

**Flower Garden Banks National Marine Sanctuary  
Final Environmental Impact Statement Consultation and Cooperating  
Agency Documents**

**December 2020**

## List of Acronyms

ADCNR	Alabama Department of Conservation and Natural Resources
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
CZMA	Coastal Zone Management Act
DEIS	Draft Environmental Impact Statement
FGBNMS	Flower Garden Banks National Marine Sanctuary
NHPA	National Historic Preservation Act of 1966
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
SERO	Southeast Regional Office
USFWS	United States Fish and Wildlife Service

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A number of Federal agencies provide regulatory oversight to the resources within or near FGBNMS and the proposed expansion areas. Correspondence related to interagency coordination and consultation that NOAA completed as part of this analysis are included in this document. **Teal** text indicates the agency, while **black** text describes the consultation. Each letter is bookmarked to this table of contents for ease of navigation.

1. [NOAA/NMFS/SERO, Habitat Conservation Division](#); Essential Fish Habitat Consultation: FGBNMS Proposed Boundary Expansion and DEIS
2. [NMFS Southeast Regional Office, Habitat Conservation Division](#); Essential Fish Habitat General Concurrence
3. [Alan Risenhoover, Office of Sustainable Fisheries](#); Letter of Comment FGBNMS Proposed Sanctuary Expansion
4. [Gulf of Mexico Fishery Management Council](#); Comments on Proposed Regulations for the DEIS Sanctuary Expansion
5. [Gulf of Mexico Fishery Management Council](#); Revised Comments on Proposed Regulations for the DEIS Sanctuary Expansion
6. [Gulf of Mexico Fishery Management Council](#); Clarification of the regulatory language for the possession of fishing gear while transiting without interruption through Sanctuary designated areas
7. [USFWS Southeast Regional Office](#); FGBNMS Proposed Boundary Expansion and DEIS – ESA Section 7 Consultation
8. [USFWS Southwest Regional Office](#); FGBNMS Proposed Boundary Expansion and DEIS – ESA Section 7 Consultation
9. [NMFS Office of Protected Resources](#); FGBNMS Proposed Boundary Expansion and DEIS – ESA Consultation
10. [NOAA NMFS Southeast Regional Office](#); FGBNMS Proposed Boundary Expansion
11. [NMFS Protected Resources Division, Southeast Regional Office](#); Expedited ESA Consultation Request for FGBNMS
  - 11a. [NMFS Southeast Regional Office](#); FGBNMS, Gulf of Mexico – EXPEDITED TRACK
12. [USFWS Texas Coastal Ecological Services Field Office](#); List of Threatened and Endangered Species that may occur in your proposed project location [FGBNMS Proposed Expansion], and/or may be affected by your proposed project
13. [Department of Environmental Management, Alabama](#); FGBNMS Proposed Boundary Expansion and DEIS – Request for Information to Prepare CZMA Consistency Determination
14. [ADCNR 5 Rivers Delta Resource Center, Alabama](#); FGBNMS Proposed Boundary Expansion and DEIS – Request for Information to Prepare CZMA Consistency Determination
15. [State Lands Division, ADCNR, Alabama](#); FGBNMS Proposed Expansion – Request for CZMA Consistency Determination
16. [Florida Coastal Office Department of Environmental Protection, Florida](#); FGBNMS Proposed Boundary Expansion and DEIS – Request for Information to Prepare CZMA Consistency Determination
17. [Office of Resilience and Coastal Protection, Florida Department of Environmental Protection, Florida](#); FGBNMS Proposed Expansion – Request for CZMA Consistency Determination

18. [Department of Natural Resources, Louisiana](#); FGBNMS Proposed Boundary Expansion and DEIS – Request for Information to Prepare CZMA Consistency Determination
19. [State of Louisiana, Department of Natural Resources, Office of Coastal Management](#); FGBNMS Proposed Boundary Expansion Coastal Zone Consistency
20. [Office of Coastal Management, Department of Natural Resources, Louisiana](#); FGBNMS Proposed Expansion – Request for CZMA Negative Determination
21. [Mississippi Coastal Program, Department of Marine Resources](#); FGBNMS Proposed Boundary Expansion and DEIS – Request for Information to Prepare CZMA Consistency Determination
22. [Mississippi Department of Marine Resources](#); Proposed FGBNMS Boundary Expansion and Draft EIS
23. [Office of Coastal Resources Management, Mississippi Department of Marine Resources](#); FGBNMS Proposed Expansion – Request for CZMA Consistency Determination
24. [Coastal Resiliency and Recovery, Texas General Land Office](#); FGBNMS Boundary Expansion and DEIS – Request for Information to Prepare CZMA Consistency Determination
25. [Texas General Land Office](#); FGBNMS Expansion
26. [Texas Coastal Management Program, Coastal Resources Division, Texas General Land Office](#); FGBNMS Proposed Expansion – Request for CZMA Negative Determination
27. [Department of Interior, BOEM](#); Cooperating Agency Agreement
28. [Department of Interior, BSEE](#); Cooperating Agency Agreement
29. [Department of Interior, BOEM](#); Review of Offshore Energy and Mineral Resources, Potential Expansion of FGBNMS
30. [Advisory Council on Historic Preservation](#); FGBNMS Proposed Boundary Expansion and DEIS – NHPA Section 106 Consultation
31. [State of Louisiana, Department of Natural Resources, Office of Coastal Management](#); Coastal Zone Consistency Expansion of the FGBNMS Offshore Louisiana
32. [Florida Department of Environmental Protection](#); FGBNMS Proposed Expansion - Request for CZMA Consistency Determination - FL202011179084C
33. [Alabama Department of Environmental Management](#); FGBNMS Expansion - CZMA Determination
34. [Texas General Land Office](#); FGBNMS Expansion CMP#:21-0999-F2



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

Date: July 7, 2016

From: G. P. Schmahl  
Superintendent  
Flower Garden Banks National Marine Sanctuary

To: Rusty Swafford  
Gulf of Mexico Branch Supervisor  
NOAA/NMFS/SERO, Habitat Conservation Division

Subject: Essential Fish Habitat Consultation: Flower Garden Banks National Marine Sanctuary Proposed Boundary Expansion and Draft Environmental Impact Statement

The purpose of this memorandum is to ensure compliance with the Essential Fish habitat (EFH) conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA, 16 U.S.C. 1801 et seq.). In fulfillment of those requirements, the Flower Garden Banks National Marine Sanctuary (FGBNMS) is providing its EFH Assessment for the subject FGBNMS boundary expansion proposal as documented in the enclosed Draft Environmental Impact Statement (DEIS), and is requesting initiation of consultation. The DEIS analyzes proposed actions to expand the FGBNMS and to apply the existing sanctuary regulations and management regime to the expanded area. NOAA's preferred alternative (Alternative 3) would add 15 additional bank and reef areas to FGBNMS, which would expand the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the north central Gulf of Mexico. These areas are from 70 to 120 miles off-shore and are comprised of reefs and bottom features that provide important habitat for fish and other biological resources that are essential components of the regional Gulf of Mexico ecosystem.

Categories of EFH in the vicinity of the expansion alternatives include non-vegetated marine mud, sand, shell, rock substrates, live hard bottoms, corals and coral reefs, continental shelf and geologic features and marine water column (see section 4.3.2 and Appendix D). Habitat Areas of Particular Concern (HAPCs) have been designated in the area of proposed alternatives at individual reefs and banks of the northwestern Gulf of Mexico: East and West Flower Garden Banks, Stetson Bank, Sonnier Bank, MacNeil Bank, 29 Fathom, Rankin/Bright Bank, Geyer Bank, McGrail Bank, Bouma Bank, Rezak/Sidner Bank, Alderdice Bank and Jakkula Bank. Coral HAPC designations have been made for East Flower Garden Bank, West Flower Garden Bank, Stetson Bank and McGrail Bank. This designation carries with it restrictions on anchoring and gear type (e.g., pots, traps and bottom-tending gear types are prohibited). Additional coral HAPC designations in the study area are under consideration by the Gulf of Mexico Fishery Management Council (GMFMC).



In addition to being designated EFHs for federally managed species, the areas of the proposed expansion alternatives also provide nursery and forage habitats that support various life stages of ecologically and recreationally important marine fish species. These species serve as prey for other fish managed under the MSA by the GMFMC (e.g., mackerels, snappers and groupers) and for highly migratory species managed by the National Marine Fisheries Service (NMFS) (e.g., billfishes and sharks). Habitats within the proposed expansion areas also provide important fishery support functions, such as a physically recognizable structure and substrate for refuge and attachment above and/or below the sediment surface. Moreover, the expansion alternatives include areas that provide habitat for many benthic animals, including marine worms and crustaceans, which are consumed by higher trophic level predators. Benthic organisms also have a key role in the food web because they (1) mineralize organic matter, releasing important nutrients to be reused by primary producers; (2) act as trophic links between primary producers and primary consumers; and (3) aggregate dissolved organics within marine waters, which are another source of particulate matter for primary consumers.

Pursuant to section 600.920 (e)(3) of the Rules and Regulations for implementing the Magnuson-Stevens Fishery Conservation and Management Act, the FGBNMS provides the following information.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and apply existing sanctuary regulations and management actions to these newly expanded areas. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed action. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed “Flower Gardens Bank National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement” (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122. The DEIS is also available at <http://flowergarden.noaa.gov/management/expansiondeis.html>.

The need for the proposed action is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA’s evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed action would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

The need for expansion has been strongly supported in public scoping for both that management plan review and for the enclosed DEIS. The evaluation of important



marine resources and the incorporation of places of national significance into the National Marine Sanctuary System further national ocean resource management objectives articulated by many publicly vetted and expert-driven strategic planning efforts. These efforts reference the need for additional protections for important habitat areas nationally and in the northern Gulf of Mexico. These include the recommendations made in NOAA's 2010 Strategic Plan for Deep-Sea Coral and Sponge Ecosystems. Specific recommendations focused on the application of conservation measures in the Gulf of Mexico region, including those made in the Gulf Coast Ecosystem Restoration Task Force's 2011 Gulf of Mexico Regional Ecosystem Restoration Strategy and reiterated by a variety of constituencies such as the Gulf Coast Ecosystem Restoration Council (2013), the Gulf of Mexico Alliance (2006, 2009), non-governmental organizations and coalitions (e.g., Brown et al. 2011), and the academic community (e.g., Peterson et al. 2011). Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region. There is significant concern about impacts from bottom-disturbing activities (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities) on the sensitive biological resources and geological features associated with many reefs and banks in the area.

Based on the preceding information, prior informal consultation with your office, and the information and findings provided in the enclosed DEIS, FGBNMS has determined that sanctuary designation in areas to which FGBNMS boundaries are proposed to be expanded supports the goals of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as reauthorized by the Sustainable Fisheries Act of 1996 (see sections 5.3.1, 5.3.2.7, 5.3.4.3, and particularly page 5-35 in section 5.3.7 of the DEIS). This is done by protecting Essential Fish Habitat (EFH) and contributing to the conservation and management of species managed by the National Marine Fisheries Service (NMFS) and the Gulf of Mexico Fishery Management Council (GMFMC). The proposed sanctuary boundary expansion will conserve and improve the resiliency of categories of EFH that have undergone significant degradation in the north central Gulf of Mexico. The proposed sanctuary expansion will benefit the overall Gulf of Mexico ecosystem in terms of habitat extent, integrity, and diversity, including EFH and other important habitats in the region.

Please advise if additional information or assistance is needed.





**UNITED STATES DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration

**NATIONAL MARINE FISHERIES SERVICE**

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

**NATIONAL MARINE FISHERIES SERVICE  
SOUTHEAST REGIONAL OFFICE, HABITAT CONSERVATION DIVISION  
ESSENTIAL FISH HABITAT GENERAL CONCURRENCE  
FOR CERTAIN FIELD OPERATIONS IN THE SOUTHEAST AND GULF OF MEXICO NATIONAL  
MARINE SANCTUARIES**

**PURPOSE:** To efficiently conduct essential fish habitat (EFH) consultations required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for certain field operations supporting research and management activities at Gray's Reef National Marine Sanctuary, Florida Keys National Marine Sanctuary, and the Flower Garden Banks National Marine Sanctuary.

**BACKGROUND:** The Magnuson-Stevens Act requires federal agencies involved in permitting (or licensing), funding, or undertaking actions which may adversely impact EFH to consult with the National Marine Fisheries Service (NMFS) regarding their activities' impacts on EFH. For certain types of actions resulting in no more than minimal adverse effects to EFH individually and cumulatively, NMFS may issue a statement of General Concurrence in accordance with the requirements of 50 CFR 600.920(g).

NOAA's National Ocean Service Office of National Marine Sanctuaries (ONMS) has prepared a Programmatic Environmental Assessment (PEA) of Field Operations in the Southeast and Gulf of Mexico which describes research and management activities occurring at the three sanctuaries in the southeastern United States. General Concurrence has been requested for those activities.

**QUALIFYING CRITERIA:** In order for federal actions to qualify for a General Concurrence, NMFS must determine the following criteria of 50 CFR 600.920(g)(2) are met:

**The actions must be similar in nature and similar in their impact on EFH (50 CFR 600.920(g)(2)(i)(A)):** Section 2.0 (Description of Proposed Action and Alternatives) of the ONMS-prepared PEA describes the field operations supporting research and management activities at the three sanctuaries in the southeastern United States.

**The actions must not cause greater than minimal adverse effects on EFH when implemented individually (50 CFR 600.920(g)(2)(i)(B)):** Section 4.0 (Environmental Consequences) of the ONMS-prepared PEA describes the effects of the field operations supporting research and management activities at the three sanctuaries in the southeastern United States. Mitigative measures (e.g., best management practices, training protocols, NOAA Small Boat Program Guidelines) undertaken by ONMS staff and contractors are also described in Sections 2.0 (Description of Proposed Action and Alternatives), 4.0 (Environmental Consequences) and 5.0 (Consultations).

**The actions must not cause greater than minimal cumulative adverse effects on EFH (50 CFR 600.920(g)(2)(i)(C)):** Section 2.0 (Description of Proposed Action and Alternatives) and Section 4.0 (Environmental Consequences) of the ONMS-prepared PEA describes annual average frequency of field operations supporting research and management activities at the three sanctuaries in the southeastern United States. Section 4.0 (Environmental Consequences) also includes an analysis of the cumulative effects of the proposed activities; cumulative impacts are expected to be minimal.

**Actions qualifying for a General Concurrence must be tracked to ensure their cumulative effects are no more than minimal (50 CFR 600.920(g)(2)(ii)):** In Section 5.0 (Consultations) of the ONMS-prepared PEA, the ONMS indicates it will notify NMFS of any proposed changes to field operations which may result in adverse effects on EFH to determine if individual consultation is required or if this General Concurrence requires revision. Additionally, the ONMS will provide NMFS an annual report of all field operations undertaken under the PEA. See Notification procedure below.

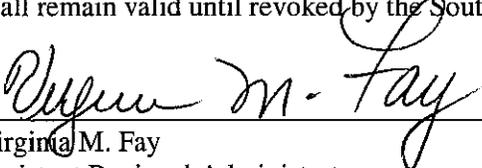
**GENERAL CONCURRENCE:** Based on the above, and NMFS review of the ONMS request and supporting environmental analysis, the NMFS has determined most research and management activities at the three sanctuaries in the southeastern United States are authorized for EFH General Concurrence to include: vessel operations; diving and snorkel operations; deployment of autonomous and remotely operated vehicles, drifters, and gliders; deployment of sampling equipment on the seafloor; and other sampling activities described in the PEA.

**Exclusions:** The NMFS has determined the following ONMS activities are not authorized for EFH General Concurrence and require individual EFH consultation:

- Activities requiring an individual permit or letter of permission, and an associated EFH consultation, from the U.S. Army Corps of Engineers. Consultation for these activities will be coordinated with the U.S. Army Corps of Engineers.
- Coral restoration activities proposing the harvest of healthy (undamaged) or non-nursery corals. EFH consultation for these activities will be addressed on a project-by-project basis in conjunction with the NMSA permit process, unless a separate programmatic consultation is sought.
- Seagrass restoration activities proposing the harvest and relocation of seagrass from non-nursery donor sites. EFH consultation for these activities will be addressed on a project-by-project basis in conjunction with the NMSA permit process, unless a separate programmatic consultation is sought.
- Non-emergency removal of grounded vessels and large debris requiring motorized equipment that may alter the surrounding environment or may further adversely impact the substrate upon which the vessel or marine debris was originally found during the removal process. Emergency removal of grounded vessel and large debris, causing further damage will be addressed on a case-by-case basis pursuant to 50 CFR 600.920.

**NOTIFICATION:** ONMS shall notify the Habitat Conservation Division, and provide annual reports of all field operations undertaken under the PEA, to [nmfs.ser.efhgeneralconcurrence@noaa.gov](mailto:nmfs.ser.efhgeneralconcurrence@noaa.gov).

**EFFECTIVE DATES:** NMFS will periodically review its findings of General Concurrence and may revise or revoke a General Concurrence if new information indicates the covered actions are having more than minimal adverse effects on EFH. This General Concurrence becomes effective on the date signed below and shall remain valid until revoked by the Southeast Regional Office Habitat Conservation Division.

  
\_\_\_\_\_  
Virginia M. Fay  
Assistant Regional Administrator  
Habitat Conservation Division

September 28, 2016



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

**AUG 17 2016**

George (G.P.) Schmahl  
Superintendent  
NOAA / Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Building 216  
Galveston, TX 77551

RE: Flower Garden Banks National Marine Sanctuary Proposed Sanctuary Expansion

Dear G.P.:

This letter provides comments regarding potential effects on Atlantic Highly Migratory Species (HMS) fisheries in the Gulf of Mexico from the proposal to add 15 additional banks (11 discrete boundary areas) to the Flower Garden Banks National Marine Sanctuary (NMS). These additional banks range from 70 to 120 miles off-shore and comprise approximately 383 square miles of additional reefs and bottom features that provide habitat for fish and other biological resources. We also understand that the preferred alternative proposes to extend the existing protections of Flower Garden Banks NMS to these additional areas to limit the impact of bottom-disturbing activities on their sensitive biological resources and geological features.

Existing protections for the Flower Garden Banks NMS includes a prohibition on fishing except for the use of conventional hook and line gear. Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or electrically operated, hand-held or mounted.

Several fishing gears used in HMS fisheries meet the definition of conventional hook and line gear, thus would be allowed for use in the additional banks; however, pelagic longline would not meet the definition. Pelagic longline is used to target yellowfin tuna and swordfish in the Gulf of Mexico. Prohibiting pelagic longline in the additional banks is concerning because most of these areas are currently important fishing areas in the HMS pelagic longline fishery. Pelagic longline is fished with mainlines that extend tens of miles in length and drift on ocean currents in the upper portion of the water column. Pelagic longline gear does not come into contact with the ocean floor or benthic habitats. Because pelagic longline extends over such a long distance, it is likely that drifting gear may enter one or more of the small additional banks and, the more banks there are, the more likely the gear is to drift into a restricted area. Thus, the total area of the 15 additional banks may seem relatively small, but the cumulative effect on large-scale fishing gear like pelagic longline would be much greater.

The HMS pelagic longline fishery is a well-regulated fishery that provides employment for many people in the Gulf of Mexico. It is subject to Vessel Monitoring System requirements and other regulations.



Because pelagic longline gear does not come into contact with the ocean floor or benthic habitats or in any way harms corals, we request that an exemption for pelagic longline gear be added to the current exemption for conventional hook and line gear. If you would like to discuss this request in greater detail, please contact Margo Schulze-Haugen at (301) 713-8503 or Randy Blankinship at (727) 824-5399. Thank you for considering this request.

Sincerely,



Alan Risenhoover  
Director, Office of Sustainable Fisheries



# Gulf of Mexico Fishery Management Council

*Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico*

2203 N. Lois Avenue, Suite 1100

Tampa, Florida 33607 USA

Phone: 813.348.1630 • Toll free: 888.833.1844 • Fax: 813.348.1711

[www.gulfcouncil.org](http://www.gulfcouncil.org)

November 08, 2016

George Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Ave. U, Bldg 216  
Galveston, Texas 77551

006578 NOV 20 16

Re: Comments on the Proposed Regulations for the Draft Environmental Impact Statement (DEIS):  
Sanctuary Expansion

Dear Mr. Schmahl:

Thank you for your attendance at the past three Gulf of Mexico Fishery Management Council (Council) meetings and providing information to the Council. This letter is accompanied by a white paper entitled "Evaluation of Regulations for the Expansion of the Flower Garden Banks National Marine Sanctuary" that includes the Council's recommendations and comments on the proposed regulations for the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) expansion. Additionally, the Council's recommendations on the regulations strictly pertain to the FGBNMS's Preferred Alternative 3. The Council does not support the expansion proposed in the DEIS for Alternative 4 nor Alternative 5 as the Council agrees with the FGBNMS assertion that Alternative 4 and Alternative 5 are outside the current operational capacity of the FGBNMS.

The Council urges the FGBNMS to consider a tiered approach to management of the FGBNMS as outlined in the attached white paper. The Council proposes that the first tier coincide with existing BOEM no activity zones and to make these areas into "no bottom tending gear" zones. Traditional hook-and-line fishing (including bandit rigs) would be allowable in these zones. The second tier would be the area outside the BOEM no activity zones but inside the boundaries of the proposed FGBNMS expansion. This tier would allow bottom tending gear and anchoring but would exclude bottom trawling, traps, and dredges. The third tier would be outside the boundaries of the proposed expansion and would not have any FGBNMS imposed regulations. The Council also recommends related endorsements, anchor restrictions, and mooring buoys.

The Council also requests that the FGBNMS include Council staff on any working groups regarding future regulatory or spatial analyses and welcomes further discussion of the regulations with the FGBNMS staff as noted, by you, at the October 2016 Council meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leann Bosarge".

Leann Bosarge  
Council Chairman

cc: Gulf Council  
Billy Causey  
Cindy Meyer  
Council staff

# Evaluation of Regulations for the Expansion of the Flower Garden Banks National Marine Sanctuary

## White Paper

November 2016



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## Background

The Gulf of Mexico Fishery Management Council (Council) is concerned about the regulations proposed for the expansion of the Flower Garden Banks National Marine Sanctuary (FGBNMS). The current project analyzes the current boundaries of the proposed expansion, the current no activity zones for oil and gas activity, fishing effort, and existing habitat areas of particular concern in the Gulf of Mexico (Gulf). Each site is analyzed with existing information and recommendations about regulations are presented. This work will be presented to the Council at its October 2016 meeting and will be modified according to the Council's guidance.

Current regulations for the FGBNMS expansion "grandfather in" existing oil and gas platforms and pipelines. The Gulf is home to more than 3,000 oil and gas platforms, more than 2,500 shipwrecks, and other numerous artificial reefs. Fishermen have used many of the areas that are currently being proposed as extensions of the FGBNMS regulations (Table 1). Some of these fisheries require the use of anchors to prevent unsafe practices at sea. The Council requests that a blanket approach not be used in the expansion of the FGBNMS, and that there be consideration for existing user groups that would be heavily affected should these proposed area closures take place. The Council requests that the FGBNMS consider alternate regulations that would accommodate historic fishing practices as the FGBNMS is accommodating historic use by oil and gas.

**Table 1.** Comparison of the existing and proposed areas outlined in the FGBNMS expansion DEIS. The Current Area is the existing area of the Sanctuary or HAPC. The proposed area is the area proposed in the FGBNMS Expansion DEIS Preferred Alternative 3. If the Current Status is empty then the area has no current designation. If the Current Status says "partial" then a portion of the proposed area is already designated, but not the complete proposed area.

Site	Current Area (sq miles)	Proposed Area (sq miles)	Current Status	Regulations?
<b>Stetson Bank</b>	0.8	2.3	Sanctuary/HAPC	Yes
<b>West Flower Garden, East Flower Garden, and Horseshoe Banks</b>	85.5	147.4	Partial Sanctuary/HAPC	Yes
<b>MacNeil Bank</b>	10.7	8.3	Partial HAPC	No
<b>Rankin, 28 Fathom and Bright Bank</b>	107.4	82.9	HAPC	No
<b>Geyer Bank</b>	17.4	15.3	Partial HAPC	No
<b>McGrail Bank</b>	18.7	12.0	HAPC	Yes
<b>Sonnier Bank</b>	11.9	5.6	Partial HAPC	No
<b>Alderdice Bank</b>	6.6	8.0	Partial HAPC	No
<b>Elvers Bank</b>		20.1		No
<b>Bouma, Bryant, Rezak, and Sidner Banks</b>	41.1	53.6	Partial HAPC	No
<b>Parker Bank</b>		27.7		No
<b>Total</b>	300.1	383.2		

The following results describe each of the areas in Preferred Alternative 3 FGBNMS DEIS (NOAA, 2016), with minimal comments on Alternatives 4 and 5 with regard to the FGBNMS expansion proposed regulations as those alternatives were indicated as currently unfeasible and outside the range of manageable alternatives.

Ultimately, the Council requests that the FGBNMS

- Maintain current fishing regulations in the existing HAPCs with regulations
- Continue to allow historical fishing practices in the areas that are outside the BOEM no activity zones by establishing a tiered approach that would include:
  - If the area has an established “no activity zone” by BOEM, create a “no bottom tending gear zone” that uses the boundaries of the “no activity zone.”
  - Establish a truncated “no bottom tending gear zone” for banks that have updated information but do not have “no activity zones” established by BOEM (e.g. Horseshoe Bank).
  - In these “no bottom tending gear zones,” prohibit all fishing that is not by hook and line and prohibit all anchoring (i.e. no bottom trawling gear, bottom long line gear, traps or dredges).
  - Allow historic fishing practices (with gear other than hook and line) within the proposed sanctuary boundary area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement (as described below).
  - Allow anchoring by fishing vessels with an endorsement (as described below) in soft sediment outside the “no bottom tending gear zone.” These vessels must carry an operating vessel monitoring system (VMS); and anchors used should be equipped with a weak link environmental safe guard.
- Establish a certificate program or endorsement program that would allow for education of fishermen within the FGBNMS on the environmental importance of the area(s), fishing restricted areas and appropriate gear types (i.e. anchor type). This program could be a requirement for anyone that fishes in the FGBNMS proposed boundaries.
  - The FGBNMS should consider two types of endorsements. One endorsement would be for commercial fishermen which would require a class or certification program that clearly delineates the different zones and regulations for each zone; to anchor in the FGBNMS this type of endorsement would be required as would VMS. The second type of endorsement would be for recreational fishermen that would not anchor but would use mooring buoys; this endorsement would be an online certification program and would be required for recreational fishermen.
- Provide an adequate number of mooring buoys on any of the expanded “no bottom tending gear zones” to allow access for the public.

Within each area, there will be three separate “tiers” of regulations. Tier 1- inside the “no bottom tending gear zones would: allow fishing only by hook and line, prohibit anchoring by fishing vessels, and require a special endorsement from the FGBNMS. Tier 2- outside the “no bottom tending gear zone” and inside the Council recommended boundary of the expansion of

FGBNMS (Preferred Alternative 3) would: allow anchoring of vessels with a vessel monitoring system by using a soft sediment specific anchor with weak link and prohibit bottom trawling, traps, and dredges. Tier 3- outside of the proposed boundary would: have no FGBNMS imposed regulations (all regulations that currently exist are maintained)

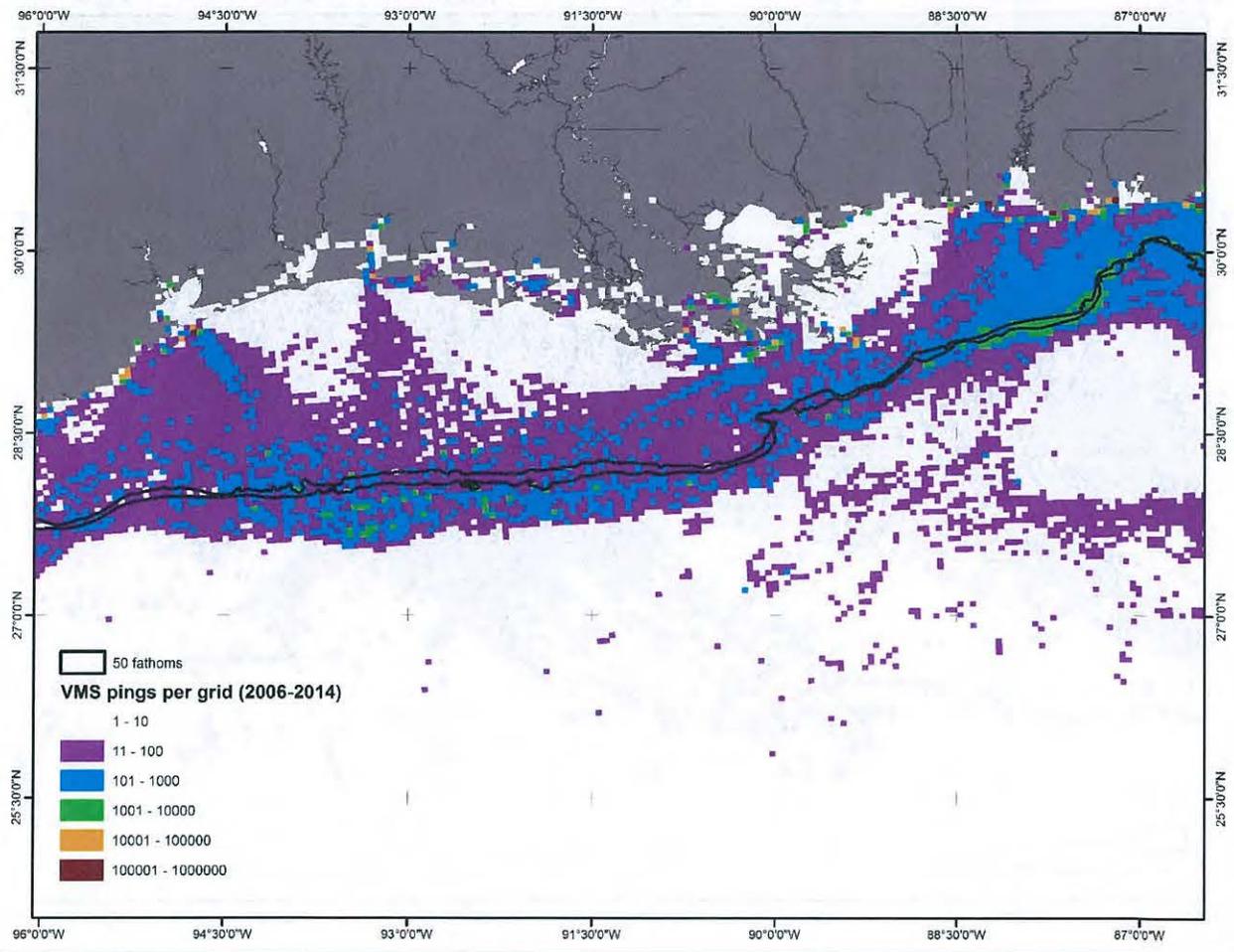
#### Current Fishing Regulations

- West and East Flower Garden Banks HAPC prohibits fishing with bottom longline, bottom trawl, buoy gear, dredge, pot or trap and bottom anchoring by fishing vessels year round.
- Stetson Bank HAPC prohibits fishing with bottom longline, bottom trawl, buoy gear, pot or trap and bottom anchoring by fishing vessels year round.
- Within the FGBNMS (East and West Flower Garden Banks and Stetson Bank) there is only fishing allowed by hook-and-line, and no anchoring in the FGBNMS boundaries
- McGrail Bank HAPC prohibits fishing with bottom longline, bottom trawl, buoy gear, pot or trap and bottom anchoring by fishing vessels year round.

## Map of Fishing Effort in the Gulf of Mexico (VMS)

Each vessel with a vessel monitoring system (VMS) sends out a position report once per hour, but the number of pings increases (more position reports in time) when a vessel is approaching an environmentally sensitive area

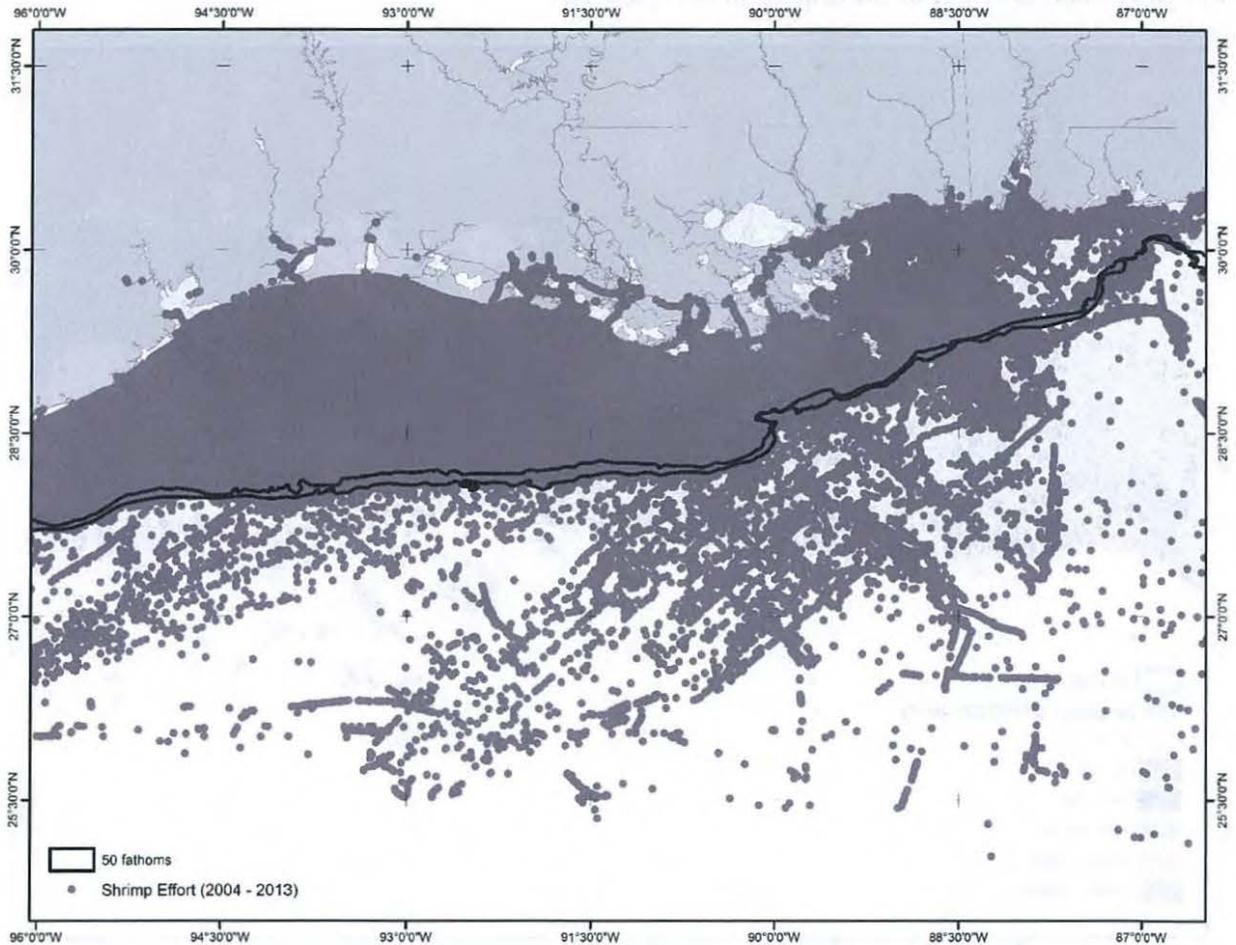
([http://www.nmfs.noaa.gov/ole/about/our\\_programs/vessel\\_monitoring.html](http://www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html)). The VMS program monitors over 4,000 vessels in U.S. waters, twenty four hours a day. Below is a depiction of the VMS data from 2006 to 2014 for vessels with bottom tending gear with a federal Gulf Reef Fish, Lobster, or Shrimp permit (Figure 1).



**Figure 1.** Vessel Monitoring System pings in 5 km (2.7 nautical miles) by 5 km grids. The number of pings in each cell. Colors are arranged by orders of magnitude.

