January 27, 2025

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Submitted Electronically via regulations.gov
Docket ID: BOEM-2023-0046

Subject: Comments on the Draft Programmatic Environmental Impact Statement for Gulf of Mexico Regional Outer Continental Shelf Oil and Gas Lease Sales, 89 Fed. Reg. 101,044 (Dec. 13, 2024)

The American Petroleum Institute (API), EnerGeo Alliance (EnerGeo), Independent Petroleum Association of America (IPAA), Louisiana Mid-Continent Oil & Gas Association (LMOGA), National Ocean Industries Association (NOIA), and Offshore Operators Committee (OOC) (collectively, the Associations) offer the following comments on the Bureau of Ocean Energy Management's (BOEM) Draft Programmatic Environmental Impact Statement (DPEIS) for Gulf of Mexico (GOM)[1] Regional Outer Continental Shelf (OCS) Oil and Gas Lease Sales, which is expected to be used to inform the decision for the first GOM oil and gas lease sale in the 2024-2029 National OCS Oil and Gas Program, to inform decision on additional future GOM lease sales, and to support post-lease site-and activity-specific OCS oil-and gas-related activity analyses and approvals. 89 Fed. Reg. at 101,044. For many years, the Associations and our members have worked collaboratively with the Department of the Interior (DOI) and its agencies (including BOEM) in support of the continued safety of industry workers and protection of the environment both offshore and onshore. At the same time, our members rely heavily on Congress's statutory mandates (repeatedly recognized by the courts) that DOI make the OCS available for leasing and expeditious development. Those mandates have been repeatedly reaffirmed by courts,

[1] President Trump issued an executive order on January 20, 2025, that directed the Secretary of the Interior, within 30 days of the date of that order, to "take all appropriate actions" to rename the area previously known as the Gulf of Mexico as the "Gulf of America." "Restoring Names that Honor American Greatness" sec. 4 (January 20, 2025). As of the date of these comments, that order had not yet been implemented, so these comments follow the terminology used in BOEM's DPEIS.

including in recently rejecting arbitrary and unsupported restrictions on leasing based on concerns regarding the Rice's whale that are once again reflected in the DPEIS's misguided Preferred Alternative C.

Many of our members are involved in exploring for and developing oil and natural gas resources in the GOM and we support BOEM, at a minimum, holding all lease sales as scheduled in the 2024-2029 National OCS Oil and Gas Program, and offering all unleased acreage not subject to moratorium in those lease sales. Accordingly, BOEM should adopt Alternative B in the DPEIS; the other alternatives do not meet legal requirements and are not adequately justified in the DPEIS.

The Associations

- API is a national trade association representing nearly 600 member companies that operate throughout the U.S. and on the OCS, and include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. API members provide most of the nation's energy and are committed to continued compliance with federal mineral leasing statutes, implementing regulations, and lease terms.
- EnerGeo is the international trade association representing the industry that provides geophysical services (geophysical data acquisition, processing and interpretation, geophysical information ownership and licensing, and associated services and product providers) to the oil and natural gas industry. EnerGeo member companies, which operate within the GOM, play an integral role in the successful exploration and development of offshore hydrocarbon resources through the acquisition and processing of geophysical data.
- IPAA is a national upstream trade association representing thousands of independent oil and natural gas producers and service companies across the United States. Independent producers develop 91 percent of the nation's oil and natural gas wells. These companies account for 83 percent of America's oil production, 90 percent of its natural gas and natural gas liquids production, and support over 4.5 million American jobs.
- Founded in 1923, LMOGA is Louisiana's longest standing trade association, exclusively representing all aspects of the oil and gas industry onshore and offshore, including exploration, production, mid-stream activities, pipeline, refining, and marketing.
- NOIA represents the interests of all segments of the offshore energy industry, including offshore oil and gas, offshore wind, offshore minerals, offshore carbon capture, use, and sequestration, and other emerging technologies. NOIA's 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.
- OOC member companies represent more than 90% of the oil and gas production in the GOM OCS with oil and natural gas operators, drilling contractors, and service providers. Its members recognize that offshore operations must be conducted safely and in a manner that protects the environment. The offshore industry has a long history of safe operations that has advanced the energy security of our nation and provided energy resources which are crucial to our nation's economy.

Summary of the Associations' Comments on the DPEIS

BOEM has undertaken multiple NEPA reviews encompassing oil and gas leasing in the GOM, comprising thousands of pages over several years—all of which support the safe and responsible leasing and development of OCS oil and gas subject to existing robust environmental safeguards. Most recently, BOEM prepared detailed NEPA reviews for GOM Region-wide Lease Sales 259 and 261, and a voluntary PEIS for BOEM's 2024-2029 Proposed Final Program, which contemplates merely three lease sales and only within the GOM. Prior to that, Congress via the 2022 Inflation Reduction Act (IRA) expressly found sufficient the similarly robust environmental analyses prepared for Lease Sale 257. These studies show that, in light of this exhaustive analysis to date, GOM oil and gas operations and their effects are well understood. The supplemental analysis for Lease Sales 259 and 261, which was completed in January 2023, concluded that no available new information alters BOEM's prior findings or otherwise reveals new significant impacts from the GOM lease sales.

The Associations are aware of no new information that would change these conclusions for this DPEIS, nor does the DPEIS identify any such new information. Consistent with the Regional Director's note at page iii of the DPEIS, the Final PEIS should make clear that it supports the decision for the first GOM oil and gas lease sale, as well as future leasing and post-lease site-and activity-specific OCS oil-and gas-related activity analyses and approvals, pursuant to the 2024-2029 GOM OCS Oil and Gas Leasing Program.

The President has issued two Executive Orders (EOs) highlighting the importance of increasing national energy production, including through increased OCS leasing. The first executive order, titled "Unleashing American Energy," finds that it is "in the national interest to unleash America's affordable and reliable energy and natural resources," and declares that it is "the policy of the United States. . . to encourage energy exploration and production on federal lands and waters, including the Outer Continental Shelf, in order to meet the needs of our citizens and solidify the United States as an energy leader long into the future." Executive Order No. ___, sec. 1, 2(a) (January 20, 2025). The EO directs that the heads of all agencies review all agency actions to identify those that impose an "undue burden" on the use of domestic energy resources and develop action plans to "suspend, revise or rescind" those actions. Section 3(a), 3(b).

A second executive order, titled "Declaring a National Energy Emergency," finds that the "energy . . . identification, leasing, development, production, transportation, refining and generation capacity of the United States are all far too inadequate to meet our Nation's needs" and that "the integrity and expansion of our Nation's energy infrastructure – from coast to coast – is an immediate and pressing priority for the protection of the United States' national and economic security." Executive Order No. ___., sec. 1 (January 20, 2025). One of its provisions directs heads of agencies to "identify and exercise any lawful emergency authorities available to them, as well as all other lawful authorities they possess," to facilitate the "identification, **leasing**, siting, production, transportation, refining and generation of domestic energy resources, including, but not limited to, on Federal lands." Section 2(a) (emphasis added).

The DPEIS analyzes four alternatives: Alternative A, the no-action alternative, which would cancel the next oil and gas lease sale in the 2024-2029 GOM OCS Leasing Program; Alternative B, the Proposed Action, which would provide for a lease sale of available unleased blocks in the Central and Western GOM subject to certain existing exclusions; Alternative C, the "Preferred Alternative," which would exclude substantial additional areas from leasing, particularly based on purported concerns about

proposed critical habitat for the Rice's whale; and Alternative D, which would add still further exclusions from leasing.

The Associations believe that only Alternative B is supported by the record and consistent with applicable legal requirements, and is reinforced by the aforementioned recent executive orders. The DPEIS does not provide a reasoned basis for adopting the other Alternatives.

Alternative A would restrict critical production of oil and gas and would have substantial adverse effects on the industry and on the region's economy. As for Alternatives C and D, they contain extensive exclusions from leasing that are inconsistent with OCSLA, lack sound justification and are not analyzed in detail in the DPEIS. The exclusions generally relate to potential conflicts with other uses of leased areas that have in the past been effectively managed case-by-case through lease conditions rather than exclusions, and that lessees and BOEM are able to address when they arise. The draft EIS proposes broad exclusions from leasing based on conflicting uses with little discussion (and in some instances, no discussion) of whether the conflict could be managed through BOEM's historical approach, rather than excluding the areas in question from leasing. The DPEIS does not explain why BOEM's approach was inadequate, and what necessitates such broad exclusions from leasing. The broad exclusions are especially inappropriate for wind areas now that all of the OCS has been temporarily withdrawn for wind leasing.[2] Moreover, despite Alternative C's additional acreage restrictions reportedly designed to avoid environmental risks, those risks are not, in fact, avoided by the exclusions, and the risk impacts are nearly identical to Alternative B. Once Alternative A is set aside, a review of BOEM's analysis of impacts from the other three alternatives demonstrates that the potential impacts of Alternative B are similar to those of Alternatives C and D, so that Alternative B should be selected.

