United States Department of the Interior

FISH AND WILDLIFE SERVICE
Louisiana Ecological Services
200 Dulles Drive
Lafayette, Louisiana 70506

April 26, 2021

Mr. Michael A. Celata
Regional Director, BOEM
Gulf of Mexico OCS Region
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123

Mr. Lars Herbst
Regional Director, Gulf of Mexico OCS Region
Bureau of Safety and Environmental Enforcement
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123

Dear Mr. Celata and Mr. Herbst:

Please reference Mr. Tré Glenn's February 12, 2021, electronic mail and attached biological evaluation (BE) for the Bureau of Ocean Energy Management's (BOEM) and Bureau of Safety and Environmental Enforcement's (BSEE) proposed oil and gas leasing, exploration, development, production, decommissioning, and all related activities in the Gulf of Mexico Outer Continental Shelf (OCS) within existing leased areas and those areas proposed for future leasing in the Western Planning Area (WPA), the Central Planning Area (CPA), and the Eastern Planning Area (EPA) on the threatened eastern black rail (*Laterallus jamaicensis jamaicensis*). With a mutual agreement to extend the Service's response date, the BOEM and BSEE request our review of and concurrence with their determination that the proposed activities are not likely to adversely affect the eastern black rail. We have reviewed the information provided and offer the following comments in accordance with provisions of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq).

**Proposed Action**

The proposed action area includes coastal waters of Texas (TX), Louisiana (LA), Mississippi (MS), Alabama (AL), and Florida (FL) where OCS oil and gas activities are expected to occur across the western, central, and eastern planning areas that are maintained by BOEM and BSEE. The WPA is primarily located within coastal waters of Texas, the CPA within coastal waters of Louisiana, Mississippi, and Alabama, and the EPA within coastal waters of Florida. The proposed action would allow for routine OCS oil and gas activities to continue within the WPA, CPA, and EPA. Activities include aircraft and vessel traffic, pipeline landfalls, terminals,

platforms, drilling, discharge, and removal operations. These activities facilitate existing or proposed oil and gas leasing, exploration, development, production, and decommissioning within the action area. Potential occurrence of marine debris resulting from OCS oil and gas activities are included for consideration regarding the proposed action.

Methods for carrying out these activities will follow previously established regulations or protocols in order to ensure compliance with safe operations. Vessels utilizing navigation waterways or corridors will adhere to U.S. Coast Guard regulations to limit vessel speeds within inland areas. Aircraft will adhere to altitude restrictions set forth by the Federal Aviation Administration while working offshore between platform sites or when flying over inland areas. Pipeline landfalls and terminals as well as other onshore infrastructure that result in wetland destruction or modification within the action area require mitigation or restoration as outlined by Section 404 of the Clean Water Act. Discharges, such as produced water, are restricted based on maximum allowable amounts permitted by the National Pollutant Discharge Elimination System. Additionally, daily monitoring will be performed by the permittee through a visual sheen test to maintain compliance with the allowable amounts of discharge. Marine debris that may occur from OCS oil and gas activities within the proposed action area have multiple regulations to prevent introduction of waste material. These include the BSEE regulation (NTL 2012-BSEE-G01) to prohibit improper disposal of equipment, the National Marine Fisheries Service's (NMFS) Gulf of Mexico Marine Trash and Debris Awareness and Elimination Survey Protocols, and the International Convention for the Prevention of Pollution from Ships (MARPOL).

**Effects Analysis**

*Eastern Black Rail*

Data for the eastern black rail (EBR) is limited and populations are not well defined throughout the species range. Within Louisiana, the EBR currently has nine identified coastal parishes where habitat may be suitable. Cameron and Vermillion Parish have known occurrence for the EBR while Iberia, St. Mary, Terrebonne, Lafourche, Jefferson, Plaquemines, and St. Bernard Parishes have potential for occurrence. Potentially disturbing activities from the proposed OCS oil and gas activities, such as noise disturbance, air pollution, habitat loss or degradation, and environmental contaminants, could impact the EBR or known/potential habitat. Protocols and regulations provided within the BE, such as those mentioned above, should reduce the potential for harmful effects to the EBR or lessen the impact of those effects if OCS oil and gas activities were to interact directly or indirectly with the species. As mentioned within the BE, oil spills that may occur from these activities have the greatest potential to impact coastal birds like the EBR. Oil that makes its way inland to the coastal parishes inhabited by the EBR or into suitable habitats could negatively impact the species by causing displacement, reduced survival, or direct mortality. However, the probability of such an event occurring as a result of OCS oil and gas activities is relatively low. The Oil Spill Risk Analysis (OSRA) model is utilized within the BE to calculate the probability of an accidental oil spill across the coastal counties or parishes of TX, LA, MS, AL, and FL. For the state of Louisiana, the probability of an accidental oil spill (≥1,000 bbl) occurring and contacting the shoreline within 10 to 30 days as a result of EPA and WPA OCS oil and gas activities are between 0.5 – 1 percent. For the CPA, the probability for LA is between 0.5 – 8 percent varying significantly across the parishes. The probability for oil

spills occurring and contacting LA offshore waters is similar for the WPA and EPA, but the CPA is much higher, between 2 – 25 percent. For the EBR, a marsh bird primarily utilizing inland habitats, the increased potential for impact to offshore waters should not be a significant risk to the species or its known/potential habitats within Louisiana's coastal parishes.

