

RECORD OF DECISION
for the
FINAL ENVIRONMENTAL IMPACT STATEMENT
on the
Expansion of Flower Garden Banks National Marine Sanctuary

National Oceanic and Atmospheric Administration
Office of National Marine Sanctuaries

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I. Introduction

This document comprises the National Oceanic and Atmospheric Administration's (NOAA's) Record of Decision (ROD) for the final environmental impact statement (FEIS) published on December 11, 2020 to expand Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary). This ROD includes a description of the decision, a summary of the alternatives considered by NOAA, an identification of the environmentally preferable alternative, and a discussion of factors and considerations balanced by NOAA in making its decision. NOAA published a Notice of Intent to prepare a draft environmental impact statement (DEIS) for expanding the sanctuary boundaries on February 3, 2015 (80 FR 5699).

Since this environmental review began before September 14, 2020, which was the effective date of the amendments to the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) (85 FR 43304, Jul. 16, 2020), NOAA prepared the FEIS and ROD for this action using the 1978 CEQ regulations.

II. Decision

This ROD documents NOAA's decision to expand Flower Garden Banks National Marine Sanctuary, located in the northwestern Gulf of Mexico, 70 to 115 nautical miles (130 to 213 kilometers) off the coasts of Texas and Louisiana. NOAA selected the Final Preferred Alternative to expand FGBNMS to include seventeen individual banks (listed from west to east: Stetson, West Flower Garden, Horseshoe, East Flower Garden, MacNeil, Rankin and 28-Fathom, Bright, Geyer, Elvers, McGrail, Bouma, Sonnier, Rezak, Sidner, Parker, and Alderdice banks) that are protected within nineteen discontinuous boundaries (Figure 1). With this decision, the size of FGBNMS increases from approximately 56 square miles to 160 square miles.

NOAA will manage the expanded sanctuary with the existing 2012 sanctuary management plan and regulations codified at 15 C.F.R. part 922, subpart L. NOAA's decision is based on the analyses in the accompanying FEIS,¹ as summarized below.

