



August 20, 2021

Submitted via email

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RE: Generic Essential Fish Habitat Amendment for Modifying All Gulf of Mexico Fishery Management Plans (Amendment 5)

The Offshore Operators Committee (OOC), International Association of Geophysical Contractors (IAGC), the American Petroleum Institute (API), the International Association of Drilling Contractors (IADC), the National Ocean Industries Association (NOIA), and the Louisiana Mid-Continent Oil and Gas Association (LMOGA) (herein, the “Associations”) appreciate the opportunity to provide comments on the Generic Essential Fish Habitat (EFH) Amendment for Modifying All Gulf of Mexico (GOM) Fishery Management Plans (Amendment 5). It is our understanding that Amendment 5 is in the beginning phase of development and comments are presently being requested to assist the GOM Fishery Management Council (hereafter, “the Council”) in identification of issues, potential impacts, and reasonable solutions as the Council seeks to develop management actions and alternatives. The comments contained in this letter are submitted without prejudice to any of our members who may have differing or opposing views.

The Associations

The OOC is an offshore energy trade association that serves as a technical advocate for companies operating on the U.S. Outer-Continental Shelf. Founded in 1948, the OOC has evolved into the principal technical representative regarding regulation of offshore energy operations.

Founded in 1971, the IAGC is the global trade association for the geophysical and exploration industry, the cornerstone of the energy industry. With member companies in 50 countries, IAGC membership includes onshore and offshore survey operators and acquisition companies, data and processing providers, exploration and production companies, equipment and software manufacturers, industry suppliers, and service providers. Those companies represented by the IAGC conduct geophysical and exploration operations on behalf of oil and gas companies, governments, and alternative (sometimes referred to as renewable) energy developers.

API is a national trade association representing 600 member companies involved in all aspects of the oil and natural gas industry. API’s members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API

and its members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers.

Since 1940, IADC has exclusively represented the worldwide oil and gas drilling industry. IADC's contract-drilling members own most of the world's land and offshore drilling units that drill the vast majority of the wells producing the planet's oil and gas. IADC's membership also includes oil-and-gas producers, and manufacturers and suppliers of oilfield equipment and services. Through conferences, training seminars, print and electronic publications, and a comprehensive network of technical publications, IADC continually fosters education and communication within the upstream petroleum industry.

NOIA represents and advances a dynamic and growing offshore energy industry, providing solutions that support communities and protect our workers, the public and our environment. For nearly 50 years, NOIA has been committed to ensuring a strong, viable U.S. offshore energy industry capable of meeting the energy needs of our nation in an efficient and environmentally responsible manner. NOIA member companies are engaged in traditional oil and natural gas exploration and production, as well as offshore wind energy development. Further, NOIA's members include energy developers and, just as importantly, the businesses - large and small - who do the work of building, supplying, and servicing these projects.

Founded in 1923, LMOGA is Louisiana's longest standing trade association, exclusively representing all aspects of the oil and gas industry onshore and offshore, including exploration, production, mid-stream activities, pipeline, refining and marketing. LMOGA and our member companies are committed to safety and environmental protection.

Comments and Recommendations

Regulatory impact reviews require a broader lens to capture the full effect of Council actions

The Associations understand the Council's mission is to manage fishery resources in the federal waters of the GOM with the aim to achieve the greatest overall benefit to the nation by sustaining and maintaining responsible fisheries management. However, the GOM is not only a vital environmental resource for the nation, but a significant economic engine as well. Therefore, it is critically important that direct and indirect impacts to all GOM stakeholders from the Council's decisions are understood and considered. It is from this perspective that we offer the comments contained herein.

In evaluating previous regulatory impact reviews conducted by the Council (e.g., Coral Amendment 9), an adequate analysis of economic impacts on non-fishing activities in the GOM has not occurred. Cost-benefits to the regulated industries utilizing the GOM (oil and gas, marine transportation, renewable energy, the military, etc.) have historically not been well understood or developed by the Council. Even though fishing restrictions in previously proposed EFH or Habitat Areas of Particular Concern (HAPCs) do not directly affect offshore energy development, the indirect or secondary impacts of establishing such areas and requiring consultation from the Bureau of Ocean Energy Management (BOEM) on new lease sales and developments

have historically lacked rigor and robustness. In Generic EFH Amendment 3, the Council notes that absent designation, assessments of non-fishing activities “will continue under the Fish and Wildlife Coordination Act, though possibly not to the same level of scrutiny and without as clearly defined a consultation process.” In regard to HAPCs, The National Oceanic and Atmospheric Association (NOAA) states that:

*“Proposed development activities within HAPCs, such as energy or dredging projects, **will be more carefully scrutinized during consultations with NOAA, and may require extra study and mitigation planning compared to surrounding areas** (emphasis added)¹.”*

Impacts to the offshore energy industry can come in the form of regulatory uncertainty, delays in project approvals, and additional costs (and delays) associated with additive studies or mitigation measures. Any one of these may make a project unviable as companies operate in a competitive, capital intensive endeavor that shifts capital deployment to the most economical locations, both domestically and abroad.

