



October 17, 2023

Submitted via email and [www.regulations.gov](http://www.regulations.gov)

Ms. Jennifer Schultz  
Endangered Species Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway (SSMC3)  
Silver Spring, MD 20910

RE: Offshore Operators Committee Comments on the Endangered and Threatened Wildlife and Plants:  
Proposed Rule to Designate Marine Critical Habitat for Six Distinct Population Segments of Green  
Sea Turtles  
Document ID Number: NOAA-NMFS-2023-0087-0001

Dear Ms. Schultz,

The Offshore Operators Committee (OOC) appreciates the opportunity to provide detailed comments on the above-captioned Proposed Rule to Designate Marine Critical Habitat for Six Distinct Population Segments of Green Sea Turtles. Comments are submitted without prejudice to any member's right to have or express different or opposing views. It is from this perspective that these comments have been developed.

OOC member companies represent more than 90% of the oil and gas production in the Gulf of Mexico (GOM) Outer Continental Shelf (OCS) with oil and natural gas operators, drilling contractors, and service providers. Our members recognize that offshore operations must be conducted safely and in a manner that protects the environment. The offshore industry has a long history of safe operations that has advanced the energy security of our nation and provided energy resources which are crucial to our nation's economy. OOC members support the protection of the green sea turtle, the environment, and workers in the Gulf of Mexico.

After review of the proposal, it is apparent that that National Marine Fisheries Service (NMFS) did not utilize best available science in determining critical habitat for the green sea turtle. In specific, OOC would highlight the omission of certain peer reviewed science. OOC would like to call attention to the *Review of the Proposed Critical Habitat for the Green Turtle North Atlantic Distinct Population Segment*, prepared by LGL Ecological Research Associates (Putman and Ireland, 2023), which supports exclusion of certain areas as critical habitat, primarily Galveston Bay and *Sargassum* habitats. OOC respectfully requests NMFS to withdraw their designation of critical habitat for the green sea turtle amending the proposal to reflect the best available science, thereby excluding those areas within Galveston Bay and

including *Sargassum* habitat.

OOO is providing comments on the issues below related to the Critical Habitat Designation and resulting current and future impacts:

1. Limited Availability of Published Scientific Data
2. Data Does not Support Designation of Entire GOM
3. Improper Inclusion of Galveston Bay

### **1. Limited Availability of Scientific Data**

The proposed critical habitat designation relies on information that has not been made available to the public for review. This proposal relies on three *draft* NMFS reports: the Draft Biological Report (NMFS 2023a), Draft Economic Impact Analysis (NMFS 2023b), and Draft Sections 4(a)(3) and 4(b)(2) Report (NMFS 2023c). OOO believes that it is inappropriate to reference draft documents in a proposal for Critical Habitat Designation when NMFS has not yet completed its internal review of these documents. The Draft Biological Report that accompanies the proposed rule contains 284 citations of unpublished data. Stakeholders were unable to review any of this unpublished data, which NMFS is representing as the “best available science” in accordance with the Endangered Species Act (ESA). However, the cited data cannot meet that definition when it has not been made available to the public. Of particular interest is one unpublished study related to data collected on green sea turtles in the GOM (Mansfield and Phillips, in review) that appears to be the basis for establishing green sea turtle critical habitat to cover nearly the entire GOM.

The green sea turtle critical habitat proposed rule was written and issued with references to draft and unpublished reports and data, and determinations were made based on this draft and unpublished information. To comply with its obligation to ensure adequate opportunity for public notice and comment, NMFS should make all referenced unpublished data “available for public review so that its accuracy [can] be verified before [NMFS makes] a decision relying, to a large extent, on information contained in the report.” *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1403 (9th Cir. 1995).

Part of the integrity of rulemaking is to ensure that the public can review the reasoning behind the proposed rulemaking and provide informed commentary. This is greatly hindered when much of the data relied upon to determine the proposed critical habitat area is not publicly available. This undermines not only the Endangered Species Act (ESA), but also 5 USC 552(a) of the Administrative Procedures Act.

In NOAA Administrative Order (NAO) 202-735D-2: Scientific Integrity, Section 6: Integrity of Scientific Activities (2), it states that the National Oceanic and Atmospheric Administration (NOAA) “preserves the integrity of the scientific activities it conducts and activities that are conducted on its behalf. It will not tolerate loss of integrity in the performance of scientific activities or in the application of science in decision-making. To that end, NOAA will: ... (d) Ensure that data and research used to support policy decisions undergo independent peer review by qualified experts, where feasible, appropriate, and consistent with the law and NOAA’s Information Quality and Peer Review Guidelines.” The Draft

Economic Report referenced in this proposal, was peer reviewed but there was no identification of the peer reviewers, why they were chosen or their credentials.