¹ See <https://flowergarden.noaa.gov/management/sanctuaryexpansion.html>

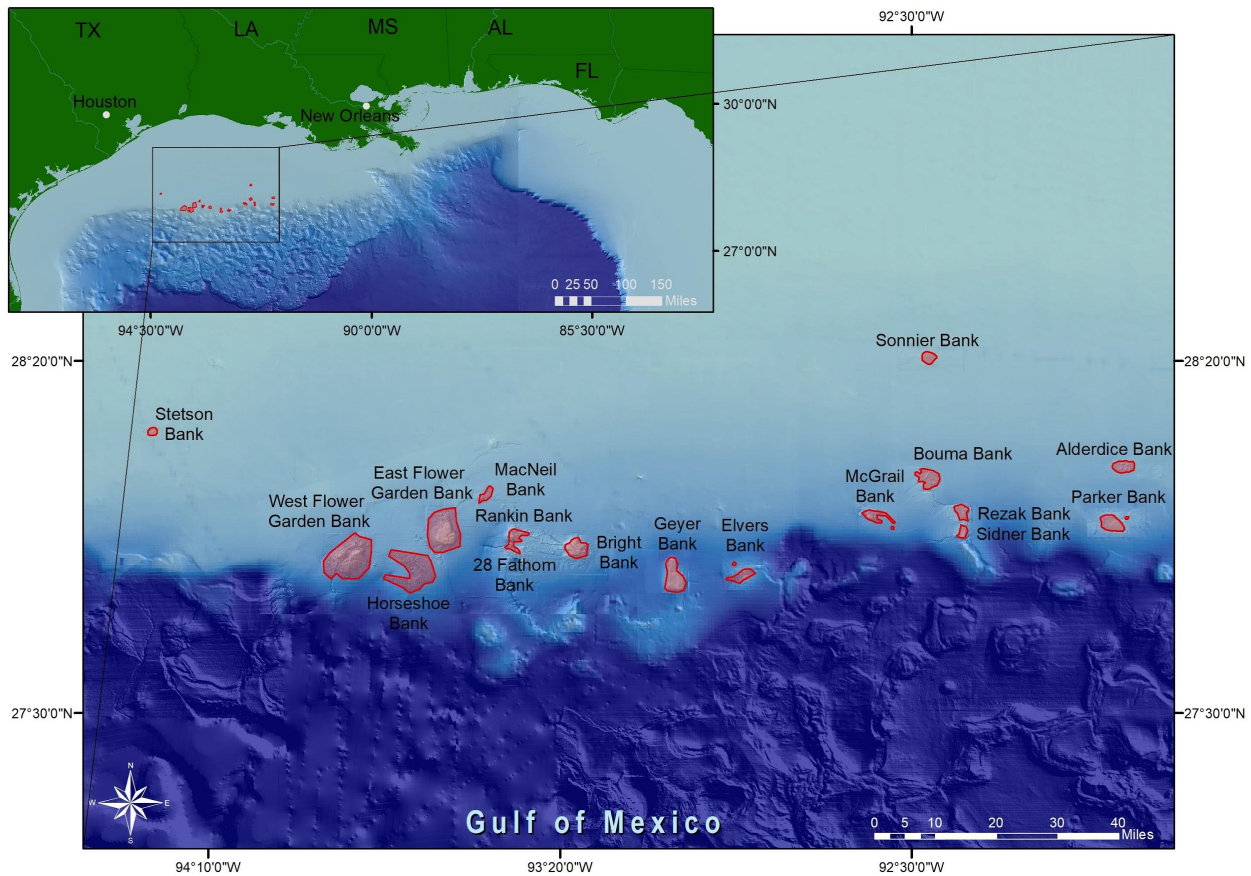


Figure 1. NOAA's Final Preferred Alternative for FGBNMS sanctuary expansion. Image: NOAA.

The banks in this map from west to east are as follows: Stetson Bank, West Flower Garden Bank, Horseshoe Bank, East Flower Garden Bank, MacNeil Bank, Rankin Bank and 28 Fathom Bank, Bright Bank, Geyer Bank, Elvers Bank, McGrail Bank, Sonnier Bank, Bouma Bank, Rezak Bank, Sidner Bank, Parker Bank, and Alderdice Bank.

III. Alternatives Considered

In the FEIS, NOAA considered a reasonable range of spatial alternatives for rigorous exploration and objective evaluation that were determined to possess conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources or qualities that gave them special national, and in some instances, international, significance. NOAA emphasized the areas and resources in the north central Gulf of Mexico when developing the alternatives. With this approach, NOAA was able to evaluate the nationally significant features in the region, accounting for the multiple ecological and human use benefits of sanctuary expansion.

NOAA focused on alternatives that could reasonably meet the purpose and need for this action (refer to FEIS Chapter 2). In the FEIS, NOAA considered a range of alternatives, including a No Action Alternative, that ranged in areal extent from approximately 56 square miles to 935 square miles. Under all action alternatives, NOAA proposed to apply the existing sanctuary regulations and management plan to the expanded areas.

Existing sanctuary regulations include restrictions on anchoring or otherwise mooring; discharging or depositing materials or other matter; alteration of the seabed; possessing various marine resources; injuring or taking or attempting to injure or take sanctuary resources;

possessing or using explosives or releasing electrical charges; feeding fish; and possessing (except while passing without interruption through the sanctuary) or using fishing gear other than conventional hook and line gear. Refer to the sanctuary regulations, codified at 15 C.F.R. part 922, subpart L. The range of alternatives evaluated in the FEIS is as follows:

NOAA's Final Preferred Alternative is a modified version of Alternative 3 presented in the DEIS. The modification was based primarily on recommendations from the Sanctuary Advisory Council in 2018, and in final form, encompasses approximately 160 square miles (414 square kilometers). This alternative includes 17 nationally significant biological and geological features within 19 polygons.

Alternative 1, the No Action Alternative, maintained the previous FGBNMS boundaries, which encompassed approximately 56 square miles (145 square kilometers) and included three distinct geologic features and biological communities at East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank (Figure 2).

