



April 10, 2023

Brenda Mallory, Chair
Council on Environmental Quality
730 Jackson Place N.W.
Washington, D.C. 20503

Re: Comments of the National Ocean Industries Association on Interim Guidance, “National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change,” CEQ-2022-0005/RIN 0331-AA06

Dear Chair Mallory:

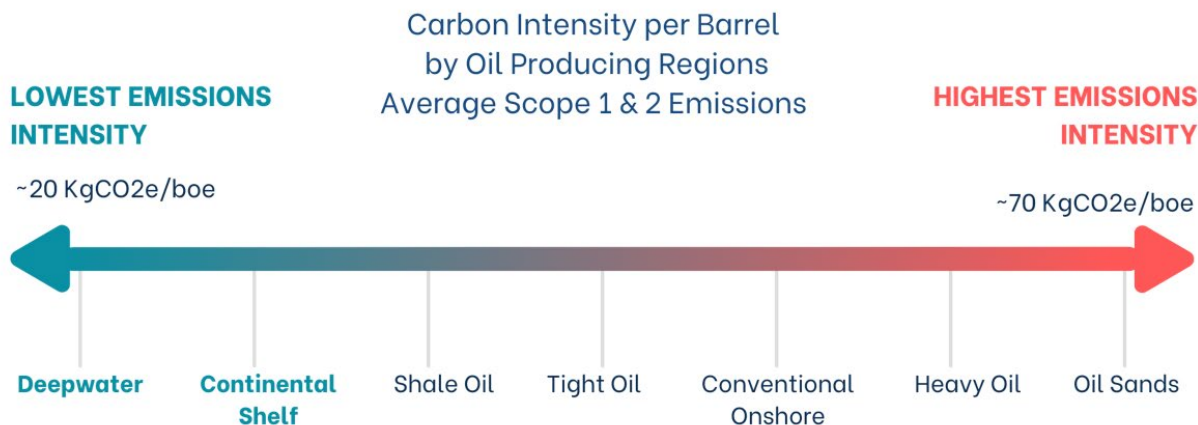
The National Ocean Industries Association (NOIA) respectfully submits these comments in response to the Council on Environmental Quality’s (CEQ) interim guidance to assist federal agencies in considering greenhouse gas (GHG) emissions and climate change effects of proposed major federal actions under the National Environmental Policy Act (NEPA). NOIA represents the interests of all segments of the offshore energy industry, including offshore oil and gas, offshore wind, offshore minerals, offshore carbon sequestration, and other emerging technologies. Our membership includes energy project leaseholders and developers and the entire supply chain of companies that make up an innovative ecosystem contributing to the safe and responsible development and production of offshore energy. In addition, our members have invested significantly in the research, development, demonstration, and deployment of all types of low and zero carbon technologies. This includes wind, carbon capture and storage, hydrogen, geothermal, and more. The companies in the offshore energy industry will be key participants in building and integrating these technologies at scale. NOIA and its members thus have a direct interest in the implementation of NEPA, specifically including this interim guidance.

NOIA membership as well as our larger industry recognizes the risks of climate change and the need for continued action to address it. As innovators, we are contributing solutions and best practices for addressing the climate challenge. We are committed to navigating the climate challenge, ensuring the availability of affordable energy, and providing energy security for the U.S. and global society. We welcome a clear regulatory framework that balances and enables these important objectives. From an American competitiveness standpoint, bureaucratic red tape and associated litigation continue to serve as significant impediments to investment in the large-scale energy projects that have the potential to be built here in the U.S.

The Offshore Energy Industry: A Global Leader in Climate Progress

The offshore industry is a demonstrated leader and partner in global efforts to address the climate challenge. The American offshore sector is transforming how hydrocarbons are produced, making new streams of energy and innovative energy solutions a reality today. These efforts include the transfer of offshore oil and gas expertise and revenues into areas such as offshore wind, hydrogen, and carbon capture and storage (CCS).

Given the projected continued demand for oil and gas resources for the U.S. and global economies, government policy should promote and encourage energy production from the lowest carbon-intensive sources of oil and gas on a per barrel basis. The U.S. offshore region is recognized as providing among the lowest carbon-intensive barrels of the various producing regions.¹ The U.S. Gulf of Mexico has a carbon-intensity one-half of other producing regions.² The deepwater—which represents 92% of oil production in the U.S. Gulf of Mexico—provides among the lowest carbon intensity of any oil producing region offshore or onshore. The chart below illustrates the distinct advantage of offshore oil production over other producing regions:



Source: Wood Mackenzie

U.S. government efforts should serve to promote U.S. offshore production over substitution of barrels from higher carbon intensity foreign sources. According to Wood Mackenzie, reducing oil production from the U.S. Gulf of Mexico would increase the average emissions rate for global oil production:

