

**CALENDAR ITEM
C35**

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D. Brown, A. Abeleda
M. Brand, R. Greenwood

**REQUEST AUTHORITY FOR THE EXECUTIVE OFFICER
TO SOLICIT PROPOSALS FOR CONSULTANT SERVICES, NEGOTIATE FAIR AND
REASONABLE PRICE, AWARD AND EXECUTE AGREEMENTS FOR
PREPARATION OF ENVIRONMENTAL DOCUMENTATION FOR
REAUTHORIZATION OF THE STATEWIDE GEOPHYSICAL SURVEY PERMIT
PROGRAM**

PARTY:

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202

BACKGROUND:

On May 24, 1984, the State Lands Commission approved a Geophysical Survey Permit Program after adopting a Negative Declaration (ND) 358, State Clearinghouse No. 84020113, prepared pursuant to the California Environmental Quality Act (CEQA).

During consideration of the Geophysical Survey Permit Program, the Commission through the adopted ND, examined the potential adverse effects of geophysical survey activities on commercial fishing and highlighted and recommended two issues for further study. These issues were the effects of the use of geophysical equipment on 1) temporary fish dispersal from known fishing areas, and 2) the egg and larval stages of commercial varieties of fish.

From May 1984, through December 1986, monies were allocated and spent on relevant special studies and activities. Based on the information obtained from these studies it was determined that the use of geophysical survey equipment, which emits strong acoustic pulses, may cause significant adverse effects upon the environment and that approval of a permit allowing use of such equipment required preparation of an environmental impact report. However, the Commission also found at that time that no new information revealed any substantial evidence that use of passive equipment or low acoustic pulse-generating equipment, such as side-scan sonar and magnetometer,

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would have a significant effect on the environment. Based upon the May 24, 1984, Negative Declaration, the Commission, therefore, approved the issuance of permits for three-year time periods, which provided for the use of equipment that has no more than two kilojoules of energy input. The Commission has been issuing geophysical survey permits based on these conditions in the ensuing years.

Several geophysical survey permits were renewed at the Commission's August 22, 2008, meeting (Minute Items 47 through 52). At that time, the Commission was informed that staff had become aware of recently published studies indicating a potential for impact of low acoustic pulse-generating equipment on fish, marine mammals, and marine reptiles. At that time, the Commission determined that the permits should be renewed for a period of one year rather than three years pending a more thorough review of recent scientific information.

Commission staff has completed a review of a number of recently published scientific studies regarding the effects of underwater noise on marine species. These studies indicate there is a potential for significant impacts on fish, marine mammals, and marine reptiles as a result of sound pressure levels and frequencies, within certain ranges, emitted by low acoustic pulse-generating equipment used to conduct geophysical surveys. In addition, the more recent scientific studies are based on analyses of sound pressure levels and frequencies rather than energy levels. Therefore, it is possible that although a piece of equipment may meet the two kilojoules requirement established by the CSLC, it may emit sound pressure levels and/or frequencies that could be deleterious to marine species. NOAA Fisheries (NMFS) and the Mineral Management Service (MMS) also use frequency and sound pressure levels to regulate activities in the adjacent federal waters.

PROPOSED ACTIVITY:

From the recent scientific information that the Commission's staff has reviewed and in accordance with the California Code of Regulations Title 14, Chapter 3, §15000 et seq., the CSLC will act as the California Lead Agency for preparation of the environmental documentation necessary to reauthorize the Commission's Geophysical Survey Permit Program (proposed Project).

Consideration of this proposed Project will require environmental documentation in accordance with the CEQA. The Executive Officer requests delegation of authority to engage a consultant for this purpose. Consultant selection shall be conducted in accordance with the procedures as specified in CSLC Regulations and in the State Contract Manual, on the basis of demonstrated competence and qualifications for the types of services to be performed, and at a fair and reasonable price. All costs shall be recovered from applicants seeking to renew or obtain geophysical survey permits.

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The environmental documentation will include a review of all pertinent and recent scientific studies of the effects of underwater noise on fish, sea mammals and sea reptiles. It will also include a review of those criteria currently being used by NMFS to avoid significant impacts on marine species. Based on the results of these reviews, modifications to the CSLC's current Geophysical Survey Program may be recommended and a new environmental document prepared.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

2. Approval of this item by the Commission does not constitute approval of additional geophysical survey permits; it only authorizes consultant contracts for environmental review.

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code Section 6106 (Delegation to execute written instruments)
- B. State Contracts Manual Section 11.00 A & E method (10/05)
- C. Public Contract Code Section 6106
- D. Government Code Section 4526
- E. California Administrative Code Title 2 Article 13 Section 2980.0 - 2990.0

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THESE ACTIVITIES ARE EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO 14 CALIFORNIA CODE OF REGULATIONS 15060(c)(3) BECAUSE THESE ACTIVITIES ARE NOT PROJECTS AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND 14 CALIFORNIA CODE OF REGULATIONS 15378.
2. FIND THAT THE SELECTION OF CONSULTANTS UNDER THIS PROCESS DOES NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOVERNMENT CODE SECTION 11342.610, BECAUSE THEY WILL BE ACCORDED EQUAL OPPORTUNITY TO SUBMIT STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA.

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3. FIND THAT THE SELECTION OF CONSULTANTS UNDER THIS PROCESS FOR PROFESSIONAL SERVICES OF ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL, LAND SURVEYING OR CONSTRUCTION PROJECT MANAGEMENT SERVICES WILL BE CONSISTENT WITH PROCEDURES AND POLICIES ADOPTED BY THE COMMISSION AS SPECIFIED IN GOVERNMENT CODE SECTION 4526 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS 2980 –2980.9.
4. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO SOLICIT PROPOSALS, NEGOTIATE A FAIR AND REASONABLE PRICE, AWARD AND EXECUTE CONTRACTS FOR ENVIRONMENTAL DOCUMENTATION AND MITIGATION MONITORING IN ACCORDANCE WITH STATE POLICIES AND PROCEDURES.
5. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO ENTER INTO AGREEMENTS WITH PERMIT APPLICANTS TO RECOVER COSTS INCURRED.