

Supplemental Information Report
To the
2016 Flower Garden Banks National Marine Sanctuary Expansion
Draft Environmental Impact Statement (RIN 0648–BA21)
March 22, 2019

Introduction

Pursuant to the National Environmental Policy Act (NEPA), the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of National Marine Sanctuaries (ONMS) issued a Draft Environmental Impact Statement (DEIS) for the Flower Garden Banks National Marine Sanctuary Expansion (2016 DEIS) in June 2016. The U.S. Department of the Interior (DOI), Bureau of Ocean Energy Management (BOEM), and Bureau of Safety and Environmental Enforcement (BSEE) are cooperating agencies in developing the DEIS. NOAA intends to revise the preferred alternative identified in the 2016 DEIS (2016 Preferred Alternative). This Supplemental Information Report (SIR) evaluates the adequacy of the 2016 DEIS and determines whether a Supplemental Environmental Impact Statement (SEIS) is required or necessary for NOAA to comply with NEPA for the Revised Preferred Alternative.

Summary

The proposed action of the 2016 DEIS is to expand the boundaries of the Flower Garden Banks National Marine Sanctuary (FGBNMS) and apply existing sanctuary regulations and management actions to the expanded area. Sanctuary regulations, set forth in 15 CFR 922.122, provide protection only to three nationally significant coral reefs and banks named East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. These regulations also protect from physical injury and death certain marine species (including rays and whale sharks) that are found within the boundaries of FGBNMS.

Section 2.2 of the 2016 DEIS (Need for Action) explains that the proposed action is needed to address episodic and ongoing threats arising from bottom-disturbing activities (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities) on the sensitive biological resources and geological features located in the northern Gulf of Mexico. To address these threats, the 2016 DEIS considers a no action alternative and a reasonable range of other alternatives that would expand the geographic size and increase the number of nationally significant reefs, banks, and other features that enjoy protection under the National Marine Sanctuaries Act (NMSA). In response to comments received on the 2016 DEIS, NOAA plans to revise the preferred alternative by slightly modifying the geographic boundary and reducing the total size of the protected area (Revised Preferred Alternative).

NOAA finds that the changes reflected in the Revised Preferred Alternative are not “substantial changes in the proposed action that are relevant to environmental concerns” (40 C.F.R. § 1502.9(c)(1)(i)). NOAA further finds that the comments received on the 2016 DEIS do not constitute “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” (40 C.F.R. § 1502.9(c)(1)(ii)). As such, preparing a supplement to the 2016 DEIS is neither required, nor necessary under NEPA. Pursuant to applicable CEQ Guidance, NOAA will document the rationale for revising the preferred alternative in the Final Environmental Impact Statement (FEIS) and related Record of Decision (ROD).

Criteria for Supplementing a Previous NEPA Analysis

The White House Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA requires a federal agency to prepare supplements to either Draft or Final Environmental Impact Statements if: (1) the agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 C.F.R. § 1502.9(c)(1)). Where these two criteria are not satisfied, an agency may still choose to exercise discretion and “prepare supplements when the agency determines that the purposes of [NEPA] will be furthered” (40 C.F.R. § 1502.9(c)(2)). The determination is made on a case-by-case basis.

A federal agency has a continuing duty to evaluate new information relevant to the environmental impacts of its actions, even after the release of an Environmental Impact Statement (EIS). A Supplemental Information Report (SIR) is a written decision tool prepared by an agency to inform the decision whether to supplement an existing NEPA analysis. When performing this review, consideration is given to whether new information or changed conditions are within the scope and range of effects considered in the original analysis. If the agency determines that the new information or changed conditions fall within the scope and range of effects considered in the original environmental analysis, then a supplemental environmental document is not required. However, if the agency determines that changes to the analysis are needed to address environmental effects not previously addressed in the original environmental analysis and that have a bearing on the proposed action or its impacts, then the proposed action will be delayed until the supplemental analysis is completed.

