Submitted via Regulations.gov

June 16, 2025

Kelly Hammerle
Program Manager
Bureau of Ocean Energy Management
45600 Woodland Road
Sterling, VA 20166

Re: Comments on a Request for Information and Comments on the Preparation of the 11th National Outer Continental Shelf Oil and Gas Leasing Program

Dear Ms. Hammerle:

Defenders of Wildlife and the Animal Welfare Institute ("AWI") submit these comments on behalf of the 17 undersigned organizations regarding the Bureau of Ocean Energy Management's ("BOEM") Request for Information ("RFI") and Comments on the Preparation of the 11th National Outer Continental Shelf ("OCS") Oil and Gas Leasing Program.[1] Our organizations and the members we represent would be directly affected by oil and gas development in the Washington/Oregon and Northern, Central, and Southern California Planning Areas (collectively, "West Coast Planning Areas") and in the North, Mid, and South Atlantic and Straits of Florida Planning Areas (collectively, "East Coast Planning Areas"). We are strongly opposed to such a substantial threat to our natural resources, communities, and wildlife and thus oppose new offshore drilling anywhere on the OCS—but especially in the areas of the Atlantic and Pacific Oceans that have remained untouched by oil and gas leasing for more than 40 years due in part to repeated, longstanding local opposition to offshore drilling.

These comments focus on the East and West Coast Planning Areas, where President Trump has repeatedly indicated his intent to pursue offshore drilling. As explained below, BOEM cannot authorize leases in any ineligible portions of these planning areas, *i.e.*, National Marine Sanctuaries and areas restricted under a presidential withdrawal pursuant to Section 12(a) of the Outer Continental Shelf Lands Act ("OCSLA"). Furthermore, we present a detailed analysis under Section 18 of OCSLA demonstrating why BOEM should not authorize leases in *any* portion of the East or West Coast Planning Areas.

Any effort to open these areas to offshore drilling would be in direct defiance of nearly every state along the East and West Coasts who have long made their positions against offshore drilling clear. Both the East and West Coast Planning Areas are regions of outstanding ecological diversity and vibrant maritime activity, and oil and gas drilling could be catastrophic for these special ecosystems. As demonstrated by the *Deepwater Horizon* disaster in 2010, as well as countless other major spills over the years on the OCS, oil spills of all sizes cause severe immediate and long-lasting damage to marine and coastal environments. These risks are exacerbated by the current administration's and Congress's track record of rolling back offshore drilling safety regulations designed to prevent such environmental accidents. Meanwhile, the benefits of oil and gas development would be few, as industry interest remains low and current market conditions render any new development in the East and West Coast Planning Areas economically infeasible. Our organizations are also deeply

[1] Request for Information and Comments on the Preparation of the 11th National Outer Continental Shelf Oil and Gas Leasing Program MAA104000, 90 Fed. Reg. 17972 (Apr. 30, 2025) [hereinafter RFI].

concerned about the prospect of seismic airgun testing in the Atlantic and Pacific Oceans, which would cause immense harm to sensitive marine species like marine mammals; thus, we urge BOEM to not pursue seismic blasting where it does not intend to lease. Finally, in order to ensure that environmental impacts and alternatives are fully considered before moving forward, BOEM should conduct a National Environmental Policy Act ("NEPA") analysis.

I. BOEM MUST LIMIT THE TEMPORAL AND GEOGRAPHIC SCOPE OF THE RFI AND SUBSEQUENT DPP

A. Covered Five-Year Period

OCSLA[2] mandates that leasing programs consist of five-year schedules of proposed lease sales.[3] For the 11th National OCS Oil and Gas Leasing Program, however, BOEM has only *suggested* that the program will have a five-year schedule and has not specified what it anticipates the five-year period will be.[4] We would like to reaffirm that the 11th National OCS Program can only provide a "schedule of proposed lease sales . . . for the *five-year* period following its approval or reapproval,"[5] and request additional information as to the timing of the anticipated finalization of the 11th National OCS Program.

Furthermore, the 10th National OCS Program has already been created to provide an OCS leasing schedule from 2024 to 2029. While BOEM states that it intends to replace that program with the one it is currently developing, the agency should explain why that is necessary when the 10th Program was only recently completed and, as discussed in Section II.E below, market conditions do not currently and are not expected to require any change to those near-term leasing plans.

B. Eligible Areas of the OCS

BOEM is requesting information and comments on all 27 OCS Planning Areas, and states that it will analyze each of these areas in the subsequent Draft Proposed Program ("DPP").[6] This includes "the areas that are restricted from leasing by presidential withdrawal or Congressional moratorium," even though BOEM recognizes that they "may be currently unavailable" for leasing.[7] As discussed below, it also includes National Marine Sanctuaries designated for their special ecological, cultural, and historical features and needs.

We strongly urge BOEM to exclude from consideration any areas of the OCS where leasing has been prohibited, especially places restricted under a presidential withdrawal pursuant to OCSLA Section 12(a) or the National Marine Sanctuaries Act ("NMSA"). Each of these areas is ineligible for oil and gas leasing and must be treated as such.

1. Areas Withdrawn Under OCSLA Section 12(a)

Oil and gas leasing has been prohibited on more than 625 million acres of the OCS—including nearly 250 million acres off the West Coast and 334 million acres of the Atlantic OCS and eastern Gulf—

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[2] 43 U.S.C. § 1331, *et. seq.*

[3] RFI, 90 Fed. Reg. at 17973; *see also* 43 U.S.C. § 1344(a); 30 C.F.R. § 556.200.

[4] *See* RFI, 90 Fed. Reg. at 17976-77 (requesting information on "energy needs for the five year period relevant to the 11th National OCS Program" and whether areas "should be considered for leasing early or late in the five-year schedule," without providing dates for that five-year period).

[5] 43 U.S.C. § 1344(a) (emphasis added).

[6] RFI, 90 Fed. Reg. at 17973-74.

[7] *Id.*

subject to presidential withdrawals under OCSLA Section 12(a).[8] These withdrawals reflect a fifty-year bipartisan tradition of protecting coastal communities, natural resources, and wildlife from offshore drilling, and they cannot be revoked absent an act of Congress. Yet BOEM has indicated that it may ignore these restrictions and consider withdrawn areas in the DPP anyway,[9] and President Trump has twice attempted to unilaterally revoke important Section 12(a) protections.[10] Opening these areas to leasing would violate OCSLA, as well as undermine decades of state and local opposition to drilling off their shores.[11] BOEM should therefore exclude any presidentially withdrawn areas from consideration in the DPP.

a. Bipartisan History of Section 12(a) Withdrawals

OCSLA Section 12(a) allows the President to withdraw from disposition any of the unleased lands of the OCS.[12] Since OCSLA's enactment in 1953, there has been a longstanding bipartisan tradition of using this authority.[13] Eight presidents spanning the political spectrum—including the sitting president—have made more than a dozen Section 12(a) withdrawals over the past fifty-five years:

- **1960** – President Eisenhower was the first to use this power when he withdrew the Key Largo Coral Reef Preserve from disposition in 1960.[14]
- **1969** – Nine years later, the Secretary of the Interior for the Nixon administration withdrew the newly created Santa Barbara Channel Ecological Preserve from disposition.[15]
- **1990** – President George H.W. Bush made the first sizable Section 12(a) withdrawal of OCS lands when he announced a ten-year withdrawal of areas already under a legislative

[8] Press Release, The White House, President Biden Protects Atlantic and Pacific Coasts from Offshore Oil and Gas Drilling (Jan. 6, 2025) [hereinafter 2025 Biden Withdrawals Press Release], bidenwhitehouse.archives.gov/briefing-room/statements-releases/2025/01/06/fact-sheet-president-biden-protects-atlantic-and-pacific-coasts-from-offshore-oil-and-gas-drilling/; *see also* Withdrawal of Certain Areas of the United States Outer Continental Shelf From Oil or Natural Gas Leasing, 90 Fed. Reg. 6739 (Jan. 17, 2025) [hereinafter Biden 2025 Alaska Withdrawal]; Withdrawal of Certain Areas of the United States Outer Continental Shelf from Oil or Natural Gas Leasing, 90 Fed. Reg. 6743 (Jan. 6, 2025) [hereinafter Biden 2025 Atlantic, Pacific, and Gulf Withdrawal].

[9] RFI, 90 Fed. Reg. at 17974.

[10] Executive Order 13795, Implementing an America-First Offshore Energy Strategy, 82 Fed. Reg. 20815, 20816 (Apr. 28, 2017); Executive Order 14154, Unleashing American Energy, 90 Fed. Reg. 8353, 8354 (Jan. 29, 2025).

[11] *See* 2025 Biden Withdrawals Press Release, *supra* note 8 ("Nearly 400 municipalities and over 2,300 elected local, state, Tribal, and federal officials across the Atlantic, Pacific, and Gulf coasts have formally opposed the expansion of offshore drilling in these areas in view of its severe environmental, health, and economic threats. Nearly every Governor along the East and West Coasts—Republicans and Democrats alike—has expressed concerns about expanded oil and gas drilling off their coastlines. In Alaska, the new Northern Bering Sea protections are consistent with a long-standing request from more than 70 coastal Tribes based on the need to help sustain a vital and threatened ocean area, and the natural resources it contains that Indigenous communities have stewarded and relied on for subsistence since time immemorial.").

[12] 43 U.S.C. § 1341(a) ("The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.").

[13] *See* Adam Vann, CONG. RSCH. SERV., RL33404, OFFSHORE OIL AND GAS DEVELOPMENT: LEGAL FRAMEWORK 4-6 & n.29 (2018), crsreports.congress.gov/product/pdf/RL/RL33404 (outlining prior withdrawals).

[14] Establishing the Key Largo Coral Reef Preserve, 25 Fed. Reg. 2352 (Mar. 19, 1960).

[15] Establishment of Santa Barbara Channel Ecological Preserve, 34 Fed. Reg. 5655 (Mar. 26, 1969).

moratorium on oil and gas leasing and development.[16]

- **1998** – President Clinton extended the Bush moratorium until 2012 and indefinitely withdrew from disposition by leasing OCS areas designated as marine sanctuaries as of 1998.[17]
- **2008** – Four years before the Clinton withdrawal was set to expire, President G.W. Bush issued a memorandum modifying the Clinton memorandum to encompass any area designated as a marine sanctuary as of July 2008.[18]
- **2010** – President Obama withdrew Bristol Bay, part of the North Aleutian Basin in Alaska, from leasing through June 30, 2017.[19]
- **2014** – President Obama next withdrew "for a time period without specific expiration" the entire North Aleutian Basin Planning Area, including Bristol Bay, from consideration for any oil or gas leasing for purposes of exploration, development, or production.[20]
- **2016** – Finally, President Obama indefinitely withdrew the Chukchi Planning Area and portions of the Beaufort Sea Planning Area in Alaska,[21] 26 major canyons and canyon complexes off the Atlantic coast,[22] and the Norton Basin Planning Area and portions of the St. Matthew-Hall Planning Area in Alaska.[23]
- **2020** – President Trump issued ten-year withdrawals of the South Atlantic and Straits of Florida Planning Areas, the North Carolina portion of the Mid-Atlantic Planning Area, and parts of the Central and Eastern Gulf of Mexico Planning Areas, all of which are set to expire on June 30, 2032.[24]

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[16] George H.W. Bush, *Statement on Outer Continental Shelf Oil and Gas Development*, AM. PRESIDENCY PROJECT (June 26, 1990), presidency.ucsb.edu/documents/statement-outer-continental-shelf-oil-and-gas-development; Vann (2018), *supra* note 13.

[17] Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition, 34 WEEKLY COMP. PRES. DOC. 1111 (June 12, 1998) [hereinafter Clinton Withdrawal].

[18] Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf From Leasing Disposition, 44 WEEKLY COMP. PRES. DOC. 986 (July 14, 2008) [hereinafter G.W. Bush Withdrawal]. The year prior, President G.W. Bush also "modified the executive directive on OCS leasing withdrawal to reflect congressional moratoria in two areas—the North Aleutian Basin planning area offshore Alaska, and areas of the eastern Gulf of Mexico." Curry L. Hagerty, CONG. RSCH. SERV., R41132, OUTER CONTINENTAL SHELF MORATORIA ON OIL AND GAS DEVELOPMENT 7 (2011).

[19] Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition, 2010 DAILY COMP. PRES. DOC. (Mar. 31, 2010).

[20] Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition, 2014 DAILY COMP. PRES. DOC. (Dec. 16, 2014).

[21] Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska from Leasing Disposition, 2015 DAILY COMP. PRES. DOC. 1 (Jan. 27, 2015); Memorandum on Withdrawal of Certain Portions of the United States Arctic Outer Continental Shelf From Mineral Leasing, 2016 DAILY COMP. PRES. DOC. 1 (Dec. 20, 2016).

[22] Memorandum on Withdrawal of Certain Areas off the Atlantic Coast on the Outer Continental Shelf From Mineral Leasing, 2016 DAILY COMP. PRES. DOCS. 1 (Dec. 20, 2016).

[23] Executive Order 13754, Northern Bering Sea Climate Resilience, 81 Fed. Reg. 90669, 90670 (Dec. 9, 2016).

[24] Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition, 2020 DAILY COMP. PRES. DOC. (Sept. 8, 2020), govinfo.gov/content/pkg/DCPD-202000659/pdf/DCPD-202000659.pdf; Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition, 2020 DAILY COMP. PRES. DOC. (Sept. 25, 2020), govinfo.gov/content/pkg/DCPD-202000726/pdf/DCPD-202000726.pdf.

- **2023** – President Biden withdrew the remaining leasable portions of the Beaufort Sea Planning Area in Alaska.[25]
- **2025** – In January 2025, President Biden issued two memoranda indefinitely withdrawing the remaining open areas of the Northern Bering Sea Climate Resilience Area in Alaska,[26] as well as the North Atlantic, Mid-Atlantic, South Atlantic, and Straits of Florida Planning Areas; the eastern Gulf of Mexico; and the Washington/Oregon, Northern California, Central California, and Southern California Planning Areas.[27]

Cumulatively, these withdrawals protect the full extent of the Atlantic OCS under U.S. jurisdiction; the Pacific OCS off California, Oregon, and Washington; the Eastern Gulf; and the entirety of the North Aleutian Basin, Norton Basin, Beaufort Sea, and Chukchi Sea Planning Areas surrounding Alaska.

b. Presidential Withdrawals Are Irrevocable

In its RFI, BOEM recognizes that withdrawn portions of the OCS cannot be offered for sale "until Congress and/or the President, as applicable, makes [them] available."[28] However, this statement is misleading. The President does not have unilateral authority to make permanently withdrawn areas available again; only an act of Congress may repeal a Congressional moratorium or a permanent presidential withdrawal under OCSLA Section 12(a). President Trump has twice tried to revoke prior presidents' indefinite withdrawals;[29] however, the U.S. District Court for the District of Alaska, the only court to have weighed in on this issue, found that such revocations are unlawful in light of the text, structure, purposes, and legislative history of OCSLA.[30] Areas whose withdrawal President Trump has claimed to revoke should consequently be considered unavailable for leasing absent legislation to the contrary—as should all OCS areas that have been subject to permanent withdrawal.

