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Submitted electronically - <http://www.regulations.gov>.

Subject: Comments on Draft Environmental Impact Statement  
Flower Garden Banks National Marine Sanctuary Proposed Expansion  
NOAA-NOS-2016-0059

The American Petroleum Institute (“API”), National Ocean Industries Association (“NOIA”), Independent Petroleum Association of America (“IPAA”), International Association of Drilling Contractors (“IADC”), the International Association of Geophysical Contractors (“IAGC”), and the Offshore Operators Committee (“OOC”) (“the Associations”) offer the following comments on the National Oceanic and Atmospheric Administration (“NOAA”) request for comments on the Draft Environmental Impact Statement (“DEIS”) for the proposed actions of boundary expansion and application of existing regulations and management plan actions to new geographic areas of the Flower Garden Banks National Marine Sanctuary (“FGBNMS” or “Sanctuary”) published in the Federal Register on June 10, 2016. Comments submitted on behalf of the Associations are submitted without prejudice to any member’s right to have or express different or opposing views.

The Associations’ members have significant interest in ensuring that future opportunities for offshore oil and natural gas exploration and development in the Gulf of Mexico (“GOM”) are not unduly restricted by expanding the FGBNMS to include new geographic areas for which expansion is not appropriate or with boundaries in excess of those needed to protect appropriate areas. Nearly a quarter of America’s oil and natural gas is produced from the GOM, and extending the boundaries as proposed and beyond those recommended by the Sanctuary Advisory Council (“SAC”) and the Boundary Expansion Work Group (“BEWG”) is likely to result in substantial impacts to the exploration, development and production of oil and natural gas resources, undue restrictions on seismic surveys, and reductions in available pipeline corridors. Because NOAA has abandoned the recommendations made by the SAC and the BEWG, a process that benefited from industry, and other key stakeholder (e.g., fishing industries) support and engagement, the Associations have no other option at this time than to support Alternative 1 – No Action – until NOAA can reengage with stakeholders and collaboratively address how the new expansion areas would impact future oil and natural gas exploration and development activities.

## I. The Associations

API is a national trade association representing over 640 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, marine transporters, and service and supply companies that support all segments of the industry. API and its members are dedicated to meeting environmental requirements, while economically and safely developing and supplying energy resources for consumers. API is a longstanding supporter of offshore exploration and development and the process laid out in the Outer Continental Shelf Lands Act ("OCSLA") as a means of balancing and rationalizing responsible oil and gas activities and the associated energy security and economic benefits with the protection of the environment.

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.

IPAA is a national trade association representing the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts. Independent producers drill about 95 percent of American oil and natural gas wells, produce more than 50 percent of American oil, and more than 85 percent of American natural gas. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy.

Since 1940, IADC has exclusively represented the worldwide oil and gas drilling industry. IADC's contract-drilling members own most of the world's land and offshore drilling units that drill the vast majority of the wells producing the planet's oil and gas. IADC's membership also includes oil-and-gas producers, and manufacturers and suppliers of oilfield equipment and services. Through conferences, training seminars, print and electronic publications, and a comprehensive network of technical publications, IADC continually fosters education and communication within the upstream petroleum industry

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.

OOC is an organization of 47 producing companies and 61 service providers to the industry who conduct essentially all of the OCS oil and gas exploration and production activities in the GOM. Founded in 1948, the OOC is a technical advocate for the oil and gas industry regarding the regulation of offshore exploration, development and producing operation in the GOM.

## II. Overview

Industry personnel have been directly involved in the National Marine Sanctuaries Program for years, participating as members of regional site selection teams in the 1980s and serving as members of the SAC for the FGBNMS. The Associations will continue to support establishment of sanctuaries that satisfy the statutory factors required for designation of sanctuaries, including special places of national significance, balancing resource protection and resource development needs, consideration of multiple and compatible uses, and the availability of resources for management.