Eastern black rails are considered year-round residents along the Texas Gulf Coast. They are known to occur and breed from Jefferson County to Cameron County, with Texas having one of the highest known population numbers of eastern black rails throughout the species range. As previously mentioned, oil that makes its way inland to coastal Texas counties inhabited by the EBR or into suitable habitats could negatively impact the species by causing displacement, reduced survival, or direct mortality. However, the probability of such an event occurring as a result of OCS oil and gas activities is relatively low. The OSRA model is utilized within the BE to calculate the probability of an accidental oil spill across the coastal counties or parishes of TX, LA, MS, AL, and FL. For the state of Texas, the probability of an accidental oil spill (≥1,000 bbl) occurring and contacting the shoreline within 10 to 30 days as a result of CPA OCS oil and gas activities are between 0.5 – 4 percent. For the EPA, the probability for TX is less than 0.5 percent. However, for the WPA, the probability for TX is between 0.5 – 3 percent varying significantly across the coastline. Per the BE, the OSRA modeling results (10- and 30-day probabilities) indicate that a large spill (>1,000 bbl) in Federal offshore waters, should one occur, would have a 3 – 5 percent and 9 – 16 percent probability (from CPA), 5 – 8 percent and 8 – 14 percent probability (from WPA), and ≤ 0.5 percent probability (from EPA) of impacting Texas offshore waters. For the EBR, a marsh bird primarily utilizing inland habitats, the increased potential for impact to offshore waters should not be a significant risk to the species or its known/potential habitats within Texas coastal counties.

The eastern black rail occurs year-round in Florida and has potential for occurrence in Alabama and Mississippi. As mentioned previously, oil that makes its way inland to coastal Florida counties inhabited by the EBR or into suitable habitats could negatively impact the species by causing displacement. Oil that goes into potential habitat for the EBR, such as the coastal counties of Alabama and Mississippi, could negatively impact those habitats by causing degradation or habitat loss. However, the probability of such an event occurring as a result of OCS oil and gas activities is relatively low. The OSRA model is utilized within the BE to calculate the probability of an accidental oil spill across the coastal counties or parishes of TX, LA, MS, AL, and FL. For AL, MS, and FL, the probability of an accidental oil spill (≥1,000 bbl) occurring and contacting the shoreline within 10 to 30 days as a result CPA, EPA, and WPA OCS oil and gas activities are ≤ 0.5 percent. Per the BE, the OSRA modeling results (10- and 30-day probabilities) indicate that a large spill (>1,000 bbl) in Federal offshore waters, should one occur, would have between a 0.5 – 2 percent chance of impacting offshore waters of AL, MS, and FL as a result of CPA, EPA, and WPA OCS oil and gas activities. For the EBR, a marsh bird primarily utilizing inland habitats, the increased potential for impact to offshore waters should not be a significant risk to the species or its known/potential habitats within Alabama, Mississippi, and Florida.

The proposed OCS oil and gas activities within the WPA, CPA, and EPA could potentially impact the EBR or its habitat within coastal counties or parishes within TX, LA, MS, AL, and FL. Effects such as displacement in response to noise disturbance or reduced survival from oil

spills could occur from the aforementioned project activities. However, taking into consideration the protocols and regulations that will be implemented to reduce environmental impacts and the risk analyses demonstrating a low probability of oil spills that could significantly impact the species, the OCS oil and gas activities are not likely to adversely affect the eastern black rail. Accordingly, the Service concurs with your determination that implementation of the proposed action is not likely to adversely affect the eastern black rail.

We appreciate the cooperation exhibited by your agencies and look forward to future coordination with BOEM/BSEE in the conservation of endangered and threatened species in the Gulf of Mexico and adjacent coastal habitats. If you have any questions regarding this letter, please contact Joe Hodges (337-291-3109) of this office.

Sincerely,

BRIGETTE FIRMIN

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Brigette D. Firmin
Acting Field Supervisor
Louisiana Ecological Services Office

cc: FWS, Ecological Services, Houston, TX
FWS, Ecological Services, Jackson, MS
FWS, Ecological Service, Daphne, AL
FWS, Ecological Services, Panama City, FL
Tré Glenn, BOEM, New Orleans, LA
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Daniel Leedy, BSEE, New Orleans, LA

## LITERATURE CITED

Bureau of Ocean Energy Management (2012). Final Environmental Impact Statement Gulf of Mexico OCS Oil and Gas Lease Sales: 2012-2017. Gulf of Mexico OCS Region. New Orleans, LA.

U.S. Fish and Wildlife Service (2018). Species Status Assessment Report for the Eastern Black Rail (*Laterallus jamaicensis jamaicensis*). Region 4. Atlanta, GA.

U.S. Fish and Wildlife Service (2020). Endangered and Threatened Wildlife and Plants; Threatened Species Status for Eastern Black Rail with a Section 4(d) Rule. Region 4. Charleston, SC.