Finally, like in its omission of more frequent lease sales in the 2024-2029 GOM OCS Leasing Program, BOEM cannot justifiably rely on its analysis of greenhouse gas (GHG) emissions to restrict leasing, and particularly cannot rely on speculative modeling of foreign emissions. BOEM is not authorized to take GHG emissions into account in implementing OCSLA in any event, but the Associations oppose inclusion of erroneous analysis in the agency's record. Similarly, BOEM should omit discussion of the social cost of greenhouse gases from its analysis, given the limitations of available data and the limited context in which that tool is properly applied.

1. **Oil and Natural Gas are Critical to U.S. Energy Needs and Sound Energy Policy.**

As President Trump takes office, the outlook for American energy is strong. The United States has become a net exporter of energy, thanks largely to increased oil and natural gas production, reducing national reliance on foreign energy.[3] Oil and natural gas development on the OCS provides affordable and reliable energy and remains essential to America's long-term economic growth and national security. The U.S. oil and natural gas industry as a whole directly and indirectly supports nearly 11 million U.S. jobs and makes up nearly 8 percent of the U.S. economy.[4] As summarized above, the President has now

[2] Presidential Memorandum, "Temporary Withdrawal of all Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects" (January 20, 2025).

[3] U.S. Energy Information Administration, "U.S. Energy Facts Explained" https://www.eia.gov/energyexplained/us-energy-facts/.

[4] PricewaterhouseCoopers LLP, "Impacts of the Oil and Natural Gas Industry on the US Economy in 2021," https://www.api.org/-/media/files/policy/american-energy/pwc/2023/api-pwc-economic-impact-report-2023.pdf

issued two EOs that prioritize increased domestic energy production. One of these orders specifically highlights "energy exploration and production on . . . the Outer Continental Shelf," and the other directs agencies to use all "lawful authorities they possess" to facilitate "leasing . . . of domestic energy resources . . . on Federal lands."

The U.S. is now a global leader in both emissions improvements and energy production, thanks to the innovation and vitality of the U.S. oil and gas industry. We believe it is critically important to bring proper attention to the enormous benefits derived from continued oil and gas exploration and development on the OCS. It is just as critical that we highlight that significant curtailment of new offshore oil and gas leasing would effectively reduce our domestic energy supply but would not significantly reduce our demand for energy. Curtailment of leasing likely would result in the need for more oil and gas from countries with less stringent environmental standards and generate more GHG emissions than those associated with GOM deepwater production. As the DPEIS states at 1-8: "Although the United States consumes more than just oil and gas to fulfill its demand for energy, those fuels are fundamental to powering the U.S. economy. Oil and gas from the GOM OCS contributes to meeting domestic demand and enhances national energy security by reducing the need for imports of those resources." The DPEIS explains that ongoing exploration and development in the GOM OCS contributes to national energy needs "by contributing supply as well as benefits in terms of the balance of payments, energy security, technology, revenues, and employment." *Id.*

Annual offshore oil and gas industry investment is projected to be substantial in coming years, averaging almost $30 billion a year between 2025 and 2040. As set forth in Table 1, a recent economic study indicates that with additional leasing opportunities, investment and spending will increase by $4.8 billion a year by 2040. Under that scenario, the industry could support an average of 55,700 more jobs and would contribute an additional $4.6 billion to U.S. GDP each year. U.S. government revenues could rise by $1.7 billion annually by 2040, strengthening federal finances and the programs that depend on them.[5]

Table 1: Full Forecast Key Findings (2025-2040)

		Legislated Leasing Program Case Impacts		
Economic Impact	Base Case Average (2025-2040)	Average Impact (2025-2040)	End of Forecast Impact (2040)	Cumulative Impact (2025-2040)
Capital Investment and Spending ($ Billions)	$29.9	$2.8	$4.8	$44.9
Employment	362,000	31,700	55,700	N/A
Contributions to GDP ($ Billions)	$30.9	$2.6	$4.6	$42.3
Government Revenues ($ Billions)	$7.3	$0.5	$1.7	$8.3
Oil and Natural Gas Production (MMBOED)	2.3	0.16	0.51	949 Million Barrels

Source: Energy and Industrial Advisory Partners

Oil and gas activities contribute billions of dollars to federal and state governments every year, which support important programs like education, infrastructure, and conservation efforts. In 2023 alone, DOI disbursed nearly $12 billion generated from energy production on federal lands and waters to the U.S.

[5] Energy & Industrial Advisory Partners, The Economic Impacts of a Consistent Offshore Oil and Gas Program at 4 (January 2025).

Treasury and state governments.[6] In fiscal year 2024, the industry paid more than $660 million in bonus bids and lease rentals, and more than $16 billion in total revenue.[7] The Land and Water Conservation Fund, which is funded almost entirely by offshore oil and gas revenues, receives $900 million a year to support outdoor recreation and conservation efforts nationwide.[8] Congress has also provided for up to $1.9 billion a year of revenues received from energy production on public lands, including oil and gas leasing, to be used to address critical deferred maintenance projects and improve transportation and recreation infrastructure in national parks, national wildlife refuges and recreation areas, and Bureau of Indian Education schools.[9]

The ability of U.S. producers to provide more oil and gas supplies to the world market has not only created global environmental benefits, but also changed geopolitical dynamics for the better, resulting in greater energy security for the U.S. and its allies. Given the current global circumstances, seldom has domestic energy security been more essential. To achieve this, policymakers must put in place policies, including prompt development of the 2024-2029 GOM OCS Leasing Program, that support energy investment, create new access, and keep regulation from unnecessarily restricting energy growth.

The GOM OCS has been the backbone of U.S. energy production for years; it currently provides 1.9 million of barrels of oil equivalent per day, amounting to 14% of total U.S. crude oil production. Regular and predictable lease sales and permit and plan reviews and approvals provide the industry the necessary confidence to make the long-term investments required for offshore development, particularly given the magnitude of the investments required for deepwater projects. As technology improves, additional infrastructure becomes available, and economic conditions change, OCS exploration and development trends will continue, so long as sufficient acreage is made available through lease sales. Because of this evolution, it is important to allow innovative companies the opportunity to pursue new leases to safely test groundbreaking geologic concepts and to employ advancements in drilling and production technology. A continuous stream of new discoveries is needed to replace depleting reserves and help maintain or increase production levels. Unduly restricting areas for new leasing would impede the opportunity to fully utilize newer technologies that are safer, more reliable, more environmentally friendly, and more energy efficient, and would instead focus efforts on older reservoirs that will likely require more energy to extract and process production as they near depletion.

Without the opportunity to obtain substantial acreage through new leases, companies will be enticed to turn their attention and investment dollars to prospects in other parts of the country or the world, where volumes are unlikely to compete with the comparative efficiencies and environmental advantages of U.S. offshore production that should continue to play a large role in meeting future demand. The opportunity for a successful national energy policy and the billions of dollars of multi-year investments needed to realize additional offshore production depends on duly holding robust OCS lease sales and the expeditious implementation of the 2024-2029 GOM OCS Leasing Program.

2. Alternative A Contravenes Statutory Requirements To Maintain an OCS Leasing Program.

[6] U.S. Department of the Interior, "Natural Resources Revenue Data" https://revenuedata.doi.gov/query-data/?dataType=Disbursements.
[7] ONRR, Royalty Revenue Data, https://revenuedata.doi.gov/query-data/
[8] https://revenuedata.doi.gov/how-revenue-works/lwcf/#
[9] https://www.doi.gov/gaoa-faqs

Though inclusion of a No Action Alternative (Alternative A) is appropriate for NEPA review purposes, BOEM should reject that alternative as unreasonable and not meeting either BOEM's stated objectives or Congress' mandates. The DPEIS (at 1-5) recognizes "BOEM's mandate to further the orderly development of OCS oil and gas resources under the OCSLA." Particularly given the unprecedentedly few lease sales already contained in BOEM's 2024-2029 Program, and with the most recent lease sale held back in December 2023, cancelling any scheduled lease sale would impermissibly render the Program a mere paper exercise, thereby flouting Congressional mandates for OCS oil and gas leasing under the Outer Continental Shelf Lands Act of 1953 (OCSLA, 43 U.S.C. § 1331 et seq.)), the 1978 amendments to OCSLA (Public Law 95-372, 92 Stat. 629), and the 2022 IRA, Pub. L. 117-169 §§ 50264 and 50265 (Aug. 16, 2022). Alternative A also cannot be reconciled with the President's recent executive orders directing increased domestic energy production and the removal of obstacles to leasing of energy resources on public lands.