Using our recently updated [Emissions Benchmarking Tool](#), which profiles emissions for more than 2,800 oil and gas assets around the world, [researchers] Oberstoetter and Usoro were able to compare the carbon intensity of the principal sources of crude used in the US. Numerous factors drive the differences in intensity: emissions in Venezuela, Colombia and Canada are driven by the more energy-intensive processes needed to produce the heavier crude qualities, while in Iraq flaring is the big problem. The overall picture is clear, however: the deep water of the Gulf of Mexico is one of the lowest-carbon sources of oil used in the US, with only Saudi Arabia coming in lower. In the light of that, Oberstoetter and Usoro argue, restrictions on US production in the Gulf could end up having a counterproductive impact on global emissions. “Removing or handicapping a low emitter hurts the collective global average.”³

¹ See February 2021 Wood Mackenzie Report on “Carbon emissions performance in US GoM: a low emitter in the crossfire,” April 13, 2020 ChemRxiv “Statistical Study of Carbon Intensities in the GOM and PB,” and NOIA Fact Sheet on “Fighting Against Climate Change.”

² Motiwala, and Ismail, “Statistical Study of Carbon Intensities in the GOM and PB,” ChemRxiv, April 13, 2020.

³ <https://www.woodmac.com/news/the-challenge-of-negative-emissions/>

According to McKinsey, in the report titled “How the Gulf of Mexico can further the energy transition,” there are four key factors that give the deepwater Gulf of Mexico a “low carbon advantage”:

First, in contrast to other regions where flaring natural gas without a market is more commonplace, most of the natural gas produced in the Gulf of Mexico is sold to local markets, which results in minimal routine flaring and, consequently, less GHG emissions. Second, the facilities have efficient, modern designs that minimize methane leakage. Third, wells and production facilities have a high throughput, minimizing the number of energy-intensive processes required to bring on new supply, such as drilling. And fourth, operators have made active decarbonization efforts to stay in line with environmental sustainability goals and in compliance with regulations.⁴

McKinsey estimates production from the U.S. Gulf of Mexico could decrease by about 800,000 barrels per day by 2040 without additional projects beyond those that have already been sanctioned. In that situation, McKinsey expects lost production would be made up by substitutions from other parts of the world without much oil demand destruction. The country would be able to import sufficient oil, but it would come from higher-emitting basins, resulting in an increase in greenhouse gas emissions globally:

This supply reduction would have to be offset by alternative sources to meet global demand, which could hinder net-zero goals significantly. Because many other oil producing regions globally have total unit costs similar to those in the Gulf of Mexico, global oil price increases or substitution with other energy sources wouldn't be expected, and global demand for oil would remain unchanged. Instead, the reduced Gulf supply would be offset by production increases from other sources, such as other deepwater basins, shale, and OPEC. Based on the higher emissions per barrel of this new supply, global emissions would increase by 50 million to 100 million metric tons of CO₂e through 2040.⁵

McKinsey also points out other significant, adverse consequences if America moves away from deepwater Gulf of Mexico oil production, “A shift in production from the Gulf of Mexico to other basins could also have broader implications for the U.S. economy, including the loss of more than 100,000 jobs and a \$30 billion to \$40 billion reduction in federal government revenue from reduced royalties and lease-sale proceeds.”⁶

Innovation and technological progress continue on a daily basis in the U.S. offshore energy industry. The multitude of companies needed to produce energy offshore work collaboratively

⁴ Brown, Di Fiori, Smith, and Yanosek, “Deepwater Gulf of Mexico’s role during the energy transition,” McKinsey, September 2022, at pages 3-4.

⁵ Brown, Di Fiori, Smith, and Yanosek, “Deepwater Gulf of Mexico’s role during the energy transition,” McKinsey, September 2022, at page 6.

⁶ Brown, Di Fiori, Smith, and Yanosek, “Deepwater Gulf of Mexico’s role during the energy transition,” McKinsey, September 2022, at page 6.



to shrink an already small carbon footprint.⁷ From electrifying operations to deploying innovative solutions that reduce the size, weight, and part-count of offshore infrastructure—thus increasing safety and lowering the carbon footprint—the U.S. Gulf of Mexico is home to an ongoing high-tech revolution. Offshore operators have collaborated to standardize subsea tiebacks and share facilities, decreasing the need for more facilities and lowering the carbon intensity of offshore operations. Drones and subsea remotely operated vehicles (ROVs) are patrolling and connecting onshore and offshore operations with detailed real-time data. AI and machine learning are enabling greater efficiencies while also spotting potential issues before they have a chance to become real problems. And oil and gas operations can coexist with wind and other uses of the Outer Continental Shelf.

