



May 6, 2026

# Endangered Species Committee (“God Squad”) Exemption of Oil and Gas Activities in the Gulf of America

## Introduction

On March 31, 2026, the Endangered Species Committee (ESC; also known as the “God Squad”) voted to issue an exemption from Section 7(a)(2) of the Endangered Species Act (ESA) for oil and gas exploration, development, and production activities in the Gulf of America (GoA). In accordance with Sections 7(h) and 7(j) of the ESA, the ESC exempted these oil and gas activities from the ESA requirements known as *Section 7 consultation* after the Secretary of Defense—who is using “Secretary of War” as a “secondary title” under Executive Order 14347 dated September 5, 2025— notified the Secretary of the Interior (the ESC chair) that an exemption was necessary for reasons of national security.

This exemption was the first issued for national security reasons. To date, GoA oil and gas companies have abided by *reasonable and prudent alternatives* (RPAs) and other measures to mitigate effects on ESA-listed species and *critical habitat* when carrying out activities, as required in a 2025 National Marine Fisheries Service (NMFS) biological opinion (BiOp) and 2018 and 2025 BiOps from the U.S. Fish and Wildlife Service (FWS).

In the request for an exemption, the Secretary of Defense stated that ongoing litigation related to endangered species threatens to halt oil and gas production in the region and that litigation diverts resources away from approving permits; limits agency discretion, leading to more restrictive operations; and creates instability and uncertainty that might discourage long-term development. Further, the Secretary asserted that if oil and gas exploration and development were halted, U.S. military operations and readiness would be disrupted, and U.S. adversaries such as Iran and Russia would benefit. In light of the Secretary’s determination under Section 7(j), the ESC granted the exemption. Several stakeholder groups have filed lawsuits regarding the ESC’s findings.

Congress may be interested in how this exemption from Section 7 consultation could affect ESA-listed species (e.g., Rice’s whales, certain sea turtles) and critical habitat in the GoA, its potential implications for Gulf oil and gas operations, and any precedent the decision might set for other areas with ESA-listed species.

## Section 7 Consultations and Exemptions

Section 7 of the ESA requires federal agencies to ensure that actions they undertake, authorize, or fund are not likely to jeopardize listed species under the ESA or adversely modify designated critical habitat of listed species. Section 7 requires federal agencies to consult with FWS and/or NMFS (jointly referred to as the Services) when their proposed actions may affect listed species or critical

habitat. Section 7 consultation is the process used to evaluate the effects of agency actions on listed species and critical habitat and to consider alternatives to minimize those effects. If the action may adversely affect listed species or critical habitat, formal consultation ensues. Formal consultation generally concludes with the Services issuing a BiOp on the effects of the action. If the action is likely to jeopardize listed species or adversely modify critical habitat, the Services are required to identify any RPAs the federal agency can take to avoid jeopardy. If the Services find no jeopardy or an RPA is identified, an incidental take statement (ITS) is included. An ITS states the amount of *take* of a listed species anticipated from the proposed action and exempts the action from prohibitions on take of listed species under Section 9 of the ESA.

If the Services issue a jeopardy BiOp without identifying any RPAs, or if the federal agency determines that it cannot implement the action without violating the ESA (i.e., it does not want to use the RPA), the agency may apply for an exemption under Section 7(h). Under the process detailed in Sections 7(g)-(h), the agency (or the governor[s] of affected state[s] or affected license applicant[s]) may apply for an exemption after consultation is completed. Upon determining that a request for an exemption may be warranted, the Secretary of the Interior or Secretary of Commerce, as applicable to jurisdiction, passes the application to the ESC, composed of six specified federal officials and one individual from each affected state. After a process of deliberation and consideration of several factors associated with the action, the ESC votes on whether to grant an exemption.

For an exemption to be granted, the ESC must find that there are no RPAs to the action, that the benefits of that action outweigh the benefits of alternative courses of action, that the action is of regional or national significance, and that the federal agency or private applicant went through the process according to the rules and acted in good faith.

If the exemption is given, reasonable mitigation and enhancement measures are to be implemented to minimize the effects of the action on listed species and critical habitat. Using this process, the ESC granted two exemptions (in 1979 and 1992). No other exemptions were granted until the March 2026 exemption for GoA oil and gas activities employing the authority of Section 7(j) of the ESA. Section 7(j) states that the ESC shall grant an exemption if the Secretary of Defense finds that the exemption is necessary for reasons of national security. The language of this section does not make clear whether the full process for granting an exemption under Section 7(g) and (h) needs to be followed in conjunction with such a

determination. Granted exemptions for a proposed action are permanent unless certain conditions arise. The March 2026 action covers all current leases and new leases issued through 2029 in the area covered by the BiOps.

