environment remain less than significant. This subsection is reasonably necessary to define the number of MWMs required aboard the survey vessel and experience necessary to monitor for marine wildlife during low-energy geophysical surveys. This subsection is referenced by Commission staff when reviewing Pre-Survey Notification Packages and MWM résumés to ensure permittee compliance with the Low-Energy OGPP's MMP and General Permit.

1. One MWM is required for surveys operating geophysical equipment at frequencies ≥ 200 kilohertz (kHz).

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to define the number of MWMs required aboard the survey vessel when geophysical equipment is operated at frequencies of 200 kHz or greater.

NECESSITY

Frequencies of 200 kHz or greater are above the known functional hearing ranges of, and are thus not audible to, marine mammals; therefore, sounds at these frequencies would not be expected to cause physical or behavioral impacts. One MWM will ensure the protection of marine mammals from the risk of collision during vessel transit and survey activities.

2. Two MWMs are required for surveys operating geophysical equipment at frequencies < 200 kHz.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to define the number of MWMs required aboard the survey vessel when geophysical equipment is operated at frequencies less than 200 kHz.

NECESSITY

Frequencies less than 200 kHz are within the known functional hearing ranges of, and are thus audible to, marine mammals; therefore, sounds at these frequencies have the potential to cause physical or behavioral impacts. For surveys operating equipment at these frequencies, a safety zone around the sound source (i.e., geophysical equipment) is required to be observed by the MWMs. Two MWMs will allow for the safety zone to be monitored effectively and to ensure the protection of marine mammals from the risk of collision during vessel transit and survey activities.

3. Permittees may petition for alternate MWM requirements:
 - a. Petitions shall be received by the Commission at least 21 calendar days prior to survey commencement.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to streamline the pre-survey notification process and provide Commission staff with sufficient time to review a permittee's petition request for alternate MWM requirements while concurrently reviewing the survey's Pre-Survey Notification Package for compliance with the Low-Energy OGPP's MMP and General Permit.

NECESSITY

This subsection is reasonably necessary to provide permittees with flexibility for complying with the Low-Energy OGPP MND's MMP and General Permit. Commission staff understands that there may be circumstances when it is not feasible for a designated MWM to be on the survey vessel (e.g., a survey vessel is too small to accommodate an extra person). If this situation were to arise, this subsection allows a permittee to request alternate MWM requirements on a case-by-case basis based on the factors in (b) below.

- b. The Commission shall evaluate such petitions on a case-by-case basis and consider factors including the equipment type, frequency, and source level; timing, type, and location of the survey; the size of the survey vessel and availability of alternate vessels; and the ability to effectively implement the marine mammal and reptile mitigation measures. An alternative to the MWM requirements must ensure the ability to monitor operations consistent with (b)(5) of this section.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to make permittees aware of some of the factors Commission staff will consider when evaluating petition requests for alternate MWM requirements.

NECESSITY

This subsection is reasonably necessary to provide permittees with flexibility for complying with the Low-Energy OGPP MND's MMP and General Permit. Commission staff understands that there may be circumstances when it is not feasible for a designated MWM to be on the survey vessel (e.g., a survey vessel is too small to accommodate an extra person). If this situation were to arise, this subsection allows a permittee to request using one MWM, when two are required, or the captain or a crew member perform this function. It also provides permittees with some of the criteria against which Commission staff will evaluate their petition request.

D. Safety Zone Calculations:

1. For surveys operating equipment at a frequency < 200 kHz, a safety zone around the sound source (i.e., geophysical equipment) shall be observed by the MWMs.
2. The size of the safety zone shall be the distance to the 160 dB re 1 μ Pa (root mean square [rms]) threshold as calculated, or modeled, by the Permittee.
3. To calculate the size of the safety zone, the Permittee shall use the spherical spreading loss model ($20 \text{ Log } (R)$, where R is the distance from the source divided by the reference distance (1 meter)), except for where the water depth is:

- a. Less than 1 wavelength of the predominant sound energy of the active sound source, or
 - b. Less than 3 meters, when the intermediate spreading loss model (15 Log (R)) shall be used.
4. The safety zone for each piece of equipment operated at a frequency < 200 kHz shall be indicated on the Pre-Survey Notification Form.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to outline when a safety zone is required to be implemented and how to calculate the radius of the safety zone. Additionally, this subsection also fulfills a specific requirements of the Low-Energy OGPP MND's MMP, which includes MM BIO-3: Safety Zone Monitoring.

NECESSITY

Safety zone monitoring is a mitigation measure commonly implemented during offshore geophysical surveys. The safety zone is defined as the radius around the sound source within which real-time mitigation measures are implemented if animals are detected. Safety zones vary in size depending on the operational characteristics of the equipment being used (e.g., operational frequency, source sound level), and are based on the area within which marine mammals could be exposed to injurious levels of sound, as well as sound levels that have the potential to cause behavioral disruption. Acoustic thresholds for marine mammals are established by NOAA, and the current threshold for the onset of behavioral harassment for these types of sound sources (i.e., impulsive) is 160 dB re 1 μ Pa (rms) (70 FR 1871). Using the spherical spreading loss model for underwater noise provided in this section, permittees can calculate the distance to the 160 dB threshold for each equipment type operating below 200 kHz. The spherical spreading loss model (i.e., sound waves propagating evenly in all directions) was chosen because it is a conservative approach to calculating distances to acoustic thresholds in the open ocean. For nearshore surveys where the water depth is less than 1 wavelength of the predominant sound energy of the active sound source or less than 3 meters, an intermediate spreading loss model (i.e., between spherical and cylindrical spreading [spreading loss in a medium with upper (sea surface) and lower (seafloor) boundaries]) was chosen because it is a conservative approach to calculating distances to acoustic thresholds in shallow-water environments. Frequencies of 200 kHz or greater are above the known functional hearing ranges of, and are thus not audible to, marine mammals; therefore, sounds at these frequencies would not be expected to cause physical or behavioral impacts.

