

K. The DPEIS's MPA Discussions and Findings Must Be Clarified, Improved, and Justified

The DPEIS's discussion of Marine Protected Areas ("MPAs") is unclear and confusing. We have noticed that BOEM tends to conflate various legally designated and non-legally designated terms, such as "Biologically Important Areas," Environmental Important Areas. For example, "Deepwater MPA" appears to be a new construct because Deepwater MPAs are not, to our knowledge, formally designated regions. The DPEIS describes "Coastal MPAs" as consisting of national parks, national wildlife refuges, national estuarine research reserves, and State-designated MPAs (DPEIS at xxxv), but "Offshore MPAs" (a new term) are described as consisting of national marine sanctuaries (NMSs), Deepwater MPAs, and fishery management areas, with no further explanation of what defines a Deepwater MPA. Of the Offshore MPAs listed, it appears that the brine pool and chemosynthetic MPA sites (*e.g.*, Green Canyon ["GC"] 233 Brine Pool, GC 234 Chemo Community, and Bush Hill Chemo Community) are deeper than 1,000 feet, but many of the coral and hardbottom sites listed are no deeper than 1,000 feet.⁴¹ In addition, Section 2.8-1 of the DPEIS (page 2-16) describes four "deepwater areas" for closure (the Central Planning Area ("CPA") Closure Area, the Eastern Planning Area, the Dry Tortugas Closure Area, and the Flower Gardens Closure Area).⁴² BOEM should more clearly characterize these areas and explain their significance to the DPEIS's analysis of seismic activities. In particular, closure of the CPA will lead to a significant loss of economic opportunities as many leaseholders in this area will be unable to fulfill lease commitments.

The DPEIS also suggests, without supporting explanation, that MPAs may be used to restrict activities. *See, e.g.*, DPDEIS at 4-261 ("All sites listed are afforded some degree of protection based on their associated management plans."); *id.* at 3-29 ("All authorizations for G&G surveys proposed within or near these [specific benthic locations and MPA] areas would be subject to the review noted previously to facilitate avoidance."); *id.* at 4-269 ("While seismic surveys employing airgun arrays and hydrophone streamers are not currently precluded from conducting surveys over deepwater MPAs, other G&G activities may not be allowed in designated No Activity Zones."). Although it is appropriate under NEPA to describe these areas as parts of the existing environment that have ecological significance, if BOEM and/or NMFS intends to use these areas as a basis for implementing additional restrictions on activities, then

⁴¹ We understand that the South Atlantic Fishery Management Council has designated Deepwater MPAs (ranging from about 200 to 1,000 feet deep) to protect deepwater fish species, but it does not appear that the Gulf of Mexico Fishery Management Council has made similar designations.

⁴² BOEM's definition for "deepwater" had been 300 m (~1,000 feet) per NTL 2009-G40.

that intention must be disclosed and clearly explained, and the supporting legal authority must be identified.⁴³

L. The DPEIS Is Poorly Organized and Presented

Respectfully, the DPEIS is poorly organized and presented. For some sections and appendices, it is almost impossible to clearly review and understand many of the underlying technical analyses. The body of the DPEIS contains a substantial amount of both conflicting and redundant material, which is repeated in appendices, and in appendices to appendices. For example, Appendix D itself has six appendices, many details of which conflict with portions of the body of the DPEIS or with Appendix D itself. As another example, sections addressing threshold criteria in the body of the DPEIS (pages 4-12; 4-33; 4-45) and in Appendix D (D-50; D-25; D-56; Table 6) conflict with Appendix H. Assumptions and conclusions are buried in the details of Appendix D, but the other documents (*i.e.*, the DPEIS and Appendix H) present no conclusions that clearly correspond to those presented in Appendix D's Phase II model. The three sections on threshold criteria in these three separate documents appear to have been written by three different people who did not view each other's work.⁴⁴ There appears to be hundreds of referential and typographical errors in the DPEIS and its appendices. In short, the overall quality and clarity of the analyses presented in the DPEIS and its appendices is poor and inhibits meaningful review and input, particularly in light of the relatively short period that was provided for review and comment on the DPEIS.⁴⁵

M. The DPEIS's Flaws Place Future Federal Actions at Risk

The flaws in the DPEIS (as described above), to the extent they are not cured in the final PEIS, may have unintended and undesired negative consequences for any agency that relies on the final PEIS for the authorization of future federal actions and, specifically, for the issuance of MMPA ITAs in the GOM. For example, the DPEIS makes unrealistic, incorrect effects findings that will almost certainly contradict findings made in reviews of future federal actions (assuming those reviews are performed correctly). Additionally, the DPEIS's failure to address the effects of mitigation measures will very likely contradict subsequent MMPA Section 101(a)(5)

⁴³ The "moderate" effects finding for marine mammals in MPAs lacks rational support. There is no explanation in the DPEIS why impacts reach the level of "moderate" for marine mammals inside of MPAs when MPAs represent relatively small areas inside the AOC.

⁴⁴ Appendix D also refers to a set of Excel workbooks (*see, e.g.*, D-213) that cannot be found on the BOEM website and for which a link is not otherwise provided.

⁴⁵ In addition to the substantive errors addressed in this comment letter and the associated attachments, the Associations have identified many typographical errors and minor editorial mistakes in the DPEIS. The Associations plan to provide BOEM with a table of these errors and mistakes after the close of the comment period.