Applicable CEQ Guidance

The decision whether to supplement a draft EIS is based on CEQ Guidance¹. Specifically, question 29b asks, “How must an agency respond to a comment on a draft EIS that raises a new alternative not previously considered in the draft EIS?” CEQ responds,

This question might arise in several possible situations. First, a commenter on a draft EIS may indicate that there is a possible alternative which, in the agency's view, is not a reasonable alternative. Section 1502.14(a). If that is the case, the agency must explain why the comment does not warrant further agency response, citing authorities or reasons that support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. Section 1503.4(a) . . .

A second possibility is that an agency may receive a comment indicating that a particular alternative, while reasonable, should be modified somewhat, for example, to achieve certain mitigation benefits, or for other reasons. If the modification is reasonable, the agency should include a discussion of it in the final EIS. For example, a commenter on a draft EIS on a proposal for a pumped storage power facility might suggest that the applicant's proposed alternative should be enhanced by the addition of certain reasonable mitigation measures, including the purchase and set-aside of a wildlife preserve to substitute for the tract to be destroyed by the project. The modified alternative including the additional mitigation measures should be discussed by the agency in the final EIS.

A third slightly different possibility is that a comment on a draft EIS will raise an alternative which is a minor variation of one of the alternatives discussed in the draft EIS, but this variation was not given any consideration by the agency. In such a case, the agency should

¹ CEQ. 1981. Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations. 46 FR 18026 (March 23, 1981). <https://www.energy.gov/sites/prod/files/G-CEQ-40Questions.pdf> accessed on 8/8/18

develop and evaluate the new alternative, if it is reasonable, in the final EIS. If it is qualitatively within the spectrum of alternatives that were discussed in the draft, a supplemental draft will not be needed. For example, a commenter on a draft EIS to designate a wilderness area within a National Forest might reasonably identify a specific tract of the forest, and urge that it be considered for designation. If the draft EIS considered designation of a range of alternative tracts which encompassed forest area of similar quality and quantity, no supplemental EIS would have to be prepared. The agency could fulfill its obligation by addressing that specific alternative in the final EIS.

A fourth possibility is that a commenter points out an alternative which is not a variation of the proposal or of any alternative discussed in the draft impact statement, and is a reasonable alternative that warrants serious agency response. In such a case, the agency must issue a supplement to the draft EIS that discusses this new alternative. For example, a commenter on a draft EIS on a nuclear power plant might suggest that a reasonable alternative for meeting the projected need for power would be through peak load management and energy conservation programs. If the permitting agency has failed to consider that approach in the Draft EIS, and the approach cannot be dismissed by the agency as unreasonable, a supplement to the Draft EIS, which discusses that alternative, must be prepared. (If necessary, the same supplement should also discuss substantial changes in the proposed action or significant new circumstances or information, as required by Section 1502.9(c)(1) of the Council's regulations.)

This SIR was prepared in accordance with NOAA Administrative Order (NAO) 216-6A, "Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands" and the related Companion Manual for NOAA Administrative Order 216-6A, Section 5(c) and Appendix C-14.

Background

FGBNMS currently consists of three nationally significant coral reefs and banks; namely, East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. These geological features are located along the continental shelf of the northwestern Gulf of Mexico, approximately 70 to 115 miles off the coasts of Texas and Louisiana (Figure 1.).