2. National Marine Sanctuaries

We are particularly concerned about potential efforts to open national marine sanctuaries to oil and gas leasing in the 11th National OCS Program in spite of the clear intent of Congress and past presidents to protect these special places from destructive extractive activities. As discussed below in Section II.C, there are 11 national marine sanctuaries in the Pacific and Atlantic Planning Areas, all of which protect valuable marine wildlife and ecosystems.[31] Opening these sanctuaries to leasing would violate OCSLA Section 12(a), as well as the NMSA and its implementing regulations.

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[25] Memorandum on Withdrawal of Certain Areas off the United States Arctic Coast of the Outer Continental Shelf From Oil or Gas Leasing, 2023 DAILY COMP. PRES. DOC. 1 (Mar. 13, 2023).
[26] Biden 2025 Alaska Withdrawal, 90 Fed. Reg. 6739.
[27] Biden 2025 Atlantic, Pacific, and Gulf Withdrawal, 90 Fed. Reg. 6743.
[28] RFI, 90 Fed. Reg. at 17973-74.
[29] E.O. 13795, Implementing an America-First Offshore Energy Strategy, 82 Fed. Reg. at 20816; E.O. 14154, Unleashing American Energy, 90 Fed. Reg. at 8354.
[30] *League of Conservation Voters v. Trump*, 363 F. Supp. 3d. 1013 (D. Alaska 2019), *dismissed as moot League of Conservation Voters v. Biden*, 843 F. App'x 937, 939 (9th Cir. 2021); *see also* Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg 7037, 7039 (Jan. 25, 2021) (restoring prior Section 12(a) withdrawals).
[31] *See* Attachment 4.

a. Bipartisan History of National Marine Sanctuary Designation

As with OCSLA Section 12(a) withdrawals, there is a longstanding, bipartisan tradition of designating national marine sanctuaries to protect "some of the most iconic underwater places throughout the United States."[32] Seventeen national marine sanctuaries have been designated over the past fifty years, "spanning over 629,000 square miles of ocean and Great Lakes waters" from the Hawaiian islands to the Massachusetts coast and the Florida Keys.[33] These sanctuaries are managed with the "primary objective of resource protection,"[34] meaning incompatible uses—like oil and gas exploration that could threaten ecological, cultural, or historical resources—are expressly prohibited.[35]

Indeed, the NMSA,[36] the statute authorizing the creation of national marine sanctuaries, was passed in 1972 in response to public outcry over a catastrophic three-million-gallon oil spill in Santa Barbara, California, that "blacken[ed] popular beaches and kill[ed] thousands of seabirds and countless fish and marine mammals."[37] Public support for the act went beyond simply "preventing something, such as oil drilling," to also include "*proactive* protection of important areas" through designation as a marine sanctuary.[38]

As sanctuaries were designated through the decades, NOAA issued proactive protections in the form of regulations prohibiting seabed drilling in national marine sanctuaries, citing the need to "protect the resources and qualities of [sanctuaries] from the harmful effects of . . . drilling into the seabed, strip mining, laying of pipelines and outfalls, and offshore commercial development, which may disrupt and/or destroy sensitive marine benthic habitats, such as kelp beds, invertebrate populations, fish habitats, and estuaries and sloughs."[39] NOAA likewise prohibited oil and gas development, exploration, and production in many sanctuaries because such activities would be "inconsistent with the purposes of the Sanctuary,"[40] given threats that "include not only catastrophic events such as oil spills associated with blow-outs, rupture of pipelines or loading of tankers but also long-term chronic events such as discharge of drilling fluids, cuttings and air emissions."[41]

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[32] *National Marine Sanctuaries*, NAT'L OCEANIC & ATMOSPHERIC ADMIN. (NOAA), sanctuaries.noaa.gov (last visited June 7, 2025).
[33] *Id.* This number does not include the two sanctuaries, the Key Largo National Marine Sanctuary ("NMS") and the Looe Key NMS, that were subsumed by the Florida Keys NMS in 1990. *See* 15 C.F.R. § 922.160, *et seq.*
[34] 16 U.S.C. § 1431(b)(6); *see also id.* § 1431(a)(4) (stating the policy of Congress to establish national marine sanctuaries to "improve the conservation, understanding, management, and wise and sustainable use of marine resources; enhance public awareness, understanding, and appreciation of the marine environment; and maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit" designated areas).
[35] *Id.* § 1441(c)(1) ("A permit issued under this section . . . shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources.").
[36] 16 U.S.C. 1431, *et seq.*
[37] Elizabeth Moore, OFF. OF NAT'L MARINE SANCTUARIES, NOAA, TIME AND TIDE: A HISTORY OF THE NATIONAL MARINE SANCTUARY SYSTEM, at 14, 16-17 (2022), nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/docs/2022-time-and-tide-a-history-of-the-national-marine-sanctuary-system.pdf.
[38] *Id.* at 17 (emphasis added).
[39] *See, e.g.*, Monterey Bay National Marine Sanctuary Regulations, 57 Fed. Reg. 43310, 43320 (Sept. 18, 1992).
[40] *See, e.g.*, *id.* at 43311.
[41] *See, e.g.*, *id.*

b. OCSLA Protections

Every national marine sanctuary on the OCS has been permanently withdrawn from disposition by leasing under OCSLA Section 12(a) and thus is ineligible for inclusion in the 11th National OCS Program. In recognition of the clear incongruity between the aims of the National Marine Sanctuary System and the potential harm from fossil fuel extraction,[42] President Clinton indefinitely withdrew from disposition by leasing all OCS areas designated as marine sanctuaries by 1998.[43] This withdrawal was reaffirmed and updated by President George W. Bush in 2008,[44] encompassing a total of thirteen sanctuaries specifically withdrawn from leasing. Of the four sanctuaries created after the 2008 Bush withdrawal, only Chumash Heritage NMS is on the OCS and even hypothetically eligible for inclusion in the 11th National OCS Program.[45] But Chumash Heritage NMS falls within President Biden's 2025 withdrawal of the Central California Planning Area, which, as of the date of this letter, remains in effect and cannot be revoked barring an act of Congress.[46] Thus, leasing of any national marine sanctuary on the OCS is prohibited under OCSLA Section 12(a).

c. NMSA Section 310 Protections

Oil and gas exploration, development, and production are also incompatible uses of national marine sanctuaries expressly prohibited by NMSA Section 310, which allows the Secretary of Commerce to issue special use permits authorizing certain activities[47] in a sanctuary "*only if* that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources."[48] Oil and gas leasing would meet neither standard.

Oil and gas activities are fundamentally incompatible with valid sanctuary purposes, as national marine sanctuaries are inherently designed to protect and conserve some of the country's "most iconic natural, cultural, and historical marine resources."[49] To become a national marine sanctuary, a marine area must be "of special national significance" due to its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities; the communities of living marine resources it harbors; or its resource or human-use values.[50] An area also must be at-risk, requiring supplemental protections to ensure its "coordinated and

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[42] *See, e.g.*, 15 C.F.R. § 922.61(f) (prohibiting drilling or coring the seabed in Monitor NMS, the nation's first marine sanctuary); *id.* § 922.72(a)(4) (prohibiting drilling in Channel Islands NMS); *id.* § 922.142(3) (same for Stellwagen Bank NMS); *id.* § 922.152(5) (same for Olympic Coast NMS); *id.* § 922.163(a)(3) (same for Florida Keys NMS).

[43] Clinton Withdrawal, 34 WEEKLY COMP. PRES. DOC. at 1111.

[44] G.W. Bush Withdrawal, 44 WEEKLY COMP. PRES. DOC. at 986.

[45] Mallows Bay-Potomac River NMS (2019), Wisconsin Shipwreck Coast NMS (2021), and Lake Ontario NMS (2024) are not subject to OCSLA, as they are not located on the OCS. Chumash NMS, in contrast, is located off the coast of central California.

[46] Biden 2025 Atlantic, Pacific, and Gulf Withdrawal, 90 Fed. Reg. 6743; *LCV v. Trump*, 363 F. Supp. 3d. at 1030.

[47] Authorization of these activities must be necessary to establish conditions of access to and use of any sanctuary resource, or to promote public use and understanding of a sanctuary resource. 16 U.S.C. § 1441(a). Sanctuary resources are defined as "any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary." *Id.* § 1432(8). Mineral leasing in the 11th National OCS Program clearly would not meet these standards either, as oil and gas deposits are not sanctuary resources.

[48] 16 U.S.C. § 1441(c)(1) (emphasis added).

[49] *National Marine Sanctuary Frequently Asked Questions*, OFF. NAT'L MARINE SANCTUARIES, NOAA, sanctuaries.noaa.gov/about/faqs/ (last visited May 29, 2025).

[50] 16 U.S.C. § 1433(a)(2).

comprehensive conservation and management."[51] Logically, the purpose of designating any sanctuary at minimum includes protecting the special qualities, living marine resources, or resource or human use values that make it nationally significant. Oil and gas activities, however, only threaten these interests. Individual leases not only risk certain harm from the construction and operation of a well—such as from building structures or depositing drill muds and cuttings—but also create the possibility of a catastrophic spill or long-term adverse impacts from chronic pollution or the disturbance of important habitat.[52] It is difficult to imagine a scenario in which any sanctuary purpose—from preserving fragile wildlife habitat, historic sites, or Indigenous cultural use of marine spaces to providing sustainable recreational or commercial fishing areas—would not be adversely affected by these risks.

Nor would oil and gas leasing be compatible with the protection of sanctuary resources, which include "any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary."[53] Again, an activity that risks catastrophic damage to the surrounding area—and does nothing to advance conservation—is inherently adverse to the protection of important resources there.

These points have been recognized time and time again by both NOAA and Congress in establishing sanctuaries and issuing their managing regulations:

- **Channel Islands NMS** was designated in 1980 "to protect and preserve the extraordinary ecosystem including marine birds and mammals and other natural resources of the waters surrounding the northern Channel Islands and Santa Barbara Island and ensure the continued availability of the area as a research and recreational resource."[54] Increasing use of the Santa Barbara Channel was putting additional pressure on the resources that the sanctuary was designed to conserve, so "those activities which pose a significant threat to the special marine features of these waters" were prohibited within its boundaries.[55] One such prohibited activity was new leasing of hydrocarbon exploration, development and production activities.[56] NOAA recognized that "[e]ven if the specific operations [of an oil or gas well] . . . do not cause significant damage, there remains the possibility of a major spill resulting in serious damage and the potential for long-term adverse impacts from chronic pollution by hydrocarbons and drill muds and other disturbance of sensitive habitat."[57]
- **Florida Keys NMS** was established through an act of Congress in 1990 to "provide comprehensive protection" for the "spectacular, unique, and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs," in offshore waters adjacent to the Florida Keys.[58] As part of these efforts, Congress prohibited the leasing, exploration, development, or production of minerals or hydrocarbons within the

[51] *Id*. § 1433(a)(3).
[52] The Channel Islands National Marine Sanctuary, 45 Fed. Reg. 65198, 65200-01 (Oct. 2, 1980) (Final Rule).
[53] 16 U.S.C. § 1432(8).
[54] 45 Fed. Reg. at 65203.
[55] The Channel Islands National Marine Sanctuary, 44 Fed. Reg. 69970, 69971 (Dec. 5, 1979) (Proposed Rule); *see also* 45 Fed. Reg. at 65199.
[56] 45 Fed. Reg. at 65204; *see also* 15 C.F.R. § 922.7(a)(1).
[57] 45 Fed. Reg. at 65200–01.
[58] Florida Keys National Marine Sanctuary and Protection Act, Pub. L. No. 101-605, § 2, 104 Stat. 3089, 3089 (1990).

sanctuary.[59] This prohibition was based on the "best available scientific information,"[60] which established that "the corals, seagrasses, and mangroves of the Florida Keys and the Sanctuary's water quality are especially vulnerable to oil and gas activities in the area."[61]

- **Chumash Heritage NMS** was designated in October 2024 to protect the area's ecological, historical, archaeological, and cultural resources from a variety of threats, including new offshore energy development.[62] After noting that new oil, gas, or mineral development would be incompatible with these purposes, NOAA promulgated regulations prohibiting any new oil, gas, or mineral development leases in the sanctuary.[63] If Chumash Heritage NMS were opened to energy development, BOEM would risk harm to habitat for southern sea otters,[64] blue whales, snowy plovers, black abalone, white sharks, and leatherback sea turtles, many of which are threatened or endangered species; the heritage and way of life for Indigenous peoples like the Chumash, who have lived in and cared for the area for more than 10,000 years; and hundreds of known or suspected shipwrecks of historical importance, several of which are listed on the National Register of Historic Places.[65] Sea otters in particular have long been known to be especially vulnerable to "the increased threat of an oil spill in connection with offshore development and the production and transfer of petroleum products," as oil spills spread quickly in central California and can rapidly kill sea otters by destroying the insulative properties of their coats and causing hypothermia.[66]

Given the fundamental incompatibility of oil and gas leasing with the protection of natural, cultural, or historical resources, BOEM must consider all national marine sanctuaries ineligible for inclusion in the 11th National OCS Program and exclude them from analysis in the DPP.

II. THE SECTION 18 OCSLA FACTORS WEIGH HEAVILY AGAINST OIL AND GAS LEASING AND EXPLORATION IN THE ATLANTIC AND PACIFIC

In 1978, Congress declared the OCS to be "a vital national resource reserve held by the Federal Government for the public."[67] OCS management must be "conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the [OCS], and the potential impact of oil and gas exploration on other resource values of the [OCS] and the marine, coastal, and human environments."[68]

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[59] *Id.* § 6(b), 104 Stat. at 3092.
[60] Florida Keys National Marine Sanctuary Proposed Regulations, 60 Fed. Reg. 16399, 16404 (Mar. 30, 1995).
[61] Florida Keys National Marine Sanctuary Final Regulations, 62 Fed. Reg. 4578, 4579 (Jan. 30, 1997).
[62] Chumash Heritage National Marine Sanctuary, 89 Fed. Reg. 83554, 83555 (Oct. 16, 2024) (Final Rule).
[63] *Id.* at 83582 ("[T]he regulations do not allow NOAA to approve any permit or otherwise authorize certain incompatible activities, such as new oil, gas or mineral development, . . . within the sanctuary."); 15 C.F.R. § 922.232(a)(1).
[64] U.S. FISH & WILDLIFE SERV., SPECIES STATUS ASSESSMENT REPORT FOR THE SOUTHERN SEA OTTER (*ENHYDRA LUTRIS NEREIS*), at 29, 34 (2023) [hereinafter SEA OTTER SSA], iris.fws.gov/APPS/ServCat/DownloadFile/238511; *see also id.* at 39 (noting that the risk of oil spills is a major threat to the species).
[65] 89 Fed. Reg. at 83555.
[66] SEA OTTER SSA, *supra* note 64, at 39 (discussing Determination that the Southern Sea Otter Is a Threatened Species, 42 Fed. Reg. 2965 (Jan. 14, 1977)).
[67] 43 U.S.C. § 1332(3).
[68] *Id.* § 1344(a)(1).