## Map of Shrimping Effort in the Gulf of Mexico (Shrimp ELB)

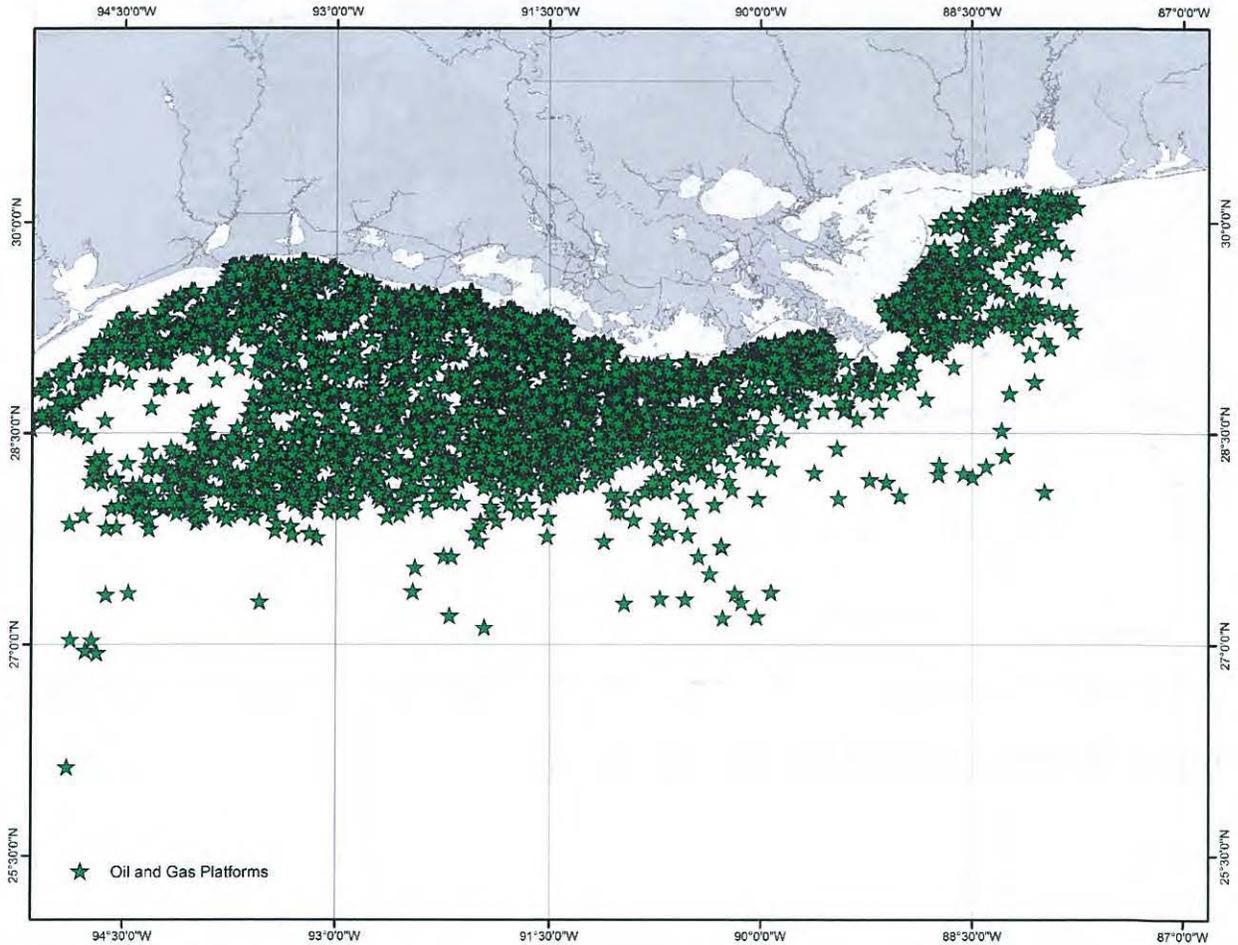
Shrimp electronic logbooks (ELB) are on approximately one third of the shrimping fleet (~500 units). However, at the onset of the ELB program, there were not 500 units, and the increase to 500 units took a few years. ELB data points are locations collected every ten minutes. The data is then filtered based on time and distance between points to determine if a vessel was likely towing. The data presented below are tow points from the ELB data (Figure 2). Data are inclusive of the years 2004-2013.



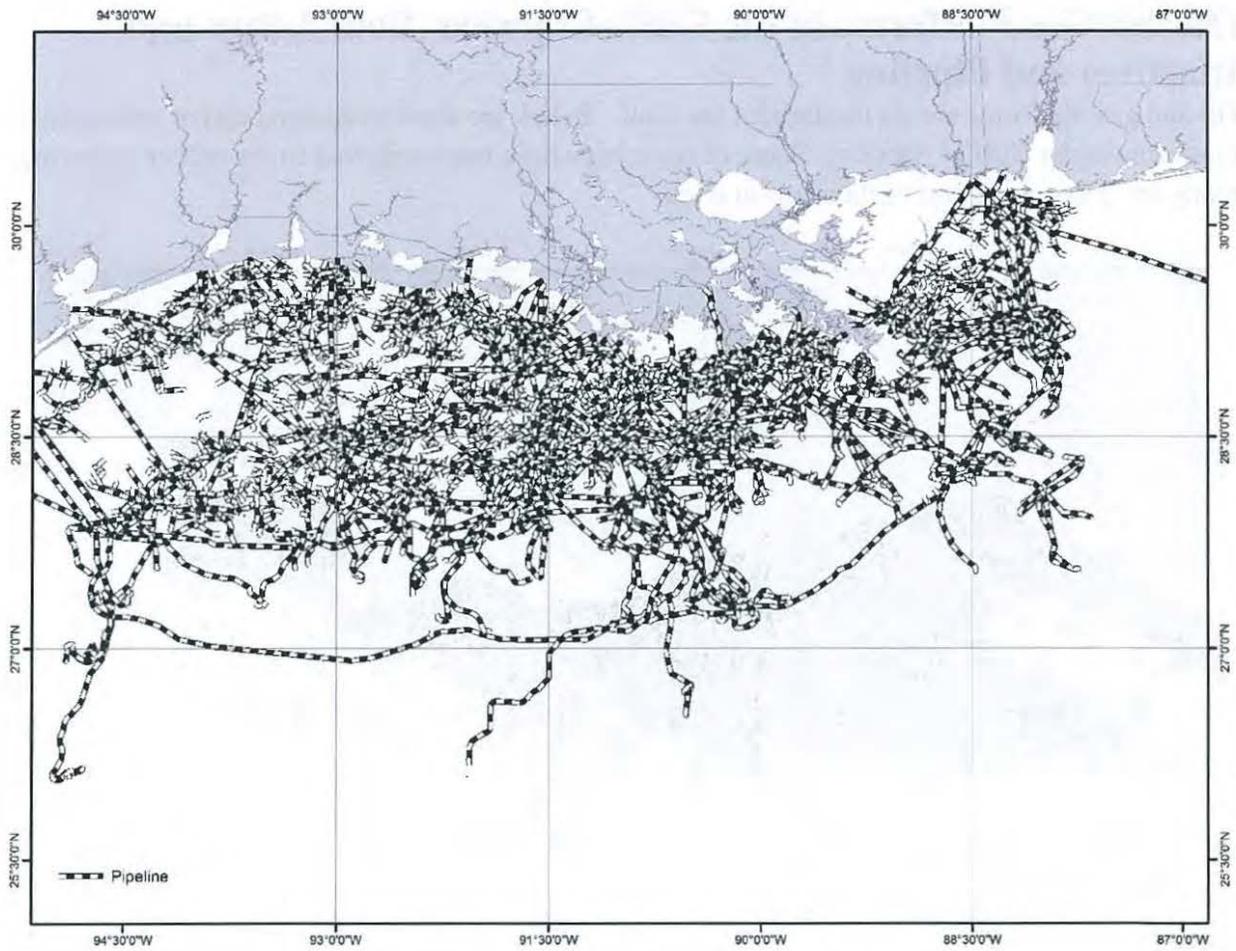
**Figure 2.** Shrimp electronic logbook points for the Gulf of Mexico.

## Oil and Gas Platforms in the Gulf of Mexico (Both Active and Inactive) and Pipeline

Oil and gas platforms are all throughout the Gulf. Below are the documented active and inactive platforms in the Gulf of Mexico. Some of these may have been removed in the recent years, and many are nearing the end of their useful lives.



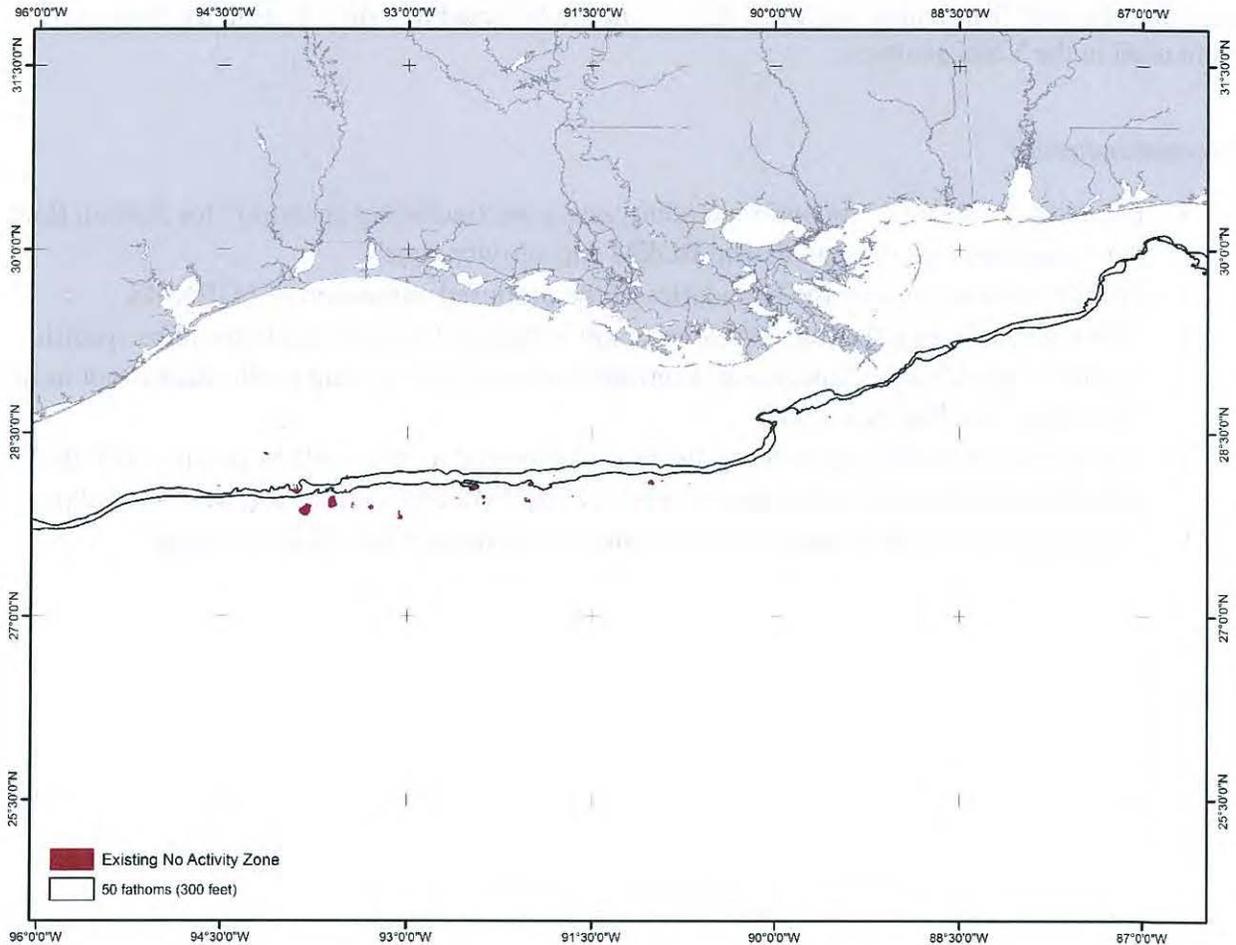
**Figure 3.** Oil and gas platforms in the Gulf of Mexico



**Figure 4.** Pipelines for oil and gas in the Gulf of Mexico.

## BOEM No Activity Zones

The Bureau of Ocean Energy Management (BOEM) currently has “no activity zones” which prohibit oil and gas exploration, extraction, and infrastructure to protect particularly sensitive areas (Figure 5); this is currently just over 110 square nautical miles. These zones are currently under revision, but it should be noted that the current boundaries are in effect. As the no activity zones are modified, the BOEM will need to update nautical navigation charts.



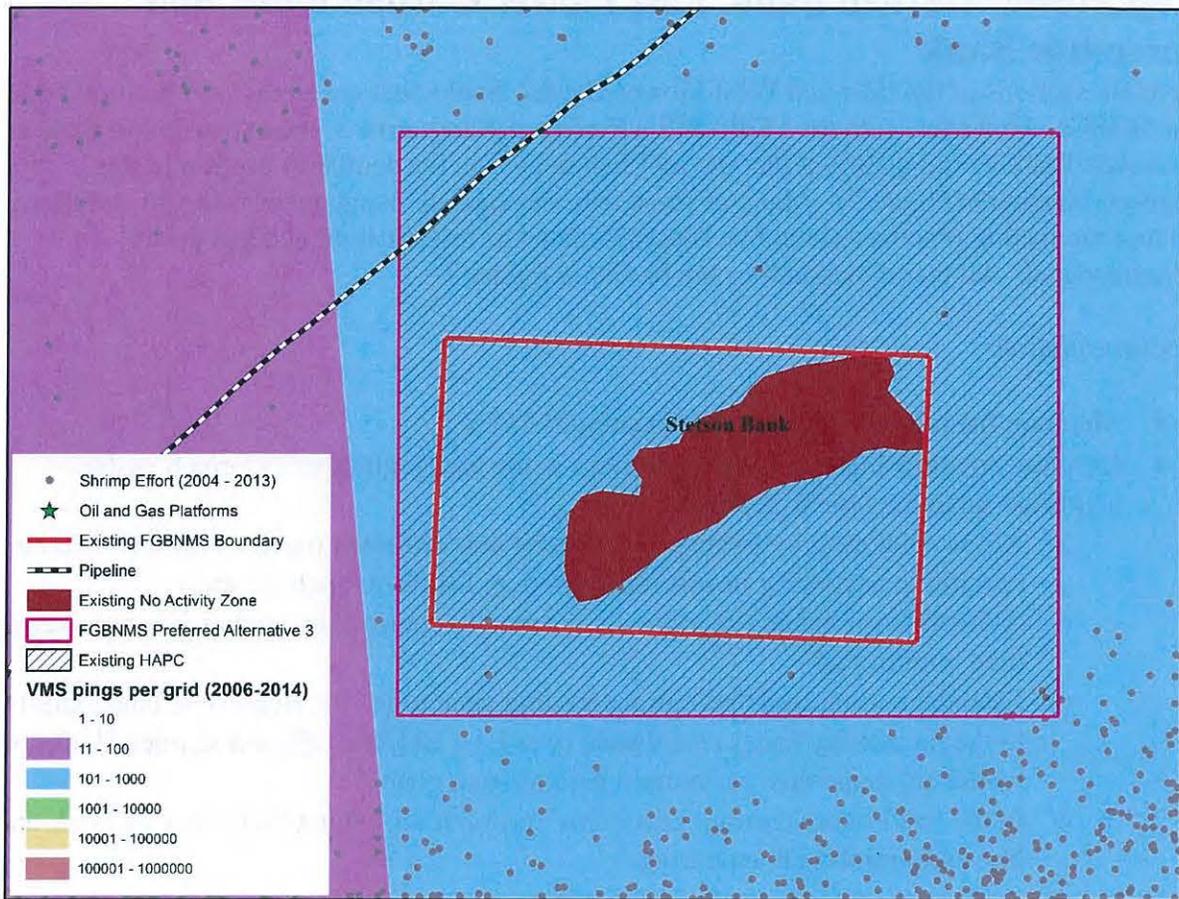
**Figure 5.** Existing BOEM no activity zones. These zones are currently under revision (M. Mueller, Benthic Ecologist, BOEM personal communication, 2016) but serve as a template for discussion for this paper.

## Stetson Bank

Stetson Bank is already part of the FGBNMS and is a recognized HAPC with fishing regulations (Figure 6). The boundaries of the HAPC and the FGBNMS differ. The Council is currently in the process of initiating a document to review HAPCs, both identifying new areas and revising existing HAPCs. The Council encourages the FGBNMS to maintain the current boundary instead of modifying it to Preferred Alternative 3, as it appears that there has been historic fishing practices in the southeast corner of the HAPC. This area does not appear to be a highly used area for reef fish fishing via VMS data; it should be noted that only bottom tending gear were used in the VMS analysis.

### *Recommendations*

- Establish a truncated “no bottom tending gear zone (including anchors)” for Stetson Bank that coincides with the established BOEM “no activity zone”
- Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
- Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone.”
- Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement (as described above)
- Modify the southeast portion of the boundary to accommodate shrimp fishing



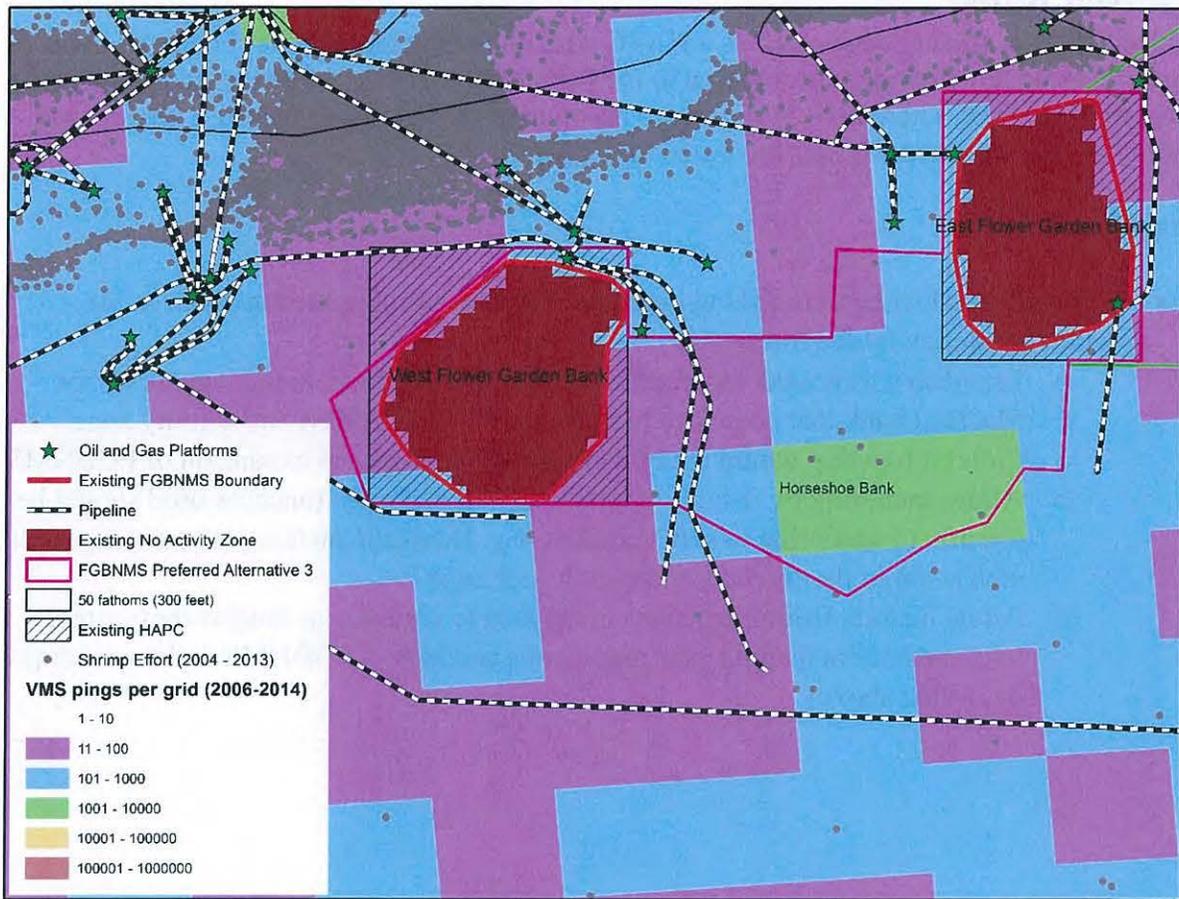
**Figure 6.** Stetson Bank existing FGBNMS boundary (in red), existing HAPC (hatched lines) and proposed expansion (outlined in magenta).

## West Flower Garden Bank, East Flower Garden Bank, and Horseshoe Bank

There are sections of the East and West Flower Garden Banks that are already no bottom tending gear HAPCs. However, with the FGBNMS's Preferred Alternative 3, the expansion to include Horseshoe Bank would greatly affect the reef fish fishery in the southeast portion of the proposed boundary (Figure 7). Many of these fisheries operate using anchors in soft sediment, and historic fishing practices should be accommodated as historical oil and gas use is accommodated. All recommendations are based on Figure 7.

### *Recommendations*

- Maintain fishing regulations in the existing HAPCs
- Continue to allow historic fishing practices in the area highlighted in green in the southeast section by the following:
  - Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.)
  - Allow historic fishing practices in the area to continue as long as it is not over the hard bottom reef
  - Establish a truncated “no bottom tending gear zone” for Horseshoe bank, similar to the no activity zones established over East and West Flower Garden Banks, that would delineate this “no bottom tending gear zone.”
  - In the “no bottom tending gear zone,” prohibit all fishing that is not by hook-and-line and prohibit all anchoring



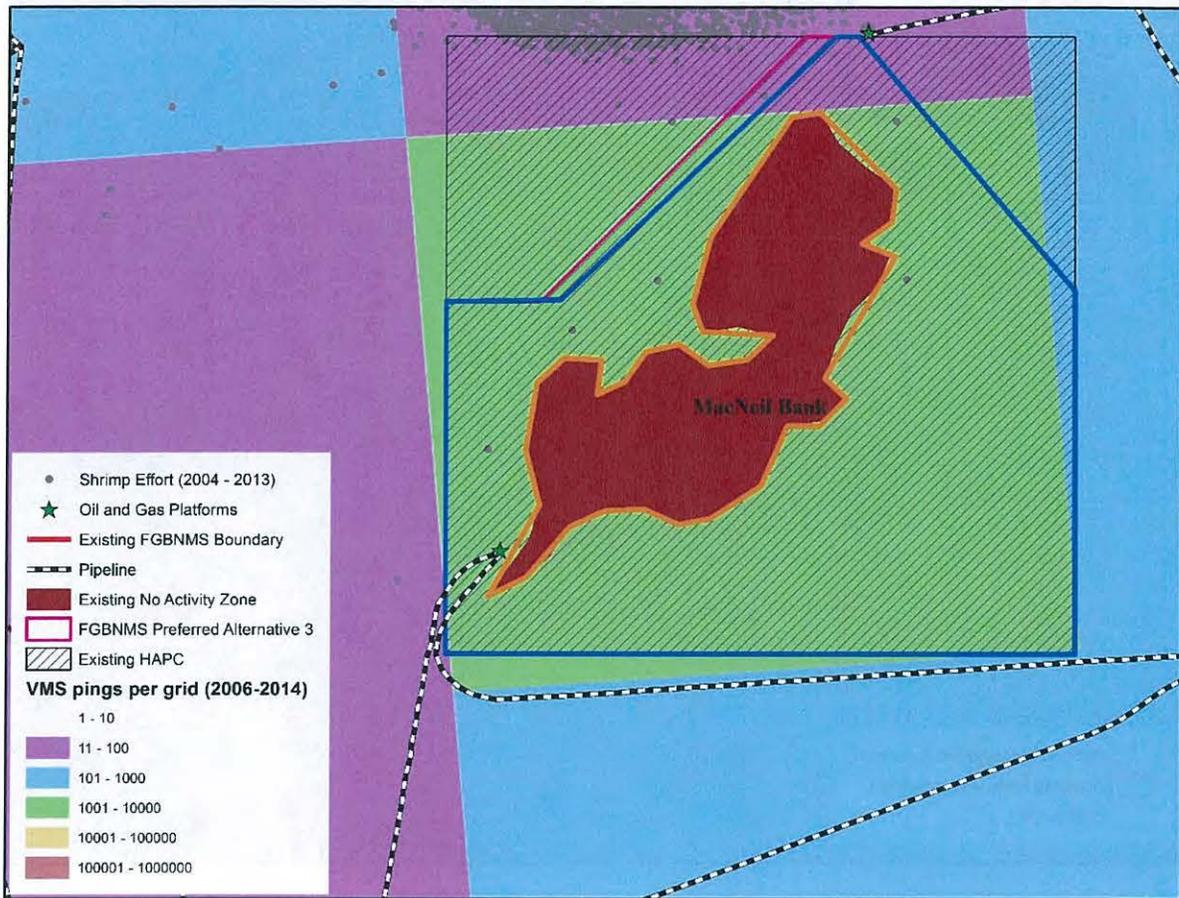
**Figure 7.** East Flower Garden Bank, West Flower Garden Bank and Horseshoe Bank. Existing FGBNMS boundary (in red), existing HAPC (hatched lines) and proposed expansion (outlined in magenta).

## MacNeil Bank

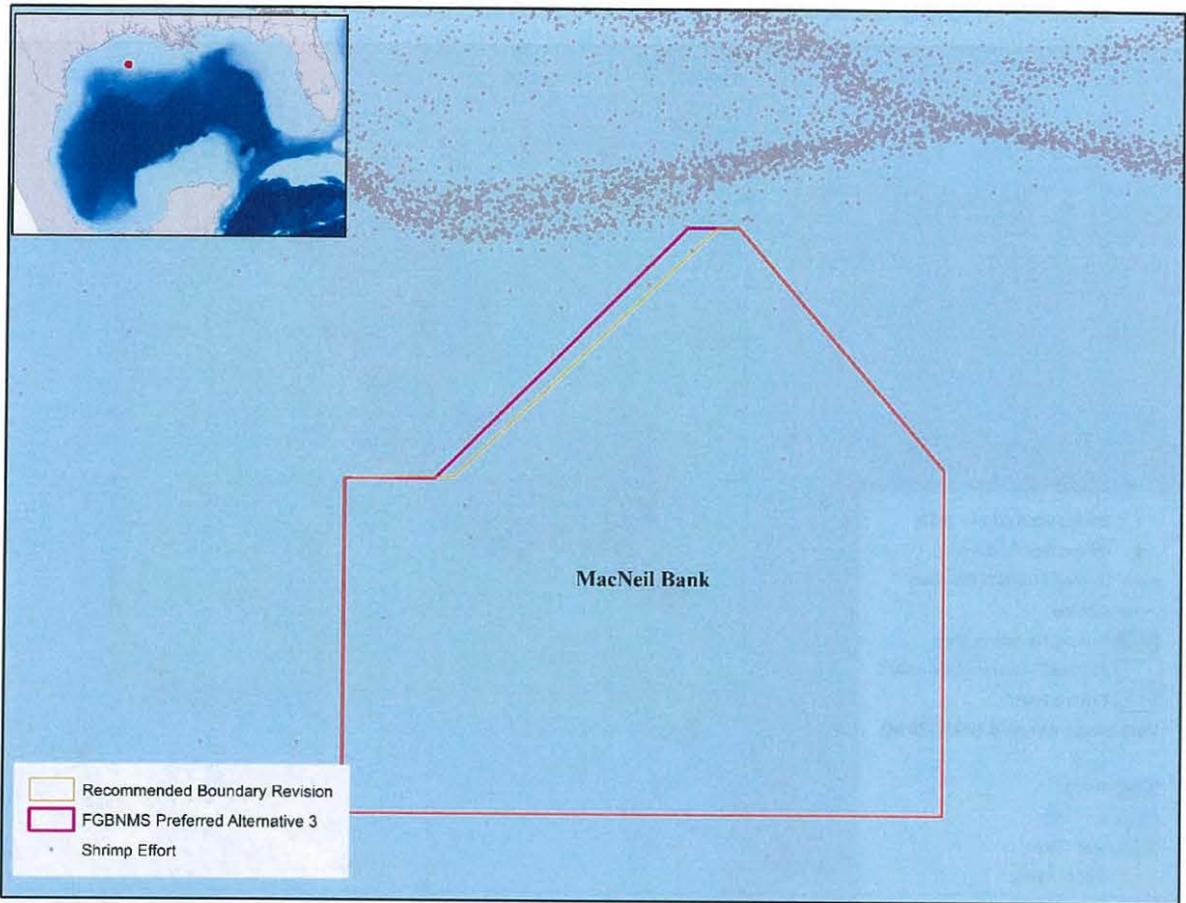
MacNeil Bank is already designated as a HAPC with no fishing regulations (Figure 8). The Council has already provided information to the FGBNMS to revise the proposed northwestern boundary (Preferred Alternative 3) slightly to accommodate the shrimp fishery's historic use (Figure 9). All recommendations are based on Figure 9.

### *Recommendations*

- Continue to allow historic fishing practices in the area highlighted in green in the southeast section by the following:
  - Establish a truncated “no bottom tending gear zone (including anchors)” for MacNeil bank that coincides with the established BOEM “no activity zone”
  - Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
  - Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone.”
  - Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement (as described above)



**Figure 8.** MacNeil Bank existing HAPC (hatched lines) and proposed expansion (outlined in magenta).



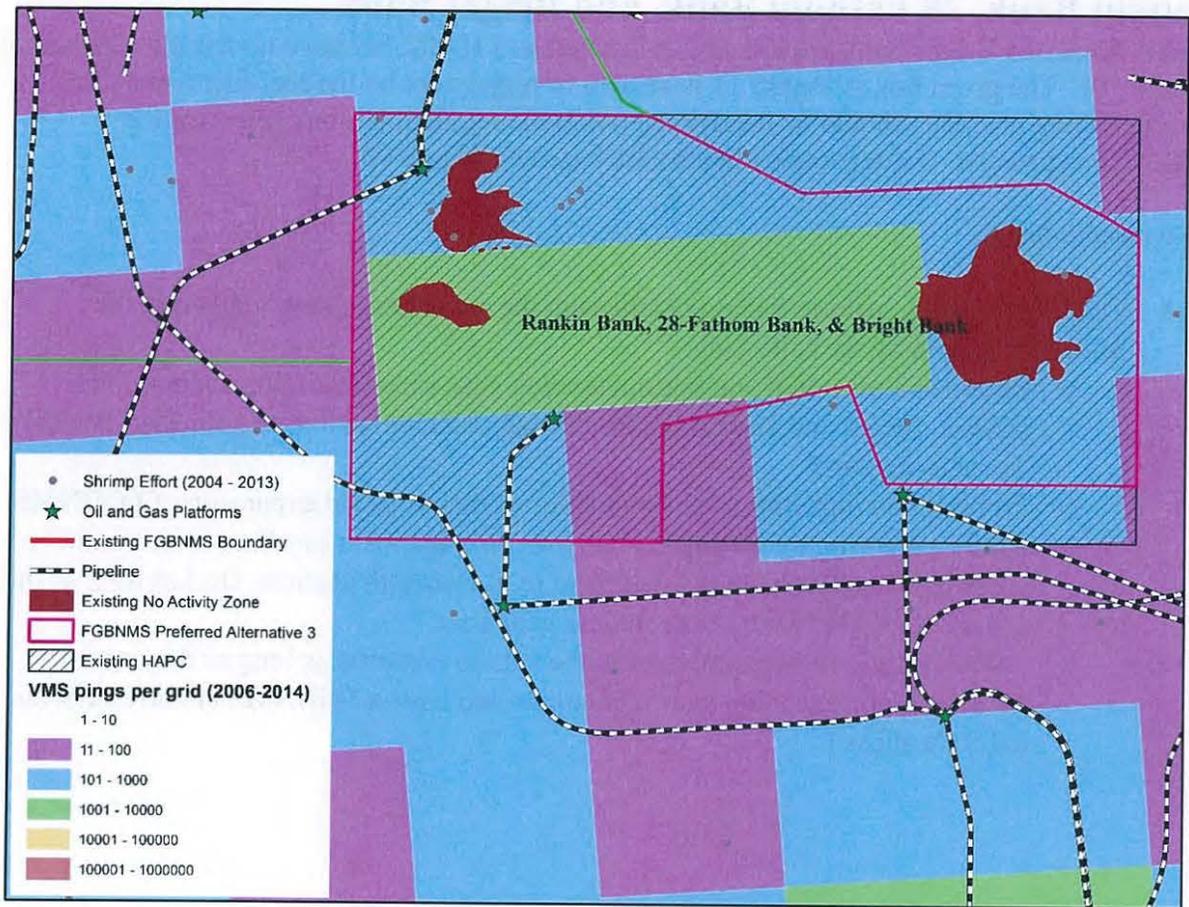
**Figure 9.** Gulf of Mexico Fishery Management Council suggested revision to the boundary of the proposed expansion in Preferred Alternative 3.

## Rankin Bank, 28 Fathom Bank, and Bright Bank

Rankin Bank and Bright Bank are already designated as a HAPC but have no fishing regulations (Figure 10). The green box in Figure 11 is an area of high usage by the reef fish fishery and historic fishing practices should be incorporated into the regulations considered for the FGBNMS expansion. All recommendations are based on Figure 10.

### *Recommendations*

- Continue to allow historic fishing practices in the area highlighted in green in the southeast section by the following:
  - Establish a truncated “no bottom tending gear zone (including anchors)” for Rankin, Bright and 28 Fathom Banks that coincide with the established BOEM “no activity zone”
  - Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
  - Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone”
  - Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement (as describe above)



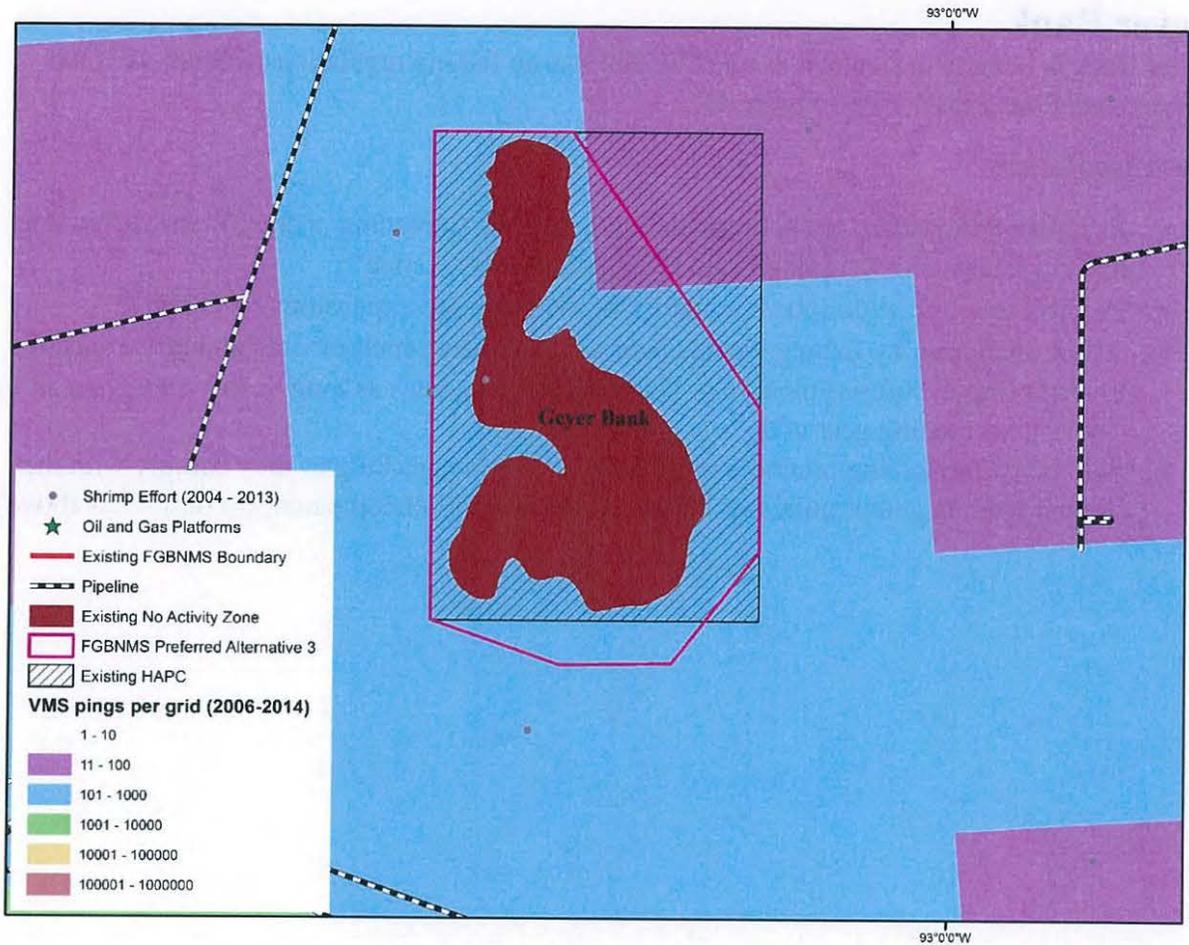
**Figure 10.** Rankin, Bright, and 28 Fathom Banks: existing HAPC (hatched lines) and proposed expansion (outlined in magenta).

## Geyer Bank

Geyer Bank is already designated as a HAPC but has no fishing regulations (Figure 11). All recommendations are based on Figure 11.