6. Current Biological Information: Prior to commencement of survey operations, the Permittee shall:
 - A. Contact the National Oceanic and Atmospheric Administration's (NOAA)

Long Beach office staff and local whale watching operations to acquire information on the current composition and relative abundance of marine wildlife offshore.

- B. Convey sightings data to the vessel operator and crew, survey party chief, and onboard MWMs prior to departure.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to fulfill a requirement of the Low-Energy OGPP MND's MMP, which includes MM BIO-1: Current Biological Information.

NECESSITY

This subsection is reasonably necessary to fulfill a requirement of the Low-Energy OGPP MND's MMP, which includes MM BIO-1: Current Biological Information. Geophysical surveys conducted under this permit occur in offshore State waters where marine wildlife are not evenly distributed and not all species are present year-round. Communication with NOAA Long Beach staff and local whale watching operations prior to survey activities provides permittees with current composition and abundance estimates for marine wildlife within or near the survey area. Sightings information is then conveyed to the vessel operator and crew, survey party chief, and onboard MWMs. This information alerts the parties aboard the vessel to the marine wildlife that may be encountered during the survey and provides the MWMs with data on the approximate number and types of wildlife that may be in the area.

7. Geophysical Survey Series: If a geophysical survey is part of a larger series of surveys within a defined survey area, the Permittee may, to avoid submitting multiple Pre-Survey Notifications to the Commission, provide a single notice to all parties listed in section 2100.08, including all potential survey dates/windows up to 1 year from the original notice date. This notice must be submitted no less than 21 calendar days prior to the commencement of the first geophysical survey in the survey series. For every geophysical survey within the survey series that occurs thereafter, the Permittee shall notify the Commission by email at slc.ogpp@slc.ca.gov prior to the survey.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to streamline the Pre-Survey Notification process for Commission staff and the permittee for survey activities that occur within a defined survey area for up to 1 year from the original notice date.

NECESSITY

A permittee conducting multiple surveys within a defined survey area can submit one Pre-Survey Notification Package (hereafter referred to as "original") that covers all surveys within the series for up to 1 year. This subsection defines the survey information to be included in the original Pre-Survey Notification Package in addition to the parties to be notified no less than 21 days prior to the start of the first survey in the

series. For every survey thereafter, for up to 1 year, the permittee must notify the Commission via email prior to survey commencement. This subsection allows permittees and Commission staff to streamline the Pre-Survey Notification submission and review processes, respectively.

b. Survey Operations:

1. Nighttime Operations: The Permittee shall not conduct nighttime survey operations; however, the Commission may authorize, at its discretion, the Permittee to operate at night if the proposed survey allows the MWMs to fully monitor operations consistent with (b)(5) of this section.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to fulfill a requirement of the Low-Energy OGPP MND's MMP, which includes MM BIO-4: Nighttime Operations that are designed to minimize potential underwater noise and vessel strike impacts to marine mammals from nighttime survey operations.

NECESSITY

Nighttime surveys may negatively affect a MWM's ability to effectively implement safety zones and monitor for marine wildlife during vessel transit and survey activities. This subsection is reasonably necessary to allow permittees to provide Commission staff with information regarding how MWMs can fully implement safety zones, monitor for marine wildlife, and carry out section 5, below.

2. Engine and Equipment Maintenance and Operations: The Permittee shall:
 - A. Maintain all construction equipment in proper tune according to the manufacturers' specifications; fuel all portable diesel-powered equipment with California Air Resources Board (CARB)-certified motor vehicle diesel fuel limiting sulfur content to 15 parts per million or less (i.e., CARB Diesel Fuel); and operate equipment in conformance with county air quality guidelines.
 - B. Conduct routine inspection and maintenance of acoustic-generating equipment to ensure that the equipment remains in proper working order and within the manufacturer's equipment specifications.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to assist in meeting the statutory requirement that geophysical survey permits include conditions that ensure public safety and protection of the environment (Public Resources Code section 6212.3). As identified in the Low-Energy OGPP MND's MMP, MM AIR-1 was adopted into the Low-Energy OGPP that diesel engines operate within certain parameters in order to avoid significant environmental impacts to air quality, while MM BIO-6 was adopted to ensure

geophysical survey equipment is maintained per the manufacturer's equipment specifications and operating properly.