Alternative 2 was the sanctuary expansion recommendation made by the Sanctuary Advisory Council in 2007, which encompassed a total of approximately 281 square miles (728 square kilometers). This alternative included 12 nationally significant biological and geological features within 9 discrete proposed boundary areas.

Alternative 3 was a modified version of the 2007 Sanctuary Advisory Council recommendation and was the 2016 staff recommendation in the DEIS. This alternative took into account new information gained since the 2007 Sanctuary Advisory Council recommendation was made, was based on the same criteria as the 2007 Sanctuary Advisory Council recommendation, simplified the boundaries for ease of enforcement and consistency with existing regulatory regimes, and encompassed approximately 383 square miles (992 square kilometers). This alternative included a total of 18 nationally significant biological and geological features within 11 discrete proposed boundary areas.

Alternative 4 would have added protection for high priority mesophotic and deep benthic resource areas across the north central Gulf of Mexico and encompassed approximately 634 square miles (1,642 square kilometers). This alternative included 43 nationally significant biological and geological features (including 18 high priority mesophotic and deep benthic sites) within 29 discrete proposed boundary areas.

Alternative 5 would have provided for more comprehensive management and protection of important and vulnerable mesophotic and deep benthic habitats as well as important cultural and historic resource sites across the north central Gulf of Mexico, further expanded from Alternative 4, and encompassed approximately 935 square miles (2,422 square kilometers). This alternative included 57 nationally significant biological and geological features and 8 nationally significant cultural and historic resource sites within 45 discrete proposed boundary areas.