### Recommendations

- Establish a truncated “no bottom tending gear zone (including anchors)” for Geyer Bank that coincides with the established BOEM “no activity zone”
- Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
- Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone”
- Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement (as described above)



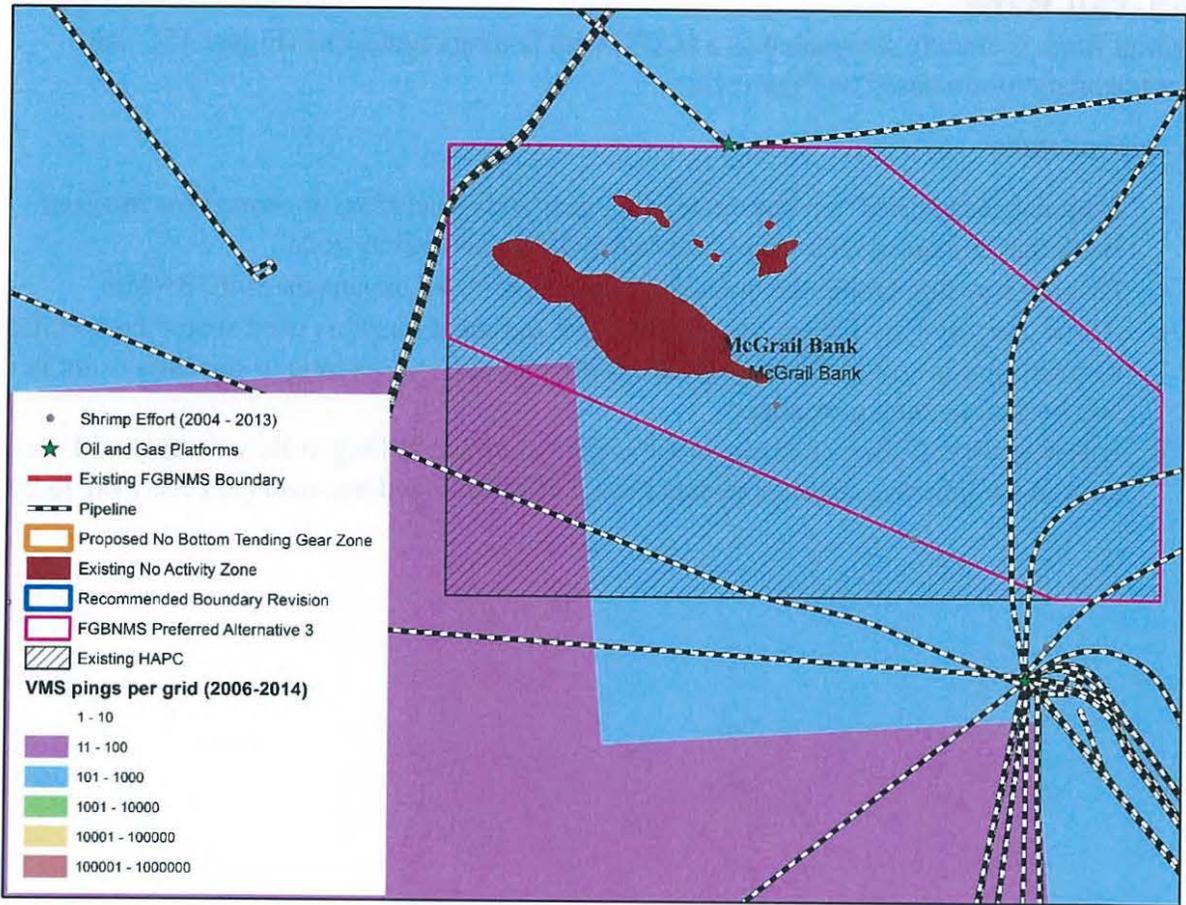
**Figure 11.** Geyer Bank: existing HAPC (hatched lines) and proposed expansion (outlined in magenta).

## McGrail Bank

McGrail Bank is already designated as a HAPC with fishing regulations (Figure 12). All recommendations are based on Figure 12.

### *Recommendations*

- Establish a truncated “no bottom tending gear zone (including anchors)” for McGrail Bank that coincides with the established BOEM “no activity zone”
- Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
- Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone.”
- Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement (as described above)



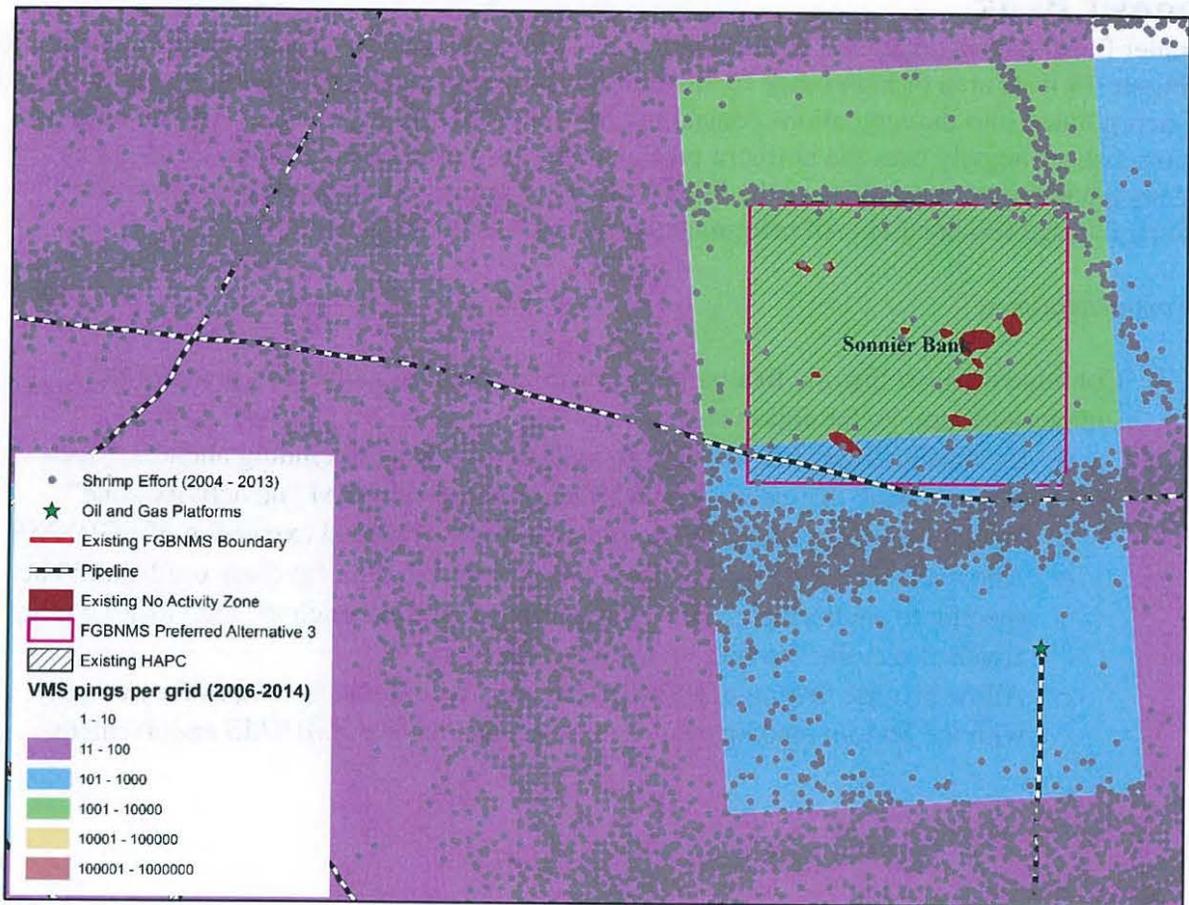
**Figure 12.** McGrail Bank: existing HAPC (hatched lines) and proposed expansion (outlined in magenta).

## Sonnier Bank

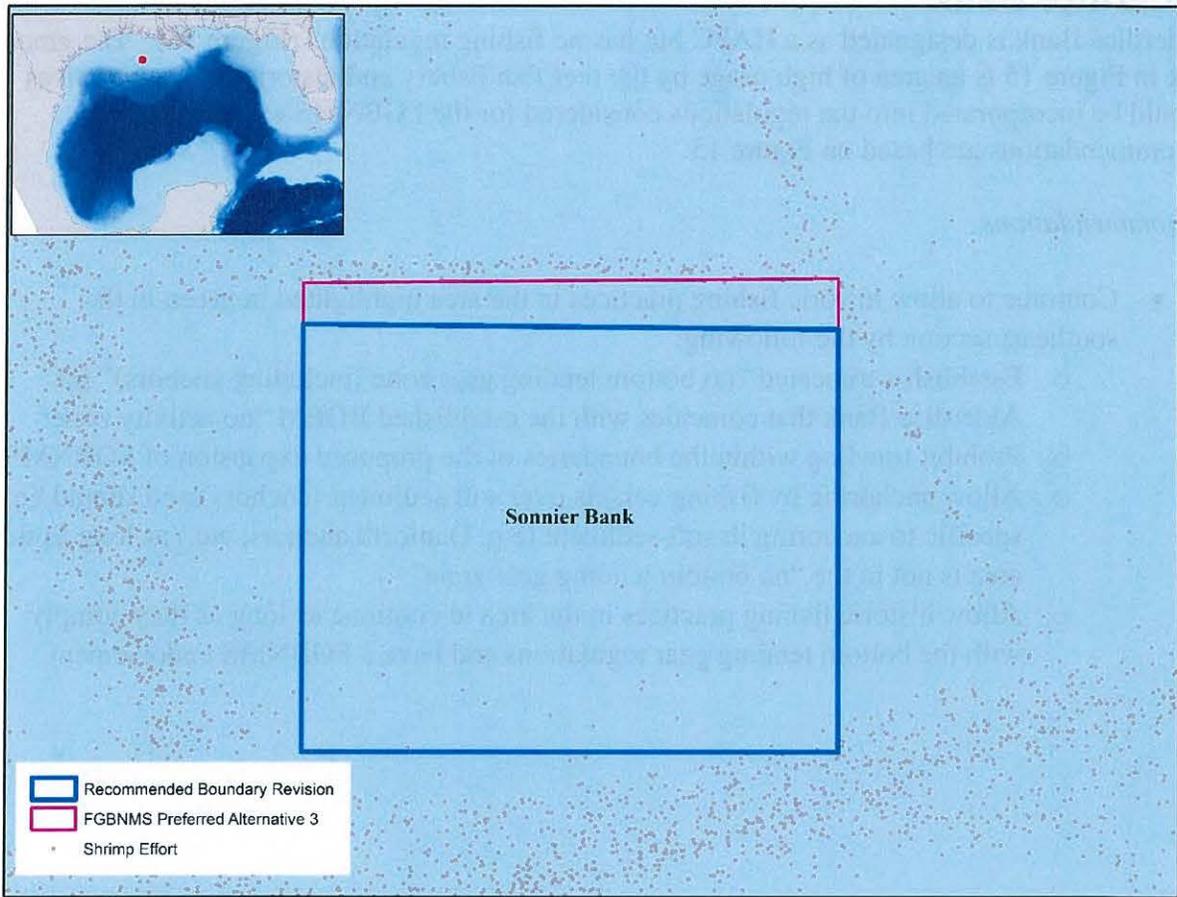
Sonnier Bank is designated as a HAPC but has no fishing regulations (Figure 13). The green box in Figure 15 is an area of high usage by the reef fish fishery and historic fishing practices should be incorporated into the regulations considered for the FGBNMS expansion. Additionally, the shrimp fishery heavily uses the northern portion of the proposed boundary; the Council has already made recommendations to the FGBNMS about revising the boundary to allow for historical usage (Figure 14). All recommendations are based on Figure 13.

### *Recommendations*

- Continue to allow historic fishing practices in the area highlighted in green in the southeast section by the following:
  - Establish a truncated “no bottom tending gear zone (including anchors)” for Sonnier Bank that coincides with the established BOEM “no activity zone”
  - Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
  - Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone.”
  - Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement



**Figure 13.** Sonnier Bank: existing HAPC (hatched lines) and proposed expansion (outlined in magenta).



**Figure 14.** Gulf of Mexico Fishery Management Council suggested revision to the boundary of the proposed expansion of Sonnier Bank.

## Alderdice Bank

Alderdice Bank is designated as a HAPC but has no fishing regulations (Figure 15). The green box in Figure 15 is an area of high usage by the reef fish fishery and historic fishing practices should be incorporated into the regulations considered for the FGBNMS expansion. All recommendations are based on Figure 15.

### *Recommendations*

- Continue to allow historic fishing practices in the area highlighted in green in the southeast section by the following:
  - Establish a truncated “no bottom tending gear zone (including anchors)” for Alderdice Bank that coincides with the established BOEM “no activity zone”
  - Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
  - Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone”
  - Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement



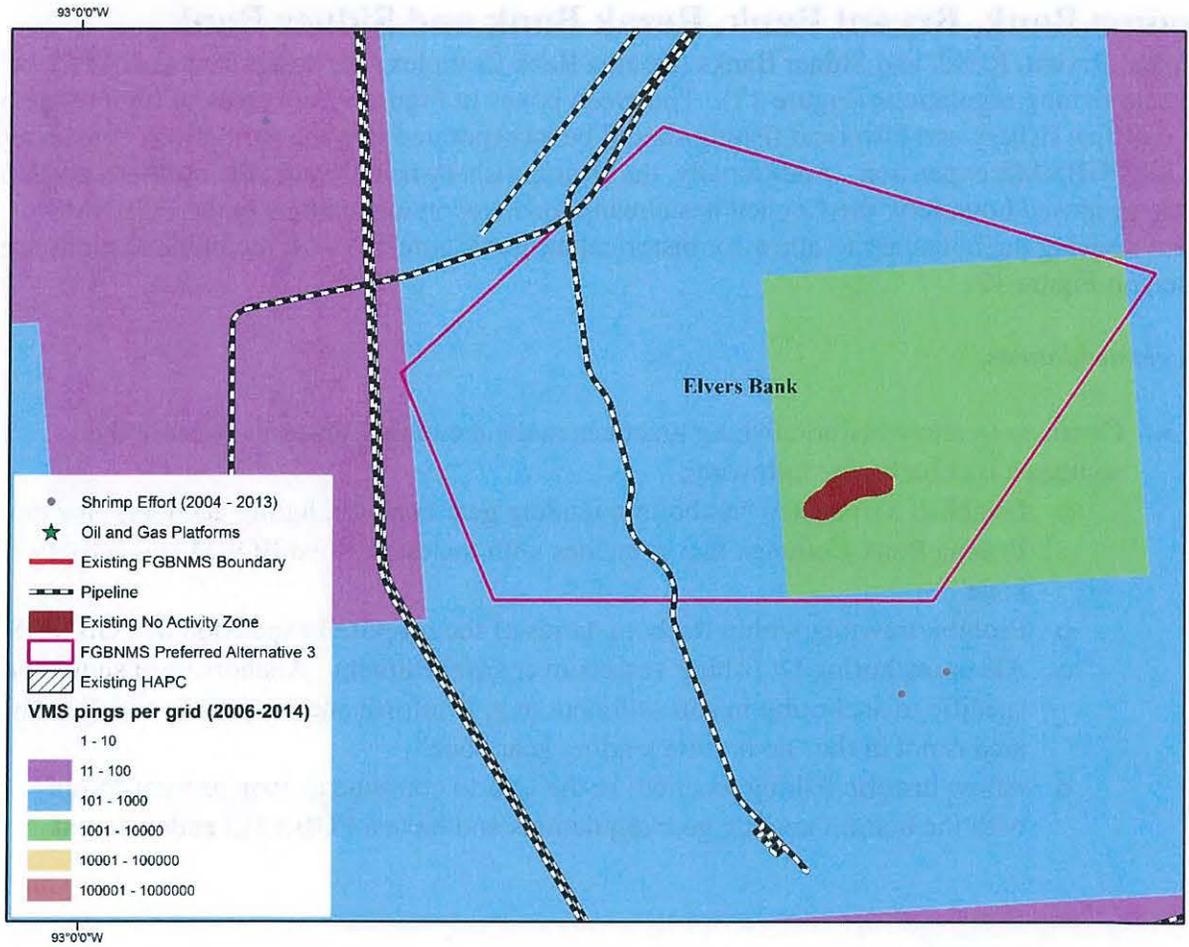
**Figure 15.** Alderdice Bank: existing HAPC (hatched lines) and proposed expansion (outlined in magenta).

## Elvers Bank

Elvers Bank is not currently designated as a HAPC (Figure 16). The green box in Figure 16 is an area of high usage by the reef fish fishery and historic fishing practices should be incorporated into the regulations considered for the FGBNMS expansion. All recommendations are based on Figure 16.

### *Recommendations*

- Continue to allow historic fishing practices in the area highlighted in green in the southeast section by the following:
  - Establish a truncated “no bottom tending gear zone (including anchors)” for Elvers Bank that coincides with the established BOEM “no activity zone”
  - Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
  - Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone”
  - Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement



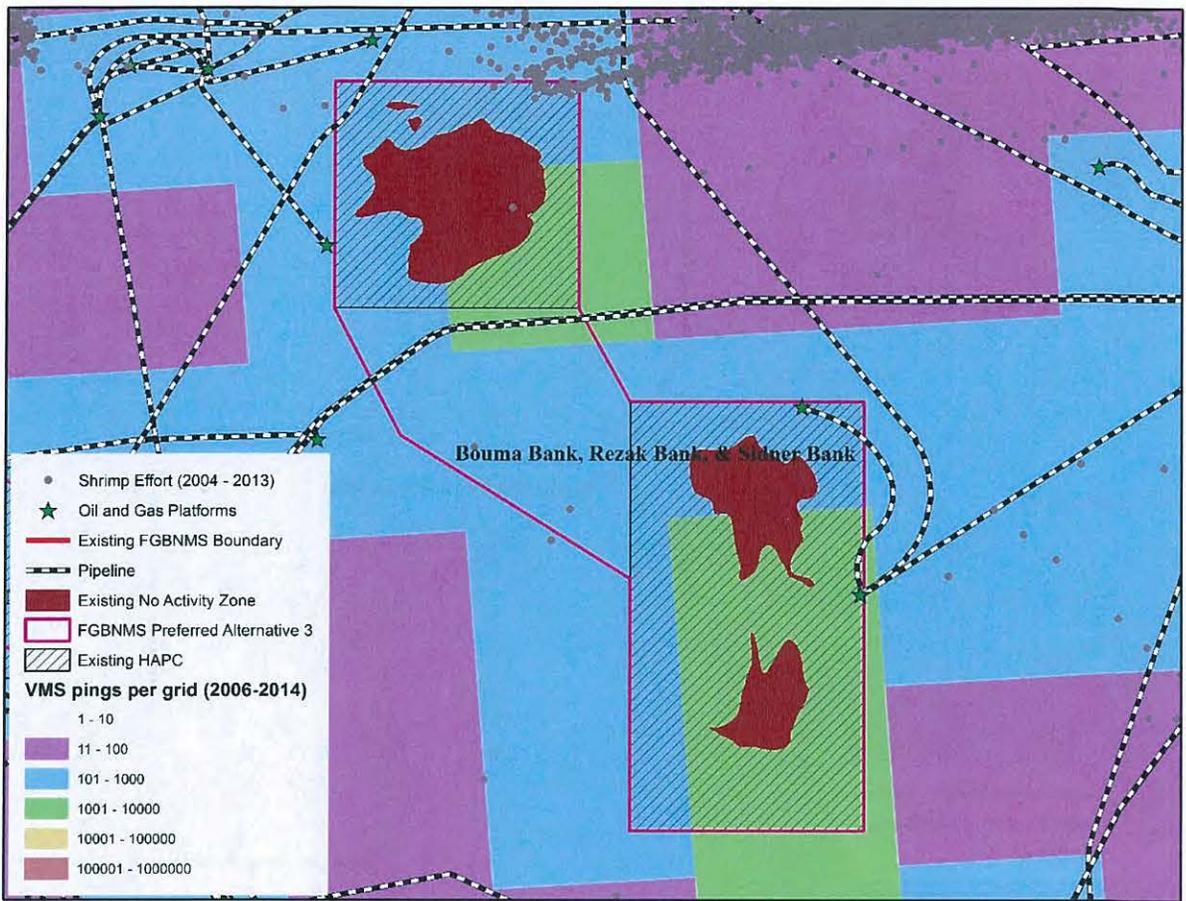
**Figure 16.** Elvers Bank: existing HAPC (hatched lines) and proposed expansion (outlined in magenta).

## **Bouma Bank, Bryant Bank, Rezak Bank and Sidner Bank**

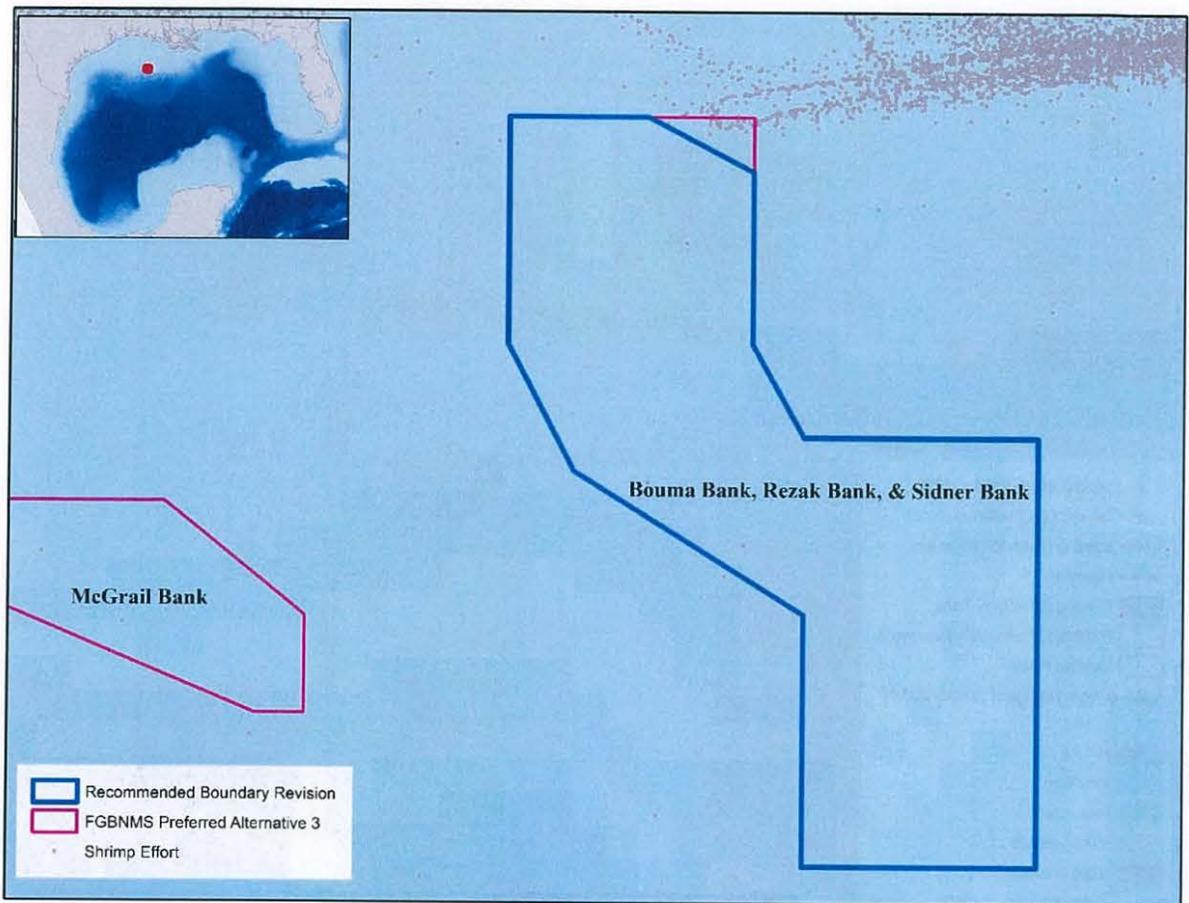
Bouma, Bryant, Rezak and Sidner Banks (Bouma Bank Complex) are designated as HAPCs but have no fishing regulations (Figure 17). The green boxes in Figure 17 are areas of high usage by the reef fish fishery and historical fishing should be incorporated into the regulations considered for the FGBNMS expansion. Additionally, the shrimp fishery heavily uses the northern portion of the proposed boundary; the Council has already made recommendations to the FGBNMS about revising the boundary to allow for historical usage (Figure 18). All recommendations are based on Figure 17.

### *Recommendations*

- Continue to allow historic fishing practices in the area highlighted in green in the southeast section by the following:
  - Establish a truncated “no bottom tending gear zone (including anchors)” for the Bouma Bank Complex that coincides with the established BOEM “no activity zone”
  - Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
  - Allow anchoring by fishing vessels over soft sediment. Anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone”
  - Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement



**Figure 17.** Bouma Bank, Bryant Bank, Rezak Bank and Sidner Bank: existing HAPC (hatched lines) and proposed expansion (outlined in purple).



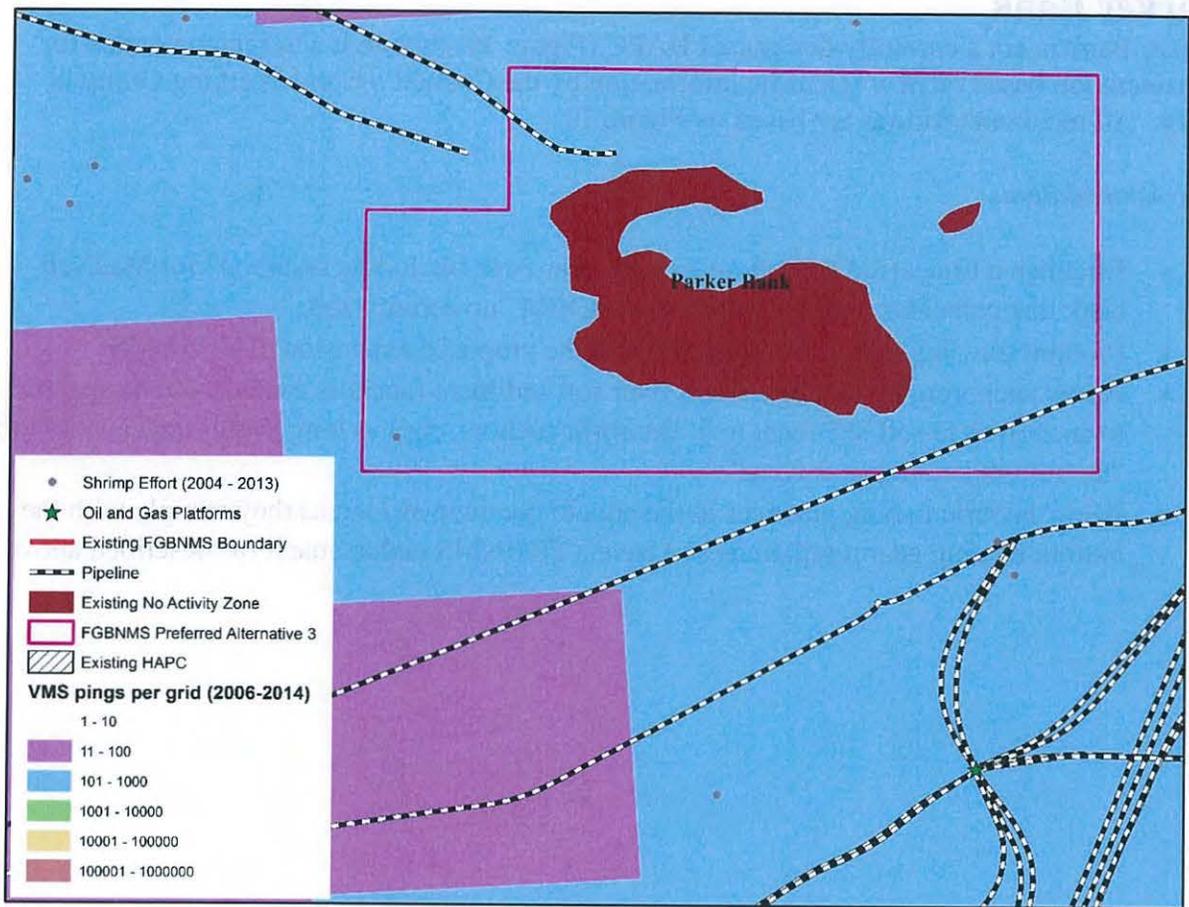
**Figure 18.** Gulf of Mexico Fishery Management Council suggested revision to the boundary of the proposed expansion of the Bouma Bank Complex.

## Parker Bank

Parker Bank is not a currently designated HAPC (Figure 19) though it was recommended for consideration based on new scientific information by the Council's Coral Working Group in 2014. All recommendations are based on Figure 19.

### *Recommendations*

- Establish a truncated “no bottom tending gear zone (including anchors)” for MacNeil bank that coincides with the established BOEM “no activity zone”
- Prohibit trawling within the boundaries of the proposed expansion of FGBNMS
- Allow anchoring by fishing vessels over soft sediment (anchors used should be specific to anchoring in soft sediment (e.g. Danforth anchors, etc.) as long as this area is not in the “no bottom tending gear zone.”
- Allow historic fishing practices in the area to continue as long as they comply with the bottom tending gear regulations and have a FGBNMS endorsement (as described above)



**Figure 19.** Parker Bank: existing HAPC (hatched lines) and proposed expansion (outlined in magenta).

## Example of “No Bottom Tending Gear Zone”

All of the recommendations stem from having a “tiered” approach, or certain fishing activities allowed within the expansion of the FGBNMS but not all fishing practices are allowed in all areas. The Council recommends that the BOEM “no activity zones” coincide with the “no bottom tending gear zones” (Figure 20). Nearly the entirety of the proposed boundary of the Preferred Alternative 3 expansion of FGBNMS of MacNeil Bank is a heavily used area for reef fish (VMS data.) Thus, the closure of this area would greatly affect the fishermen in this region. Supporting a “no bottom tending gear zone” within the boundary while allowing anchoring in soft sediment or fishing with bottom tending gear outside of the no activity zone would minimally affect the fishermen that rely on these areas while maximizing protection for the hard bottom reef resources. Additionally, limiting the footprint of trawling outside of these areas will protect the reef from sediment plumes.

Tier 1- inside the “no bottom tending gear zones

Fishing only by hook and line, no anchoring

Requires a special endorsement from the FGBNMS

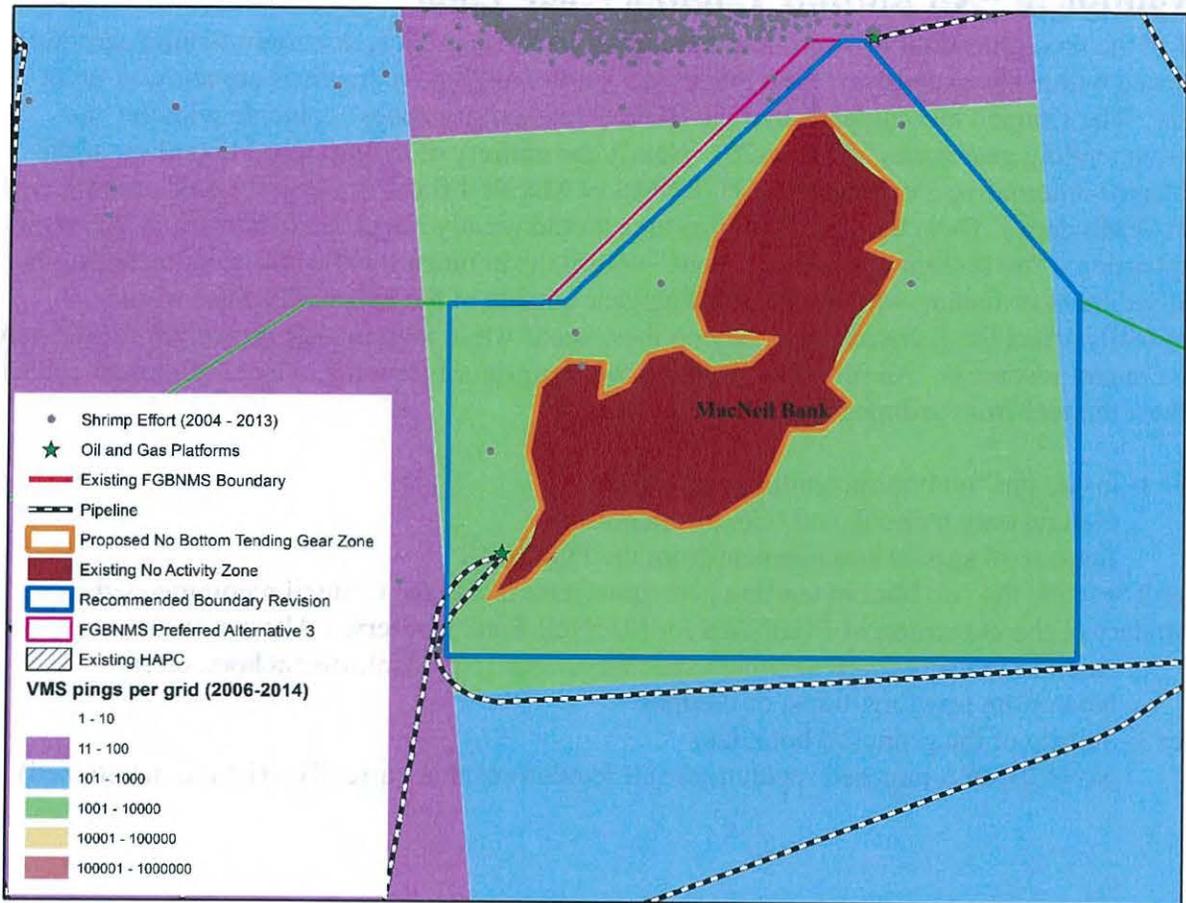
Tier 2- outside the “no bottom tending gear zone” and inside the Council recommended boundary of the expansion of FGBNMS for MacNeil Bank (Preferred Alternative 3)

Anchoring using a soft sediment specific anchor (e.g. Danforth anchors, etc.)

No bottom trawling, traps, or dredges

Tier 3- outside of the proposed boundary

No FGBNMS imposed regulations (all regulations that currently exist are maintained)



**Figure 20.** Example of using the BOEM “no activity zone” to delineate a “no bottom tending gear zone.”

## Summary

Here, we have outlined specific regulatory recommendations for each of the areas outlined in the FGBNMS expansion DEIS Preferred Alternative 3. The same analyses should be applied to any of the areas that the FGBNMS chooses in its expansion (e.g. alternative 4, or alternative 5). The Council staff is available to assist with data analyses should the FGBNMS choose a different preferred alternative, but for the sake of brevity, the only analyses contained in this document referred to Preferred Alternative 3.

Additional steps that the FGBNMS should consider with regard to regulations

- Establish a certificate program or endorsement program that would allow for education of fishermen within the FGBNMS on the fishing restricted areas and appropriate gear types (i.e. anchor). This program could be a requirement for anyone that fishes in the FGBNMS proposed boundaries regardless of gear type.
- Establish a tiered approach to regulations. Hook-and-line gear only within the “no bottom tending zone,” anchoring by vessels outside the “no bottom tending gear zone,” longlines outside the “no bottom tending gear zone.”
- Historical fishing practices. Many of the areas that are proposed under Preferred Alternative 3, Alternative 4, and Alternative 5 are heavily fished areas. As oil and gas efforts are accommodated based on historical use, so should fishing activities. There need not be a broad sweep approach to regulations, but instead separate zones can be established within the expansion, and these zones are easily enforced with the use of VMS.

Here, a spatially explicit decision support tool is presented and can be applied for fishing regulations of the proposed boundaries of the FGBNMS expansion. This analysis can be further refined by inclusion of fine scale bathymetry, shrinking the size of the cells used to consolidate VMS data, and incorporation of VMS data that is not restricted to bottom tending gear.



# Gulf of Mexico Fishery Management Council

*Managing Fishery Resources in the U.S. Federal Waters of the Gulf of Mexico*

4107 West Spruce St Suite 200

Tampa, Florida 33607 USA

Phone: 813.348.1630 • Toll free: 888.833.1844 • Fax: 813.348.1711

[www.gulfcouncil.org](http://www.gulfcouncil.org)

November 7, 2018

006730NOV2019

George Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Ave. U, Bldg 216  
Galveston, Texas 77551

Re: Revised Comments on the Proposed Regulations for the Draft Environmental Impact Statement (DEIS): Sanctuary Expansion

Dear Mr. Schmahl:

Thank you for your presentation on the Flower Garden Banks National Marine Sanctuary (FGBNMS) Advisory Council's (SAC) recommendation for sanctuary expansion at the August 2018 Gulf of Mexico Fishery Management Council (Council) meeting. The Council requested that its staff provide a summary of the fishing activity in the areas recommended by the SAC, as these boundaries were markedly different from the boundaries in the Draft Environmental Impact Statement (DEIS) on which the Council had previously provided recommendations. The Council supports the new SAC boundaries for the FGBNMS expansion and would also recommend an alternative set of fishing regulations to go along with these modifications. The Council's original fishing regulations recommendations for the proposed area used a tiered approach for the DEIS preferred alternative 3. These recommendations no longer seem sensible when applied to the new SAC recommended areas. Thus, this letter provides the Council's recommendations on fishing regulations for the areas outlined by the SAC.

The Council recommends that the current fishing regulations of the FGBNMS extend into the expanded area; however, with one major exception, that is spearfishing in the expanded area be allowed. This recommendation is consistent with the SAC recommendations. The Council still recommends related endorsements for fishing in the sanctuary, anchor restrictions, and placement of mooring buoys. Lastly, the Council discussed the use of bandit rig gear in the FGBNMS and some members advise that the FGBNMS investigate the potential impact that the weights used in bandit-rig fishing could have on coral.

The Council appreciates the opportunity to provide the FGBNMS with comment and your participation in the Council process. Should the FGBNMS move forward with preferred alternative 3 outlined in the DEIS, the Council maintains its recommendations in the letter dated November 8, 2016 for that alternative.

Sincerely,

A handwritten signature in cursive script, reading "Thomas R. Frazer".

