

Categorical Exclusion

Reissuance of EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for New and Existing Sources in the Offshore Oil and Gas Extraction for the Eastern Portion of the Outer Continental Shelf of the Gulf of Mexico

Background

The U.S. Environmental Protection Agency (EPA) intends to reissue a National Pollutant Discharge Elimination System (NPDES) General Permit (GP) for the eastern portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (Permit No. GEG460000) for discharges from new sources, existing sources, and new dischargers, in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 Code of Federal Regulations [CFR] Part 435, Subpart A).

The EPA's reissuance of a new source NPDES general permit is a federal action requiring compliance with the National Environmental Policy Act (NEPA), 42 USC §§4321-4370(f). In accordance with the Council on Environmental Quality regulations, 40 CFR §1501.4, a federal agency may categorically exclude an action from detailed environmental review, provided the proposed action meets certain criteria that the EPA has previously determined will not have significant environmental impact and involve no extraordinary circumstances as set forth in 40 CFR Part 6.

Proposed Action

The EPA is reissuing the NPDES general permit for the eastern portion of the OCS of the Gulf of Mexico for five years. This general permit will replace the previous permit issued on December 21, 2017, which became effective on January 20, 2018, and will expire on January 19, 2023.

The general permit authorizes discharges from oil and gas facilities and supporting pipeline facilities, engaged in exploration, development, and production operations located in and discharging to Federal waters of the Gulf of Mexico (GOM) seaward of 200 meters depth contour offshore Alabama and Florida and seaward of the outer boundary of the territorial seas for offshore Mississippi and Alabama in Mobile and Viosca Knoll lease blocks.

Eligibility for Categorical Exclusion

Pursuant to NEPA, the Council on Environmental Quality's NEPA regulations, and the EPA's regulations for implementing NEPA (40 CFR part 6), the EPA has determined that the reissuance of the NPDES general permit for the eastern portion of the OCS of the GOM is eligible for a categorical exclusion requiring documentation under 40 CFR 6.204(a)(1)(iv). This category includes "actions involving reissuance of an NPDES permit for a new source providing the conclusions of the original NEPA document are still valid, there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective." The EPA previously completed an Environmental Assessment/Finding of No

Significant Impact (EA/FONSI) for the NPDES general permit in 2017. The analysis and conclusions regarding the potential environmental impacts, reasonable alternatives, and potential mitigation included in the EA/FONSI are still valid for the reissuance of the NPDES general permit because the proposed permit conditions are same and, in this case, more environmentally protective. [For example, the draft NPDES general permit includes the same monitoring and reporting requirements and similar limitations to the 2017 general permit. In addition to the limitations in the 2018 general permit, new acute Whole Effluent Toxicity (WET) limits on Well Treatment and Completion Fluids when discharged separately from produced water are include in the draft general permit (See page 46)].

Extraordinary Circumstances (40 CFR 6.204(b)(1) through b(10))

The EPA has reviewed the proposed action and determined that the NPDES general permit does not involve any extraordinary circumstances listed in 6.204(b)(1) through (b)(10).

1. The proposed action is not known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.

The 2017 EA indicated that no potential significant adverse environmental impacts are anticipated from the proposed action, and the EPA issued a FONSI.

2. The proposed action is not known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

Although activities under the proposed GP occur offshore, the oil and gas industry and its support are interlinked with onshore communities for supplies and support personnel. Onshore activities related to oil and gas extraction are concentrated around support infrastructure such as ports, canals, heliports, repair yards, pipe coating facilities, and gas processing facilities. In addition, onshore populations may be impacted through consumption of seafood exposed to discharges from permitted activities.

The EPA has determined that the NPDES GP will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations living in counties along the GOM. The proposed provisions increase the level of environmental protection for potentially affected populations such as minority or low-income subsistence fishermen or persons belonging to the Poarch Band of Creek Indians of Poarch, Alabama (near Mobile, Alabama), the Mississippi Band of Choctaw Indians, and various Seminole Reservation lands in Florida.

