October 24, 2025

VIA Email (ITP.Harlacher@noaa.gov)

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 by EnerGeo Alliance for Incidental Take Regulations Applicable to Geophysical Surveys in the Gulf of America

Dear Ms. Harlacher:

This letter provides the comments of the EnerGeo Alliance ("EnerGeo"), American Petroleum Institute ("API"), 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 EnerGeo for the implementation of new Marine Mammal Protection Act ("MMPA") incidental take regulations ("ITRs") applicable to geophysical surveys conducted in the Gulf of America ("GOA"). 90 Fed. Reg. 45,936 (Sept. 24, 2025) (the "Notice"). As the petitioner for the requested ITRs (EnerGeo) and the organizations whose members will obtain incidental take authorizations under the requested ITRs, we appreciate NMFS's consideration of these comments.

I. THE ASSOCIATIONS

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 geological and geophysical ("G&G") exploration activities, particularly in the GOA. EnerGeo's members conduct geophysical studies and analyze data that are essential to the discovery and delivery of oil and natural gas resources in the GOA.

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 natural 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 G&G exploration activities and provide support services for offshore oil and natural gas development.

NOIA represents the interests of all segments of the offshore energy industry, including offshore oil and natural 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 natural gas production in the GOA Outer Continental Shelf, with oil and natural gas operators, drilling contractors, and service providers. Its 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 natural gas industry onshore and offshore, including exploration, production, mid-stream activities, pipeline, refining, and marketing.

II. COMMENTS

On January 21, 2021, NMFS issued five-year ITRs applicable to geophysical surveys in the GOA. Those ITRs became effective on April 19, 2021, and are scheduled to expire on April 19, 2026. *See* 86 Fed. Reg. 5322 (Jan. 19, 2021); 89 Fed. Reg. 31,488 (April 24, 2024). Industry has generally supported the implementation of five-year ITRs in the GOA because they establish a comprehensive and predictable program for authorizing incidental take and mitigating, monitoring, and reporting the effects of such take by geophysical activities in the GOA.

The first four years of monitoring and reporting under the current ITRs show that GOA geophysical surveys have low levels of minor, incidental behavioral harassment of marine mammals with no more than a negligible impact on GOA marine mammal populations. The reported data show that the numbers of observed marine mammals exposed to incidental harassment acoustic levels are orders of magnitude less than the conservative overestimates of incidental take relied upon by NMFS during the rulemaking process for the current ITRs.[1] The reported data also demonstrate that the mitigation and monitoring measures implemented by industry under the current ITRs are effective.[2]

In August 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. EnerGeo's petition presents incidental take estimates that are objectively based on the best scientific information available as well as reasonable measures to ensure the least practicable impact from that incidental take, as required by the MMPA. *See* 16 U.S.C. § 1371(a)(5)(A).

The Associations urge NMFS to place its *highest priority* on the timely processing and issuance of new ITRs in response to EnerGeo's petition. We understand that the government shutdown may have slowed NMFS's current processing of EnerGeo's petition. Unfortunately, the expiration date of the current ITRs is unaffected by the shutdown, and we therefore request that the agency prioritize and devote the resources necessary to timely review and process EnerGeo's petition. Issuance of the regulations requested by EnerGeo before April 19, 2026 is the most effective way to ensure there is no disruption to incidental take authorizations for GOA geophysical activities that are essential to the ongoing maintenance and viability of the GOA Oil and Gas Program.

We recognize, as stated in the Notice, that, on September 3, 2025, NMFS issued a separate notice of a request by NMFS's Office of Policy for reimplementation of the current ITRs applicable to geophysical surveys conducted in the GOA. 90 Fed. Reg. 42,569 (Sept. 3, 2025). As stated in our comments in response to that notice, the Associations' primary interest is the establishment of new ITRs by April 19, 2026, which we continue to believe is best accomplished by NMFS's timely issuance of new ITRs in response to EnerGeo's petition. However, if that proves infeasible, then the Associations generally support NMFS's issuance of reimplemented ITRs, provided the reimplemented ITRs will be effective by no later than April 19, 2026. As stated in our prior comments, this support is subject to three important conditions:

- API and EnerGeo maintain all their objections to the current ITRs, as stated in the ongoing litigation (*API v. Lutnick*).

- 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.

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[1] NMFS's overestimates of incidental take are the subject of a legal challenge to the current ITRs filed by API and EnerGeo. *American Petroleum Institute, et al. v. Lutnick, et al.*, No. 21-cv-905 (E.D. La.) ("*API v. Lutnick*").

[2] The nearshore time-area closure in current ITRs (50 C.F.R. § 217.184(e)) is, however, unsupported, unjustified, and subject to a legal challenge in *API v. Lutnick*.

- The Associations request that NMFS develop a seamless process for the issuance of letters of authorization ("LOAs") for which the covered time period straddles the current ITRs, any reimplemented ITRs, and/or new ITRs. For example, NMFS could issue LOAs before April 19, 2026, that are effective beyond that date, conditioned upon the timely issuance of reimplemented ITRs and/or new ITRs.

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

Sincerely,

Dustin Van Liew
Senior Vice President, Global Policy
EnerGeo Alliance

Holly Hopkins
Vice President, Upstream Policy
American Petroleum Institute

Erik Milito
President
National Ocean Industries Association

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Tommy Faucheux

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