Tom Frazer, Ph.D.  
Council Chairman

cc: Gulf Council  
Council staff  
Sanctuary leadership



# Gulf of Mexico Fishery Management Council

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4107 West Spruce St Suite 200  
Tampa, Florida 33607 USA  
Phone: 813.348.1630 • Toll free: 888.833.1844 • Fax: 813.348.1711  
[www.gulfcouncil.org](http://www.gulfcouncil.org)

February 19, 2020

George P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Ave U, Bldg 216  
Galveston, Texas 7751

006841 FEB 20 19

Re: Clarification of the regulatory language for the possession of fishing gear while transiting without interruption through Sanctuary designated areas

Mr. Schmahl,

Thank you for your presentation and update on the Flower Garden Banks National Marine Sanctuary (Sanctuary) expansion during the October 2019 Gulf of Mexico Fishery Management Council (Council) meeting in Galveston, Texas. After the update, the Council requested clarification of the regulatory language as related to the issue of *transiting* through the Sanctuary. The specific concern had to do with the possession and stowage of fishing gear while underway. The current regulatory language does not address the issue of proper stowage of fishing gear, as noted below. Thus, the Council recommends the inclusion of language defining the requirements for the stowage of affected fishing gears in an effort to avoid any potential confusion.

The current regulatory language in 15 CFR § 922.122(a) (10) for prohibited or otherwise regulated activities states:

*Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.*

The Council appreciates the opportunity to continue collaborating with the you and the Sanctuary staff. Should you have any questions, please contact the Council's Executive Director, Dr. Carrie Simmons.

Respectfully,

A handwritten signature in cursive script that reads "Thomas K. Frazer".

Thomas K. Frazer

Cc: Council Members / Council Staff / Jack McGovern, Ph.D. / Andy Strelcheck / Sue Gerhart



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 7, 2016

Cindy Dohner  
Regional Director  
U.S. Fish & Wildlife Service  
Southeast Regional Office  
1875 Century Blvd., Suite 400  
Atlanta, GA 30345

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – ESA Section 7  
Consultation

Dear Ms. Dohner,

The purpose of this letter is to ensure compliance with the consultation requirements of Section 7 of the Endangered Species Act (ESA, 16 U.S.C. 1531-1544). In fulfillment of those requirements, the Flower Garden Banks National Marine Sanctuary (FGBNMS) is providing its assessment of potential impacts to listed threatened or endangered species and their habitats for the subject proposal of FGBNMS boundary expansion and application of existing regulations and management plan actions in these areas, as documented in the enclosed Draft Environmental Impact Statement (DEIS), and is requesting initiation of consultation.

Based on information provided in the enclosed DEIS, FGBNMS has determined that: (1) several federally listed threatened and endangered species managed by the US Fish & Wildlife Service (USFWS) may occur in the areas where FGBNMS is considering implementing the proposed actions; (2) some federally listed threatened and endangered species managed by the USFWS could benefit from the proposed actions, as described in Section 5.3.2.7 of the enclosed DEIS; and (3) implementation of any of the five proposed alternatives, including the preferred alternative, identified in the enclosed DEIS is not likely to adversely affect any species listed as threatened or endangered, or habitats critical to such species, under the ESA.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Gardens Bank National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122. The DEIS is also available at <http://flowergarden.noaa.gov/management/expansiondeis.html>.



The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

The need for expansion has been strongly supported in public scoping for both that management plan review and for the enclosed DEIS. The evaluation of important marine resources and the incorporation of places of national significance into the National Marine Sanctuary System further national ocean resource management objectives articulated by many publicly vetted and expert-driven strategic planning efforts. These efforts address the need for additional protections for important habitat areas nationally, and in the northern Gulf of Mexico. These include the recommendations made in NOAA's 2010 Strategic Plan for Deep-Sea Coral and Sponge Ecosystems. Specific recommendations focused on the application of conservation measures in the Gulf of Mexico region notably include those made in the Gulf Coast Ecosystem Restoration Task Force's 2011 Gulf of Mexico Regional Ecosystem Restoration Strategy and reiterated by a variety of constituencies such as the Gulf Coast Ecosystem Restoration Council (2013), the Gulf of Mexico Alliance (2006, 2009), non-governmental organizations and coalitions (e.g., Brown et al. 2011), and the academic community (e.g., Peterson et al. 2011). Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, salvage activities) on the sensitive biological resources and geological features associated with many reefs and banks in the area.

Federally listed threatened and endangered species managed by the USFWS occurring in areas considered for sanctuary expansion are identified in Section 4.3.3 of the enclosed DEIS. The proposed actions will conserve and improve the resiliency



of overall ecosystem function in the north central Gulf of Mexico. Based on the information provided above and in the enclosed DEIS regarding the nature and location of the proposed action, FGBNMS has determined that the proposed project is not likely to adversely affect any federally listed threatened or endangered species or adversely modify their critical habitats as defined by ESA.

These determinations consider the increased protections that would be extended to federally listed species and their habitats by sanctuary regulations in proposed expansion areas, including prohibitions against anchoring and bottom-disturbing activities (including some types of fishing), as well as prohibitions on discharges. Sanctuary expansion will yield a substantial net increase in ecosystem function and overall quality of habitat benefitting listed species. Potential interactions resulting from NOAA field operations in the areas are mitigated by the sanctuary's standard operating procedures and will be further analyzed in the Programmatic Environmental Assessment of Field Operations in the Southeast and Gulf of Mexico National Marine Sanctuaries.

Based on the information provided above and in the enclosed DEIS, FGBNMS requests your concurrence with the determination of this DEIS that the potential impacts of the proposed actions on federally listed threatened and endangered species are adequately described in the document and that the alternatives including the preferred alternative are not likely to adversely affect federally listed threatened or endangered species or adversely modify their critical habitats. If the USFWS disagrees with this determination and recommends additional conservation measures, please inform me of this decision within 90 days of your receipt of this letter. Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl  
Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 7, 2016

Dr. Benjamin Tuggle  
Regional Director  
U.S. Fish & Wildlife Service  
Southwest Regional Office  
P.O. Box 1306  
Albuquerque, NM 87103-1306

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – ESA Section 7  
Consultation

Dear Dr. Tuggle,

The purpose of this letter is to ensure compliance with the consultation requirements of Section 7 of the Endangered Species Act (ESA, 16 U.S.C. 1531-1544). In fulfillment of those requirements, the Flower Garden Banks National Marine Sanctuary (FGBNMS) is providing its assessment of potential impacts to listed threatened or endangered species and their habitats for the subject proposal of FGBNMS boundary expansion and application of existing regulations and management plan actions in these areas, as documented in the enclosed Draft Environmental Impact Statement (DEIS), and is requesting initiation of consultation.

Based on information provided in the enclosed DEIS, FGBNMS has determined that: (1) several federally listed threatened and endangered species managed by the US Fish & Wildlife Service (USFWS) may occur in the areas where FGBNMS is considering implementing the proposed actions; (2) some federally listed threatened and endangered species managed by the USFWS could benefit from the proposed actions, as described in Section 5.3.2.7 of the enclosed DEIS; and (3) implementation of any of the five proposed alternatives, including the preferred alternative, identified in the enclosed DEIS is not likely to adversely affect any species listed as threatened or endangered, or habitats critical to such species, under the ESA.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Gardens Bank National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122. The DEIS is also available at <http://flowergarden.noaa.gov/management/expansiondeis.html>.



The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

The need for expansion has been strongly supported in public scoping for both that management plan review and for the enclosed DEIS. The evaluation of important marine resources and the incorporation of places of national significance into the National Marine Sanctuary System further national ocean resource management objectives articulated by many publicly vetted and expert-driven strategic planning efforts. These efforts address the need for additional protections for important habitat areas nationally, and in the northern Gulf of Mexico. These include the recommendations made in NOAA's 2010 Strategic Plan for Deep-Sea Coral and Sponge Ecosystems. Specific recommendations focused on the application of conservation measures in the Gulf of Mexico region notably include those made in the Gulf Coast Ecosystem Restoration Task Force's 2011 Gulf of Mexico Regional Ecosystem Restoration Strategy and reiterated by a variety of constituencies such as the Gulf Coast Ecosystem Restoration Council (2013), the Gulf of Mexico Alliance (2006, 2009), non-governmental organizations and coalitions (e.g., Brown et al. 2011), and the academic community (e.g., Peterson et al. 2011). Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, salvage activities) on the sensitive biological resources and geological features associated with many reefs and banks in the area.

Federally listed threatened and endangered species managed by the USFWS occurring in areas considered for sanctuary expansion are identified in Section 4.3.3 of the enclosed DEIS. The proposed actions will conserve and improve the resiliency



of overall ecosystem function in the north central Gulf of Mexico. Based on the information provided above and in the enclosed DEIS regarding the nature and location of the proposed action, FGBNMS has determined that the proposed project is not likely to adversely affect any federally listed threatened or endangered species or adversely modify their critical habitats as defined by ESA.

These determinations consider the increased protections that would be extended to federally listed species and their habitats by sanctuary regulations in proposed expansion areas, including prohibitions against anchoring and bottom-disturbing activities (including some types of fishing), as well as prohibitions on discharges. Sanctuary expansion will yield a substantial net increase in ecosystem function and overall quality of habitat benefitting listed species. Potential interactions resulting from NOAA field operations in the areas are mitigated by the sanctuary's standard operating procedures and will be further analyzed in the Programmatic Environmental Assessment of Field Operations in the Southeast and Gulf of Mexico National Marine Sanctuaries.

Based on the information provided above and in the enclosed DEIS, FGBNMS requests your concurrence with the determination of this DEIS that the potential impacts of the proposed actions on federally listed threatened and endangered species are adequately described in the document and that the alternatives including the preferred alternative are not likely to adversely affect federally listed threatened or endangered species or adversely modify their critical habitats. If the USFWS disagrees with this determination and recommends additional conservation measures, please inform me of this decision within 90 days of your receipt of this letter. Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl  
Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 7, 2016

David Bernhart,  
Assistant Regional Administrator  
Office of Protected Resources  
National Marine Fisheries Service  
263 13<sup>th</sup> Avenue South  
St. Petersburg, FL 33701

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – ESA Consultation

Dear Mr. Bernhart,

The purpose of this letter is to ensure compliance with the consultation requirements of the Endangered Species Act (ESA, 16 U.S.C. 1531-1544). In fulfillment of those requirements, the Flower Garden Banks National Marine Sanctuary (FGBNMS) is providing its assessment of potential impacts to listed threatened or endangered species and their habitats for the subject FGBNMS boundary expansion proposal as documented in the enclosed Draft Environmental Impact Statement (DEIS), and is requesting initiation of consultation.

Based on information and findings provided in the enclosed DEIS, the FGBNMS has determined that: (1) several federally listed threatened and endangered species managed by the National Marine Fisheries Service (NMFS) may occur in the areas where FGBNMS is considering implementing the proposed actions; (2) some federally listed threatened and endangered species managed by NMFS could benefit from the proposed restoration project, as described in Section 5.3.2.7 of the enclosed DEIS; and (3) implementation of any of the five proposed alternatives, including the preferred alternative, identified in the enclosed DEIS is not likely to adversely affect any species listed as threatened or endangered, or habitats critical to such species, under the ESA.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to these newly expanded areas. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed “Flower Gardens Bank National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement” (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122. The DEIS is also available at <http://flowergarden.noaa.gov/management/expansiondeis.html>.

The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively



be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

The need for expansion has been strongly supported in public scoping for both that management plan review and for the enclosed DEIS. The evaluation of important marine resources and the incorporation of places of national significance into the National Marine Sanctuary System further national ocean resource management objectives articulated by many publicly vetted and expert-driven strategic planning efforts. These efforts address the need for additional protections for important habitat areas nationally, and in the northern Gulf of Mexico. These include the recommendations made in NOAA's 2010 Strategic Plan for Deep-Sea Coral and Sponge Ecosystems. Specific recommendations focused on the application of conservation measures in the Gulf of Mexico region notably include those made in the Gulf Coast Ecosystem Restoration Task Force's 2011 Gulf of Mexico Regional Ecosystem Restoration Strategy and reiterated by a variety of constituencies such as the Gulf Coast Ecosystem Restoration Council (2013), the Gulf of Mexico Alliance (2006, 2009), non-governmental organizations and coalitions (e.g., Brown et al. 2011), and the academic community (e.g., Peterson et al. 2011). Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, salvage activities) on the sensitive biological resources and geological features associated with many reefs and banks in the area.

Federally listed threatened and endangered species managed by NMFS that occur in areas considered for sanctuary expansion are identified in Section 4.3.3 of the enclosed DEIS. The proposed actions will conserve and improve the resiliency of overall ecosystem function in the north central Gulf of Mexico. Based on the information provided above and in the enclosed DEIS regarding the nature and location of the proposed action, FGBNMS has determined that the proposed actions are not likely to adversely



affect any federally listed threatened or endangered species or adversely modify their critical habitats as defined by ESA.

These determinations consider the increased protections that would be extended to federally listed species and their habitats by sanctuary regulations in proposed expansion areas, including prohibitions against anchoring and bottom-disturbing activities (including some types of fishing), as well as prohibitions on discharges. Sanctuary expansion will yield a substantial net increase in ecosystem function and overall quality of habitat benefitting listed species. Potential interactions resulting from NOAA field operations in the areas are mitigated by the sanctuary's standard operating procedures and will be further analyzed in the Programmatic Environmental Assessment of Field Operations in the Southeast and Gulf of Mexico National Marine Sanctuaries.

Based on the information provided above and in the enclosed DEIS, FGBNMS requests your concurrence with the determination of this DEIS that the potential impacts of the proposed actions on federally protected resources are adequately described in the document and that the alternatives, including the preferred alternative, are not likely to adversely affect federally listed threatened or endangered species or adversely modify their critical habitats. If the NMFS Office of Protected Resources disagrees with this determination and recommends additional conservation measures, please inform me of this decision within 90 days of your receipt of this letter. Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl  
Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**UNITED STATES DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
263 13th Avenue South  
St. Petersburg, Florida 33701-5505  
<http://sero.nmfs.noaa.gov>

F/SER31:MET

MEMORANDUM FOR: George Schmahl

DEC 20 2016

FROM:

*for* F/SE – Roy E. Crabtree, Ph.D. 

SUBJECT:

Flower Garden Banks National Marine Sanctuary Proposed Boundary Expansion

Applicant	SER Number	Project Name/Type
National Ocean Service (NOS) Flower Garden Banks National Marine Sanctuary (FGBNMS)	SER-2016-18086	FGBNMS Boundary Expansion

This memorandum responds to the NOS FGBNMS’s July 7, 2016, letter requesting concurrence under Section 7 of the Endangered Species Act (ESA) with the project-effects determinations associated with the proposed expansion of the boundaries of the FGBNMS. You determined that the proposed action (Alternative 3 in the Flower Garden Banks National Marine Sanctuary Expansion Draft Environmental Impact Statement) may affect, but is not likely to adversely affect, 2 whale species (sperm and fin), 5 sea turtle species (green, hawksbill, Kemp’s ridley, leatherback, and loggerhead) and 4 coral species (lobed star, mountainous star, boulder star, and elkhorn).

NMFS received the applicant’s draft environmental impact statement and appendices on July 12, 2016, and we initiated consultation on that day. NMFS’s determinations regarding the effects of the proposed actions are based on the description of the actions in this informal consultation. Any changes to the proposed actions may negate the findings of the present consultation and may require reinitiation of consultation with NMFS.

**Project Location**

The preferred alternative expands the boundaries of FGBNMS by encompassing 18 natural features over an area of approximately 383 square miles within the northern Gulf of Mexico off the coast of Texas and Louisiana. The actual proposed expansion areas are shown as 11 discrete boundary polygons in Figure 1. The existing boundaries of FGBNMS include Stetson Bank (Area 1), West Flower Garden Bank, and East Flower Garden Bank (which are now encompassed within Area 2).



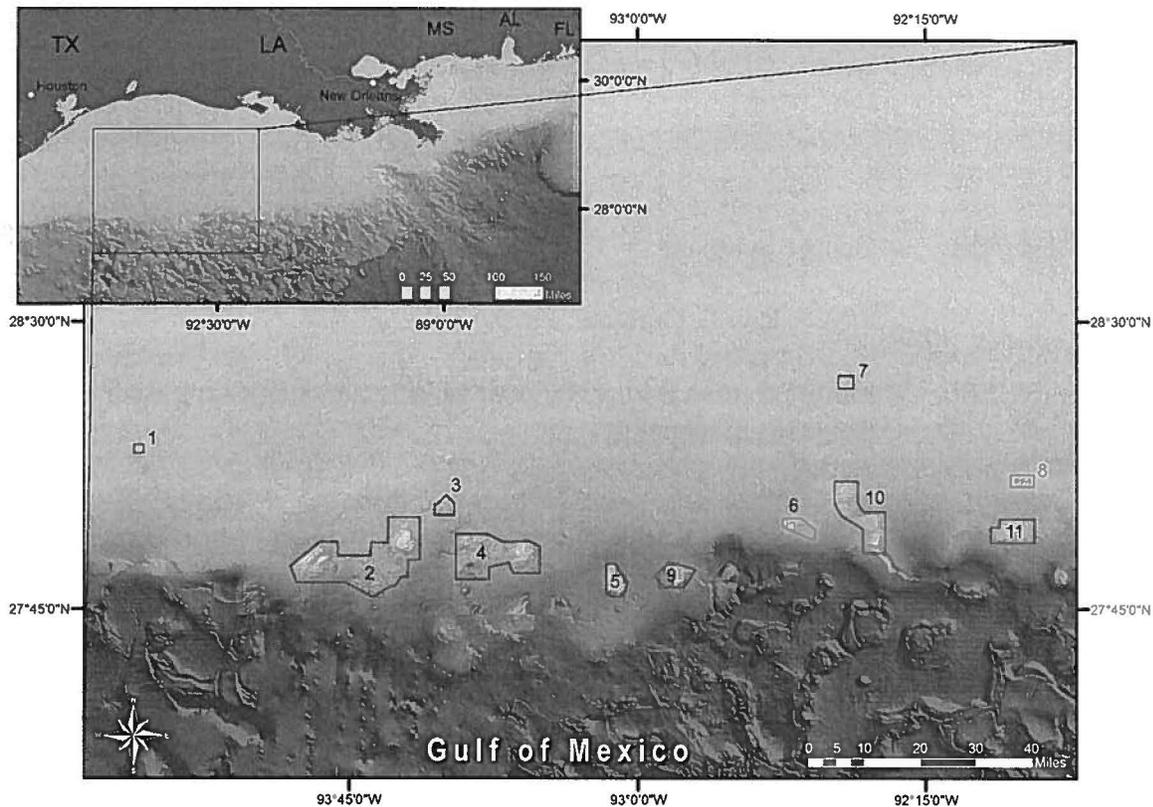


Figure 1. Areas proposed for inclusion in the expanded FGBNMS. Boundary polygons are numbered as shown in Table 1.

### Proposed Action

NOAA’s proposed action is the expansion of the existing boundaries of the FGBNMS from approximately 56 square miles to an area that encompasses approximately 383 square miles of waters in the northwestern Gulf of Mexico, including important and sensitive marine habitat areas outside the current sanctuary boundary. All current sanctuary regulations would be enforced in the new expansion areas. Current sanctuary regulations include restrictions on exploration for, or development or production of oil, gas or minerals; anchoring or otherwise mooring; discharging or depositing materials or other matter; alteration of the seabed; possessing various marine resources; injuring or taking or attempting to injure or take sanctuary resources; possessing or using explosives or releasing electrical charges; feeding fish; and possessing (except while passing without interruption through the sanctuary) or using fishing gear other than conventional hook and line gear. The full text of the regulations can be found in Appendix F of the Flower Garden Banks National Marine Sanctuary Expansion Draft Environmental Impact Statement (<http://flowergarden.noaa.gov/doc/fgbnmsexpansiondeisappendices.pdf>). A list of the areas proposed to be included in the expanded FGBNMS along with the size of each area is provided in Table 1.

**Table 1. Name and size (in square miles) of areas proposed to be included in the expanded FGBNMS. Numbers in first column correspond with those shown in Figure 1.**

<b>Areas</b>	<b>Nationally Significant Biological and Geological Features</b>	<b>Area (square miles)</b>
1	Stetson Bank (this area is part of the existing FGBNMS)	2.33
2	West Flower Garden Bank, East Flower Garden Bank and Horseshoe Bank (West Flower Garden Bank and East Garden Flower Bank areas are part of the existing FGBNMS)	147.41
3	MacNeil Bank	8.31
4	Rankin Bank, 28 Fathom Bank and Bright Bank	82.94
5	Geyer Bank	15.27
6	McGrail Bank	12.02
7	Sonnier Bank	5.58
8	Alderdice Bank	7.98
9	Elvers Bank	20.10
10	Bouma Bank, Bryant Bank, Rezak Bank and Sidner Bank	53.56
11	Parker Bank	27.69
	<b>Net Increase in Area Over Current Sanctuary</b>	<b>326.98</b>
	<b>Total Area</b>	<b>383.19</b>

**Table 2. Effects determinations for species the Action Agency and NMFS believe may be affected by the proposed action**

<b>Species</b>	<b>ESA Listing Status</b>	<b>Action Agency Effect Determination</b>	<b>NMFS Effect Determination</b>
<b>Whales</b>			
Sperm	E	NLAA	NLAA
Fin	E	NLAA	NLAA
<b>Sea Turtles</b>			
Green (North and South Atlantic distinct population segment [DPS])	T	NLAA	NLAA
Kemp's ridley	E	NLAA	NLAA
Leatherback	E	NLAA	NLAA
Loggerhead (Northwest Atlantic Ocean DPS)	T	NLAA	NLAA
Hawksbill	E	NLAA	NLAA
<b>Corals</b>			
Lobed star	T	NLAA	NLAA
Mountainous star	T	NLAA	NLAA
Boulder star	T	NLAA	NLAA
Elkhorn	T	NLAA	NLAA
E = endangered; T = threatened; NLAA = may affect, not likely to adversely affect			

## Critical Habitat

The FGBMNS and all proposed expansion areas fall within designated critical habitat for loggerhead sea turtles (LOGG-S-2 [Sargassum]). There are 4 Primary Constituent Elements (PCEs) of this critical habitat found within Unit LOGG-S-2:

1. Convergence zones, surface-water downwelling areas, the margins of major boundary currents (Gulf Stream), and other locations where there are concentrated components of the *Sargassum* community in water temperatures suitable for the optimal growth of *Sargassum* and inhabitation of loggerheads;
2. *Sargassum* in concentrations that support adequate prey abundance and cover;
3. Available prey and other material associated with *Sargassum* habitat including, but not limited to, plants and cyanobacteria and animals native to the *Sargassum* community such as hydroids and copepods;
4. Sufficient water depth and proximity to available currents to ensure offshore transport (out of the surf zone), and foraging and cover requirements by *Sargassum* for post-hatchling loggerheads, i.e., >10 m depth.

We believe the proposed action has the potential to produce a beneficial effect on PCE 3 - Available prey and other material associated with *Sargassum* habitat (discussed further below).

## Analysis of Potential Routes of Effects to Species

NMFS has identified the following potential effects to whales, sea turtles and corals from the proposed projects and concluded that these species are not likely to be adversely affected.

Long-term, localized benefits to living marine resources are the primary goal of the proposed sanctuary expansion and the imposition of protections associated with such a designation.

- Noise created by humans can adversely affect whales and sea turtles. The expected reduction in large vessel traffic and other noise-generating activities related to oil and gas exploration and production resulting from sanctuary expansion may reduce man-made noise, resulting in beneficial effects on listed species.
- Corals can be damaged or destroyed by bottom-tending fishing gears, possessing various marine resources, injuring or taking or attempting to injure or take sanctuary resources, anchoring, dredging, scraping, mining, oil and gas extraction, and construction/operation of pipelines. The proposed expansion of the sanctuary (where these activities will be prohibited) may result in beneficial effects on listed corals in these areas.
- Sea turtles and whales are known to become entangled in derelict fishing gear such as long-lines and nets. The proposed expansion of the sanctuary (where the use of these types of gear will be prohibited) may result in a beneficial reduction in entanglement of listed sea turtles and whales in these areas.
- Discharges of toxins and marine debris from vessels are known to impact sea turtles due to ingestion. The proposed expansion of the sanctuary (where discharge of any material will be prohibited) may benefit listed species by reducing the likelihood of ingestion of toxic/foreign materials.

- Sea turtles and whales may be injured or killed by vessel strikes in open water. There is the potential for sanctuary expansion to result in a small increase in vessel traffic related to regulatory enforcement, research, education, and recreation. Due to the extreme remoteness of the proposed expansion areas and the minor increase in vessel traffic expected from sanctuary expansion, the potential for the proposed action to result in an increase in vessel strikes of listed species is discountable.

### **Analysis of Potential Routes of Effects to Critical habitat**

The proposed expansion of the sanctuary would increase the area in which the restrictions on fishing, oil and gas production, and the discharge of toxins from vessels would apply. This may result in long-term beneficial effects on available prey associated with *Sargassum* habitat within the expanded sanctuary. There are no other reasonably foreseeable routes of effects to loggerhead sea turtle critical habitat (LOGG-S-2)

### **Conclusion**

Because all potential project effects to listed species and critical habitat were found to be discountable, insignificant or beneficial, we conclude that the proposed action is not likely to adversely affect listed species under NMFS's purview. This concludes your consultation responsibilities under the ESA for species under NMFS's purview. Consultation must be reinitiated if a take occurs or new information reveals effects of the action not previously considered, or if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or if a new species is listed or critical habitat designated that may be affected by the identified action. NMFS's findings on the project's potential effects are based on the project description in this response. Any changes to the proposed action may negate the findings of this consultation and may require reinitiation of consultation with NMFS.

We look forward to continued cooperation with you and the FGBNMS to promote the conservation of our threatened and endangered marine species and designated critical habitats. If you have any questions about this consultation, please contact Mike Tucker, Consultation Biologist, at (727) 209-5981, or by email at [michael.tucker@noaa.gov](mailto:michael.tucker@noaa.gov).

File: 1514-22C.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

November 16, 2020

Mr. David Bernhart  
Assistant Regional Administrator  
Protected Resources Division  
National Marine Fisheries Service  
Southeast Regional Office  
263 13<sup>th</sup> Avenue South  
St. Petersburg, FL 33701

Project: Expedited ESA Consultation Request for Flower Garden Banks National Marine Sanctuary Expansion

Dear Mr. Bernhart,

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) Flower Garden Banks National Marine Sanctuary (FGBNMS) requests expedited informal consultation under Section 7 of the Endangered Species Act (ESA) for the proposed Flower Garden Banks National Marine Sanctuary Expansion. We have determined that the proposed action may affect, but is not likely to adversely affect ESA-listed species or their designated critical habitat, and we request your concurrence with this determination.

NOAA conducted informal consultation with NMFS in 2016 (NMFS tracking # SER-2016-18086), on what was then the Preferred Alternative for expansion of the FGBNMS, as presented in the Draft Environmental Impact Statement (referred to as the 2016 Preferred Alternative). Since that consultation was completed, the FGBNMS has revised the Preferred Alternative for the proposed expansion, by reducing the area of the expansion, increasing the number of polygons (discrete areas within a specified boundary), and reducing the number of banks affected. The original 2016 Preferred Alternative would have added 15 banks, for a total of 18 banks, represented in 11 polygons (including 3 multi-bank complexes within a single polygon). This 2016 Preferred Alternative would have increased the existing sanctuary area from approximately 56 square miles to approximately 383 square miles. NOAA's 2020 Final Revised Preferred Alternative would add 14 banks, for a total of 17 banks, represented in 19 polygons (including 3 banks within multiple polygons). This would increase the current sanctuary area from approximately 56 square miles to approximately 160 square miles. While the proposed boundaries for the 2020 Final Preferred Alternative have changed since FGBNMS conducted its Section 7 consultation in 2016, the 2020 Final Preferred Alternative would not have any effects on ESA-listed species or their designated critical habitats beyond those effects that were analyzed in the 2016 consultation because the boundaries for the 2020 Final Preferred Alternative encompass



the 2016 boundaries and because FGBNMS has not identified any new activities that would affect listed species or their designated critical habitats not included within the 2016 consultation.

Since the completion of consultation in 2016, NMFS has listed four (4) species under the ESA that may occur within the action area and may be affected by the proposed action. Therefore, this re-initiation focuses on the four species listed under the ESA since 2016.

## 1. PROPOSED ACTION

NOAA proposes to expand the boundaries of Flower Garden Banks National Marine Sanctuary (FGBNMS) to include portions of 14 additional reefs and banks in the northwestern Gulf of Mexico, representing a 104 square mile increase in area to provide protection of habitat contained therein. The existing FGBNMS regulations would be applied to the expanded locations. Current FGBNMS regulations can be found at 15 CFR part 922, subpart L, 922.122 (a); 15 CFR, Subpart A, 922.3, and also in Appendix F of the FGBNMS DEIS (<http://flowergarden.noaa.gov/doc/fgbnmsexpansiondeisappendices.pdf>). Current sanctuary regulations include restrictions on exploration for, or development or production of oil, gas or minerals; anchoring or otherwise mooring; discharging or depositing materials or other matter; alternation of the seabed; possessing various marine resources; injuring or taking or attempting to injury or take sanctuary resources; possessing or using explosives or releasing electrical charges; feeding fish; and possessing (except while passing without interruption through the sanctuary) or using fishing gear other than conventional hook and line gear.

## 2. ACTION AREA

Pursuant to 50 C.F.R. § 4402.02, the term *action area* is defined as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.” Accordingly, the action area typically includes the affected jurisdictional waters and other areas affected by the authorized work or structures within a reasonable distance.

NOAA’s 2020 Final Preferred Alternative would add 14 banks, for a total of 17 banks, represented in 19 polygons (including 3 banks within multiple polygons). This would increase the current sanctuary area from approximately 56 square miles to approximately 160 square miles. The proposed rule would adjust the boundaries of the existing sanctuary – Stetson Bank, and East and West Flower Garden Banks, and add boundaries to include 14 additional banks: Horseshoe, MacNeil, Rankin, 28 Fathom, Bright, Geyer, Elvers, McGrail, Sonnier, Bouma, Rezak, Sidner, Alderdice, and Parker Banks, all in the Northwestern Gulf of Mexico (Figure 1).



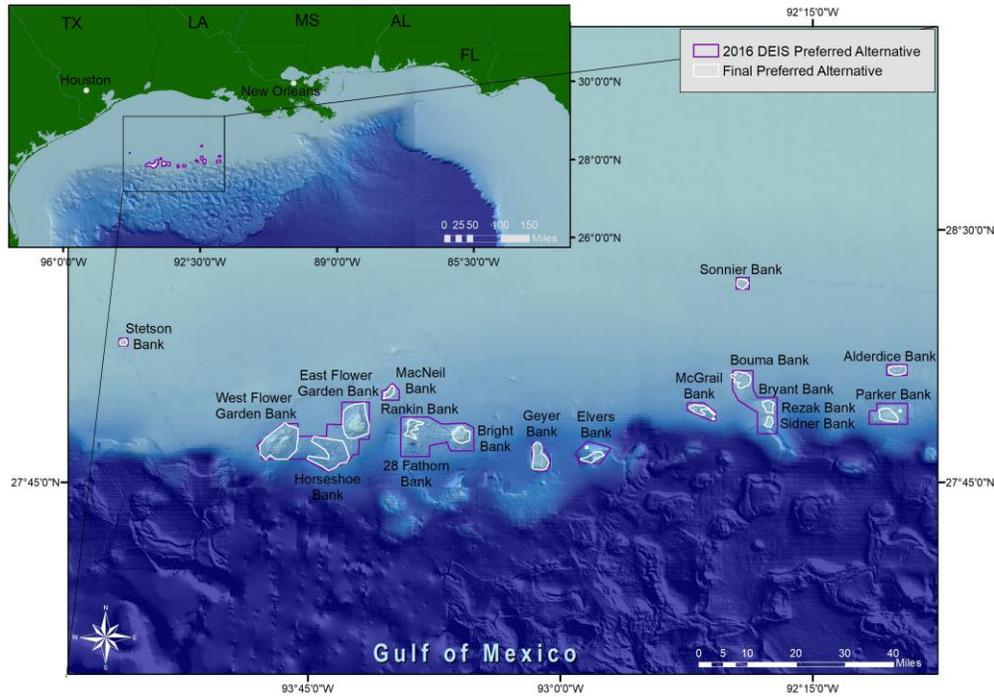


Figure 1. Sanctuary boundaries as presented in 2016 Draft Environmental Impact Statement, and the 2020 Final Preferred Alternative.

A list of the areas proposed to be included in the expanded FGBNMS along with the size of each polygon is provided in Table 1.

Table 1. Name and size (in square miles) of areas proposed to be included in the expanded FGBNMS.

	<b>Nationally Significant Biological and Geological Features</b>	<b>Area (sq. miles)</b>
1	Stetson Bank	1.4
2	West Flower Garden Bank	37.2
3	East Flower Garden Bank	27.8
4	Horseshoe Bank	28.7
5	MacNeil Bank	2.7
6	Rankin/28 Fathom Banks	5.6
7	Bright Bank	7.7
8	Geyer Bank	11.5
9	Elvers Bank (2 polygons)	4.6
10	McGrail Bank (2 polygons)	4.7
11	Sonnier Bank	3.1
12	Bouma Bank	7.7
13	Rezak Bank	3.7
14	Sidner Bank	2.0
15	Alderdice Bank	5.0
16	Parker Bank (2 polygons)	7.0
	<b>Net Increase in Area Over Current Sanctuary</b>	<b>104</b>
	<b>Total Area</b>	<b>160</b>



### 3. AFFECTED SPECIES/HABITAT

In 2016, FGBNMS consulted with NMFS regarding twelve (12) species listed under the ESA with the potential to occur within the action area and for designated critical habitat that may occur within the action area (NMFS tracking # SER-2016-18086). As noted above, the FGBNMS determined that the 2020 Final Preferred Alternative would not have any effects on the ESA-listed species or their designated critical habitats beyond those that were analyzed in the 2016 consultation because the boundaries for the 2020 Final Preferred Alternative encompass the boundaries of the 2016 Preferred Alternative and because FGBNMS has not identified any new activities that would impact listed species or designated critical habitats not included within the 2016 consultation. Since the completion of consultation in 2016, NMFS has listed four species under the ESA which may be affected by the proposed expansion of the FGBNMS (see Table 2).

Table 2. Effects determination for species listed under the ESA since 2016 that may occur within the Action Area

Species	ESA Listing Status	Listing Rule/Date	Most Recent recovery plan date	Action Agency Effect Determination
Gulf of Mexico Bryde's whale ( <i>Balaenoptera edeni</i> ) – GoM subspecies	Endangered	84 FR 15446/ April 15, 2019	N/A	NLAA
Giant manta ray ( <i>Manta birostris</i> )	Threatened	83 FR 2916/ January 22, 2018	N/A	NLAA
Oceanic whitetip shark ( <i>Carcharhinus longimanus</i> )	Threatened	83 FR 4153/ January 30, 2018	N/A	NLAA
Nassau Grouper ( <i>Epinephelus striatus</i> )	Threatened	81 FR 42268/ July 29, 2016	N/A	NLAA

### 4. POTENTIAL ROUTES OF EFFECTS FOR THE PROPOSED ACTION

#### Potential beneficial effects to listed species from sanctuary expansion (beneficial)

Noise created by humans can adversely affect whales and fish by interfering with communication, damaging hearing functions, and causing behavioral changes that lead to less efficient foraging, breeding, and caring for eggs and young. The proposed expansion would limit oil and gas exploration within areas previously open to such activities, which would result in a reduction in large vessel traffic and oil and gas exploration within these areas. The expected reduction in large vessel traffic and other noise-generating activities related to oil and gas exploration and production resulting from sanctuary expansion may reduce man-made noise, resulting in beneficial effects on listed species.

Fish and whales are known to become entangled in commercial fishing gear, which can result in mortality, reduced foraging abilities, and lacerations and infections. The proposed expansion of the sanctuary (where some commercial fishing would be



prohibited) may result in a beneficial reduction in entanglement of listed species in these areas.

Discharges of toxins and marine debris from vessels are known to impact fish and whales due to ingestion that could lead to internal blockages, starvation, or mortality. The proposed expansion of the sanctuary (where discharge of any material would be prohibited) may result in beneficial effects on listed species by reducing the likelihood of ingestion of toxic or foreign materials.

### **Direct injury due to vessel strikes (extremely unlikely)**

Giant mantas and whales may be injured or killed by vessel strikes in open water. There is the potential for sanctuary expansion to result in a small increase in vessel traffic related to regulatory enforcement, research, education, and recreation. Due to the extreme remoteness of the proposed expansion areas and the minor increase in vessel traffic expected from sanctuary expansion, the potential for the proposed action to result in an increase in vessel strikes of listed species is extremely unlikely to occur.

In addition, the FGBNMS vessel (R/V *Manta*) follows standing orders imposed by ONMS management to minimize impacts on resources, particularly sea turtles, marine mammals, and other protected species, within the sanctuary and while transiting between sites or from/to shore. The general standing orders direct FGBNMS small boat operators to:

- **Keep a sharp lookout** – vessel operators are required to stay vigilant for marine mammals, sea turtles, and other collision hazards.
- **Lookouts** – Post a minimum of one dedicated lookout when the vessel is transiting above speeds of 15kts.
- **Night transits** – Operator will keep a sharp lookout during night transits. Night transits are limited to less than 15kts, unless in the case of an emergency. Watch your speed in limited visibility situations.
- **Stay at the helm** – vessel operators are required to keep hands on the wheel and throttle at all times while in areas where large whales and turtles can occur, and must be ready to take action immediately to avoid any animal.
- **Keep your distance** – if large whales are sighted, a distance of at least 100 yards should be maintained.
- **Stop vessel when large whales are near** – If large whales surface within 100 yards, vessel operators should stop immediately and use prudent seamanship to decide to either move away slowly or wait for the animal to move away on its own.
- **Sargassum interaction** – Limit *sargassum* interaction as much as is reasonably feasible, to prevent impact on sea turtle hatchling habitat.



