



American  
Petroleum  
Institute



October 3, 2025

## **VIA Federal eRulemaking Portal**

Ms. Jenna Harlacher  
Permits and Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

**Re: Comments on Request for Reimplemented Incidental Take Regulations Applicable to Geophysical Surveys in the Gulf of America – NOAA-NMFS-2025-0638**

Dear Ms. Harlacher:

This letter provides the comments of the American Petroleum Institute (“API”), EnerGeo Alliance (“EnerGeo”), National Ocean Industries Association (“NOIA”), Offshore Operators Committee (“OOC”), and the Louisiana Mid-Continent Oil and Gas Association (“LMOGA”) (collectively, the “Associations”) in response to the National Marine Fisheries Service’s (“NMFS”) notice of a request by NMFS’s Office of Policy for reimplementation of the current Marine Mammal Protection Act incidental take regulations (“ITRs”) applicable to geophysical surveys conducted in the Gulf of America (“GOA”). 90 Fed. Reg. 42,569 (Sept. 3, 2025). As organizations whose members obtain incidental take authorizations under the ITRs, we appreciate NMFS’s consideration of these comments.

## **I. THE ASSOCIATIONS**

API is a national trade association representing nearly 600 member companies involved in all aspects of the oil and natural gas industry. API’s members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API’s members are directly engaged in oil and gas exploration in the GOA and have for decades been among the principal developers of offshore leases in the GOA. In addition to leaseholders and operators, API’s members include companies that conduct geophysical and geological (“G&G”) exploration activities and provide support services for offshore oil and gas development.

EnerGeo is the international trade association representing the industry that provides geophysical services (geophysical data acquisition, processing and interpretation, geophysical information ownership and licensing, and associated services and product providers) to the oil and natural gas industry. EnerGeo has existed for 50 years and is the only global trade organization solely dedicated to the geophysical and exploration industry. EnerGeo and its members have longstanding and fundamental interests in the conduct and regulation of G&G exploration activities, particularly in the GOA. EnerGeo's members conduct geophysical studies and analyze data that is essential to the discovery and delivery of oil and natural gas resources in the GOA.

NOIA represents the interests of all segments of the offshore energy industry, including offshore oil and gas, offshore wind, offshore minerals, offshore carbon capture, use, and sequestration, and other emerging technologies. NOIA's membership includes energy project leaseholders and developers and the entire supply chain of companies that make up an innovative ecosystem contributing to the safe and responsible development and production of offshore energy.

OOC member companies represent more than 90% of the oil and gas production in the GOA Outer Continental Shelf with oil and natural gas operators, drilling contractors, and service providers. Our members recognize that offshore operations must be conducted safely and in a manner that protects the environment. The offshore industry has a long history of safe operations that has advanced the energy security of our nation and provided energy resources which are crucial to our nation's economy.

Founded in 1923, LMOGA is Louisiana's longest standing trade association, exclusively representing all aspects of the oil and gas industry onshore and offshore, including exploration, production, mid-stream activities, pipeline, refining, and marketing.

## II. COMMENTS

The current ITRs applicable to geophysical surveys in the GOA became effective April 19, 2021, and, as amended, expire April 19, 2026. *See* 86 Fed. Reg. 5322 (Jan. 19, 2021); 89 Fed. Reg. 31,488 (April 24, 2024). On May 6, 2021, API and EnerGeo filed a lawsuit challenging the current ITRs in the federal district court for the Eastern District of Louisiana. *American Petroleum Institute, et al. v. Lutnick, et al.*, No. 21-cv-905 (E.D. La.). The claims asserted in that lawsuit primarily challenge (1) NMFS's use of overly conservative modeling to generate inflated incidental take estimates, and (2) NMFS's imposition of an unsupported and unjustified nearshore closure. *See id.* at Dkt. 28 (Amended Complaint). The lawsuit remains pending.