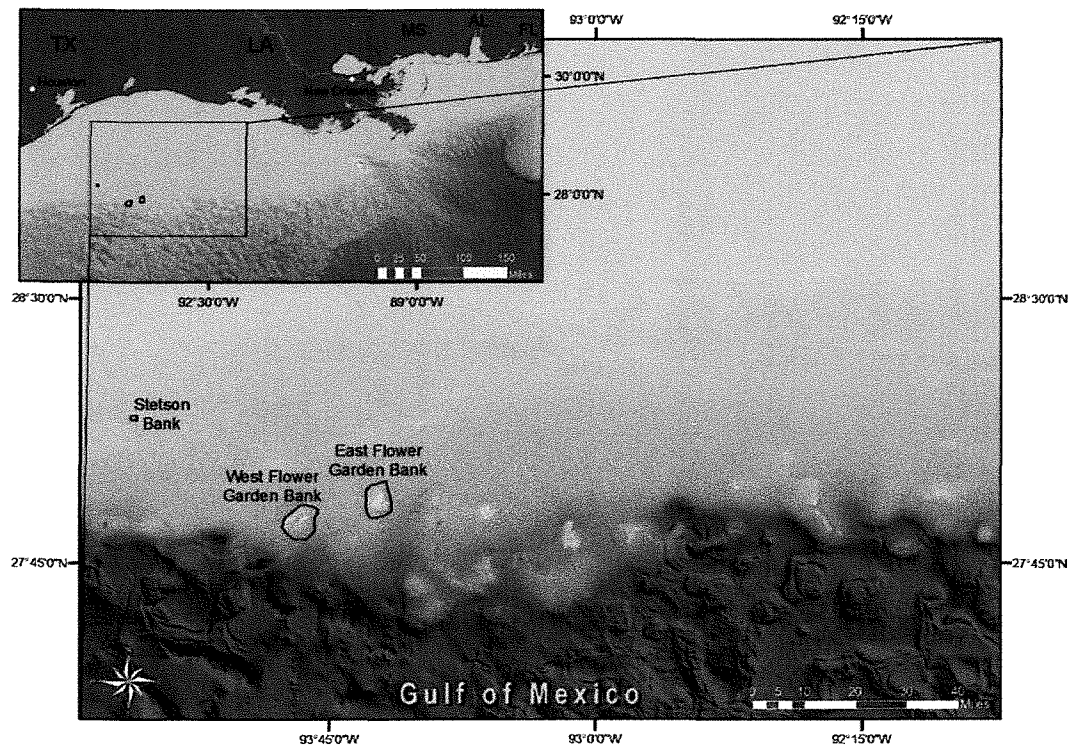


Figure 1. Flower Garden Banks National Marine Sanctuary Existing Boundaries

The northern Gulf of Mexico is a heavily utilized and industrialized region with sensitive biological resources and geological features associated with area coral reefs and banks. These coral reefs, banks, and marine life are threatened by bottom-disturbing human related activities (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities). To address these threats and conserve sensitive biological resources and geological features, the 2016 DEIS considers five spatial alternatives, including the no action alternative, and evaluates the reasonably anticipated environmental impacts stemming from the proposed expansion of the network of protected areas and extending application of the existing sanctuary regulations and management actions to those expanded area.

Table 1 summarizes the five alternatives considered in the 2016 DEIS.

Table 1. Alternatives Analyzed in the 2016 DEIS

Topic Area	Alt. 1: No Action	Alt. 2: 2007 Sanctuary Advisory Council (SAC) Rec.	Alt. 3: 2016 Preferred Alt. in DEIS	Alt. 4: + high priority mesophotic & deep coral sites	Alt. 5: Comprehensive Protection
# of Banks / Features	3	12 (9 new)	18 (15 new)	43 (40 new)	57 (54 new)
# of Areas (polygons / units)	3	9 (6 new)	11 (9 new)	29 (26 new)	45 (42 new)
Total size (mi ²)	56.21	281.15	383.19	633.76	935.18
Management Plan and Regulations	Apply current management plan and regulations	Apply current management plan and regulations	Apply current management plan and regulations	Apply current management plan and regulations	Apply current management plan and regulations

Changes to Preferred Alternative

In response to comments and recommendations received on the 2016 DEISs, NOAA intends to revise the geographic boundary and size of the protected areas identified in the 2016 Preferred Alternative (Alt. 3). Compared to the 2016 Preferred Alternative (Alt. 3), the Revised Preferred Alternative would reduce the total size of the proposed sanctuary expansion by 223 mi² (from ~383 mi² to 160 mi²), reduce the number of additional banks from 15 to 14, and increase the number of new polygons from 8 large areas encompassing multiple features to 16 smaller areas more closely bounding the shallowest portions of the geological features of interest. This revision would increase the total number of banks to 17, and increase the total number of polygons to 19.

