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Submitted Electronically via MidAtlanticRPB@boem.gov

RE: Comments on Draft Mid-Atlantic Regional Ocean Action Plan

The American Petroleum Institute (“API”), National Ocean Industries Association (“NOIA”), and the International Association of Geophysical Contractors (“IAGC”) (“the Associations”) offer the following comment on the draft Mid-Atlantic Ocean Action Plan (henceforth referred to as the “draft Plan”). While our industry does not currently engage in offshore exploration or development in the Mid-Atlantic Outer Continental Shelf (“OCS”) of the U.S. Exclusive Economic Zone, seismic surveys and drilling in the Mid-Atlantic have occurred in the past, enhancing understanding of the resource potential in this region. In addition, companies are actively seeking permits to perform seismic surveys in a portion of the area cover by the draft plan. API and its members remain concerned with the potential for unintended consequences to arise from the implementation of the draft Plan. Our fear is that an Ocean Action Plan will be used as a tool to limit and delay future conventional energy exploration and development opportunities in the Mid-Atlantic OCS.

API is a national trade association representing over 650 member companies involved in all aspects of the oil and natural gas industry, including offshore exploration and development in and adjacent to U.S. coastal and Outer Continental Shelf (“OCS”) ocean waters as well as delivery of resources to regions dependent on oil and gas.

NOIA is the only national trade association representing all segments of the offshore industry with an interest in the exploration and production of both traditional and renewable energy resources on the U.S. Outer Continental Shelf (“OCS”). The NOIA membership comprises more than 325 companies engaged in a variety of business activities, including production, drilling, engineering, marine and air transport, offshore construction, equipment manufacture and supply, telecommunications, finance and insurance, and renewable energy.

IAGC is the international trade association representing the industry that provides geophysical services (geophysical data acquisition, processing and interpretation, geophysical information ownership and licensing, associated services and product providers) to the oil and natural gas industry. IAGC member companies play an integral role in the successful exploration

and development of offshore hydrocarbon resources through the acquisition and processing of geophysical data.

The Associations appreciate the intent of marine planning. The oil and gas industry values certainty and predictability given the large capital investments required for offshore oil and natural gas development. Key components of the process include effective interagency collaboration, informed decision-making, and timely permit issuance. For the Mid-Atlantic region, we note that the draft plan to date largely focuses on common sense actions, like getting agencies to collect more data, consult effectively, and make information more available to interested stakeholders – all actions that could help smooth the process for prospective investment in the region. However, it is still not clear how the draft Plan will improve the current situation. The draft Plan does not help to clarify our understanding of how improvements in interagency coordination will be achieved, given the lack of specificity as to many of the proposed actions to be taken and the agencies that would be involved. API finds that interagency coordination goals could be achieved through other means outside the Regional Planning Body (“RPB”) process – such as facilitating conversations across agencies, increasing transparency of agency actions, and building bespoke coordination teams to address specific questions – and that these do not require new bureaucracies like the RPB or directives established in vague terms in the Plan. If the RPB still finds it necessary to promote interagency coordination via the Plan and its bureaucracy, the Plan should be modified to make it clear that any and all coordination and collaboration tools included in the Plan are entirely flexible and may be adopted or further refined to meet agency and stakeholder needs as all parties deem appropriate, given the unique coordination needs that may arise across ocean resource issues over time. The Plan should also make it clear that agencies will not be limited to those coordination and collaboration practices established under the Plan.

In addition, there are many elements of the draft plan that are not yet defined, and these areas remain a source of uncertainty and potential risk. Since the release of the Executive Order it has been unclear as to how agencies will implement ocean plans and what this will mean for potential offshore oil and natural gas development, particularly with respect to compliance with existing statutes and regulations. As stated in the Executive Order that established the National Ocean Policy, federal agencies are directed to implement the regional marine plans to the maximum extent, including through regulations where necessary.¹ These directives that bind federal agencies to implement the plan through agency policies, decision-making, and regulation present significant problems. First, this directive limits the options that agencies can consider as they work to apply existing Congressional authorities to ever-changing environmental and economic conditions along our nation’s coasts and oceans. Instead of using existing governance processes (e.g., regulatory processes guided by Administrative Procedure Act, interagency coordination customized to address emerging issues, etc.), agencies would have to ensure consistency with a Plan that – due to incomplete information, outdated analyses, and/or misaligned goals – may not be relevant to agency needs or that introduces bureaucratic steps that force costs and delays to mount. Second, and perhaps more troubling, is the fact that the draft Plan simply does not contain enough information for stakeholders like the Associations to understand how federal agency compliance with the plan will affect our members. As federal agencies change their policy, decision-making, and regulatory activities to be consistent with the Plan, it will certainly affect the options and activities of regulated entities. In order to allow for