### ESA Requirements for Oil and Gas Development in the GoA Prior to Exemption

NMFS and FWS have issued BiOps for oil and gas activities in the GoA as part of their consultations with the Department of the Interior’s Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE). BOEM and BSEE administer oil and gas activities pursuant to the Outer Continental Shelf Lands Act. In March 2020, NMFS issued a BiOp for BOEM’s and BSEE’s GoA oil and gas activities. Several environmental organizations filed a lawsuit arguing that NMFS did not adequately evaluate the potential for future GoA oil spills, and did not require sufficient safeguards for ESA-listed species from offshore drilling operations. A U.S. district court in Maryland vacated NMFS’s 2020 BiOp in August 2024, effective December 20, 2024 (later extended to May 21, 2025). Due to the wide range of oil and gas activities covered by the BiOp, industry stakeholders asserted that any gap between the vacatur and adoption of a new BiOp could “halt or seriously slow all operations in the U.S. Gulf of Mexico.” NMFS issued the BiOp in May 2025 and no gap occurred.

The NMFS 2025 BiOp covers the full range of BOEM’s and BSEE’s management and regulation of outer continental shelf oil and gas activities—from lease sales, through exploration and development of leases, to eventual decommissioning of oil and gas infrastructure when leases terminate—for GoA oil and gas leases *issued* within five years of the BiOp’s publication (approximately through 2029), and leases issued prior to the BiOp’s publication. The BiOp’s scope includes activities throughout the projected 40-year life of a given lease, as long as the lease was issued in the specified timeframe. In terms of geographic area, the BiOp covers the Western and Central GoA planning areas and the “small portion” of the Eastern GoA planning area that is not withdrawn from leasing.

In the 2025 BiOp, NMFS found that without precautionary measures, GoA oil and gas activities could jeopardize the future survival of endangered Rice’s whales. In a 2022 stock assessment, the most current for the species, NMFS estimated that 51 Rice’s whales remain. The BiOp includes measures for preventing vessel strikes on Rice’s whales, which experts identify as a significant threat to their long-term viability. Experts also identify the *Deepwater Horizon* oil spill as having contributed to the mortality of some Rice’s whales, among other factors. The BiOp also identified adverse impacts to some other ESA-listed species (e.g., sperm whales, certain sea turtles). A separate FWS 2018 BiOp for GoA oil and gas activities found that such activities were unlikely to jeopardize nesting sea turtles or other ESA-listed species under FWS’s jurisdiction (e.g., manatees) or to destroy or adversely affect their critical habitats. The FWS BiOp, which covered a similar set of activities, geography, and time range as the NMFS BiOp, also included conservation recommendations to minimize adverse impacts to these listed species. A 2025 FWS decision affirmed the conclusions of the 2018 BiOp.

In its 2026 decision, the ESC granted “an exemption from the requirements of the [ESA]” for the agency actions that were analyzed in the 2025 NMFS BiOp and the 2018 and 2025 FWS BiOps. The ESC stated that with this exemption, BOEM and BSEE are not required to comply with the Section 7(a)(2) procedural requirements or substantive “jeopardy” and “adverse modification” mandates. Also, incidental take of listed species in carrying out the covered activities would not violate the ESA. The ESC noted that other protective measures that BOEM and BSEE mandated in the covered agency actions before the ESA consultation process would remain implemented.

### Considerations for Congress

Congress may consider issues that might arise from the exemption, including but not limited to the following:

- Congress may consider any precedents this exemption might set for other authorized activities with potential national security concerns and BiOps in place—for instance, whether a similar approach could be used to exempt activities from ESA consultation in other regions where oil and gas development is occurring; whether it could be applied to water conveyance operations where BiOps are issued and water supply is deemed a security concern; or whether national security exemptions in accordance with Executive Order 14276, “Restoring America’s Seafood Competitiveness,” might be applicable to the fishing industry’s interactions with ESA-listed species, and how any such exemptions might intersect with other conservation mandates.
- Congress could consider whether to define the scope and applicability of the term *national security* in the context of an exemption from the ESA’s Section 7(a)(2).
- Section 7(j) of the ESA does not specify ESC procedures when the Secretary of Defense finds that an exemption is necessary for national security reasons. Congress may consider whether to specify the process for granting an exemption for national security interests.
- The Marine Mammal Protection Act (MMPA) includes protections for marine mammals (e.g., Rice’s whales) during authorized oil and gas activities, including under a Letter of Authorization (LOA) for GoA geophysical survey activities. Congress may consider how the exemption might affect future LOAs and intersections between the ESA and MMPA.
- GoA oil and gas companies had been subject to ESA regulations and mitigation measures while producing oil and gas. Congress may consider to what extent the exemption might facilitate production compared to pre-exemption levels, and how it would affect listed species.
- The exemption of GoA oil and gas activities appears to apply to a broad scope of activities. Congress may consider whether to clarify the scope or number of activities that could be included in an exemption.

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