The IRA makes clear that BOEM must pursue a truly all-of-the-above energy strategy on the OCS in lieu of its repeated cancellations or extreme truncations of OCS oil and gas lease sales since early 2021. Multiple courts have held that Congress requires DOI to establish and implement an oil and gas leasing program and continue to conduct lease sales. *E.g., Louisiana v. Biden,* No. 2:21-CV-00778, 2022 WL 3570933 (W.D. La. Aug. 18, 2022) (final merits ruling on summary judgment) (OCSLA "requires [BOEM] to sell oil and gas leases"). Selecting Alternative A would render the Program illusory and statutorily deficient.

The DPEIS (at 2-4) discusses the uncertainties that cancelling future lease sales would create for operators, noting that such cancellations "may present economic circumstances that increase the risk of smaller operators going bankrupt and larger operators focusing their activities elsewhere in the world." "When OCS oil and gas lease sales occur on a regular basis, as they generally have for many decades, operators maintain maximum flexibility in how they choose to invest in their discoveries." *Id*.

The DPEIS states that it is "challenging" to predict how operators would respond to Alternative A, but that the lack of new leasing opportunities could lead to fewer capital investments in the GOM region, with associated adverse economic effects. The DPEIS (at 4-217) treats the extent of these economic impacts as uncertain, ranging from "minor adverse" to "moderate adverse" impacts. The DPEIS (at 4-235) also discusses potential social impacts on communities that depend on the oil and gas industry, but summarily concludes those impacts will be "negligible." This greatly understates the potential economic and social effects of Alternative A. There have already been interruptions in the GOM leasing program and a significant reduction in lease sales from past years. Selecting Alternative A would affect the industry's willingness to invest in the GOM OCS, with foreseeable severe effects on operators and associated industries and communities.

The DPEIS is also inconsistent in its treatment of Alternative A, and avoids analyzing some predictable impacts of selecting this alternative. For example, the DPEIS analyzes vessel traffic as a factor under alternatives B, C, and D, but not under Alternative A. The DPEIS's charts at page 4-93 and pages 4-121-122 compare impacts on fish and marine mammals of alternatives B, C, and D associated with vessel traffic and other factors, but omit alternative A, stating that the impacts of that alternative are "none."

But BOEM acknowledged in its programmatic analysis of the national OCS leasing program that cessation of leasing would lead to substitution with imported oil to meet energy needs, giving rise to increased tanker traffic with associated impacts. National OCS Final PEIS at 7, 240-43. In that earlier PEIS, BOEM stated that "tanker noise and vessel strikes are particular concerns for marine mammals." (National OCS PEIS at 242). The DPEIS's failure to address these effects of additional vessel traffic renders its analysis of Alternative A deficient.

Similarly, the DPEIS (at 2-4) states that Alternative A would lead to fewer local impacts "but these activities and associated impacts could shift to other regions," but it does not provide details on these potential effects. This inconsistent presentation of impacts could preclude DOI and the public from making an informed comparison of the alternatives. The Associations urge DOI to carefully evaluate its presentation of the no-action alternative to ensure that the final PEIS gives the public and the decision-maker appropriate and accurate information to make this informed comparison.

3. BOEM Should Adopt Alternative B.

Though the DPEIS presents a reasonable range of alternatives for purposes of NEPA review, only Alternative B, the proposed alternative, satisfies applicable legal requirements and is supported by the record.

Congress has repeatedly affirmed its mandate to lease the vast and valuable domestic oil and gas resources on the OCS and thereby promote the nation's economic growth and national security. Congress expressed its preference for region-wide leasing in the IRA, by directing the Secretary to conduct Lease Sales 259 and 261 and specifying that the sales occur in accordance with the environmental analyses and Record of Decision for those lease sales approved by the Secretary in January 2017. See IRA Sections 50264(a)(3) and (d) (directing Lease Sale 259); IRA Sections 50264(a)(4) and (e) (directing Lease Sale 261). The Record of Decision in question expressly provided for Region-wide leasing, stating that "the GOM sales would be region-wide and include unleased acreage not subject to moratorium or otherwise unavailable, in the Western, Central and Eastern Gulf of Mexico" and noting that this approach provided "greater flexibility to industry." Record of Decision at 3.[10]

In directing Lease Sales 259 and 261 to proceed on this basis, Congress demonstrated its preference for region-wide leasing with minimal exclusions. The Secretary of the Interior's rationale for this approach, as endorsed by Congress, remains just as applicable today as in 2017; limited exclusions from leasing provide the greatest flexibility. BOEM should continue to adhere to this approach and dismiss the Alternatives other than Alternative B.

A region-wide approach with minimal exclusions is particularly important in light of the reduced level of leasing authorized in the GOM region in the 2024-2029 Five-Year Program. The longstanding practice in the GOM region has been for BOEM to conduct annual lease sales with minimal excluded areas. BOEM

[10] https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-Record-of-Decision.pdf

now proposes to conduct only three lease sales through 2029 [11] and suggested that BOEM may not hold all three sales. Failing to hold all three, and reducing acreage offered in any one of those three sales would be inconsistent with OCSLA and the Executive Order "Declaring a National Energy Emergency", which instructs agencies to identify all lawful means to " facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including, but not limited to, on Federal lands." Moreover, because only three sales are authorized it is especially important that operators have flexibility in bidding on leasing opportunities, and not be subject to the significant constraints proposed in Alternatives C and D. Broader opportunities will incentivize investment in the region and will therefore increase the ability of the GOM leasing program to contribute to the nation's energy independence, support employment in the region, and achieve the program's other objectives.

As discussed throughout these comments, the DPEIS does not provide a reasoned basis for adopting the other Alternatives. The Associations thus support Alternative B as properly implementing the requirements of OCSLA, the IRA, and other statutory provisions.

4. <u>Alternative C Excludes Vast Areas From Leasing Without Adequate Justification.</u>

Alternative C would exclude significant areas from leasing when compared to Alternative B. As discussed below, BOEM has not provided a reasonable basis for these proposed exclusions.

a. Rice's Whale Exclusions

Alternative C would exclude blocks within the Rice's whale currently *proposed* critical habitat area and the Rice's whale proposed core distribution area. No such critical habitat has even been finalized to date. Moreover, that proposal is baseless and overbroad, as reflected in separate comments thereon, which are attached to this comment letter. The Associations recognize the importance of conserving marine mammals, including the Rice's whale, but maintain that this goal can be achieved through BOEM's existing approach, under which a lease stipulation provides operating conditions on vessels operating in the De Soto Canyon area, the only area where Rice's whales are regularly and predictably found. Moreover, the exclusion of the *proposed* critical habitat area does not provide additional protections to Rice's whales over Alternative B. Even supposing that whales are present in the proposed critical habitat area (which has not been established, as discussed below), vessels must still cross the 100-400m isobath for either alternative, and the large oil spill risk analysis for both alternatives is nearly identical.

The additional restrictions proposed under Alternative C do not have a sound basis in science or available data. In particular, there is limited evidence that the Rice's whale is consistently present in the proposed critical habitat area. Recent acoustic studies show that the temporal pattern of whale calls heard in central and western GOM are distinctly different than those heard in eastern GOM and have not been corroborated with any additional evidence to show that they come from Rice's whales. Additionally, the couple of recent reported sightings did not verify with DNA evidence that they are Rice's whales and not another similar-looking species. The Associations attach and incorporate by reference the industry comments previously submitted (on October 6, 2023 by API, et al.) on NMFS's

[11] API has challenged this Five-Year Program inclusion of only three lease sales under OCSLA and the Administrative Procedure Act. *American Petroleum Institute v. DOI*, No. 24-1023 (D.C. Cir.).

separate proposal to designate critical habitat for the Rice's whale (Docket No. NOAA-NMFS-2023-0028). Also attached is a technical report by LGL Ecological Research Associates, Inc. entitled *Review of the Rice's Whale Proposed Critical Habitat and Related Scientific Literature,* identifying the lack of evidence for Rice's whale critical habitat throughout the GOM.