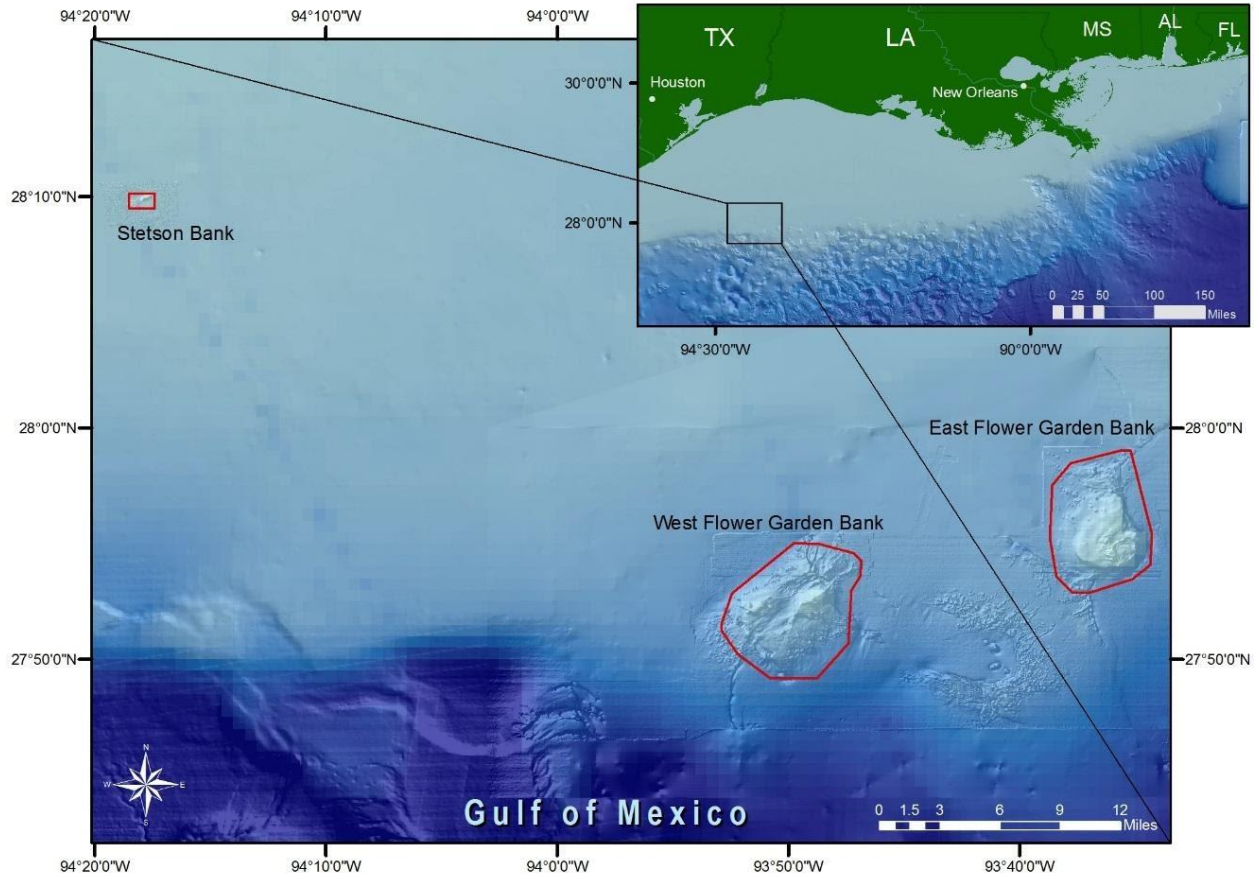


Figure 2. Current boundaries of FGBNMS (No Action Alternative). Image: NOAA.