NECESSITY

This subsection is reasonably necessary to fulfill the purpose of the regulation because it lists specific requirements that derive from a mitigation measure adopted in the Low-Energy OGPP MND. The purpose of subsection (2)(A) is to ensure that air quality impacts are minimized. Ensuring that vessels are compliant with CARB certified diesel standards and fuels achieves this goal. The purpose of subsection (2)(B) is to ensure that the equipment is working properly and operating, in the field, as indicated on the manufacturer's equipment specifications sheet. QA/QC procedures carried out by the permittee will ensure that MM BIO-6 is met, and may include: checking cables for leaks or damage; conducting board level signal and voltage checks; and running equipment through an internal systems check.

3. MWMs: Approved MWMs shall be aboard the survey vessel to visually monitor for marine wildlife during transit and data collection activities. All visual monitoring shall occur from the highest practical vantage point aboard the survey vessel; binoculars shall be used to observe the surrounding area, as appropriate.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to fulfill a requirement of the Low-Energy OGPP MND's MMP, which includes MM BIO-2: Marine Wildlife Monitors (MWMs). This measure requires that one to two qualified MWMs, depending on the geophysical survey equipment operated, be aboard the survey vessel to monitor for marine wildlife during transit and survey activities, in addition to implementing other MMs, including MM BIO-3: Safety Zone Monitoring.

NECESSITY

MWMs reduce the potential for injury or harassment to protected species by ensuring mitigation and monitoring requirements, as described in the Low-Energy OGPP MND's MMP and General Permit, are followed during vessel transit and survey activities.

4. Pinniped Haul-Out Sites: The following avoidance/monitoring requirements shall be implemented during transit and data collection activities:
 - A. The survey vessel shall not approach within 91 meters of a haul-out site.
 - B. For surveys occurring within 300 meters of a haul-out site, survey operations shall be conducted in an expedited manner to minimize the potential for disturbance of pinnipeds on land.
 - C. MWMs shall monitor pinniped activity onshore as the vessel approaches, observing and reporting on the number of pinnipeds potentially disturbed (e.g., via head lifting, flushing into the water).

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to fulfill a requirement of the Low-Energy OGPP MND's MMP including MM BIO-7: Avoidance of Pinniped Haul-Out Sites, which was adopted to minimize potential impacts to pinnipeds hauled out on land.

NECESSITY

The National Marine Fisheries Service has established guidelines to prevent the harassment of marine mammals, including pinnipeds, which recommends that vessels should not approach within 100 yards (approximately 91 meters) of pinnipeds hauled out on land. The mitigation measure goes on to require that survey operations be conducted in an expedited manner for surveys occurring within 300 meters of a haul-out site to reduce the potential for disturbing pinnipeds who may be resting, molting, or mating and pupping. This subsection is reasonably necessary to fulfill the purpose of the regulation because it lists specific requirements that derive from a mitigation measure adopted in the Low-Energy OGPP MND. The mitigation measures adopted to reduce environmental impacts are required to be a part of the Low-Energy OGPP pursuant to CEQA.

5. Safety Zone Monitoring: If geophysical equipment is operated at a frequency < 200 kHz, MWMs aboard the survey vessel shall monitor an area (i.e., safety or exclusion zone) based on the equipment operated, centered on the sound source. The model that shall be used by the Permittee to calculate the safety zone is provided in (a)(5)(D) of this section.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to fulfill a requirement of the Low-Energy OGPP MND's MMP including MM BIO-3: Safety Zone Monitoring, which was adopted to minimize the risk of injury or disturbance to marine wildlife from geophysical survey activities.

NECESSITY

Safety zone monitoring is a mitigation measure commonly implemented during offshore geophysical surveys. The safety zone is the radius around the sound source within which real-time mitigation measures are implemented if animals are detected. Safety zones vary in size depending on the operational characteristics of the equipment being used (e.g., operational frequency, source sound level), and are based on the area within which marine mammals could be exposed to injurious levels of sound, as well as sound levels that have the potential to cause behavioral disruption. Acoustic thresholds for marine mammals are established by NOAA. Section (a)(5)(D), above, defines which acoustic threshold and the calculation/model to be used by permittees calculating the safety zone radius for each equipment type operating below 200 kHz. Frequencies of 200 kHz or greater are above the known functional hearing ranges of, and are thus not audible to, marine mammals; therefore, sounds at these frequencies would not be expected to cause physical or behavioral impacts.

- A. If a marine mammal or sea turtle is observed within or is about to enter the specified safety zone, geophysical equipment shall be immediately shut down.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to assist in meeting the statutory requirement that geophysical survey permits include conditions that ensure public safety and protection of the environment (Public Resources Code section 6212.3). As identified in the MND, a mitigation measure was adopted into the Low-Energy OGPP that requires operators to shut down geophysical survey equipment when a marine mammal or sea turtle is observed within or is about to enter the established safety zone(s). This requirement is intended to prevent harm to marine mammals and sea turtles from the sound energy produced by low-energy geophysical equipment.

NECESSITY

This subsection is reasonably necessary to fulfill the purpose of the regulation because it lists specific requirements that derive from a mitigation measure adopted in the Low-Energy OGPP MND. The mitigation measures adopted to reduce environmental impacts are required to be a part of the Low-Energy OGPP pursuant to CEQA.