The GOM is one of the most active areas of oil and natural gas exploration in the world. Our industry has successfully co-existed within and around the FGBNMS since its designation in 1992, and is vested in the protection and health of the FGBNMS. Our industry also collaborates with GOM partners to advance monitoring and research in support of science and management priorities within and surrounding the Sanctuary. For example, NOAA, the Bureau of Ocean and Energy Management (“BOEM”), Texas A&M University, and Shell Exploration and Production Company are collaborating on the installation of a “sentinel site” in the FGBNMS to monitor ocean acidification. This real-time monitoring site will enable the partners to gather baseline data and long-term time series at FGBNMS to assess the health and management of sensitive environments in the GOM. This collaborative effort meets goals in the Research and Monitoring and Resource Protection Action Plans of the 2012 FGBNMS Management Plan, which industry supported the construction and development of through representation on the SAC. Another example of how industry strongly supports preserving the rich and diverse living coral, invertebrate and fish communities in the GOM is demonstrated by industry’s active role and donations made to the GOM states’ Rigs-to-Reefs programs. Industry is also partnering with federal agencies (BOEM and NOAA) and the University of Southern Mississippi and other ocean stakeholders to monitor physical oceanographic conditions using autonomous underwater vehicles. Data collected by these vehicles is used to monitor annual and seasonal variability of the Loop Current and its eddies, which are important GOM circulation features driving connectivity between GOM large marine ecosystem. The data are also supplied to agencies and the broader GOM community to support modeling, monitoring and management goals prioritized by the community, such as goals of the Research and Monitoring Action Plan in the FGBNMS Management Plan.

The Notice of Intent<sup>1</sup> (“NOI”) published in 2015 noted that the reasons for the proposed expansion are to: 1) address concerns about impacts of anchoring and safe access by fishers and divers (by adding mooring buoys), 2) mitigate damage as a result of unregulated activities (i.e., hunting for artifacts), and 3) protect unique features such as coral reefs. Oil and natural gas activities were not listed as a potential concern in the NOI and in the FGBNMS Management Plan; however, in the DEIS NOAA uses certain oil and natural gas exploration and development activities as a reason for “significant concern about impacts from bottom-disturbing activities” (DEIS 1-3). The Associations question the reasoning for this finding given the long-term coexistence of industry activities in and around the existing FGBNMS, evaluations by NOAA<sup>2</sup> and BOEM<sup>3</sup> that find no adverse impacts to

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<sup>1</sup> Federal Register /Vol. 80, No. 22, 5699-5701

<sup>2</sup> Clark, R., J.C. Taylor, C.A. Buckel, and L.M. Kracker (eds). 2014. Fish and Benthic Communities of the Flower Garden Banks National Marine Sanctuary: Science to Support Sanctuary Management. NOAA Technical Memorandum NOS NCCOS 179. Silver Spring, MD. 317 pp.

<sup>3</sup> Zimmer, B., L. Duncan, R.B. Aronson, K.J.P. Deslarzes, D. Deis, M.L. Robbart, W.F. Precht, L. Kaufman, B. Shank, E. Weil, J. Field, D.J. Evans, and L. Whaylen. 2010. Long-term monitoring at the East and West Flower Garden Banks, 2004-2008. Volume I: Technical report. U.S. Dept. of the Interior, Bureau of Ocean Energy Management,

the FGBNMS from oil and natural gas activities, and the advances in safety and oil spill prevention that have developed since the Deepwater Horizon (“DWH”) event.

The Associations and our members support preservation of the rich biological communities in the GOM, but in terms of identifying new areas for inclusion as part of the FGBNMS there are a number of key principles that the Associations strongly support, including:

- Identify sites that are truly unique places of “national significance” (National Marine Sanctuaries Act (“NMSA”), Sections 301 & 303);
- Base the value proposition, threat identification and benefit assessments on science and evidence (NMSA, Section 303);
- Allow for multiple use with reasonable access regulations and reasonable mitigation measures that directly address threats (NMSA, Sections 301(b)(6) & 303(b)(1));
- Recognize other agencies’ statutory responsibilities and protective regulations and avoid duplicative regulation and unnecessary restriction of activities that do not threaten Sanctuary resources (NMSA, Sections 301 & 303(b)); and,
- Use a collaborative, consensus-building, transparent process for selection and management of Sanctuary resources (NMSA, Sections 303(b)(2), 304 & 315).

Regarding the final point above on process, the Associations are extremely disappointed that NOAA decided to select Alternative 3 as the preferred alternative and that the process used by the BEWG to identify and delineate boundaries around new Sanctuary areas was discarded. Industry representatives have been active participants in the FGBNMS boundary expansion process with extensive dialogue in the 2005-2007 timeframe yielding a consensus expansion proposal (DEIS Alternative 2). Since then, in all FGBNMS public meetings, the 2012 Sanctuary Expansion Action Plan, and other interactions with NOAA Sanctuary staff, there were no indications that further additional areas (the SAC’s second choice) would be selected as the preferred alternative.