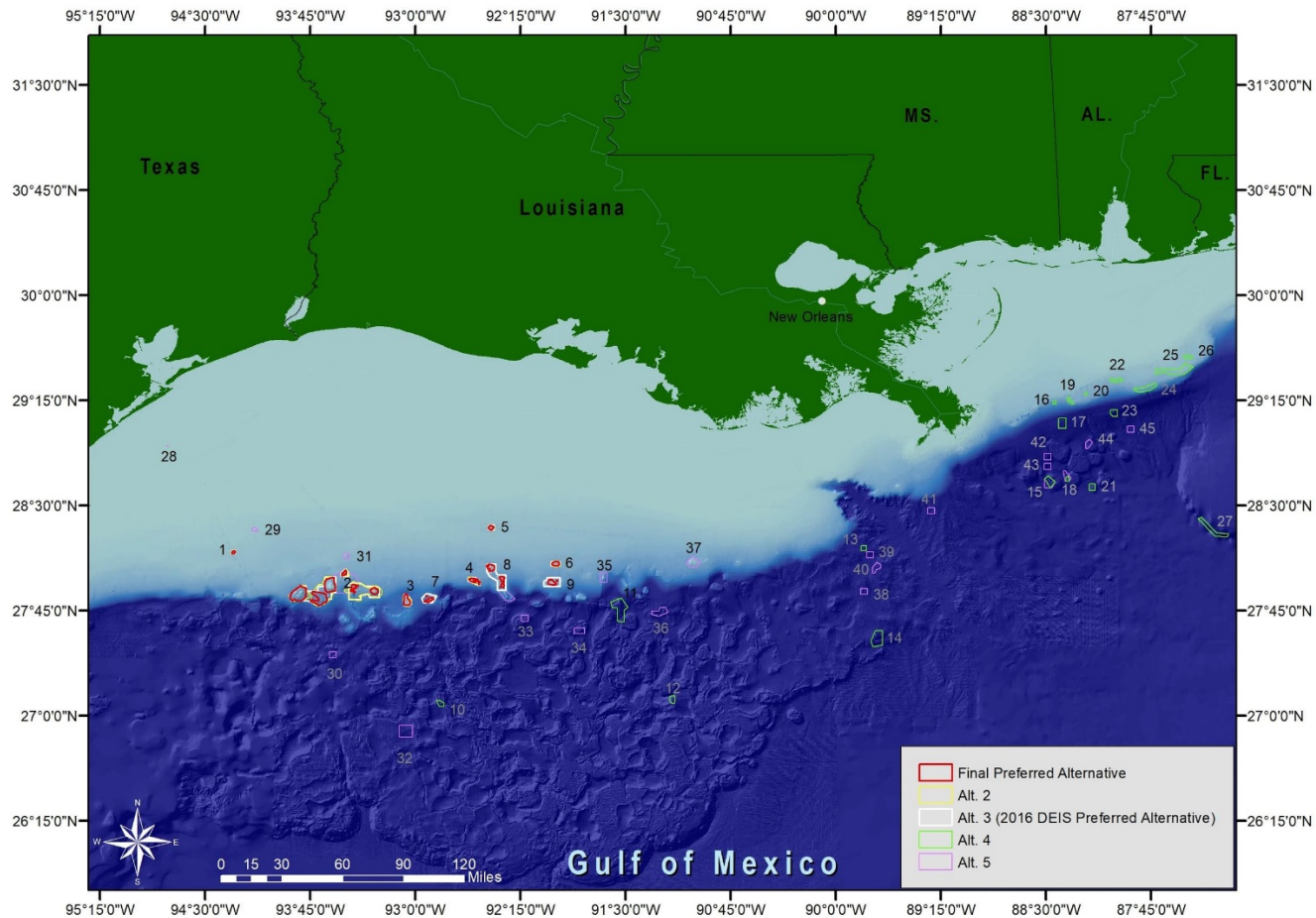


Figure 3. Range of action alternatives considered and evaluated in the FEIS. Image: NOAA.

1. 32 Fathom Bank, 2. Stetson Bank, 3. Claypile Bank, 4. Applebaum Bank, 5. West Flower Garden Bank, 6. Coffee Lump Bank, 7. East Flower Garden Bank, 8. Horseshoe Bank, 9. MacNeil Bank, 10. 29 Fathom Bank, 11. Rankin Bank, 12. 28 Fathom Bank, 13. Bright Bank, 14. Geyer Bank, 15. Elvers Bank, 16. McGrail Bank, 17. Sonnier Bank, 18. Bouma Bank, 19. Bryant Bank, 20. Rezak Bank, 21. Sidner Bank, 22. Tresslar Bank, 23. Parker Bank, 24. Alderdice Bank, 25. Fishnet Bank, 26. Phleger Bank, 27. Sweet Bank, 28. Jakkula Bank, 29. Ewing Bank, 30. Diaphus Bank, 31. Sackett Bank, 32. Mountain Top, 33. Alabama Alps and 36 Fathom Ridge, 34. West Addition Pinnacles, 35. Shark, Double Top, and Triple Top Reefs, 36. Ludwick-Walton and West Delta Mounds, 37. Yellowtail, Cat's Paw, Roughtongue, and Corkscrew Reefs, 38. Far Tortuga Reef.

Alternatives Considered, but not Carried Forward

NOAA also considered, but did not carry forward, certain alternatives that were identified during scoping or public input throughout the expansion process. These alternatives included the potential inclusion of additional topographic features and sites in biogeographic regions other than the north central Gulf of Mexico (between the 87th and 95th west meridians). NOAA eliminated from further consideration the inclusion of additional topographic features beyond the range of alternatives, because NOAA determined that insufficient data were available to adequately characterize the sites or available data did not indicate sufficiently unique, diverse, productive or otherwise nationally significant biological communities or geologic features. NOAA also eliminated from further consideration the inclusion of sites in biogeographic regions other than the north central Gulf of Mexico because these areas to both the east and west reflected geologic/sedimentary and hydrologic/oceanographic settings, and biological communities that were distinctly different. These sites and the resources were faced with distinctly different threats or other conservation issues.

NOAA also considered, but eliminated from further evaluation, some alternatives that would involve changes to the current sanctuary regulations and their application to the proposed expansion areas. These possible regulatory alternatives included fishery closures or permit requirements, allowance of spearfishing, greater restrictions on oil and gas development, policies related to decommissioned platforms and artificial reefs, and establishment of anchorages. NOAA eliminated these regulatory alternatives from further evaluation based, in part, on the Sanctuary Advisory Council's recommendation that the current regulatory regime should be extended to any expanded sanctuary boundaries and because these practices did not align with the FGBNMS mission to protect sanctuary resources.

