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RE: Offshore Operators Committee (OOC), Louisiana Mid-Continent Oil & Gas Association (LMOGA), and National Ocean Industries Association (NOIA) Recommendations  
Protection of Marine Archaeological Resources  
RIN 1010-AE11

The Offshore Operators Committee (OOC), Louisiana Mid-Continent Oil & Gas Association (LMOGA), and National Ocean Industries Association (NOIA) appreciates the opportunity to provide detailed recommendations and requests for clarification on potential changes to the Protection of Marine Archaeological Resources proposed rule. Comments submitted on behalf of OOC, LMOGA, and NOIA members are submitted without prejudice to any member's right to have or express different or opposing views. It is from this perspective that these recommendations have been developed.

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 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.

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.

OOC, LMOGA, and NOIA greatly appreciate BOEM's efforts developing the Proposed Rule and for providing this opportunity to comment. We believe the information included is important and critical to ensuring that a final rule is protective over our nation's archaeological resources while allowing for continued safe and effective development of our nation's offshore energy resources. However, there are many aspects of the Proposed Rule that are far too ambiguous and require additional definitions and clarifications, including the Regulatory Analysis. These details must be provided in order to allow stakeholders to properly evaluate the proposed rule, and how operators might comply with provisions that may be in a final rule. Therefore, OOC, LMOGA, and NOIA respectfully suggest BOEM utilize the feedback to this Proposed rule and garner additional stakeholder input to then issue another proposed rule that provides fair notice and will allow for solicit informed comments. Likewise, the attached comments are structured to include suggested edits, technical recommendations, and requests for clarification to the Proposed Rule.

In several places both BOEM's NTL 2005-G07 (Re-issued June 25, 2020) and "Guidance for Compliance with Mitigation 3.20 Avoidance of Archaeological Resources" (Avoidance Mitigation Document) conflict with the Proposed Rule without comprehensive incorporation of those documents into the Proposed Rule. Details on these conflicts are provided in the table below, and we request BOEM clarify whether NTL 2005-G07 and the Avoidance Mitigation Document will be rescinded upon issuance of a final rule.

OOC, LMOGA, and NOIA appreciate BOEM's efforts to safeguard our nation's archaeological resources and look forward to working with the agency on this important issue. If you have any questions or require additional information, please contact me.

Sincerely,

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<b>Chapter II Bureau of Ocean Energy Management Department of the Interior</b>			
<b>Subchapter B Offshore</b>			
<b>Part 550 Oil and Gas and Sulfur Operations in the Outer Continental Shelf</b>			
The authority citation for part 550 continues to read as follows:			
<b>Authority</b>			
30 U.S.C. 1751; 31 U.S.C. 9701; 33 U.S.C. 1321(j)(1)(C); 43 U.S.C. 1334.			
<b>New Regulation Citation Section</b>	<b>Current Rule</b>	<b>Proposed Rule</b>	<b>Comments</b>
<b>§ 550.105 Definitions</b>	Definitions <i>Archeological resource</i> means any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest.	<b>§ 550.105 Definitions.</b> * * * * * Archeological resource means the material remains of human life or activities that are at least 50 years of age and that are of archaeological interest, including any historic property described by the National Historic Preservation Act, as defined in 36 CFR 800.16(l). * * * * * *	OOC, LMOGA, & NOIA are requesting additional clarification on this expanded definition of an archeological resource.  <ul style="list-style-type: none"> <li>OOC, LMOGA, &amp; NOIA recommend BOEM specifically address whether it intends to rescind (or revise, and if so, how) NTL No. 2005-G07 and its Guidance for Compliance with Mitigation 3.20 upon issuance of a final rule.</li> </ul>
<b>§ 550.194(a)</b>	If the Regional Director has reason to believe that an archaeological resource may exist in the lease area, the Regional Director will require in writing that your EP, DOCD, or DPP be accompanied by an archaeological report. If the archaeological report suggests that an archaeological resource	<b>(a)</b> To protect archaeological resources, your EP, DOCD, or DPP, or any other request to obtain an authorization or permit from BOEM that involves disturbance of the seafloor, must be accompanied by or contain one of the following:	OOC, LMOGA, & NOIA recommend that BOEM retain its discretion through the “reason to believe” standard, and not change the existing regulatory text.  There is nothing under the current regulations preventing BOEM from identifying lease areas with potential archaeological resources that may exist in multiple lease areas, as they have done historically, while also excluding lease areas that, based on information BOEM has been provided over many decades, would not require additional reporting.  Instead, the Proposed Rule expressly assumes it would “protect archeological resources” by shifting the burden of proof onto the lessee