As those previous comments explained, NMFS has itself previously found that the Rice's whale's range is primarily restricted to the De Soto Canyon area of the northeastern GOM and that Rice's whales rely on that area through all stages of their life. In July 2023, NMFS proposed to designate a much broader area as critical habitat, but without citing data that establish that Rice's whales "occupy" the entire GOM, without properly defining the attributes of the habitat that NMFS proposes to designate, and without properly analyzing the economic impacts of its proposed designation. Even if Rice's whales occasionally do veer outside of the De Soto Canyon area, there is no scientific study that shows that any other area meets the ESA requirements of critical habitat, including showing biological features that are necessary for the survival of the species.

The courts have already rejected broad lease exclusions on such weak evidence. In conducting Lease Sale 261, and notwithstanding Congress' clear directive, BOEM made a last-minute change to the lease area in the Final Notice of Sale, which excluded six million acres in which BOEM asserted the Rice's whale might be found. The State of Louisiana, API, and individual lessees challenged this decision and secured an order from the federal district court barring DOI from removing this area from Lease Sale 261. The district court's decision observed that BOEM's decision rested on a document (Soldevilla study) that the agency had reviewed a few months earlier and found did not justify any changes to the agency's existing approach that relied on lease stipulations to protect the Rice's whale. In January 2023, BOEM reviewed the Soldevilla study and found that the agency did not have enough information "to confirm [the whales'] distribution or any seasonal movements outside the core area" and that the potential for vessel strikes "is extremely unlikely to occur due to the generally slow vessel transiting and surveying speeds, limited vessel routes originating from the eastern GOM, and the additional mitigations on vessels within the Rice's whale core area." But in the Final Notice of Sale for Lease Sale 261, just eight months later, BOEM cited the same study as justifying extensive restrictions on leasing, without justifying this "about-face from a position taken by the agency just months before." Citing this flaw among others, the Louisiana federal district court enjoined BOEM's decision to withdraw purported Rice's whale habitat areas from leasing. *Louisiana v. Haaland*, No. 23-CIV-01157 (W.D. La. September 21, 2023). In rejecting an appeal by environmental groups, the Fifth Circuit explained the tenuous relationship between BOEM's leasing decision and prospective harm to Rice's whales:

> [I]n four separate environmental reviews over the last seven years, BOEM concluded that additional protections for the Rice's whales are unnecessary outside of their "core" habitat in the eastern Gulf—an area unrelated to Lease Sale 261 that has long been protected from oil-and-gas leasing. For instance, BOEM concluded that that there were no "justifiable reasons to restrict the lease sale area" by "exclud[ing] blocks from leasing in the 100-400m isobath in the western and central Gulf" and that existing lease stipulations "provide adequate environmental protection," as "the potential for vessel strikes" remains "extremely unlikely."

Louisiana v. Haaland, 86 F.4th 663 (5th Cir. 2023).

NMFS proposed designation of critical habitat under the Endangered Species Act (ESA) for the Rice's whale in July 2023, but as of the date of these comments, it has not taken action to finalize that designation. A proposed critical habitat designation has limited legal status as an agency action, and the mere existence of a proposal to designate critical habitat should not be given weight in BOEM's environmental impact analysis.[12] Otherwise, NMFS would be improperly predetermining its ESA decision.

Alternative C merely repeats DOI's prior errors. BOEM instead should adhere to its longstanding practice of addressing conservation of Rice's whales through lease-based restrictions applicable only to operations in the demonstrated Biologically Important Area for the Rice's whale. The Associations object to BOEM's unsupported proposal to replace this approach with broad exclusions from leasing.

b. Wind Exclusions

The DPEIS proposes to exclude entirely from oil and gas leasing a set of areas that have been identified for potential wind leasing: the Wind Energy Options, the Wind Energy Areas, and Wind Energy Lease(s). Notwithstanding President Trump's temporary withdrawal of OCS areas from future wind leasing, broad exclusions from oil and gas leasing in wind areas violate the terms of OCSLA, which support multiple use of the OCS as much as possible, and President Trump's Executive Order "Declaring a National Energy Emergency," which instructs agencies to prioritize oil and gas leasing.

The DPEIS contains only a very brief discussion of the nature of potential conflicts between oil and gas production and wind energy facilities, stating (at 4-16) that "renewable energy infrastructure occupies large areas and consists of many cables on the seafloor that connect the turbines and offline substations" and that "it could be difficult to place OCS oil and gas infrastructure within the same areas as the renewable energy infrastructure". The DPEIS also refers to risks from "increased vessel traffic if renewable energy and OCS oil and gas infrastructure are placed near each other." *Id.*

The Associations generally support multiple use of the OCS, including for wind energy purposes. But such uses should occur as part of an "all of the above" approach to use of OCS resources, under which OCS activities are managed to accommodate the needs of multiple users and take into account the needs of the many stakeholders that rely on OCS resources. In adopting OCSLA, Congress declared it is the "policy of the United States" to authorize "operations in the outer Continental Shelf" subject to a goal "to prevent or minimize … physical obstruction to other users of the waters or subsoil and seabed[.]" 43 U.S.C. § 1332(6). BOEM's own regulations recognize the need to "achieve a rational balance" among multiple goals in managing OCS resources, "none of which inherently outweighs or supplants any other." 30 C.F.R. 585.102(a).

[12] Areas that are proposed as critical habitat have a limited legal status under applicable regulations. In the event of potential adverse modifications, the regulations provide only for a "conference between the Federal agency and the Service" which "shall consist of informal discussions," 50 C.F.R. 402.10(c), a requirement that falls well short of the formal biological opinion process. Given the flaws of the proposed critical habitat designation, and because it is not clear what adverse modifications could occur in light of applicable protections for the Rice's whale, the pending proposed critical habitat designation does not justify the sweeping exclusions proposed in Alternative C.

This is consistent with BOEM's longstanding approach to accommodating multiple uses of the OCS. Section 19 of BOEM's standard OCS oil and gas lease form provides that BOEM may later grant wind leases for OCS areas already leased for oil and gas "except that operations under such [wind] leases or grants shall not unreasonably interfere with or endanger [oil and gas] operations under this lease[.]" Similarly, the issuance of an offshore wind lease does not necessarily preclude oil and gas activities in the same area. As reflected in Section 3 of BOEM's standard OCS renewable energy lease form, BOEM reserves the "right to authorize other uses within the leased area and project easement(s) that will not unreasonably interfere with activities described in an approved SAP and/or COP, pursuant to this lease." The two uses can be mutually supportive; for example, offshore wind energy can supply offshore oil and gas platforms with power in lieu of on-lease use of generated oil and gas, as occurs at the Hywind Tampen project in the Norwegian North Sea.

BOEM's short discussion of potential conflicts between wind and oil and gas falls far short of meeting OCSLA's policy to "prevent or minimize physical obstruction to other users," 43 U.S.C. § 1332(6), or explaining the need to exclude oil and gas leasing entirely from the identified wind areas under Alternative C, as opposed to adopting an approach that provides for wind energy uses while also accommodating other essential uses of OCS resources. The great majority of the identified wind areas have been considered for leasing or offered for lease but have not been leased at this time, and it is not clear whether there will be commercial interest in leasing these areas for wind energy purposes. The President has issued a memorandum withdrawing "from disposition for wind leasing all areas within the Outer Continental Shelf" until the memorandum is revoked, which further reduces the likelihood that these areas will be subject to leasing in the near term. Presidential Memorandum, "Temporary Withdrawal of All Areas On the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices," sec. 1, (January 20, 2025).

To the extent that wind energy facilities are eventually constructed in the areas in question, any use conflicts can be managed with lease stipulations without the need for the broad proposed exclusions from leasing altogether. The DPEIS acknowledges (at 4-14), in discussing potential space-use conflicts with wind and other uses, that "in the event that incompatibilities would arise, BOEM could utilize lease stipulations to help mitigate the potential conflicts." Wind facilities require energy transmission lines, but those lines are limited in scope and any conflicts with other uses of the GOM, such as rights of way for oil and gas pipelines, can be addressed with lease conditions that address the routing of this infrastructure to prevent conflicts.