BOEM is statutorily required to consider the following eight factors outlined in Section 18 of OCSLA when determining the timing and location of the leasing, exploration, development, and production of offshore oil and gas:

i. Existing information concerning the geographical, geological, and ecological characteristics of such regions;
ii. An equitable sharing of developmental benefits and environmental risks among the various regions;
iii. The location of such regions with respect to, and the relative needs of, regional and national energy markets;
iv. The location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the OCS;
v. The interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;
vi. Laws, goals, and policies of affected states which have been specifically identified by the governors of such states as relevant matters for the Secretary of the Interior's consideration;
vii. The relative environmental sensitivity and marine productivity of different areas of the OCS; and
viii. Relevant environmental and predictive information for different areas of the OCS.[69]

Considering these factors, BOEM must develop its leasing program "to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone."[70] Leasing programs for which BOEM has failed to adequately consider each of these factors have been held invalid and vacated by federal courts.[71] BOEM should thus take care to ensure that every Section 18 factor is given due consideration in preparing the DPP and any subsequent planning documents.

Our organizations provide a detailed analysis of several factors—namely, the laws, goals, and policies of affected states; geographic, geological, and ecological characteristics of OCS regions; equitable sharing of developmental benefits and environmental risks; national energy market needs; the interests of potential oil and gas producers in developing oil and gas resources; and other uses of the sea and seabed—as they pertain to the West and East Coast Planning Areas, to assist BOEM in its preparation of the DPP, and ultimately the 11th National OCS Program. As detailed below, each of these factors weighs against opening the Atlantic or Pacific coasts to any new oil and gas leasing for the first time in decades.

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[69] *Id*. § 1344(a)(2).
[70] *Id*. § 1344(a)(3).
[71] *See Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 563 F.3d 466, 487-89 (D.C. Cir. 2009) [hereinafter *CBD v. Interior*] (vacating and remanding the 2007-2012 leasing program because the Department of the Interior failed to conduct a proper environmental sensitivity analysis under Section 18(a)(2)(G)); *California v. Watt*, 668 F.2d 1290, 1313–15 (D.C. Cir. 1981) (remanding the 1980-1985 leasing program to Interior for inadequately considering the "equitable sharing of developmental benefits and environmental risks among the various regions" and failing to consider "the relative environmental sensitivity and marine productivity of different areas of the [OCS]" under Sections 18(a)(2)(B) and (G), respectively).

A. BOEM Must Adequately Consider Each Section 18 Factor

BOEM must adequately consider all eight Section 18 factors in preparing and maintaining its 11th National OCS Program.[72] Failure to do so when determining the timing or location of leasing activity may lead to a court order invalidating the program.[73]

But it is not clear that BOEM plans to give full and fair consideration to each factor, as required by statute. BOEM recognizes in the RFI that the "eight factors that *must* be considered in determining the timing and location of leasing under the National OCS Program are set forth in Section 18(a)(2) of [OCSLA]."[74] However, the RFI then appears to discount the importance of certain factors in an effort to downplay opposition from directly affected state, local, and regional decisionmakers and their communities,[75] as well as a lack of interest in new drilling from the oil and gas industry.[76] The RFI lists eight pieces of information that BOEM believes will be "most useful" in formulating the 11th National OCS Program, but not all Section 18 factors are included.[77] Notably, national energy needs are listed twice, and the "interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination" and the "laws, goals, and policies of affected states" are not listed at all.[78] Though BOEM does go on to state that the agency "will take into account the interest of potential oil and gas producer in the development of oil and gas resources" in its request for information from the oil and gas industry, the RFI is void of any request for information on the "laws, goals, and policies of affected States which have been specifically identified by the Governors of such States"—a factor that BOEM *must* consider under OCSLA Section 18(a)(2)(F).[79] In misleading the public as to what factors BOEM is required to analyze, the RFI undermines transparency, public

[72] *See* 43 U.S.C. § 1344(a).
[73] *See id*. § 1344(a)(2); *Watt*, 668 F.2d at 1313-15 (vacating for failure to properly consider Section 18 factors in determining the timing and location of leasing activity).
[74] RFI, 90 Fed. Reg. at 17975 (emphasis added); *see also* 43 U.S.C. § 1344(a)(2).
[75] *See, e.g.*, Letter from State Legislators to Ryan Zinke, U.S. Sec'y of the Interior (Mar. 5, 2018), ncelenviro.org/app/uploads/2018/03/OCS-Oil-and-Gas-Leasing-Program-Sign-On.pdf (letter from 220 state legislators in 16 Atlantic and Pacific coastal states opposing offshore drilling); Bradley Jones, *More Americans Oppose than Favor Increased Offshore Drilling*, PEW RSCH. CTR. (Jan. 30, 2018), pewresearch.org/short-reads/2018/01/30/more-americans-oppose-than-favor-increased-offshore-drilling/ ("Overall, Americans who live close to a coastline are less supportive of expanding offshore drilling than those who live farther from a coast. Only about a third (34%) of those who live within 25 miles of a coastline favor allowing more offshore oil and gas drilling, while 56% are opposed.").
[76] *See, e.g.*, Tristan Baurick, *Trump Wants More Drilling, but the Oil Market Is Already Saturated*, GRIST MAG. (Jan. 31, 2025), grist.org/energy/trump-wants-more-drilling-but-the-oil-market-is-already-saturated/ ("The market is saturated with oil, making companies reluctant to spend more money drilling because the added product will likely push prices down, cutting into profits.").
[77] RFI, 90 Fed. Reg. at 17976.
[78] *See id.*; *cf.* 43 U.S.C. § 1344(a). The eighth category of information requested is "[m]ethods and procedures for assuring the receipt of fair market value for lands leased." RFI, 90 Fed. Reg. at 17976.
[79] RFI, 90 Fed. Reg. at 17977 (requesting only that states share information on "the relationship between OCS oil and gas activity and the states' coastal zone management programs, . . . environmental risk and potential for damage to coastal and marine resources associated with OCS development, . . .other uses of the sea and seabed, . . . equitable sharing of developmental benefits and environmental risks associated with OCS oil and gas activity (or the likely energy substitutes in the absence of new OCS leasing)," and "the impacts of additional OCS leasing, exploration, production, and the associated economic impact on the state and national economies and citizens, including impacts to employment, existing and new industries, and state taxes").

participation, and reasoned decision-making in developing a DPP, and ultimately the 11th National OCS Program, by providing deficient notice of the agency's statutory obligations.

BOEM cannot obfuscate the widespread opposition to drilling off the Atlantic and Pacific coasts. We therefore strongly urge BOEM to consider the laws, goals, and policies of those affected states, as well as the evidently diminished interest of oil and gas producers in new OCS leasing, in determining whether to include the East and West Coast Planning Areas in the 11th National OCS Program—even if those factors may be less supportive of, or even contrary to, this administration's policy of 'unleashing American energy' by expanding energy production in the OCS.[80]

B. Laws, Goals, and Policies of Affected States

In developing the 11th National OCS Program, BOEM must consider the "laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration."[81] These laws, goals, and policies, as evidenced by states' historic requests for exclusion and marine and coastal wildlife protections, weigh heavily against opening up the East or West Coast Planning Areas to new oil or gas leasing.

1. History of State Requests for Exclusion

States along the Atlantic and Pacific coasts have long requested to have their coastlines excluded from OCS leasing programs, and BOEM has likewise long acknowledged that states play a key role in offshore leasing decisions by deferring to their positions regarding drilling off their coasts. This is evidenced by the development of both the 9th and 10th National OCS Programs, during which BOEM excluded the East and West Coast Planning Areas based in large part on opposition from state governors, other state representatives, local elected officials, and Tribes.

a. 9th National OCS Program

In their responses to BOEM's 2014 RFI for the 9th National OCS Program, the governors of six states—Washington, Oregon, California, Maryland, Delaware, and Massachusetts—explicitly requested exclusion from oil and gas leasing.[82] BOEM therefore entirely excluded all West Coast Planning Areas and the North Atlantic Planning Area from its 2017–2022 DPP, which the agency found to be "consistent with the long-standing interests of Pacific coast states."[83] The DPP proposed only a single lease sale at least 50 miles off the coasts of Virginia, North Carolina, South Carolina, and Georgia in the combined Mid-Atlantic and South Atlantic Planning Areas due to requests for inclusion from those states.[84] The 50-mile buffer had been included for the potential Atlantic sale to minimize conflicts with Department of Defense or other multiple-use activities, such as renewable energy, commercial and recreational fishing, critical habitat needs for marine mammals and sea turtles, hard bottom environments, and other environmental concerns.[85]

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[80] RFI, 90 Fed. Reg. at 17973.
[81] 43 U.S.C. § 1344(a)(2)(F).
[82] U.S. DEP'T OF THE INTERIOR (DOI), BUREAU OCEAN ENERGY MGMT. (BOEM), 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, at S-3 (2015), boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-DPP.pdf.
[83] *Id.* at S-3, S-10.
[84] *Id.* at S-3, S-9.
[85] *Id.* at S-10.

Coastal communities in the Mid- and South Atlantic quickly began adopting resolutions against drilling off their coasts in response to this planned lease sale.[86] Fifteen months after publishing its DPP, the Interior Department announced that its Proposed Program would not include any lease sales in the Mid- and South Atlantic Program Area, citing market dynamics, conflicts with competing commercial and military ocean uses, and, notably, "strong local opposition."[87] Citizens and local officials in communities along the Atlantic coast had expressed "significant opposition" to "the prospect of introducing . . . the impacts of oil and gas development and the impacts of accompanying supporting infrastructure, along with [its] inherent risks," into their communities.[88] Of particular concern was the risk that oil and gas activities may jeopardize Department of Defense activities or established and important economic uses of the coast, such as ocean-dependent tourism, commercial and recreational fishing, and commercial shipping and transportation.[89]

b. 10th National OCS Program

Opposition to offshore drilling in the East and West Coast Planning Areas only grew as BOEM prepared its 10th National OCS Program a few years later. In response to the 2017 RFI, the governors of Washington, Oregon, and California once again "strongly oppose[d] any new leasing off their coasts."[90] On the Atlantic coast, BOEM received letters of opposition from governors, or state agencies on behalf of a governor, in Florida, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, and Massachusetts.[91] Despite this widespread opposition, the DPP proposed fifteen different lease sales off the Atlantic and Pacific coasts covering all eight East and West Coast Planning Areas.[92]

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[86] *See, e.g.*, Mark Hibbs, *Towns Vote to Oppose Offshore Drilling*, COASTALREVIEW.ORG (Aug. 13, 2015), coastalreview.org/2015/08/towns-vote-to-oppose-offshore-drilling/ ("Beaufort and Morehead City join 18 other cities and counties in [North Carolina] that have passed resolutions against offshore drilling or seismic testing . . . In addition to the state's other port city of Wilmington, towns on the list include Sunset Beach, Caswell Beach, Wrightsville Beach, Surf City, Manteo, Kill Devil Hills and Nags Head."); David Helvarg, *The Shifting Politics of Offshore Drilling*, SIERRA MAG. (Mar. 8, 2016), sierraclub.org/sierra/2016-2-march-april/green-life/shifting-politics-offshore-drilling ("All coastal towns and cities in South Carolina have now passed resolutions against either acoustic surveys (which are necessary for underwater oil and gas exploration but which can harm marine life) or oil drilling. Some 100 other municipalities from Florida to New Jersey have passed similar resolutions."); Press Release, Oceana, Washington, D.C. Becomes Largest City to Formally Oppose Offshore Drilling and Seismic Airgun Blasting (Feb. 3, 2016), oceana.org/press-releases/washington-dc-becomes-largest-city-formally-oppose-offshore-drilling-and/ ("Today, the Washington, D.C. City Council voted unanimously to oppose offshore drilling and seismic airgun blasting in the Atlantic Ocean. Washington, D.C. is the largest city to formally oppose such activities, joining Baltimore, MD, Savannah, GA, Charleston, SC and Wilmington, NC, among others.").

[87] Press Release, U.S. DOI, Interior Department Announces Next Step in Offshore Oil and Gas Leasing Planning Process for 2017-2022 (Mar. 15, 2016), doi.gov/pressreleases/interior-department-announces-next-step-offshore-oil-and-gas-leasing-planning-process.

[88] BOEM, 2017-2022 OCS OIL AND GAS LEASING PROPOSED PROGRAM, at S-9 (2016), boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-Proposed-Program-Decision.pdf.

[89] *Id.* at S-9-S-10.

[90] BOEM, 2019-2024 NATIONAL OCS OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, at 9-2 (2018), boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2019-2024/DPP/NP-Draft-Proposed-Program-2019-2024.pdf [hereinafter 2019-2024 OIL & GAS DPP].

[91] *Id.* at 9-2-9-3.

[92] *Id.* at 8.

In response to the DPP, BOEM "received more than two million comments from the public and stakeholders, including governors, Federal agencies, state agencies, local agencies, energy and non-energy industries, Tribal governments, environmental non-governmental organizations and advocacy groups, and the public."[93] Representatives from East coast states were outspoken against any drilling in the Atlantic, with letter of oppositions sent in from the governors of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, and South Carolina, and the state attorneys general of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Delaware, New York, New Jersey, Maryland, Virigina, and North Carolina.[94] BOEM received an outpouring of opposition from West coast states as well, with letters of opposition from the governors of California and Washington; advisors to the governor of Oregon; the attorneys general of California, Oregon and Washington; and state agencies, including the California Air Resources Board, representatives of the California Coastal Commission, and the Washington Department of Ecology.[95] After receiving these comments from every East coast state from South Carolina to Maine, the Trump administration did not finalize the 10th National OCS Program, and upon resuming its preparation, the Biden administration dropped all East and West Coast Planning Area sales in the Proposed Program.[96]

c. Current State and Local Opposition

As of earlier this year, "[n]early every Governor along the East and West Coasts—Republicans and Democrats alike—has expressed concerns about expanded oil and gas drilling off their coastlines,"[97] including the governors of Maine, Massachusetts, Rhode Island, Connecticut, Delaware, Maryland, North Carolina, New Hampshire, New York, New Jersey, South Carolina, Georgia, and Florida on the Atlantic coast.[98] Almost 400 municipalities and more than 2,300 elected local, state and federal officials have formally opposed offshore oil and gas drilling and seismic airgun blasting.[99] Just two weeks ago, U.S. Representative Nancy Mace (R-SC) sent a letter to Secretary Burgum urging him to preserve the moratorium on oil and gas exploration, development, and production off the coast of South Carolina in developing the 11th National OCS Program, citing "widespread bipartisan agreement" on the issue.[100] And just last week, Dare County, North Carolina, passed a resolution stating their opposition to the current federal push for offshore drilling.[101]

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[93] BOEM, 2023-2028 NATIONAL OCS OIL AND GAS LEASING PROPOSED PROGRAM, at 1 (2022), boem.gov/sites/default/files/documents/oil-gas-energy/national-program/2023-2028_Proposed%20Program_July2022.pdf.

[94] *Id.* at A-5, A-10, A-12-A-15.

[95] *Id.* at A-6-A-9.

[96] *Id.* at 4-5.

[97] *Fact Sheet: President Biden Protects Atlantic and Pacific Coasts from Offshore Oil and Gas Drilling*, THE WHITE HOUSE (Jan. 6, 2025), bidenwhitehouse.archives.gov/briefing-room/statements-releases/2025/01/06/fact-sheet-president-biden-protects-atlantic-and-pacific-coasts-from-offshore-oil-and-gas-drilling/.