- B. If a marine mammal's or sea turtle's actions are observed to be irregular or if a large concentration of diving birds/seabirds is observed in the immediate vicinity, the MWMs shall have the authority to shut down geophysical equipment.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to assist in meeting the statutory requirement that geophysical survey permits include conditions that ensure public safety and protection of the environment (Public Resources Code section 6212.3). As identified in the Low-Energy OGPP MND, a mitigation measure was adopted into the Low-Energy OGPP that provides MWMs with the authority to order geophysical survey equipment be shut down to protect marine mammals and sea turtles when evidence exists that they may be affected adversely by the acoustic energy produced by low-energy geophysical equipment. This requirement is intended to cease geophysical survey work when it may be increasing marine mammals and sea turtles to susceptibility of harm or predation.

NECESSITY

This subsection is reasonably necessary to fulfill the purpose of the regulation because it lists specific requirements that derive from a mitigation adopted in the Low-Energy OGPP MND. The mitigation measures adopted to reduce environmental impacts are required to be a part of the Low-Energy OGPP pursuant to CEQA.

- C. During periods of limited visibility (e.g., fog, rain), MWMs shall have the authority to shut down geophysical equipment if the safety zone and

immediate vicinity cannot be observed. Periodic reevaluation of weather conditions and the reassessment of the cessation recommendation shall be completed by the MWMs.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to assist in meeting the statutory requirement that geophysical survey permits include conditions that ensure public safety and protection of the environment (Public Resources Code section 6212.3). As identified in the Low-Energy OGPP MND, a mitigation measure was adopted into the Low-Energy OGPP that provides MWMs with the authority to recommend cessation of geophysical survey work when visibility becomes limited. This ensures that MWMs are able to monitor safety zones effectively for the presence of marine mammals and sea turtles that may otherwise travel too close to operating low-energy geophysical survey equipment and the survey vessel.

NECESSITY

This subsection is reasonably necessary to fulfill the purpose of the regulation because it lists specific requirements that derive from a mitigation measure adopted in the Low-Energy OGPP MND. The mitigation measures adopted to reduce environmental impacts are required to be a part of the Low-Energy OGPP pursuant to CEQA.

- D. If geophysical equipment is shut down, the equipment shall not be restarted and ramped up to full power until the marine mammal or sea turtle is observed outside of the safety zone or has not been observed for 15 minutes. Geophysical equipment shall not be ramped up from a shut down if the safety zone cannot be observed.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to assist in meeting the statutory requirement that geophysical survey permits include conditions that ensure public safety and protection of the environment (Public Resources Code section 6212.3). As identified in the Low-Energy OGPP MND, mitigation measures were adopted into the Low-Energy OGPP that provide MWMs with the authority to require or recommend the cessation of geophysical equipment operations. If equipment is shut down, this subsection instructs MWMs and operators how to restart the geophysical equipment. This ensures that marine mammals and sea turtles are not within the established safety zone(s) prior to the initiation of a soft start and geophysical equipment being ramped up to full power.

NECESSITY

This subsection is reasonably necessary to fulfill the purpose of the regulation because it lists specific requirements that derive from a mitigation measure adopted in the Low-Energy OGPP MND. The mitigation measures adopted to reduce environmental impacts are required to be a part of the Low-Energy OGPP pursuant to CEQA.

6. Noise Reduction Methods: The Permittee shall implement the following

equipment operations to reduce noise levels produced by acoustic generating geophysical equipment:

- A. When several pieces of equipment are operating simultaneously, they shall be timed so that they will not be transmitting at the same time unless designed to do so (e.g., multi-component systems) in order to avoid cumulative effects.
- B. A soft-start procedure (i.e., ramp-up procedure) shall be used for all acoustic-generating geophysical equipment capable of adjusting energy levels. The Permittee shall implement the soft-start procedure at the beginning of survey activities each day or following a shutdown to allow any marine mammal that may be in the immediate area to leave before the sound source reaches full energy. Each piece of equipment shall be initiated at the lowest practical sound level, increasing output in such a manner as to increase in steps not exceeding approximately 6 decibels per 5-minute period. For surveys requiring a safety zone to be monitored, a soft-start shall not be initiated if the safety zone cannot be adequately monitored (e.g., due to inclement weather) by the MWM(s).
- C. The Permittee shall follow, to the maximum extent feasible while allowing for the gathering of useful data, the following guidelines as they pertain to the use of subbottom profilers and side-scan sonars, including:
 1. Using the highest frequency band possible for the subbottom profiler;
 2. Using the shortest possible pulse length; and
 3. Lowering the pulse rate (pings per second) as much as feasible.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is present methods to reduce underwater noise from geophysical survey activities and fulfill specific requirements of the Low-Energy OGPP MND's MMP, which includes MM BIO-5: Soft Start and MM BIO-6: Practical Limitations on Equipment Use.

NECESSITY

The noise reduction methods presented in this subsection are reasonably necessary to reduce potentially significant impacts to marine wildlife to less than significant. As discussed in the Low-Energy OGPP MND, the operation of more than one piece of equipment at the same time, if not timed to overlap or designed to do so, can cause cumulative noise impacts that could affect marine wildlife. Additionally, MM BIO-5: Soft-Start is a common mitigation measure employed worldwide to minimize acoustic impacts. It incorporates a gradual build-up of a sound source over time, with the aim of

warning marine mammals and allowing them to depart the area before sound levels peak. Furthermore, as discussed in the Low-Energy OGPP MND, the received sound level experienced by marine wildlife could be reduced through changes in the equipment's operation. Analysis of side-scan sonar and subbottom profiler field measurements has suggested adopting the procedures outlined in MM BIO-6 when operating the subbottom profiler and side-scan sonar to reduce the ensonification of the surrounding environment. Through the incorporation of these sound reducing methods during low-energy geophysical surveys, potentially significant noise-related impacts to marine wildlife are reduced to less than significant.