CCS also is a fundamental tool in combating climate change. The International Energy Agency deems CCS “an important opportunity to achieve deep carbon dioxide emissions reductions.”⁸ The U.S. Gulf of Mexico soon could very well be the leader in CCS, with proposed regulations expected from the Bureau of Ocean Energy Management (BOEM). Early views on the potential opportunity point out that up to fifty million tons of CO₂ annually could be stored beneath the Gulf of Mexico by 2030, more than all the CCS currently operating globally, and could potentially double from there by 2040.⁹ Subsea deep formations, including those that have long held oil and gas reserves, are ideal repositories for sequestered carbon.¹⁰

As reflected in our Climate Change Position & Principles,¹¹ NOIA supports the efforts of our members in understanding and improving their emissions footprint and setting sustainability goals and targets, assists our members by facilitating collaboration and enhancing organizational capability to support emissions reduction efforts, and seeks to be a constructive partner in the development of thoughtful and balanced national policy to address climate change. Building the infrastructure of the future and deploying technologies in support of decarbonization requires a far more streamlined permitting process. With NEPA at the heart of federal agency permitting, CEQ and implementing agencies must tighten the process with far greater certainty and predictability through sensible guidance and timely reviews.

NEPA’s Impact on Investment in and Completion of Offshore Energy Projects

NEPA is a foundational environmental law and is designed to fulfill the important objectives of informed decision-making and public participation. The intent of NEPA is clear and has been validated by the U.S. Supreme Court. As stated by the Court in *Public Citizen*:

Signed into law on January 1, 1970, NEPA establishes a “national policy [to] encourage productive and enjoyable harmony between man and his environment,” and was intended to reduce or eliminate environmental damage and to promote the

⁷ See NOIA 2023 ESG Report, with industry case studies on emissions reduction approaches, at <https://www.noia.org/wp-content/uploads/2023/01/2023-NOIA-ESG-Report.pdf>

⁸ <https://www.iea.org/reports/the-role-of-co2-storage>

⁹ https://corporate.exxonmobil.com/News/Newsroom/News-releases/2022/0120_Industry-support-for-large-scale-carbon-capture-and-storage-gains-momentum-in-Houston

¹⁰ <https://www.iea.org/commentaries/the-world-has-vast-capacity-to-store-co2-net-zero-means-we-ll-need-it>

¹¹ <https://www.noia.org/climatechange/>



“understanding of the ecological systems and natural resources important to” the United States. 42 U.S.C. Section 4321. “NEPA itself does not mandate particular results” in order to accomplish these ends. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Rather, NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analysis of the environmental impact of their proposals and actions.” See *id.*, at 349-350.

Importantly, the Supreme Court referenced in *Public Citizen* the specific language of the CEQ’s regulations to clarify the statute’s role: “The NEPA process is intended to help public officials make decisions that are based on understanding of the environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 CFR Section 1502.1. NEPA’s purposes are frustrated, however, when analysis is prepared for the sake of more analysis, or employs assumptions or calculations ill-suited to the proposed agency action at hand. In such circumstances, protracted and voluminous NEPA reviews only serve to confuse rather than inform the agency decision-maker and the public.

The delays in federal approvals for construction of major projects because of NEPA is well known and thoroughly documented.¹² As billions of dollars are expended by the federal government through landmark legislation for infrastructure and energy projects, NEPA and other delay concerns become more problematic. The Inflation Reduction Act passed in August of 2022 includes nearly \$370 billion in incentives for clean energy investments. A substantial portion of these investments likely will require NEPA review. No matter the type of project, NEPA adds a heightened level of uncertainty for investors, particularly in light of CEQ’s interim guidance. Due to the scale of modern energy projects and the inefficiency of the current NEPA review process, investors must often choose between developing a project in the U.S., with its added red tape, uncertainties, and threats of litigation, or deploying that capital in other parts of the world.

A prime example of the global nature of energy investment opportunities is CCS. According to the International Energy Agency:

Carbon capture, utilisation and storage (CCUS) technologies offer an important opportunity to achieve deep carbon dioxide (CO₂) emissions reductions in key industrial processes and in the use of fossil fuels in the power sector. CCUS can also enable new clean energy pathways, including low-carbon hydrogen production, while providing a foundation for many carbon dioxide removal (CDR) technologies.

See <https://www.iea.org/reports/the-role-of-co2-storage>.

The U.S. has thus far led efforts in CCS, with 10 of the 19 worldwide projects operating located in the U.S. in 2019. While most projects to date have included an enhanced oil recovery component, the U.S. is well-positioned to lead in pure storage projects. As it relates specifically

¹² See Environmental Impact Statement Timelines (2010-2018), Council on Environmental Quality (June 12, 2020), available at https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf (last accessed March 14, 2023) (“CEQ found that across all Federal agencies, the average (i.e., mean) EIS completion time (from NOI to ROD) was 4.5 years”)



to offshore, the National Petroleum Council concluded that “One of the largest opportunities for saline formation storage in the United States can be found in federal waters, particularly in the Gulf of Mexico.”¹³ The U.S. Gulf of Mexico offshore region provides tremendous advantages for an emerging U.S. CCS sector. The Gulf of Mexico is characterized by vast geologic prospects for CO₂ storage, extensive and established energy infrastructure along the Gulf Coast and throughout the outer continental shelf, a proximity to industrial centers for capturing emissions, and an assessable engineering and energy knowledge base and workforce, along with associated RD&D capabilities.