[98] *Grassroots Opposition to Offshore Drilling and Exploration in the Atlantic Ocean and off Florida's Gulf Coast*, OCEANA, usa.oceana.org/climate-and-energy-grassroots-opposition-offshore-drilling-and-exploration-atlantic-ocean-and-3/ (last visited June 7, 2025).

[99] *Id.*

[100] Letter from U.S. Representative Nancy Mace to U.S. Sec'y of the Interior Doug Burgum (June 2, 2025), x.com/RepNancyMace/status/1929903958396379401.

[101] *Dare County Passes Resolution Opposing Federal Plans to Reopen Offshore Drilling*, WTKR (June 9, 2025), wtkr.com/news/in-the-community/outer-banks/dare-county-passes-resolution-opposing-federal-plans-to-reopen-offshore-drilling.

Numerous fishing and tourism interests—including local chambers of commerce, tourism and restaurant associations, fishery management councils, and an alliance representing over 60,000 businesses and 500,000 fishing families from Florida to Maine—also strongly oppose oil exploration and/or development off the Atlantic coast.[102] No lease sales have occurred in the East or West Coast Planning Areas since 1984,[103] and no new lease sales should be proposed in the next DPP in light of coastal communities' repeated objections to reopening their oceans to oil and gas production based on their individual laws, goals, and policies and the other OCSLA factors.

2. State Marine and Coastal Wildlife Protections

Elected officials and local communities have opposed drilling off the Atlantic and Pacific coasts time and time again, in large part because it conflicts with their laws, goals, and policies aimed at protecting state natural resources and coastal economies. Oil and gas development poses serious risks, with potential effect that could jeopardize coastal tourism, commercial fishing, environmental protection mandates, and other environmental values promoted by coastal states. As discussed later in this letter, undermining these protections to promote oil and gas development in the OCS not only risks harm to these multi-million-dollar industries and the health of coastal residents but also threatens the survival and recovery of the many threatened and endangered species who live along the Atlantic and Pacific coasts, including sea otters, Florida manatees, Southern resident killer whales, loggerhead sea turtles, coho salmon, piping plovers, marbled murrelets, and North Atlantic right whales.

Many state legislatures have explicitly taken legislative action to oppose offshore drilling. Several Atlantic and Pacific states—namely California, Delaware, Florida, Maine, Maryland, New Hampshire, New Jersey, New York, Oregon, and Virginia—have already passed legislation or constitutional amendments that block or restrict offshore drilling in their coastal waters.[104] Legislators in a few other states on the Atlantic coast (Connecticut, Massachusetts, and South Carolina) have proposed similar legislation.[105] California, Delaware, Georgia, New Jersey, and Rhode Island have also issued resolutions documenting their opposition to offshore drilling in federal waters.[106] And California has even prohibited any state leases authorizing new construction of oil- and gas-related infrastructure associated with Pacific OCS leases issued after 2017.[107]

Other states have recognized the threats posed by offshore oil and gas development in their coastal zone management plans. North Carolina, for example, has recognized that "[e]xploration for the development of offshore and [OCS] energy resources has the potential to affect coastal

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[102] *Grassroots Opposition to Offshore Drilling and Exploration*, OCEANA, *supra* note 98; Press Release, Oceana, As the Trump Administration Considers New Offshore Drilling, Oceana Stands for Healthy Oceans for Every American (Apr. 18, 2025), usa.oceana.org/press-releases/as-the-trump-administration-considers-new-offshore-drilling-oceana-stands-for-healthy-oceans-for-every-american/.

[103] BOEM, 2019-2024 OIL & GAS DPP, *supra* note 90, at 4-2, 4-6 (noting that the most recent lease sales held in the Atlantic and Pacific were in 1983 and 1984, respectively).

[104] NAT'L CAUCUS ENV'T LEGISLATORS, LEGISLATOR GUIDE FOR OFFSHORE AND COASTAL PROTECTION 2 (2021), ncelenviro.org/app/uploads/2021/07/Offshore-Drilling-Briefing-Book-1.pdf; FLA. CONST. art. II, § 7(c) ("To protect the people of Florida and their environment, drilling for exploration or extraction of oil or natural gas is prohibited on lands beneath all state waters which have not been alienated and that lie between the mean high water line and the outermost boundaries of the state's territorial seas.").

[105] NAT'L CAUCUS ENV'T LEGISLATORS (2021), *supra* note 104, at 2.

[106] *Id.*; Ga. H.R. Res. 48 (2019-2020 session) (adopted only by Georgia's House of Representatives).

[107] CAL. PUB. RES. CODE § 6245(a).

resources."[108] The state has therefore mandated that energy facilities avoid any activities "that could result in significant adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, . . . [or] the use of public trust waters," barring an affirmative demonstration that the activity will not significantly harm coastal resources.[109] To respect these laws, goals, and policies in the manner articulated by OCSLA, BOEM should exclude any proposed lease sales in the East or West Coast Planning Areas from its proposed five-year schedule in the DPP for the 11th National OCS Program.

C. Geographical, Geological, and Ecological Characteristics

When developing its five-year program and deciding what OCS areas to lease for oil and gas development, BOEM must consider "existing information concerning the geographical, geological, and ecological characteristics" of each OCS region.[110] As BOEM itself has acknowledged in the current and previous oil and gas leasing programs,[111] both the Atlantic and Pacific Planning Areas are regions of outstanding ecological diversity that are home to countless marine mammal, fish, invertebrate, sea turtle, bird, and coral species, many of which are endangered or threatened, as well as important benthic habitats. The attached maps showcase many of these unique features.[112]

1. Geographical, Geological, and Ecological Characteristics of the Atlantic

The Atlantic OCS region boasts stunning ecosystem diversity, including offshore canyons, hard bottom and live bottom habitats, and deepwater coral systems. According to the current leasing program, "canyons provide refuge for fishes and substrate for marine benthic communities and serve as key foraging areas for marine mammals and seabirds."[113] Furthermore, NOAA has stated that the region's deepwater corals may be "the best developed, most extensive deep coral areas in U.S. waters."[114] Scientific exploration continues to discover the presence of new species in these diverse habitats.[115] The Atlantic region is also used as a migratory superhighway by birds, fishes, and whales. The shelf break and upper slope off Cape Hatteras, North Carolina, in particular is a biological hotspot that features the highest diversity of marine mammals on the East Coast.[116]

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[108] 15A N.C. Admin. Code § 07M.0401(b).
[109] *Id.* § 07M.0403(f)(1).
[110] 43 U.S.C. § 1344(a)(2)(A).
[111] *See*, *e.g.*, BOEM, 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program Final Programmatic Environmental Impact Statement 90-101, 124-134 (2023), boem.gov/oil-gas-energy/leasing/2024-2029-national-ocs-oil-gas-leasing-final-peis-vol1 [hereinafter 2024-2029 Oil & Gas Program FEIS] (incorporated by reference into the final leasing program).
[112] *See* Attachments 1-9.
[113] *Id.* at 155.
[114] Ross, S.W., & Nizinski, M.S. (2007). State of deep coral ecosystems in the US southeast region: Cape Hatteras to southeastern Florida. In E. Lumsden et al. (Eds.), The State of Deep Coral Ecosystems in the United States (pp. 233-270), coris.noaa.gov/activities/deepcoral_rpt/Chapter6_Southeast.pdf (citations omitted), at 233.
[115] *Deep-Sea Coral Habitat*, Nat'l Marine Fisheries Serv. (NMFS), fisheries.noaa.gov/national/habitat-conservation/deep-sea-coral-habitat (last visited May 23, 2025).
[116] S.W. Ross, *Unique Deep-Water Ecosystems off the Southeastern United States*, 20 Oceanography 130, 130–39 (2007), jstor.org/stable/24860157; Byrd, B.L., Hohn, A.A., Lovewell, G.N., Altman, K.M., Barco, S.G., Friedlaender, A., ... & Thayer, V.G. (2014). Strandings as indicators of marine mammal biodiversity and human interactions off the coast of North Carolina. *Fishery Bulletin*, *112*(1), 1-23.

The coast adjacent to the East Coast Planning Areas is characterized by unique and sensitive shorelines, prominent salt marshes, fragile barrier islands, and other immensely productive marine habitats.[117] The Chesapeake Bay is the largest estuary in the country and one of the most productive bodies of water in the world, home to more than 3,600 species of animals and plants.[118] The Pamlico/Albemarle Estuary, the second largest behind Chesapeake Bay, also boasts a diverse and abundant biological community, hosting half of the juvenile fish habitat from Maine to Florida.[119]

There are 33 threatened and endangered marine species in the East Coast Planning Areas, including four fishes (Atlantic salmon, Atlantic sturgeon, Nassau grouper, and shortnose sturgeon), six marine mammals (blue, fin, sei, sperm, and North Atlantic right whales and the West Indian manatee), five sea turtles (green, leatherback, loggerhead, hawksbill, and Kemp's ridley turtles), four elasmobranchs (scalloped hammerhead shark, smalltooth sawfish, giant manta ray, and oceanic whitetip shark), six birds (Bermuda petrel, red knot, roseate tern, wood stork, black-capped petrel, and piping plover), the queen conch, and seven coral species. Critical habitat is designated on the Atlantic OCS for loggerhead sea turtles, North Atlantic right whales, and seven species of coral.[120]

Of particular concern is the endangered status of the North Atlantic right whale. The species is rapidly declining toward extinction, with only about 372 individuals remaining in the population.[121] The species is currently experiencing an Unusual Mortality Event ("UME")—designated by the National Marine Fisheries Service ("NMFS") due to unsustainable levels of mortality and serious injury from vessel strikes and entanglement in fishing gear[122]—and its recovery is further hindered by underwater noise pollution and climate change-driven habitat shifts. The East Coast Planning Areas encompass the entirety of the right whale's habitat, and this species is found nowhere else on Earth. Put simply, right whales cannot withstand further losses or additional stress from potential oil and gas development if the species is to reverse its decline and eventually recover.[123]

The waters of the East Coast Planning Areas offer essential habitats for many other marine mammals, supporting their feeding, breeding, resting, and migration. These productive waters, shaped by the mixing of the Labrador Current and Gulf Stream, support a wide range of species. There are 40 species of marine mammals that inhabit the East Coast Planning Areas, including six

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[117] *Atlantic Coast*, INST. WATER RES., iwr.usace.army.mil/Missions/Tales-of-the-Coast/Americas-Coasts/Atlantic/ (last visited May 30, 2025).

[118] *Ocean Facts*, NAT'L OCEAN SERV., oceanservice.noaa.gov/facts/chesapeake.html (last visited May 23, 2025).

[119] *Our Estuary: Fast Facts*, ALBEMARLE-PAMLICO NAT'L ESTUARY P'SHIP, apnep.nc.gov/our-estuary/fast-facts (last visited May 23, 2025).

[120] *See* Attachments 6-7. *See also Critical Habitat*, NMFS, fisheries.noaa.gov/national/endangered-species-conservation/critical-habitat (last visited May 29, 2025).

[121] Linden, D.M. (2024). Population size estimation of North Atlantic right whales from 1990-2023. *NOAA Tech Memo NMFS-NE-324*, repository.library.noaa.gov/view/noaa/66179.

[122] *2017-2025 North Atlantic Right Whale Unusual Mortality Event*, NMFS, fisheries.noaa.gov/national/marine-life-distress/2017-2025-north-atlantic-right-whale-unusual-mortality-event (last visited May 29, 2025).

[123] The Potential Biological Removal level for the species is 0.7, meaning that not even a single individual can be lost to human activities each year if the species is to avoid extinction. *See*, *e.g.*, Hayes, S.A., Josephson, E., Maze-Foley, K., Rosel, P.E., & McCordic, J. (2024). U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2023. *NOAA Tech Memo NMFS-NE-321*, repository.library.noaa.gov/view/noaa/66187, at 3.

baleen whales, 16 toothed whales, 12 dolphins, five seals, and one manatee.[124] As discussed above, six of these species are listed under the ESA, with the North Atlantic right whale the only marine mammal with designated critical habitat on the OCS.

Many marine mammals in the Atlantic migrate seasonally, with baleen whales like humpback and right whales following zooplankton blooms (particularly in the Gulf of Maine), small delphinids like common bottlenose dolphins frequenting warmer nearshore coastal waters, and deep-diving species like sperm whales favoring shelf break waters (particularly adjacent to the offshore canyons).[125] Harbor and gray seals are the most common pinnipeds in the region.[126]

In addition to the UME for the North Atlantic right whale, ongoing UMEs exist for the Atlantic populations of minke whales (since 2017) and humpback whales (since 2016). As discussed above, more than 40 percent of the right whale population has been impacted by the current UME, either by mortality (41), serious injury (39), or morbidity (sublethal injuries or poor health; 77).[127] More than 200 minke whales have stranded between Maine and Georgia from January 2017 through May 2025.[128] Elevated numbers of humpback whales have also stranded along the Atlantic Coast since January 2016, with 255 humpback whale mortalities recorded as of June 7, 2025, and strandings occurring in every state along the East Coast.[129] The suspected cause of these UMEs are entanglements and/or vessel strikes. These events demonstrate an increasing risk to marine mammals from human activities in this region.

Finally, a significant amount of coastal lands and marine waters have been designated by the federal government in and around the Atlantic Planning Areas, including: two national parks, 58 national wildlife refuges, seven national seashores, five national marine sanctuaries, three national monuments, and 15 national estuarine research reserves.[130] In addition, more than 175 areas have been designated by Atlantic coastal states for the same purposes.[131] These areas, which represent sensitive and ecologically valuable habitat for innumerable marine species and provide educational

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[124] These species are: North Atlantic right, humpback, fin, sei, minke, blue, sperm, dwarf sperm, pygmy sperm, killer, pygmy killer, false killer, Northern bottlenose, melon-headed, short-finned pilot, and long-finned pilot whales; five beaked whales; harbor porpoises; 12 dolphins; harbor, gray, harp, hooded, and ringed seals; and West Indian manatees. Numbers compiled by internal analysis at AWI.

[125] *See*, *e.g.*, Roberts, J.J., Best, B.D., Mannocci, L., Fujioka, E.I., Halpin, P.N., Palka, D.L., ... & Lockhart, G.G. (2016). Habitat-based cetacean density models for the US Atlantic and Gulf of Mexico. *Scientific Reports*, *6*(1), 22615, doi.org/10.1038/srep22615; Moors-Murphy, H. B. (2014). Submarine canyons as important habitat for cetaceans, with special reference to the Gully: A review. *Deep Sea Research Part II: Topical Studies in Oceanography*, *104*, 6-19, doi.org/10.1016/j.dsr2.2013.12.016; Stanistreet, J.E., Nowacek, D.P., Baumann-Pickering, S., Bell, J.T., Cholewiak, D.M., Hildebrand, J.A., ... & Read, A.J. (2017). Using passive acoustic monitoring to document the distribution of beaked whale species in the western North Atlantic Ocean. *Canadian Journal of Fisheries and Aquatic Sciences*, *74*(12), 2098-2109, doi.org/10.1139/cjfas-2016-0503.

[126] Hayes et al. (2024), *supra* note 123, at 285.

[127] *2017-2025 North Atlantic Right Whale Unusual Mortality Event*, *supra* note 122.

