



UNITED STATES DEPARTMENT OF

COMMERCE

National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

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St. Petersburg, Florida 33701-5505

<https://www.fisheries.noaa.gov/region/southeast>

July 29, 2022

F/SER4:DD

Mr. Michael A. Celata, Regional Director
Bureau of Ocean Energy Management (BOEM)
Gulf of Mexico OCS Region (GM 670)
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394

Dear Mr. Celata:

NOAA's National Marine Fisheries Service (NMFS) has reviewed the Essential Fish Habitat (EFH) Assessment for Oil and Gas Activities in the Gulf of Mexico (BOEM 2022-032) dated May 2022.

Background

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires federal agencies to consult with the Secretary of Commerce, through NOAA's National Marine Fisheries Service (NMFS), with respect to "any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH identified under this Act." NMFS published the final rule implementing the EFH provisions of the Magnuson-Stevens Act on January 17, 2002. BOEM oversees the National Outer Continental Shelf Oil and Gas Leasing Program pursuant to Section 18 of the Outer Continental Shelf Lands Act (OCSLA). Certain activities authorized by BOEM may result in adverse effects to EFH and require consultation.

In 1999, our agencies consulted on a programmatic level to address EFH issues related to operational activities, including pipeline rights-of-way, plans for exploration and production, and platform removal in the Gulf of Mexico Central and Western Planning Areas. That programmatic EFH consultation was subsequently amended in 2007 to also include operational activities within a small portion of the Eastern Planning Area. Following the Mississippi Canyon Block 252 spill event in April 2010, BOEM requested re-initiation of Endangered Species Act consultation with both the U.S. Fish and Wildlife Service and NMFS. NMFS responded by letter dated September 24, 2010, requesting a review of the EFH consultation as well. At that time, regional NMFS and BOEM staff agreed to procedures which would incorporate a programmatic EFH consultation within the National Environmental Policy Act (NEPA) document prepared for the 2012-2017 five-year multi-lease sale program. Another EFH Assessment was prepared for the 2017-2022 program.

Proposed Actions

The proposed actions addressed in the BOEM EFH Assessment include reasonably foreseeable oil and gas activities on the Gulf of Mexico's Outer Continental Shelf (OCS), including proposed



lease sales and activities related to exploration, development, production, and decommissioning, including, but not limited to, geological and geophysical (G&G) activities, drilling, construction, support, removal, and site clearance operations. Related activities not occurring on the OCS, such as inshore and onshore activities (e.g., vessel traffic, navigation channel maintenance, and new pipeline landfalls) are also addressed and assessed for potential impacts to EFH and federally managed fisheries species (i.e., species managed under a fisheries management plan (FMP)) in the Gulf of Mexico.

EFH Assessment

Section 2.0 of the BOEM EFH Assessment details measures implemented through operating regulations, lease stipulations, Notices to Lessees and Operators (NTLs), and project-specific requirements or conditions of approval to minimize potential impacts on EFH that could result from BOEM-regulated activities on the OCS. Such measures also address concerns related to endangered and threatened species, geologic and human made hazards, military warning and ordnance disposal areas, archaeological sites, air and water quality, sensitive benthic communities, artificial reefs, operations in hydrogen sulfide prone areas, and shunting of drill effluents in the vicinity of biologically sensitive features. Additionally, BOEM reviews proposed activities for compliance with regulatory requirements and applies conditions of approval as needed. Section 5.0 describes how mitigation measures are applied in specific categories of EFH. Section 8.0 provides the views of BOEM on the effects of regulated activities and proposed mitigation measures to avoid and minimize the potential for adverse effects to EFH and managed species.

To ensure adverse impacts to EFH and federally managed fisheries from activities managed by BOEM Gulf of Mexico Region are avoided, minimized, and offset, the implementation of EFH conservation measures is necessary.

EFH Conservation Recommendations

1. The NMFS incorporates by reference and adopts the mitigation measures described in Section 2.0 and 5.0 as EFH conservation recommendations. Those measures are based on prior programmatic EFH consultations between BOEM and NMFS and specifically include the following NTLs:
 - a. NTL 2009-G39; Biologically-Sensitive Underwater Features and Areas including the Topographic Features and Live-Bottom (Pinnacle Trend) Stipulations. This NTL protects and minimizes impacts to sensitive topographic features, pinnacle trend features, and low relief, potentially sensitive features through avoidance and exclusion zones.
 - i. The Topographic Features Stipulation minimizes potential impacts on topographic features from bottom-disturbing activities (structure removal and emplacement) and operational discharges associated with the proposed action through avoidance, by requiring individual activities to be located at specified

distances from the feature or zone.