However, investment in U.S. CCS projects is at risk. Projects compete for investment at a global scale and federal permitting remains a serious obstacle to billions of dollars of investment that could flood the U.S. market. This is abundantly clear in the momentum in Europe to scale up CCS projects. According to the International Association of Oil and Gas Producers, there are more than seventy existing or planned projects in Europe. With vast amounts of capital required and long lead times, the U.S. could quickly fall behind in its ability to secure the decarbonization opportunity of CCS because of inefficiencies and confusion stemming from NEPA reviews.

Red tape has already created a serious drag on U.S. investment in CCS. The Infrastructure Investment and Jobs Act (IIJA) was passed into law in November 2021. The IIJA includes a requirement for the U.S. Department of the Interior to promulgate regulations for the sequestration of carbon dioxide in the U.S. outer continental shelf by November 2022. Interior missed this deadline and has yet to issue a proposed rule. As a result, there is no timeline in sight for leasing Outer Continental Shelf acreage for sequestering carbon dioxide, and leasing is merely the first step in the process for investment. Beyond leasing regulations for federal offshore CCS, NEPA adds substantial uncertainty in investment and major delays for those projects that ultimately get the greenlight for development.

Importantly, more streamlined NEPA reviews are wholly consistent with achieving NEPA’s important procedural goals. NOIA commends CEQ and individual agencies for taking steps to expedite and improve the NEPA process. Several aspects of CEQ’s 2020 updates to its NEPA regulations helpfully codify best practices and case law to save both agency and applicant time and resources. Further NEPA guidance to agencies could help as well, but *only* to the extent it simplifies and puts reasonable bounds on the analysis for agencies. While NOIA supports CEQ providing greater certainty and uniformity in agencies’ review of climate effects in NEPA analyses, we are concerned that aspects of the latest interim guidance will exacerbate ambiguity and delay without meaningful improvements in decision-making. Moreover, to the extent that CEQ intends to change federal agencies’ approaches to NEPA analysis, CEQ should appropriately undertake notice and comment rulemaking in lieu of guidance that includes a footnote stating it is legally non-binding yet as a practical matter is controlling on agencies. *See* 88 Fed. Reg. at 1,197 n.4).¹⁴ CEQ also asserts that this interim guidance will control CEQ’s review of individual agencies’ proposed revisions to their own NEPA implementing regulations going forward. *See id.* at 1,198. These concerns are particularly salient given the years of flip-flopping and revisions for this guidance, which could continue going forward. *See* 88 Fed. Reg.

¹³ *Meeting the Dual Challenge: A Roadmap to At-Scale Deployment of Carbon Capture, Use, and Storage*, December 2019, p. 27, Volume 1, Report Summary.

¹⁴ It is unclear why this guidance is proceeding on a separate, non-regulatory track.



at 1198 n.16. Our members need certainty in the NEPA process going forward, particularly given the massive investments necessary to realize critical offshore energy development.

Areas for Improvement in CEQ's Interim Guidance

U.S. policy should support the development and availability of all forms of abundant, reliable, and affordable domestic energy supplies for Americans, while continuously reducing emissions. NOIA's members are investing in and deploying low and zero carbon technologies, while also continuing to develop traditional energy sources that are vital for the U.S. market.

While the interim guidance focuses on the consideration by federal agencies of greenhouse gas emissions, the document sets forth interpretations of NEPA that may be used for analysis of *all* types of environmental impacts. CEQ should exercise caution when finalizing the guidance document so that it does not transform climate effects analysis into a shorthand means to select winners and losers among various proposed energy projects, all of which are needed to meet domestic economic growth and national security goals.

There is broad and bipartisan consensus on the need to streamline permitting so that the U.S. can get to the task of building vital infrastructure and energy projects without delay. Legislative proposals related to permitting reform on both sides of the aisle include NEPA as a common denominator. (*See, e.g.*, the Energy Independence and Security Act of 2022, the BUILDER Act of 2021, and the TAP American Energy Act of 2022.) In the interim, CEQ should exercise its own discretion to achieve these same ends. At a minimum, CEQ should not foster even more confusion surrounding what constitutes an adequate environmental review under NEPA, further prolong the already lengthy review process, or create grist for litigation challenges to federal agency decisions based solely on *de minimis* technicalities.

1. CEQ's Emphasis on the "Rule of Reason" Should Direct Agencies to Explain the Utility of Climate-Related Information for Environmental Review of Different Proposed Agency Actions.