The DPEIS (at 4-16) explains that BOEM's own analysis envisions use of distancing as a tool to manage potential conflicts: "The marine spatial planning that BOEM performed with NOAA included oil and gas infrastructure distancing when determining the appropriate locations of the WEAs." The DPEIS cites the study on which BOEM relied in identifying the wind energy areas for potential leasing; that study likewise assumed that distancing would be a tool to manage conflicts between wind energy and other uses such as oil and gas development. Randall et al, "A Wind Energy Siting Analysis for the Gulf of Mexico call area" (BOEM 2022). Overall, BOEM should liberally consider maximum use of the GOM OCS on a lease-by-lease basis to achieve OCSLA's energy generation purposes critical to the prosperity of the nation.

c. Other Exclusions

BOEM (at 2-6) also proposes to exclude from leasing "whole and partial blocks that contain Significant Sediment Resource Areas (SSRAs)" and areas subject to three existing lease stipulations: the Topographic Features Stipulation, Live Bottom (Pinnacle Trend) Stipulation, and Blocks South of Baldwin County, Alabama Stipulation. In the past BOEM has managed all of these issues with lease stipulations, and the DPEIS provides virtually no discussion of why it proposes to change that longstanding approach. On the contrary, the DPEIS (at 4-14) says that "in the event incompatibilities would arise, BOEM could use lease stipulations to help mitigate the potential conflicts." BOEM's proposal to replace lease stipulations with exclusions will not avoid impacts to the resources in question. The existing lease stipulations limit resource impacts very effectively, and there is no evidence that exclusions will produce better outcomes.

As to SSRAs, the DPEIS (at 4-14, 4-15) says "[a]s storms increase in frequency and strength, there has been and would continue to be, an increased need for sediment dredging for coastal resiliency." But the DPEIS (at 4-15) goes on to explain that BOEM uses Information to Lessees and Notices to Lessees to inform lessees of SSRAs and areas of active dredging and cites a Notice to Lessees requiring that bottom-disturbing activities "must avoid, to the maximum extent practicable, significant OCS sediment resources."

Appendix F discusses the existing stipulations in detail and analyzes their effectiveness. It finds them to be effective in protecting the identified features and does not describe any concerns that have arisen in their implementation. For example, in discussing the Live Bottom (Pinnacle Trend) Stipulation, Appendix F (at F-29) says that studies at the Pinnacle Trend have shown that the stipulation "has successfully prevented mechanical damage to the pinnacle habitats through the survey and distancing requirements." Appendix F (at F-20, F-30) similarly finds the Topographic Features Stipulation and the Blocks South of Baldwin County, Alabama Stipulation to be effective. In analyzing impacts of the alternatives, the DPEIS accordingly concludes the lease stipulations will be highly protective, finding for example that with adherence to BOEM lease stipulations impacts to benthic communities will be "negligible" or "minor." Similarly, the DPEIS (at 4-97) concludes that the exclusion of these areas in Alternative C would lead to spatial redistribution of activity but "overall would not change the suite of IPFs and impact conclusions for fishes and invertebrates."

The Associations' members apply the most stringent safety and environmental regulations in the world, and follow comprehensive and dedicated industry safeguards to avoid, minimize, and mitigate any environmental impacts from OCS oil and gas activities. For many years, applicable safeguards have allowed coexistence of OCS uses with these various protected features and uses. It follows that these areas are suitable for oil and gas leasing, and BOEM has not provided a evidence-based demonstration to the contrary.

5. <u>Alternative D Is Not Justified in the DPEIS and Is Not a Viable Alternative</u>.

Alternative D contains the same flawed exclusions as Alternative C, plus even more unfounded exclusions. In addition to failing to meet the IRA's requirements for wind leasing, Alternative D fails on its own terms. Many of Alternative D's additional proposed exclusions receive little or no discussion in the

DPEIS. The lack of any explanation for these proposed exclusions makes it difficult to provide helpful comments on whether these exclusions have any sound basis. The DPEIS (at 2-8) says only that these areas "have been emphasized by public commenters in scoping for previous NEPA analyses" and suggests that selecting this option would "preserve flexibility for marine spatial planning for potential different ocean uses." The following is an overview of the additional exclusions, as well as the Associations' analysis, to the extent it is possible to analyze exclusions with little or no justification in the DPEIS.

Eastern Planning Area. Alternative D (at 2-8) proposes excluding "whole and partial blocks in the EPA of the GOM." There is a portion of the Eastern Planning Area that has not been withdrawn from leasing and has been included in previous lease sales. The Associations reviewed the DPEIS but were not able to identify any discussion of BOEM's proposed rationale for changing past agency practice of including this area in lease sales. This area is located along the western edge of the planning area in close proximity to existing oil and gas activities in the Central Planning Area. As such, oil and gas development of these westwardly available areas in the Eastern GOM Planning Area would likely be supported from existing infrastructure (port areas, waste disposal, etc.) and will not require infrastructure to be built in Florida to support OCS oil and gas activities.

Additional Portions of the Wind Leasing Call Area. BOEM proposes excluding additional areas of the GOM Wind Leasing Call Area. Notably, the wind energy areas proposed for exclusion in Alternative C are the areas that BOEM has itself determined to have potential for wind energy development and has therefore prioritized for potential leasing. It follows that the areas identified in Alternative D are those that BOEM has found to have less potential for wind energy development and for which such use is accordingly more speculative and uncertain. The discussion above of the need to apply an "all of the above" approach to managing oil and gas development together with other uses applies with even greater force in these areas, in which BOEM itself concedes wind energy development is less likely to occur.

Bottlenose Dolphins. The DPEIS (at 2-8) proposes excluding "whole and partial blocks in coastal OCS waters shoreward of the 20-m (66-ft) isobath to avoid additional impacts to coastal stocks of bottlenose dolphin." The DPEIS contains no substantive discussion of this proposal; it mentions bottlenose dolphin only twice in its analysis of potential effects, once in referring generally to cetacean stranding (at 4-112) and once in a general discussion of marine mammals that can be affected by nearshore discharges and wastes (at 4-260). The DPEIS does not otherwise discuss the status of bottlenose dolphin populations in the area, or the nature or scale of any potential benefits to those populations associated with the proposed exclusion. The bottlenose dolphin's status is listed by IUCN as "least concern." The DPEIS provides no rationale or analysis supporting this proposal, and the Associations are not able to discern any need for this exclusion.

Marine Sanctuary. BOEM proposes excluding additional areas in the vicinity of the Flower Garden Banks National Marine Sanctuary beyond those already excluded under Alternative B. As discussed in the previous section, any concerns involving potential impacts to the marine sanctuary can be managed with lease stipulations and do not need to be addressed through a broad exclusion.

Department of Defense Mission Incompatibility. BOEM proposes excluding "whole and partial blocks identified by the Department of Defense as mission incompatibility areas." Once again, the DPEIS contains no discussion of the basis for this proposed exclusion or of what concerns, if any, the Department of Defense has raised about compatibility of leasing with military operations. BOEM has a longstanding lease stipulation that is designed to reconcile development of the OCS with the needs of the military. Appendix F (at F-8) discusses BOEM's lease stipulations, including the military stipulation, and concludes that the military stipulation "makes multiple-use conflicts between military operations and OCS oil- and gas-related activities unlikely." It also states that "there has never been an accident involving a conflict between military operations and OCS oil- and gas- related activities." *Id*. *See also* DPEIS at F-9 – F-12 (discussing additional lease stipulations addressing potential conflicts with military operations).

The Associations strongly support the nation's military readiness needs, and the Associations' members have a decades-long track record of conducting their operations in a way that avoids conflict with military activities. BOEM has provided no information suggesting that existing lease stipulations are insufficiently protective so as to possibly warrant such an exclusion from leasing.

6. <u>The Environmental Analysis in the DPEIS Supports Selection of Alternative B</u>.

BOEM must ensure that its NEPA presentation of potential impacts from oil and gas leasing, exploration, and development is not overstated or speculative, but rather relies on comprehensive legal protections and the best available peer-reviewed scientific literature. The DPEIS affords short shrift to the robust, multi-agency oversight of OCS oil and gas operations and innumerable regulations, requirements, and other safeguards to avoid, minimize, and mitigate any environmental impacts from OCS oil and gas activities, including on protected marine species. The Associations incorporate by reference the industry comments previously submitted (on October 5, 2022 by API, et al.) on the Proposed 2024-2029 Five-Year Program and Draft PEIS (Docket No. BOEM–2022–0031), many of which remain unaddressed by BOEM in its current DPEIS for leasing.