- ii. The Live-Bottom (Pinnacle Trend) Stipulation minimizes the potential impacts from oil and gas operations, including accidental oil spills and blowouts, on the biota of Pinnacle Trend features by increasing the distance of such events from the features.
 - b. NTL 2009-G40 Deepwater Benthic Communities. This NTL greatly reduces the risk of physical impacts by requiring the avoidance of potential chemosynthetic communities. It includes requirements to avoid potential chemosynthetic communities identified on required geophysical survey records or photo-documentation to establish the absence of potential hard-bottom communities prior to approval of the structure emplacement. BOEM Gulf of Mexico Region shall initiate project-specific EFH consultation with NMFS whenever a shorter separation distance is proposed for seafloor disturbing activities and BOEM determines this may result in adverse effects to EFH.
2. NTL 2015-G03 Marine Trash and Debris Awareness and Elimination is adopted as an EFH conservation recommendation. This NTL describes Bureau of Safety and Environmental Enforcement's (BSEE) requirements for prevention of marine debris from oil- and gas-related activities and outlines annual training and reporting requirements.
 3. NTL 2009-G04 Significant OCS Sediment Resources of the Gulf of Mexico is adopted as an EFH conservation recommendation. This NTL identifies BOEM's responsibility as stewards of significant sand resources on the OCS and provides guidance for the avoidance and protection of significant OCS sediment resources essential to coastal restoration initiatives in the Gulf of Mexico. Additionally, this NTL discourages abandoning pipelines in areas with significant sediment resources. OCS sediment resources are necessary for coastal resiliency and restoration projects and programs, which can protect and restore EFH.
 4. NTL 2009-G34 Ancillary Activities is adopted as an EFH conservation recommendation. This NTL provides guidance on conducting ancillary activities that disturb the seafloor in the Gulf of Mexico OCS.
 5. NTL 2008-G05 Shallow Hazards Program is adopted as an EFH conservation recommendation. This NTL describes surveys, reports, analyses, and mitigation to ensure exploration, development, production, and transportation operations are conducted with a minimum risk to human life and the environment.
 6. NTL 2019-G05 Site Clearance and Verification for Decommissioned Wells, Platforms, and Other Facilities is adopted as an EFH conservation recommendation. This NTL ensures that any object (i.e., wellheads, platforms, etc.) installed on an OCS lease is properly removed and the site cleared so as not to conflict with other uses of the OCS.
 7. NTL 2009-G27 Submitting Exploration Plans and Development Operations Coordination Documents is adopted as an EFH conservation recommendation. This NTL provides policy

for revising OCS plans when operators propose to change approved anchor patterns or anchor areas.

8. NTL 2012-N06 Guidance to Owners and Operators of Offshore Facilities Seaward of the Coast Line Concerning Regional Oil Spill Response Plans is adopted as an EFH conservation recommendation. This NTL provides guidance concerning the preparation of regional Oil Spill Response Plans.
9. BOEM continue to provide NMFS with yearly summaries describing:
 - a. The number and type of permits issued in each planning area each year and describing the number and type of activities located in the Live-Bottom (Pinnacle Trend) and Topographic Features blocks for that year.
 - b. The decommissioning activities completed in Live-Bottom (Pinnacle Trend) and Topographic Features blocks for that year.
 - c. The number of seismic surveys proposing to utilize ocean-bottom surveys that year.
 - d. The number of and/or miles of decommissioned pipelines including the number of waivers, if any, granted for the burial requirement, thereby allowing self-burial that year.

Please be advised the Magnuson-Stevens Act and the regulations to implement the EFH provisions (50 CFR Section 600.920) require your office to provide a written response to this letter. That response must be provided within 30 days and at least 10 days prior to final agency action. A preliminary response is acceptable if final action cannot be completed within 30 days. Your final response must include a description of measures to be required to avoid, mitigate, or offset the adverse impacts of the activity. If your response is inconsistent with our EFH conservation recommendation(s), you must provide an explanation of the reasons for not implementing those recommendation(s).

Review and Revision

BOEM requests this EFH consultation not be tied to a specific five-year OCS Leasing Program but rather to focus on the suite of BOEM and BSEE authorized activities associated with any National OCS Leasing Program. If any modifications are made to BOEM or BSEE programs, site and activity specific review procedures, lease stipulations, and NTLs described in the EFH Assessment that result in changes to potential adverse effects on EFH, the BOEM Gulf of Mexico Region should notify the NMFS Southeast Region Habitat Conservation Division to initiate discussions regarding the necessity to modify this EFH consultation.

Reinitiation will occur as necessary, such as when NMFS and BOEM jointly agree to reinitiate consultation, when BOEM significantly alters the proposed action, or upon meeting conditions for site-specific EFH consultation. In addition, BOEM subject-matter experts routinely review activities for proposed technologies, methods, locations, and other sources of potential effects to species and habitats. This process includes concurrent reviews for circumstances that could result in the initiation of site-specific EFH consultation as determined by the above EFH conservation recommendations. BOEM will continue to evaluate and assess risks to federally managed species and EFH in upcoming environmental compliance documentation under NEPA

and other statutes based on the most recent and best available information. Additionally, BOEM currently has an environmental study underway in the northern Gulf of Mexico investigating pipeline displacement for both active and abandoned pipeline segments. If new or additional information affecting EFH conservation recommendations becomes available, NMFS will consider whether to request additional consultation with BOEM and/or provide additional EFH conservation recommendations.

Finally, NMFS advises BOEM that at this time the Gulf of Mexico Fishery Management Council in the early phases of amending EFH information in their FMPs and the NMFS Highly Migratory Species Management Branch released Amendment 10 to the 2006 Consolidated Atlantic Highly Migratory Species FMP in 2017 updating EFH information from the 2009 Final Amendment 1 referenced in the BOEM EFH Assessment.

Thank you for your consideration of these recommendations. If we can be of further assistance, please do not hesitate to contact David Dale at 727-824-5317 or by email at david.dale@noaa.gov.

Sincerely,

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Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc: via electronic mail
F/SER4 – Swafford
GMFMC – Simmons
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