On August 12, 2025, EnerGeo, on behalf of industry, submitted a petition for the issuance of new ITRs applicable to geophysical surveys in the GOA. EnerGeo's petition requests that NMFS issue new ITRs with an effective date of no later than April 19, 2026, and that the ITRs remain in effect for a period of five years. Notice of EnerGeo's petition was published in the Federal Register on September 24, 2025. *See* 90 Fed. Reg. 45,936 (Sept. 24, 2025).

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As relevant here, the Associations' primary interest is the establishment of new ITRs by April 19, 2026, which is best accomplished by NMFS timely issuing new ITRs in response to EnerGeo's petition. The Associations also maintain that timely issuance of the requested new ITRs remains feasible, given that EnerGeo's petition was submitted over eight months prior to expiration of the current ITRs. Accordingly, the Associations strongly urge NMFS to place its highest priority on timely issuance of new ITRs in response to EnerGeo's petition.

If timely issuance of new ITRs in response to EnerGeo's petition proves infeasible, then the Associations generally support NMFS's issuance of reimplemented ITRs, as requested by NMFS's Office of Policy—assuming such reimplemented ITRs will be effective by no later than April 19, 2026. The Associations' support is subject to three important conditions, as follows.

- API and EnerGeo maintain all their objections to the current ITRs, as stated in the ongoing litigation.
- If new ITRs in response to EnerGeo's petition cannot be timely issued, then the Associations request that NMFS expend all necessary resources to issue such ITRs as soon as possible (*i.e.*, within weeks) after April 19, 2026, and, at that time, those new ITRs will replace the reimplemented ITRs.
- The Associations request that NMFS develop a seamless process for the issuance of letters of authorizations (LOAs") for which the covered time period straddles the current ITRs, reimplemented ITRs, and/or new ITRs. For example, NMFS could issue conditional LOAs before April 19, 2026, that are effective beyond that date, conditioned upon the timely issuance of reimplemented ITRs and/or new ITRs.

Finally, should NMFS proceed to process the request for reimplemented ITRs, then the Associations assume, subject to the conditions stated above, that request is being made on behalf of the industry participants who will engage in the geophysical activities addressed by the reimplemented ITRs and request LOAs under the reimplemented ITRs. We also direct NMFS's attention to the petition and related materials for the *current* ITRs, which provide information sufficient to support the Office of Policy's request for reimplementation of the current ITRs.

Thank you for considering these comments. Please do not hesitate to contact the undersigned with any questions.

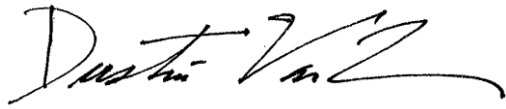
Sincerely,

A handwritten signature in blue ink, reading "Holly A. Hopkins". The signature is fluid and cursive, with the first name "Holly" being the most prominent.

Holly A. Hopkins  
Vice-President, Upstream Policy  
American Petroleum Institute

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A handwritten signature in black ink, appearing to read "Dustin Van Liew". The signature is fluid and cursive, with the first name "Dustin" being more prominent than the last name "Van Liew".

Dustin Van Liew  
Senior Vice-President, Global Policy  
EnerGeo Alliance

A handwritten signature in black ink, appearing to read "Erik Milito". The signature is cursive and somewhat stylized, with the first name "Erik" being more prominent than the last name "Milito".

Erik Milito  
President  
National Ocean Industries Association

A handwritten signature in black ink, appearing to read "Evan Zimmerman". The signature is cursive and somewhat stylized, with the first name "Evan" being more prominent than the last name "Zimmerman".

Evan Zimmerman  
Executive Director  
Offshore Operators Committee

A handwritten signature in black ink, appearing to read "Tommy Fauchaux". The signature is cursive and somewhat stylized, with the first name "Tommy" being more prominent than the last name "Fauchaux".

Tommy Fauchaux  
President  
Louisiana Mid-Continent Oil & Gas Association