## 2. Data Does not Support Designation of the Entire Gulf of Mexico

The best available scientific data does not support the proposed designation of critical habitat throughout the GOM on the basis that the metocean characteristics that allow the turtles to utilize *Sargassum* mats is an ‘essential feature’ of green sea turtle habitat.

The surface-pelagic foraging essential feature is described in the proposal as "Convergence zones, frontal zones, surface-water downwelling areas, the margins of major boundary currents, and other areas that result in concentrated components of the *Sargassum*-dominated drift community, as well as the currents which carry turtles to *Sargassum*-dominated drift communities, which provide sufficient food resources and refugia to support the survival, growth, and development of post-hatchlings and surface-pelagic juveniles, and which are located in sufficient water depth (at least 10 m) to ensure offshore transport via ocean currents to areas which meet forage and refugia requirements." (88 FR 46581) However, NMFS does not give any details about the specific parameters of these "convergence zones, frontal zones, surface-water downwelling areas, the margins of major boundary currents, and other areas" to demonstrate that they are present in any or all of the areas proposed for critical habitat designation, other than the known fact that *Sargassum* mats do often exist in those locations. The simple existence of mats is does not provide a scientific study and analysis of the metocean features that are being proposed as the "essential feature". Moreover, the use of the term "other areas" is non-specific. However, the mats themselves are not a permanent essential feature of the ocean, so NMFS could not designate the *Sargassum* itself as the essential feature. Instead, NMFS has attempted to assert that metocean criteria allows *Sargassum* to be present, must be essential. In the draft critical habitat biological report section 4.2.3.3, NMFS has selected locations where surface-pelagic green turtles have been observed and used the argument that the presence of turtles in those locations equates to critical habitat. This does not meet the requirements of the ESA. The report does not provide evidence of a scientific study that analyzes the "convergence zones, frontal zones, surface-water downwelling areas, the margins of major boundary currents, and other areas" that allow *Sargassum* to thrive in these locations.

The Draft Biological Report relies upon three studies to conclude that the surface-pelagic foraging/resting features are essential, and they include: Witherington et al. (2012), Hardy et al. (2018), and Mansfield et al. (2021).

- Witherington et al. (2012) only surveyed turtles “within patches of consolidated floating material (mats, scattered patches, and drift lines) and between these patches” of *Sargassum*, with no comparable surveys in open ocean habitat without *Sargassum*. This study does not describe the relative importance of areas with *Sargassum*, compared to areas without *Sargassum*.
- Hardy et al. (2018) only maps where *Sargassum* could be detected via satellite in the northeastern GOM, with no mention of green sea turtles. This study does not address any aspect of the green sea turtle’s reliance on *Sargassum*.
- The Mansfield et al. (2021) study involved satellite-tracked captive-reared juvenile green sea

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turtles after they were deliberately placed in *Sargassum* mats off the coast of east Florida in the vicinity of the Gulf Stream. That study concludes: “Presently, the amount of time spent by individual oceanic-stage turtles in this habitat is unclear, and there are yet no empirical studies to determine if species differ in *Sargassum* habitat use and association.” The conclusion of Mansfield et al. (2021) is that the *Sargasso Sea* is an important developmental habitat for green sea turtles, **not** *Sargassum* itself.

None of these studies supports the proposed designation of the pelagic areas throughout the GOM as “critical habitat”, nor do they give a scientific discussion of the metocean features that create *Sargassum*, nor do they prove that the presence of *Sargassum* is “essential” to green sea turtles. Accordingly, the proposed designation of critical habitat based upon the presence of *Sargassum* lacks a rational basis and is not based on the best scientific and commercial data available, as required by the ESA.

Additionally, the Draft Biological Report does not consider the significant research that has been conducted to describe and quantify the distribution, abundance, and movement of pelagic *Sargassum* since 2011. *Sargassum* displays a distinct seasonal cycle in which biomass increases over the spring and early summer and decreases over late summer to winter (Putman and Hu, 2022). While *Sargassum* displays a seasonal cycle, green sea turtles must survive in the oceanic habitat for multiple years, which includes many months each year when *Sargassum* is either not present at all or extremely reduced. And when *Sargassum* is present, the amount and distribution vary significantly from year to year. The best available data show no correlation between the abundance or distribution of green sea turtles and the presence or location of *Sargassum*. As demonstrated in the Putman and Ireland (2023) review, the best available data show that even the largest amount of *Sargassum* ever recorded in the GOM would support only 58,000 turtles, which is clearly insufficient to account for the juvenile recruitment and continued population growth of the North Atlantic DPS.

### **3. Improper Inclusion of Galveston Bay**

NMFS’s proposed designation of critical habitat along the Texas coast to address the benthic foraging and resting essential feature should *not* extend to Galveston Bay because the best scientific and commercial data available show that Galveston Bay does not contain features that are essential to the species.