[128] *2017-2025 Minke Whale Unusual Mortality Event along the Atlantic Coast*, NMFS, fisheries.noaa.gov/national/marine-life-distress/2017-2025-minke-whale-unusual-mortality-event-along-atlantic-coast (last visited May 29, 2025).

[129] *2016-2025 Humpback Whale Unusual Mortality Event Along the Atlantic Coast*, NMFS, fisheries.noaa.gov/national/marine-life-distress/2016-2025-humpback-whale-unusual-mortality-event-along-atlantic-coast (last visited June 7, 2025).

[130] *See* Attachments 3-7. Numbers compiled by internal analysis at Defenders of Wildlife.

[131] *Id*.

and recreational opportunities for the public, would be significantly harmed by oil and gas development.

2. Geographical, Geological, and Ecological Characteristics of the Pacific

The West Coast OCS region harbors a striking diversity of marine and coastal ecosystems shaped by complex oceanographic and geological processes. The California Current, a cold, nutrient-rich upwelling system, supports one of the most productive marine food webs in the world.[132] Upwelling events promote phytoplankton blooms that fuel diverse and complex trophic webs. The region also serves as a migratory corridor for multiple species, such as gray whales, humpback whales, and leatherback sea turtles.[133] Kelp forests thrive in this region, particularly along the rocky coastlines of California and Oregon, providing critical habitat for sea otters, fishes, invertebrates, and marine birds.[134]

Like the East Coast OCS region, the continental shelf and slope feature submarine canyons, seamounts, and deep-sea coral habitats that support diverse assemblages of species, many of which are still being discovered. According to the most recent environmental impact statement ("EIS") for the 10th National OCS Program, "Monterey Canyon in the Central California Planning Area and other submarine canyons attract diverse sea life."[135] The coasts adjacent to the West Coast Planning Areas range from sandy beaches to rocky tidepools, hosting resilient natural communities adapted to fluctuating tides and wave energy, including sea stars, anemones, and mussels.[136] Additionally, vast estuaries like the San Francisco Bay and Puget Sound serve as vital nurseries for salmon, Dungeness crab, and migratory birds.[137]

There are 33 threatened and endangered marine species in the West Coast Planning Areas, including: nine fishes (chinook, coho, sockeye, and chum salmon, tidewater goby, green sturgeon, eulachon, bocaccio, and yelloweye rockfish), nine marine mammals (blue, fin, humpback, gray, sperm, sei, Southern resident killer, and North Pacific right whales; Guadalupe fur seals, and Southern sea otters), four sea turtles (green, leatherback, loggerhead, and olive ridley sea turtles), seven birds (western snowy plover, California Ridgway's rail, light-footed Ridgway's rail, California least tern, short-tailed albatross, Hawaiian petrel, and marbled murrelet), black and white abalone, scalloped hammerhead, and oceanic whitetip sharks. In the West Coast Planning Areas, NMFS has designated critical habitat for the leatherback sea turtle, green sturgeon, eulachon, tidewater goby, western

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[132] Hickey, B.M., & Banas, N.S. (2003). Oceanography of the US Pacific Northwest coastal ocean and estuaries with application to coastal ecology. *Estuaries*, *26*, 1010-31, doi.org/10.1007/BF02803360.

[133] Calambokidis, J., Kratofil, M.A., Palacios, D.M., Lagerquist, B.A., Schorr, G.S., Hanson, M.B., … & Hazen, E.L. (2024). Biologically Important Areas II for cetaceans within US and adjacent waters: West Coast Region. *Frontiers in Marine Science*, *11*, 1283231, doi.org/10.3389/fmars.2024.1283231.

[134] Dayton, P.K. (1985). Ecology of kelp communities. *Annual Review of Ecology & Systematics*, 215-45, jstor.org/stable/2097048.

[135] 2024-2029 OIL & GAS PROGRAM FEIS, *supra* note 111, at 147.

[136] Helmuth, B., Broitman, B.R., Blanchette, C.A., Gilman, S., Halpin, P., Harley, C.D., … & Strickland, D. (2006). Mosaic patterns of thermal stress in the rocky intertidal zone: Implications for climate change. *Ecological Monographs*, *76*(4), 461-79, doi.org/10.1890/0012-9615(2006)076[0461:MPOTSI]2.0.CO;2.

[137] Simenstad, C.A., Hood, W.G., Thom, R.M., Levy, D.A., & Bottom, D.L. (2000). Landscape structure and scale constraints on restoring estuarine wetlands for Pacific Coast juvenile fishes. *Concepts & Controversies in Tidal Marsh Ecology*, 597-630, doi.org/10.1007/0-306-47534-0_28.

snowy plover, marbled murrelet, Stellar sea lions, humpback whales, and Southern resident killer whales.[138]

The West Coast Region is home to a diverse array of other marine mammals, including both migratory and resident species that rely on these habitats for feeding, breeding, resting, and migration. There are 36 species of marine mammals in this region, including eight baleen whales, 13 toothed whales, seven dolphins, six pinnipeds, and two sea otters.[139] As discussed above, nine of these species are listed under the ESA, with Stellar sea lions, humpback whales, and Southern resident killer whales having designated critical habitat.

Influenced by the nutrient-rich California Current, the West Coast Region supports baleen whales such as humpback and blue whales who feed along the coast, and gray whales who travel through nearshore waters each year during their migration between Alaska and Mexico. Resident populations like harbor porpoises and Southern resident killer whales depend on nearshore and inland waters. Pinnipeds like California sea lions and elephant seals rely on the coastal interface between productive waters and abundant rocky habitat for foraging at sea and breeding and resting on land.[140]

Of particular concern is the Eastern North Pacific ("ENP") gray whale population, whose habitat extends across the entire West Coast OCS region. ENP gray whales are facing ongoing and increasing threats from vessel strikes, fisheries bycatch, ocean contaminants, anthropogenic noise, whale watching, and ocean warming. While the most recent gray whale UME closed in 2023, recent data indicate that gray whale strandings have once again increased and calf production has declined precipitously. According to Mexican scientists, 70 gray whales were found stranded in Mexico between December 19, 2024 and March 31, 2025,[141] and according to NMFS, an additional 47 gray whales have stranded in the United States this year (27 in California, 13 in Washington, and 7 in Oregon) as of June 12, 2025 (with additional mortalities likely to be documented through the end of June).[142] This level of mortality is similar to the number of gray whales found stranded in Mexico in 2020 (at the beginning of the UME)[143] and is prompting scientists to ask if gray whales are "at a tipping point in their history."[144] Furthermore, only 14 cow-calf pairs, a record low, were documented on the calving grounds in 2025, and Mexican researchers have documented an increase in the number of

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[138] *See* Attachments 8-9. *See also Critical Habitat*, *supra* note 120.

[139] These species are: humpback, minke, sei, fin, blue, gray, Bryde's, North Pacific right, killer, sperm, pygmy sperm, dwarf sperm, and short-finned pilot whales; six beaked whales; harbor and Dall's porpoises; seven dolphins; Guadaloupe fur, northern fur, northern elephant, and Pacific harbor seals; California and Steller sea lions; and northern and southern sea otters. Numbers compiled by internal analysis at AWI.

[140] Barlow, J., & Forney, K.A. (2007). Abundance and population density of cetaceans in the California Current ecosystem. *Fishery Bulletin, 105*(4), 509-26, hdl.handle.net/1834/25509; Dailey, M.D., Reish, D.J., & Anderson, J.W. (Eds.). (1993). *Ecology of the Southern California Bight: A synthesis and interpretation*. Univ of California Press, doi.org/10.2307/jj.8306197.

[141] Martínez A., S., Swartz, S., Urbán R., J., Gómora, L.V., Lobo B., R., Romero, Y.J., … & Nuñez J., A.I., (2025). *Annual Research Report for the 2025 Gray Whale (Eschrichtius robustus) Winter Season in Laguna San Ignacio and the Bahía Magdalena Lagoon Complex, Baja California Sur, Mexico*. GRAY WHALE RSCH. MEX., graywhaleresearchmexico.org/updates/2025-annual-gray-whale-report-laguna-san-ignacio-and-bahia-magdalena.

[142] Bellamy Pailthorp, *Gray Whales Along the Pacific West Coast Appear to be in Trouble*, KNKX PUB. RADIO (June 12, 2025), knkx.org/environment/2025-06-12/gray-whales-along-the-pacific-west-coast-appear-to-be-in-trouble. By comparison, 31 whales stranded in 2024, and 44 stranded in 2023 (the last year of the UME). *Id.*

[143] *2019-2023 Eastern North Pacific Gray Whale UME (CLOSED)*, NMFS (last visited May 30, 2025), fisheries.noaa.gov/national/marine-life-distress/2019-2023-eastern-north-pacific-gray-whale-ume-closed.

[144] Martínez et al. (2025), *supra* note 141.

whales with a poor body condition in 2025 compared to previous years.[145] Given this populations pronounced vulnerability, increased stressors from potential oil and gas activity are a significant concern.

Finally, a significant amount of coastal lands and marine waters have been protected by the federal government in and around the Pacific Planning Areas, including: three national parks, 20 national wildlife refuges, one national seashore, six national marine sanctuaries, two national monuments, eight federal marine reserves, and five national estuarine research reserves.[146] In addition, more than 239 areas have been designated by Pacific coastal states and municipalities for the same purposes.[147] As discussed above, these areas provide critical protections for sensitive wildlife and educational and recreational opportunities for the public, which would be significantly harmed by oil and gas development.

The uniqueness, sensitivity, and importance of the geographical, geological, and ecological features of the East and West Coast OCS regions and adjacent coasts support the removal of these Planning Areas from the 2023-2028 leasing program. As explained below, BOEM's analysis of this factor should show that the ecological value of these resources is too great to justify new leasing in the East or West Coast regions. We urge the agency to protect these ecologically valuable areas from any oil and gas leasing.

D. Equitable Sharing of Developmental Benefits and Environmental Risks

OCSLA further requires BOEM to consider the "equitable sharing of developmental benefits and environmental risks among the various regions" when designing its five-year leasing program.[148] For both the East and West Coast Planning Areas, the environmental risks of drilling, including the threat of chronic oil leaks and catastrophic discharge events, far outweigh any alleged developmental benefits. As discussed above and depicted in the attached maps, the natural resources in these areas are immense. And as discussed below, oil and gas drilling could be catastrophic for these special ecosystems. For these reasons, we strongly urge against including the East and West Coast Planning Areas in the leasing program.

1. The Risk of Catastrophic Oil Spills and Chronic Oil Leaks

The environmental risks that could result from offshore drilling in the East and West Coast Planning Areas are innumerable. Among the most devastating are the risks of oil spills—both acute and chronic. A catastrophic oil discharge event would be devastating to East and West Coast OCS areas and their sensitive ecosystems, as noted by BOEM itself in the current oil and gas program.[149] Marine mammals, sea turtles, and seabirds are particularly vulnerable to oil exposure, experiencing immediate and long-term health effects like suffocation, hypothermia, organ failure, respiratory illness, gastrointestinal and liver damage, reduced growth, reproductive issues, and starvation.[150] In

[145] *Id*.
[146] *See* Attachments 3-5, 8-9. Numbers compiled by internal analysis at Defenders of Wildlife.
[147] *Id*.
[148] 43 U.S.C. § 1344(a)(2)(B).
[149] *See generally* 2024-2029 OIL & GAS PROGRAM FEIS, *supra* note 111, at 271-72.
[150] Fraser, G.S. (2014). Impacts of offshore oil and gas development on marine wildlife resources. In J.E. Gates et al. (Eds.), Peak Oil, Economic Growth, and Wildlife Conservation (pp. 191-217), doi.org/10.1007/978-1-4939-1954-3_10; Troisi, G., Barton, S., & Bexton, S. (2016). Impacts of oil spills on seabirds: Unsustainable impacts of non-renewable energy. *International Journal of Hydrogen Energy*, *41*(37), 16549-16555,

addition to effects of oil exposure, actions taken to contain and clean up spills (*e.g.*, the use of toxic dispersants, heavy machinery, at-sea burns, vessels, etc.) pose significant risks to wildlife.[151] Long-lived animals like cetaceans and sea turtles have pronounced difficulty recovering from these effects.[152]

The *Deepwater Horizon* spill in 2010 made clear that there is no such thing as safe offshore oil drilling, nor is there any way to fully clean up a significant spill. The blowout resulted in the death of 11 people and the release of approximately 206 million gallons of oil over the course of 87 days.[153] The spill covered more than 42,000 square miles of the ocean surface and reached more than 1,240 miles of shoreline in the northern Gulf.[154] Both the spill itself and the cleanup caused significant environmental harm.

In the immediate aftermath, an estimated 79,919 seabirds[155] and between 100,000 and 200,000 sea turtles[156] were killed. Half of these turtles were Kemp's ridley sea turtles, a species that was at the time and continues to be endangered.[157] The spill resulted in a five-fold increase in the number of stranded sea turtles[158] and a sharp decline in the number of sea turtle nests in the coastal footprint of the spill.[159] At least 15 cetacean species were exposed to surface oil,[160] which killed 62 percent of

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doi.org/10.1016/j.ijhydene.2016.04.011; Wallace, B.P., Stacy, B.A., Cuevas, E., Holyoake, C., Lara, P.H., Marcondes, A.C.J., … & Shigenaka, G. (2020). Oil spills and sea turtles: Documented effects and considerations for response and assessment efforts. *Endangered Species Research*, *41*, 17-37, doi.org/10.3354/esr01009; Helm, R.C., Costa, D.P., DeBruyn, T.D., O'Shea, T.J., Wells, R.S., & Williams, T.M. (2014). Overview of effects of oil spills on marine mammals. *Handbook of Oil Spill Science and Technology*, 455-75, doi.org/10.1002/9781118989982.ch18.

[151] Wallace et al. (2020), *supra* note 150.

[152] Takeshita, R., Sullivan, L., Smith, C., Collier, T., Hall, A., Brosnan, T., … & Schwacke, L. (2017). The *Deepwater Horizon* oil spill marine mammal injury assessment. *Endangered Species Research*, *33*, 95-106, doi.org/10.3354/esr00808.

[153] *See* Wallace, B.P., Brosnan, T., McLamb, D., Rowles, T., Ruder, E., Schroeder, B., … & Wehner, D. (2017). Effects of the *Deepwater Horizon* oil spill on protected marine species. *Endangered Species Research*, *33*, 1-7, doi.org/10.3354/esr00789.

[154] *Id*.

[155] Patterson, III, W.F., Robinson, K.L., Barnett, B.K., Campbell, M.D., Chagaris, D.C., Chanton, J.P., … & Pulster, E. L. (2023). Evidence of population-level impacts and resiliency for Gulf of Mexico shelf taxa following the *Deepwater Horizon* oil spill. *Frontiers in Marine Science*, *10*, 1198163, doi.org/10.3389/fmars.2023.1198163.

[156] Wallace et al. (2020), *supra* note 150.

[157] Patterson et al. (2023), *supra* note 155.

[158] Mitchelmore, C.L., Bishop, C.A., & Collier, T.K. (2017). Toxicological estimation of mortality of oceanic sea turtles oiled during the *Deepwater Horizon* oil spill. *Endangered Species Research*, *33*, 39-50, doi.org/10.3354/esr00758.

