STAFF REPORT

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GENERAL PERMIT TO CONDUCT GEOPHYSICAL SURVEYS

APPLICANT:

Bureau of Ocean Energy Management

BACKGROUND:

The federal Bureau of Ocean Energy Management has applied for a statewide General Offshore Geophysical Survey Permit (General Permit) pursuant to the Commission's Geophysical Survey Permit Program (OGPP). A General Permit is issued to qualified companies and organizations to perform low-energy geophysical surveys of the ocean bottom for purposes including, but not limited to:

- Scientific research, including surveys of nearshore sand erosion and deposition, seafloor changes, and seafloor topography and bathymetry
- Surveying existing pipelines routes and assessing any structural damage, or free-spanning
- Identifying and avoiding seafloor faults and hazards when designing pipeline and cable projects, reducing the likelihood of damage due to these hazards
- Surveying existing fiber-optic cables, utilities, and other seafloor structures to determine how well they are buried
- Benthic habitat surveys, hard bottom map development, and mapping of essential fish habitat or cultural resources indicating where the placement of permanent or temporary objects (e.g., cables or anchors) should be precluded
- Searching for the locations of historic shipwrecks, other sunken boats, airplanes, and archaeological sites

The General Permit authorizes a permittee to conduct these activities on State sovereign land, including granted and ungranted tidelands and submerged lands and the beds of navigable waterways. Each permittee must comply with pre-survey, survey, and post-survey requirements to ensure that the survey activities address and minimize potential impacts to aquatic life or to the environment as required by statute.

Activities under the General Permit are also required to comply with limitations that protect the environment, as described in the Commission's new regulations that went into effect on January 1, 2020, as Article 2.9.1, Permits for Geophysical Surveys (Cal. Code Regs., tit. 2 § 2100 et seq.) (Article 2.9.1).

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6212.3, 6216, and 6301; California Code of Regulations, title 2, section 2100 et seq.

Public Trust and State's Best Interests Analysis:

The Bureau of Ocean Energy Management conducts subsea surveys and mapping and has applied for a permit to conduct low-energy geophysical surveys in offshore waters throughout California. Scientific study has been recognized by the courts to be a use consistent with the common law Public Trust Doctrine. (See, for example, *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260). The marine research activities to be conducted under this proposed General Permit are a water-dependent use utilizing acoustic, noise-generating equipment such as side-scan sonar and multi-beam echosounders at frequencies at, or below, the hearing range of marine mammals. The use of high-energy equipment, such as airguns or water guns, is expressly prohibited under the General Permit.

The proposed General Permit requires the Permittee to provide staff with advance notification of operations, the specifications of the equipment to be employed, a Marine Wildlife Contingency Plan, and an Oil Spill Contingency Plan. Submission of post-survey data reports and records of biological observations and incidents are also required. Staff may receive copies of all data derived from any and all surveys under this Permit upon request. Additionally, the Permit is limited to 3 years. Staff believes that granting the Permit is consistent with and will not interfere with common law Public Trust Doctrine uses at this time and for the foreseeable term of the Permit. For all the reasons above, staff believes the approval of the permit application is in the best interests of the State. Staff recommends approval of this General Permit.

TERM OF PROPOSED PERMIT:

3 years, beginning February 28, 2020, through February 27, 2023.

OTHER PERTINENT INFORMATION:

1. Pursuant to the California Environmental Quality Act (CEQA), a Mitigated Negative Declaration (MND) identified as CSLC MND 751, State Clearinghouse No. 2013072021, and a Mitigation Monitoring Program

were adopted by the Commission on September 20, 2013 (Item 120, September 20, 2013) for implementation of the OGPP. On April 23, 2014, the Commission adopted an addendum to the MND, which revised the General Permit and Mitigation Monitoring Program (Item C67, April 23, 2014).

2. In 2015, the Legislature passed AB 1274, codifying Public Resources Code section 6212.3 (geophysical permits). AB 1274 affirmed the Commission's authority to issue geophysical permits "subject to terms and conditions as the Commission shall specify to ensure public safety and protection of the environment".

3. On January 1, 2020, Article 2.9.1 became effective to accomplish the goals of AB 1274 and establish requirements to ensure that geophysical surveys performed on State sovereign land address and minimize potential impacts to aquatic life or to the environment. The Mitigation Monitoring Program, adopted by the Commission, and all program parameters are codified into these regulations. Permit issuance requirements, specifically, are detailed in California Code of Regulations, title 2, sections 2100.04 and 2100.05.

4. This action is consistent with Strategy 1.1 of Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.

5. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be authorized to conduct geophysical surveys on sovereign land. Upon expiration or prior termination of the permit, the applicant has no right to a new permit or to renewal of any previous permit.

RECOMMENDED ACTION:
It is recommended that the Commission:

CEQA FINDINGS:

1. Find that the MND, CSLC MND No. 751, State Clearinghouse No. 2013072021, and a Mitigation Monitoring Program were prepared by Commission staff and adopted by the Commission on September 20, 2013 (Item 120, September 20, 2013).

2. Find that the addendum to the MND, including a revised General Permit and Mitigation Monitoring Program, was prepared by Commission staff and adopted by the Commission on April 3, 2014, (Item C67, April 23, 2014), pursuant to the provisions of CEQA.

3. Find that the Commission reviewed and considered the information contained in the previously adopted MND and addendum; and that in the Commission's independent judgment, the scope of activities to be carried out under the permit to be issued under this authorization has been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 has resulted in any new or substantially more severe significant impacts; and, therefore, no additional CEQA analysis is required.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that activities authorized by the proposed permit will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values in the permitted location and for the foreseeable term of the permit; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Offshore Geophysical Survey Permit to the Bureau of Ocean Energy Management to conduct low-energy geophysical surveys from February 28, 2020, through February 27, 2023.