ACRA
American Cultural Resources Association

April 17, 2023

Bureau of Ocean Energy Management (BOEM)
Department of the Interior, Bureau of Ocean Energy Management, Office of Regulations
849 C Street NW, Mailstop DM5238
Washington, DC 20240
Attn: Peter Meffert

Re: Protection of Marine Archaeological Resources: a Proposed Rule by the Bureau of Ocean Energy Management (RIN 1010-AE11)

Dear Mr. Meffert:

The American Cultural Resources Association (ACRA), the trade association for private firms that specialize in cultural resource management (CRM), appreciates this opportunity to comment on the Department of the Interior's proposed rule, *Protection of Marine Archaeological Resources.*

ACRA member firms undertake much of the legally mandated CRM studies and investigations in the United States and employ thousands of CRM professionals, including archaeologists, architectural historians, ethnographers, historians, and an increasingly diverse group of other specialists. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or Tribal law and facilitate an open dialog where every stakeholder has a voice.

ACRA commends the Bureau of Ocean Energy Management (BOEM) for its critical analysis of the predictive model regarding the potential for submerged archaeological resources within the coastal waters of the United States and its conclusion that current procedures are insufficient for the marine archaeological resources protection. As BOEM notes, the predictive model has proven problematic in accurately predicting the presence or absence of archaeological resources, as resources such as shipwrecks have been identified in low probability areas. Additionally, the predictive model approach does not provide detailed, site-specific survey or review for the potential of a lease area to contain ancient submerged landform features (ASLFs).

The spirit of the proposed rule improves BOEM's efforts to conduct "reasonable and good faith identification efforts" as stipulated by the National Historic Preservation Act. The proposed Rule will require high-resolution geophysical surveys to identify submerged cultural resources including shipwrecks and ASLFs. ACRA believes that this process is an improvement over the predictive approach. The proposed Rule will allow for the

identification and delineation of cultural resources within a specific lease development area and for the protection of these resources prior to construction activities. This approach also benefits lessees and operations as it reduces risk and potential mitigation costs related to the inadvertent discovery of a submerged cultural resource during the construction phase. ACRA also agrees with BOEM's statement that "the incremental cost increase to industry of this proposed rule would be outweighed by the reduction in risks of unexpected delay and avoidable site damage."

Although the wording of the proposed rule seems to focus on shipwrecks, we are encouraged by the requirement for surveys that address the potential for precontact archaeological material. The potential for such resources requires honoring of BOEM's trust responsibilities with federally recognized Tribal Nations, noted in VIII.H., Consultation with Indian Tribes E.O. 13175 and Departmental Policy, as well as Native Hawaiian organizations..

ACRA supports the spirit of the proposed rule which will aid the protection of our maritime heritage and evidence of the early occupation of North America by Native Americans; however, some of the technical parameters in the proposed rule require further consideration prior to formal adoption:

- §550.194(c)(1) – the navigation system specifies logging the survey vessel's position, but this proposed rule does not comment on the requirement for acoustic tracking (e.g., ultra-short baseline acoustic positioning systems [USBL]) of towed sensors or autonomous underwater vehicles in deep water (200 m [656 ft]), consistent with Shallow Hazards Notice to Lessees and Operators (NTL) 2022-G01 Part III.A.

- §550.194(c)(2) – under current NTL 2005-G07, magnetometer data are required to be collected in water depths up to 200 m (656 ft). The wording of the new rule implies that BOEM will no longer require magnetometer survey for archaeology in water depths more than 100 m (328 ft). Magnetometer data have been safely and efficiently collected in these greater water depths under NTL 2005-G07 and are currently required for Shallow Hazards under NTL 2022-G01 Part III.C.1. What rationale is provided for the measurement reduction for magnetometer data acquisition, if that is the actual intent of this wording?

- §550.194(c)(4) –"The 0.5-meter resolution standard is consistent with the capabilities of modern sonar systems when operated at appropriate frequency and range settings." Does this language refer to along-track detection or across-track resolution? The implications for each are significantly different.

- Section VIII. Procedural Matters Part A. Regulatory Planning and Review – The discussion of line spacing refers to prior NTL 2005-G07 recommendations for line spacing of 50 m in water depths of 200 m or less but fails to mention the requirement for 300-m line spacing in all water depths greater than 200 m as specified in NTL 2011-JOINT-G01. Further in this section, the proposed rule states that "expected incremental costs … are due to the requirement for HRG archaeological surveys in water depths of less than or equal to 100 meters …" As

written, it can be inferred that no archaeological survey is required in water depths greater than 100 m. The sonar section contains the only mention of archaeological survey requirements in water depths greater than 140 m.

ACRA recommends that clarification of these technical matters will avoid guidance issues in the future. ACRA appreciates BOEM's on-going efforts to conduct "reasonable and good faith identification efforts."

Sincerely,

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Executive Director

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