[159] Lauritsen, A.M., Dixon, P.M., Cacela, D., Brost, B., Hardy, R., MacPherson, S.L., … & Witherington, B. (2017). Impact of the *Deepwater Horizon* oil spill on loggerhead turtle *Caretta caretta* nest densities in northwest Florida. *Endangered Species Research*, *33*, 83-93, doi.org/10.3354/esr00794; Gallaway, B.J., Caillouet, Jr., C.W., Plotkin, P.T., Gazey, W.J., Cole, J.G., & Raborn, S.W. (2013). Kemp's Ridley Stock Assessment Project: Final Report, *Gulf States Marine Fisheries Commission*, repository.library.noaa.gov/view/noaa/38078.

[160] Takeshita et al. (2017), *supra* note 152.

bottlenose dolphins,[161] 26 percent of sperm whales,[162] and 17 percent of Rice's whales.[163] As a result of oil exposure, 88 percent of dolphins born within the spill area had abnormal or under-developed lungs.[164] Exposure to crude oil and dispersants also damaged sperm whale cells and DNA, leading to sublethal and long-term effects.[165] Eight years after the spill, all vertebrate taxa in the Gulf were documented to still be experiencing "impair[ed] stress responses and adrenal gland function, cardiotoxicity, immune system dysfunction, disruption of blood cells and their function, effects on locomotion, and oxidative damage."[166]

A groundbreaking study published in 2020 shows that the reach of the spill may have been 30 percent bigger than originally thought.[167] Large areas of the Gulf were exposed to "invisible and toxic oil" that extended beyond the boundaries of the satellite footprint.[168] The study also found that the oil extended much deeper than satellites had detected, with toxic concentrations 1.3 kilometers down that were "potentially lethal and sublethal."[169] Ten years later, marine biodiversity was still lower than pre-spill levels, and lingering effects "may be extreme."[170] We ask that BOEM include this study and its conclusion in its final analysis, as it illustrates the long-lasting, devastating impacts of oil spills.

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[161] Wallace et al., (2017), *supra* note 153.

[162] *See* Farmer, N.A., Baker, K., Zeddies, D.G., Denes, S.L., Noren, D.P., Garrison, L.P., ... & Zykov, M. (2018). Population consequences of disturbance by offshore oil and gas activity for endangered sperm whales (*Physeter macrocephalus*). *Biological Conservation*, *227*, 189-204, doi.org/10.1016/j.biocon.2018.09.006.

[163] NOAA, DEEPWATER HORIZON OIL SPILL: FINAL PROGRAMMATIC DAMAGE ASSESSMENT AND RESTORATION PLAN AND FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, Chapter 4: Injury to Natural Resources (2016), gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan.

[164] Colegrove, K.M., Venn-Watson, S., Litz, J., Kinsel, M.J., Terio, K.A., Fougeres, E., ... & Rowles, T.K. (2016). Fetal distress and in utero pneumonia in perinatal dolphins during the Northern Gulf of Mexico unusual mortality event. *Diseases of Aquatic Organisms*, *119*(1), 1-16, doi.org/10.3354/dao02969.

[165] Wise, Jr., J.P., Wise, J.T., Wise, C.F., Wise, S.S., Gianios, Jr., C., Xie, H., ... & Wise, Sr., J.P. (2014). Concentrations of the genotoxic metals, chromium and nickel, in whales, tar balls, oil slicks, and released oil from the Gulf of Mexico in the immediate aftermath of the *Deepwater Horizon* oil crisis: Is genotoxic metal exposure part of the *Deepwater Horizon* legacy?. *Environmental Science & Technology*, *48*(5), 2997-3006, doi.org/10.1021/es405079b; Wise, C.F., Wise, J.T., Wise, S.S., Thompson, W.D., Wise, Jr., J.P., & Wise, Sr., J.P. (2014). Chemical dispersants used in the Gulf of Mexico oil crisis are cytotoxic and genotoxic to sperm whale skin cells. *Aquatic Toxicology*, *152*, 335-40, doi.org/10.1016/j.aquatox.2014.04.020.

[166] Takeshita, R., Bursian, S.J., Colegrove, K.M., Collier, T.K., Deak, K., Dean, K.M., ... & Hall, A.J. (2021). A review of the toxicology of oil in vertebrates: What we have learned following the *Deepwater Horizon* oil spill. *Journal of Toxicology & Environmental Health, Part B*, *24*(8), 355-94, at 355, doi.org/10.1080/10937404.2021.1975182; Avens, L., Goshe, L.R., Coggins, L., Shaver, D.J., Higgins, B., Landry, Jr., A.M., & Bailey, R. (2017). Variability in age and size at maturation, reproductive longevity, and long-term growth dynamics for Kemp's ridley sea turtles in the Gulf of Mexico. *PloS One*, *12*(3), e0173999, doi.org/10.1371/journal.pone.0173999.

[167] Berenshtein, I., Paris, C.B., Perlin, N., Alloy, M.M., Joye, S.B., & Murawski, S. (2020). Invisible oil beyond the *Deepwater Horizon* satellite footprint. *Science Advances*, *6*(7), eaaw8863, doi.org/10.1126/sciadv.aaw8863; *see also* Darryl Fears, *The Toxic Reach of Deepwater Horizon's Oil Spill Was Much Larger—And Deadlier—Than Previous Estimates, A New Study Says,* WASH. POST (Feb. 12, 2020), wapo.st/4kLBpM9.

[168] Berenshtein et al., *supra* note 167, at 1.

[169] *Id.* at 2, 7.

[170] McClain, C.R., Nunnally, C., & Benfield, M.C. (2019). Persistent and substantial impacts of the *Deepwater Horizon* oil spill on deep-sea megafauna. *Royal Society Open Science*, *6*(8), 191164, doi.org/10.1098/rsos.191164, at 1.

Over recent years, research has continued to emerge demonstrating the lasting impacts of the *Deepwater Horizon* spill on wildlife populations in the Gulf. Bottlenose dolphins continue to be impacted by oil exposure from the spill.[171] Sperm whales experienced prolonged impacts of fetal death, calf abandonment, and starvation.[172] The spill also impacted an estimated 48 percent of the Rice's whale habitat, an estimated 22 percent of reproductive females experienced reproductive failure, and 18 percent of the population likely suffered adverse health effects due to the spill.[173] It has been estimated that it will take 69 years for the already small population to recover from these losses.[174]

Impacts to migratory birds are also still being felt, far beyond Gulf ecosystems.[175] Recent scientific modeling confirms that the oil spill reduced biomass of big reef and demersal fishes by 25 to 50 percent and 40 to 70 percent, respectively, and some of these populations may take 30 years or more to recover.[176] Deep-sea corals impacted by the spill could also take up to three decades to fully recover.[177] Additionally, research now shows that the *Deepwater Horizon* spill harmed shipwreck ecosystems by reducing biodiversity of microorganisms at the base of the food chain, an impact that before had gone undetected.[178]

Although the *Deepwater Horizon* spill was particularly devastating, it was not unprecedented. In fact, catastrophic spills and pollution events are common across the OCS at all stages of development, including after decommissioning (Figure 1). In 1969, a blowout occurred at a drilling platform offshore Santa Barbara, California, releasing four million gallons of crude oil into the Pacific Ocean and causing widespread environmental damage.[179] In 1979, an exploratory well in the Gulf blew out and spilled 140 million gallons of oil over the course of 10 months.[180] In 1989, the Exxon Valdez spilled more than 11 million gallons of oil into Alaska's Prince William Sound.[181] In 2009, the Montara oil rig

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[171] Schwacke, L.H., Marques, T.A., Thomas, L., Booth, C.G., Balmer, B.C., Barratclough, A., … & Smith, C.R. (2022). Modeling population effects of the *Deepwater Horizon* oil spill on a long-lived species. *Conservation Biology*, *36*(4), e13878, doi.org/10.1111/cobi.13878.

[172] Farmer et al. (2018), *supra* note 162.

[173] Rosel, P.E., Corkeron, P.J., Engleby, L., Epperson, D.M., Mullin, K., Soldevilla, M.S., & Taylor, B.L. (2016). Status Review of Bryde's Whales (*Balaenoptera edeni*) in the Gulf of Mexico Under the Endangered Species Act. *NOAA Tech Memo NMFS-SEFSC-692*, repository.library.noaa.gov/view/noaa/14180.

[174] *Trophic Interactions and Habitat Requirements of Gulf of Mexico Rice's Whales*, NMFS, fisheries.noaa.gov/southeast/endangered-species-conservation/trophic-interactions-and-habitat-requirements-rices (last visited May 30, 2025).

[175] Kent Erdahl, *Minnesota Requests BP Oil Spill Money to Help Loons Recover*, KARE 11 (May 3, 2018), kare11.com/article/news/minnesota-requests-bp-oil-spill-money-to-help-loons-recover/89-548676286.

[176] Ainsworth, C.H., Paris, C.B., Perlin, N., Dornberger, L.N., Patterson III, W.F., Chancellor, E., … & Perryman, H. (2018). Impacts of the *Deepwater Horizon* oil spill evaluated using an end-to-end ecosystem model. *Plos One*, *13*(1), e0190840, doi.org/10.1371/journal.pone.0190840.

[177] Girard, F., Shea, K., & Fisher, C.R. (2018). Projecting the recovery of a long-lived deep-sea coral species after the *Deepwater Horizon* oil spill using state-structured models. *Journal of Applied Ecology*, *55*(4), 1812-22, doi.org/10.1111/1365-2664.13141.

[178] Hamdan, L.J., Salerno, J.L., Reed, A., Joye, S.B., & Damour, M. (2018). The impact of the *Deepwater Horizon* blowout on historic shipwreck-associated sediment microbiomes in the northern Gulf of Mexico. *Scientific Reports*, *8*(1), 9057, doi.org/10.1038/s41598-018-27350-z.

[179] *Oil Spills*, CA. COASTAL COMM'N (last visited June 10, 2025), coastal.ca.gov/publiced/oilspills.html.

[180] Mark Stevenson & Molly O'Toole, *'79 Gulf Spill Leaves Sobering Lessons for BP*, NBC NEWS (June 4, 2010), nbcnews.com/id/37514348/ns/disaster_in_the_gulf/t/gulf-spill-leaves-sobering-lessons-bp/.

[181] *Exxon Valdez Oil Spill*, OFF. RESPONSE & RESTORATION, NOAA (last visited May 29, 2025), response.restoration.noaa.gov/oil-and-chemical-spills/significant-incidents/exxon-valdez-oil-spill.

spilled between 29,600 and 222,000 barrels of oil into the Timor Sea over the span of ten weeks.[182] In 2015, a badly corroded pipeline near Refugio State Beach, California ruptured and spilled what experts now believe was more than 450,000 gallons of oil into the Santa Barbara Channel.[183]

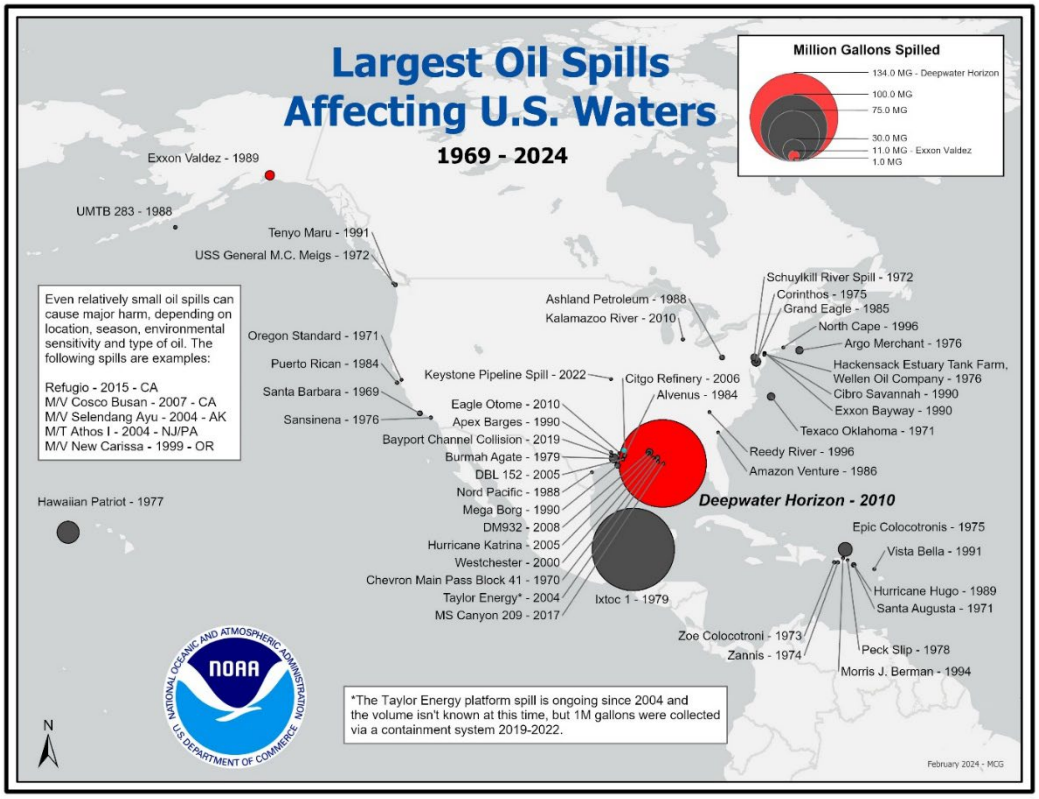

Figure 1. Largest Oil Spills Affecting U.S. Waters. *Oil Spills*, NOAA, noaa.gov/education/resource-collections/ocean-coasts/oil-spills (last visited May 29, 2025).

In 2016, a crack in a Shell Offshore pipeline spilled almost 80,000 gallons of oil into the Gulf of Mexico, for which the company had to pay $6.1 million in civil penalties and environmental damages.[184] In 2017, the Gulf saw the largest oil spill since *Deepwater Horizon*, spilling upwards of 400,000 gallons of oil from the sea floor.[185] In 2018, a deepwater exploratory rig off the coast of

[182] *Fact Sheet, Exploration and Development Risks*, PEW CHARITABLE TRS. (Sept. 1, 2013). pewtrusts.org/en/research-and-analysis/fact-sheets/0001/01/01/exploration-and-development-risks.
[183] *Refugio Oil Spill: What Restoration Looks Like 5 Years Later*, ENV'T DEF. CTR. (last visited June 13, 2025), environmentaldefensecenter.org/refugio-oil-spill-what-restoration-looks-like-5-years-later/#_ftn1.
[184] According to court filings, "Shell continued to actively pump oil through the cracked pipeline for at least . . . seven and a half hours. This was due in substantial part to Shell's failure to provide adequate training for its control room operators." *See* Mark Schleifstein, *Shell Offshore to Pay $2.2 Million Fine for 2016 Gulf Spill*, NOLA.COM (Feb. 1, 2019), nola.com/news/environment/article_142721ae-fcc0-5d79-a009-0d65e58ce4f6.html.
[185] Raleigh Hoke, *Oil and Gas in the Gulf of Mexico*, HEALTHY GULF (Apr. 19, 2018), healthygulf.org/blog/8-years-since-bp-disaster-new-report-documents-oil-and-gas-impacts.