3. The proposed action is not known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.

The proposed action is not expected to significantly affect threatened or endangered species or their critical habitat. On July 25, 2022, the U.S. Fish and Wildlife Service (U.S. FWS) indicated that no further action was needed when the agency makes a “no effect determination.” On January 19, 2017, the U.S. FWS concurred with EPA’s determination that reissuance of the Draft GP is

"not likely to adversely affect" the endangered West Indian manatee (*Trichechus manatus*), the threatened piping plover (*Charadrius melodus*), and the threatened red knot (*Calidris canutus rufa*) or their critical habitats. In addition, the Service indicated that the proposed activities would not affect other species such as the Alabama beach mouse, the Choctawhatchee beach mouse, the Perdido Key beach mouse, the Audubon's crested caracara, the Florida scrub-jay, the red-cockaded woodpecker, the Woodstock, the Cape Sable seaside sparrow, the Mississippi sandhill crane, the roseate tern and the whooping crane.

The 2018 general permit and corresponding 2017 EA/FONSI, did not address a newly listed species, the Baleen Whale (Rice's Whale) or its critical habitat. Rice's whales are members of the baleen whale family Balaenopteridae. With likely fewer than 100 individuals remaining, Rice's whales are one of the most endangered whales in the world. The EPA is currently consulting with NOAA/National Marine Fisheries on the current more stringent permit impacts to Rice's Whale.

For the past 25 years, the Rice's whale has been consistently located in the northeastern GOM, along the continental shelf break between 100 and about 400 meters depth. They are the only resident baleen whale in the GOM. A single Rice's whale was observed in the western Gulf of Mexico off the coast of Texas, suggesting that their distribution may occasionally include waters elsewhere in the GOM. NOAA Fisheries scientists are conducting research to better understand the whales' distribution, for example, if they utilize the western GOM and Mexican waters of the southern GOM, and how frequently they may occur in these other areas. The Rice's whale is one of the few types of baleen whales to prefer warmer, tropical waters and that does not make long-distance migrations. They remain in the GOM year-round.

Figure 1 depicts the Rice's whale core distribution area as of June 2019 in the Southeast Region. This Geographic Information System (GIS) data is based on visual sightings and tag data and represents the current core distribution area of Rice's whale based on the best available data as of June 2019. This map does not imply knowledge of habitat preferences, and NOAA's GIS data will be updated periodically when new data become available.

The GP authorizes discharges from oil and gas facilities and supporting pipeline facilities, engaged in exploration, development, and production operations located in and discharging to Federal waters of the GOM seaward of 200 meters depth contour offshore Alabama and Florida and seaward of the outer boundary of the territorial seas for offshore Mississippi and Alabama in Mobile and Viosca Knoll lease blocks. (Figure). According to NOAA's 2019 data in Figure 1, The Rice's Whale has been found in oil and gas leasing blocks of Apalachicola, Desoto Canyon, Viosca Knoll, Pensacola, Destin Dome, Florida Middle Ground, Desoto Canyon, Lloyd, and The Elbow (see Figure 2).

Region 4's current permit authorizes a total of 24 coverages. Three coverages are located in the Desoto leasing block, Seventeen in Mobile, and four in Viosca Knoll. Comparatively, Region 6's permit that covers the Central and Western Portion of the Gulf has approximately 5000 coverages.

The EPA Region 4 permit contains prohibitions to discharge within 1000 feet (ft) of Areas of Biological Concern. Areas of Biological Concern for water within the territorial seas (shoreline to 3-mile offshore) are those defined as “no activity zones” for biological reasons by the states of Alabama, Florida and Mississippi. For offshore waters seaward of three miles, areas of biological concern include “no activity zones” defined by the Department of Interior (DOI) for biological reasons, or identified by the EPA in consultation with the DOI, the states, or other interested federal agencies, as containing biological communities, features or functions that are potentially sensitive to discharges associated with the oil and gas industry.

Figure 1.