The court in *Public Citizen* explained the "rule of reason" applies to NEPA and it serves to ensure "that agencies determine whether and to what extent to prepare an EIS based upon the usefulness of any new potential information in the decision making process." By deferring to federal agency analysis methods, the court acknowledged the importance of a federal agency's knowledge and experience as it relates to the area that it regulates.

The "rule of reason" should be a core principle of any NEPA review, and CEQ, here, has rightly emphasized an agency's ability to rely on it when considering GHG emissions. This means the range of alternatives in the context of GHG emissions considered by agencies should be reasonable, practical, and bounded. The guidance notes that this "rule of reason" basis should be used when determining the appropriate depth of analysis such that precision regarding emission reduction benefits does not come at the expense of efficient and accessible analysis. The appropriate scope of GHG analysis for an agency rulemaking, a landscape-level planning decision, or an individual project should be very different. NOIA concurs with CEQ that a one shoe fits all requirement to consider GHG emissions in any preset manner cannot exist within

the NEPA framework, and agencies may successfully rely on very different types and scopes of GHG emission information so long as they provide their reasoning.

CEQ's references to the "rule of reason" throughout the guidance help make it clear that agencies should focus their analyses on the usefulness of the information based upon their nuanced knowledge and experience. CEQ can further clarify the importance of an agency's reliance on the "rule of reason" by expressly stating that agencies should describe the relative usefulness of the GHG-related information provided or not provided.

2. CEQ Should Direct Agencies to Identify Assumptions and Uncertainties in GHG Analyses to Enhance Their Defensibility.

NEPA analysis has evolved to the point where agencies and applicants are carrying out environmental analysis in a defensive posture, attempting to check every possible box in order to create the most defensible record for often inevitable court challenges by opponents that routinely utilize NEPA litigation as a tool to delay or stop projects, including renewable energy. CEQ should not perpetuate this unfortunate trend for GHG analyses within NEPA reviews. Rather, consistent with its regulations, where agencies can demonstrate that incomplete or unavailable information regarding climate effects is not essential to reasoned decision making, further analysis should not be required. *See* 40 CFR 1502.21.

Performing sufficient GHG analysis should not be a herculean task. While it may be important to understand GHG emissions related to federally approved projects under certain circumstances, inclusion of a *quantitative* analysis of the impacts of GHG emissions compared to a "No Action" alternative is not required by NEPA and may not be appropriate under many circumstances where either (1) the GHG emissions impacts can be qualitatively concluded as insignificant, or (2) there is no adequate data or methodology to support a quantitative conclusion. That is why previous iterations of CEQ's guidance did not call for universal quantitative analyses. CEQ likewise should not do so now.

CEQ's interim guidance could be read to recommend consideration of a multitude of impacts and scenarios that can be far removed from the proposed major federal action. Attempting to expand analysis beyond a single localized project's contours and instead proffer predictive global climate change effects creates further validity concerns due to the necessarily increased level of speculation inherent in the analysis. It is for this reason, in part, why it is so critical for the integrity of any NEPA review for the applicable federal agency to clearly identify what certainties and uncertainties exist in any data as well as in its analysis and methodologies. And that uncertainty neither defeats the NEPA analysis nor is cured by rampant speculation.

Based upon the rule of reason, an agency should describe the relative certainties or uncertainties in its GHG modeling and make it clear that the analysis has been conducted to best ensure that the decisionmaker has the most useful relevant information. This can be done with an eye toward the inevitable judicial review so that the courts are not in a position to unreasonably and unnecessarily substitute their own judgment for that of the experts in the agency. It is important for agencies, and CEQ through any guidance it issues to agencies, to understand and acknowledge the uncertainties that exist with modeling of GHG emissions and associated

climate impacts. Climate and economic models are inherently imprecise. Models instead are used to forecast general trends and give an idea of the magnitude of impact key variables may have on certain outcomes; applying models that were designed to quantify a broad suite of global impacts may provide a false sense of precision when applied to project level evaluation.

Because of the inherent uncertainties of modeled predictions, agencies should be allowed to provide a range of estimated GHG impacts based on the variation in external factors. CEQ can also help agencies make reviews more defensible in court by finalizing a guidance document that ensures the review process adheres to the basic purpose of assisting the decision maker with an understanding of the environmental consequences, without directing agencies to engage in speculative analysis. In addition, while the interim guidance encourages agencies to seek information to quantify emissions, CEQ should go a step further and direct agencies upon receipt of such information to not undertake redundant efforts.