*Conclusion* Federally listed threatened and endangered species managed by NMFS that occur in areas considered for sanctuary expansion were identified in Section 4.3.3 of the 2016 DEIS, with four subsequently listed species noted above. While potential adverse impacts from vessel strikes are extremely unlikely to occur, the proposed expansion is expected to result in beneficial impacts to listed species because it would prevent noise-generating activities and would conserve and improve the resiliency of overall ecosystem function in the north central Gulf of Mexico. Based on the information provided above and in the aforementioned and reviewed DEIS regarding the nature and location of the proposed action, FGBNMS has determined that the proposed action may affect, but is not likely to adversely affect any Federally listed threatened or endangered species or adversely modify their critical habitats as defined by ESA.

These determinations consider the increased protections that would be extended to federally listed species and their habitats by sanctuary regulations in proposed expansion areas, including prohibitions against anchoring and bottom-disturbing activities (including some types of fishing), as well as prohibitions on discharges. Sanctuary expansion would yield a substantial net increase in ecosystem function and overall quality of habitat benefitting listed species. Potential interactions resulting from NOAA field operations in the areas will be minimized by the sanctuary's standard operating procedures and will be further analyzed in the Programmatic Environmental Assessment of Field Operations in the Southeast and Gulf of Mexico National Marine Sanctuaries.

Based on the information provided above, FGBNMS requests your concurrence with the determination that the proposed action is not likely to adversely affect federally listed threatened or endangered species or adversely modify their critical habitats. NOAA/FGBNMS has used the best scientific and commercial data available in making this determination. A complete list of citations used in the development of the DEIS are available in the DEIS appendix, provided previously, and updated and attached herewith.

Note that the information contained herein is pre-decisional, and should not be shared beyond the need intended through this consultation.

Sincerely,



G.P. Schmahl  
Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-356-0390  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
263 13<sup>th</sup> Avenue South  
St. Petersburg, Florida 33701-5505  
<https://www.fisheries.noaa.gov/region/southeast>

F/SER31:DMB  
SERO-2020-03175

George P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551

Ref.: Flower Garden Banks National Marine Sanctuary Expansion, Gulf of Mexico – EXPEDITED TRACK

Dear George:

This letter responds to your November 16, 2020, request pursuant to Section 7 of the Endangered Species Act (ESA) for consultation with the National Marine Fisheries Service (NMFS) on the subject action.

We reviewed the action agency's consultation request document and related materials. Based on our knowledge, expertise, and the action agency's materials, we concur with the action agency's conclusions that the proposed action is not likely to adversely affect the NMFS ESA-listed species and/or designated critical habitat. This concludes your consultation responsibilities under the ESA for species and/or designated critical habitat under NMFS's purview. Reinitiation of consultation is required and shall be requested by the action agency or by NMFS where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) take occurs; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in this consultation; (c) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not previously considered in this consultation; or (d) if a new species is listed or critical habitat designated that may be affected by the action.

We look forward to further cooperation with you on other projects to ensure the conservation of our threatened and endangered marine species and designated critical habitat. If you have any questions on this consultation, please contact Dana M. Bethea, Consultation Biologist, at (727) 209-5974 or by email at [Dana.Bethea@noaa.gov](mailto:Dana.Bethea@noaa.gov).

Sincerely,

David Bernhart  
Assistant Regional Administrator  
for Protected Resources

File: 1514-22.e





# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Texas Coastal Ecological Services Field Office  
4444 Corona Drive, Suite 215  
Corpus Christi, TX 78411  
Phone: (281) 286-8282 Fax: (281) 488-5882  
<http://www.fws.gov/southwest/es/TexasCoastal/>  
[http://www.fws.gov/southwest/es/ES\\_Lists\\_Main2.html](http://www.fws.gov/southwest/es/ES_Lists_Main2.html)

In Reply Refer To:

November 12, 2020

Consultation Code: 02ETTX00-2021-SLI-0386

Event Code: 02ETTX00-2021-E-00860

Project Name: Proposed Expansion of Flower Garden Banks National Marine Sanctuary

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The U.S. Fish and Wildlife Service (Service) field offices in Clear Lake, Tx, and Corpus Christi, Tx, have combined administratively to form the Texas Coastal Ecological Services Field Office. A map of the Texas Coastal Ecological Services Field Office area of responsibility can be found at: <http://www.fws.gov/southwest/es/TexasCoastal/Map.html>. All project related correspondence should be sent to the field office responsible for the area in which your project occurs. For projects located in southeast Texas please write to: Field Supervisor; U.S. Fish and Wildlife Service; 17629 El Camino Real Ste. 211; Houston, Texas 77058. For projects located in southern Texas please write to: Field Supervisor; U.S. Fish and Wildlife Service; P.O. Box 81468; Corpus Christi, Texas 78468-1468. For projects located in six counties in southern Texas (Cameron, Hidalgo, Starr, Webb, Willacy, and Zapata) please write: Santa Ana NWR, ATTN: Ecological Services Sub Office, 3325 Green Jay Road, Alamo, Texas 78516.

The enclosed species list identifies federally threatened, endangered, and proposed to be listed species; designated critical habitat; and candidate species that may occur within the boundary of your proposed project and/or may be affected by your proposed project.

New information from updated surveys, changes in the abundance and distribution of species, changes in habitat conditions, or other factors could change the list. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. The Service recommends that verification be completed by visiting the ECOS-IPaC website <http://ecos.fws.gov/ipac/> at regular intervals during project planning and implementation for updates to species list and information. An updated list may be

requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

Candidate species have no protection under the Act but are included for consideration because they could be listed prior to the completion of your project. The other species information should help you determine if suitable habitat for these listed species exists in any of the proposed project areas or if project activities may affect species on-site, off-site, and/or result in "take" of a federally listed species.

"Take" is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. In addition to the direct take of an individual animal, habitat destruction or modification can be considered take, regardless of whether it has been formally designated as critical habitat, if the activity results in the death or injury of wildlife by removing essential habitat components or significantly alters essential behavior patterns, including breeding, feeding, or sheltering.

### **Section 7**

Section 7 of the Act requires that all Federal agencies consult with the Service to ensure that actions authorized, funded or carried out by such agencies do not jeopardize the continued existence of any listed threatened or endangered species or adversely modify or destroy critical habitat of such species. It is the responsibility of the Federal action agency to determine if the proposed project may affect threatened or endangered species. If a "may affect" determination is made, the Federal agency shall initiate the section 7 consultation process by writing to the office that has responsibility for the area in which your project occurs.

**Is not likely to adversely affect** - the project may affect listed species and/or critical habitat; however, the effects are expected to be discountable, insignificant, or completely beneficial. Certain avoidance and minimization measures may need to be implemented in order to reach this level of effects. The Federal agency or the designated non-Federal representative should seek written concurrence from the Service that adverse effects have been eliminated. Be sure to include all of the information and documentation used to reach your decision with your request for concurrence. The Service must have this documentation before issuing a concurrence.

**Is likely to adversely affect** - adverse effects to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial. If the overall effect of the proposed action is beneficial to the listed species but also is likely to cause some adverse effects to individuals of that species, then the proposed action "is likely to adversely affect" the listed species. An "is likely to adversely affect" determination requires the Federal action agency to initiate formal section 7 consultation with this office.

**No effect** - the proposed action will not affect federally listed species or critical habitat (i.e., suitable habitat for the species occurring in the project county is not present in or adjacent to the action area). No further coordination or contact with the Service is necessary. However, if the

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project changes or additional information on the distribution of listed or proposed species becomes available, the project should be reanalyzed for effects not previously considered.

Regardless of your determination, the Service recommends that you maintain a complete record of the evaluation, including steps leading to the determination of affect, the qualified personnel conducting the evaluation, habitat conditions, site photographs, and any other related articles.

Please be advised that while a Federal agency may designate a non-Federal representative to conduct informal consultations with the Service, assess project effects, or prepare a biological assessment, the Federal agency must notify the Service in writing of such a designation. The Federal agency shall also independently review and evaluate the scope and contents of a biological assessment prepared by their designated non-Federal representative before that document is submitted to the Service.

The Service's Consultation Handbook is available online to assist you with further information on definitions, process, and fulfilling Act requirements for your projects at: [http://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf)

### **Section 10**

If there is no federal involvement and the proposed project is being funded or carried out by private interests and/or non-federal government agencies, and the project as proposed may affect listed species, a section 10(a)(1)(B) permit is recommended. The Habitat Conservation Planning Handbook is available at: [http://www.fws.gov/endangered/esa-library/pdf/HCP\\_Handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/HCP_Handbook.pdf)

### **Service Response**

Please note that the Service strives to respond to requests for project review within 30 days of receipt, however, this time period is not mandated by regulation. Responses may be delayed due to workload and lack of staff. Failure to meet the 30-day timeframe does not constitute a concurrence from the Service that the proposed project will not have impacts to threatened and endangered species.

### **Proposed Species and/or Proposed Critical Habitat**

While consultations are required when the proposed action may affect listed species, section 7(a)(4) was added to the ESA to provide a mechanism for identifying and resolving potential conflicts between a proposed action and proposed species or proposed critical habitat at an early planning stage. The action agency should seek concurrence from the Service to assist the action agency in determining effects and to advise the agency on ways to avoid or minimize adverse effect to proposed species or proposed critical habitat.

### **Candidate Species**

Candidate species are species that are being considered for possible addition to the threatened and endangered species list. They currently have no legal protection under the ESA. If you find you have potential project impacts to these species the Service would like to provide technical

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assistance to help avoid or minimize adverse effects. Addressing potential impacts to these species at this stage could better provide for overall ecosystem health in the local area and avert potential future listing.

Several species of freshwater mussels occur in Texas and four are candidates for listing under the ESA. The Service is also reviewing the status of six other species for potential listing under the ESA. One of the main contributors to mussel die offs is sedimentation, which smothers and suffocates mussels. To reduce sedimentation within rivers, streams, and tributaries crossed by a project, the Service recommends that you implement the best management practices found at: <http://www.fws.gov/southwest/es/TexasCoastal/FreshwaterMussels.html>.

Candidate Conservation Agreements (CCAs) or Candidate Conservation Agreements with Assurances (CCAAs) are voluntary agreements between the Service and public or private entities to implement conservation measures to address threats to candidate species. Implementing conservation efforts before species are listed increases the likelihood that simpler, flexible, and more cost-effective conservation options are available. A CCAA can provide participants with assurances that if they engage in conservation actions, they will not be required to implement additional conservation measures beyond those in the agreement. For additional information on CCAs/CCAAs please visit the Service's website at <http://www.fws.gov/angered/what-we-do/cca.html>.

### **Migratory Birds**

The Migratory Bird Treaty Act (MBTA) implements various treaties and conventions for the protection of migratory birds. Under the MBTA, taking, killing, or possessing migratory birds is unlawful. Many may nest in trees, brush areas or other suitable habitat. The Service recommends activities requiring vegetation removal or disturbance avoid the peak nesting period of March through August to avoid destruction of individuals or eggs. If project activities must be conducted during this time, we recommend surveying for active nests prior to commencing work. A list of migratory birds may be viewed at <http://www.fws.gov/migratorybirds/regulationspolicies/mbta/mbtandx.html>.

The bald eagle (*Haliaeetus leucocephalus*) was delisted under the Act on August 9, 2007. Both the bald eagle and the golden eagle (*Aquila chrysaetos*) are still protected under the MBTA and BGEPA. The BGEPA affords both eagles protection in addition to that provided by the MBTA, in particular, by making it unlawful to "disturb" eagles. Under the BGEPA, the Service may issue limited permits to incidentally "take" eagles (e.g., injury, interfering with normal breeding, feeding, or sheltering behavior nest abandonment). For more information on bald and golden eagle management guidelines, we recommend you review information provided at <http://www.fws.gov/midwest/eagle/pdf/NationalBaldEagleManagementGuidelines.pdf>.

The construction of overhead power lines creates threats of avian collision and electrocution. The Service recommends the installation of underground rather than overhead power lines whenever possible. For new overhead lines or retrofitting of old lines, we recommend that project

developers implement, to the maximum extent practicable, the Avian Power Line Interaction Committee guidelines found at <http://www.aplic.org/>.

Meteorological and communication towers are estimated to kill millions of birds per year. We recommend following the guidance set forth in the Service Interim Guidelines for Recommendations on Communications Tower Siting, Constructions, Operation and Decommissioning, found online at: <http://www.fws.gov/habitatconservation/communicationtowers.html>, to minimize the threat of avian mortality at these towers. Monitoring at these towers would provide insight into the effectiveness of the minimization measures. We request the results of any wildlife mortality monitoring at towers associated with this project.

We request that you provide us with the final location and specifications of your proposed towers, as well as the recommendations implemented. A Tower Site Evaluation Form is also available via the above website; we recommend you complete this form and keep it in your files. If meteorological towers are to be constructed, please forward this completed form to our office.

More information concerning sections 7 and 10 of the Act, migratory birds, candidate species, and landowner tools can be found on our website at: <http://www.fws.gov/southwest/es/TexasCoastal/ProjectReviews.html>.

### **Wetlands and Wildlife Habitat**

Wetlands and riparian zones provide valuable fish and wildlife habitat as well as contribute to flood control, water quality enhancement, and groundwater recharge. Wetland and riparian vegetation provides food and cover for wildlife, stabilizes banks and decreases soil erosion. These areas are inherently dynamic and very sensitive to changes caused by such activities as overgrazing, logging, major construction, or earth disturbance. Executive Order 11990 asserts that each agency shall provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial value of wetlands in carrying out the agency's responsibilities. Construction activities near riparian zones should be carefully designed to minimize impacts. If vegetation clearing is needed in these riparian areas, they should be re-vegetated with native wetland and riparian vegetation to prevent erosion or loss of habitat. We recommend minimizing the area of soil scarification and initiating incremental re-establishment of herbaceous vegetation at the proposed work sites. Denuded and/or disturbed areas should be re-vegetated with a mixture of native legumes and grasses. Species commonly used for soil stabilization are listed in the Texas Department of Agriculture's (TDA) Native Tree and Plant Directory, available from TDA at P.O. Box 12847, Austin, Texas 78711. The Service also urges taking precautions to ensure sediment loading does not occur to any receiving streams in the proposed project area. To prevent and/or minimize soil erosion and compaction associated with construction activities, avoid any unnecessary clearing of vegetation, and follow established rights-of-way whenever possible. All machinery and petroleum products should be stored outside the floodplain and/or wetland area during construction to prevent possible contamination of water and soils.

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Wetlands and riparian areas are high priority fish and wildlife habitat, serving as important sources of food, cover, and shelter for numerous species of resident and migratory wildlife. Waterfowl and other migratory birds use wetlands and riparian corridors as stopover, feeding, and nesting areas. We strongly recommend that the selected project site not impact wetlands and riparian areas, and be located as far as practical from these areas. Migratory birds tend to concentrate in or near wetlands and riparian areas and use these areas as migratory flyways or corridors. After every effort has been made to avoid impacting wetlands, you anticipate unavoidable wetland impacts will occur; you should contact the appropriate U.S. Army Corps of Engineers office to determine if a permit is necessary prior to commencement of construction activities.

If your project will involve filling, dredging, or trenching of a wetland or riparian area it may require a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (COE). For permitting requirements please contact the U.S. Corps of Engineers, District Engineer, P.O. Box 1229, Galveston, Texas 77553-1229, (409) 766-3002.

### **Beneficial Landscaping**

In accordance with Executive Order 13112 on Invasive Species and the Executive Memorandum on Beneficial Landscaping (42 C.F.R. 26961), where possible, any landscaping associated with project plans should be limited to seeding and replanting with native species. A mixture of grasses and forbs appropriate to address potential erosion problems and long-term cover should be planted when seed is reasonably available. Although Bermuda grass is listed in seed mixtures, this species and other introduced species should be avoided as much as possible. The Service also recommends the use of native trees, shrubs, and herbaceous species that are adaptable, drought tolerant and conserve water.

### **State Listed Species**

The State of Texas protects certain species. Please contact the Texas Parks and Wildlife Department (Endangered Resources Branch), 4200 Smith School Road, Austin, Texas 78744 (telephone 512/389-8021) for information concerning fish, wildlife, and plants of State concern or visit their website at: [http://www.tpwd.state.tx.us/huntwild/wild/wildlife\\_diversity/texas\\_rare\\_species/listed\\_species/](http://www.tpwd.state.tx.us/huntwild/wild/wildlife_diversity/texas_rare_species/listed_species/).

If we can be of further assistance, or if you have any questions about these comments, please contact 281/286-8282 if your project is in southeast Texas, or 361/994-9005, ext. 246, if your project is in southern Texas. Please refer to the Service consultation number listed above in any future correspondence regarding this project.

Attachment(s):

- Official Species List
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# Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Texas Coastal Ecological Services Field Office**

4444 Corona Drive, Suite 215

Corpus Christi, TX 78411

(281) 286-8282

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## Project Summary

Consultation Code: 02ETTX00-2021-SLI-0386

Event Code: 02ETTX00-2021-E-00860

Project Name: Proposed Expansion of Flower Garden Banks National Marine Sanctuary

Project Type: \*\* OTHER \*\*

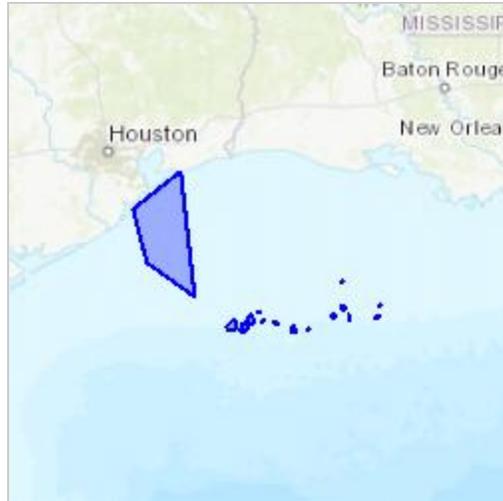
Project Description: NOAA's Final Preferred Alternative for expanding the Flower Garden Bank National Marine Sanctuary would the existing boundaries of Stetson Bank, and East and West Flower Garden banks, as well as establishing sixteen new discontinuous boundaries encompassing seventeen individual banks (Stetson, East Flower Garden, West Flower Garden, McGrail, Geyer, Sonnier, Alderdice, Horseshoe, MacNeil, Elvers, Parker, Bright, Rankin, 28-Fathom, Bouma, Rezak, and Sidner banks).

NOAA's Final Preferred Alternative would expand the network of protected areas within the sanctuary, and apply the existing sanctuary regulations and management actions to the expanded areas. NOAA's Final Preferred Alternative was based on the criteria developed by the Advisory Council's Boundary Expansion Working Groups (BEWGs) and the Advisory Council's 2018 recommendation, over 30 years of scientific studies and explorations, research and consultation with other federal and state agencies, strong public support and comment during public meetings preceding this proposal, and extensive input from oil and gas, and fishing interests.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/28.846923983500034N94.67926539401032W>

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Counties: Galveston, TX

## Endangered Species Act Species

There is a total of 9 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

- 
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

## Mammals

NAME	STATUS
West Indian Manatee <i>Trichechus manatus</i> There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat. <b><i>This species is also protected by the Marine Mammal Protection Act, and may have additional consultation requirements.</i></b> Species profile: <a href="https://ecos.fws.gov/ecp/species/4469">https://ecos.fws.gov/ecp/species/4469</a>	Threatened

## Birds

NAME	STATUS
Attwater's Greater Prairie-chicken <i>Tympanuchus cupido attwateri</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/7259">https://ecos.fws.gov/ecp/species/7259</a>	Endangered
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is <b>final</b> critical habitat for this species. Your location overlaps the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/6039">https://ecos.fws.gov/ecp/species/6039</a>	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/1864">https://ecos.fws.gov/ecp/species/1864</a>	Threatened

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## Reptiles

NAME	STATUS
<p>Green Sea Turtle <i>Chelonia mydas</i>            Population: North Atlantic DPS            There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat.            Species profile: <a href="https://ecos.fws.gov/ecp/species/6199">https://ecos.fws.gov/ecp/species/6199</a></p>	Threatened
<p>Hawksbill Sea Turtle <i>Eretmochelys imbricata</i>            There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat.            Species profile: <a href="https://ecos.fws.gov/ecp/species/3656">https://ecos.fws.gov/ecp/species/3656</a></p>	Endangered
<p>Kemp's Ridley Sea Turtle <i>Lepidochelys kempii</i>            There is <b>proposed</b> critical habitat for this species. The location of the critical habitat is not available.            Species profile: <a href="https://ecos.fws.gov/ecp/species/5523">https://ecos.fws.gov/ecp/species/5523</a></p>	Endangered
<p>Leatherback Sea Turtle <i>Dermochelys coriacea</i>            There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat.            Species profile: <a href="https://ecos.fws.gov/ecp/species/1493">https://ecos.fws.gov/ecp/species/1493</a></p>	Endangered
<p>Loggerhead Sea Turtle <i>Caretta caretta</i>            Population: Northwest Atlantic Ocean DPS            There is <b>final</b> critical habitat for this species. Your location is outside the critical habitat.            Species profile: <a href="https://ecos.fws.gov/ecp/species/1110">https://ecos.fws.gov/ecp/species/1110</a></p>	Threatened

## Critical habitats

There is 1 critical habitat wholly or partially within your project area under this office's jurisdiction.

NAME	STATUS
<p>Piping Plover <i>Charadrius melodus</i>  <a href="https://ecos.fws.gov/ecp/species/6039#crithab">https://ecos.fws.gov/ecp/species/6039#crithab</a></p>	Final



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 13, 2016

Mr. Scott Brown, Program Chief Coastal Programs Office  
Department of Environmental Management  
4171 Commanders Drive  
Mobile, AL 36615

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – Request for  
Information to Prepare CZMA Consistency Determination

Dear Mr. Brown,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the Draft Environmental Impact Statement (DEIS) for the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) boundary expansion and application of existing sanctuary regulations and management plan actions in the boundary expansion areas. In order to prepare a consistency determination for this action, I am requesting information on reasonably foreseeable effects of this action on the uses and resources of your state's coastal zone, and the relevant enforceable policies of your coastal management program that may pertain to this action.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS for this action can be found at <http://flowergarden.noaa.gov/management/expansiondeis.html>. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The alternatives are a series of discrete banks and reef areas located 70 to 115 miles off the coasts of Texas and Louisiana. NOAA's preferred alternative (Alternative 3) is the expansion of the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the northwestern Gulf of Mexico, including additional important and sensitive marine habitat areas outside the current sanctuary boundary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Garden Banks National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122.

The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS



expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities on the sensitive biological resources and geological features associated with many reefs and banks in the area (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities).

Although the alternatives evaluated in the DEIS would occur outside the coastal zone of the states bordering the Gulf of Mexico, Section 1456 of the CZMA requires that any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone shall be consistent to the maximum extent practicable with the enforceable policies of approved state management programs. If you believe that the proposed action may have reasonably foreseeable effects on the uses or resources of the state's coastal zone, please respond within 30 days of the date of this letter, describing those effects and the enforceable policies that pertain to those effects for our consideration. Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 13, 2016

Mr. Phillip Hinesley, Chief Coastal Section State Lands Division  
ADCNR 5 Rivers Delta Resource Center  
31115 5 Rivers Blvd.  
Spanish Fort, AL 36527

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – Request for  
Information to Prepare CZMA Consistency Determination

Dear Mr. Hinesley,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the Draft Environmental Impact Statement (DEIS) for the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) boundary expansion and application of existing sanctuary regulations and management plan actions in the boundary expansion areas. In order to prepare a consistency determination for this action, I am requesting information on reasonably foreseeable effects of this action on the uses and resources of your state's coastal zone, and the relevant enforceable policies of your coastal management program that may pertain to this action.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS for this action can be found at <http://flowergarden.noaa.gov/management/expansiondeis.html>. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The alternatives are a series of discrete banks and reef areas located 70 to 115 miles off the coasts of Texas and Louisiana. NOAA's preferred alternative (Alternative 3) is the expansion of the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the northwestern Gulf of Mexico, including additional important and sensitive marine habitat areas outside the current sanctuary boundary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Garden Banks National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122.

The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS



expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities on the sensitive biological resources and geological features associated with many reefs and banks in the area (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities).

Although the alternatives evaluated in the DEIS would occur outside the coastal zone of the states bordering the Gulf of Mexico, Section 1456 of the CZMA requires that any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone shall be consistent to the maximum extent practicable with the enforceable policies of approved state management programs. If you believe that the proposed action may have reasonably foreseeable effects on the uses or resources of the state's coastal zone, please respond within 30 days of the date of this letter, describing those effects and the enforceable policies that pertain to those effects for our consideration. Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

November 16, 2020

Mr. Will Underwood  
Coastal Section Administrator  
State Lands Division, ADCNR  
31115 5 Rivers Blvd.  
Spanish Fort, AL 36527

Subject: Flower Garden Banks National Marine Sanctuary Proposed Expansion – Request for CZMA Consistency Determination

Dear Mr. Underwood,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the proposed expansion of Flower Garden Banks National Marine Sanctuary. The National Oceanic and Atmospheric Administration (NOAA) submits, pursuant to 15 CFR 930.36, the following consistency determination for the proposed expansion of Flower Garden Banks National Marine Sanctuary, located in the northwestern Gulf of Mexico, approximately 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana.

### **Description of Proposed Action**

NOAA's proposed action is to expand the sanctuary to include portions of 14 additional reefs and banks in the northwestern Gulf of Mexico, representing approximately a 104 square mile increase in area, for a total of 160.4 square miles and 17 reefs and banks. In the expanded areas, NOAA would apply the existing sanctuary regulations at 15 CFR Part 922, subpart L, and management actions as described in the [2012 Final Management Plan](#). This action responds to the need to provide additional protection of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico.

Located in the northwestern Gulf of Mexico, 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana, Flower Garden Banks National Marine Sanctuary currently encompasses approximately 56 square miles and includes three separate undersea features: East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. The banks range in depth from 55 feet (17 meters) to nearly 500 feet (152 meters), and are geological formations created by the movement of ancient salt deposits pushed up through overlying sedimentary layers.



The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of Flower Garden Banks National Marine Sanctuary is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

### **History of the Sanctuary Expansion Process**

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) and the NMSA, NOAA prepared and released a Draft Environmental Impact Statement (Draft EIS; 81 FR 37576, June 10, 2016). The Draft EIS considered five alternatives for the proposed expansion of the sanctuary's boundaries. NOAA's preferred alternative in the Draft EIS sought to expand the existing sanctuary from approximately 56 square miles to approximately 383 square miles, including additional important and sensitive marine habitat areas in the northwestern Gulf of Mexico. This alternative included 15 reefs and banks (in addition to those contained within the existing 3 sanctuary units) encompassed within 11 discrete boundary polygons. In the Draft EIS, NOAA evaluated the environmental consequences of the alternatives and provided an in-depth resource assessment. NOAA did not identify any significant adverse impacts to the human environment under any alternative considered in the Draft EIS. See the Draft EIS here: <https://flowergarden.noaa.gov/management/expansiondeis.html>.

NOAA published a Notice of Proposed Rulemaking on May 1, 2020 which proposed a revised preferred alternative for expanding the sanctuary (85 FR 25359). NOAA developed the revised preferred alternative based primarily on a recommendation from the Sanctuary Advisory Council, along with input received from public comments, consultation with the Gulf of Mexico Fishery Management Council and various Federal agencies. NOAA's revised preferred alternative (now renamed the Final Preferred Alternative) would add 14 banks, for a total of 17 banks, represented in 19 polygons (including 3 banks with multi-polygons). This would increase the current sanctuary area from approximately 56 square miles to approximately 160 square miles. In the Final Preferred Alternative, NOAA reduced the size of the expansion areas compared to the Draft EIS preferred alternative, in order to promote compatibility with users and reduce potential economic impacts to the offshore energy industry and fishing. See the Notice of Proposed Rulemaking here: <https://flowergarden.noaa.gov/management/expansionnpr.html>.

NOAA is preparing a Final EIS and Final Rule which will be published in the Federal Register. The Final EIS concludes that implementing NOAA's Final Preferred Alternative will have no significant adverse impacts to the human environment.



## Determination

On July 13, 2016, upon publication of the Draft EIS, NOAA sent letters to the coastal management program managers of Alabama, Florida, Louisiana, Mississippi, and Texas, requesting information on the reasonably foreseeable effects of the proposed action on the uses and resources of each state's coastal zone and the relevant enforceable policies of the coastal management program that may pertain to the proposed action. NOAA did not receive a response from the state of Alabama.

Based on the changes in NOAA's preferred alternative between the Draft EIS and Notice of Proposed Rulemaking, NOAA re-evaluated the proposed action for potential impacts to coastal uses and the relevant enforceable policies of the Alabama coastal management program due to the smaller areal extent of the proposed sanctuary expansion. NOAA determined that implementing sanctuary regulations and other management actions in the proposed expanded areas would occur far offshore of Texas and Louisiana and would not limit or restrict any state activities in the expanded FGBNMS area and would not otherwise have any reasonably foreseeable effects to uses or resources of Alabama's coastal zone. Therefore, NOAA concluded that implementing the proposed action will have no reasonably foreseeable coastal effects.

We respectfully request that you agree to an expedited response no later than December 16, 2020. If you object to NOAA's determination and believe that coastal effects from the proposed action are inconsistent with your state's enforceable policies, please contact me at your earliest convenience to resolve this matter.

Sincerely,



George P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-356-0383  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

cc:

Mr. J. Scott Brown, Alabama Department of Environmental Management





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 13, 2016

Ms. Becky Prado  
Interim Coastal Program Administrator  
Florida Coastal Office Department of Environmental Protection  
3900 Commonwealth Boulevard Douglas Building, Mail Station 47  
Tallahassee, FL 32399-3000

Ms. Ann Lazar Environmental Administrator  
Florida Coastal Office Department of Environmental Protection  
3900 Commonwealth Boulevard Douglas Building, Mail Station 47  
Tallahassee, FL 32399-3000

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – Request for  
Information to Prepare CZMA Consistency Determination

Dear Ms. Prado and Ms. Lazar,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the Draft Environmental Impact Statement (DEIS) for the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) boundary expansion and application of existing sanctuary regulations and management plan actions in the boundary expansion areas. In order to prepare a consistency determination for this action, I am requesting information on reasonably foreseeable effects of this action on the uses and resources of your state's coastal zone, and the relevant enforceable policies of your coastal management program that may pertain to this action.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS for this action can be found at <http://flowergarden.noaa.gov/management/expansiondeis.html>. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The alternatives are a series of discrete banks and reef areas located 70 to 115 miles off the coasts of Texas and Louisiana. NOAA's preferred alternative (Alternative 3) is the expansion of the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the northwestern Gulf of Mexico, including additional important and sensitive marine habitat areas outside the current sanctuary boundary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Garden Banks National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122.



The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities on the sensitive biological resources and geological features associated with many reefs and banks in the area (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities).

Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

November 16, 2020

Ms. Alex Reed, Director  
Office of Resilience and Coastal Protection  
Florida Dept. of Environmental Protection  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Subject: Flower Garden Banks National Marine Sanctuary Proposed Expansion –  
Request for CZMA Consistency Determination

Dear Ms. Reed,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the proposed expansion of Flower Garden Banks National Marine Sanctuary. The National Oceanic and Atmospheric Administration (NOAA) submits, pursuant to 15 CFR 930.36, the following consistency determination for the proposed expansion of Flower Garden Banks National Marine Sanctuary, located in the northwestern Gulf of Mexico, approximately 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana.

### **Description of Proposed Action**

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Located in the northwestern Gulf of Mexico, 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana, Flower Garden Banks National Marine Sanctuary currently encompasses approximately 56 square miles and includes three separate undersea features: East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. The banks range in depth from 55 feet (17 meters) to nearly 500 feet (152



meters), and are geological formations created by the movement of ancient salt deposits pushed up through overlying sedimentary layers.

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of Flower Garden Banks National Marine Sanctuary is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

### **History of the Sanctuary Expansion Process**

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) and the NMSA, NOAA prepared and released a Draft Environmental Impact Statement (Draft EIS; 81 FR 37576, June 10, 2016). The Draft EIS considered five alternatives for the proposed expansion of the sanctuary's boundaries. NOAA's preferred alternative in the Draft EIS sought to expand the existing sanctuary from approximately 56 square miles to approximately 383 square miles, including additional important and sensitive marine habitat areas in the northwestern Gulf of Mexico. This alternative included 15 reefs and banks (in addition to those contained within the existing 3 sanctuary units) encompassed within 11 discrete boundary polygons. In the Draft EIS, NOAA evaluated the environmental consequences of the alternatives and provided an in-depth resource assessment. NOAA did not identify any significant adverse impacts to the human environment under any alternative considered in the Draft EIS. See the Draft EIS here: <https://flowergarden.noaa.gov/management/expansiondeis.html>.

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<https://flowergarden.noaa.gov/management/expansionnpr.html>.

NOAA is preparing a Final EIS and Final Rule which will be published in the Federal Register. The Final EIS concludes that implementing NOAA's Final Preferred Alternative will have no significant adverse impacts to the human environment.



## Determination

On July 13, 2016, upon publication of the Draft EIS, NOAA sent letters to the coastal management program managers of Alabama, Florida, Louisiana, Mississippi, and Texas, requesting information on the reasonably foreseeable effects of the proposed action on the uses and resources of each state's coastal zone and the relevant enforceable policies of the coastal management program that may pertain to the proposed action. NOAA did not receive a response from the state of Florida.

Based on the changes in NOAA's preferred alternative between the Draft EIS and Notice of Proposed Rulemaking, NOAA re-evaluated the proposed action for potential impacts to coastal uses and the relevant enforceable policies of the Florida coastal management program due to the smaller areal extent of the proposed sanctuary expansion. NOAA determined that implementing sanctuary regulations and other management actions in the proposed expanded areas would occur far offshore of Texas and Louisiana, and would not limit or restrict any state activities in the expanded FGBNMS area and would not otherwise have any reasonably foreseeable effects to uses or resources of Florida's coastal zone. Therefore, NOAA concluded that implementing the proposed action will have no reasonably foreseeable coastal effects.

We respectfully request that you agree to an expedited response no later than December 16, 2020. If you object to NOAA's determination and believe that coastal effects from the proposed action are inconsistent with your state's enforceable policies, please contact me at your earliest convenience to resolve this matter.

Sincerely,



George P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

cc:

Mr. Chris Stahl, Florida State Clearinghouse Coordinator





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 13, 2016

Mr. Keith Lovell  
Department of Natural Resources  
P.O. Box 44487  
617 North 3rd St., Suite 1048  
Baton Rouge, LA 70808-4487

Mr. Jeff Harris  
Department of Natural Resources  
P.O. Box 44487  
617 North 3rd St., Suite 1048  
Baton Rouge, LA 70808-4487

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – Request for  
Information to Prepare CZMA Consistency Determination

Dear Mr. Lovell and Mr. Harris,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the Draft Environmental Impact Statement (DEIS) for the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) boundary expansion and application of existing sanctuary regulations and management plan actions in the boundary expansion areas. In order to prepare a consistency determination for this action, I am requesting information on reasonably foreseeable effects of this action on the uses and resources of your state's coastal zone, and the relevant enforceable policies of your coastal management program that may pertain to this action.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS for this action can be found at <http://flowergarden.noaa.gov/management/expansiondeis.html>. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The alternatives are a series of discrete banks and reef areas located 70 to 115 miles off the coasts of Texas and Louisiana. NOAA's preferred alternative (Alternative 3) is the expansion of the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the northwestern Gulf of Mexico, including additional important and sensitive marine habitat areas outside the current sanctuary boundary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Garden Banks National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122.



The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities on the sensitive biological resources and geological features associated with many reefs and banks in the area (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities).

Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**State of Louisiana**  
**DEPARTMENT OF NATURAL RESOURCES**  
**OFFICE OF COASTAL MANAGEMENT**

August 10, 2016

George Schmahl, Sanctuary Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Via e-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

Re: **C20160091 Coastal Zone Consistency**  
**National Ocean Service (NOS)**  
Direct Federal Action  
Flower Garden Banks National Marine Sanctuary Proposed Boundary Expansion  
**Offshore, Louisiana**

Dear Mr. Schmahl:

The Louisiana Department of Natural Resources, Office of Coastal Management (OCM), has reviewed your letter of July 20, 2016, regarding the preparation of a consistency determination for the referenced project as required by Section 307 of the Coastal Zone Management Act of 1972, as amended. Your office requested comments from the state on a proposed plan to expand the Flower Garden Banks National Marine Sanctuary. The plan your office provided included five expansion scenarios. Please accept the following comments on potential impacts to Louisiana's coastal uses or resources and the relevant Enforceable Policies of the Louisiana Coastal Resource Program (LCRP).

All projects must be determined to be consistent with the Coastal Use Guidelines (Louisiana Administrative Code Title 43, Chapter 7, Subchapter B). As a reminder, the guidelines must be reviewed for their applicability during the preparation of your consistency determination (copy of the guidelines is appended for your convenience).