In addition, is it NOAA’s intent to expand the boundaries for areas in Alternative 3 as rectangles that encompass non-sensitive mud plain areas well beyond the hard bottoms areas of biological concern? In the public hearings, the verbal justification was an approach to recreate right-angles in boundaries for ease of navigation (i.e., simpler for users to delineate the boundaries on navigation charts or technology). The NOAA FGB Superintendent stated the boundary areas are not significantly different between overlapping areas proposed in Alternatives 2 and 3, but rather change is in shape only. This approach stands in stark contrast with the “polygon” boundaries based on understanding coral and reef ecosystem interactions developed by the SAC for the proposed expansion areas and the existing FGBNMS. The Associations question why after nine years (beginning in 2007 and including the 2012 Management Plan that recommends 500-meter buffer zones based on supporting literature) NOAA proposed a preferred alternative without first consulting with the BEWG and the SAC or seeking other stakeholder input before deciding on this alternative? If this decision was based on new science, why was the SAC not given an opportunity to review it? The lack of transparency, lack of scientific rationale given for the inclusion of mud plain areas versus hard bottom areas, and deviation from the FGBNMS Management Plan in the decision-making process inform our decision to support Alternative 1 at this time.

Association members participated in this process in good faith with the understanding that the SAC's thoughtful and reasonable recommendation, which was based on input by environmental groups as well as industry, would be an alternative that NOAA could embrace. In contrast, NOAA's decision to opt for arbitrary boundary adjustments creates uncertainty that jeopardizes multi-million-dollar business decisions that impact GOM commerce, which has implications for the nation's economic vitality. Industry has a good record of minimizing impacts and partnering with the Sanctuary over the years to protect these resources, thus NOAA's decision to pursue such a substantially different alternative without first obtaining stakeholder input is disappointing and counter-productive to effective management. Therefore, the Associations encourage NOAA to re-engage with the SAC and re-establish its dialogue with industry and other stakeholders to fully explain what led to NOAA's decision to present Alternative 3 as the preferred action and, perhaps more importantly, to fully explore with industry and other federal agencies how the expansion areas would be managed so that there is some assurance access will be provided to oil and natural gas resources in the areas adjacent to the new areas.

Finally, and as discussed further below, the available facts indicate that Alternatives 3, 4, and 5 fail to meet the requirements set forth in the NMSA for designation of additional sanctuary areas. Under Section 303(a) of the NMSA, the Secretary of Commerce ("Secretary") can only designate additional sanctuary areas if she determines, among other things, that the areas are "of special national significance" and that "existing State and Federal authorities" applicable to the new areas are "inadequate" or require supplementation.<sup>4</sup> Under Section 304(f) of the NMSA, the Secretary must also determine, among other things, that "the addition of a new sanctuary will not have a negative impact on the System."<sup>5</sup> Based on the information and analyses provided, as discussed below, the Secretary cannot reasonably make these determinations for Alternatives 3, 4, or 5. In addition to the information discussed below, this conclusion is supported by the sheer magnitude of the expansion proposed under those three alternatives. Alternative 3 represents an almost 40% increase in the spatial area covered by the expansion above that recommended by the SAC. Alternatives 4 and 5 expand the area of coverage to levels that are not sustainable at NOAA's current resource levels, and it is not realistic to expect that additional resources will be available to fulfill the stated mission. Alternative 5 would expand the present 56 square miles ("mi<sup>2</sup>") FGBNMS to almost 1,000 mi<sup>2</sup> – a 2,000% increase.

The Associations find that NOAA has not provided adequate analyses to justify an expansion beyond the SAC recommendation, nor did it follow a process consistent with that used to establish Alternative 2. Given the lack of justification for NOAA's conclusions and the lack of analyses of key costs and benefits surrounding each alternative, the Associations find that the proposed expansion alternatives presented in the DEIS are neither necessary nor appropriate for achieving the goals of the NMSA.

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<sup>4</sup> 16 U.S.C. § 1433(a).

<sup>5</sup> 16 U.S.C. § 1434(f)(1).

