



American
Petroleum
Institute



March 26, 2026

VIA Federal eRulemaking Portal

Mr. Ben Laws
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Re: Comments of the American Petroleum Institute, the EnerGeo Alliance, the Louisiana Mid-Continent Oil and Gas Association, the National Ocean Industries Association, and the Offshore Operators Committee on Request For Reimplementation of Incidental Take Regulations Applicable to Geophysical Surveys in the Gulf of America – NOAA-NMFS-2025-0638

Dear Mr. Laws:

This letter provides the comments of the American Petroleum Institute (“API”), EnerGeo Alliance (“EnerGeo”), the Louisiana Mid-Continent Oil and Gas Association (“LMOGA”), the National Ocean Industries Association (“NOIA”), and the Offshore Operators Committee (“OOC”) (collectively, the “Associations”) in response to the National Marine Fisheries Service’s (“NMFS”) request for comments by NMFS’s Office of Policy for the proposed rule regarding the reimplementation of the current Marine Mammal Protection Act incidental take regulations (“ITRs”) applicable to geophysical surveys conducted in the Gulf of America (“GOA”). 91 Fed. Reg. 9,014 (Feb. 24, 2026). 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.

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.

For more than 50 years, the NOIA has represented the interests of all segments of the offshore energy industry, including offshore oil and gas, offshore wind, offshore carbon sequestration, and offshore minerals. Our membership includes energy project operators, leaseholders, and developers along with the entire supply chain of companies that make up an innovative ecosystem contributing to the safe and responsible exploration, development, and production of U.S. energy and mineral resources.

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. OOC also represents operators and future operators of offshore wind and companies who plan to participate in offshore Carbon Capture and Storage projects. Our members are committed to conducting offshore operations 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. OOC members support the protection of the ocean, the environment at large, and the workers in the Gulf of America.

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). API and EnerGeo’s lawsuit remains pending.

Section 7 Endangered Species Act (“ESA”) coverage for NMFS’s proposed rule is provided through the agency’s May 20, 2025, Biological Opinion (“2025 BiOp”) on federally regulated oil and gas program activities in the GOA. On January 23, 2026, the Western District of Louisiana found the 2025 BiOp to be unlawful regarding the agency’s jeopardy determination, reasonable and prudent alternatives, and incidental take statement. *State of Louisiana v. NMFS*, Case No. 2:25-cv-00691-JDC-TPL (W.D. La. Jan. 23, 2026), Dkt. 53. The court remanded the 2025 BiOp back to NMFS to fix its errors within 185 days of its order on remedy. *Id.*, Dkt. 59. Important here, the court did not vacate the 2025 BiOp, meaning that it remains in place and continues to provide ESA coverage while NMFS addresses the deficiencies identified by the court. As a result, the 2026 BiOp remains operative and available to provide ESA coverage for current and future ITRs during the remand period.¹

On August 12, 2025, EnerGeo, on behalf of industry, submitted a petition requesting the issuance of new ITRs applicable to geophysical surveys in the GOA for a five-year duration, with an effective date of no later than April 19, 2026. Notice of EnerGeo’s petition was published in the Federal Register on September 24, 2025. *See* 90 Fed. Reg. 45,936 (Sept. 24, 2025). 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 appreciate that there may have been competing obligations that may have delayed the agency from timely issuing new ITRs in response to EnerGeo’s petition. Ultimately, the Associations are invested in the establishment of new ITRs by April 19, 2026, to avoid disruption in incidental take authorizations for ongoing and planned geophysical activities. Because issuance of new ITRs in response to EnerGeo’s petition ahead of the April 19, 2026 expiration date has proven infeasible, the Associations support NMFS’s issuance of reimplemented ITRs by April 19, 2026, subject to three important conditions.

- **Preservation of all current objections.** The Associations maintain all their objections (including to the inflated take modeling and unsupported nearshore closure) to the current ITRs, as stated in the ongoing litigation.² In addition, the Associations agree with NMFS that year-round restrictions in the 100-400 m area in the central and western GOA are unnecessary, infeasible, and not practicable in light of the lack of evidence to support such a restriction.
- **Prompt issuance of new ITRs.** The Associations understand that NMFS will not be able to process EnerGeo’s petition before April 19, 2026, but that the agency has continued to make significant progress to issue a proposed rule in response to the petition on a reasonable timeline. In the meantime, the Associations request that NMFS will commit

¹ The 2025 BiOp is also subject to a separate lawsuit in Maryland, which remains pending. *Sierra Club v. NMFS*, Case No. 8:25-cv-01627-DLB (D. Md.).

² This comment letter includes as exhibits API’s, EnerGeo’s, NOIA’s, and OOC’s past comment letters to previous ITRs that address the issues that remain relevant to the proposal to reimplement the current ITRs, including the Rice’s whale proposed critical habitat.

the resources necessary to issue new ITRs as soon as possible (*i.e.*, within weeks) after April 19, 2026, which will replace the reimplemented ITRs.

- **Seamless letters of authorizations coverage with no lapses.** The Associations request that NMFS develop a seamless process for the issuance of letters of authorizations for which the covered time period straddles the current ITRs, 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. The Associations emphasize that any gaps in ITR coverage is not acceptable because even a brief lapse can create regulatory uncertainty that can half geophysical operations mid-project, disrupt planning and investments, and expose industry to compliance risk without providing any corresponding environmental benefits.

Finally, if NMFS proceeds with processing the request for reimplementation of the current ITRs, the record should reflect that the request is also made on behalf of the regulated industry participants. In addition, we 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.

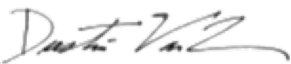
Sincerely,



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American Petroleum Institute



Erik Milito
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