Table 2 and Figure 2 compare the 2016 Preferred Alternative (as described in the DEIS) and the Revised Preferred Alternatives.

Table 2. Comparison between the 2016 and Revised Preferred Alternatives

Topic Area	Alt. 3: 2016 Preferred Alternative in DEIS	Revised Preferred Alternative
# of Banks	18 (15 new)	17 (14 new)
# of Areas (polygons / units)	11 (8 new)	19 (16 new)
Total size (mi ²)	383.19	160.35
Management Plan and Regulations	Apply current management plan and regulations	Apply current management plan and regulations
Note: The smaller size of the area surrounding individual banks established under the Revised Preferred Alternative results in a greater number of areas (polygons/units) as some of the continuous areas in the 2016 Preferred Alternative would be separated.		

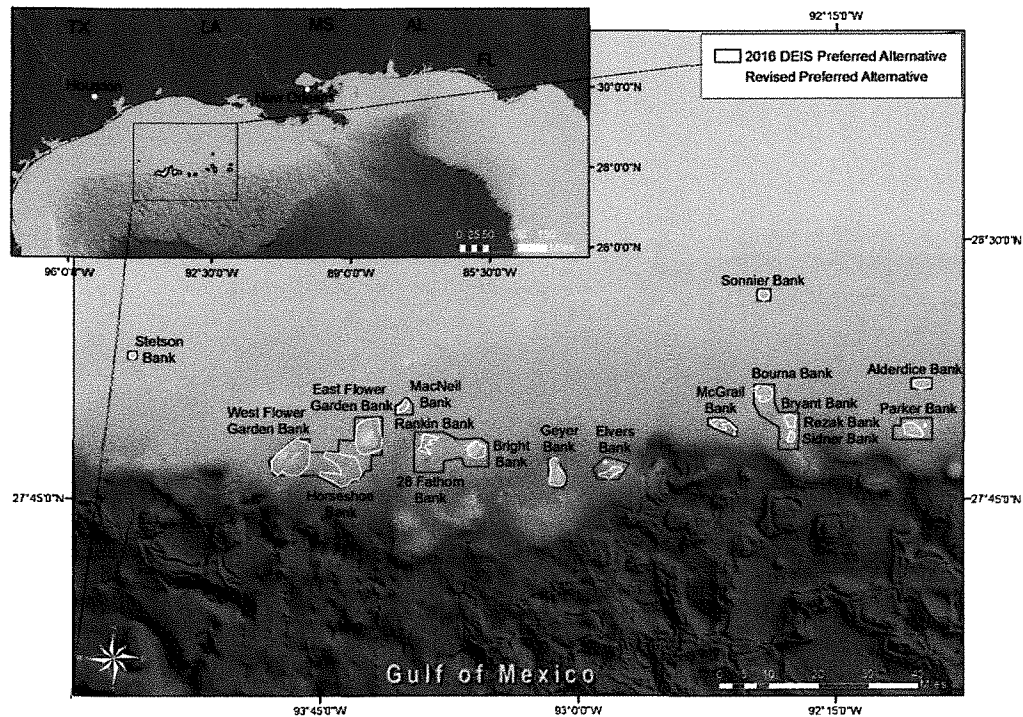


Figure 2. Flower Garden Banks National Marine Sanctuary 2016 DEIS Preferred Alternative and Revised Preferred Alternative