### III. Issue Specific Comments

#### A. New Proposed Areas are neither of “special national significance” or “unique”

As noted above, the NMSA requires that newly designated sanctuary areas be “of special national significance.” NOAA has not provided adequate justification that this standard has been met for including additional areas beyond those recommended by the SAC (Alternative 2). In addition, the term “unique” is applied in too many places to give credence to the label. NOAA should provide detailed, justifiable criteria that it used to determine what qualifies as unique or an area “of special national significance.” The DEIS provides one such justification for the *Deepwater Horizon* wreck [page 3-12] by including the following language:

“...to incorporate the culturally significant and scientifically important wreck of the Deepwater Horizon oil platform and wellhead (i.e., as a memorial to the tragic and nationally significant event, which was the first oil spill in U. S. history to be officially designated a ‘Spill of National Significance’ by the U. S. Coast Guard, and for long-term study of recovery, conservation and management benefits...”

However, the Associations find that the current designations are reasonable and appropriate for protecting unique areas of national significance, a conclusion that is supported by the 2012 Management Plan and the determinations of the SAC.

When compared to the existing FGBNMS, the Associations find the newly proposed areas are not of the same biological importance or uniqueness. The existing banks in FGBNMS are relatively small reefs, perched on top of salt dome features that rise up from water depths of over 300 feet to within 60 feet of the surface. The reef building corals primarily occupy the pinnacle of each salt dome, covering only 250 acres on the East Flower Gardens and 100 acres on the West Flower Gardens, and a much smaller area of Stetson Bank. The existing FGBNMS reefs are unique in many ways, including the fact that they are the northern most reefs on the U.S. OCS.

NOAA’s proposed expansion appears to assume that these characteristics and values extend to areas beyond the reefs. The Associations find, however, that the DEIS gives undue biological importance to hard bottom areas, exaggerates the uniqueness and value of deepwater coral, and overstates the risks presented by human activity to deep water coral. The DEIS asserts that,

“[t]hese alternatives would provide protection for nationally significant benthic habitats with biological, ecological, and/or structural links to the existing sanctuary, including vulnerable habitats and living resources in the region. Those alternatives would provide for more comprehensive management and protection of important and vulnerable mesophotic and deep benthic habitat sites and cultural resources across the north central Gulf of Mexico, and would provide important opportunities for research and recovery of resources from observed impacts.” (DEIS 2-1).

While understanding ecological processes, the Associations disagree with the degree of significance placed on these potential benthic linkages. Whether there is important recruitment connectivity from bank to bank, or whether the recruitment to a single bank comes from a variety of different sources, depends on local current regimes present in the areas. The concept that all hard bottom areas are critical links in a consistent chain, and each link is crucial to all the others, is not

supported by the existing science. If NOAA believes this is the case, appropriate scientific references should be provided for public review.

#### B. Proposed boundary delineations are excessive

The Associations must also challenge the logic for establishing size and placement of boundaries. The DEIS states that there would be no significant impacts from the SAC recommended alternative and that the larger boundaries were proposed “for ease of enforcement and consistency with existing regulatory regimes.” (DEIS ES-3). The DEIS also states that the larger boundaries proposed in Alternative 3 were determined “using substantially the same evaluation criteria applied by the BEWG” and also based on consideration of new scientific data and “the BOEM lease block boundaries, which overlay the entire study area, and HAPC [Habitat Areas of Particular Concern] boundaries.” (DEIS 3-6, 7). The Associations question why the new information was not made available for review by the SAC or BEWG and why lease block boundaries and HAPC boundaries have any relevance on determining an area to be included in a sanctuary, especially since these were not part of the evaluation criteria used by the BEWG as described in the 2012 Management Plan. These expanded boundaries are substantially different from the 500-meter buffer boundaries the BEWG established and that were drawn from center of high relief/coral areas. This excessive expansion renders inaccessible mud plain areas where drilling rigs and production platforms could have been safely deployed under current regulations. The DEIS is unclear as to how existing BOEM regulations would be applied within these larger boundary zones that include vast areas with little or no biological importance. These analyses must be provided to meet National Environmental Policy Act (“NEPA”) requirements for taking a “hard look” at sanctuary expansion impacts and facilitate informed public comment.

Also, when delineating boundaries for potential areas, the DEIS is not consistent in its treatment of multiple oil seeps and sensitive marine habitats wherein some are deemed important in establishing valued areas requiring protection and others are not. Oil seeps are common throughout the GOM and the existence of one in proximity to a proposed expansion area is not justification for including it in the Sanctuary boundary. NOAA should further explain what criteria qualify a specific feature for special protections.