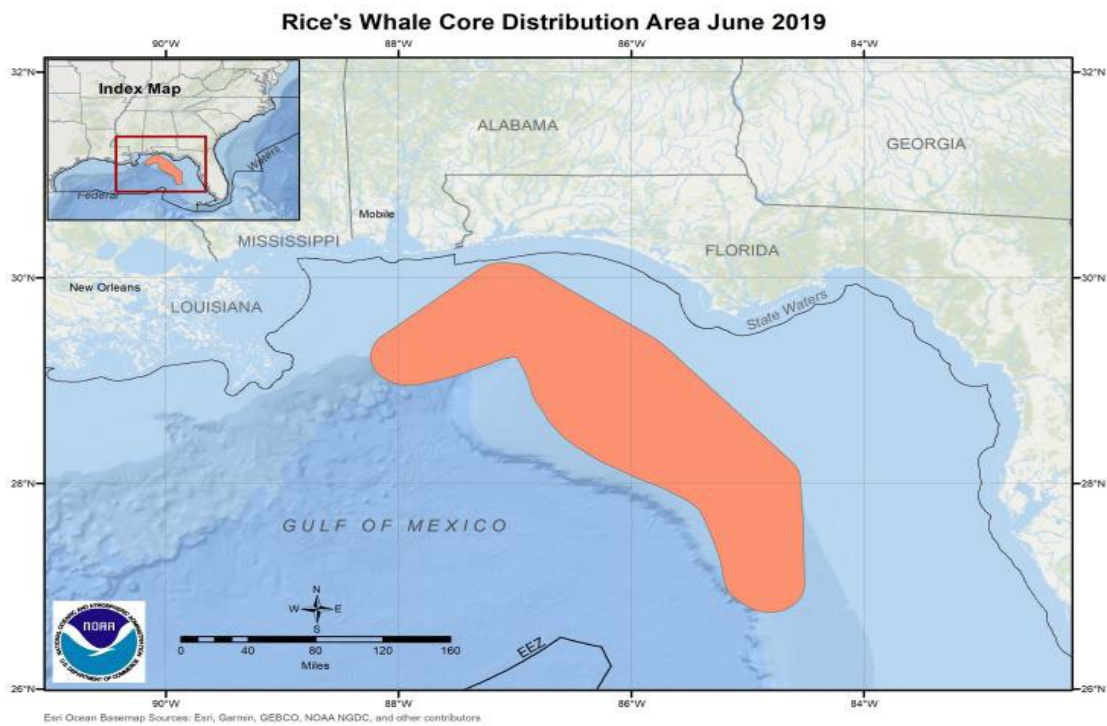
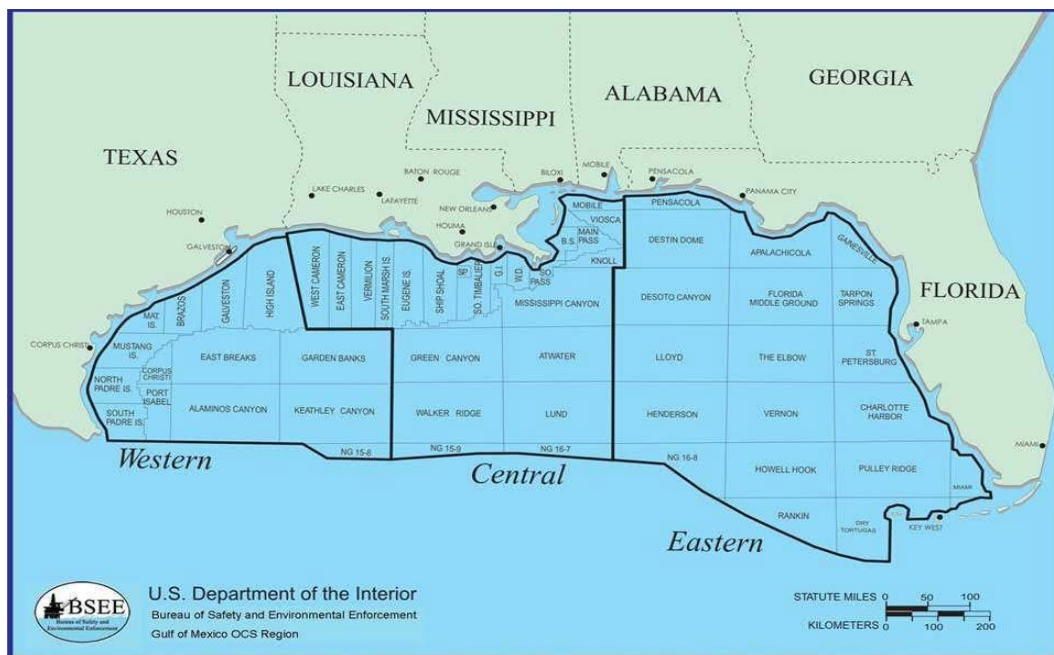