3. Indirect and Downstream Climate Impacts Are Inherently Uncertain

Consistent with the purpose of NEPA, the primary focus by federal agencies conducting NEPA reviews should be on the direct impacts of the action – both adverse and beneficial. Under the reasonable foreseeability standard, NEPA analysis also generally considers the proposed action's incremental contribution to indirect and cumulative impacts. Under the guidance and in the context of cumulative impacts, agencies are expressly directed to consider upstream and downstream impacts. Agency consideration of those more removed impacts should be balanced such that the impacts are considered in the context of the nature of the specific proposed action and the uncertainties associated with evaluating such impacts. Agencies should be directed to identify the extent of any uncertainties associated with these more removed, speculative, and conditional impacts. This would inject transparency and allow agencies to consider feedback on the reliance on certain assumptions, variable factors, or modeling approaches.

For example, as explained in the guidance, for offshore oil and gas leasing, agencies are instructed to include estimates of the greenhouse gas emissions that occur through end-use of the final products marketed in the economy. This type of analysis depends upon a multitude of assumptions and associated modeling to determine impacts that may or may not occur years down the road. For example, in just the last couple years alone, as a function of shifting just a couple of assumptions, Interior has opined both that not holding domestic offshore lease sales may result in both slightly higher and slightly lower domestic GHG emissions. While the important analytical takeaway should be the nominal scale of climate impacts—thus rendering the issue immaterial for agency decisionmaking—opponents and courts have instead seized upon the directionality of the impacts as dispositive of agency decision-making.

With offshore oil and gas leases, production may not occur for several years after the lease is secured, and most leases never result in production. Among other factors, such greenhouse gas estimates related to the downstream end-use rely upon speculative projections of future global supply and demand. There are dozens of scenarios for global oil demand and these scenarios extend out to year 2040, 2050, or beyond, including scenarios from organizations such as the International Energy Agency and Energy Information Administration. Every year, the assumptions and modeling change for these scenarios, and new scenarios are developed.

Recently completed NEPA analyses of offshore oil and gas leasing suggests that the no leasing alternative could result in fewer greenhouse gases in future years. However, this is based upon assumptions of what the global energy system may look like in 10, 20, or 30 years. This also requires a substitution analysis related to potential alternative energy sources that may be in the mix many years down the road. The guidance states that “Agencies should disclose any assumptions and inputs used in substitution analysis and models that *accurately account for reasonable and available energy substitute resources.*” CEQ should clarify this statement because it is in direct reference to projections, and projections such as this are inherently uncertain. In other words, there is inherent inaccuracy involved in this type of analysis and modeling. This type of NEPA analysis must make it clear to the decision-maker that these types of projections and modeling have substantial uncertainty.

As stated earlier, agencies can also address this uncertainty and create a defensible record by providing a range of potential emissions related to the federal action. Where agencies under the rule of reason determine that quantification of GHG emissions is warranted for a proposed action, CEQ should consider recommending preparation of a range of GHG estimates. By contrast, CEQ should not recommend untethered assessments of indirect and cumulative GHG effects that exaggerate the potential impacts of the proposed action, ignore proportionality between localized action and contribution to global climate impacts, and simply operate to stack the deck against types of energy projects that may be less favored as a policy matter at any given time.

4. NEPA GHG Analyses Should Be Placed in Context.

This type of NEPA analysis should also put estimates of future, speculative impacts into the broader, fact-based context of the energy system. While there is inherent uncertainty in trying to predict the future, we know today, based upon empirical analysis, that the U.S. offshore region provides among the lowest carbon intensity barrels of oil of all the producing regions in the world.¹⁵ Relatedly, we also know that production from U.S. offshore oil and gas development comes from an ever-decreasing environmental footprint:

Gulf of Mexico Oil and Gas Lease Information¹⁶

Date	Number of Active Leases	Acreage of Active Leases	Number of Producing Leases	Acreage of Producing Leases	Number of Non-producing Leases	Acreage of Non-producing Leases	Average Daily Production
December 2021	2,018	10,773,137	540	2,766,936	1,478	8,006,201	1.73 mbpd
December 2016	3,257	17,331,283	873	4,301,193	2,381	13,030,090	1.73 mbpd
December 2011	5,873	31,576,909	1,244	6,065,566	4,629	25,511,343	1.25 mbpd

¹⁵ See <https://www.woodmac.com/news/the-challenge-of-negative-emissions/>; <https://www.mckinsey.com/industries/oil-and-gas/our-insights/how-the-gulf-of-mexico-can-further-the-energy-transition>

¹⁶ Source: [BOEM](#), [EIA](#) (As of March 2022, there are 1,997 active leases, with 479 producing leases, 1,518 non-producing leases in the Gulf of Mexico.)



The above leasing data demonstrates that the industry is innovating and advancing technologies to do more with less. Over the 10-year period from 2011, the industry increased oil production in the Gulf of Mexico by 38 percent while the number of producing leases decreased by 57 percent. This is an impressive achievement.