The Associations concur with the DPEIS's conclusion that many of the impacts it analyzes would be the same under all of the action alternatives (B, C, and D) when the incremental contribution of an OCS oil and gas sale is analyzed, given existing regulation and mitigation. The DPEIS finds in most cases that the impacts would be negligible. The DPEIS comes to this conclusion for impacts to water quality (negligible, xiv), coastal communities or habitats (negligible to minor, xiv), benthic communities and habitats (negligible, xv), pelagic communities and habitats (negligible, xvi), fishes and invertebrates (negligible to minor, xvi), birds (negligible, xvii), commercial fisheries (negligible to minor, xix), recreational fishing (minor beneficial to minor adverse, xx), cultural, historical and archaeological resources (negligible, xxi), and land use and coastal infrastructure (negligible, xxi). As to air quality, the DPEIS (at xiii, 4-33) likewise finds that the impacts of Alternatives B, C and D would be "similar" and that there would be spatial redistribution of activities with no change in the activity levels." The environmental justice analysis (at xxii) finds that a proposed oil and gas lease sale "would not directly affect minority and low-income populations."

The DPEIS similarly concludes that each of Alternatives B, C, and D would have "negligible" effects on sea turtles "when properly regulated and mitigated," noting (at xix) that the exclusions in Alternatives C and

D are of “limited” benefit to sea turtles “due to their wide distribution and transitory use of these areas.” The DPEIS comes to a similar conclusion for marine mammals, finding (at xxiv) that impacts are “not expected to result in, or have a notable or measurable contribution to, any new or ongoing significant cumulative impacts to marine mammals or sea turtles.” (The DPEIS’s analysis of Rice’s whale is discussed above.) The offshore oil and gas industry routinely complies with various regulations and requirements related to the protection of marine species. For example, geophysical surveys related to GOM oil and gas activities are required to comply with the provisions of 50 C.F.R. Part 217 for Incidental Takes of Marine Mammals.

For methane, the analysis of potential emissions from a new OCS oil and gas lease sales includes conservative (i.e., high-end) assumptions for methane emissions associated with future leases. Methane emissions associated with actual development of new leases is likely to be lower than what is presented in this analysis. The DPEIS states that it relies on methane emissions data from 2017 (Wilson et al. 2019a) to establish baseline emissions data instead of more recent emissions data from 2021 (Thé et al. 2023). (DPEIS at 4-27, 4-34) Based on analysis in Thé et al. 2023, methane emissions reported in 2021 were ~49% lower than those reported in 2017, primarily due to decreased volumes from cold venting. Extrapolations based on data from Wilson et al. 2019a would not capture reductions in methane emissions between 2017 and 2021. In addition, the majority of the methane emissions as the result of lease sales were estimated to occur from facilities in less than 200 meters of water-depth, based on emission profiles from current shelf facilities. If new lease sales were to lead to additional developments in the shelf at new platforms or tie-ins to existing facilities, these new developments could lead to additional production-based metering requirements for facilities where production now exceeded 2,000 BOED, and facilities would remain subject to time duration limits on flaring and venting events under 30 CFR 250 Subpart K. These types of factors do not appear to be included in the DPEIS analysis for methane.

As part of its evaluation of ozone impacts, BOEM states that “when considering that the existing baseline conditions of the Houston-Galveston-Brazoria area are in nonattainment for ozone (O3), cumulative impacts could be moderate to major if notable and measurable levels of O3 caused by an OCS oil and gas lease sale were to reach the Houston-Galveston-Brazoria area, slowing down the long-term ability of the area to recover from chronic nonattainment status for O3” (DPEIS at 4-244, citing Li et al. 2023). The underlying study (Li et al. 2023) does not appear to find a connection between emissions from offshore oil and gas platforms and onshore ozone concentrations in the Houston area. Rather, the study describes ozone impacts associated with meteorological conditions where winds recirculate air masses from over-water areas of the Gulf of Mexico with elevated ozone levels due to onshore emissions over the Houston area for a second time. The study does not draw connections between offshore oil and gas emissions and such ozone concentrations in the Houston-Galveston-Brazoria area. In fact, a conclusion from the Li et al. 2023 paper states: “This study reveals the important role of chemical O3 production over Galveston Bay and the Gulf of Mexico from precursors emitted from the adjacent land and the Houston Ship Channel or transported regionally from the northeastern states.” At a minimum, BOEM should clarify within the DPEIS that the moderate to major cumulative impacts considered were not associated with air emissions connected to lease sales.

In characterizing oil spill risks, the DPEIS gives short shrift to the comprehensive and dedicated safeguards to avoid, minimize, and mitigate any environmental impacts from OCS oil and gas activities. The oil and gas industry continuously strives to enhance the safety of offshore operations, including

focusing on its ability to: prevent spills from occurring; intervene to halt any spill that does occur; and respond to spills with the most effective mitigation measures possible.[13] There are extensive environmental safeguards in place for offshore operations in the form of regulations and regulatory oversight of safety and spill prevention equipment, systems, programs, operational practices, and a highly trained and skilled workforce. This overall comprehensive system of regulations, federal oversight, equipment, programs, best practices, and trained staff underpins safe and environmentally protective operations and promotes the safe and responsible development of energy sources that help fuel the American economy and meet domestic energy needs.

Additionally, in partnership with federal, state and local governments, academic institutions and communities, the industry dedicates significant time and resources to preparing and planning for the unlikely case of an oil spill. This exhaustive preparation enables the industry to respond appropriately to a spill of any magnitude to minimize its impact on people and the environment. Oil spill response organizations have significantly increased their capabilities over the past decade by increasing training and maintaining an increased inventory of equipment that is fit for specific purposes such as in-situ burning. The industry has also invested in international oil spill preparedness and response programs focused on improving industry operational capabilities in all parts of the world and continues to advance oil spill response research and development programs.[14] BOEM explained the significance of recent regulatory and technological advances to reducing the risk of oil spill in a court filing in the District of Maryland.[15]

For example, the Marine Well Containment Company[16] and the HWCG[17] were created in response to the Deepwater Horizon oil spill, and currently provide offshore member companies with advanced containment technology and response capabilities for the unique challenges of stopping the flow of oil thousands of feet below the water's surface. In the unlikely event that these services will be needed, these companies maintain quickly deployable systems that are designed to stem the flow of hydrocarbons from wellbores located on the seafloor either by sealing the well or directing the fluids into storage vessels located on the surface of the water.

The DPEIS contains references in some instances to the potential future application of additional protective measures. For example, it says that "additional BOEM additional protective measures for benthic communities and habitats would be considered at the site-specific stage" (4-64, footnote to Table 4.4-3) and makes similar statements for fishes and invertebrates (4-93, footnote to Table 4.6-3), marine mammals (4-121, footnote to Table 4.8-3), and sea turtles (4.137, footnote to Table 4.9-3). The Associations note that there are already substantial protections in place in these contexts, including in existing lease stipulations and safeguards applied by industry, such that additional protective measures should not be necessary.

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[13] https://www.api.org/oil-and-natural-gas/health-and-safety/exploration-and-production-safety/offshore-safety
[14] http://www.oilspillprevention.org/
[15] *See, e.g.*, Memorandum in Support of Defendants' Cross-Motion for Summary Judgment and In Opposition to Plaintiffs' Motion for Summary Judgment, *Sierra Club v. National Marine Fisheries Service*, No. 20-CV-3060-DBL, Declaration of Christopher Michael DuFore para. 5 (D. Md. Feb. 6. 2024).
[16] https://marinewellcontainment.com/
[17] https://www.hwcg.org/

The DPEIS (at xxv) finds that "a single OCS oil and gas lease sale would have a minor to moderate beneficial contribution to cumulative economic impacts given the substantial prevalence and influence of OCS oil and gas related activities to the regional economy," and that cancelling such a sale under Alternative A would have "minor to moderate adverse" effects. As discussed earlier in these comments, these effects would be greater than the DPEIS indicates.

7. **The Analysis of Greenhouse Gases in the DPEIS Fails to Support More Limitations on Leasing.**

Under OCSLA and NEPA, DOI is neither required nor permitted to consider downstream climate effects in implementing leasing programs for the Outer Continental Shelf. *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). Nevertheless, because the DPEIS addresses climate effects through GHG estimates, the Associations note that a fair and accurate assessment of those effects likewise supports selection of Alternative B in the DPEIS.