Specifically within these guidelines, please include a discussion about potential impacts to other coastal uses that may result from expanding the sanctuary boundary. Potential impacts to recreational and commercial fishing as well as oil and gas exploration and development on the Outer Continental Shelf should be included in this discussion. New rules and regulations will likely inhibit multiple uses of these geographic areas by Louisiana's coastal users, and could likely result in social and economic impacts to the state.

In addition to a thorough review of the coastal use guidelines, the consistency determination should include an alternatives analysis. The analysis should describe the proposed expansion scenario and thoroughly examine its potential direct, indirect and cumulative impacts which may affect Louisiana. Also, included with this should be a brief discussion of all other alternative expansion scenarios that were considered, and the rationale for selecting the preferred alternative. The consistency determination should also include a discussion of actions the NOS proposes to take to avoid, reduce or compensate for adverse impacts.

OCM is transitioning to a paperless office, and we request that your consistency determination and supporting information be submitted electronically via e-mail. If you should have any questions on this matter, please contact Jeff Harris of the Consistency Section at (225) 342-7949 or [Jeff.Harris@LA.gov](mailto:Jeff.Harris@LA.gov).

Sincerely yours,

**/S/ Don Haydel**

Acting Administrator

Interagency Affairs/Field Services Division

ATTACHMENT

DH/SK/jdh

## ATTACHMENT

TITLE 43  
NATURAL RESOURCES  
Part I. Office of the Secretary  
Subpart 1. General  
Chapter 7. Coastal Management

### **Subchapter B. Coastal Use Guidelines**

Coastal use guidelines as approved by the House Natural Resources Committee on July 9, 1980, the Senate Natural Resources Committee on July 11, 1980, and the governor on July 24, 1980.

#### **§701. Guidelines Applicable to All Uses**

- A. The guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with.
- B. Conformance with applicable water and air quality laws, standards and regulations, and with those other laws, standards and regulations which have been incorporated into the coastal resources program shall be deemed in conformance with the program except to the extent that these guidelines would impose additional requirements.
- C. The guidelines include both general provisions applicable to all uses and specific provisions applicable only to certain types of uses. The general guidelines apply in all situations. The specific guidelines apply only to the situations they address. Specific and general guidelines should be interpreted to be consistent with each other. In the event there is an inconsistency, the specific should prevail.
- D. These guidelines are not intended to nor shall they be interpreted so as to result in an involuntary acquisition or taking of property.
- E. No use or activity shall be carried out or conducted in such a manner as to constitute a violation of the terms of a grant or donation of any lands or waterbottoms to the state or any subdivision thereof. Revocations of such grants and donations shall be avoided.
- F. Information regarding the following general factors shall be utilized by the permitting authority in evaluating whether the proposed use is in compliance with the guidelines:
  1. type, nature, and location of use;
  2. elevation, soil, and water conditions and flood and storm hazard characteristics of site;
  3. techniques and materials used in construction, operation, and maintenance of use;
  4. existing drainage patterns and water regimes of surrounding area including flow, circulation, quality, quantity, and salinity; and impacts on them;
  5. availability of feasible alternative sites or methods of implementing the use;
  6. designation of the area for certain uses as part of a local program;

7. economic need for use and extent of impacts of use on economy of locality;
  8. extent of resulting public and private benefits;
  9. extent of coastal water dependency of the use;
  10. existence of necessary infrastructure to support the use and public costs resulting from use;
  11. extent of impacts on existing and traditional uses of the area and on future uses for which the area is suited;
  12. proximity to and extent of impacts on important natural features such as beaches, barrier islands, tidal passes, wildlife and aquatic habitats, and forest lands;
  13. the extent to which regional, state, and national interests are served including the national interest in resources and the siting of facilities in the coastal zone as identified in the coastal resources program;
  14. proximity to, and extent of impacts on, special areas, particular areas, or other areas of particular concern of the state program or local programs;
  15. likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts;
  16. proximity to and extent of impacts on public lands or works, or historic, recreational, or cultural resources;
  17. extent of impacts on navigation, fishing, public access, and recreational opportunities;
  18. extent of compatibility with natural and cultural setting;
  19. extent of long term benefits or adverse impacts.
- G. It is the policy of the coastal resources program to avoid the following adverse impacts. To this end, all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable significant:
1. reductions in the natural supply of sediment and nutrients to the coastal system by alterations of freshwater flow;
  2. adverse economic impacts on the locality of the use and affected governmental bodies;
  3. detrimental discharges of inorganic nutrient compounds into coastal waters;
  4. alterations in the natural concentration of oxygen in coastal waters;
  5. destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;
  6. adverse disruption of existing social patterns;
  7. alterations of the natural temperature regime of coastal waters;
  8. detrimental changes in existing salinity regimes;
  9. detrimental changes in littoral and sediment transport processes;
  10. adverse effects of cumulative impacts;
  11. detrimental discharges of suspended solids into coastal waters, including turbidity resulting from dredging;

12. reductions or blockage of water flow or natural circulation patterns within or into an estuarine system or a wetland forest;
13. discharges of pathogens or toxic substances into coastal waters;
14. adverse alteration or destruction of archaeological, historical, or other cultural resources;
15. fostering of detrimental secondary impacts in undisturbed or biologically highly productive wetland areas;
16. adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;
17. adverse alteration or destruction of public parks, shoreline access points, public works, designated recreation areas, scenic rivers, or other areas of public use and concern;
18. adverse disruptions of coastal wildlife and fishery migratory patterns;
19. land loss, erosion, and subsidence;
20. increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards;
21. reduction in the long term biological productivity of the coastal ecosystem.

- H.1. In those guidelines in which the modifier "maximum extent practicable" is used, the proposed use is in compliance with the guideline if the standard modified by the term is complied with. If the modified standard is not complied with, the use will be in compliance with the guideline if the permitting authority finds, after a systematic consideration of all pertinent information regarding the use, the site and the impacts of the use as set forth in Subsection F above, and a balancing of their relative significance, that the benefits resulting from the proposed use would clearly outweigh the adverse impacts resulting from noncompliance with the modified standard and there are no feasible and practical alternative locations, methods, and practices for the use that are in compliance with the modified standard and:
- a. significant public benefits will result from the use; or
  - b. the use would serve important regional, state, or national interests, including the national interest in resources and the siting of facilities in the coastal zone identified in the coastal resources program, or;
  - c. the use is coastal water dependent.
2. The systematic consideration process shall also result in a determination of those conditions necessary for the use to be in compliance with the guideline. Those conditions shall assure that the use is carried out utilizing those locations, methods, and practices which maximize conformance to the modified standard; are technically, economically, environmentally, socially, and legally feasible and practical; and minimize or offset those adverse impacts listed in §701.G and in the Subsection at issue.
- I. Uses shall to the maximum extent practicable be designed and carried out to permit multiple concurrent uses which are appropriate for the location and to avoid unnecessary conflicts with other uses of the vicinity.
  - J. These guidelines are not intended to be, nor shall they be, interpreted to allow expansion of governmental authority beyond that established by R.S. 49:214.21-49:214.42, as amended; nor

shall these guidelines be interpreted so as to require permits for specific uses legally commenced or established prior to the effective date of the coastal use permit program nor to normal maintenance or repair of such uses.

AUTHORITY NOTE:

Promulgated in accordance with R.S. 49:214.27

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

### **§703. Guidelines for Levees**

- A. The leveeing of unmodified or biologically productive wetlands shall be avoided to the maximum extent practicable.
- B. Levees shall be planned and sited to avoid segmentation of wetland areas and systems to the maximum extent practicable.
- C. Levees constructed for the purpose of developing or otherwise changing the use of a wetland area shall be avoided to the maximum extent practicable.
- D. Hurricane and flood protection levees shall be located at the nonwetland/wetland interface or landward to the maximum extent practicable.
- E. Impoundment levees shall only be constructed in wetland areas as part of approved water or marsh management projects or to prevent release of pollutants.
- F. Hurricane or flood protection levee systems shall be designed, built and thereafter operated and maintained utilizing best practical techniques to minimize disruptions of existing hydrologic patterns, and the interchange of water, beneficial nutrients, and aquatic organisms between enclosed wetlands and those outside the levee system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

### **§705. Guidelines for Linear Facilities**

- A. Linear use alignments shall be planned to avoid adverse impacts on areas of high biological productivity or irreplaceable resource areas.
- B. Linear facilities involving the use of dredging or filling shall be avoided in wetland and estuarine areas to the maximum extent practicable.
- C. Linear facilities involving dredging shall be of the minimum practical size and length.
- D. To the maximum extent practicable, pipelines shall be installed through the "push ditch" method and the ditch backfilled.
- E. Existing corridors, rights-of-way, canals, and streams shall be utilized to the maximum extent practicable for linear facilities.
- F. Linear facilities and alignments shall be, to the maximum extent practicable, designed and constructed to permit multiple uses consistent with the nature of the facility.
- G. Linear facilities involving dredging shall not traverse or adversely affect any barrier island.

- H. Linear facilities involving dredging shall not traverse beaches, tidal passes, protective reefs, or other natural gulf shoreline unless no other alternative exists. If a beach, tidal pass, reef, or other natural gulf shoreline must be traversed for a non-navigation canal, they shall be restored at least to their natural condition immediately upon completion of construction. Tidal passes shall not be permanently widened or deepened except when necessary to conduct the use. The best available restoration techniques which improve the traversed area's ability to serve as a shoreline shall be used.
- I. Linear facilities shall be planned, designed, located, and built using the best practical techniques to minimize disruption of natural hydrologic and sediment transport patterns, sheet flow, and water quality and to minimize adverse impacts on wetlands.
- J. Linear facilities shall be planned, designed, and built using the best practical techniques to prevent bank slumping and erosion, and saltwater intrusion, and to minimize the potential for inland movement of storm-generated surges. Consideration shall be given to the use of locks in navigation canals and channels which connect more saline areas with fresher areas.
- K. All nonnavigation canals, channels, and ditches which connect more saline areas with fresher areas shall be plugged at all waterway crossings and at intervals between crossings in order to compartmentalize them. The plugs shall be properly maintained.
- L. The multiple use of existing canals, directional drilling, and other practical techniques shall be utilized to the maximum extent practicable to minimize the number and size of access canals, to minimize changes of natural systems, and to minimize adverse impacts on natural areas and wildlife and fisheries habitat.
- M. All pipelines shall be constructed in accordance with Parts 191, 192, and 195 of Title 49 of the Code of Federal Regulations, as amended, and in conformance with the Commissioner of Conservation's Pipeline Safety Rules and Regulations and those safety requirements established by R.S. 45:408, whichever would require higher standards.
- N. Areas dredged for linear facilities shall be backfilled or otherwise restored to the pre-existing conditions upon cessation of use for navigation purposes to the maximum extent practicable.
- O. The best practical techniques for site restoration and revegetation shall be utilized for all linear facilities.
- P. Confined and dead end canals shall be avoided to the maximum extent practicable. Approved canals must be designed and constructed using the best practical techniques to avoid water stagnation and eutrophication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### **§707. Guidelines for Dredged Spoil Deposition**

- A. Spoil shall be deposited utilizing the best practical techniques to avoid disruption of water movement, flow, circulation, and quality.
- B. Spoil shall be used beneficially to the maximum extent practicable to improve productivity or create new habitat, reduce or compensate for environmental damage done by dredging activities, or prevent environmental damage. Otherwise, existing spoil disposal areas or upland

disposal shall be utilized to the maximum extent practicable rather than creating new disposal areas.

- C. Spoil shall not be disposed of in a manner which could result in the impounding or draining of wetlands or the creation of development sites unless the spoil deposition is part of an approved levee or land surface alteration project.
- D. Spoil shall not be disposed of on marsh, known oyster or clam reefs, or in areas of submersed vegetation to the maximum extent practicable.
- E. Spoil shall not be disposed of in such a manner as to create a hindrance to navigation or fishing, or hinder timber growth.
- F. Spoil disposal areas shall be designed and constructed and maintained using the best practical techniques to retain the spoil at the site, reduce turbidity, and reduce shoreline erosion when appropriate.
- G. The alienation of state-owned property shall not result from spoil deposition activities without the consent of the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### **§709. Guidelines for Shoreline Modification**

- A. Nonstructural methods of shoreline protection shall be utilized to the maximum extent practicable.
- B. Shoreline modification structures shall be designed and built using best practical techniques to minimize adverse environmental impacts.
- C. Shoreline modification structures shall be lighted or marked in accordance with U.S. Coast Guard regulations, not interfere with navigation, and should foster fishing, other recreational opportunities, and public access.
- D. Shoreline modification structures shall be built using best practical materials and techniques to avoid the introduction of pollutants and toxic substances into coastal waters.
- E. Piers and docks and other harbor structures shall be designed and built using best practical techniques to avoid obstruction of water circulation.
- F. Marinas and similar commercial and recreational developments shall to the maximum extent practicable not be located so as to result in adverse impacts on open productive oyster beds, or submersed grass beds.
- G. Neglected or abandoned shoreline modification structures, piers, docks, and mooring and other harbor structures shall be removed at the owner's expense, when appropriate.
- H. Shoreline stabilization structures shall not be built for the purpose of creating fill areas for development unless part of an approved surface alteration use.
- I. Jetties, groins, breakwaters, and similar structures shall be planned, designed, and constructed so as to avoid to the maximum extent practicable downstream land loss and erosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

### **§711. Guidelines for Surface Alterations**

- A. Industrial, commercial, urban, residential, and recreational uses are necessary to provide adequate economic growth and development. To this end, such uses will be encouraged in those areas of the coastal zone that are suitable for development. Those uses shall be consistent with the other guidelines and shall, to the maximum extent practicable, take place only:
  - 1. on lands 5 feet or more above sea level or within fast lands; or
  - 2. on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered, and:
    - a. the land is already in high intensity of development use; or
    - b. there is adequate supporting infrastructure; or
    - c. the vicinity has a tradition of use for similar habitation or development.
- B. Public and private works projects such as levees, drainage improvements, roads, airports, ports, and public utilities are necessary to protect and support needed development and shall be encouraged. Such projects shall, to the maximum extent practicable, take place only when:
  - 1. they protect or serve those areas suitable for development pursuant to §711.A; and
  - 2. they are consistent with the other guidelines; and
  - 3. they are consistent with all relevant adopted state, local, and regional plans.
- C. Reserved.
- D. To the maximum extent practicable wetland areas shall not be drained or filled. Any approved drain or fill project shall be designed and constructed using best practical techniques to minimize present and future property damage and adverse environmental impacts.
- E. Coastal water dependent uses shall be given special consideration in permitting because of their reduced choice of alternatives.
- F. Areas modified by surface alteration activities shall, to the maximum extent practicable, be revegetated, refilled, cleaned, and restored to their predevelopment condition upon termination of the use.
- G. Site clearing shall to the maximum extent practicable be limited to those areas immediately required for physical development.
- H. Surface alterations shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Alterations in wildlife preserves and management areas shall be conducted in strict accord with the requirements of the wildlife management body.
- I. Surface alterations which have high adverse impacts on natural functions shall not occur, to the maximum extent practicable, on barrier islands and beaches, isolated cheniers, isolated

natural ridges or levees, or in wildlife and aquatic species breeding or spawning areas, or in important migratory routes.

- J. The creation of low dissolved oxygen conditions in the water or traps for heavy metals shall be avoided to the maximum extent practicable.
- K. Surface mining and shell dredging shall be carried out utilizing the best practical techniques to minimize adverse environmental impacts.
- L. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.
- M. Surface alteration sites and facilities shall be designed, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment and minimize other adverse impacts.
- N. To the maximum extent practicable only material that is free of contaminants and compatible with the environmental setting shall be used as fill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

### **§713. Guidelines for Hydrologic and Sediment Transport Modifications**

- A. The controlled diversion of sediment-laden waters to initiate new cycles of marsh building and sediment nourishment shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.
- B. Sediment deposition systems may be used to offset land loss, to create or restore wetland areas or enhance building characteristics of a development site. Such systems shall only be utilized as part of an approved plan. Sediment from these systems shall only be discharged in the area where the proposed use is to be accomplished.
- C. Undesirable deposition of sediments in sensitive habitat or navigation areas shall be avoided through the use of the best preventive techniques.
- D. The diversion of freshwater through siphons and controlled conduits and channels, and overland flow to offset saltwater intrusion and to introduce nutrients into wetlands shall be encouraged and utilized whenever such diversion will enhance the viability and productivity of the outfall area. Such diversions shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source.
- E. Water or marsh management plans shall result in an overall benefit to the productivity of the area.
- F. Water control structures shall be assessed separately based on their individual merits and impacts and in relation to their overall water or marsh management plan of which they are a part.
- G. Weirs and similar water control structures shall be designed and built using the best practical techniques to prevent "cut arounds," permit tidal exchange in tidal areas, and minimize obstruction of the migration of aquatic organisms.

- H. Impoundments which prevent normal tidal exchange and/or the migration of aquatic organisms shall not be constructed in brackish and saline areas to the maximum extent practicable.
- I. Withdrawal of surface and ground water shall not result in saltwater intrusion or land subsidence to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

#### **§715. Guidelines for Disposal of Wastes**

- A. The location and operation of waste storage, treatment, and disposal facilities shall be avoided in wetlands to the maximum extent practicable, and best practical techniques shall be used to minimize adverse impacts which may result from such use.
- B. The generation, transportation, treatment, storage, and disposal of hazardous wastes shall be pursuant to the substantive requirements of the Department of Environmental Quality adopted pursuant to the provisions of R.S. 30:217, et seq.; as amended and approved pursuant to the Resource Conservation and Recovery Act of 1976 P.L. 94-580, as amended, and of the Office of Conservation for injection below surface.
- C. Waste facilities located in wetlands shall be designed and built to withstand all expectable adverse conditions without releasing pollutants.
- D. Waste facilities shall be designed and constructed using best practical techniques to prevent leaching, control leachate production, and prevent the movement of leachate away from the facility.
- E. The use of overland flow systems for nontoxic, biodegradable wastes, and the use of sump lagoons and reservoirs utilizing aquatic vegetation to remove pollutants and nutrients shall be encouraged.
- F. All waste disposal sites shall be marked and, to the maximum extent practicable, all components of waste shall be identified.
- G. Waste facilities in wetlands with identifiable pollution problems that are not feasible and practical to correct shall be closed and either removed or sealed, and shall be properly revegetated using the best practical techniques.
- H. Waste shall be disposed of only at approved disposal sites.
- I. Radioactive wastes shall not be temporarily or permanently disposed of in the coastal zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

**§717. Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters**

- A. Upland and upstream water management programs which affect coastal waters and wetlands shall be designed and constructed to preserve or enhance existing water quality, volume, and rate of flow to the maximum extent practicable.
- B. Runoff from developed areas shall to the maximum extent practicable be managed to simulate natural water patterns, quantity, quality, and rate of flow.
- C. Runoff and erosion from agricultural lands shall be minimized through the best practical techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).

**§719. Guidelines for Oil, Gas, and Other Mineral Activities**

- A. Geophysical surveying shall utilize the best practical techniques to minimize disturbance or damage to wetlands, fish and wildlife, and other coastal resources.
- B. To the maximum extent practicable, the number of mineral exploration and production sites in wetland areas requiring floatation access shall be held to the minimum number, consistent with good recovery and conservation practices and the need for energy development, by directional drilling, multiple use of existing access canals, and other practical techniques.
- C. Exploration, production, and refining activities shall, to the maximum extent practicable, be located away from critical wildlife areas and vegetation areas. Mineral operations in wildlife preserves and management areas shall be conducted in strict accordance with the requirements of the wildlife management body.
- D. Mineral exploration and production facilities shall be to the maximum extent practicable designed, constructed, and maintained in such a manner to maintain natural water flow regimes, avoid blocking surface drainage, and avoid erosion.
- E. Access routes to mineral exploration, production, and refining sites shall be designed and aligned so as to avoid adverse impacts on critical wildlife and vegetation areas to the maximum extent practicable.
- F. Drilling and production sites shall be prepared, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment.
- G. All drilling activities, supplies, and equipment shall be kept on barges, on drilling rigs, within ring levees, or on the well site.
- H. Drilling ring levees shall to the maximum extent practicable be replaced with small production levees or removed entirely.
- I. All drilling and production equipment, structures, and storage facilities shall be designed and constructed utilizing best practical techniques to withstand all expectable adverse conditions without releasing pollutants.

- J. Mineral exploration, production, and refining facilities shall be designed and constructed using best practical techniques to minimize adverse environmental impacts.
- K. Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.
- L. The use of dispersants, emulsifiers, and other similar chemical agents on oil spills is prohibited without the prior approval of the Coast Guard or Environmental Protection Agency on-scene coordinator, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan.
- M. Mineral exploration and production sites shall be cleared, revegetated, detoxified, and otherwise restored as near as practicable to their original condition upon termination of operations to the maximum extent practicable.
- N. The creation of underwater obstructions which adversely affect fishing or navigation shall be avoided to the maximum extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:493 (August 1980).



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

November 16, 2020

Mr. Charles Reulet, Administrator  
Interagency Affairs Field Services Division  
Office of Coastal Management  
Department of Natural Resources  
PO Box 44487  
Baton Rouge, LA 70804

Subject: Flower Garden Banks National Marine Sanctuary Proposed Expansion –  
Request for CZMA Negative Determination

Dear Mr. Reulet,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the proposed expansion of Flower Garden Banks National Marine Sanctuary. The National Oceanic and Atmospheric Administration (NOAA) submits, pursuant to 15 CFR 930.36, the following consistency determination for the proposed expansion of Flower Garden Banks National Marine Sanctuary, located in the northwestern Gulf of Mexico, approximately 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana.

### **Description of Proposed Action**

NOAA's proposed action is to expand the sanctuary to include portions of 14 additional reefs and banks in the northwestern Gulf of Mexico, representing approximately a 104 square mile increase in area, for a total of 160.4 square miles and 17 reefs and banks. In the expanded areas, NOAA would apply the existing sanctuary regulations at 15 CFR Part 922, subpart L, and management actions as described in the [2012 Final Management Plan](#). This action responds to the need to provide additional protection of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico.

Located in the northwestern Gulf of Mexico, 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana, Flower Garden Banks National Marine Sanctuary currently encompasses approximately 56 square miles and includes three separate undersea features: East Flower Garden Bank, West Flower Garden Bank, and Stetson



Bank. The banks range in depth from 55 feet (17 meters) to nearly 500 feet (152 meters), and are geological formations created by the movement of ancient salt deposits pushed up through overlying sedimentary layers.

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of Flower Garden Banks National Marine Sanctuary is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

### **History of the Sanctuary Expansion Process**

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) and the NMSA, NOAA prepared and released a Draft Environmental Impact Statement (Draft EIS; 81 FR 37576, June 10, 2016). The Draft EIS considered five alternatives for the proposed expansion of the sanctuary's boundaries. NOAA's preferred alternative in the Draft EIS sought to expand the existing sanctuary from approximately 56 square miles to approximately 383 square miles, including additional important and sensitive marine habitat areas in the northwestern Gulf of Mexico. This alternative included 15 reefs and banks (in addition to those contained within the existing 3 sanctuary units) encompassed within 11 discrete boundary polygons. In the Draft EIS, NOAA evaluated the environmental consequences of the alternatives and provided an in-depth resource assessment. NOAA did not identify any significant adverse impacts to the human environment under any alternative considered in the Draft EIS. See the Draft EIS here: <https://flowergarden.noaa.gov/management/expansiondeis.html>.

NOAA published a Notice of Proposed Rulemaking on May 1, 2020 which proposed a revised preferred alternative for expanding the sanctuary (85 FR 25359). NOAA developed the revised preferred alternative based primarily on a recommendation from the Sanctuary Advisory Council, along with input received from public comments, consultation with the Gulf of Mexico Fishery Management Council and various Federal agencies. NOAA's revised preferred alternative (now renamed the Final Preferred Alternative) would add 14 banks, for a total of 17 banks, represented in 19 polygons (including 3 banks with multi-polygons). This would increase the current sanctuary area from approximately 56 square miles to approximately 160 square miles. In the Final Preferred Alternative, NOAA reduced the size of the expansion areas compared to the Draft EIS preferred alternative, in order to promote compatibility with users and reduce potential economic impacts to the offshore energy industry and fishing. See the Notice of Proposed Rulemaking here: <https://flowergarden.noaa.gov/management/expansionnpr.html>.

NOAA is preparing a Final EIS and Final Rule which will be published in the Federal Register. The Final EIS concludes that implementing NOAA's Final Preferred Alternative will have no significant adverse impacts to the human environment.



## Determination

On July 13, 2016, upon publication of the Draft EIS, NOAA sent letters to the coastal management program managers of Alabama, Florida, Louisiana, Mississippi, and Texas, requesting information on the reasonably foreseeable effects of the proposed action on the uses and resources of each state's coastal zone and the relevant enforceable policies of the coastal management program that may pertain to the proposed action. NOAA did not receive a response from the state of Louisiana.

Based on the changes in NOAA's preferred alternative between the Draft EIS and Notice of Proposed Rulemaking, NOAA re-evaluated the proposed action for potential impacts to coastal uses and the relevant enforceable policies of the Louisiana coastal management program due to the smaller areal extent of the proposed sanctuary expansion. NOAA determined that implementing sanctuary regulations and other management actions in the proposed expanded areas would occur far offshore and would have negligible to no impact on any state activities and would not otherwise have any reasonably foreseeable effects to uses or resources of Louisiana's coastal zone. Therefore, NOAA concluded that implementing the proposed action will be consistent to the maximum extent practicable with the enforceable policies of approved state management programs.

We respectfully request that you agree to an expedited response no later than December 16, 2020. If you object to NOAA's determination and believe that coastal effects from the proposed action are inconsistent with your state's enforceable policies, please contact me at your earliest convenience to resolve this matter.

Sincerely,



George P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

cc:

Mr. Jeff Harris, Louisiana Department of Natural Resources





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 13, 2016

Mr. Jan Boyd, Director  
Mississippi Coastal Program, Department of Marine Resources  
1141 Bayview Avenue, Suite 101  
Biloxi, MS 39530

Ms. Willa Brantley  
Mississippi Coastal Program, Department of Marine Resources  
1141 Bayview Avenue  
Biloxi, MS 39530

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – Request for  
Information to Prepare CZMA Consistency Determination

Dear Mr. Boyd and Ms. Brantley,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the Draft Environmental Impact Statement (DEIS) for the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) boundary expansion and application of existing sanctuary regulations and management plan actions in the boundary expansion areas. In order to prepare a consistency determination for this action, I am requesting information on reasonably foreseeable effects of this action on the uses and resources of your state's coastal zone, and the relevant enforceable policies of your coastal management program that may pertain to this action.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS for this action can be found at <http://flowergarden.noaa.gov/management/expansiondeis.html>. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The alternatives are a series of discrete banks and reef areas located 70 to 115 miles off the coasts of Texas and Louisiana. NOAA's preferred alternative (Alternative 3) is the expansion of the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the northwestern Gulf of Mexico, including additional important and sensitive marine habitat areas outside the current sanctuary boundary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Garden Banks National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122.



The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities on the sensitive biological resources and geological features associated with many reefs and banks in the area (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities).

Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**MISSISSIPPI**  
**DEPARTMENT OF MARINE RESOURCES**

July 27, 2016

G.P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Building 216  
Galveston, TX 77551

RE: DMR-170021; Proposed FGBNMS Boundary Expansion and Draft EIS

Dear Mr. Schmahl:

The Department of Marine Resources in cooperation with other state agencies is responsible under the Mississippi Coastal Program (MCP) for managing the coastal resources of Mississippi. Proposed activities in the coastal area are reviewed to insure that the activities are in compliance with the MCP.

The Department has received a request to review the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) boundary expansion and Draft Environmental Impact Statement for the FGBNMS located in the Gulf of Mexico. The Department has no objections to the proposed boundary changes or the Draft EIS. It has been determined that the state's marine fisheries resources are not likely to be negatively affected and the areas are outside of the Coastal Zone of Mississippi. Thank you for the opportunity to comment on your project.

For more information, questions concerning this correspondence contact Jennifer Wittmann with the Bureau of Wetlands Permitting at (228) 523-4111 or [jennifer.wittmann@dmr.ms.gov](mailto:jennifer.wittmann@dmr.ms.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Willa J. Brantley". The signature is written over a horizontal line and extends to the right.

Willa J. Brantley  
Bureau Director, Wetlands Permitting

WJB/jcw



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

November 16, 2020

Ms. Jennifer Wittmann, Director  
Office of Coastal Resources Management  
Mississippi Department of Marine Resources  
1141 Bayview Avenue  
Biloxi, MS 39530

Subject: Flower Garden Banks National Marine Sanctuary Proposed Expansion –  
Request for CZMA Consistency Determination

Dear Ms. Wittmann,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the proposed expansion of Flower Garden Banks National Marine Sanctuary. The National Oceanic and Atmospheric Administration (NOAA) submits, pursuant to 15 CFR 930.36, the following consistency determination for the proposed expansion of Flower Garden Banks National Marine Sanctuary, located in the northwestern Gulf of Mexico, approximately 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana.

### **Description of Proposed Action**

NOAA's proposed action is to expand the sanctuary to include portions of 14 additional reefs and banks in the northwestern Gulf of Mexico, representing approximately a 104 square mile increase in area, for a total of 160.4 square miles and 17 reefs and banks. In the expanded areas, NOAA would apply the existing sanctuary regulations at 15 CFR Part 922, subpart L, and management actions as described in the [2012 Final Management Plan](#). This action responds to the need to provide additional protection of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico.

Located in the northwestern Gulf of Mexico, 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana, Flower Garden Banks National Marine Sanctuary currently encompasses approximately 56 square miles and includes three separate undersea features: East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. The banks range in depth from 55 feet (17 meters) to nearly 500 feet (152



meters), and are geological formations created by the movement of ancient salt deposits pushed up through overlying sedimentary layers.

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of Flower Garden Banks National Marine Sanctuary is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

### **History of the Sanctuary Expansion Process**

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) and the NMSA, NOAA prepared and released a Draft Environmental Impact Statement (Draft EIS; 81 FR 37576, June 10, 2016). The Draft EIS considered five alternatives for the proposed expansion of the sanctuary's boundaries. NOAA's preferred alternative in the Draft EIS sought to expand the existing sanctuary from approximately 56 square miles to approximately 383 square miles, including additional important and sensitive marine habitat areas in the northwestern Gulf of Mexico. This alternative included 15 reefs and banks (in addition to those contained within the existing 3 sanctuary units) encompassed within 11 discrete boundary polygons. In the Draft EIS, NOAA evaluated the environmental consequences of the alternatives and provided an in-depth resource assessment. NOAA did not identify any significant adverse impacts to the human environment under any alternative considered in the Draft EIS. See the Draft EIS here: <https://flowergarden.noaa.gov/management/expansiondeis.html>.

NOAA published a Notice of Proposed Rulemaking on May 1, 2020 which proposed a revised preferred alternative for expanding the sanctuary (85 FR 25359). NOAA developed the revised preferred alternative based primarily on a recommendation from the Sanctuary Advisory Council, along with input received from public comments, consultation with the Gulf of Mexico Fishery Management Council and various Federal agencies. NOAA's revised preferred alternative (now renamed the Final Preferred Alternative) would add 14 banks, for a total of 17 banks, represented in 19 polygons (including 3 banks with multi-polygons). This would increase the current sanctuary area from approximately 56 square miles to approximately 160 square miles. In the Final Preferred Alternative, NOAA reduced the size of the expansion areas compared to the Draft EIS preferred alternative, in order to promote compatibility with users and reduce potential economic impacts to the offshore energy industry and fishing. See the Notice of Proposed Rulemaking here:

<https://flowergarden.noaa.gov/management/expansionnpr.html>.

NOAA is preparing a Final EIS and Final Rule which will be published in the Federal Register. The Final EIS concludes that implementing NOAA's Final Preferred Alternative will have no significant adverse impacts to the human environment.



## Determination

On July 13, 2016, upon publication of the Draft EIS, NOAA sent letters to the coastal management program managers of Alabama, Florida, Louisiana, Mississippi, and Texas, requesting information on the reasonably foreseeable effects of the proposed action on the uses and resources of each state's coastal zone and the relevant enforceable policies of the coastal management program that may pertain to the proposed action. On July 27, 2016, NOAA received a response (attached) from the Mississippi Department of Marine Resources stating that the Department has no objections to the proposed sanctuary boundary changes or the Draft EIS, and that the state's marine fisheries resources are not likely to be adversely affected.

Based on the changes in NOAA's preferred alternative between the Draft EIS and Notice of Proposed Rulemaking, NOAA re-evaluated the proposed action for potential impacts to coastal uses and the relevant enforceable policies of the Mississippi coastal management program due to the smaller areal extent of the proposed sanctuary expansion. NOAA determined that implementing sanctuary regulations and other management actions in the proposed expanded areas would occur far offshore of Texas and Louisiana and would not limit or restrict any state activities in the expanded FGBNMS area and would not otherwise have any reasonably foreseeable effects to uses or resources of Mississippi's coastal zone. Therefore, NOAA concluded that implementing the proposed action will have no reasonably foreseeable coastal effects.

We respectfully request that you agree to an expedited response no later than December 16, 2020. If you object to NOAA's determination and believe that coastal effects from the proposed action are inconsistent with your state's enforceable policies, please contact me at your earliest convenience to resolve this matter.

Sincerely,



George P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

cc:

Ms. Willa Brantley, Mississippi Coastal Program, Department of Marine Resources





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 13, 2016

Ms. Melissa Porter and Mr. Craig Davis  
Coastal Resiliency and Recovery  
Texas General Land Office  
P.O. Box 12873  
Austin, TX 78711-2873

Mr. Ray Newby  
Coastal Grant Programs & Support, Coastal Resources Division  
Texas General Land Office  
P.O. Box 12873  
Austin, TX 78711-2873

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – Request for  
Information to Prepare CZMA Consistency Determination

Dear Ms. Porter, Mr. Davis, and Mr. Newby,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the Draft Environmental Impact Statement (DEIS) for the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) boundary expansion and application of existing sanctuary regulations and management plan actions in the boundary expansion areas. In order to prepare a consistency determination for this action, I am requesting information on reasonably foreseeable effects of this action on the uses and resources of your state's coastal zone, and the relevant enforceable policies of your coastal management program that may pertain to this action.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS for this action can be found at <http://flowergarden.noaa.gov/management/expansiondeis.html>. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The alternatives are a series of discrete banks and reef areas located 70 to 115 miles off the coasts of Texas and Louisiana. NOAA's preferred alternative (Alternative 3) is the expansion of the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the northwestern Gulf of Mexico, including additional important and sensitive marine habitat areas outside the current sanctuary boundary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Garden Banks National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122.



The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities on the sensitive biological resources and geological features associated with many reefs and banks in the area (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities).

Although the alternatives evaluated in the DEIS would occur outside the coastal zone of the states bordering the Gulf of Mexico, Section 1456 of the CZMA requires that any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone shall be consistent to the maximum extent practicable with the enforceable policies of approved state management programs. If you believe that the proposed action may have reasonably foreseeable effects on the uses or resources of the state's coastal zone, please respond within 30 days of the date of this letter, describing those effects and the enforceable policies that pertain to those effects for our consideration. Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





TEXAS GENERAL LAND OFFICE  
GEORGE P. BUSH, COMMISSIONER

August 29, 2016

United States Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Building 216  
Galveston, Texas 77551

**Re: Flower Garden Banks National Marine Sanctuary expansion  
CMP#: 16-1342-F2**

Dear Mr. Schmahl:

Pursuant to Title 31 Natural Resources and Conservation, Part 16 Coastal Coordination Council rules, the project referenced above has been reviewed for consistency with the Texas Coastal Management Program (CMP).

It has been determined that there are no significant unresolved consistency issues with respect to the project. Therefore, this project is consistent with the CMP goals and policies.

Please note that this letter does not authorize the use of Coastal Public Land. No work may be conducted or structures placed on State-owned land until you have obtained all necessary authorizations, including any required by the General Land Office and the U.S. Army Corps of Engineers.

If you have any questions or concerns, please contact me at (409) 741-4057 or at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov)

Sincerely,

Allison Buchtien  
Program Specialist  
Coastal Protection  
Texas General Land Office



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

November 16, 2020

Ms. Melissa Porter  
Texas Coastal Management Program  
Coastal Resources Division  
Texas General Land Office  
P.O. Box 12873  
Austin, TX 78711-2873

Subject: Flower Garden Banks National Marine Sanctuary Proposed Expansion – Request for CZMA Consistency Determination

Dear Ms. Porter,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the proposed expansion of Flower Garden Banks National Marine Sanctuary. The National Oceanic and Atmospheric Administration (NOAA) submits, pursuant to 15 CFR 930.36, the following consistency determination for the proposed expansion of Flower Garden Banks National Marine Sanctuary, located in the northwestern Gulf of Mexico, approximately 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana.

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NOAA's proposed action is to expand the sanctuary to include portions of 14 additional reefs and banks in the northwestern Gulf of Mexico, representing approximately a 104 square mile increase in area, for a total of 160.4 square miles and 17 reefs and banks. In the expanded areas, NOAA would apply the existing sanctuary regulations at 15 CFR Part 922, subpart L, and management actions as described in the [2012 Final Management Plan](#). This action responds to the need to provide additional protection of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico.