	<p>may be present, you must either:</p>		<p>through a default requirement that is both unreasonable and unnecessary to achieve the overall stated purpose.</p> <p>Instead of assuming – inconsistently with information BOEM currently possess – that every lease area may contains an archaeological resource and introducing a new need for lessees to submit requests for departure and for BOEM staff to process those requests, BOEM can utilize the information it has collected over decades of activity on the OCS to identify lease areas that should be excluded from the proposed requirements and which lease areas BOEM has “reason to believe” may contain archeological resources.</p> <p>If BOEM is unwilling to retain the current regulatory text in lieu of the proposed text, OOC, LMOGA, &amp; NOIA recommend BOEM remove the phrase “or any other request to obtain an authorization or permit from BOEM that involves disturbance of the seafloor” from proposed § 550.194(a).</p> <p>Further, if BOEM is unwilling to remove the phrase, BOEM should define specifically which authorizations and permits would be subject to the new requirement and re-release the proposed rule with such definition for additional public review and comment. To the degree that BOEM’s definition includes all or most permits or authorizations associated with offshore oil and gas exploration and production, BOEM should accordingly review and revise the regulatory impact analysis to reflect such broad applicability and include such revised analysis for public review and comment in the re-released proposed rule.</p>
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New Regulation Citation Section	Current Rule	Proposed Rule	Comments
§ 550.194(a)(2)	Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by operations. This requires further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques the Regional Director considers appropriate. You must submit the investigation report to the Regional Director for review.	<b>(a)(2)</b> a reference to an archaeological report based on a high-resolution geophysical survey of the APE that you previously submitted for your lease, provided that any previously submitted survey complies with the survey parameters identified in these regulations and the results of the survey are, in BOEM’s judgment, valid (BOEM may consider a survey or the resulting report to be invalid if BOEM suspects that changes to the seafloor environment warrant acquiring additional data, considering, for example, the time elapsed since the prior survey); or	<p>OOO, LMOGA, &amp; NOIA request BOEM strike the following from §550.194(a)(2):</p> <p><b>(a)(2)</b> a reference to an archaeological report based on a high-resolution geophysical survey of the APE that you previously submitted for your lease, provided that any previously submitted survey complies with the survey parameters identified in these regulations <del>and the results of the survey are, in BOEM’s judgment, valid (BOEM may consider a survey or the resulting report to be invalid if BOEM suspects that changes to the seafloor environment warrant acquiring additional data, considering, for example, the time elapsed since the prior survey); or</del></p> <p>Reasoning:</p> <ul style="list-style-type: none"> <li>• If the survey was conducted with an acceptable high resolution geophysical instrument and is compliant with the regulations, then the amount of time should not be important since anything of archeological interest would have been identified and an avoidance criterion could be applied or has already been applied.</li> <li>• 550.194(a)(2) is an example of confusion in the Proposed Rule. This section lacks clear parameters to determine what constitutes a “valid” survey valid. or how BOEM will make that determination. Instead, the Proposed Rule is vague.</li> </ul>
§ 550.194(a)(3)	N/A	<b>(a)(3)</b> evidence demonstrating to BOEM’s satisfaction that a reasonable and good faith effort to identify archaeological resources within the APE has already been performed, provided that the past efforts are sufficient to identify possible marine archaeological resources at a degree of certainty reasonably similar to or better than an HRG survey.	If an earlier survey was done that meets all requirements, then another survey does not need to be done.