BOEM does not attempt to distinguish between Alternatives B, C, and D in its GHG analysis, finding that the alternatives would change the location of forecasted activities but not overall production and activity levels. (4-10) With respect to domestic oil and gas production and consumption, the DPEIS describes the differences between the no-action alternative and the three action alternatives as small. Because GOM oil and gas production has "some of the lowest GHG intensity of all oil production" (H-14) and would displace fuels with higher carbon intensity, proceeding with oil and gas leasing would reduce GHG emissions under many scenarios or would lead to only a small increase in emissions, depending on activity level (4-12). The DPEIS notes that displacement of other oil and gas production by GOM production tends to reduce GHG emissions.

The DPEIS forecasts an increase in foreign GHG emissions associated with oil and gas leasing, but as the Associations explain below, the DPEIS's modeling of foreign emissions likely overstates foreign emissions reductions under the No Action Alternative and thereby unduly casts that alternative in an artificially more favorable light. Moreover, the DPEIS proffers a social cost of greenhouse gas emissions analysis that the new Executive Order "Unleashing American Energy" confirms suffers from "harmful and detrimental inadequacies," section 6(c), and that is based on unreliable information. BOEM should instead have declined to conduct a social cost of greenhouse gases (SC-GHG) analysis, as is within BOEM's discretion.

a. BOEM's modeling of foreign oil and gas markets is deficient.

The Associations agree with BOEM that any analysis of lease sales' impact on foreign oil production and consumption should be presented separately from domestic GHG estimates. But oil and gas trades in worldwide markets, so BOEM's GHG analysis must take into account effects on foreign oil and gas production and consumption. BOEM discusses its GHG analysis in detail in Appendix H, and is candid about the limitations of its analysis of foreign markets. Appendix H (at H-28) states that "BOEM lacks the ability to estimate foreign oil midstream GHG emissions." Appendix H also concedes that changes in foreign oil consumption would cause substitution of other energy sources and is not captured by BOEM's model. *See* DPEIS at H-29, H-30 ("BOEM acknowledges that displacement of substitutes would certainly

occur and that a portion of the increased emissions currently quantified would be mitigated by displaced GHG emissions from energy substitutes."). BOEM adds (at H-30) that "the same uncertainty exists in regard to estimating the displacement of energy substitutes in the upstream and midstream." BOEM asserts that these unquantified variables (midstream emissions and substitution) "would not be enough to offset the increase in GHG emissions currently estimated from foreign oil's upstream and downstream," but provides no support for this claim. *Id.* BOEM concedes that the limitations on its data are substantial, stating that "because the quantifiable foreign analysis is not comprehensive, domestic production and consumption emissions are not directly comparable to the foreign estimates. Therefore, BOEM is not providing a combined quantitative estimate of domestic and foreign emissions because it would be potentially misleading to add them together." *Id.*

Currently, it appears as though MarketSim does not account for the imperfect competitive structure of the global oil market (for example, see Boug et al. (2016)[18] which finds support for imperfect competition in the oil market, and that OPEC's behavior has changed significantly recently). Specifically, the analysis does not consider potential imperfect competitive actions from foreign suppliers that have excess capacity, such as OPEC+, or suppliers that respond to other metrics besides price, such as market share. Additionally, it has been suggested that OPEC+ functions as a balancing mechanism whereby it assesses liquids demand, then non-OPEC+ supply, and then determines what level of OPEC+ supply is needed to balance demand and supply.

In contrast, the foreign consumption and supply elasticities used for the DSEIS's analysis assume foreign markets only respond to price. Accounting for these numerous additional market realities could create significantly different results. For example, Golombek et al. (2018)[19] developed a dominant firm model to characterize OPEC's market power and arrives at elasticities of supply that are significantly different than those used in BOEM's analysis.

There is the additional issue of scale. Economic models are not precision instruments; they can be used to forecast general trends and give an idea of the magnitude of impact key variables (e.g., prices) may have on certain outcomes (e.g., production). Expecting a model to accurately forecast a change of about a tenth of one cent per barrel of oil or associated production impacts over a multi-decade period is not realistic. *See* H-14 n.12 ("The average price reductions under the proposed action relative to baseline over the 34 years of oil and natural gas production at the high activity level are $0.11 per barrels higher for oil, $0.002 per thousand cubic feet higher for natural gas, $0.008 per ton higher for coal, and $0.002 per kilowatt higher for electricity."). And since BOEM has not furnished any statistical metrics from the model (goodness-of-fit statistics such as R2), there is no reason to conclude that a per barrel price estimate is statistically different from zero or that a corresponding reduction in consumption is distinguishable from background noise or random error.

Given the large variation in the estimates of elasticities, if BOEM continues to perform these analyses, a sensitivity analysis is warranted for a more transparent and defensible analysis here. As part of this

[18] Boug et al. (2016) "Modelling OPEC Behavior: Theory and Evidence" Discussion Paper 843. Statistics Norway.
[19] Golombek et al. (2018) "OPEC's market power: An empirical dominant firm model for the oil market" *Energy Economics* 70 98-115.

sensitivity analysis, the Associations suggest BOEM use another scenario where global prices do not change, and where foreign suppliers target an overall price trend equal to the No Action Alternative. This case would not have an overall price effect and therefore the quantity of energy demanded would not be impacted. The sensitivity analysis would also estimate the GHG impact of sourcing energy from different geographical locations.

The welfare losses associated with purportedly reduced oil consumption in the No Action Alternative should be explicitly acknowledged and estimated as well. Specifically, the loss of consumer surplus (willingness of consumers to pay above the prevailing market price rather than do without it) and the loss of producer surplus (the willingness of producers to supply below the prevailing market price) stemming from reducing production and consumption of oil should be examined and estimated along with any projected reduction in GHG emissions.

A key dimension of the analysis of foreign oil consumption is that, in addition to the uncertainty of BOEM's estimates, the quantities of GHG emissions associated with a single oil and gas leasing decision are very small when compared to GHG emissions worldwide. The DPEIS describes the GHG effects it discusses as small, but does not provide adequate context as to just how small the differences in GHG emissions BOEM projects will be. The DPEIS (at 3-15) says: "It is important to note that a single lease sale, no matter which alternative is selected, would represent only a small portion of activity and a small incremental contribution (0.3 – 1.8%) to the overall Cumulative OCS Oil and Gas Program activity forecasted to occur between 2024 and 2093." BOEM's (admittedly highly imprecise) modeling of changes in foreign oil consumption as a result of the proposed lease sale predicts an increase of between 11 million and 164 million barrels, depending on levels of activity in the energy market. (H-20, table H.2-13) BOEM had earlier predicted global consumption of 1.3 trillion barrels over the course of production of an oil and gas lease.[20] Assuming that remains the approximate scale of comparison, that means that the change in foreign oil consumption will be between .0008 and .01 of one percent. BOEM concedes (at 4-12) that the changes in *domestic* GHG emissions associated with this decision "results in only small changes in emissions," but does not go on to explain that their projected changes in foreign emissions are likewise very small indeed. Thus, whatever alterations or assumptions BOEM utilizes in its GHG modeling methodology, and whether or not BOEM concludes GHG emissions are nominally "higher" or "lower" for the No Action Alternative, the differences are very small and should be immaterial to the agency's leasing decision.

b. The Social Cost of Greenhouse Gases Is Not Appropriate for Use in the DPEIS.

Although the Associations support the appropriate consideration of climate change impacts in NEPA analyses, the Associations reiterate that the SC-GHG is not appropriate for use by BOEM in this DPEIS. SC-GHG is a monetized cost-benefit analysis tool developed for economically significant regulatory rulemakings; NEPA does not compel cost-benefit analysis, particularly for an individual leasing decision. 40 C.F.R. § 1502.22 ("For purposes of complying with the Act, agencies need not display the weighing of

[20] Gulf of Mexico OCS Oil and Gas Leasing Greenhouse Gas Emissions and Social Cost Analysis: Addendum to the Gulf of Mexico Lease Sales 259 and 261 Draft Supplemental EIS and Technical Report (2022), at 11.

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.").

The President's January 20, 2025 EO titled "Unleashing American Energy" contains provisions addressing the use of SC-GHG analysis in agency decision-making. Section 6(b) of the EO disbands the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) and withdraws "any guidance, instruction, recommendation, or document issued by the IWG." Section 6(c) of the EO finds that the use of these metrics "is marked by logical deficiencies, a poor basis in empirical science, politicization, and the absence of a foundation in legislation" and directs the EPA Administrator to issue guidance within 60 days to "address these harmful and detrimental inadequacies, including consideration of eliminating the 'social cost of carbon' calculation from any Federal permitting or regulatory decision." Section 6(d) directs that, pending issuance of that EPA guidance, agencies must "ensure estimates to assess the value of changes in greenhouse gas emissions resulting from agency actions, including with respect to the consideration of domestic versus international effects and evaluating appropriate discount rates, are, to the extent permitted by law, consistent with the guidance contained in OMB Circular A-4 of September 17, 2003 (Regulatory Analysis)."

