

**COMMENTS ON HR 5745 – MARINE FISHERIES
HABITAT PROTECTION ACT**

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General Comments

- HR 5745 would expand the successful artificial reefing programs on the federal Outer Continental Shelf by facilitating the conversion of more retired oil and gas platforms into artificial reefs, thereby preserving marine habitats and supporting the vibrant recreational fishing industry.
- The proposed legislation has many positive attributes but can be improved by making the following changes:
 1. Require artificial reefing assessments to be funded by the applicant and conducted by independent third parties,
 2. Require the applicant to provide documentation showing all infrastructure and equipment including pipelines do not contain hazardous materials.
 3. Require the applicant to conduct ROV surveys of pipelines to document the fish and other biota that reside on, under or in the immediate vicinity of the pipeline..
 4. Require the State Artificial Reef Manager, in consultation with the Director of BSEE, to designate reef planning areas,
 5. Require the Secretary of DOC, in consultation with the Secretary of DOI, to determine if the reefing criteria have been met.
 6. Delete unclear and confusing legal jargon like “*without limitation, Reefing in Place of Approved Structures.*”

Comments on Steps in HR 5745 Reef in Place Process	
Steps in HR 5745	Reviewer Comments
1. <u>Notice of Intent to Reef</u> : Applicant submits a Notice of Intent (NOI) to Reef an inactive structure to Director of BSEE.	Formal notification is an appropriate first step.
2. <u>Assessment</u> : Within 180 days of submitting an NOI, the Director shall conduct or appoint a State or qualified third party to perform on its behalf an assessment of each inactive structure.	180 days seems unusually long; 90 days would be reasonable. To avoid potential conflict of interest concerns, BSEE should not conduct assessments. Allowing oil and gas infrastructure to remain in place would result in significant cost savings for the applicant. The applicant should be required to provide funding to BSEE or the State Reef Management Agency to oversee the

	assessment, which should be conducted by an independent third party (e.g. university or academic institution).
3. <u>DOC Consultation</u> : The assessment shall involve consultation with the Administrator, Dept. of Commerce (DOC) and include an assessment of the habitat value and economic benefits of reefing including a comparison of the costs to replace the inactive structure with equivalent materials.	The requirement to include an assessment of replacement costs is unnecessary and would complicate and increase the costs of the assessment. The requirement should be deleted.
4. <u>Applicant Assessment</u> : The Director may permit an applicant to conduct an assessment or enter into an agreement with a State or qualified third-party to perform on its behalf an assessment report for each inactive structure.	An assessment conducted by an applicant would raise potential conflict of interest concerns. The applicant should be required to provide funding to BSEE or the State Reef Management Agency to oversee the assessment, which should be conducted by an independent third party (e.g. university or academic institution).
5. <u>Assessment Deadline</u> : To the extent possible, the assessment must be completed within one year of receipt of the NOI.	The requirement provides flexibility and is reasonable.
6. <u>Eligible Structure Determination</u> : Not later than 60 days after completion of the assessment, the Director of BSEE, in consultation with DOC, shall issue a determination on whether the inactive structure is an eligible structure for decommissioning in place.	The 60-day deadline is reasonable.
7. <u>Eligible Structure Criteria</u> : To be an eligible structure, there must be an established reef ecosystem on, under, or in the immediate vicinity of the inactive structure, and reefing in place must be shown to be appropriate based on criteria described in the National Artificial Reef Plan (NARP).	The text appropriately references the NARP criteria.
8. <u>Designation of Reef Planning Areas</u> : Not later than 90 days after designating an eligible structure, the Director, in consultation with the associated State Reef Program, shall designate a Reef Planning Area that	The Director of BSEE should not designate the Reef Planning Area. The State Artificial Reef Manager, in consultation with the Director of BSEE, should designate the Reef Planning Area because the state will assume liability and management responsibility for

<p>includes the footprint of the eligible structure or other proposed reefing location, along with any surrounding area deemed necessary for reefing in place.</p>	<p>the infrastructure approved to be reefed in place.</p>
<p>9. <u>Three Year Deadline:</u> Not later than three years after the Director determines an inactive structure to be an eligible structure for reefing, the applicant may reef in place if:</p> <ul style="list-style-type: none"> (a) all wells have been permanently plugged and abandoned (b) hydrocarbons and other hazardous liquids have been removed (c) if required, aids to navigation are installed (d) the applicant confirms there is no outstanding liability or responsibility for the structure. (e) the Applicant has transferred or has an agreement to transfer liability to a State agency upon completion of the reefing activity. (f) The Secretary of the Interior determines the reefing criteria have been met and the eligible structure is reasonably sound and secure. 	<p>The three-year deadline provides an incentive for operators, some who may be delinquent in plugging and abandoning wells in a timely manner, to plug and abandon wells to be eligible for reefing infrastructure in place.</p> <p>The Secretary of DOC, not the Secretary of Interior, should be responsible for determining whether the reefing criteria have been met. Their determination should be done in consultation with the Director of BSEE.</p>