Additional regulatory alternatives were considered based on recommendations during coordination with the Gulf of Mexico Fishery Management Council (GMFMC). Pursuant to recommendations provided by the GMFMC and resulting coordination, NOAA considered the council's recommendation to create a new regulatory endorsement program to allow anchoring by commercial fishing vessels on those areas of soft sediment outside of the "no bottom tending gear zone." NOAA ultimately eliminated this regulatory alternative from further study because NOAA made modifications to the proposed boundaries of areas included in NOAA's Final Preferred Alternative to closely follow the boundaries of the Bureau of Ocean Energy Management's (BOEM's) No Activity Zones (NAZs), which contain minimal soft sediment. NOAA specifically considered fishery exemptions for pelagic longlining and spearfishing in the expansion areas. NOAA ultimately rejected both fishery exemptions because these fishing practices are not aligned with the FGBNMS mission to protect vulnerable ecological resources.

Environmental Impacts of the Alternatives

NOAA's analysis of the environmental impacts of each alternative concluded that no significant adverse impacts to physical and biological resources, cultural and historic resources, or marine area use, recreation, and socioeconomics were expected under any alternative. The boundaries proposed under each of the action alternatives encompassed progressively greater numbers of nationally significant biological and geological features and progressively greater areal extent. NOAA's analysis found that environmental consequences were proportional to the number of features and areal extent encompassed under each alternative.

Direct, long-term, localized major benefits to living marine resources in the proposed expansion areas would result from sanctuary expansion and the imposition of protections concomitant with such designation. Sessile benthic communities would benefit because they are highly susceptible to bottom-disturbing activities like anchoring, oil and gas development, fishing activities and marine debris. Sanctuary expansion may result in increases in coral cover or density over time; increases in fish biomass or abundance, particularly where fishing pressure is reduced; reduction of impacts to fish due to limitations on fishing; reduction of marine debris and impacts of debris on corals and other organisms, such as entanglement of sea turtles in derelict fishing gear and incidental catch of fish in “ghost” fishing gear; and protections to threatened and endangered species that make use of the protected habitats.

IV. Environmentally Preferable Alternative(s)

Alternative 5 represents the environmentally preferable alternative because it would have protected the largest areal extent and the greatest number of banks (Figure 3) and provided the greatest benefit to the environment. Alternative 5 proposed to incorporate mesophotic and deep coral ecosystem sites, as well as important shipwreck sites, across the north central Gulf of Mexico, including the Deepwater Horizon oil spill site. This alternative encompassed 57 nationally significant natural features and 8 nationally significant cultural and historic resource sites over an area of approximately 935 square miles, within 45 discrete proposed boundary polygons. Alternative 5 was included in the FEIS analysis despite being outside the scope of NOAA’s current operational capacity and budgetary resources for FGBNMS. NOAA determined this alternative to be reasonable due to these sites’ presence within the distinct biogeographic region of the north central Gulf of Mexico and due to advances in understanding and heightened awareness of the importance of these sites that has developed in the last decade.

Alternative 5 would provide a broad area of protection for living marine resources including coral reefs, coral communities, mesophotic coral habitats, coralline algae zones, soft bottom communities, deep coral ecosystems, and a wide variety of fish, invertebrates, corals, and protected species (e.g. Mobula rays, sea turtles). Direct, long-term, localized, major, beneficial impacts to physical and biological resources, and cultural and historic resources would be generated by the resource protection and management under Alternative 5. NOAA concluded the beneficial impact to cultural and historical resources would be unique to Alternative 5.

V. Rationale for Selection of the Final Preferred Alternative

NOAA selected the Final Preferred Alternative because it will fulfill the statutory mission and responsibilities of the National Marine Sanctuaries Act, while giving consideration to economic, environmental, technical, and other factors, including minimizing user conflicts. NOAA’s Final Preferred Alternative provides a great environmental benefit and protection of nationally significant biological and geological features in a manner that can be managed within current agency resources available for FGBNMS operational capacity and budgetary resources (i.e., using existing staff, facilities, and vessels to conduct management activities in a funding-neutral, or only slightly funding-positive, scenario).