Located in the northwestern Gulf of Mexico, 70 to 115 miles (113 to 185 kilometers) off the coasts of Texas and Louisiana, Flower Garden Banks National Marine Sanctuary currently encompasses approximately 56 square miles and includes three separate undersea features: East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. The banks range in depth from 55 feet (17 meters) to nearly 500 feet (152 meters), and are geological formations created by the movement of ancient salt deposits pushed up through overlying sedimentary layers.



The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of Flower Garden Banks National Marine Sanctuary is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

### **History of the Sanctuary Expansion Process**

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) and the NMSA, NOAA prepared and released a Draft Environmental Impact Statement (Draft EIS; 81 FR 37576, June 10, 2016). The Draft EIS considered five alternatives for the proposed expansion of the sanctuary's boundaries. NOAA's preferred alternative in the Draft EIS sought to expand the existing sanctuary from approximately 56 square miles to approximately 383 square miles, including additional important and sensitive marine habitat areas in the northwestern Gulf of Mexico. This alternative included 15 reefs and banks (in addition to those contained within the existing 3 sanctuary units) encompassed within 11 discrete boundary polygons. In the Draft EIS, NOAA evaluated the environmental consequences of the alternatives and provided an in-depth resource assessment. NOAA did not identify any significant adverse impacts to the human environment under any alternative considered in the Draft EIS. See the Draft EIS here: <https://flowergarden.noaa.gov/management/expansiondeis.html>.

NOAA published a Notice of Proposed Rulemaking on May 1, 2020 which proposed a revised preferred alternative for expanding the sanctuary (85 FR 25359). NOAA developed the revised preferred alternative based primarily on a recommendation from the Sanctuary Advisory Council, along with input received from public comments, consultation with the Gulf of Mexico Fishery Management Council and various Federal agencies. NOAA's revised preferred alternative (now renamed the Final Preferred Alternative) would add 14 banks, for a total of 17 banks, represented in 19 polygons (including 3 banks with multi-polygons). This would increase the current sanctuary area from approximately 56 square miles to approximately 160 square miles. In the Final Preferred Alternative, NOAA reduced the size of the expansion areas compared to the Draft EIS preferred alternative, in order to promote compatibility with users and reduce potential economic impacts to the offshore energy industry and fishing. See the Notice of Proposed Rulemaking here: <https://flowergarden.noaa.gov/management/expansionnpr.html>.

NOAA is preparing a Final EIS and Final Rule which will be published in the Federal Register. The Final EIS concludes that implementing NOAA's Final Preferred Alternative will have no significant adverse impacts to the human environment.



## Determination

On July 13, 2016, upon publication of the Draft EIS, NOAA sent letters to the coastal management program managers of Alabama, Florida, Louisiana, Mississippi, and Texas, requesting information on the reasonably foreseeable effects of the proposed action on the uses and resources of each state's coastal zone and the relevant enforceable policies of the coastal management program that may pertain to the proposed action. On August 29, 2016, NOAA received a response (attached) from the Texas General Land Office stating that the proposed action had been reviewed for consistency with the Texas Coastal Management Program and that there are no significant unresolved consistency issues with respect to the project. Therefore, the State of Texas determined that that the proposed action is consistent with the Texas Coastal Management Program goals and policies.

Based on the changes in NOAA's preferred alternative between the Draft EIS and Notice of Proposed Rulemaking, NOAA re-evaluated the proposed action for potential impacts to coastal uses and the relevant enforceable policies of the Texas coastal management program due to the smaller areal extent of the proposed sanctuary expansion. NOAA determined that implementing sanctuary regulations and other management actions in the proposed expanded areas would occur far offshore and would have negligible to no impact on any state activities and would not otherwise have any reasonably foreseeable effects to uses or resources of Texas's coastal zone. Therefore, NOAA concluded that implementing the proposed action will be consistent to the maximum extent practicable with the enforceable policies of approved state management programs.

We respectfully request that you agree to an expedited response no later than December 16, 2020. If you object to NOAA's determination and believe that coastal effects from the proposed action are inconsistent with your state's enforceable policies, please contact me at your earliest convenience to resolve this matter.

Sincerely,



George P. Schmahl, Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

cc:

Ms. Allison Buchtien, National Resource Specialist, Upper Coast Permit Service Center  
Ms. Jesse Solis, Permit Service Center Coordinator, Lower Coast Permit Service Center



**COOPERATING AGENCY AGREEMENT  
BETWEEN THE  
U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SERVICE  
OFFICE OF NATIONAL MARINE SANCTUARIES  
AND THE  
U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF OCEAN ENERGY MANAGEMENT  
IN THE DEVELOPMENT OF AN  
ENVIRONMENTAL IMPACT STATEMENT FOR THE REVISION  
OF THE FLOWER GARDEN BANKS  
NATIONAL MARINE SANCTUARY BOUNDARIES**

**INTRODUCTION**

The National Oceanic and Atmospheric Administration (NOAA), Office of National Marine Sanctuaries (ONMS) has initiated a process to review and revise the Flower Garden Banks National Marine Sanctuary (FGBNMS) boundaries. The ONMS is conducting this process pursuant to Section 304(a) of the National Marine Sanctuaries Act, as amended (NMSA). Changes under consideration include adjustment of the current FGBNMS boundaries of the East and West Flower Garden and Stetson Banks, and the expansion of the sanctuary to include additional banks and other features in the northern Gulf of Mexico. Some of the changes under consideration will require a change to the FGBNMS terms of designation and will require preparation of an environmental impact statement (EIS) per Section 304(a) of the NMSA. The EIS will be prepared pursuant to the National Environmental Policy Act (NEPA).

The ONMS has requested that the Bureau of Ocean Energy Management (BOEM) participate as a cooperating agency in the preparation of the EIS. Section 1501.6 of the Council on Environmental Quality's regulations emphasizes agency cooperation in the NEPA process between Federal agencies having jurisdiction or special expertise related to a proposed activity. BOEM has jurisdiction over Outer Continental Shelf (OCS) leasing; pipeline rights-of-way; geological and geophysical (G&G) activity permitting; managing and ensuring environmentally responsible operations during exploration, development, and production of mineral resources on the OCS; and special expertise in the analyses of G&G activity and oil and gas (i.e., exploration, development, and production) activities on the OCS. Some of the areas under consideration for expansion of the FGBNMS boundaries contain active oil and gas leases, OCS-related infrastructure, and known, yet undeveloped, hydrocarbon reserves. Additionally, most of the locations under consideration for inclusion in the FGBNMS are associated with existing BOEM No Activity Zones. The ONMS has requested that BOEM provide relevant information and analyses (described below) during preparation of the EIS and identify a point of contact to facilitate coordination between the two agencies for matters related to this effort. This Cooperating Agency Agreement (CAA) has been prepared to enlist BOEM as a cooperating agency for the preparation of the EIS.

**AUTHORITIES**

The legal authority for the ONMS to enter into this CAA is the NMSA, 16 U.S.C. § 1442(a), which allows the Secretary of Commerce to enter into cooperative agreements, contracts, or other

agreements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of the NMSA.

- A. The programmatic authority for the ONMS to enter into this CAA is the NMSA, 16 U.S.C. §§ 1431 *et seq.*, which includes among its Purposes and Policies:

16 U.S.C. § 1431(b)(7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

- B. The programmatic authority for BOEM to enter into this CAA is the Outer Continental Shelf Lands Act (OCSLA; 43 U.S.C. Chapter 29, Subchapter III, and further defined in 30 CFR parts 500-599), under which BOEM has the authority to manage the exploration for, and also the development and production of, mineral resources located on the OCS. BOEM also has the authority for the issuance of pipeline rights-of-way for the transportation of oil, natural gas, sulfur, and other minerals. BOEM thus has expertise in these as well as many other areas that are relevant to the leasing of lands on the OCS. As a result, BOEM meets the criteria of a "cooperating agency," which is defined as "...any Federal agency other than the lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or any other major Federal action significantly affecting the quality of the human environment."

This CAA does not subjugate any NOAA, ONMS, or BOEM regulatory authorities or responsibilities but serves to clarify the roles and responsibilities in the NEPA process. Executing this CAA does not satisfy BOEM's independent review and comment responsibilities under Section 102 (2) (C) of NEPA or its responsibilities for any other environmental consultations required by law. This CAA does not affect BOEM's responsibilities under the OCSLA and regulations under 30 CFR parts 550-599. In addition, this CAA does not affect the NOAA, ONMS's responsibilities under the NMSA and regulations under 15 CFR part 922. In this regard, the NOAA, ONMS and BOEM agree to cooperate in the NEPA process on the EIS for the revision of the FGBNMS boundaries.

## TERMS AND CONDITIONS

- A. ONMS will:

1. Act as the lead agency for preparation of the EIS.
2. Designate a primary point of contact for matters related to this CAA. The primary point of contact for this CAA will be G.P. Schmahl. See contact information below.
3. Have the lead in setting up and holding any public meetings or hearings that may be held in conjunction with the EIS. The times and locations of the public hearings will be jointly agreed upon with BOEM.

4. Will prepare all sections of the EIS.
5. Will conduct the economic analysis necessary for the ONMS proposed action based on nonproprietary estimates of oil and gas reserves beneath selected areas proposed for sanctuary expansion supplied by BOEM.
6. Will provide BOEM with preliminary draft copies of sections of the Draft and Final EISs for review and will consider all of BOEM's comments during preparation of the Draft and Final EISs. BOEM will have at least two (2) weeks to review the preliminary copies of the Draft and Final EISs.
7. Will provide to BOEM copies of all comments during preparation of the EIS (including scoping, Draft EIS, Final EIS, and Record or Decision [ROD]).
8. Shall place a copy of this CAA in an appendix to the EIS.

B. BOEM will:

1. Be a cooperating agency for the preparation and review of the EIS.
2. Designate a primary point of contact for matters related to this CAA. The primary point of contact for this CAA will be Michelle Nannen. See contact information below.
3. Participate, as they deem appropriate, in any public meetings or hearings that may be held in conjunction with the EIS.
4. Provide ONMS with nonproprietary information as requested during the preparation of this CAA, regarding:
  - a) Nonproprietary estimates of oil and gas reserves beneath selected areas proposed for sanctuary expansion. Selected areas only include the banks identified in the shape file labeled "Preliminary\_Proposed\_Action\_20150619".
  - b) Techniques used in the exploration, development, and production of hydrocarbons required to access oil and gas reserves beneath selected areas proposed for sanctuary expansion.
  - c) Nonproprietary seismic information in the vicinity of the existing sanctuary and proposed expansion boundaries.
  - d) Locations, distancing requirements, and shape files for shipwrecks that may be located in the proposed expansion. These include the U.S.S. *Hatteras* in the Galveston Area and the three "Monterrey" shipwrecks in the Keathley Canyon Area.
  - e) Analysis of shipwrecks that may be located in the expansion areas.
  - f) Respond to questions related to nonproprietary aspects of the analysis for oil and

gas reserves beneath the proposed expansion areas for ONMS's economic analysis in the EIS.

5. Will comply with the EIS schedule of ONMS to the best of BOEM's ability given BOEM's current workload during development of the 2017-2022 Five-Year Program and competing/conflicting internal needs for access to the same BOEM analytical resources. The above tasks (1-4) are those agreed upon during the preparation of this CAA. The timeframe to complete additional tasks to what is stated in this CAA will be negotiated upon request, based on BOEM's staff and workload.
6. In addition to BOEM's review of draft NEPA documents described above in Section (A)(6), BOEM reserves the right to review, at BOEM's discretion, the Draft EIS, Final EIS, and the ROD after release to the general public and to provide additional comments.

### **FUNDING, PROGRAMMING, PAYMENT, AND REIMBURSEMENT ARRANGEMENTS**

This CAA is not a fiscal or funds obligation document. Any activities involving reimbursement or transfer of funds between parties to this CAA will be handled in accordance with applicable laws, regulations, and procedures.

### **CONTACTS**

- A. The points of contact for activities under this CAA are

ONMS

G.P. Schmahl, Superintendent  
Office of National Marine Sanctuaries  
4700 Avenue U, Building 216  
Galveston, TX 77550  
Telephone: 409-621-5151, ext. 102  
Fax: 409-621-1316  
Email: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

BOEM

Michelle Nannen  
Bureau of Ocean Energy Management  
1201 Elmwood Park Blvd. (MS 623E)  
New Orleans, LA 70123-2394  
Telephone: 504-731-6682  
Fax: 504-736-2361  
Email: [michelle.nannen@boem.gov](mailto:michelle.nannen@boem.gov)

- B. The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change. A change to this section will not require an amendment.

### **DURATION OF THIS CAA, AMENDMENTS, OR TERMINATION**

- A. This CAA will become effective after execution by both parties and will terminate upon completion of the EIS.
- B. This CAA may be amended within its scope through the written mutual consent of the parties.
- C. This CAA may be terminated by written notice by either of the signatories at any time.

## **LIMITATIONS**

All commitments made in this CAA are subject to the availability of appropriated funds and each agency's budget priorities. Nothing in this CAA obligates BOEM or ONMS to expend appropriations or to enter into any contract, assistance agreement, or interagency agreement, or to incur other financial obligations. This CAA is neither a fiscal nor a funds obligation instrument. Any endeavor involving the reimbursement or contribution of funds between the parties of this CAA will be handled in accordance with applicable laws, regulations, and procedures, and will be subject to separate subsidiary agreements that will be affected in writing by representatives of both parties. This CAA does not create any right or benefit enforceable against BOEM or ONMS, their officers or employees, or any other person. This CAA does not apply to any person outside BOEM or ONMS.

In addition, confidential, privileged or proprietary information will not be shared between the agencies and will be excluded from any data analyses or reports that are considered during the preparation of the EIS. The agencies understand that while BOEM will analyze information on oil and gas reserves beneath the proposed sanctuary expansion boundaries for the EIS that may be confidential, privileged or proprietary, BOEM will only share information with ONMS related to OCS reserves and associated revenue that is not confidential, privileged or proprietary.

## **RESOLUTION OF DISPUTES**

The parties agree to make every attempt to settle any disputes regarding this CAA at the lowest operational level. In the case of a substantial disagreement between ONMS and BOEM, each agency will designate a senior management official at the regional level to seek resolution. If these officials do not resolve the dispute within 30 days, the agencies will further elevate the matter to the Director of BOEM and the Director of ONMS for resolution.

## **PREDECISIONAL MATERIALS**

The undersigned hereby agree to maintain confidentiality of information and documents shared in furtherance of this CAA during completion of the EIS. This agreement to maintain confidentiality of information and documents applies to all communications, including the following: email messages; notes to the file; agendas, pre-meeting materials, presentations, and meeting notes and summaries; letters; review evaluations; and all documents created and shared as part of the collaboration established in this CAA. Any information that is required to be released to the public due to Agency legal obligations should not contain confidential or privileged information, including deliberative process privilege materials related to preparation of the Draft and Final EIS.

Information provided to BOEM or ONMS related to activities carried out under this CAA may be subject to applicable statutes and regulations that require its disclosure upon request, including, but not limited to, the Freedom of Information Act (FOIA, 5 U.S.C. § 552). For purposes of FOIA requests, each agency will not release information provided by the other agency directly to a FOIA requester but, rather, will follow FOIA procedures by referring the FOIA request and/or the information to the other agency for review, determination, and response directly to the requester.

**APPROVALS**

ACCEPTED AND APPROVED FOR THE  
U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SERVICE

BY:



Billy D. Causey  
Director  
Southeast, Gulf and Caribbean Region  
Office of National Marine Sanctuaries

DATE:

9/17/15

ACCEPTED AND APPROVED FOR THE  
U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF OCEAN ENERGY  
MANAGEMENT

BY:



Michael A. Celata  
Acting Regional Director  
Gulf of Mexico OCS Region  
Bureau of Ocean Energy Management

DATE:

9/8/15

**COOPERATING AGENCY AGREEMENT  
BETWEEN THE  
U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SERVICE  
OFFICE OF NATIONAL MARINE SANCTUARIES  
AND THE  
DEPARTMENT OF INTERIOR  
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT  
IN THE DEVELOPMENT OF AN  
ENVIRONMENTAL IMPACT STATEMENT FOR THE REVISION OF THE FLOWER  
GARDEN BANKS NATIONAL MARINE SANCTUARY BOUNDARIES**

**INTRODUCTION**

The National Oceanic and Atmospheric Administration (NOAA), Office of National Marine Sanctuaries (ONMS) has initiated a process to review and revise the Flower Garden Banks National Marine Sanctuary (FGBNMS) boundaries. The ONMS is conducting this process pursuant to section 304(a) of the National Marine Sanctuaries Act, as amended (NMSA). Some of the changes under consideration include adjustment of the current FGBNMS boundaries of the East and West Flower Garden and Stetson Banks, and the expansion of the sanctuary to include additional banks and other features in the northern Gulf of Mexico. Some of the changes under consideration will require a change to the FGBNMS terms of designation, which requires preparation of an environmental impact statement (EIS) per section 304(a) of the NMSA. The EIS will be prepared pursuant to the National Environmental Policy Act (NEPA).

ONMS has requested that the Bureau of Safety and Environmental Enforcement (BSEE) participate as a cooperating agency in the preparation of the EIS. Section 1501.6 of the Council on Environmental Quality regulations emphasizes agency cooperation in the NEPA process between Federal agencies having jurisdiction or special expertise related to a proposed activity. The BSEE has jurisdiction by law over the regulation of oil and gas activities on the outer continental shelf (OCS) and has special expertise in the analyses of oil and gas activities on the OCS. Some of the areas under consideration for expansion of the FGBNMS boundaries contain active oil and gas leases and infrastructure and are also associated with existing Bureau of Ocean Energy Management (BOEM) No Activity Zones. The ONMS has requested that BSEE provide relevant information and analyses during preparation of the EIS and identify a point of contact to facilitate coordination between the two agencies for matters related to this effort. This CAA has been prepared to enlist BSEE as a cooperating agency.

**AUTHORITIES**

- A. The legal authority for the FGBNMS to enter into this Agreement is the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1442(a), which allows the Secretary

of Commerce to enter into cooperative agreements, contracts, or other agreements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of the NMSA.

- B. The programmatic authority for the FGBNMS to enter into this Agreement is the NMSA, 16 U.S.C. 1431 et seq, which includes among its Purposes and Policies:

16 U.S.C. 1431(b)(7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

- C. The programmatic authority for the BSEE to enter into this Agreement is the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1333 SEC. 5., which includes among its Purposes and Policies:

43 U.S.C. 1333 SEC.5.(a) In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States.

43 U.S.C. 1333 SEC.5.(h) The head of any Federal department or agency who takes any action which has a direct and significant effect on the outer Continental Shelf or its development shall promptly notify the Secretary of such action and the Secretary shall thereafter notify the Governor of any affected State and the Secretary may thereafter recommend such changes in such action as are considered appropriate.

## TERMS AND CONDITIONS

- A. ONMS will:

1. Act as the lead agency for preparation of the EIS.
2. Designate a primary point of contact for matters related to this CAA.
3. Have the lead in setting up and holding any public meetings or hearings that may be held in conjunction with the EIS. The times and locations of the public hearings will be jointly agreed upon with BSEE.
4. Will prepare all sections of the EIS.
5. Will provide BSEE with preliminary draft copies of sections of the Draft and Final EIS for review and will consider all BSEE comments during preparation of the Final EIS.

6. Will provide to BSEE copies of all comments during preparation of the EIS (including scoping, draft EIS, Final EIS and ROD).
  7. Shall place a copy of this CAA in an appendix to this EIS.
- B. BSEE will:
1. Be a cooperating agency for preparation of the EIS.
  2. Designate a primary point of contact for matters related to this CAA (contact information provided below).
  3. Participate, as they deem appropriate, in any public meetings or hearings that may be held in conjunction with the EIS.
  4. Make every effort to comply with the EIS schedule of ONMS.
  5. Provide relevant information and recommendations for consideration in ONMS' analyses during preparation of the EIS; as required, and in coordination with BOEM reviewers.
  6. Be a cooperating agency in the preparation and review of the EIS; however, BSEE reserves the ability to review the EIS when it is released to the general public and to provide ONMS with additional appropriate comments.

## **FUNDING, PROGRAMMING, PAYMENT, AND REIMBURSEMENT ARRANGEMENTS**

This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or transfer of funds among the Parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures.

## **CONTACTS**

- A. The points of contact for activities under this Agreement are:

ONMS  
G.P. Schmahl  
Superintendent

BSEE  
James Sinclair  
Bureau of Safety and Environment  
Enforcement

4700 Ave U, Bldg 216  
Galveston, TX 77550  
Ph 409-621-5151 ext. 102  
Fax 409-621-1316  
george.schmahl@noaa.gov

1201 Elmwood Park Blvd, GE 466  
New Orleans, LA 70123  
Ph 504-736-2789  
Fax 504-736-7500  
james.sinclair@bsee.gov

- B. The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change. A change to this section will not require an amendment.

### **DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION**

- A. This Agreement will become effective after execution by both Parties and will terminate upon completion of the EIS.
- B. The Agreement may be amended within its scope through the written mutual consent of the Parties.
- C. The Agreement may be terminated by written notice by either of the signatories at any time.

### **RESOLUTION OF DISPUTES**

The parties agree to make every attempt to settle any disputes regarding this CAA at the lowest operational level. In the case of a substantial disagreement between ONMS and BSEE, each agency will designate a senior management official at the regional level to seek resolution. If these officials do not resolve the dispute within 30 days, the agencies will further elevate the matter to the Director of BSEE and the Director of ONMS for prompt resolution.

### **PREDECISIONAL MATERIALS**

The undersigned hereby agree to maintain confidentiality of information and documents shared in furtherance of this CAA during completion of the EIS. This agreement applies to all communications, including the following: email messages; notes to the file; agendas, pre-meeting materials, presentations, and meeting notes, and summaries; letters; review evaluations; and all documents created and shared as part of the collaboration established in this CAA. A party may only release or otherwise disclose the contents of privileged documents prepared or provided by the other party only after receiving express written permission from the other party.

**APPROVALS**

ACCEPTED AND APPROVED FOR THE  
U.S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SERVICE

ACCEPTED AND APPROVED FOR THE  
U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF SAFETY AND  
ENVIRONMENTAL ENFORCEMENT

BY:   
\_\_\_\_\_  
Billy D. Causey  
Director  
Southeast, Gulf and Caribbean Region  
Office of National Marine Sanctuaries

BY:   
\_\_\_\_\_  
Lars Herbst  
Regional Director  
Gulf of Mexico OCS Region  
Bureau of Safety and Environmental  
Enforcement

DATE: 9/28/15

DATE: 9/2/15



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

FEB 25 2019

RDML Tim Gallaudet, Ph.D., USN Ret.  
Assistant Secretary of Commerce for Oceans and Atmosphere  
and Acting Under Secretary of Commerce for Oceans and Atmosphere  
U.S. Department of Commerce  
Washington, D.C. 20230

Dear Dr. Gallaudet:

We received your request to evaluate the potential expansion of the Flower Garden Banks National Marine Sanctuary pursuant to Section 4(a) of Executive Order 13795, *Implementing an America-First Offshore Energy Strategy* (April 28, 2017).

In the enclosed document, the Bureau of Ocean Energy Management (BOEM) has responded to your request with a completed review of offshore energy and mineral resource potential within the designated area, as well as a review of the potential impacts that the proposed expansion will have on the development of those resources.

If you have any questions, please contact Dr. Walter D. Cruickshank, BOEM Acting Director, at (202) 208-6300 or [Walter.Cruickshank@boem.gov](mailto:Walter.Cruickshank@boem.gov).

Sincerely,

Joseph R. Balash  
Assistant Secretary  
Land and Minerals Management

Enclosure

**BOEM REVIEW OF OFFSHORE ENERGY AND MINERAL RESOURCES**

**POTENTIAL EXPANSION  
OF THE FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY**

**FEBRUARY 21, 2019**

**PUBLIC VERSION**

## EXECUTIVE SUMMARY

The proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) expansion would likely result in a reduction in the Nation's recoverable oil and gas reserves. The existing FGBNMS affects 19 OCS lease blocks, in which there are 4 existing OCS oil and gas leases. The proposed expansion of the FGBNMS would affect 65 additional whole or partial OCS blocks (by incorporation into the FGBNMS and/or by distancing requirements for bottom disturbing activity) and 8 additional OCS oil and gas leases, totaling 84 OCS lease blocks and 12 OCS oil and gas leases affected by the proposed expanded FGBNMS. Some areas included in the proposed FGBNMS expansion are comprised of muddy seafloor, which are areas where the Bureau of Ocean Energy Management (BOEM) can currently permit oil and gas activity. With the proposed FGBNMS expansion, the National Oceanic and Atmospheric Administration (NOAA) would still allow OCS oil and gas leasing, however, OCS oil and gas activity on the muddy seafloor would become more restricted and costly for OCS oil and gas lessees. The restrictions and increased costs for OCS oil- and gas-related activities in an expanded FGBNMS would likely negatively impact the development of oil and gas resources on existing leases, and may negatively impact future lease sales within the FGBNMS. A negative impact on future lease sales would likely lead to a reduction in revenue to the Federal Government.

The following information concerns only the 65 OCS blocks that would be affected by in the FGBNMS if the proposed expansion were approved:

### *Oil and Gas Resources within the Proposed Expansion Boundaries*

- Approximately 0.11 million barrels of oil equivalent (MMBOE) of reserves, 3.86 MMBOE of contingent resources, and 4.50 MMBOE of undiscovered resources

### *Restrictions within the Proposed Expansion Boundaries*

- NOAA would allow leasing in the proposed FGBNMS expansion areas; however, NOAA has restrictions on seafloor disturbance within a National Marine Sanctuary.
  - Restrictions on new oil and gas on-site drilling and structure and pipeline emplacement within the expanded FGBNMS would require lessees to directionally drill from outside the FGBNMS to oil and gas resources within the FGBNMS and to route new pipelines around the expanded FGBNMS, both of which are costly and time consuming.
- Individual United States Environmental Protection Agency's (USEPA) Region 6 National Pollutant Discharge Elimination System (NPDES) permits would need to be obtained for all new oil and gas activities within the expanded FGBNMS. No discharge within the FGBNMS would be permitted under the NPDES general permit, except for those structures installed prior to the designation of the Sanctuary.
  - Individual NPDES permits may be more restrictive than a general NPDES permit and obtaining one may be costly and time consuming.

#### *Leasing Aspects within the Proposed Expansion Boundaries*

- \$97 million in bonus bids have already been received for the leases affected by the proposed FGBNMS expansion areas.
- 8 OCS blocks are currently leased, with 7 existing structures and 45 active wells; 8 additional wells have been approved to drill.
- Lessees might argue that new restrictions on discharge and structure emplacement in the expanded FGBNMS render it uneconomic to recover all resources on existing leases. Unless NOAA and USEPA build in protections for valid existing rights, lessees might pursue claims for breach of contract or takings, leading at minimum to litigation costs for the government.

#### *Additional Cost to Develop Resources within the Proposed Expansion Boundaries*

- If technically and economically feasible, operators could directionally drill to resources within the Sanctuary from locations outside of the Sanctuary.
  - It is estimated to cost \$3.24 million to directionally drill to reserves and contingent resources within the proposed FGBNMS expansion areas.
- New pipelines would need to be routed around the expanded FGBNMS.
  - It is estimated to cost \$0.97 million to route new pipelines around the proposed FGBNMS expansion in order to obtain reserves and contingent resources.
- If operators choose to drill within the expanded FGBNMS, they could apply for individual NPDES permits, which could be costly and time consuming.

#### *Revenue Loss to the Federal Government*

- New restrictions on discharge and bottom-disturbing activities may result in reduced leasing for blocks within an expanded FGBNMS, reducing bonus and royalty potential for the Federal Government.
  - At least \$12 million in future bonus bids could be lost (conservative estimate based on minimum bid amount for unleased blocks) for blocks affected by the proposed FGBNMS expansion areas.
  - From \$8.1 million to \$40.5 million in total potential royalties could be lost for undiscovered resources in the proposed FGBNMS expansion areas.
- With reduced leasing, there may be a reduction in the Nation's available oil and gas reserves because the oil and gas reserves would be stranded.

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## 1.0 INTRODUCTION

The National Oceanic and Atmospheric Administration (NOAA), Office of National Marine Sanctuaries has proposed to expand the Flower Garden Banks National Marine Sanctuary (FGBNMS) in the Gulf of Mexico (GOM). This document presents the results of a Bureau of Ocean Energy Management (BOEM) review of the impacts of the proposed expansion areas on offshore energy or mineral resources. As required under Section 4(a) of Executive Order 13795, *Implementing an America-First Offshore Energy Strategy* (April 28, 2017), this document focuses on offshore energy from wind, oil, natural gas, and methane hydrates. BOEM has also included information regarding potential impacts on offshore marine minerals.

### 1.1 BACKGROUND INFORMATION PERTINENT TO THIS CONSULTATION

In its Draft Environmental Impact Statement (EIS), which was published on June 10, 2016, NOAA analyzed five alternatives for the Sanctuary boundaries. The alternatives ranged from a “No Action Alternative” that would maintain the Sanctuary at its current size of approximately 56 mi<sup>2</sup> affecting 19 OCS blocks to an alternative encompassing the largest area expanding the Sanctuary to approximately 935 mi<sup>2</sup> affecting 253 OCS blocks. NOAA’s designated “Preferred Alternative” in the Draft EIS proposed to expand the Sanctuary to approximately 383 mi<sup>2</sup> affecting 105 OCS blocks.

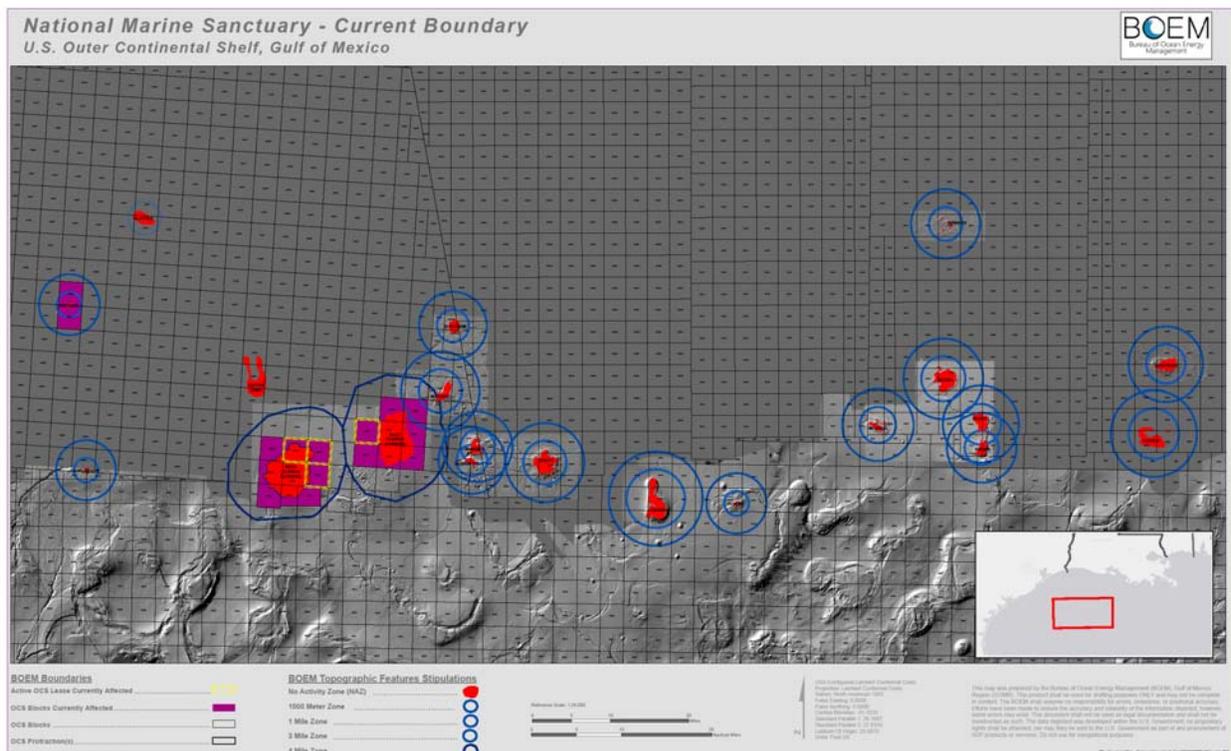
BOEM was a Cooperating Agency on the EIS; and requested that the impacts of Sanctuary expansion on offshore energy be analyzed in the Draft EIS. However, NOAA’s schedule did not allow for the additional analysis and the Draft EIS did not adequately address or analyze the potential impacts of a Sanctuary expansion on offshore energy. Therefore, BOEM conducted its own analysis of the potential impacts to offshore energy in Alternative 3 (NOAA’s preferred alternative) and Alternative 5 (the largest expansion alternative) of the Draft EIS. BOEM provided this analysis to NOAA on November 17, 2016, for use in the Final EIS. BOEM later met with NOAA on February 10, 2017, to discuss the results of BOEM’s analyses. NOAA has not provided a publication date for the Final EIS.

Following the close of the comment period on the Draft EIS, the FGB Sanctuary Advisory Council’s (Council) Boundary Expansion Working Group (BEWG) began an effort to provide a new boundary recommendation to NOAA. On May 9, 2018, the FGB Council voted to accept the BEWG’s expansion recommendation. The recommended boundaries are smaller than NOAA’s Preferred Alternative in their Draft EIS. NOAA then finalized the FGB Council’s proposed boundaries, with a small change for consistency with the current Sanctuary boundaries. The proposed expansion would add approximately 104 mi<sup>2</sup> to the FGBNMS, bringing the total FGBNMS to just over 160 mi<sup>2</sup>. NOAA’s finalization of the FGB Council’s proposed boundaries resulted in final boundaries for the proposed FGBNMS expansion, and allowed initiation of the consultation with BOEM under E.O. 13795. The following analysis was conducted for NOAA’s final FGBNMS proposed expansion boundary.

## 2.0 ANALYSIS

### 2.1 EXISTING FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

**Figure 1** shows the existing FGBNMS. The Sanctuary is composed of three topographic features: East Flower Garden Bank; West Flower Garden Bank; and Stetson Bank. Currently, there are 17 Outer Continental Shelf (OCS) blocks wholly or partially within the existing FGBNMS. There are 19 OCS blocks affected as a result of BOEM’s policy to distance bottom disturbing activity from the FGBNMS. Those blocks are shown in pink in **Figure 1**. In addition, there are currently four active oil and gas leases partially within or affected by the existing FGBNMS boundaries. These active oil and gas leases are outlined in yellow in **Figure 1**. No new oil and gas leasing is permitted within the 17 OCS blocks that are wholly or partially within the FGBNMS, as they have been withdrawn from leasing through a Presidential Memorandum dated July 14, 2008. There are no active renewable energy or marine mineral leases in the existing FGBNMS.



*Figure 1. Current Flower Garden Banks National Marine Sanctuary.*

### 2.2 PROPOSED EXPANSION OF THE FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

NOAA is proposing to expand the FGBNMS boundaries to include several additional topographic features in the Gulf of Mexico. The FGBNMS and the proposed expansion areas are located in two BOEM OCS planning areas: the Western Planning Area and Central Planning Area, both of which are in the BOEM Gulf of Mexico OCS region. **Figure 2** shows the outline of the proposed FGBNMS expansion boundary in light blue.

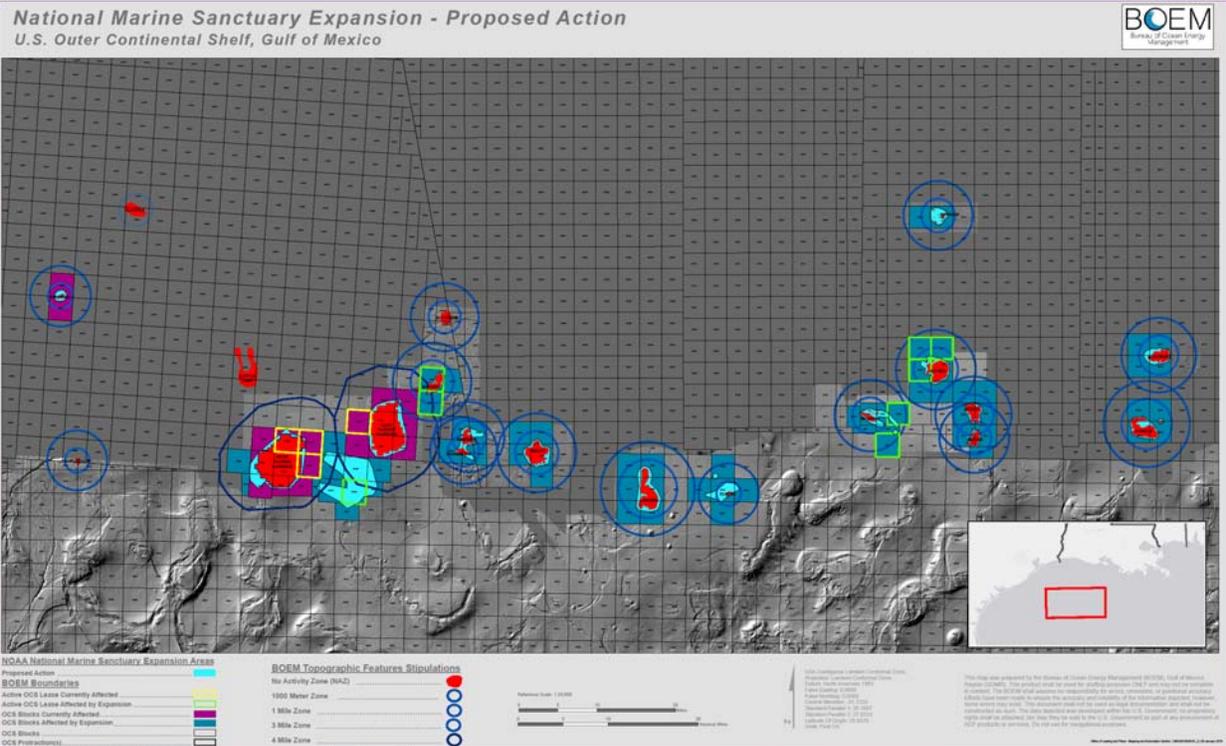


Figure 2. Flower Garden Banks National Marine Sanctuary Proposed Boundary Expansion.