7. Marine Mammal and Reptile Collision Reporting

- A. If a collision with a marine mammal or reptile occurs, the Permittee shall document the conditions under which the accident occurred, including the following:
1. Vessel location (latitude, longitude) when the collision occurred;
 2. Date and time of collision;
 3. Speed and heading of the vessel at the time of collision;
 4. Observation conditions (e.g., wind speed and direction, swell height, visibility in miles or kilometers, and presence of rain or fog) at the time of collision;
 5. Species of marine wildlife contacted (if known);
 6. Whether an observer was monitoring marine wildlife at the time of collision; and
 7. Name of vessel, vessel owner/operator, and captain officer in charge of the vessel at time of collision.
- B. After a collision, the vessel shall stop, if safe to do so; however, the vessel is not obligated to stand by and may proceed after confirming that doing so will not further injure the animal. The vessel will then immediately communicate by radio or telephone all details of the incident to the vessel's base of operations. The vessel's base of operations will then immediately call the NOAA Stranding Coordinator to report the collision and follow any subsequent instructions. The captain onboard the vessel may also contact the NOAA Stranding Coordinator directly if an on-board telephone is available. The vessel's base of operations shall also call CDFW and the Commission within 24 hours of the collision to notify them of the incident.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to assist in meeting the statutory requirement that geophysical survey permits include conditions that ensure public safety and

protection of the environment (Public Resources Code section 6212.3). This subsection provides permittees with the necessary reporting procedures in the event the geophysical survey vessel is involved with a collision with a marine mammal or sea turtle.

NECESSITY

Collisions with ships are one of the primary threats to marine mammals, particularly large whales, around the world. Requirements have been incorporated into the Project-Specific Permit to reduce the risk of collision between marine wildlife and geophysical survey vessels during transit and data collection activities, including the requirement for MWMs (e.g., MWMs, safety zone monitoring). However, in the event a collision cannot be avoided and occurs, it is critical that the incident is recorded and reported to the appropriate agencies, including NOAA, CDFW, and the Commission. This subsection is reasonably necessary to outline the information to be recorded if a collision with a marine mammal or turtle occurs, and the appropriate communication channels to report the incident. The exhibit clearly and concisely informs permittees of their reporting responsibilities and the required elements of the report in the event of a collision. The contact information for the agencies to be notified are included in every permittee's General MWCP.

8. Fishing Gear Interference: To minimize interaction with fishing gear that may be present within a survey area:
 - A. The survey vessel (or designated vessel) shall traverse the proposed survey corridor prior to commencing survey operations to note and record the presence, type, and location of deployed fishing gear (i.e., buoys).
 - B. No survey lines within 30 meters (100 feet) of observed fishing gear shall be conducted. The survey crew shall not remove or relocate any fishing gear; removal or relocation shall only be accomplished by the owner of the gear upon notification by the survey operator of the potential conflict.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to assist in meeting the statutory requirement that geophysical survey permits include conditions that ensure public safety and protection of the environment (Public Resources Code section 6212.3). As identified in the Low-Energy OGPP MND, mitigation measures were adopted into the Low-Energy OGPP to minimize interaction with fishing gear that may be present in the survey area and reduce any potential conflicts between fishers and geophysical survey operators.

NECESSITY

This subsection is reasonably necessary to fulfill the purpose of the regulation because it lists specific requirements that derive from a mitigation measure adopted in the Low-Energy OGPP MND. The mitigation measures adopted to reduce environmental impacts are required to be a part of the Low-Energy OGPP pursuant to CEQA.

- c. Post-Survey Requirements:

1. The Permittee shall submit a Post-Survey Report to the Commission not more than 30 days after the completion of a survey conducted under this permit. The Report shall include:

A. Survey Information:

1. A narrative description of the work performed, including the dates and times during which data collection occurred, and the environmental conditions (i.e., weather and sea state) encountered during survey operations; and
2. A chart or map with track lines surveyed and spatial information related to the survey track lines (either Global Positioning System (GPS) coordinates (in decimal degrees format)) or Geographic Information System (GIS) files.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to outline the information required in the Post-Survey Report. The information provided in this report is meant to capture the activities conducted during the survey and is used by Commission staff to compare the types of activities conducted to those proposed, as described in the Pre-Survey Notification Package.

NECESSITY

This subsection is reasonably necessary to provide Commission staff with an overall picture of the survey activities conducted under the General Permit, including when and where activities occurred and under what environmental conditions, which can provide insight regarding the distance within which captain, crew, and MWM(s) were able to adequately observe for marine wildlife or other hazards. The information in this section of the report ultimately allows Commission staff to compare the types of activities conducted to those proposed, as described in the Pre-Survey Notification Package. This information is then incorporated into the Commission's geodatabase, which tracks surveys and permit compliance. The report is then posted to the Commission's website for public viewing.