The 2016 Preferred Alternative (Alt. 3) analyzed the impacts of increasing the number of nationally significant banks from 3 to 18, expanding the protected area polygons from 3 to 11, and enlarging the size of the sanctuary from ~56 square miles to ~383 square miles. Although the Revised Preferred Alternative increases the number of protected area polygon / units presented in the 2016 Preferred Alternative (Alt. 3) from 11 to 19, Figure 2 shows that the discrete polygons / units include all of the same reefs and banks that were presented in Alternative 3 of the original NEPA analysis (with one exception). In other words, no new reefs and banks are included within the boundaries of the Revised Preferred Alternative. The Revised Preferred Alternative boundaries are just more tightly drawn around the shallowest portions of the geological features of interest that were originally identified in the 2016 Preferred Alternative (Alt. 3). The smaller boundaries established under the Revised Preferred Alternative were developed from the recommendations of the Sanctuary Advisory Council (SAC) (with minor corrections to the Stetson Bank Boundary consistent with Pub. L. 104-283 (Oct. 11, 1996)). Based on the foregoing, NOAA finds that the Revised Preferred Alternative does not constitute “substantial changes in the proposed action that are relevant to environmental concerns” under NEPA. Under the Revised Preferred Alternative, more area now remains outside the sanctuary boundary than in the 2016 Preferred Alternative (Alt. 3), and left unrestricted for other public use. Because the Revised Preferred Alternative would designate an area larger than the no action alternative (Alt. 1) but smaller than the largest alternative (Alt. 5), these impacts are expected to be within the range of those analyzed in the DEIS. The Revised Preferred Alternative does not consider any areas, sanctuary regulations, or management measures that were not already considered in the 2016 DEIS. There is no change to the overall nature and scope of the effort (i.e., the expansion of FGBNMS), and the Revised Preferred Alternative remains within the range of alternatives and impacts already analyzed in the 2016 DEIS. Therefore, an SEIS is not required under the first criterion for

supplementing a previous NEPA analysis (i.e., the agency did not make substantial changes to the proposed action that are relevant to environmental concerns).

New Circumstances or Information

This section presents circumstances/information that are new or that have been updated since the analysis conducted in the 2016 DEIS. The circumstances/information fall within two broad categories: 1) fishing activity; and 2) oil and gas activity. Upon review of the circumstances/information under each category and applying the CEQ Guidance discussed above, NOAA finds that an SEIS is also not required under the second criterion for supplementing a previous NEPA analysis (i.e., there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts).

1. Fishing Activity

The National Marine Fisheries Service (NMFS) Office of Sustainable Fisheries (OSF), Gulf of Mexico Fishery Management Council (GMFMC), and the FGBNMS Advisory Council (SAC) have each submitted comments offering new boundary and/or regulatory recommendations. The complete comments and recommendations may be found at <https://flowergarden.noaa.gov/management/sacexpansionrecommendation.html> and are summarized below:

- OSF submitted comments and a request for exemption for the use of pelagic longline gear in the expanded sanctuary (letter dated August 17, 2016). OSF states that pelagic longline gear does not touch the ocean floor or benthic habitats so the gear would not harm sanctuary resources. However, since pelagic longline extends over such a long distance, it is likely that drifting gear may enter one or more of the small additional banks and the more banks there are, the more likely the gear is to drift into a restricted area.
- Pursuant to the consultation required under section 304(a)(5) of the National Marine Sanctuaries Act, the GMFMC submitted comments and recommendations relating to proposed fishing regulations (letter dated November 8, 2016). GMFMC requested that NOAA consider a tiered approach for fishing regulations within the expansion area, based on areas previously designated by the Bureau of Ocean Energy Management (BOEM) as “No Activity Zones” (NAZ). GMFMC recommended that the existing FGBNMS regulations only apply within the NAZ portions of the expanded area, and that the areas outside NAZ remain open to historical fishing practices.
- In 2018, the SAC also recommended modifications to NOAA’s 2016 Preferred Alternative: allowances for the possession of spearfishing gear in the existing sanctuary, and the ability to conduct breath-hold spearfishing in the expanded sanctuary areas (May 2018).