BOEM's analysis of the SC-GHG in the DPEIS must be revised to conform to these new requirements, including to the EPA guidance addressed in section 6(d) once it becomes available. We anticipate that the existing DPEIS analysis will require substantial revisions, especially because the EO indicates that the anticipated guidance may prohibit use of SC-GHG methodologies altogether. Pending issuance of this guidance, the Associations provide the following comments on the DPEIS.

The Associations have substantial concern about BOEM's unbalanced application of SC-GHG. Though BOEM may nominally disclaim the role of SC-GHG estimates in its decision-making, including their role in presenting an incomplete cost-benefit analysis that fails to consider all the benefits of domestic oil and gas development, use of the SC-GHG estimates here risks misleading decision-makers and the public, and suggests that BOEM's inherently unreliable analysis is subject to meaningful quantification. The Associations incorporate the industry comments previously submitted (on October 5, 2022 by API, et al.) on the Proposed 2024-2029 Five-Year Program and Draft PEIS (Docket No. BOEM–2022–0031) and (on November 21, 2022) on the Draft Supplemental Environmental Impact Statement for Gulf of Mexico Lease Sales 259 and 261 (Docket No. BOEM-2022-0048).

The SC-GHG was developed to monetize the social value of reduced GHG emissions for use in regulatory cost-benefit analysis as part of the Regulatory Impact Analysis ("RIA") associated with economically significant regulations under Executive Order 12866. Such rulemakings require full monetization of all costs and benefits and include review by the Office of Management and Budget ("OMB").[21] But the SC-GHG was never designed for use in environmental reviews under NEPA, and it is ill-suited to that purpose. Throughout the DPEIS, BOEM analyzes impacts in categories like "negligible," "minor," or

[21] E.O. 12866, Regulatory Planning and Review, https://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf.

"moderate," but does not attempt to monetize or quantify those impacts further. Only in the SC-GHG analysis does BOEM attempt to quantify (and monetize) its analysis more precisely.

If BOEM chooses to monetize an OCS oil and gas sale's emissions using the social cost of greenhouse gases (SC-GHG) it should seek to improve its overall analysis. Without monetizing and presenting all the economic benefits alongside the cost of GHG emissions, BOEM does not provide sufficient context to decision makers and the public. For example, two of BOEM's scenarios find that an OCS lease sale reduces domestic CO2e emissions while lowering energy costs and increasing domestic energy consumption. Yet, BOEM finds that their mid-activity ($207 million) and high activity case ($1.3 billion) also impose social costs after monetizing GHG emissions using EPA's 2023 cost estimates and a 2.5% discount rate. However, BOEM does not note in this section that a single GOM lease sale's annual averaged economic impact can support 7,407 (18,941) jobs and generate $863 million ($2.2 billion) in GDP in their mid (high) scenario. (4-213)

Similarly, when BOEM examines foreign impacts from an OCS lease sale it only quantifies the costs that stem from increased foreign oil and gas usage without performing a substitution analysis or netting the benefits—environmental or otherwise—from increased oil and gas consumption. If BOEM is going to include the costs of foreigners' increased energy use, presumably BOEM should include the benefits. Overall, Appendix H presents the cost of GHG emissions from an OCS lease sale without providing decisionmakers with additional context that would be helpful for them to judge its merits.

BOEM documents areas of uncertainty within its model but it does not perform a sensitivity analysis or alter key parameters—e.g., long-term elasticities. If BOEM performed a robust sensitivity analysis it would provide a more comprehensive picture, regarding a lease sale's potential impact, for policymakers and the public. BOEM previously noted that its activity levels assume different prices for oil—e.g. $40, $100, $160 per barrel—and gas. BOEM should incorporate these price levels in their baseline as this assumption impacts the amount of oil an OCS lease sale displaces in their model.[22]

The DPEIS (at 4-13) cites to a one-page memorandum issued by the IWG on December 22, 2023. That memorandum, as with other IWG documents, has now been withdrawn. Even when that memorandum was in effect, the Associations note that it required agencies to determine what estimates of the SC-GHG "are most appropriate for particular analytical contexts, and best facilitate sound decision-making." Had BOEM conducted that analysis, it would properly have determined that sound decision-making required setting aside efforts to analyze SC-GHG given the limitations of available information and analysis.

BOEM cites to CEQ's January 9, 2023 interim NEPA guidance on consideration of greenhouse gas emissions and climate change. 88 Fed. Reg. 1196 (January 9, 2023). That CEQ interim guidance may soon change. In any event, that document was issued on an interim basis subject to public comment; as of the date of these comments, over two years later, CEQ has not issued an updated guidance document. CEQ also declined to include any SC-GHG requirement in its amendments to its NEPA implementing

[22] In this analysis, BOEM's low activity level generates 55.3 MMbbl; their mid-activity generates 326.1; and their high activity level generates 755.8 MMbbl. BOEM presumably uses these price assumptions in their exploration and development scenarios.

regulations. CEQ's interim guidance document recommends that in "*most circumstances*, once agencies have quantified GHG emissions" in a NEPA document, agencies should then provide an estimate of SC-GHG. 88 Fed. Reg. at 1202 (emphasis added). CEQ's wording concedes that agencies should not prepare an estimate in *all* circumstances, but does not identify the situations in which agencies should decline to provide such an estimate. Given that CEQ's recommendation is premised on an agency first quantifying GHG emissions, and that BOEM is not able to provide a reliable quantification for reasons already discussed, this situation is one in which BOEM should omit any SC-GHG analysis.

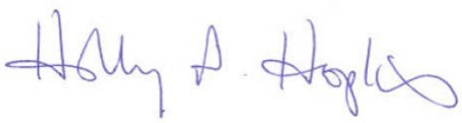
As discussed in the previous section, analyzing the GHG impacts of a lease sale requires a complex analysis of energy production worldwide, including substitution and elasticity across energy sources. Conducting this analysis properly appears to be outside the capabilities of BOEM's model, and is constrained by limitations in available data, so that BOEM's quantification of the GHG implications of leasing decisions is inherently unreliable. Layering a novel SC-GHG estimate on top of an analysis that is already impracticable does not improve the quality of agency decision-making, and instead impairs the ability of the public and agency staff to determine the implications of BOEM's decisions. This is especially true given that BOEM is legally prohibited from taking this analysis into account in making leasing decisions.

In the event that the anticipated EPA guidance on SC-GHG analysis leaves BOEM with discretion to apply a SC-GHG analysis in this context, there is legal authority indicating the BOEM can properly decline to do so. The D.C. Circuit has found that where an agency determines that there are difficulties associated with applying SC-GHG in a NEPA analysis, it is permissible for the agency to decide not to conduct such an analysis, and instead limit its review to an analysis of GHG emissions. See *Center for Biological Diversity v. FERC*, 67 F.4th 1176, 1184 (D.C. Cir. 2023) (FERC approval of LNG facilities); *Alabama Municipal Distributors Group v. FERC*, 100 F.4th 207, 214-15 (D.C. Cir. 2024) (FERC pipeline approval); *see also Dakota Resource Council v. US Department of the Interior*, No. 22-CV-1853, 2024 WL 1239698 at 18-21 (D.D.C. March 22, 2024) (BLM oil and gas lease sales). That would be the proper course for BOEM to follow here.

Conclusion

Thank you for the opportunity to provide these comments. The Associations reiterate their request that BOEM proceed with OCS oil and gas leasing under Alternative B, offering on a Region-wide basis all unleased acreage not subject to an existing moratorium. Please do not hesitate to contact us if you have questions on these comments.

Sincerely,



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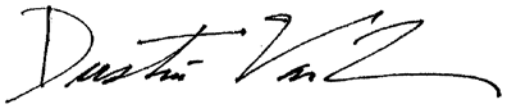

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Attachment: Comments of Trade Associations regarding the proposed rule to designate Rice's whale critical habitat, NOAA-NMFS-2023-0028 (Oct. 6, 2023); Darren Ireland, *Review of the Rice's Whale Proposed Critical Habitat and Related Scientific Literature* (attachment to Oct. 6, 2023 comments).