Further still, no agency action operates in a vacuum. Many rules interact in tandem with other rules in what are often referred to as ‘interdependencies.’ As a result, the Council should review the impact of a rule in conjunction with other rules given that interdependencies between rule effects confound the validity of individual impact estimates that consider rules one-at-a time. This is more important in today’s regulatory environment than ever before. The cumulative impact of the Amendment may prevent or hinder economic activity more so than the substance of the Amendment itself. The Associations recommend:

- *The Council include a more comprehensive analysis of the potential impacts to offshore energy development (inclusive of renewable energy as well as traditional oil and natural gas), especially for any development of additional EFH or HAPCs. Better planning and collaboration with all potentially-impacted stakeholders during the designation process facilitates improved cooperation during EFH consultations. The Associations can assist with this type of comprehensive analysis by engaging subject matter experts from our member companies to participate in the consultation process.*
- *The Council consult with the BOEM to ensure credible conclusions about the impacts of this amendment on offshore energy development.*
- *When reviewing the impact of regulations and introduction of additional EFH or HAPCs, the Council should weigh the cumulative impacts to all uses (commercial, recreational and economic) of the GOM of any such Amendment.*

Development of a comprehensive strategy and objectives for GOM deep-water corals

¹ See, https://www.marinecadastre.gov/SiteCollectionDocuments/SoWhat_HAPCs_final_template.pdf

In comments submitted to the Council in 2018 and 2019 on Coral Amendment 9, the Associations expressed concern that there was no comprehensive strategy for management of deep-water coral resources in the GOM. This lack of a strategy has led to a piecemeal approach that confuses the rulemaking process through bifurcating agency actions which does not allow the public a full appreciation for the totality of the regulatory impact. Agencies in good faith should seek to avoid statutory ambiguity that may frustrate public involvement in the regulatory process and hamper consideration of economic impacts.

Recognizing that the recent evolution of coral protection in the GOM by the Council staff has been driven by at least some measure of providing additional restrictions on the energy industry (see previous comments), coupled with President Bidens Executive Order 14008 which seeks to conserve “at least 30 percent of our lands and waters by 2030” the Associations are concerned that this Amendment may advance under the banner of creating unnecessary additional protective designations that can have significant effects on the offshore energy industry. Therefore, the Associations recommend:

- *NMFS and the Gulf Council use this as an opportunity to “take a step back” and consider a comprehensive plan for GOM deep-water corals. The plan should be developed with input from all GOM stakeholders and be based on the best available scientific and economic information.*

Description and identification of EFH should not change

During the Council’s meeting on June 22, 2021, Dr. Hollensead presented a variety of approaches which could be taken into consideration in advancing The Generic EFH Amendment relating to mapping of EFH. The Associations support ocean exploration and mapping in support of sound ocean science, however, the Associations are concerned that the use of models that rely on a range of data of varying degrees of accuracy or completeness could lead to overly broad designations that are not representative of those habitats most important to species in the GOM. Dr. Hollensead even seemed to acknowledge this concern in discussing modelling noting that “...you can get these really overreaching descriptions of EFH such that for some species and life histories the entire EEZ is considered EFH.”

- *The Associations are proponents of **Alternative 2** which continues to utilize the same methods of habitat mapping and life history association tables to describe and identify EFH but draws on updates to habitat and life history attributes to include advances in research and technical information.*

Conclusion

The Associations are strong advocates for balancing resource protection and resource development needs and consideration of multiple and compatible uses in the GOM. We believe that environmental protection, safety at sea, and economic development can coexist and thrive. To that end, the GOM is proof that effective management of a national environmental resource and a significant economic and energy engine

can be achieved. For example, the presence of oil platforms and programs such as “Rigs to Reefs” have created substratum appropriate for the colonization of mesophotic corals along the northern GOM, increasing the expansion of these communities (Sammarco et al., 2004²; Brooks et al., 2012³). To maintain an effective balance of all interested parties, including the public, all potential interests must be considered in proposals. Thank you for this opportunity to provide constructive comments.

Sincerely,



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² Sammarco, P. W., Atchinson, A. D., and Boland, G. S. (2004). Expansion of coral communities within the northern Gulf of Mexico via offshore oil and gas platforms. *Mar. Ecol. Prog. Ser.* 280, 129–143. doi: 10.1371/journal.pone.0030144

³ Brooks, J. M., Fisher, C., Roberts, H., Cordes, E., Baums, I., Bernard, B., et al. (2012). *Exploration and Research of Northern Gulf of Mexico Deepwater Natural and Artificial Hard-Bottom Habitats With Emphasis on Coral Communities: Reefs, Rigs, and Wrecks - “Lophelia II” Interim Report*. New Orleans, LA: U.S. Department of the Interior, Bureau of Ocean Energy Management.

cc: Gulf of Mexico Fishery Management Council:

- Dr. Carrie Simmons, Executive Director
- Dr. John Froeschke, Deputy Director
- Dr. Thomas Frazer, Chair
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- Andy Strelcheck, Acting Regional Administrator, Southeast Regional Office