Current oil production from federal Gulf of Mexico waters flows from leases that were issued many years ago, with many producing leases issued more than 10 years ago. The environmental analyses associated with the leases that are producing today, from many years back, did not project that we would have nearly 700 fewer producing leases with an increase in production of nearly 500,000 barrels per day.

The guidance expressly identifies renewable energy projects as an example where in-depth analysis of GHG emissions and climate change should not be required. Comparably, the guidance emphasizes that certain renewable energy projects, such as utility-scale solar and offshore wind, do not warrant a detailed analysis of lifetime GHG emissions in light of their relative minor and short-term GHG emissions associated with short-term construction. CEQ and agencies should consider similar treatment for carbon capture and storage projects, due to the resulting negative carbon emissions. Moreover, the guidance should identify comparable carbon-reducing trends as a critical piece of information that agencies must consider in the context of GHG emission analysis, such as the comparable low carbon intensity of offshore oil and gas development. Such data could be incorporated by reference in NEPA analyses to avoid duplication or inconsistency.

5. When Considering the No Action Alternative, Agencies Should Identify Alternative Energy Sources That Are Readily Available and Their Respective GHG Emissions.

When considering indirect and cumulative, including upstream and downstream impacts of offshore energy development, agencies also should explain the GHG consequences that will occur, over the subsequent several decades, of selecting the no action alternative. For example, for offshore oil and gas leasing, Interior should consider the reasonably foreseeable substitution effects of not producing the oil and gas resources from a U.S. basin that has a proven environmental responsibility and GHG reduction record. While there is uncertainty in predicting downstream GHG impacts related to U.S. offshore oil and gas leasing, it is certain that reduced offshore oil and gas leasing will result in a shift in oil production to other regions of the world. This in turn will result in a long-term decline in energy security, national security, energy affordability, government revenues, funding for the Land & Water Conservation Fund, funding for coastal restoration and resiliency, high-paying jobs, and funding for decarbonization efforts.

This is particularly true for a region like the U.S. Gulf of Mexico. The Gulf of Mexico is globally recognized as a premier global energy hub, bringing together the companies that produce foundational energy sources such as oil and gas, while leading innovation and investment in energy sources and technologies that will drive decarbonization efforts well into the future. In essence, the oil and gas industry is often in the vanguard of the development and deployment of zero carbon, low carbon, and carbon removal technologies. The offshore energy sector often has the expertise and experience to deploy and scale technologies at levels necessary to achieve decarbonization objectives. Companies throughout the offshore oil and gas supply chain continue to lead the way in innovating low emission solutions that include offshore wind, carbon capture and storage,

hydrogen, and geothermal, among others. For the foreseeable future, the U.S. Gulf of Mexico offshore energy sector will play an integral role in shaping an energy system that promotes the vision of affordable and reliable energy while simultaneously continuing to reduce the environmental and emissions footprint of development and distribution.

Importantly, for the coming decades, oil and gas supplies will remain a vital energy source for Americans and our allies around the globe. The uncertainty and unpredictability of global energy markets has been made abundantly evident in the energy challenges associated with Russia's invasion of Ukraine, which has shocked global natural gas markets and pushed countries to revert to coal power generation.¹⁷

Natural gas production can be expanded in the U.S. to help meet the import needs of Europe and reduce the GHG footprint of the European power sector. The federal resources of the U.S. Gulf of Mexico can be part of the solution. The Gulf of Mexico sits atop substantial natural gas deposits and is in close proximity to Gulf Coast LNG facilities that serve the European and other markets. Quite simply, these are GHG benefits of domestic offshore oil and gas leasing that should be considered in NEPA documents. But, when it comes to NEPA analysis related to U.S. oil and gas projects, this type of assessment of GHG benefits is often absent, though it is no less important for the decisionmaker than an abstract mathematical calculation of GHGs from forgone domestic production volumes.

The NEPA analysis associated with decisions related to U.S. energy production should clearly acknowledge, in the context of the indirect and cumulative impacts, that a failure to lease and produce energy here at home—namely in the U.S. Gulf of Mexico—will ultimately contribute to the erosion of an entire domestic energy system that is vital for our nation's long-term energy and national security, including our efforts to decarbonize the economy. When considering the Gulf of Mexico oil and gas sector, our country has spent several decades building an efficient energy system that includes upstream, midstream, and downstream infrastructure, thousands of companies with hundreds of thousands of employees, engineering expertise, and a robust system of laws and regulations. Relevant NEPA documents should acknowledge the importance and value of such an energy system as it relates to the indirect, cumulative, and long-term impacts, and the likely consequences in failing to sustain this energy system will shift investment and production to foreign regions with much less efficiency and far greater emissions profiles. This could also be accompanied by a loss in companies with the talent, expertise, and resources required for decarbonization efforts.