In the Proposed Rule, NMFS explains that, in identifying “specific areas” containing the benthic foraging/resting essential features, it “considered the best available data, including maps of seagrass coverage.” (88 FR 46583) However, “[b]ecause many areas within the range of the North Atlantic DPS contain seagrass, [NMFS] relied on the occurrence of benthic foraging/resting green turtles to determine which of these areas contain resources sufficient to support juvenile green turtles’ survival, development, and growth, and adults’ survival, migration, and reproduction.” (88 FR 46584) Accordingly, NMFS acknowledges that the benthic foraging/resting essential features exist only where seagrass and other resources are present in “sufficient” amounts to support green sea turtles. In other words, under NMFS’s analysis, there are no “essential features” where seagrass and other resources are not present in “sufficient” amounts, even though they may be present in lower quantities.

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As documented in the Putman and Ireland (2023) *Review of the Proposed Critical Habitat for the Green Sea Turtle North Atlantic Distinct Population Segment*, seagrass beds do not occur in Galveston Bay nor is there a significant distribution of seagrass around Galveston Bay. As acknowledged by NMFS in the Proposed Rule and Draft Biological Report, the best scientific and commercial data available show that areas with high seagrass coverage support larger numbers of green turtles. (NOAA/MNFS, 2023) This results in an increase in observed green sea turtles west of Galveston Bay across the Texas coast. And, consistent with the lack of seagrass in Galveston Bay, the best available data show that significantly fewer green turtles are present in Galveston Bay than in areas west of Galveston Bay. (Putman and Ireland, 2023)

*Sargassum* does frequently float off the coast of Galveston Island and Bolivar Peninsula; however, inside Galveston Bay there is a steady out-flow current that prevents non-motile floating matter such as *Sargassum* from entering Galveston Bay from the various natural watersheds that feed into Galveston Bay such as the Trinity River, San Jacinto River, and numerous creeks and bayous except under extreme conditions such as hurricanes.

In determining conservation value of an area, NMFS assigned ‘low conservation value’ to areas that support a relatively low number or density of foraging/resting individuals. As documented in the Putman and Ireland (2023) review, there are significantly fewer green sea turtles present in Galveston Bay than areas west of Galveston Bay. Therefore, Galveston Bay should be considered a low conservation value instead of the moderate conservation value of areas west and south of Galveston Bay, where green sea turtles are more abundant.

In summary, the best scientific and commercial data available show that seagrass beds do not occur in Galveston Bay and that green sea turtles do not occur there in significant numbers. (Putman and Ireland, 2023) This demonstrates that, by NMFS’s own standard, benthic foraging/resting features do not occur in Galveston Bay in “sufficient” amounts to support a conclusion that essential features “are found” in Galveston Bay. Accordingly, Galveston Bay does not meet the requirements for designation as critical habitat and should not be designated as such.

## **Conclusion**

In conclusion, OOC asserts that there is not enough scientific data to support this proposed designation of Critical Habitat for the Green Sea Turtle. OOC requests that NMFS withdraw the Proposed Rule and reissue a proposed rule in the future that complies with the ESA and its implementing regulations.

OOO encourages NMFS to also review the American Petroleum Institute (API) and EnerGeo's joint trades comment letter. In particular, we would like to call attention to the *Review of the Proposed Critical Habitat for the Green Turtle North Atlantic Distinct Population Segment*, prepared by LGL Ecological Research Associates (Putman and Ireland, 2023) that is submitted as a part of the API / EnerGeo comment letter.

OOO Comments – Critical Habitat for Green Sea Turtle  
Docket ID Number: NOAA–NMFS–2023–0087  
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We appreciate your consideration of these comments. Please do not hesitate to contact the undersigned with any questions at [steve@theooc.org](mailto:steve@theooc.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Hamm". The signature is fluid and cursive, with the first name "Steve" and last name "Hamm" clearly distinguishable.

Steve Hamm  
Associate Director  
Offshore Operators Committee

cc (via email):

Liz Klein, BOEM Director  
Kevin Sligh, BSEE Director

OOO Comments – Critical Habitat for Green Sea Turtle

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References:

Administrative Procedures Act, 5 USC §552(a)(1) (2011).

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Endangered and Threatened Wildlife and Plants: Proposed Rule To Designate Marine Critical Habitat for Six Distinct Population Segments of Green Sea Turtles, 88 FR 46572-46671 (July 19, 2023).

<https://www.federalregister.gov/documents/2023/07/19/2023-14109/endangered-and-threatened-wildlife-and-plants-proposed-rule-to-designate-marine-critical-habitat-for>

Endangered Species Act, 16 USC §1532 5(A)(i) (1973).

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