B. Biological Information:

1. A narrative description of any encounters with marine mammals, reptiles, or unusual concentrations of diving birds/seabirds (e.g., species, group size, age/size/sex categories (if determinable), behavior, distance, and bearing from vessel) and the outcome of those encounters;
2. The number of times shutdowns or slowdowns were ordered due to animals being observed in the safety zone or due to poor visibility conditions, as assessed by the MWM(s); and

3. If applicable, the number of collision events and type and disposition of animal.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to outline the information required in the Post-Survey Report regarding biological information. The information provided in this section of the report is meant to capture interactions with marine mammals and other marine wildlife during the survey and provides Commission staff with information regarding how mitigation measures are implemented by the captain, crew, and MWMs in real time.

NECESSITY

This subsection is reasonably necessary to provide Commission staff with an overall picture of the marine wildlife encountered and the mitigation measures implemented during survey activities conducted under the General Permit. The information in this section of the report provides staff with information regarding survey interactions with marine wildlife, including the species and number of individuals observed and the number of shutdowns/slowdowns implemented in response to marine mammals or sea turtles within or entering the safety zone or due to poor visibility. This section ultimately provides staff with information regarding how the captain, crew, and MWMs implemented mitigation measures in response to marine wildlife in real-time. The report is then posted to the Commission's website for public viewing.

2. The Permittee shall make available to the Commission, upon request, factual and physical survey results, logs, records, field acquired data, processed records or any other data/information resulting from operations under this permit. The Commission shall treat any information marked confidential as such, to the extent permitted by law.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this subsection is to assist in meeting the statutory requirement that all factual and physical survey results, logs, records, field acquired data, processed records or any other data/information resulting from operations under this permit be made available to the Commission upon request (Public Resources Code section 6826). Per this provision, the Commission shall treat any information marked confidential as such, to the extent permitted by law.

NECESSITY

This subsection is reasonably necessary because it is mandated by Public Resources Code section 6826 to be in geophysical survey permits.

Note: Authority cited: Sections 6108 and 6212.3, Public Resources Code. Reference: Section 6212.3, Public Resources Code.

§ 2100.08 Public Notice of Survey Activity

- a. No less than 21 calendar days prior to the commencement of a geophysical survey, the permittee shall provide electronic notice of the survey activity to the following parties:
1. California State Lands Commission
Email: slc.ogpp@slc.ca.gov
 2. If the geophysical survey is to occur in marine waters:
 - C. United States Coast Guard Local Notice to Mariners
Commander
District Eleven (DPW)
Coast Guard Island Building 50-2
Alameda, CA 94501-5836
Email: D11NM@uscg.mil
 - D. Harbormasters' offices of regional harbors near survey area.
- b. Contents of Notice: The notice shall include the completed Pre-Survey Notification Form.
- c. The permittee shall notify the Commission and the parties listed in subsection (a) of any modification, deviation, delay, or cancellation of a survey.
- d. Shorter Notification: If, due to an emergency affecting public health or safety, harm to the environment, or other circumstance in which 21-days' notice cannot be provided, the permittee shall use best efforts to notify the Commission and the parties listed in subsection (a) as quickly as practicable.
- e. Commission Notification: The Commission shall operate and maintain an email listserv or equivalent electronic communication method to notify the public of scheduled geophysical surveys. The notifications shall include information about the scheduled geophysical survey, including the survey date(s), type, location, and duration.
1. The Commission shall include information on its website www.slc.ca.gov, informing the public how to subscribe and unsubscribe from receiving geophysical survey notifications.
 2. Failure by the Commission to timely communicate information as provided in subsection (e) shall not be a basis for postponing or cancelling a permitted survey if the permittee has fully complied with the requirements of subsection (a) and (c).

Note: Authority cited: Sections 6108 and 6212.3, Public Resources Code. Reference: Section 6212.3, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to specify geophysical survey notification and cancellation procedures to be implemented by permittees and the Commission.

Section (a) specifies the notification procedures to be implemented by permittees conducting geophysical surveys, including notice to the Commission, as well as the U.S. Coast Guard Local Notice to Mariners and harbormaster's offices of regional harbors. This notification procedure will provide sufficient time for Commission staff to thoroughly review the Pre-Survey Notification Package materials submitted and provide timely notice to the public via the Commission's listserv, as described in subsection (d). This notification procedure also includes two additional channels, the U.S. Coast Guard's Local Notice to Mariners and harbormasters' offices, through which the public, including divers, fishers, and vessel operators, can search for and inquire about survey activities.

Subsection (b) specifies the permittee's responsibility to notify the entities listed in subsection (a) and the Commission of any modification, deviation, delay, or cancellation of a survey prior to its occurrence. This notification procedure allows Commission staff to update its website and notify its listserv subscribers of any survey changes or cancellations, and informs the U.S. Coast Guard's Local Notice to Mariners and local harbormasters.

Subsection (c) specifies exceptions to the 21-day Pre-Survey Notification Package requirements described in subsection (a). These exceptions allow permitted operators to conduct surveys when 21-days' notice cannot be provided when a survey is needed in due to emergency affecting public health or safety, harm to the environment, or other circumstance.