COMMENTS ON HR 5745 SECTIONS

SEC. 2. USE OF CERTAIN OFFSHORE OIL AND GAS PLATFORMS AND PIPELINES FOR ARTIFICIAL REEFS

- Federal regulations allow BSEE, if certain standards are met, to permit operators to decommission them in place, cleaning and burying them in the seabed.
- However, a 2021 General Accounting Office (GAO) report, *Updated Regulations Needed to Improve Pipeline Oversight and Decommissioning*, found that BSEE doesn't ensure OCS pipeline decommissioning standards are followed and that it failed to monitor pipeline decommissioning operations to ensure pipelines decommissioned in place are properly cleaned and buried. The report also noted BSEE failed to fully consider whether

decommissioned pipelines represent a hazard to navigation and commercial fishing, like trawlers that can be damaged by snagging equipment on undersea pipelines.

- Given these deficiencies, the proposed bill should require applicants to provide documentation to BSEE and the State Reef Management Agency demonstrating the pipelines proposed to be reefed in place have been properly cleaned and are free of hazardous materials, and they don't pose a hazard to navigation and commercial trawlers.
- Applicants should also be required to conduct ROV surveys of the pipelines to determine their burial condition, whether they are prone to being moved by hurricanes or storms, and document the fish and other biota present on, under or in the immediate vicinity of the pipeline.

SEC. 206. DEFINITIONS.

(2) ARTIFICIAL REEF. The term ‘Artificial reef’ means a structure or facility and associated equipment and infrastructure which is located, constructed or placed in Covered Waters that enhances fishery resources and commercial and recreational fishing opportunities, including, without limitation, Approved Structures.

Comments

- The NFEA definition for “*Artificial Reefs*” has been changed by adding the terminology “*associated equipment and infrastructure*” and “*including, without limitation, Approved Structures.*”
- The terminology “*without limitation*” is problematic because it could be interpreted to constrain or limit BSEE’s or the State Reef Management Agency’s authority to determine whether the equipment and infrastructure are appropriate materials for reefing consistent with NARP guidelines.
- The terminology “*without limitation*” could be interpreted to apply to equipment like umbilical lines. The 2021 GAO report reported that BSEE, based on guidance from the Environmental Protection Agency during the first Trump administration, allowed operators to leave in place some 250 decommissioned “umbilical lines” that carry electricity and hydraulic power to subsea equipment, over objections of some Interior officials who were concerned that these lines often contain hazardous chemicals that could leak over time as the equipment degrades.
- The terminology, “*without limitation, Approved Structures*” should be deleted and replaced with “*consistent with National Fisheries Enhancement Act requirements and National Artificial Reef Plan guidelines.*”

(4) DECOMMISSIONING. For the purposes of this title, the term “*Decommissioning*” means ending oil, gas, or sulphur operations on an offshore lease, right-of-way, or right-of-use and easement and returning the area subject to such lease, right-of-way, or right-of-use and easement

to a condition that complies with applicable law, including, without limitation, Reefing in Place of Approved Structures, or removal of platforms and structures, or a combination thereof.

Comments

- The definition for decommissioning under NFEA and Section 5 of the OCS Lands Act has been changed by adding the terminology “*without limitation, Reefing in Place of Approved Structures.*”
- The terminology “*without limitation, Reefing in Place of Approved Structures.*” should be deleted. The meaning of the terminology is unclear and could be interpreted to restrict the Director of BSEE or a State Reef Managers determination of what is considered to be eligible infrastructure and equipment for reefing in place.
- This terminology change would also create a strong disincentive for potential donors of OCS platforms to transport platform topsides and jackets to approved artificial reefing areas managed by State agencies.

(8) INACTIVE STRUCTURE. The terminology “*inactive structure*” means an oil or gas platform, structure, facility, pipeline, and associated equipment and infrastructure— “(A) that either— “(i) an Applicant determines is no longer useful for operations; “(ii) is located on a lease, right of way, right of use and entry or other similar right that has expired, terminated, been relinquished or abandoned or is no longer valid and effective; or “(iii) is currently on the sea floor as a result of an act of God or event of force majeure.

SEC. 207. REEF IN PLACE

(2) LIABILITY. -- Upon acceptance by a State of an Eligible structure into a State Program:

- A. the Applicant shall have no responsibility or liability with respect to the Approved Structure following completion of the reefing activity unless otherwise agreed to by the Applicant and a State; and
- B. The State shall be— “(i) solely responsible for the continued maintenance of the Approved structure, including maintaining any identifying markers installed to protect and aid navigation; and “(ii) exclusively responsible and liable for the Approved structure.

Comments

- Part B should be revised to add “*provided the requirements of NFEA and NARP guidelines have been satisfied.*” after the word structure in (ii).