6. GHG Impacts Should Only be Considered When the Reviewing Agency has Authority to Consider Them.

CEQ should further revise the guidance to make clear that any GHG emission consideration by agencies should be only for those projects where the agency has the authority to consider GHG emissions as allowed by statute and case precedent. CEQ should specifically note that under some

¹⁷ See <https://www.reuters.com/business/energy/germany-extends-run-times-coal-fired-power-plants-boost-supply-2022-09-28/>; <https://www.bloomberg.com/news/articles/2022-12-22/germany-returns-to-coal-as-energy-security-trumps-climate-goals>

circumstances, a federal agency has no statutory authority to regulate or to consider GHG emissions and the guidance is thus inapplicable to the agency's NEPA review.

The Outer Continental Shelf Lands Act ("OCSLA") and subsequent legislation like the Inflation Reduction Act of 2022 make clear that the federal government must lease offshore oil and natural gas resources.¹⁸ Interior lacks discretion to not hold offshore lease sales. For instance, a court recently found that OCSLA "requires [BOEM] to sell oil and gas leases."¹⁹ Further, under OCSLA and NEPA, Interior is not permitted to consider downstream climate effects in implementing offshore leasing programs.²⁰

7. Social Cost of GHG Is Unnecessary and Inappropriate for NEPA Reviews, Especially for Project-Specific NEPA Analysis.

The guidance directs agencies to translate the quantification of GHG emissions and the assessment of climate change effects into present-value dollars by utilizing social cost of GHG (SCGHG) tools (including social cost of carbon – SCC) and best available data. The guidance nowhere explains that the SCGHG is a regulatory *cost-benefit analysis* tool. Importantly, NEPA does *not* require cost-benefit analysis, much less monetization of impacts, unlike a Regulatory Impact Analysis under Executive Order 12866 for economically significant rulemakings. Indeed, CEQ's regulations provide: "For purposes of complying with [NEPA], agencies need not display the weighing of the merits and drawbacks of the various alternatives in a monetary cost-benefit analysis and should not do so when there are important qualitative considerations." *See* 40 CFR 1502.22. This is particularly true if only a small subset of projected impacts (i.e., GHG emissions) is monetized. More specifically, despite its procedural nature, the guidance appears aimed to achieve the substantive result of deterring approvals of proposed oil and gas activities, even offshore. *See* 88 Fed. Reg. 1,198 n.19 (identifying substantive policy goals purportedly served by this interim guidance).

CEQ's guidance is also premature, at best. E.O. 13990 expressly directed the Interagency Working Group (IWG) to "provide recommendations to the President, by no later than September 1, 2021, regarding areas of decision-making, budgeting, and procurement by the Federal Government where the SCC, SCN, and SCM [social cost of methane] should be applied." To date, no such recommendation has been made public, nor have courts directed CEQ or any agency to specifically utilize the SCGHG, including for NEPA analysis. CEQ's interim guidance is an example of taking steps ahead of the IWG to direct agencies to unilaterally consider GHG emissions under all NEPA reviews.

IWG's failure to endorse CEQ's guidance is concerning for a number of reasons. The SCGHG has historically been used as a tool for full cost-benefit analysis as part of regulatory impact analysis in rulemaking. In fact, there is no statutory or regulatory authority to apply the SCGHG broadly

¹⁸ *See* 43 U.S.C. § 1331 *et seq.*; Public Law 117-169.

¹⁹ *Louisiana v. Biden*, No. 2:21-CV-00778, 2022 WL 3570933 (W.D. La. Aug. 18, 2022)

²⁰ *See Center for Biological Diversity v. U.S. Department of Interior*, 563 F.3d 466, 485 (D.C. Cir. 2009) (OCSLA does not authorize consideration of downstream climate effects); *see Sierra Club v. FERC*, 867 F.3d 1357, 1372 (D.C. Cir. 2019) (NEPA does not require agencies to evaluate environmental effects that they lack authority to consider).



across federal agency actions. Given the absence of Congressional authorization to use the SCGHG to such an expansive reach, any use without the endorsement of either Congress or through the notice-and-comment process should be limited solely to full cost-benefit analyses as part of regulatory impact analyses during agency rulemakings. Given the extraordinary circumstances and policy CEQ has initiated by this guidance, it is even more worrisome that CEQ failed to seek public input through notice and comment before making this guidance immediately effective.

Conclusion

In closing, NOIA and the full diversity of its membership are committed to the advancement of principles of innovation, conservation, efficiency, resiliency, mitigation, adaptation, and best practices that must be part of a systematic approach to addressing climate change. We look forward to continued engagement with all agencies in the federal family as CEQ's regulations and guidance are considered, finalized, and incorporated into the NEPA review process. We appreciate your consideration of the comments herein. NOIA and its members remain available to discuss our comments.

Very respectfully,

A handwritten signature in black ink, appearing to read "Erik Milito". The signature is fluid and cursive, with a small mark above the "i" in "Milito".

Erik Milito
President
National Ocean Industries Association