Subsection (d) specifies the public notification procedures to be implemented by the Commission. Subsection (d)(1) specifies that the Commission shall include survey information on its website, including information for the public about subscribing and unsubscribing to the listserv. Subsection (d)(1) specifies that failure by the Commission to timely communicate information as provided in subsection (d)(1) shall not be a basis for postponing or cancelling a permitted survey if the permittee has fully complied with the requirements of subsections (a) and (b).

NECESSITY

Subsection (a) is reasonably necessary to provide adequate notice to the Commission, who reviews the Pre-Survey Notification materials, posts the materials to the Commission's website, and notifies its listserv, which is comprised of federal, state, and local agency representatives, industry, non-governmental organizations, and the public. This notification procedure provides sufficient time for Commission staff to thoroughly review the Pre-Survey Notification Package materials submitted and provide timely notice to the public via the Commission's listserv. Additionally, notice is provided to the U.S. Coast Guard Local Notice to Mariners and local harbormaster's offices of regional harbors to advise vessels, including recreational and commercial fishing vessels, as well as divers, surfers, and other recreationists of surveys occurring in the area. This notification procedure provides an opportunity for industry or the public to notify the Commission or

the operator about any potential use conflicts or environmental concerns (e.g., large concentrations of marine mammals) near the survey area.

Subsection (b) is reasonably necessary to keep the Commission, the U.S. Coast Guard Local Notice to Mariners, harbormaster's, and the public abreast of the status of geophysical activities occurring offshore in State waters.

Subsection (c) is reasonably necessary because adequate notice is not always provided to permittees for survey work, and emergency events requiring surveys cannot be predicted. Therefore, compliance with the OGPP's 21-day pre-survey requirements would result in the loss of work for permittees and may/will discourage non-permitted operators from applying for a permit. Under the OGPP, permitted operators must comply with the MMP, as well as develop MWCPs and OSCP's, all of which provide protection for the environment; however, these protective measures are not enforced when such surveys are conducted by non-permitted operators. All the documents required for surveys would still be required – the only difference is the "lead time" for staff review. The intent is to allow flexibility for survey operators who are not reasonably able to provide 21 days' notice for a survey due to environmental or operational conditions or those operators who, after substantial compliance with the notification requirements, must slightly alter a survey due to environmental or operational conditions within the 21-day notice period.

Subsection (d) is reasonably necessary for the Commission to notify members of the public who subscribed to its listserv about geophysical surveys occurring in State waters. Additionally, it provides protection to permittees, who otherwise met the pre-survey requirements, from their surveys being postponed or cancelled in the event that Commission staff fails to notify its listserv in a timely manner.

§ 2100.09 Geophysical Permit Suspension or Revocation

- a. Violation of the requirements of this article, or the terms and conditions of a permit, may result in the suspension or revocation of a geophysical survey permit.
 1. A suspension shall be effective upon receipt by the permittee of written notice by the Commission which shall indicate: (1) the extent of the suspension; (2) the reasons for the suspension; and (3) any corrective or preventive measures to be taken by the permittee deemed necessary by the Commission to comply with the requirements of this article.
 2. The permittee shall take immediate action to comply with the suspension and address the violation. The permittee may appear before the Commission at a hearing in order to present information relevant to whether the permit should be reinstated, modified, or revoked.
 3. A permit revocation shall be effective after adoption of such revocation by the Commission at a noticed, public hearing.

Note: Authority cited: Sections 6108 and 6212.3, Public Resources Code. Reference: Section 6212.3, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to identify the specific processes and circumstances in which a permit may be suspended or revoked. Section (a)(1) informs both the Commission and permittee of the form of notice and minimum information that must be present in a notice of suspension so that each notice will provide sufficient information upon which a permittee can know the facts surrounding the alleged violation and how the violation may be cured. Section (a)(2) directs the permittee to address and resolve the violation immediately and provides a mechanism for seeking an appealing of the notice of suspension or revocation to the Commission at its public hearings. Section (a)(3) provides the conditions for when a revocation becomes effective—only after notice and a hearing before the Commission.

NECESSITY

Subsection (a) is reasonably necessary because it identifies the Commission's authority and places a permittee on notice of the consequences of permit violations, up to and including suspension or revocation of the permit. Subsection (a)(1) is reasonably necessary because it provides the notice requirements that the Commission must meet to fully inform the permittee of an alleged violation so that the permittee is aware of a pending action to suspend the permit. Subsection (a)(2) is necessary because it directs the permittee how to respond to a notice of suspension and provides due process protections in the form of the suspension or revocation being heard before the California State Lands Commission. Subsection (a)(3) establishes the circumstances of when a revocation becomes effective, only after the issue is heard before the Commission.

§ 2100.10 Cease and Desist Authority

a. The Commission's Executive Officer shall send, via mail, a cease and desist letter to parties conducting geophysical surveys without a permit, as required under section 2100.04 of this article. To the extent known or reported to the Commission, a cease and desist letter shall include:

1. The date, time, and location of the unpermitted geophysical survey, if known;
2. A demand to cease any unpermitted survey activity; and
3. Information on to obtain and submit an application for a geophysical survey permit.