#### C. Economic evaluations are inadequate

The Associations question the amount of “passive economic use” that would be derived by the entire nation from the expansion. The DEIS cited a figure of “\$16.4 to \$18.3 billion over a five-year period.” (DEIS 5-26). The methodology used to support this amount is highly questionable, relying on a poll of 1,500 households, extrapolating the results to all U.S. households, and aggregating the results to arrive at the total.<sup>6</sup> Of particular concern, the study included results from 1,526 surveys but excluded 1,277 identified as “Protest No.”<sup>7</sup> This method excludes those individuals who were unwilling to pay any amount for adding additional banks to the FGBNMS and creates bias in NOAA’s conclusion. Using this amount in decision making is even more problematic when one considers that

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<sup>6</sup> “Valuing Marine Biodiversity in the Gulf of Mexico: Evidence from the Proposed Boundary Expansion of the Flower Garden Banks National Marine Sanctuary,” Stephanie F. Stefanski, Jay P. Shimshack. *Marine Resource Economics*, Jan 20, 2016. DOI: <http://dx.doi.org/10.1086/685109>

<sup>7</sup> A “Protest No” is a person who did not want any tax or considered to mistrust government institutions.

the economic value of potential lost oil and natural gas resources and their associated economic values appears to have been substantially underestimated by NOAA.

This underestimation is supported by comments on the DEIS filed by BOEM on August 5, 2016.<sup>8</sup> Even though BOEM recommended that a number of items be analyzed and the economic impacts evaluated, including oil and natural gas resource potential, directional drilling costs, lost lease bonus bids, and cost of new pipeline routes, the DEIS did not evaluate these and other items. BOEM stated in its letter that it would perform the analyses required to help provide a true understanding of the potential impacts so that it could be included in the final EIS. Unfortunately, this crucial information will come too late for stakeholders to fully analyze the merits of expanding the FGBNMS. Given the significance of the excluded information, the Associations urge NOAA to allow BOEM's analyses to be completed, incorporated into the DEIS analyses of alternatives, and then issue a new DEIS that provides opportunity for informed public comment and decision making on any potential expansion alternatives.<sup>9</sup>

#### D. Threat and risk assessment for oil and natural gas is overstated

The Associations find that the DEIS overstates the risks of routine oil and natural gas exploration and development. For example, in the DEIS, NOAA maintains that potential threats include,

“the physical impact of drilling, placement of structures on the seafloor (e.g., platforms, anchors, pipelines, or cables), discharges from rock-cutting during the drilling process, and intentional or accidental well discharges or release of drilling fluids. The use of anchors, pipelines and cables for oil exploration or extraction can be destructive to sensitive benthic habitats as well. The deployment of oil and gas pipelines can cause localized physical damage to corals. The use of anchors, pipelines and cables for oil exploration/extraction can be destructive to sensitive benthic habitats as well.” (DEIS 4-32).

However, immediately following this statement, the DEIS recognizes that the potential for routine oil and gas activities to impact sensitive topographic features is limited as a result of leasing stipulations and mitigations placed on permits (DEIS 4-32). Therefore, an effect of the proposed boundary expansion would be to further restrict routine oil and natural gas exploration and development activities in the vicinity of these banks, even though no significant impacts from oil and natural gas activities have been identified. Thus, the Associations do not find that the information used to justify Alternatives 3, 4, or 5 is accurate.

Notably, some of the citations used to support the existence of adverse impacts include: Lumsden et al. 2007, Heifetz et al. 2009, Gass and Roberts 2006, and NOAA 2015c. The Lumsden document is a NOAA Technical Memorandum on the state of deep coral ecosystems, which includes generic statements of impacts. This appears to be the only source of information used to assess impact from oil and natural gas activities that was provided in the DEIS.

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<sup>8</sup> <https://www.regulations.gov/document?D=NOAA-NOS-2016-0059-1305>

<sup>9</sup> In addition, under Executive Orders 12866 and 13122, as well as the Regulatory Flexibility Act, NMFS must conduct a thorough cost-benefit analysis of any proposed rule expanding the boundaries of the FGBNMS to account for the likelihood that such a rule will have a significant effect on the economy, energy supply, and small entities.