New Regulation Citation Section	Current Rule	Proposed Rule	Comments
§ 550.194(c)	If you discover any archaeological resource while conducting operations in the lease or right-of-way area, you must immediately halt operations within the area of the discovery and report the discovery to the BOEM Regional Director. If investigations determine that the resource is significant, the Regional Director will tell you how to protect it.	<b>(c)</b> The geophysical survey resolution for the surveys described in paragraph (a) of this section must be sufficiently detailed to identify potential archaeological resources and must be performed using instrumentation and methodology that is state-of-the-art and that meets or exceeds scientific standards for conducting marine archaeological surveys. The surveys must, at a minimum, adhere to the following operational requirements and performance standards:	OOO, LMOGA, & NOIA requests clarification on the sea level change referenced in the preamble to the proposed rule. The preamble references a sea level change of 460 feet; however, guidance on BOEM's <a href="#">website</a> (Gulf Of Mexico Archaeological Information   Bureau of Ocean Energy Management (boem.gov) ) states a 200-foot sea level change. This variation of definition is significant and the preamble to the proposed rule requires surveys in water depths where no material remains of human life existed. BOEM should provide the scientific basis for this change. In addition, given the conflicts between the proposed rule and existing agency guidance, we recommend BOEM specifically address whether it intends to rescind (or revise, and if so, how) the agency guidance to integrate the proposed rule changes.
§ 550.194(c)(1)	<b>This was included in BOEM NTL No. 2005-G07, but only as a recommendation</b>	<b>(c)(1)</b> A state-of-the-art navigation system with sub-meter accuracy able to continuously determine the surface position of the survey vessel and in water position of towed and autonomous survey sensors. Position fixes must be digitally and continuously logged along the vessel track. Geodesy information must be clearly presented and consistent across all data types.	OOO, LMOGA, & NOIA recommend adding a statement to paragraph (c)(1) to clarify that navigation systems meeting the criteria outline in (c)(1) do not require approval by BOEM. The proposed additional text is as follows: "Navigation systems meeting the requirements of this paragraph do not require approval from BOEM."
§ 550.194(c)(2)	N/A	<b>(c)(2)</b> For geophysical surveys conducted in water depths of 100 meters (328 feet) or less, the survey must employ a total field magnetometer, gradiometer, or other similar instrument having equal or superior measurement capability. The magnetometer, gradiometer, or its equivalent must be towed as close to the seafloor as possible and sufficiently far from the vessel to isolate the sensor	OOO, LMOGA, & NOIA recommend the following revision to be consistent with NTL 2005-G007 and the preamble of the proposed rule:  The magnetometer, gradiometer, or its equivalent must be towed <del>as close to the seafloor as possible</del> <b>no higher than 20 feet above the sea floor</b> and sufficiently far from the vessel to isolate the sensor from the magnetic field of the survey vessel and the other survey instruments..."

		<p>from the magnetic field of the survey vessel and the other survey instruments.</p> <p>The magnetometer, gradiometer, or its equivalent must be towed at a sufficient altitude to detect ferrous metals or other magnetically susceptible materials of at least 1,000 pounds (453 kg) in mass with a minimum magnetic deflection of 5 gamma (g; 5 nanotesla [nT]), conducting archaeological surveys with a maximum lane spacing of 30 meters. An altimeter must be used to record the height of the magnetometer, gradiometer, or its equivalent in the water column. The altitude of the magnetometer, gradiometer, or its equivalent must be continuously recorded during data acquisition along the survey. The instrument's sensitivity must be 1.0 g (1.0 nT) or less. Background noise level must not exceed a total of 3.0 g peak to peak. The data sampling rate must be greater than 4.0 Hz to ensure sufficient data point density of at least 2 points per meter. All collected data must be recorded on a digital medium that can be linked electronically to the positioning data. Survey line, time, position, altitude, and speed must be annotated on all output data.</p>	
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New Regulation Citation Section	Current Rule	Proposed Rule	Comments
§ 550.194(c)(3)	N/A	<p><b>(c)(3)</b> For geophysical surveys conducted in water depths of 140 meters (459 ft) or less, a sub-bottom profiler system must be used to identify and map buried geomorphological features of archaeological potential that may exist within the horizontal and vertical APE, taking into account the geomorphology of the operational area and the parameters of the proposed project (including the maximum depth of disturbance from the proposed activities). The sub-bottom system must be capable of achieving a depth of penetration and resolution of vertical bed separation that is sufficient to allow for the identification and cross-track mapping of features of archaeological potential (e.g., shell middens, paleochannels, levees, inset terraces, paleolagoon systems). The sub-bottom profiler system employed must be capable of achieving a resolution of vertical bed separation of at least 0.3 meters (1 foot) in the uppermost 10 to 15 meters (33 to 50 feet) of sediments, depending on the substrate.</p>	<p>OOO, LMOGA, &amp; NOIA recommends that this section be removed.</p> <p>Reasoning: As mentioned in § 550.194(c), BOEM has already established the sea change height as 200 feet and any changes should reflect this.</p>