The areas proposed for the FGBNMS expansion (light blue, **Figure 2**) have OCS oil and gas potential, as well as current OCS oil- and gas-related activity. There is an estimated 0.11 million barrels of oil equivalent (MMBOE) of reserves, 3.86 MMBOE of contingent resource potential, and 4.50 MMBOE of undiscovered resource potential in the proposed FGBNMS expansion areas. Leasing OCS blocks for the production of these resources provides revenue for the Federal Government. Further details on resource and leasing potential, as well as revenue through bonuses and royalties for the Federal Government, are discussed in Sections 2.2.1.1 (“Potential Leasing Impacts”) and 2.2.1.2 (“Potential Oil and Gas Resource Impacts”) below.

NOAA’s proposed FGBNMS expansion will affect 65 OCS blocks (shown in dark blue in **Figure 2**) by incorporating them wholly or partially into the FGBNMS or by distancing requirements for bottom disturbing activity that BOEM implements through lease stipulations around the FGBNMS and other topographic features that are based on an Essential Fish Habitat (EFH) Programmatic Consultation with NOAA Fisheries. Under the proposed expansion, there would be a total of 84 OCS blocks (19 existing and 65 new) wholly or partially affected by the expanded FGBNMS. Eight of those 65 OCS blocks are currently leased for oil and gas activities. Those 8 active oil and gas leases (outlined in green in **Figure 2**) would be partially incorporated into or affected by the expanded FGBNMS, resulting in a total of 12 active oil and gas leases (4 existing and 8 new) partially within or affected by the FGBNMS. No renewable energy or marine mineral leases would be incorporated into the expanded FGBNMS.

The GOM has a mature oil and gas leasing program and BOEM has been protecting sensitive biological features in the GOM for decades through stipulations attached to leases that require bottom-disturbing activity be distanced from sensitive seafloor features. BOEM stipulations also

require that drill cuttings near sensitive seafloor features be shunted to the seafloor to prevent the smothering of topographic features. Shunting the cuttings to the seafloor, rather than releasing them at the sea surface, deposits the cuttings below the sensitive habitat at the crests of the topographic features. In addition, site-specific seafloor reviews are conducted before permits are issued, and mitigations are applied as conditions of approval to permits to ensure that bottom-disturbing activity is distanced from sensitive seafloor features. As a result of BOEM's protective measures for sensitive seafloor features, BOEM only permits oil and gas activities on muddy or sandy seafloor, and does not allow these activities to occur near sensitive seafloor features.

Through the stipulations and mitigations of BOEM's OCS Oil and Gas Leasing Program, BOEM already protects the biological features proposed for inclusion in the expanded FGBNMS boundaries from bottom-disturbing oil and gas activity. **Figures 1 and 2** show BOEM's No Activity Zones in red, in which no bottom-disturbing activity from oil and gas is permitted. In addition, BOEM places buffers around the No Activity Zones to further distance bottom-disturbing oil and gas activities from these sensitive seafloor features. For many topographic features proposed for inclusion into the FGBNMS, the proposed Sanctuary boundary (light blue) is not much larger than BOEM's existing No Activity Zone (red). There are, however, a few areas where the proposed FGBNMS boundary is noticeably larger than or outside of a BOEM No Activity Zone. There are also a few muddy seafloor areas within the proposed FGBNMS expansion boundaries in which BOEM can currently permit oil and gas bottom-disturbing activities, provided they are sufficiently distanced from sensitive seafloor features.

BOEM conducts site-specific seafloor reviews and applies its Topographic Features Stipulation to every lease within a Topographic Features Stipulation block (i.e., those blocks that intersect the blue circles surrounding the topographic features in **Figures 1 and 2**). BOEM currently conducts these site-specific seafloor reviews in every block in which the proposed FGBNMS could occur. Following a site-specific seafloor review, BOEM may apply mitigations attached as conditions of approval to oil and gas permits that distance oil and gas bottom-disturbing activity from all sensitive benthic features outside of BOEM's No Activity Zones surrounding topographic features. Although BOEM's mitigations and stipulations distance oil and gas bottom-disturbing activity from sensitive seafloor features, BOEM does allow oil and gas bottom-disturbing activities, such as drilling or pipeline emplacement, on muddy seafloor outside of BOEM's protective buffers. If the proposed FGBNMS expansion occurred, these activities would not be permitted on the muddy seafloor of the expanded area due to USEPA restrictions on discharge and Sanctuary restrictions on seafloor structures in a Sanctuary.

The 65 additional OCS blocks (dark blue blocks in **Figure 2**) wholly or partially affected by the proposed expanded FGBNMS would not be excluded or withdrawn from leasing. However, new restrictions on structure and pipeline emplacement, as well as discharges, would be imposed on oil and gas activity within the proposed boundaries of the FGBNMS (light blue features in **Figure 2**) because those areas would be incorporated into the FGBNMS. Further, new pipelines, not associated with current OCS activity in the Sanctuary, would not be permitted to pass through the expanded Sanctuary. Most importantly, bottom-disturbing drilling activity and discharge would no longer be permitted in the expanded Sanctuary due to the United States Environmental Protection Agency's (USEPA) Region 6 National Pollutant Discharge Elimination System (NPDES) general permits.

Permits required for discharge (including shunting of drill cuttings) are covered under a USEPA NPDES general permit. Under the Region 6 NPDES general permit (which covers the area within the proposed expansion boundaries), no discharge is allowed in a National Marine Sanctuary, except for those structures installed prior to the designation of the Sanctuary. This restriction would essentially eliminate new oil and gas on-site drilling, structure placement, and discharge in the expanded FGBNMS. Operators could apply for individual NPDES permits to discharge in the Sanctuary, but this is expected to be costly and time consuming, resulting in reduced leasing.

The eight OCS lease blocks with the bright green outline in **Figure 2** are those blocks that are currently leased for oil and gas activity and that could experience more restrictive conditions as a result of the proposed FGBNMS expansion. For example, within those 8 OCS lease blocks, 20 exploration and development plans have been approved for activities that include the drilling of 53 new wells. Currently, 45 of the wells have been drilled, but 8 have not yet been drilled. Permitted wells located within the proposed FGBNMS expansion areas that are not drilled and their associated structures or pipelines that are not in place at the time of the FGBNMS expansion will not be allowed to proceed as currently permitted due to additional discharge and bottom-disturbing restrictions in the expanded Sanctuary. In addition, there are currently 45 active wells on the 8 leased OCS blocks that have not been permanently abandoned and still have the potential to produce oil and gas. Additional operations on any existing well located within the proposed FGBNMS expansion areas could also experience new restrictions. Although operators could apply for an individual NPDES permit to discharge within the expanded Sanctuary, the process could be costly and time consuming, and there would still be restrictions on bottom-disturbing activities within the Sanctuary. More details on BOEM's active leases within the proposed FGBNMS expansion areas are provided in Section 2.2.1.1 ("Potential Leasing Impacts") below.

Any of the 57 unleased OCS blocks that are wholly or partially affected by the proposed FGBNMS expansion areas (dark blue blocks in **Figure 2**) could experience more restrictive oil and gas activity conditions if they are leased following the expansion of the FGBNMS. This is especially true for muddy seafloor areas within the expanded Sanctuary boundaries where BOEM may permit oil and gas activity, provided it is sufficiently distanced from sensitive seafloor features. This activity would not be permitted in the expanded Sanctuary due to the restrictions on discharge and seafloor structures in the Sanctuary. An individual NPDES permit may be obtained, but there would still be restrictions on bottom-disturbing activities.

If technically and economically feasible, operators could avoid the discharge and pipeline issues within the expanded FGBNMS by directionally drilling from outside the boundaries to oil and gas resources within the Sanctuary. However, there would be additional cost associated with directional drilling and routing new pipelines around the expanded Sanctuary. A further discussion of oil and gas resources in the proposed FGBNMS expansion areas, along with the anticipated additional cost for directional drilling and routing new pipelines around the proposed FGBNMS, are discussed in Section 2.2.1.2 ("Potential Oil and Gas Resource Impacts") below. New restrictions on oil and gas activities within the proposed FGBNMS expansion areas, as well as potential additional costs to obtain oil and gas resources within the proposed FGBNMS boundaries, may result in reduced leasing in the OCS blocks incorporated into the expanded

FGBNMS. Reduced leasing could result in a reduction in the Nation’s available oil and gas reserves.

## 2.2.1 BOEM Review of Potential Offshore Oil and Gas Impacts

### 2.2.1.1 Potential Leasing Impacts

Lessees for the eight currently active oil and gas leases affected by the proposed expansion areas of the FGBNMS might argue that new restrictions on discharge and structure emplacement in the expanded FGBNMS render it uneconomic to recover all resources on existing leases. Unless NOAA and USEPA build in protections for valid existing rights, lessees might pursue claims for breach of contract or takings, leading at minimum to litigation costs for the government. The total amount of bonus collected for these leases is \$97 million. Refer to **Table 1** for a listing of the specific leases and bonus information.

Table 1. Active Lease Information Affected by the Proposed FGBNMS Expansion Areas

Lease Sale No.	Lease Sale Date	Lease Number	Royalty Rate (%)	Rental (\$/acre)	Bonus (\$)	Lease Status	Acreage
25	12/19/1972	G02275	16.67	3.00	7,833,000	UNIT	5000
26	6/19/1973	G02429	16.67	3.00	45,786,240	UNIT	5760
26	6/19/1973	G02433	16.67	3.00	38,077,978	UNIT	5760
113	3/30/1988	G09524	16.67	3.00	1,343,000	UNIT	5000
135	8/21/1991	G13363	16.67	3.00	3,713,131	PROD	5760
152	5/10/1995	G15212	16.67	5.00	373,750	PROD	5000
238	8/20/2014	G35496	18.75	7.00	162,018	PRIMARY	5760
250	3/21/2018	G36201	12.5	7.00	128,500	PRIMARY	5000
<b>Total Bonus: \$97,417,617</b>							
<b>Total Acres: 43,040</b>							

The proposed expansion area also affects 57 unleased OCS blocks that encompass approximately 267,000 acres (**Table 2**). If these 57 unleased OCS blocks become unavailable for leasing, or if operators choose not to lease them based on additional potential oil and gas restrictions within the proposed expanded FGBNMS, there could be a loss of revenue to the Federal Government. One of the forms of revenue is the bonus bid. A bonus bid is the winning highest dollar amount paid at the time of a lease sale. If a minimum bid amount for the unleased acreage is assumed, it would result in potentially \$12 million in lost bonuses collected for the proposed FGBNMS expansion areas (**Table 2**). However, this is a very conservative estimate of potential bonus for unleased area in the proposed FGBNMS expansion areas given that the bonuses collected for currently leased blocks in the proposed FGBNMS expansion areas has totaled \$97 million for only eight blocks (**Table 2**).

Table 2. Leased and Unleased Bonus Information Affected by the Proposed FGBNMS Expansion Areas

	No of Blocks Affected	No. of Blocks Leased	Leased Acreage	No. of Blocks Unleased	Unleased Acreage	Bonus Received for Leased	Potential Bonus on Unleased*
Proposed Expansion Area	65	8	43,040	57	267,000	\$97,000,000	\$12,000,000

\* Bonus calculated using minimum bid amount for unleased blocks.

If the potential resource volume within the FGBNMS could be recovered by directionally drilling wells from a surface location outside of the FGBNMS expansion areas, then the economic loss to the Federal Government from a potential reduction in leasing OCS blocks in the expanded FGBNMS may be greatly reduced. However, this would only be applicable if the resource potential under the expanded FGBNMS blocks is allowed to be accessed from areas outside of the Sanctuary and that it is technically and economically feasible to obtain. There would also be additional costs expected for drilling these wells, which would be assumed by the operators. Refer to the “Potential Oil and Gas Resource Impacts” section for additional costs to obtain resources within the proposed expanded FGBNMS.

In addition to the 8 active leases, there are currently 45 active wells that have not been permanently abandoned with a surface location on blocks affected by the proposed FGBNMS expansion areas (**Table 3**). These wells still have the potential to produce oil and gas. The estimated cost to drill these wells using current year data is approximately \$450 million (**Table 3**). There are also seven existing structures with an estimated cost of \$750 million on blocks affected by the proposed FGBNMS expansion areas (**Table 3**). These would be sunk costs for work already conducted on the leases if production is not permitted on these wells on blocks affected by the expanded FGBNMS. Additionally, in the proposed FGBNMS expansion areas, 8 additional wells have been permitted, but have not yet been drilled.

Table 3. Well, Structure, and Cost Information for Possible Oil and Gas Activities Affected by the Proposed FGBNMS Expansion Areas

	Active Wells	Existing Structures	Approved Plan Wells	Remaining Plan Wells	Estimated Cost for Existing Wells	Estimated Cost for Existing Structures
Proposed Expansion Area	45	7	53	8	\$450,000,000	\$750,000,000

### 2.2.1.2 Potential Oil and Gas Resource Impacts

An inventory of oil and gas reserves and contingent resources was performed, and estimates of undiscovered resource potential were developed for the proposed FGBNMS expansion areas. The inventory of oil and gas reserves and contingent resource volumes for the proposed FGBNMS expansion areas was compiled from BOEM’s field study database. Field studies are

developed for every oil and gas field discovered on the Gulf of Mexico OCS by BOEM’s Reserves Inventory Program. Data and information used to estimate undiscovered resource potential were derived from three main sources: (1) existing proprietary oil and gas property appraisal studies; (2) geological and geophysical prospecting studies initiated to review proposed Sanctuary expansion alternatives conducted by this office in 2016; and (3) reserves inventory studies available on select OCS blocks located within the proposed Sanctuary expansion areas. Due to the level of uncertainty associated with undiscovered resource estimates, a range of potential values is presented. **Tables 4-6** show the reserves, contingent resources, and undiscovered resources.

Reserves are those quantities of petroleum anticipated to be commercially recoverable by application of development projects to known accumulations from a given date forward under defined conditions. Reserves must further satisfy four criteria, i.e., they must be discovered, recoverable, commercial, and remaining (as of a given date) based on the development project(s) applied. The total reserves in the proposed FGBNMS expansion areas are approximately 0.11 MMBOE (**Table 4**).

Table 4. Reserves in the Proposed FGBNMS Expansion Areas

<b>Reserves</b>			
<b>Reservoir Class</b>	<b>Oil (bbl)</b>	<b>Gas (Mcf)</b>	<b>BOE</b>
Total Reserves	50,121	327,396	108,377

Contingent resources are those quantities of petroleum estimated, as of a given date, to be potentially recoverable from known accumulations by application of development projects, but which are not currently considered to be commercially recoverable due to one or more contingencies. The total contingent resources in the proposed FGBNMS expansion areas are approximately 3.86 MMBOE (**Table 5**).

Table 5. Contingent Resources in the Proposed FGBNMS Expansion Areas

<b>Contingent Resources</b>			
<b>Reservoir Class</b>	<b>Oil (bbl)</b>	<b>Gas (Mcf)</b>	<b>BOE</b>
Total Contingent Resources	89,769	21,206,328	3,863,136

Undiscovered resources are resources postulated, on the basis of geologic knowledge and theory, to exist outside of known fields or accumulations. Included also are resources from undiscovered pools within known fields to the extent that they occur within separate plays. Undiscovered hydrocarbon resource potential exists in the proposed FGBNMS expansion areas both within reservoirs associated with established and proven geologic plays, as well as resources in potential reservoirs that are thought to exist in conceptual geologic plays. The mean total undiscovered resource potential in the proposed FGBNMS expansion areas is approximately 4.50 MMBOE (**Table 6**). The undiscovered resource potential could become

stranded, or unobtainable, if there are restrictions to oil and gas activities within the proposed FGBNMS expansion areas.

Table 6. Undiscovered Resources in the Proposed FGBNMS Expansion Areas

<b>Undiscovered Resources</b>	
<b>Reservoir Class</b>	<b>Mean (BOE)</b>
Total Undiscovered Resources	4,500,000

BOEM developed a methodology to estimate the level of impact that the proposed FGBNMS expansion is expected to have on the development of the potential resources that may exist within the boundaries of the proposed expansion areas. Impact analysis has three components: (1) resource-access impact; (2) private sector opportunity-cost impact; and (3) public sector opportunity-cost impact. The private sector opportunity-cost component is associated with the cost of exploration and development of the resource. The public sector opportunity-cost component is associated with forgone royalty.

Undiscovered oil and gas resources situated on acreage included in the proposed Sanctuary expansion area become stranded when the acreage is no longer available for lease. BOEM’s impact analysis uses the volume of undiscovered oil and gas resources that could potentially remain stranded on acreage as a measure of the level of impact the proposed expansion area may impose on the development of energy resources. There is no impact on resource-access for reserves or contingent resources since these two categories of resources are only applicable to resources on leased acreage. Therefore, resources on leased acreage are not stranded. The measure of impact for the resource-access impact component is expressed in terms of the *volume of undiscovered oil and gas resources* stranded and is reported in barrels of oil equivalent (BOE). The results of the resource-access impact analysis are presented in **Table 7**.

Table 7. Resource Access Impact in the Proposed FGBNMS Expansion Areas

<b>Resource Access Impact Analysis</b>	
<b>Reservoir Class</b>	<b>Mean (BOE)</b>
Total Undiscovered Resources	4,500,000

Payments on production from leases, or royalties, can add great revenue to the Federal Treasury. Once production starts on a lease, the government receives a royalty payment. The royalty rate is a percentage of production. The royalty rate is used to calculate the royalty payment, i.e., the dollar amount paid based on the value of the amount of production. The undiscovered resources in the proposed FGBNMS expansion areas have a substantial royalty value.

The government would incur a public sector opportunity-cost if the FGBNMS is expanded. Public sector opportunity-cost impact analysis was conducted by converting natural gas volumes to BOE, calculating the sales value of the total volume of potentially forgone production. Our analyses used a wellhead product sales value of 50 \$US per BOE. The royalty value was

calculated using a product delivery cost estimate of 2 \$US per BOE and a royalty rate of 18.75 %. The sale of the entire volume was assumed to occur in Q4 2018.

Royalty values were calculated for an estimated 20% probability of success (Ps) and 100% Ps for obtaining the undiscovered resource potential. The total potential royalty value for the undiscovered resources within the proposed FGBNMS expansion areas ranges from \$8.1 million to \$40.5 million for the estimated 20% and 100% Ps (**Table 8**).

Table 8. Royalty Value for Undiscovered Resources within the Proposed FGBNMS Expansion Areas

<b>Opportunity Cost Impact Analysis – Public Sector</b>				
<b>Foregone Royalty</b>				
<b>Bank</b>	<b>Volume (BOE) Mean Estimate</b>	<b>Sales Value Wellhead Price = 50 \$US</b>	<b>Opportunity Cost Royalty (\$US) Estimate @ Ps = 1.00</b>	<b>Opportunity Cost Royalty (\$US) Estimate @ Ps = 0.20</b>
Total Volume Sold: Q4 2018 Product Delivery Cost: 2 \$US/BOE	4,500,000	\$225,000,000	\$40,500,000	\$8,100,000

As discussed earlier in this document, restrictions on structure and pipeline emplacement, as well as discharge, within the proposed FGBNMS expansion areas could lead to some oil and gas activities occurring outside of the proposed FGBNMS expansion areas. Additional costs were calculated for drilling wells from surface locations that are outside of the proposed FGBNMS boundaries in order to access reserves and resources located within the proposed FGBNMS expansion boundary. The activity cost information used to conduct the private sector opportunity-cost impact analysis was generated by developing cost estimates for the additional cost associated with relocation of pipelines and wells. The private sector opportunity-cost is incurred by private industry, mainly oil and gas companies and pipeline companies. ArcGIS was used to relocate pipelines that were within the proposed sanctuary areas and calculate the additional pipeline mileage required. Cost estimates were derived for the increased mileage using Questor software. Cost estimates for changes to drilling locations were also developed using Questor software. A measurement of the additional step-out drill-location distance required was determined, followed by a calculation of the additional well depth needed, and then a cost was calculated based on Questor’s drill cost data. In order to develop the reserves and contingent resources within the proposed FGBNMS expansion areas by directional drilling from surface locations outside of the proposed FGBNMS boundaries, it would cost an additional \$3.24 million (**Table 9**).

Table 9. Estimates of Additional Cost to Develop Reserves and Contingent Resources within the Proposed FGBNMS Expansion Areas

<b>Opportunity Cost Impact Analysis – Private Sector</b>			
<b>Reserves and Contingent Resources</b>			
<b>Bank</b>	<b>Opportunity Cost Drilling (\$MM)</b>	<b>Opportunity Cost Pipeline (\$MM)</b>	<b>Opportunity Cost Total (\$MM)</b>
Total	\$3.24	\$0.97	\$4.21

Additional cost associated with rerouting oil and gas pipelines outside the proposed FGBNMS expansion areas were also calculated. During our analyses, there were situations where changes were required to the pipeline installation plan so that oil and gas pipelines remained outside of the proposed Sanctuary expansion areas. In addition, there were also situations where the surface location of exploration and development wells were within the boundaries of the proposed expansion areas. For these cases, the well locations were moved outside of the proposed sanctuary areas, and the measured depth of the well was increased to compensate for the change of location. Cost estimates for pipeline impacts were developed by first using ArcGIS to spatially reroute pipelines outside of the proposed FGBNMS expansion areas and calculate additional pipeline mileage required to avoid proposed FGBNMS expansion areas followed by introducing the increased mileage estimate to cost functions derived using Questor software. In order to obtain the reserves and contingent resources within the proposed FGBNMS expansion areas by rerouting new pipelines around the proposed FGBNMS boundaries, it would cost an additional \$0.97 million (**Table 9**).

**2.2.2 BOEM Review of Potential Offshore Wind Impacts**

Activities prohibited in the FGBNMS include drilling into, dredging, or otherwise altering the seabed of the Sanctuary (except by anchoring); or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary. Because drilling into, dredging, altering, constructing, or abandoning structures on the seabed of the FGBNMS would not be permitted, any OCS block that becomes part of the FGBNMS as a result of expansion would not be available for renewable energy leasing.

Very little is known about the renewable energy resource potential of the Gulf of Mexico OCS. Based on earlier studies conducted by the National Renewable Energy Laboratory (NREL) in Colorado, the greatest renewable energy resource potential was found in wind energy regimes located in the Western Planning Area off south Texas (Musial et al., 2016).

**Figure 3** shows the wind speed potential in the GOM. The wind speed potential in the areas near the FGBNMS and proposed expansion areas is approximately 7.00-8.00 meters per second (m/s) (15-18 miles per hour [mph]). This is near the low end of wind speed potential for the United States; therefore, BOEM would not expect interest for offshore wind leasing in the area of the current or expanded FGBNMS.

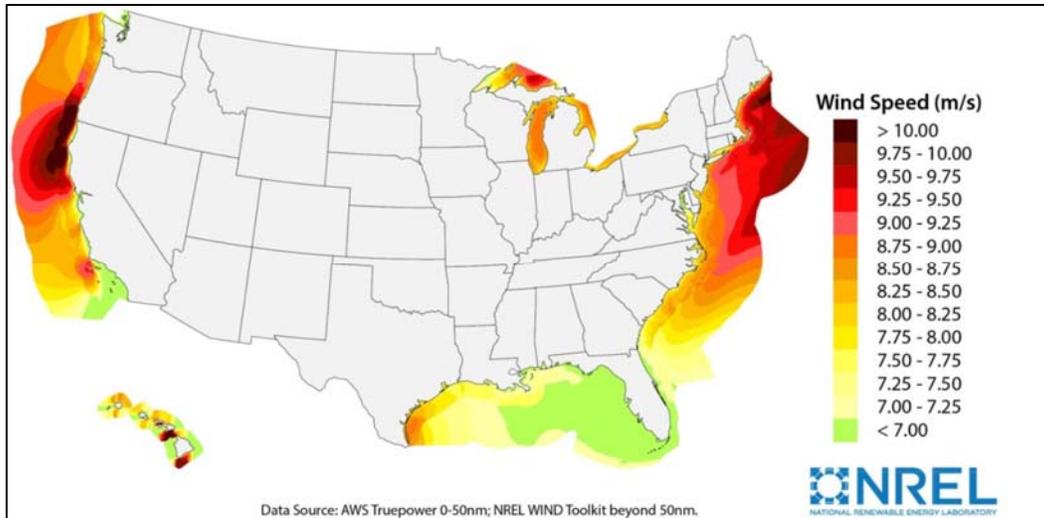


Figure 3. Offshore Wind Resource Data (Musial et al., 2016).

In 2017, NREL began exploring the feasibility of offshore renewable energy in the GOM in a study commissioned by BOEM. The study includes the Western and Central Planning Areas. Together with BOEM and its partners, NREL will select the most viable renewable energy technology in the GOM and perform more detailed economic and site-specific analysis to determine the cost and feasibility of a defined technology scenario. If the FGBNMS were to be expanded and wind energy potential were discovered, wind energy projects would not be permitted in the proposed FGBNMS expansion areas because drilling into, dredging, altering, constructing, or abandoning structures on the seabed are prohibited activities in the FGBNMS. Currently, however, it is unlikely that any large-scale wind energy facility would be built in an expanded FGBNMS, which is in an area that lacks wind resources and an area distant from shore, which presents electrical transmission challenges.

### 2.2.2.1 Alternate Use Impacts

The Gulf of Mexico Alliance has secured funding for conceptual development and a possible feasibility study to consider the use and re-purposing of decommissioned oil and gas platforms for scientific research and monitoring. The purpose of this study is to provide a general overview of the approval process for the alternative use of existing oil and gas platforms. The Gulf of Mexico Alliance has been in discussions with Chevron USA Inc. (Chevron) for the use of re-purposing the Garden Banks Block 189 platform, which is located less than 10 miles from the FGBNMS. Chevron's lease G06358 terminated in June 2016. Chevron submitted a decommissioning application and reef-in-place proposal for the existing platform in September 2015. The Artificial Reef Permit area was approved by U.S. Army Corp of Engineers; however, during the decommissioning review and approval process, BOEM requested additional information from Chevron to provide an archaeological survey for all areas proposed with bottom disturbances, including anchors and site clearance, as well as the proposed reefing location. This application has not moved forward since November 2015.

### **2.2.3 BOEM Review of Potential Offshore Marine Minerals Impacts**

The area of the proposed FGBNMS expansion is too far offshore for BOEM’s marine mineral resources. BOEM does not have any sand borrow sites that far offshore.

### **2.2.4 BOEM Review of Potential Methane Hydrates Impacts**

BOEM has assessed the potential for methane hydrate resources in the proposed expansion areas of the FGBNMS. Due to the shallow-water depth of the proposed expansion areas, the formation of methane hydrate in the subsurface is unlikely. Therefore, BOEM finds that the mean volume of in-place and technically recoverable methane hydrate resources in the proposed expansion areas is zero. The potential impact on the development of methane hydrate resources in the area of the FGBNMS’s proposed expansion would be negligible.

## **3.0 REFERENCES**

Musial, W., D. Heimiller, P. Beiter, G. Scott, and C. Draxl. 2016. 2016 Offshore Wind Energy Resource Assessment for the United States. National Renewable Energy Laboratory, Golden, CO. Contract No. DE-AC36-08GO28308. Prepared under Task No. WE15.5C01. Technical Report NREL/TP-5000-66599. xi + 76 pp.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEAN SERVICE**  
**Flower Garden Banks National Marine Sanctuary**  
4700 Avenue U, Building 216  
Galveston, TX 77551

July 7, 2016

Advisory Council on Historic Preservation  
Attn: Brian Lusher  
401 F Street NW, Suite 308  
Washington, DC 20001-2637

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary  
Expansion and Draft Environmental Impact Statement – NHPA Section  
106 Consultation

Dear Mr. Lusher,

The purpose of this letter is to ensure compliance with the consultation requirements of Section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470 et seq.). In fulfillment of those requirements, the Flower Garden Banks National Marine Sanctuary (FGBNMS) is providing its assessment of potential impacts to historic and cultural resources for the subject proposal of FGBNMS boundary expansion and application of existing regulations and management actions in these areas, as documented in the enclosed Draft Environmental Impact Statement (DEIS), and is requesting initiation of consultation. This request is being sent to the Advisory Council on Historic Preservation (ACHP)'s Office of Federal Agency Programs because the proposed actions evaluated in the enclosed DEIS affects only federal waters on the outer continental shelf of the Gulf of Mexico and is thus not subject to review by any SHPO or THPO.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Gardens Bank National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122. The DEIS is also available at <http://flowergarden.noaa.gov/management/expansiondeis.html>.

The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are available to future generations of Americans. Protecting additional nationally significant habitat



in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

The need for expansion has been strongly supported in public scoping for both that management plan review and for the enclosed DEIS. The evaluation of important marine resources and the incorporation of places of national significance into the National Marine Sanctuary System further national ocean resource management objectives articulated by many publicly vetted and expert-driven strategic planning efforts. These efforts reference the need for additional protections for important habitat areas nationally, and in the northern Gulf of Mexico. These include the recommendations made in NOAA's 2010 Strategic Plan for Deep-Sea Coral and Sponge Ecosystems. Specific recommendations focused on the application of conservation measures in the Gulf of Mexico region notably include those made in the Gulf Coast Ecosystem Restoration Task Force's 2011 Gulf of Mexico Regional Ecosystem Restoration Strategy and reiterated by a variety of constituencies such as the Gulf Coast Ecosystem Restoration Council (2013), the Gulf of Mexico Alliance (2006, 2009), non-governmental organizations and coalitions (e.g., Brown et al. 2011), and the academic community (e.g., Peterson et al. 2011). Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, salvage activities) on the sensitive biological resources and geological features associated with many reefs and banks in the area.

Anticipated impacts to cultural or historic resources from the proposed action are documented in Sections 5.3.1, 5.3.3, and 5.3.4.3 of the enclosed DEIS. The preferred alternative identified in the enclosed DEIS would have no impact on cultural and historic resources, as no known cultural or historic resources exist within the boundaries proposed for that alternative. While Alternatives 1-4 may have minor adverse effects, Alternative 5, has major beneficial effects on cultural or historic resources. The beneficial impact of this alternative is generated by resource protection and management activities that could be directed to the nationally significant shipwreck sites included in that alternative, if they were to be designated National Marine Sanctuary sites: the USS *Hatteras*, the three "Monterrey" wrecks, the *Gulfoil*, the *Gulfpenn*, the S.S. *Robert E. Lee*, the



*U-166, the Deepwater Horizon, the “Mardi Gras” wreck and the Anona*). Details of each of these sites are provided in Appendix C of the enclosed DEIS.

Based on the information provided above regarding the nature and location of the proposed action, FGBNMS has determined that the project will have no net adverse impact on historic or cultural resources protected under the NHPA. If the ACHP disagrees with this determination and recommends additional conservation measures, please inform me of this decision within 30 days of your receipt of this letter. Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,



G. P. Schmahl  
Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)





**State of Louisiana**  
**DEPARTMENT OF NATURAL RESOURCES**  
**OFFICE OF COASTAL MANAGEMENT**

December 9, 2020

George P. Schmahl  
NOAA-Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Building 216  
Galveston, TX 77551  
Via email: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

RE: **C20160091**, Coastal Zone Consistency  
**NOAA/Louisiana Trustee Implementation Group**  
Direct Federal Action  
Expansion of the Flower Garden Banks National Marine Sanctuary  
**Offshore Louisiana**

Dear Mr. Schmahl:

The above referenced project has been reviewed for consistency with the Louisiana Coastal Resources Program in accordance with Section 307 (c) of the Coastal Zone Management Act of 1972, as amended. The project, as proposed in the application, is consistent with the LCRP.

If you have any questions concerning this determination please contact Jeff Harris of the Consistency Section at (225) 342-7949 or [jeff.harris@la.gov](mailto:jeff.harris@la.gov).

Sincerely,

**/S/ Charles Reulet**  
Administrator  
Interagency Affairs/Field Services Division

CR/MH/jdh

cc: Dave Butler, LDWF



# FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, FL 32399

**Ron DeSantis**  
Governor

**Jeanette Nu ez**  
Lt. Governor

**Noah Valenstein**  
Secretary

December 16, 2020

George P. Schmahl  
Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551

RE: Flower Garden Banks National Marine Sanctuary Proposed Expansion –  
Request for CZMA Consistency Determination - FL202011179084C

Dear Mr. Schmahl,

On November 16, 2020, the National Oceanic and Atmospheric Administration (NOAA) submitted to the state of Florida, pursuant to 15 CFR 930.36 and Presidential Executive Order 12372, a consistency determination for the proposed expansion of Flower Garden Banks National Marine Sanctuary, located in the northwestern Gulf of Mexico, approximately 70 to 115 miles off the coasts of Texas and Louisiana. The Flower Garden Banks National Marine Sanctuary currently encompasses approximately 56 square miles and includes three separate undersea features: East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. The banks range in depth from 55 feet to nearly 500 feet.

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq), NOAA prepared and released a Draft Environmental Impact Statement (Draft EIS) on June 10, 2016. The Draft EIS considered five alternatives for the proposed expansion of the sanctuary's boundaries. NOAA's preferred alternative sought to expand the existing sanctuary from approximately 56 square miles to approximately 383 square miles, including additional important and sensitive marine habitat areas in the northwestern Gulf of Mexico.

NOAA published a Notice of Proposed Rulemaking on May 1, 2020 which proposed a revised preferred alternative for expanding based on recommendations from the Sanctuary Advisory Council, public comments, consultation with the Gulf of Mexico Fishery Management Council and various Federal agencies. NOAA's Final Preferred Alternative would add 14 banks, for a total of 17 banks increasing the current sanctuary area from approximately 56

square miles to approximately 160 square miles. According to NOAA, the Final Preferred Alternative, reduced the size of the expansion areas compared to the Draft EIS preferred alternative, to promote compatibility with users and reduce potential economic impacts to the offshore energy industry and fishing.

The Department of Environmental Protection, designated as the State's lead coastal management agency pursuant to section 306(c) of the Coastal Zone Management Act, 16 U.S.C. section 1456 (c), and section 380.22, Florida Statutes, hereby notifies NOAA that the state concurs that the proposed project is consistent with the enforceable policies of the Florida Coastal Management Program.

We appreciate the opportunity to review the proposed expansion of the Flower Garden National Marine Sanctuary. Should you have any questions, please contact Shana Kinsey-Carlsen, [shana.kinsey@floridadep.gov](mailto:shana.kinsey@floridadep.gov) or (850) 245-2185.

Sincerely,

A handwritten signature in blue ink that reads "Alex Reed".

Alex Reed, Director  
Office of Resilience and Coastal Protection

FGBNMS Expansion - CZMA Determination Response  
Alabama Department of Environmental Management  
January 5, 2021

Email excerpt:

*Good afternoon George:*

*Alabama understood your 16NOV2020 letter to be a negative determination (Title 15 CFR §930.35) and as such agreed that the proposal would have no reasonably foreseeable coastal effects for Alabama in part because the proposed expansion would occur far offshore of Texas and Louisiana.*

*Call or email anytime with questions.*

v/r,

J. Scott Brown, Chief  
Mobile Field Office  
Alabama Department of Environmental Management



TEXAS GENERAL LAND OFFICE  
GEORGE P. BUSH, COMMISSIONER

January 6, 2021

U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
National Ocean Service  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Building 216  
Galveston, TX 77561

**Re: Flower Garden Banks National Marine Sanctuary Proposed Expansion of 14 additional reefs and banks in the Northwestern Gulf of Mexico representing approximately a 104 square mile increase in area, for a total of 160.4 square miles and 17 reefs and banks  
CMP#: 21-0999-F2**

Dear Applicant:

Based on information provided to the Texas Coastal Management Program (TCMP) on the above referenced project, it has been determined that the project will likely not have adverse impacts on coastal natural resource areas (CNRAs) in the coastal zone and is consistent with the goals and policies of the TCMP. However, siting and construction should avoid and minimize impacts to CNRAs.

Please note that this letter does not authorize the use of Coastal Public Land. No work may be conducted, or structures placed on State-owned land until all necessary authorizations have been obtained, including any that are required by the Texas General Land Office and the U.S. Army Corps of Engineers. If a U. S. Army Corps of Engineers permit is required, it will be subject to consistency review under the Texas Coastal Management Program.

Please forward this letter to applicable parties. If you have any questions or concerns, please contact me at (361) 886-1630 or at [Federal.Consistency@glo.texas.gov](mailto:Federal.Consistency@glo.texas.gov).

Sincerely,

Jesse Solis, Jr.  
Federal Consistency – Coastal Resources  
Texas General Land Office