The Heifetz report assesses seafloor disturbance and damage to corals and sponges associated with bottom trawl fishing practices in the central Aleutian Islands of Alaska. The Gass and Roberts report documents the self-recruiting of *Lophelia pertusa*, the dominant reef-forming coral species in the north-east Atlantic, on oil and gas platforms in the North Sea. It also provides evidence of contamination to a *Lophelia* colony near one of the platforms from drill muds and cuttings; a platform that has been in place since the 1970s in the North Sea. The Wilson et al. (2010) report on the Year 2008 Gulfwide Emission Inventory Study: Final Report, should be replaced with Wilson et al., (2014), which is the Year 2011 Gulfwide emissions inventory study.

NOAA also has not provided any indication that the existing BOEM and U.S. Environmental Protection Agency (“EPA”) regulatory requirements including No Activity Zones, Biological Stipulations, Notices to Lessees, and other protective designations such as the International Maritime Organization’s “Areas to be Avoided” (“ATBA”), have failed to protect sensitive benthic resources, which is one of the standards used to determine the need for designation under the NMSA (16 U.S.C. § 1433(a)(3)). Additionally, the internet link to the NOAA (2015c) report “Threats to Deep-Sea Corals” does not work and the report could not otherwise be found online, which prevents any opportunity for informed comment.

Finally, in numerous instances the DEIS emphasizes the importance and significance of the DWH site, far from banks and reefs determined as important priorities in the Boundary Expansion Criteria. The DEIS acknowledges that the DWH spill did not directly affect the existing Sanctuary or sites considered for expansion in Alternatives 2 and 3, but it also did not provide sufficient evidence that the incident affected sites in Alternatives 4 and 5. The DEIS at 4-32 makes reference to specific reefs where “impacts resulted from the 2010 DWH spill,” which supposedly have been documented by NOAA and its partners, but no published data or literature were provided to support these findings. As another example, the DEIS states that “[s]ignificant injury has been documented at deepwater coral areas in the vicinity of the [DWH] wellhead, reefs of the Pinnacles area and other seafloor habitats” (DEIS 1-2), but provides no citations. The 2015 Sulak and Dixon report, “Change in Gulf of Mexico mesophotic reef fish community structure across the time threshold of the Deepwater Horizon oil spill event in 2010: Mesophotic reef fish community impacts of the DWH oil spill” is a Natural Resource Damage Assessment Technical Working Group Report that has not been published or made available to the public. Finally, NOAA has not made a compelling argument that the DWH wreck and its location is now a site of “national significance” that warrants inclusion in the FGBNMS, which was established for other reasons, as is implied by its inclusion in Alternative 5.

#### E. Extensive existing regulatory framework provides adequate protections

The DEIS at 1-2 and in numerous other locations documents the extensive framework of existing protections that are in place for the areas under consideration for expansion, including no activity zones, biological stipulations, and HAPC. Also, as mentioned previously in these comments, NOAA and BOEM have repeatedly concluded that oil and natural gas activities have not impacted the FGBNMS. Yet NOAA uses public concern over oil and natural gas operations, despite a lack of scientific evidence of impacts and a lack of information on how expansion would address potential risks from any marine activity, as support for Sanctuary expansion (DEIS 1-9, 10). The Associations believe that facts regarding the successful coexistence of oil and natural gas activities in and around the FGBNMS should outweigh the unsubstantiated speculation and concerns.

F. Lack of clarity regarding how other agencies will regulate oil and natural gas activities in new areas

National Marine Sanctuary designation has implications for how BOEM and EPA will apply their regulations for newly designated areas, especially given the proposed expansion of boundaries well beyond the core biological resources (corals) that have served as the basis, for example, of BOEM's No Activity Zones. Clarification from BOEM and EPA is needed to properly prepare an adequate impact analysis of the alternatives as required under NEPA. Issues that require clarification and inclusion in a revised DEIS include the following:

- limitations on seismic surveys, both nodal and towed streamer;
- impacts on EPA's waste water discharge rules under the National Pollutant Discharge Elimination System ("NPDES") regulations;
- leasing restrictions and stipulations in and around any new sanctuary area; and
- pipeline routing limitations