New Regulation Citation Section	Current Rule	Proposed Rule	Comments
§ 550.194(c)(4)		<p>(c)(4)In all water depths, a side-scan sonar or equivalent system must be used to provide continuous planimetric imagery of the seafloor to identify potential archaeological resources partly embedded in the seafloor. To provide sufficient resolution of seafloor features, BOEM requires the use of a system that operates at as high a frequency as practicable based on the factors of line spacing, instrument range, and water depth. The sonar system must resolve small, discrete targets 0.5 meters (1.6 feet) in length at maximum range. The instrument range must provide at least 100 percent overlapping coverage (i.e., 200 percent seafloor coverage) between adjacent primary survey lines. Greater than 200 percent overlapping coverage may be necessary to guarantee nadir coverage and account for survey vessel drift between lines, which may be an important consideration when surveying in deep water. The side-scan sonar sensor must be towed above the seafloor at a height that is 10 to 20 percent of the range of the instrument. Data must be digitally recorded and visually displayed to monitor data quality and identify targets of interest during acquisition. The data must be post-processed to improve data quality by, for example, adjusting for slant range effects and variable speed along line.</p>	<ul style="list-style-type: none"> <li>• The proposed rule requires that the ability to “resolve an object 0.5m in length” with side scan sonar. First, the language is unclear on what criteria are to be used for this (resolution vs detection, number of pings, along track/cross track, etc). Second, depending on the answers to the criteria, this may result in the wide line spacing surveys using 100kHz class sidescans on AUVs and in deeper towed scenarios becoming unusable. In order for survey companies to detect an object of that size, it may be necessary to run upwards of 50m line spacing in deeper water depth depending on AUV speed, ping rate, etc.</li> <li>• There is no mention in the proposed rule regarding line spacing in depths over 100m. Line spacing in these depths may now be contingent on the answer to the above if the 0.5m criteria goes into effect.</li> <li>• The proposed rule requires that a base station or gradiometer be used during solar storms. The base station requirement is unrealistic for GOM projects and the gradiometer array is an added expense in both upfront costs, added redundancy costs, added maintenance costs, increased down time, increased processing analysis time costs, etc.</li> </ul>



New Regulation Citation Section	Current Rule	Proposed Rule	Comments
§ 550.194(f)	N/A	<p><b>(f)</b> BOEM may reject any archeological report if the survey was not prepared in accordance with the requirements of paragraph (c) of this section or any BOEM-approved departure to the survey requirements. BOEM may also reject any archaeological report if the results produced from the survey do not meet the data and resolution requirements specified under paragraph (c) of this section, regardless of whether the survey was otherwise conducted appropriately.</p>	<p>There should be a grandfathering exception or delayed implementation on areas which were surveyed prior to the final rule but where work is conducted after the rule is issued.</p>
§ 550.195(a)	<p>Most previously addressed in NTL 2005-G07</p>	<p><b>(a)</b> If you discover any unanticipated archaeological resource while conducting operations on the lease or right-of-way area, you must immediately halt seafloor disturbing operations within at least 305 meters (1,000 feet) of the area of the discovery and report the discovery to the Regional Director within 72 hours.</p>	<p>NTL 2005-G07 states notification must occur within 48 hours; the proposed rule states 72 hours.</p> <p>Given the conflicts with existing agency guidance, OOC, LMOGA, &amp; NOIA recommends BOEM specifically address whether it intends to rescind (or revise, and if so, how) NTL No. 2005-G07 and its Guidance for Compliance with Mitigation 3.20 upon issuance of a final rule.</p>

New Regulation Citation Section	Current Rule	Proposed Rule	Comments
<p><b>Regulatory Impact Analysis and Information Collection Burden</b></p>	<p>N/A</p>	<p>N/A</p>	<p>BOEM states in the proposed rule that:                      “The burdens related to the submission of archaeological resource information are accounted for in OMB approved Control Number 1010–0151. Therefore, BOEM has determined there will likely not be an additional burden on industry with this proposed provision.”</p> <p>However, the recent request for re-approval for the revised OMB approved Control Number 1010–0151 for Plans (issued 3/3/23) has not been approved yet. Additionally, the comment period for that approval ends after the comment period for this proposed rule (5/2/23 vs. 4/17/23).</p> <p>In the request for re-approval – with revisions – BOEM provides burden-hour estimates for “shallow hazards surveys...G&amp;G, archaeological surveys &amp; reports (550.194)” (as well as for the time it takes an archaeologist to create reports). The burden hour estimates between this proposed rule and the re-approval of OMB approved Control Number 1010–0151 for Plans should be consistent.</p>