Note: Authority cited: Sections 6108 and 6212.3, Public Resources Code. Reference: Section 6212.3, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this section is to specify how the Commission will utilize its cease and desist authority provided in Public Resources Code section 6212.3. The Commission will provide written notification with required information to provide notice to a party conducting geophysical surveys without a permit.

Subsection (a) specifies how the Commission will notify permit violators and the information to be included in the cease and desist letter, including how the unpermitted operator can obtain and submit an application for a geophysical survey permit. The overall purpose is to promote compliance with the requirements of this article.

NECESSITY

Public Resources Code section 6212.3 (d) outlines actions the Commission may take to promote compliance with geophysical survey permit requirements, including issuing cease and desist orders to permit violators. This regulation is necessary to identify what method the Commission will conduct to provide notice to a party conducting a geophysical survey without a permit. This section also provides information on how to obtain a permit thus providing an opportunity to comply with the regulations.

PRE-SURVEY NOTIFICATION FORM

Ver. (9/25/2018)

Permittee's Contact Information

Permit #: _____

Select one:

- New Survey
- New Survey Series
- Existing Survey Series
- Time Extension

Section 1: Pre-Survey Notification Package. Please use the boxes below to verify that the required documents are included in the Pre-Survey Notification Package:

- Pre-Survey Notification Form
- Navigation chart, as well as GPS coordinates or a shapefile for proposed track lines (bounding coordinates for the survey area are acceptable if track lines are not known; all coordinates should be in decimal degrees)
- Résumé(s) of Marine Wildlife Monitor(s)

Section 2: Pre-Survey Notices. Please use the boxes below to verify that notifications have been sent to the following:

- U.S. Coast Guard Local Notice to Mariners
- Harbormasters' offices of regional harbors near the survey area

Section 3: Survey Details.

Date(s) of operation (survey window): _____

Number of survey days (approximate): _____
Survey Location: _____

Hours of operation: _____
Survey purpose/objective: _____

Section 4: Vessel Details.

Vessel name: _____

Vessel official number: _____

Vessel captain's name: _____

Radio channel(s) to be monitored by vessel: _____

Section 5: Survey Equipment Characteristics and Safety Zones.

<u>Survey Equipment Characteristics</u>			
<u>Equipment type</u>			
<u>Frequency</u>			
<u>Source level (dB re 1 uPa at 1 m [rms and peak])</u>			
<u>Number of beams</u>			
<u>Across and along track beamwidth</u>			
<u>Pulse rate/length</u>			
<u>Rise time</u>			
<u>Source depth</u>			
<u>Tow speed</u>			
<u>Cable tow length</u>			

<u>Safety Zones (if operating < 200 kHz)</u>			
<u>Equipment type</u>			
<u>Distance to the 160 dB (rms) threshold</u>			

Section 6: Pinniped Haul-Out Sites, Marine Protected Areas (MPAs), and Other Permits/Authorizations. Please provide answers to the following:

Are there pinniped haul-out sites within or near the survey area? If yes, please provide the location of and distance to the haul-out site(s).

Are there MPAs within or near the survey area? If yes, please provide the location of and distance to the MPA(s).

Were other permits or authorizations obtained from Federal or State agencies (e.g., from the California Department of Fish and Wildlife for work in or near MPAs)? If yes, please provide the type of permit and issuing agency.

Section 7: Contact Information. If you foresee potential interference with commercial fishing or other activities, please contact the person(s) listed below:

Permittee Representative

Commission Representative

**Bureau of Ocean Energy
Management Representative**
(If Applicable)

SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of this Pre-Survey Notification Form is to facilitate permittee compliance with the pre-survey requirements and submission deadline, as well as provide survey-specific information to Commission staff, U.S. Coast Guard Local Notice to Mariners, and harbormaster's offices of regional harbors near the survey area. This survey-specific information allow Commission staff and interested parties to verify operational parameters to ensure that surveys are being conducted within the requirements and terms of the permit. Additionally, this form also fulfills specific requirements of the Low-Energy OGPP MND's MMP, which includes MM BIO-2: Marine Wildlife Monitors (MWMs), MM BIO-7: Avoidance of Pinniped Haul-Out Sites, MM BIO-9: Limitations of Survey Operations in Marine Protected Areas (MPAs), MM REC-1 and MM FISH-1: U.S. Coast Guard and Harbormaster Notifications.

NECESSITY

This Pre-Survey Notification Form is reasonably necessary to help facilitate permittee compliance with the pre-survey requirements, the Low-Energy OGPP MND's MMP, and the submission deadline. The Pre-Survey Notification Form was developed as a reference for permittees to ensure that all required pre-survey materials and survey-specific information are submitted to the Commission for review 21 days prior to the proposed survey start date. The form provides a clear and concise summary for permittees to check whether they have met notification requirements and for Commission staff to verify compliance with those requirements. The form includes "yes" and "no" check boxes next to each item to be submitted to the Commission (e.g., Pre-Survey Notification Form, MWM résumés), U.S. Coast Guard Local Notice to Mariners, and harbormaster's offices of regional harbors near the survey area, as well as survey-specific information (e.g., location of pinniped haul-out sites within or near the survey area) to evaluate a permittee's compliance with the Low-Energy OGPP MND's MMP and General Permit. Providing equipment characteristic information is essential to allowing Commission staff to verify the applicable safety zones established to prevent potential impact risks to marine mammals.