For example, what is the net impact to current and proposed oil and natural gas activity on active leases? Virtually all of the proposed sites to be included in the Sanctuary are already identified by BOEM as "No Activity Zones" with associated 1-mile and 3-mile "Stipulation Zones" that extend from the perimeter of these zones. Thus the core biological resources are already "protected" from oil and natural gas activities such as from drilling discharges and anchoring. The Associations' concern is that BOEM will apply new or modified "Stipulation Zones" outward from the new Sanctuary boundaries rather than from the current boundary of the actual habitat protected by the existing "No Activity Zones." This could significantly increase the acreage subject to the "Stipulations" and impact a significantly greater number of current and future active leases. NOAA cannot make an adequate economic impact assessment, nor can it allow for a "hard look" at alternatives as NEPA requires, until it is understood how all the federal agencies that regulate industry activity will respond to the new Sanctuary designations.

G. NOAA's ability to implement its Sanctuary Management Plan for expanded areas is uncertain

As discussed above, the NMSA prohibits designation of new sanctuaries areas unless the Secretary determines that the designation will not have a negative impact on the Sanctuary system. In a number of instances, the DEIS acknowledges that Alternatives 4 and 5 encompass areas that are well beyond NOAA's ability to adequately manage and fulfill its mission. The Associations do not find these Alternatives should have been developed or be given serious consideration going forward given the effect on NOAA's resources, including the effect on existing areas in the Sanctuary system. This system has recently seen the expansion of the Thunder Bay NMS and the Gulf of the Farallones and Cordell Bank NMS, and has conducted an initial notice for public comment on a proposed expansion of the Monitor NMS, adding management burden to the finite resources available to the National Marine Sanctuary Program. The cumulative impacts of those new resource and budget burdens should be fully and publicly assessed to ensure compliance with statutory requirements and Congressional intent before proposing costly new expansions.

NOAA also states that it should be able to fulfill its mission for Alternative 3 with "current FGBNMS operational capacity" (DEIS ES-5). However, the Associations question NOAA's ability to implement educational and research programs, monitor Sanctuary health, and effectively monitor

and enforce new protections of new sanctuary areas included in Alternative 3 given the number, size and lateral spacing between proposed sites; the east-west spread of the new areas would greatly expand to cover approximately 175 miles and far offshore. Of critical importance, NOAA provided no specific justification or budget estimate information to verify that existing operational capacity would be sufficient to implement and manage any of the proposed Alternatives. Reports to the SAC by NOAA staff indicated an additional \$200,000 would be needed – nearly a 20% increase over existing budget levels. Without detailed information, the Associations do not find that this increase could be covered by the existing budget without a negative impact on the existing Sanctuary system, including the FGBNMS, as is required under the NMSA. This distinction is increasingly important when situations occur that might tax existing resources, such as the recent large-scale mortality event at East Flower Garden Bank and the demands for monitoring, data collection and full analysis that will be needed.

Finally, the DEIS asserts that user access to Sanctuary areas will be safer and enhanced by the installation of mooring buoys. When considered together with planned anchoring prohibitions in these areas, buoy availability – timely installation and ongoing maintenance – is the difference between a Sanctuary with reasonable public access and a completely restricted-access Marine Reserve. As a result, the commitment and ability to install and maintain mooring buoys is critical to many user groups. Mooring buoys in the existing FGBNMS, however, have proven to be difficult and expensive to install and maintain. The Associations question if NOAA will be able to bear the burden of having many new areas requiring mooring buoys, especially at areas in deeper water depths than the current Sanctuary areas.

#### **IV. Conclusion**

The Associations do not support an expansion of the FGBNMS at this time due to the lack of scientific basis for benefits, expected high negative effects on the economy and energy production, and lack of justification to satisfy statutory requirements under the NMSA. NOAA has not conducted adequate analyses as required under NEPA, has failed to follow an open, transparent process, and has disregarded the reasonable expansion recommendations put forward by the SAC, which included significant stakeholder input. The Associations urge NOAA to cease work on this DEIS, define a more reasonable set of alternatives, work with BOEM and industry stakeholders to more fully analyze the impacts of those new alternatives, and re-issue a new DEIS that meets NEPA requirements and allows for informed comment and decision-making. The Associations stand ready to work with NOAA going forward should it wish to re-engage with industry to address our concerns. Should you have any questions, please contact Andy Radford at 202-682-8584 or by email at [radforda@api.org](mailto:radforda@api.org).



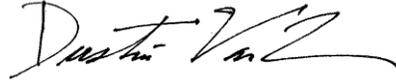
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