Halifax, Canada spewed 36,000 gallons of toxic drilling mud into the Atlantic Ocean.[186] Later that same year, Newfoundland, Canada saw its largest oil spill in history, when 66,000 gallons of crude oil leaked into the Labrador Sea as a result of storm preparations. The spill was shortly thereafter deemed "impossible to clean up."[187] Finally, just this past April, an idle well near Garden Bay Island, Louisiana blew out and discharged oil for over a week, necessitating the controlled burn of a polluted marsh nearby.[188] These examples account for only a few of the many large and catastrophic oil spills that chart recent history.

The potential for disastrous oil spills in the Atlantic in particular is enhanced by the region's strong hurricanes and tropical storms, which are becoming more intense due to climate change. History in the Gulf shows that offshore drilling and hurricanes do not mix. For example, in 2004 Hurricane Ivan damaged a cluster of subsea oil wells, resulting in a leak that went unchecked for more than 18 years, the longest running oil spill in history.[189] The very next year, when Hurricanes Katrina and Rita struck Louisiana a month apart, they damaged 115 oil platforms and 558 pipelines, spilling nearly 11 million gallons of crude oil into the Gulf, more than the 1989 Exxon Valdez oil spill in Alaska.[190]

Even in the absence of large and catastrophic spills, offshore oil and gas development consistently results in smaller, chronic spills that appear to be the cost of doing business. For example, the Center for Biological Diversity estimated that approximately 2,408,000 gallons of oil could be spilled if the East Coast Planning Areas were opened to oil and gas development.[191] Opening the West Coast Planning Areas is expected to cause 657 spills, dumping more than 4 million gallons of oil into coastal waters of the Pacific.[192] Finally, the accompanying introduction of onshore support infrastructure such as refineries, pipelines, and general infrastructure to the region would entail its own environmental damage and risks of chronic pollution events to coastal wetlands and beaches. When thinking about an equitable balance of risks and benefits of leasing on the Pacific and Atlantic OCS, it is not just the most catastrophic oil spills that BOEM must consider but also the pervasive history of countless other oil spills, pollution releases, and chronic discharge events.

The risk of catastrophic and chronic oil spills is too great a threat for the Atlantic and Pacific OCS and the marine wildlife that depend upon a clean ocean. Since any benefit that offshore development might confer on local economies or regional and national energy markets would be minimal, and injury to the marine ecosystems of the Atlantic and Pacific OCS areas could be significant, we urge BOEM to exclude the East and West Coast Planning Areas from the offshore leasing program.

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[186] Mike De Souza, *BP Canada Spews Thousands of Litres of Toxic Mud During Offshore Drilling Incident Near Halifax*, CAN. NAT'L OBSERVER (June 22, 2018), nationalobserver.com/2018/06/22/news/bp-canada-spews-thousands-litres-toxic-mud-during-offshore-drilling-incident-near.

[187] Holly McKenzie-Sutter, *Newfoundland's Largest-Ever Oil Spill Is Now Impossible to Clean Up,* FIN. POST (Nov. 20, 2018), financialpost.com/commodities/energy/n-l-s-largest-ever-oil-spill-is-now-impossible-to-clean-up-regulatory-board.

[188] Press Release, U.S. Coast Guard, Coast Guard Scheduled to Oversee In-Situ Burn (May 13, 2025), news.uscg.mil/Press-Releases/Article/4184567/coast-guard-scheduled-to-oversee-in-situ-burn/.

[189] Alison Cagle, *Victory—Finally—Against the Longest Oil Spill in U.S. History*, EARTHJUSTICE (July 15, 2022), earthjustice.org/article/victory-finally-against-the-longest-oil-spill-in-u-s-history; *see also* Melissa L. Whaling, S. ENV'T L. CTR., TOO MUCH TO LOSE: OFFSHORE DRILLING & HURRICANES IN THE SOUTHEAST, at 5 (2018), southernenvironment.org/uploads/publications/SELC_Hurricane_Report_F.pdf.

[190] Whaling (2018), *supra* note 189, at 6.

[191] Press Release, Ctr. for Biological Diversity, Analysis: Trump Offshore Plan Could Cause More Than 5,000 Oil Spills (Jan. 31, 2018), biologicaldiversity.org/news/press_releases/2018/offshore-drilling-01-31-2018.php.

[192] *Id*.

2. Other Environmental Risks of Drilling in Undeveloped Areas

Even in the absence of catastrophic accidents and chronic pollution, the environmental stressors associated with offshore oil and gas development are numerous and significant, including, but not limited to, noise pollution, marine debris, vessel traffic, benthic disturbance, degraded air and water quality, light pollution, and construction of infrastructure.[193] Just a year and a half ago, BOEM found that any potential benefits derived from developing new oil and gas resources are outweighed by "potentially significant impacts and costs to society."[194] The same conclusion is true today.

Sea turtles, sea birds, and marine mammals have been documented experiencing increased collisions with vessels, ingestion of marine debris, communication masking, barriers to reproduction, and decreased foraging behaviors from oil and gas activity. Bright lights and flares at night can disorient marine birds, bringing them off course and causing them to strike platforms, fly into flares, or becoming exhausted from avoiding them.[195] Habitat degradation from infrastructure development and seabed disturbance can alter sensitive benthic ecosystems, having cascading effects on marine wildlife.

Furthermore, the environmental impacts of oil and gas leasing, while largely regional, could expand beyond the leasing areas and adjacent communities. Greenhouse gas emissions associated with fossil fuel development pose a global threat to marine wildlife in their contribution to climate change.[196] BOEM must consider the oil and gas leasing program's role in climate change and its mounting threat to marine wildlife. In addition, a degraded marine and coastal environment can reduce the widespread ecosystem services provided by those resources, such as carbon sequestration and tourism.

Meanwhile, the benefits of oil and gas development would be few. As explained in Section II.E below, circumstances around the current oil and gas market render any new development in the East and West Coast Planning Areas economically infeasible, further tipping the balance in favor of excluding these regions from consideration.

3. Deficient Oversight of the Oil and Gas Industry

Insufficient regulatory oversight over the oil and gas industry will significantly amplify the environmental risks of offshore drilling, particularly in the uncharted and untested waters of the East and West Coast Planning Areas. Despite the numerous investigations, concerns, and recommendations for safety reforms that were raised following the *Deepwater Horizon* disaster, little has been done to ensure that similar catastrophic accidents do not occur in the future. According to a 2019 Government Accountability Office report, oil spill restoration efforts are deficient, and collaboration among oil spill responders is lacking.[197] At the time of the report, only about 13 percent

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[193] 2024-2029 OIL & GAS PROGRAM FEIS, *supra* note 111, at 163.

[194] BOEM, 2024-2029 NATIONAL OUTER CONTINENTAL SHELF OIL AND GAS LEASING: PROPOSED FINAL PROGRAM 8 (2023) [hereinafter 2024-2029 OIL & GAS PFP].

[195] Fraser (2014), *supra* note 150; Ronconi, R.A., Allard, K.A., & Taylor, P.D. (2015). Bird interactions with offshore oil and gas platforms: Review of impacts and monitoring techniques. *Journal of Environmental Management*, *147*, 34-45, doi.org/10.1016/j.jenvman.2014.07.031.

[196] *See generally* Crimmins, A.R., Avery, C.W., Easterling, D.R., Kunkel, K.E., Stewart, B.C., & Maycock, T.K. (Eds.). (2023). Fifth National Climate Assessment. *U.S. Global Change Research Program*, doi.org/10.7930/NCA5.2023.

[197] U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-31, OFFSHORE OIL SPILLS: RESTORATION AND FEDERAL RESEARCH EFFORTS CONTINUE, BUT OPPORTUNITIES TO IMPROVE COORDINATION REMAIN (2019), gao.gov/assets/gao-19-31.pdf.

of at least $8.1 billion in restoration funds dedicated to the *Deepwater Horizon* spill had been spent.[198]

Worse yet, the Trump administration has a demonstrated track record of weakening safety regulations designed to prevent environmental catastrophes on the OCS. The first Trump administration attempted to weaken several regulations designed to make offshore drilling safer and oil spills less likely.[199] The second Trump administration has already endeavored to further roll back such safety measures[200] and has gutted federal agencies and programs that help clean up oil spills.[201] Furthermore, the current Congress has already rolled back certain safety regulations,[202] and has proposed an alarming 61 percent budget cut to the Bureau of Safety and Environmental Enforcement's Offshore Safety and Environmental Enforcement spending.[203] These actions will collectively result in fewer oil rig inspections, weaker spill prevention, and slower emergency responses, exacerbating the already devastating impacts of chronic discharges and catastrophic spills.

In the face of such a disturbingly weak regulatory environment, expanding leasing to include frontier areas is unnecessarily risky. The risks of leasing in the East and West Coast Planning Areas overwhelm any marginal benefits, and the regions should be excluded from the upcoming leasing program.

E. Location with Respect to Regional and National Energy Market Needs

The 11th National OCS Program must "consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which . . . will best meet national energy needs for the five-year period following its approval or reapproval."[204] Thus, in determining the timing and location of oil and gas leasing among OCS deposits, BOEM is required to consider "the location of such regions with respect to, and the relative needs of, regional and national energy markets."[205]

BOEM has indicated that it believes our national energy needs demand increased oil and gas leasing in the OCS, citing the national policy declared in Executive Order 14,154, "Unleashing American

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[198] *Id*.

[199] *See*, *e.g.*, Press Release, Bureau of Safety & Env't Enf't, BSEE Sustains Safety and Environmental Protection while Reducing Regulatory Burden (Apr. 27, 2018), bsee.gov/newsroom/latest-news/statements-andreleases/press-releases/BSEE-sustains-safety-and-environmental; Oil and Gas and Sulphur Operations on the Outer Continental Shelf-Oil and Gas Production Safety Systems, 83 Fed. Reg. 49216 (Sept. 28, 2018).

[200] Press Release, Bureau of Safety & Env't Enf't, Interior Boosts Offshore Oil Production with New Commingling Policy (Apr. 24, 2025), doi.gov/pressreleases/interior-boosts-offshore-oil-production-new-commingling-policy.

[201] ECOSERVANTS, *Oil Spill Off Louisiana Gulf Coast Sparks Concern Amid Federal Budget Cuts* (May 4, 2025), ecoservantsproject.org/oil-spill-off-louisiana-gulf-coast-sparks-concern-amid-federal-budget-cuts/#:~:text=Adding%20urgency%20to%20the%20situation,marine%20ecosystem%20and%20coastal%20fisheries.

[202] H.J. Res. 57 - 115th Congress (2017-2018): Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to accountability and State plans under the Elementary and Secondary Education Act of 1965, H.J.Res.57, 115th Cong. (2017), congress.gov/bill/115th-congress/house-joint-resolution/57.

[203] *FY2026 Interior Budget in Brief*, U.S. DOI, doi.gov/budget/appropriations/2026/highlights (last visited June 7, 2025).

[204] 43 U.S.C. § 1344(a).

[205] *Id*. § 1344(a)(2)(C).

Energy."[206] This simply is not true. Though President Trump has declared a national energy emergency,[207] that emergency exists in name only. Contrary to the president's assertions that the U.S. energy leasing, development, and production capacity is "far too inadequate to meet our Nation's needs" and this "makes worse the high energy prices that devastate Americans,"[208] the country has hit record oil and gas production levels in the past year[209] and oil and gas prices are low as a result.[210] Nor would additional oil or gas leasing in the OCS do much to further promote 'American energy dominance.' Indeed, declining demand for oil, combined with record high production rates, is pushing oil prices too far down for companies to drill new wells profitably,[211] and rising electricity demand will likely be met by expected expansions in solar capacity and increased coal-fired production, not a greater reliance on natural gas.[212]

1. New Oil Leases on the OCS

Oversaturation of the oil market, declining demand for oil, and resultant low oil prices are expected to render new drilling economically infeasible. Additional leasing of the OCS is therefore unlikely to result in increased oil production any time in the near future—and will not 'best' meet national energy needs.[213]

An oversupply of oil has driven oil prices down too low for new drilling to occur. The United States is producing more crude oil than any country, ever,[214] and just last year, U.S. oil production hit a record high of 13 million barrels per day.[215] At the same time, U.S. demand for oil is expected to peak this year, then decline by nearly eight percent by 2030.[216] Global oil demand is also on course to plateau

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[206] RFI, 90 Fed. Reg. at 17973 ("The E.O. states that it is 'in the national interest to unleash America's affordable and reliable energy and natural resources' and that it 'is the policy of the United States . . . to encourage energy exploration and production on Federal lands and waters, including on the [OCS], in order to meet the needs of our citizens and solidify the United States as a global energy leader long into the future.'" (quoting E.O. 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 29, 2025))).

[207] Executive Order 14156, Declaring a National Energy Emergency, 90 Fed. Reg. 8433 (Jan. 29, 2025).

[208] *Id*. at 8433.

[209] *See, e.g.*, Scott Disavino & Shariq Khan, *US Oil and Gas Production Hit Record High in December, Says EIA, Reuters* (Feb. 28, 2025), reuters.com/business/energy/us-crude-oil-production-rose-record-high-december-says-eia-2025-02-28/; Jeremy Beaman, *US Gas Production Nears Record High as E&Ps Relay Caution About Growing Too Fast*, S&P GLOBAL (Feb. 3, 2025), spglobal.com/commodity-insights/en/news-research/latest-news/natural-gas/020325-us-gas-production-nears-record-high-as-e-ampps-relay-caution-about-growing-too-fast; *US Crude Oil Output Hit Record High in March, While Demand Fell, Says EIA*, REUTERS (May 30, 2025), reuters.com/business/energy/us-crude-oil-output-hit-record-high-march-while-demand-fell-says-eia-2025-05-30/.

[210] *See Spot Henry Hub Natural Gas Prices Hit a Historic Low in 2024*, ENERGY INFO. ADMIN. (EIA) (Jan. 8, 2025), eia.gov/todayinenergy/detail.php?id=64184; EIA, SHORT-TERM ENERGY OUTLOOK: MAY 2025, at 5 (2025) [hereinafter MAY 2025 STEO], eia.gov/outlooks/steo/pdf/steo_full.pdf (forecasting significant declines in global oil prices).

[211] *See, e.g.*, *Dallas Fed Energy Survey: Comments*, FED. RSRV. BANK OF DALL. (Mar. 26, 2025), dallasfed.org/research/surveys/des/2025/2501#tab-comments.

[212] MAY 2025 STEO, *supra* note 210, at 3.

[213] 43 U.S.C. § 1344(a).

[214] *United States Produces More Crude Oil Than Any Country, Ever*, EIA (Mar. 11, 2024), eia.gov/todayinenergy/detail.php?id=61545.

[215] *Short-Term Energy Outlook*, EIA (May 6, 2025), eia.gov/outlooks/steo/report/petro_prod.php.