Figure 2



On October 28, 2016, the EPA also coordinated with the National Marine Fisheries Service (NMFS) requesting concurrence on the NPDES GP *not likely to adversely affect* the sea turtles like the Kemp’s ridley (*lepidochelys kempii*), Atlantic Gulf sturgeon (*Acipenser oxyrinchus desotoi*) and West Indian manatee (*Tribchechus manatus*) and critical habitats near oil and gas exploration operations in the Eastern GOM. The EPA requested concurrence regarding the potential impacts form the proposed action on fish and marine mammals determined to *may affect* but are *not likely to adversely affect* fish including the Gulf sturgeon (*Acipenser oxyrinchus desotoi*) and marine mammals such as the West Indian manatee (*Trichechus manatus*) and cetaceans (whales, dolphin, and porpoises). The EPA did not receive a response to our letters requesting concurrence from the NMFS.

The EPA demonstrated that prospective discharger from exploration, development, and production facilities located in and discharging, to all Federal waters in the eastern portion of the GOM are not likely to adversely affect any species that are federally listed as endangered or threatened (“ESA-listed”) and are not likely to adversely affect habitat that is designated as “critical habitat” under the Endangered Species Act (ESA). The EPA is awaiting information from the NMFS on the newly ESA-listed species, the Rice’s whale.

4. *The proposed action is not known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places.*

The proposed action is not anticipated to significantly affect cultural resources including historic or archeological properties. The EPA coordinated with the historical preservation commissions

in Alabama, Mississippi, and Florida during the public notice comment period for previous EPA Region 4 offshore general permits. Each state's historical preservation agency is on the consolidated addressee list of federal and state agencies that receive public notice announcements pertaining to the permit issuance. Historically, the EPA has received no comments from these organizations on impacts from offshore oil and gas activities covered under the general permit on historical sites offshore in state or federal waters. The EPA does not expect comments for the historical preservation agencies on the current draft permit.

5. The proposed action is not known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

The draft general permit includes best conventional pollutant control technology and best available technology economically achievable limitations for existing sources and new source performance standards limitations for new sources as promulgated in the effluent guidelines for the offshore subcategory. The permit also includes electronic reporting requirements; whole effluent toxicity testing sampling and reporting requirements for well treatment, completion, and workover fluids not discharged with produced wastewaters; requirements to submit information related to the chemicals and additives used in well treatment, completion and workover operations; and information regarding types of operators. In addition, the 2022 draft general permit includes new acute WET limits on Well Treatment and Completion Fluids when discharged separately from produced water. These requirements along with the requirement to prohibit discharges within a 1,000 ft of biologically sensitive areas ensure that the action will not significantly affect environmentally important natural resources. The action is consistent with the States of Mississippi, Alabama, and Florida Coastal Zone Management Programs.

6. The proposed action is not known or expected to cause significant adverse air quality effects.

The EPA anticipates air emissions associated with authorized discharges and discharge-related activities over the five-year term of the permit will be marginal.

7. The proposed action is not known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.

N/A

8. The proposed action is not known or expected to cause significant public controversy about a potential environmental impact of the proposed action.

The EPA does not anticipate significant public controversy regarding the environmental impacts of the proposed action. This proposed action involves a renewal of previously permitted

activities that have previously undergone the environmental review process and the limitations on the proposed action are more restrictive than the 2018 action.

9. The proposed action is not known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.

N/A

10. The proposed action is not known or expected to conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

There are no known or anticipated conflicts with federally recognized Indian tribes and resources associated with the proposed action or with existing federal, state or local governments and their laws or regulations. Prohibitions for discharging within 1,000 ft of areas of biological concern are designed to protect environmentally and biologically sensitive areas.

Finding:

The EPA finds the proposed action conforms to the category of actions eligible for exclusion from detailed environmental review under 40 CFR 6.204(a)(1)(iv) and will not involve any extraordinary circumstances. Accordingly, the EPA will not prepare either an Environmental Impact Statement (EIS) or an EA for the proposed project. The EPA may revoke this categorical exclusion if changes in the proposed action render it ineligible for exclusion or if new evidence emerges which indicates that serious local or environmental issues exist or federal, state, or local laws would be violated.

Ntala Kajumba

Signature

12.9.2022

Dated