NOAA developed the Final Preferred Alternative based on input from stakeholders and the public at various stages of the expansion process, including during the public comment period for the DEIS, development of the proposed rule, and public comment on the proposed rule. Similar to the process of developing the 2007 recommendation presented in the DEIS

(Alternative 2), the Sanctuary Advisory Council created a Boundary Expansion Working Group (BEWG) that included industry representatives (i.e. oil and gas, commercial and recreational fishing, diving operations), science, and conservation members. The BEWG evaluated the boundaries proposed in DEIS Alternative 3 and provided NOAA with a revised recommendation for boundary configuration. The BEWG focused on BOEM-designated NAZs (developed in the 1970-1980's to protect the shallowest portion of the reefs and banks under consideration for oil and gas development) in response to concerns raised primarily by the oil and gas industry regarding potential impacts of the FGBNMS expansion on offshore energy operations in the Gulf of Mexico. Ultimately, the BEWG considered the NAZs as the primary geographically-bound characteristic by which to develop recommendations for revisions to the proposed sanctuary expansion boundaries. The BEWG presented its revised expansion recommendation to the full FGBNMS Sanctuary Advisory Council in May 2018, and the recommendation was accepted.

In May 2020, following public comment on the DEIS and input from the Sanctuary Advisory Council, the Gulf of Mexico Fishery Management Council, and other Federal agencies, NOAA issued a Notice of Proposed Rulemaking (NPRM or proposed rule) to expand the sanctuary. The proposed rule included a revised preferred alternative (i.e., revision of the Alternative 3 boundaries), as presented by the BEWG in their 2018 recommendation. The revised preferred alternative presented in the 2020 NPRM was deemed NOAA's Final Preferred Alternative in the FEIS, as well as this ROD.

NOAA's Final Preferred Alternative included all of the same banks identified in the DEIS Alternative 3, with the exception of Bryant Bank. Additionally, NOAA reduced the size of the boundary areas based on recommendations from the Sanctuary Advisory Council in 2018, to facilitate compatible use and reduce potential economic impacts to the offshore energy and fishing industries.

NOAA's evaluation of the Final Preferred Alternative found that it would minimize the impact to offshore energy exploration and production, and fishing, while providing substantial protection to sensitive marine habitats of national significance and meeting the expansion objectives as identified in the 2012 FGBNMS management plan and 2016 DEIS. NOAA anticipates that implementing the Final Preferred Alternative will have long-term beneficial impacts on biological and geological resources. All practicable means to avoid or minimize environmental harm from implementing this alternative have been adopted.

NOAA's decision to amend the effective date in 922.122(e) addressed concerns raised by the Department of the Navy (DON) during coordination in development of the final rule. In the final rule, NOAA clarified that the prohibitions in § 922.122(a)(2) through (a)(11) do not apply to the activities being carried out by the Department of Defense as of the date of sanctuary expansion. The DON was informed of these changes and concurred with the modifications.

NOAA also coordinated with the Department of Interior (DOI) to address concerns raised during interagency review of the proposed rule regarding the rights of existing oil and gas leaseholders. NOAA will continue to coordinate with BOEM to co-manage these resources and mitigate any impacts to oil and gas activities, including the 11 active Outer Continental Shelf (OCS) oil and gas leases that will lie wholly or partially within the boundaries of the expanded FGBNMS. For new leases, approvals or permits, licenses, or other authorizations in existence prior to the date

on which the FGBNMS expansion is finalized, lessees or operators will be required to obtain from NOAA a certification to authorize the oil and gas activities within the FGBNMS.

VI. Public Involvement and Additional Regulatory Consultations

Information regarding additional regulatory consultations is included in the FEIS and a supporting document containing consultation correspondence is available on the FGBNMS website.² Following publication of the FEIS, NOAA received concurrence from the coastal management programs of Alabama, Florida, Louisiana, Mississippi, and Texas on the agency's determination that the FGBNMS expansion is consistent, to the maximum extent practicable, with the enforceable policies of approved state coastal management programs. This serves as NOAA's compliance with the federal consistency requirements of Section 307 of the Coastal Zone Management Act (16 U.S.C. 1456).

Nicole R. LeBoeuf, Acting Assistant Administrator
for Ocean Services and Coastal Zone Management

January 12, 2021

² See <https://flowergarden.noaa.gov/management/sanctuaryexpansion.html>