Essentially, the commenters seek an exemption to the fishing gear restrictions established by the Sanctuary regulations at 15 C.F.R. 922.122 and analyzed in Sections 4 and 5 of the DEIS. Although the analysis that was conducted in 2016 did not contemplate any exemptions to the existing Sanctuary regulations applying across the expanded area, NOAA finds that the present new information is within the scope of the 2016 DEIS. The exemption is simply a minor variation to the alternatives addressed in the 2016 DEIS. The new information from the comments on fishing activity in the expanded area is consistent with the information and associated impacts analyzed in the No Action Alternative (Alt. 1). NOAA, thus, concludes the new circumstances/information from the commenters are not “significant” for purposes of the NEPA inquiry required in the CEQ regulations. As discussed above, NOAA revised its preferred alternative to respond to many of these comments by creating more open spaces between the network of protected areas. Pursuant to CEQ guidance, NOAA will fulfill its NEPA obligations by

addressing the OSF, GMFMC, and SAC comments with greater detail and specificity in the Final EIS and associated ROD.

2) Oil and Gas Activity

Pursuant to NMSA Section 304(a)(2)(B)(ii) and through the Cooperative Agency Agreement dated September 2015, NOAA consulted with DOI, BOEM during the development of the DEIS, and subsequently, after the development of the final expansion boundaries, to determine potential economic impacts to the oil and gas industry. In November 2016 comments received by NOAA on the DEIS, DOI expressed concerns that an expanded sanctuary as originally proposed in the 2016 Preferred Alternative (Alt. 3) would result in economic costs to the oil and gas industry and to the federal government from loss of potential energy resources. Pursuant to E.O. 13795 Section 4(a) consultation, DOI subsequently provided NOAA (letter dated February 25, 2019) with additional information and an updated analysis of the anticipated impacts associated with the Revised Preferred Alternative.

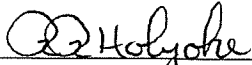
The 2016 DEIS included analysis of the socioeconomic impacts to the oil and gas industry that might arise from sanctuary expansion and extension of the sanctuary regulations to the expanded area. However, the cost analysis did not include information on the volumes of undiscovered and/or contingent resources within the Gulf of Mexico that might be impacted by the proposed expansion. Prior to the release of the DEIS, DOI asserted privilege/confidentiality and did not provide NOAA with comprehensive data and information on the undiscovered and/or contingent resources. Therefore, this new information could not be analyzed in the 2016 DEIS. Subsequent to the release of the DEIS, DOI provided additional information in the comment letters referenced above. Despite this new information, NOAA has concluded that preparing a supplement to the 2016 DEIS to address DOI's new information is neither required, nor necessary under NEPA. As explained above and pursuant to CEQ regulations, NOAA shall prepare a supplement DEIS when there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts". Since the new DOI information is economic and is not "relevant to environmental concerns", supplemental analysis is not required under NEPA. The DOI new information will be addressed in the Final EIS and associated ROD in accordance with applicable CEQ guidance.

Conclusion/Decision

After evaluating the comments and recommendations received on the 2016 DEIS, NOAA has determined that a supplemental DEIS for the proposed action is not required or necessary pursuant to 40 C.F.R. § 1502.9(c)(2). Under the present circumstances, NOAA finds that the purposes of NEPA would not be furthered by the preparation of a supplemental DEIS. The potential impacts of this Revised Preferred Alternative are fully analyzed in the 2016 DEIS. There are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts that would justify supplementation at this time. Further, under relevant CEQ guidance, all concerns or recommendations raised by the OSF, GMFMC, SAC, DOI, and the general public may be appropriately addressed in the Final EIS and ROD.

NOAA therefore concludes that the existing NEPA analysis adequately addresses the impacts of the proposed action on the human environment (including the Revised Preferred Alternative) and that no supplemental NEPA analysis is required to implement the proposed action. If the proposed action to expand FGBNMS is further revised in response to comments on the proposed rule, NOAA would re-examine the acceptability of the existing NEPA documents and the need for any supplemental analysis.

Approved:



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03/27/2019

Date