¹ See Executive Order for Stewardship of the Ocean, Our Coasts, and the Great Lakes, July 19, 2010, available at <http://www.whitehouse.gov/files/documents/2010stewardship-EO.pdf>, Section 6

informed public comments – a cornerstone of government transparency and accountability – the draft Plan must more clearly specify how the document is going to be used by federal regulators when taking actions that will substantively affect regulated entities. While the draft Plan acknowledges that it does not augment or supersede existing authorities, NOAA stated just the opposite in its recently released draft Ocean Noise Strategy Roadmap: “Marine planning seeks to augment statutorily-directed consultation and environmental impact assessment processes that are standardly used to address noise impacts.”² This and other substantive impacts of the Plan must be clearly and transparently disclosed to the public.

Another primary, immediate concern revolves around the quality of new data that was presented as part of the draft and the lack of availability of the full suite of marine life mapping products referenced for use in the draft Plan, including base layer predictive model mapping products for 29 marine mammal species and species guilds, 40 avian species, and 82 fish species. The Associations are very concerned about the use and integrity of Plan-related data and information, including referenced data on the Mid-Atlantic Ocean Data Portal. The draft Plan acknowledges limitations associated with data products it references, yet the draft Plan directs agencies and others to use the data products to influence regulatory and environmental reviews of ocean resources and uses. Without a thorough review of all the data underlying these maps or a clear picture of how they will be used, our concern is that this will become the de facto “best available science” and used as a decision making tool by regulators without having been subject to peer-review, validation, and applicable data quality standards.³

If the RPB finds it necessary to direct use of the data products via the Data Portal, the Associations echo the recommendations contained in the comments of the National Ocean Policy Coalition that all Plan and Plan-referenced data that is housed on the Portal should be reviewed to ensure compliance with all relevant data quality laws, standards, and protocols. Any references to data that is determined to not be compliant or complete should be removed from the Plan. The RPB should ensure that every Portal map that is referenced in the Plan includes a direct link to the metadata and data quality reporting information. In addition, the RPB should amend the plan to make it clear that federal agencies must further validate the accuracy of any data used in decision-making, disregard data found to be incomplete or inaccurate, and access any and all other data outside the Data Portal or Plan that may be necessary or relevant for making an informed decision on ocean resource use.

While the above concerns are important specifically to the oil and gas industry and those dependent on oil and gas delivery, the Associations note a number of policy and process concerns that could affect all ocean-dependent industries, and our members strongly support the comments that have been submitted by the National Ocean Policy Coalition. The Associations urge the RPB to avoid any actions that would cast areas as “suitable” or “unsuitable” for certain

² See NOAA Draft Ocean Noise Strategy Roadmap, Page 30

³ See e.g. Information Quality Act of 2000 (P.L. 106-554), Paperwork Reduction Act of 1995 (P.L. 104-13), Office of Management and Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (Feb. 22, 2002, 67 FR 8452-8460), Office of Management and Budget Circular No. A-16 Revised (accessible at https://www.whitehouse.gov/omb/circulars_a016_rev#1), NOAA Information Quality Guidelines (accessible at http://www.cio.noaa.gov/services_programs/IQ_Guidelines_103014.html), U.S. Interior Department Information Quality Guidelines (accessible at https://www.doi.gov/sites/doi.gov/files/migrated/ocio/information_management/upload/515Guides.pdf), U.S. Defense Department Information Quality Guidelines (accessible at <http://www.defense.gov/Resources/DoD-Information-Quality-Guidelines>), and U.S. Homeland Security Department Information Quality Guidelines (accessible at <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf>).

actions or otherwise issue directives that could ultimately block access for otherwise legal, environmentally safe, and economically valuable industry activities. This may not be the intent right now, but given official terms of the draft Plan and the work still to come it is a plausible scenario that must be avoided.

In closing, the Associations find that the risks and uncertainties established in the draft Plan could lead to confusion, delay, and cost for all regulated entities, and that these costs far outweigh the benefits of the Plan. Moreover, the benefits of interagency coordination could be achieved through other means. We respectfully request your serious consideration of these costs and benefits and modify the plan to add clarity, complete those sections of the Plan that are not yet defined, and ensure that agencies are free to choose the best way to achieve their statutory mandates – not being bound to a vague and incomplete Plan. After such revisions are made, the Plan should be re-released for public review and comment. The Associations appreciate the opportunity to comment on the draft Plan and should you have any questions, please contact Andy Radford at 202-682-8584 or radforda@api.org.

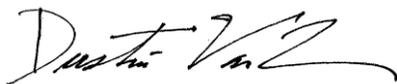
Sincerely,



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