[216] INT'L ENERGY AGENCY, OIL 2024: ANALYSIS AND FORECAST TO 2030, at 35 (2024), iea.blob.core.windows.net/assets/493a4f1b-c0a8-4bfc-be7b-b9c0761a3e5e/Oil2024.pdf.

by 2030.[217] As expanding oil production outpaces growth in demand, global oil inventories will accumulate to levels that are "unprecedented, barring the Covid-19 period"—and in turn, Brent crude oil spot prices will continue to fall.[218]

Recent increases in price volatility are pushing oil price projections even further downward.[219] Heightened price volatility has been "mostly driven by concerns of an economic slowdown or recession" due to "uncertainty about tariff rates and the degree to which those tariffs will affect economic growth and, in turn, oil demand growth," rather than any risk of supply disruption.[220]

Together, the oversupply of oil, declining demand, and concerns about the economy have led the Energy Information Administration ("EIA") to forecast that the price per barrel of oil will decrease from the already-low April 2025 price of $68 to $62 in the second half of this year and $59 in 2026—a nearly 13 percent decrease in the price per barrel.[221] Oil producers operating in the Permian region, a large onshore oil and gas reserve, reported in March 2025 that, on average, West Texas Intermediate oil prices must be at least $65 per barrel for them to profitably drill a new well.[222] Breakeven prices would likely be even higher for offshore leases, which are more expensive to drill.[223] As a result, energy companies have indicated that the substantial declines in the price per barrel of oil may lead to curtailed production.[224] Not only are prices quickly approaching levels that are too low to justify new drilling, but any added product will only add to the oversupply of oil, which in turn pushes prices even further down, cuts into profits, and makes new drilling even less attractive.[225] Adding additional leases would do little to change the realities of the current economic situation, nor is additional production even needed to meet demand.

Even if U.S. demand for oil and the price per barrel were to spike unexpectedly, U.S. oil production is not constrained by available leasing. At least 77.5 percent of all OCS acreage under active offshore oil and gas leases is not currently being used to produce oil and gas, again because the price of oil is too low to justify new drilling.[226] Any additional production is likely to first come from the Permian Basin shale in Texas and New Mexico rather than offshore reserves, which cost significantly more to

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[217] *Id*. at 11.
[218] *Id*. at 6-7 ("Rising world oil supplies, led by non-OPEC+ producers, are expected to surpass forecast demand from 2025 onwards."); MAY 2025 STEO, *supra* note 210, at 2; *U.S. Energy Production Has Increased Faster than Energy Consumption Over the Past 50 Years*, EIA (Oct. 29, 2024), eia.gov/todayinenergy/detail.php?id=63544.
[219] MAY 2025 STEO, *supra* note 210, at 6 ("[I]ncreased volatility has been reflected primarily in downward oil price movements over recent weeks.").
[220] *Id*. at 5-6.
[221] *Id*. at 2.
[222] *Dallas Fed Energy Survey: Special Questions*, FED. RSRV. BANK OF DALL. (Mar. 26, 2025), dallasfed.org/research/surveys/des/2025/2501#tab-questions.
[223] *Oil and Petroleum Products Explained: Offshore Oil and Natural Gas (In-Depth)*, EIA, eia.gov/energyexplained/oil-and-petroleum-products/offshore-oil-and-gas-in-depth.php (last visited June 8, 2025) ("Offshore oil and natural gas production is much more expensive than onshore (land-based) production.").
[224] *See, e.g.*, May 2025 STEO, *supra* note 210, at 5 ("Perceptions of oversupply among oil market participants also reflect production growth from non-OPEC producers, along with announced production increases from OPEC+."); *Dallas Fed Energy Survey: Comments*, *supra* note 211 ("At $50-per-barrel oil, we will see U.S. oil production start to decline immediately and likely significantly . . . The rhetoric from the current administration is not helpful. If the oil price continues to drop, [oil companies] will shut in production.").
[225] Tristan Baurick, *supra* note 76.
[226] *Id.*; *Oil and Petroleum Products Explained: Offshore Oil and Natural Gas (In-Depth)*, *supra* note 223.

drill.[227] Moreover, the United States already produces more petroleum than it uses, and petroleum exports even hit record levels in 2024.[228]

It is primarily economics—and not regulation of oil and gas production or the number of available leases—that will prevent expanded drilling and production of oil in the coming years.[229] Especially as the national rate of oil consumption is decreasing, national energy needs do not require an "unleashing" of OCS oil leases.

2. New Natural Gas Leases on the OCS

Expanded natural gas leasing in the OCS likewise is not needed to meet U.S. electricity demand or improve grid stability. National electricity consumption is increasing slightly, with the EIA reporting that electricity consumption grew by two percent in 2024 and will continue growing by two percent in 2025 and one percent in 2026 largely due to demand from new semiconductor and battery manufacturing factories and from data centers.[230] However, expanding natural gas exploration, development, and production in the OCS is not the solution to meeting this rising demand. Solar power is expected to supply most of the increase in demand for electricity generation, adding 26 gigawatts ("GW") of new capacity in 2025 and 22 GW in 2026.[231] Electricity supplied by natural gas is expected to decrease in use this year, with generation from U.S. natural gas-fired power plants declining by three percent in 2025 due to rising prices compared with the "historic lows" reached in 2024.[232] But natural gas prices are still relatively low, and this decrease in generation from gas-fired plants is likely to be made up for in part by a six percent increase in generation from coal.[233]

Indeed, our nation already possesses a sufficient domestic supply of natural gas. The United States is already the largest liquified natural gas exporter in the world,[234] and the EIA predicts that gas exports will increase by 22 percent in 2025 and another 10 percent in 2026.[235] Should the nation need additional energy for grid reliability or energy independence, those resources are readily available via the existing supply of cleaner renewable energy sources.

National energy needs therefore do not support an expansion of oil and gas leasing in the OCS—and especially not in the undrilled waters off the Atlantic and Pacific coasts.

F. Industry Interests

BOEM must consider the "interest of potential oil and gas producers in the development of oil and gas resources."[236] In addition to the reality that national and regional energy market needs do not

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[227] Tristan Baurick, *supra* note 76.
[228] *U.S. Crude Oil Exports Reached a New Record in 2024*, EIA (April 10, 2025), eia.gov/todayinenergy/detail.php?id=64964.
[229] *Id.* ("'It's not the regulations that are getting in the way, it's the economics,' said Hugh Daigle, a professor of petroleum engineering at the University of Texas in Austin. 'It's true that there are a bunch of undeveloped leases in the Gulf, and it'll stay that way if we continue to see low or stagnant oil prices.'").
[230] Tim Hess & Kristen Tsai, *EIA Extends Five Key Energy Forecasts Through December 2026*, EIA (Jan. 15, 2025), eia.gov/todayinenergy/detail.php?id=64264; MAY 2025 STEO, *supra* note 210, at 12 (2025).
[231] Tim Hess & Kristen Tsai, *supra* note 230.
[232] MAY 2025 STEO, *supra* note 210, at 13.
[233] *Id.* at 3.
[234] *The United States Remained the World's Largest Liquefied Natural Gas Exporter in 2024*, EIA (Mar. 24, 2025), eia.gov/todayinenergy/detail.php?id=64844.
[235] *Short-Term Energy Outlook: Natural Gas*, EIA (May 6, 2025), eia.gov/outlooks/steo/report/natgas.php.
[236] 43 U.S.C. § 1344(a)(2)(E).

support expanded offshore drilling, industry has regularly identified other reasons for being disinterested in such opportunities: a preference for available technological advancements and a market downturn due in large part to recent tariffs. So long as new drilling remains unprofitable, industry is unlikely to engage in new oil and gas production, especially in the OCS where costs are substantially higher.[237]

The oil and gas industry has explicitly expressed interest in reducing costs and increasing production, not through drilling new reserves but instead through the use of more efficient technology. A March 2025 survey response from an oil and gas support service firm mentioned this trend directly, noting that "increased drilling efficiency and capital discipline by the operator community is undermining the 'drill, baby, drill.'"[238] These advances in technological efficiency have led to record U.S. oil and gas production as of late.[239] Just last fall, ExxonMobil CEO Darren Woods summarized the status quo of the industry, stating, "I don't know that there's an opportunity to unleash a lot of production in the near term, because most operators in the U.S. are [already] optimizing their production today."[240]

The impact of ongoing tariffs and trade confrontations has only led to increased prices for steel and rig parts, as well as fear and significant uncertainty, that impede new drilling by simultaneously increasing the costs of production and decreasing the price of oil.[241] The latest U.S. tariff hikes, particularly the high rates on goods imported from China, present a "material threat" to the capital efficiency of energy and oilfield technology companies.[242] These threats are only heightened for drilling components with highly consolidated supply chains like advanced downhole drilling systems, the total landed costs of which have risen significantly in the United States due to component-level import duties.[243] Tariffs have also "immediately increased" the cost of casing and tubing by 25 percent for oil and gas exploration and production firms, as U.S. tubular manufacturers immediately raised their prices to reflect anticipated tariffs on steel.[244] Some drilling components from China that previously cost $6,500 now selling for more than $15,000.[245] At the same time, heightened price volatility due to "uncertainty about tariff rates and the degree to which those tariffs will affect economic growth and, in turn, oil demand growth," are pushing oil price projections down.[246] Despite this administration's push to "drill, baby, drill," oil and gas companies "are not going

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[237] *Oil and Petroleum Products Explained: Offshore Oil and Natural Gas (In-Depth)*, EIA, *supra* note 223.
[238] *Dallas Fed Energy Survey: Comments from Survey Respondents*, FED. RSRV. BANK OF DALL. (Mar. 26, 2025), dallasfed.org/research/surveys/des/2025/2501.
[239] *See, e.g.*, Scott Disavino & Shariq Khan, *supra* note 209.
[240] Tim McDonnell, *Exxon CEO: Trump Shouldn't Scrap Methane Regulations*, SEMAFOR (Nov. 12, 2024), semafor.com/article/11/12/2024/exxon-ceo-darren-woods-donald-trump-shouldnt-scrap-methane-regulations (brackets in original).
[241] *See* MAY 2025 STEO, *supra* note 210, at 5-6; *Dallas Fed Energy Survey: Comments from Survey Respondents*, *supra* note 238.
[242] Paul Morrell, *Mitigating Tariff Exposure for Advanced Downhole Oil & Gas Equipment*, CAPE TRYON (May 14, 2025), capetryon.com/post/mitigating-tariff-exposure-for-advanced-downhole-oil-gas-equipment.
[243] *Id.*
[244] *Dallas Fed Energy Survey: Comments from Survey Respondents*, *supra* note 238.
[245] Paul Morrell, *supra* note 242.
[246] MAY 2025 STEO, *supra* note 210, at 5.

to drill if the economics aren't there,"[247] meaning it is tariffs, not the number of available leases, that are a primary obstacle to additional drilling and industry success.[248]

A sampling of industry quotes from the past year highlights oil and gas companies' concerns with the effects of tariffs on oil and gas production. Multiple industry officials have gone on the record to share the effects of tariffs on the oil and gas industry:

- **T. Grant Johnson, President of Lone Star Production Company, an oil exploration firm based in Houston, Texas:** "[The plunging price of oil] is truly affecting everybody … There was a lot of talk of, 'drill baby, drill.' But these companies are not going to drill if the economics aren't there. All this fear and uncertainty is causing people to be far more cautious."[249]
- **Paul Morrell, Chief Operations Officer and Co-Founder of Cape Tryon, an industrial and energy consulting firm based in Houston, Texas:** "The United States' latest tariff escalation—most notably the 145 percent rate imposed on imports from China—marks a decisive shift in trade policy, driven by intensifying geopolitical and economic pressures. For energy and oilfield technology companies sourcing globally integrated systems, these tariffs present a material threat to capital efficiency, especially for components with highly consolidated supply chains like advanced downhole drilling systems. . . . Given the fluidity of the current trade environment, it is advisable to prepare mitigation pathways now, while maintaining executional flexibility in the medium term."[250]
- **Fraser McKay, Head of Upstream Analysis at Wood Mackenzie, an international oil and gas research firm:** "While the U.S. administration targets both lower prices and 'Drill, baby, drill', we're more likely to see 'Delay, baby, delay' . . . If operators and the supply chain anticipate a period of prolonged low prices, it would send shockwaves through the industry. This near-term uncertainty becomes an investment killer, precisely when the focus should be on potential long-term demand growth."[251]
- **D. Kirk Edwards, an oil and gas executive and former chair of the Permian Basin Petroleum Association:** "The mood in West Texas is eerily like it was when the pandemic first hit, when oil prices plunged and companies stopped drilling. . . . I think we are going to see within 30 to 60 days a lot of the rigs running today idled . . . Most people are in shock at how this can happen with a Republican administration."[252]

In sum, as *The Washington Post* describes,

> Companies are opting not to add new wells out of fear they will lose money. The number of active rigs in Texas is lower now than it has been since the nation was

[247] Evan Halper, *Trump Promised U.S. Dominance. Instead, Energy Companies Are Faltering*, WASH. POST (May 10, 2025), washingtonpost.com/business/2025/05/10/oil-price-energy-tariffs-trump/.
[248] *See generally Dallas Fed Energy Survey: Comments from Survey Respondents*, *supra* note 238 (repeatedly raising concerns about the impacts of tariffs on the oil and gas industry without any mention of needing to open up additional leasing).
[249] Evan Halper, *supra* note 247.
[250] Paul Morrell, *supra* note 242.
[251] Mark Thomton et al., *The Oil Industry Nervously Stands By: Tariff Uncertainty and Price Volatility Are Threats to Supply, Investment and the Service Sector*, WOODS MACKENZIE (Apr. 23, 2025), woodmac.com/press-releases/the-oil-industry-nervously-stands-by-tariff-uncertainty-and-price-volatility-are-threats-to-supply-investment-and-the-service-sector/.
[252] Evan Halper, *supra* note 247.

> climbing out of the pandemic. The president's tariffs are meanwhile driving up costs in U.S. oil fields, leaving firms hesitant to invest in expanding production.[253]

As U.S. demand for oil and oil prices drop in tandem, industry support for increased drilling—and thus increased leasing—is demonstrably lower than in past years. This factor therefore does not provide nearly as much support for leasing as it may have in the past, further underscoring the lack of a need to re-open the East or West Coast Planning Areas to new drilling for the first time in more than 40 years.

G. Location with Respect to Other Uses of the Sea and Seabed

OCSLA also requires BOEM to consider the location of each region "with respect to other uses of the sea and seabed, including . . . anticipated uses of the resources and space of the [OCS]."[254] Notably, wildlife-related tourism and recreation are common uses of the OCS on both the Atlantic and Pacific coasts. Visitors regularly travel to both coasts to experience the unique and charismatic wildlife, and oil and gas drilling would conflict with these activities, which rely on clean ocean and beaches. Marine mammals, and cetaceans in particular, are important drivers of wildlife education, conservation dollars, and economic growth for coastal communities. For example, in Stellwagen Bank National Marine Sanctuary off Massachusetts, whale watching supports nearly 1,500 jobs and generates $76 million in labor income and $182 million in sales per year.[255] These activities also contribute to wildlife education, research, and conservation:

> The sanctuary works with whale watching operators, with the goal of educating the public about this fragile and increasingly threatened ocean ecosystem. Whale watching tours at Stellwagen Bank National Marine Sanctuary are places for education, for sightseeing, but also for the advancement of important research that is used to protect and conserve the whales themselves . . . Data collected from whale watching vessels has been instrumental in backing up some of the most important steps taken to protect the whales in recent years.[256]

In Washington, whale watching in San Juan County alone supports over $216 million in economic activity in the Puget Sound Region every year.[257] This activity also generates more than $12 million in state and local tax revenue annually and supports over 1,800 jobs.[258] This economic activity feeds back into conservation by supporting the investment in protections for Southern resident killer whales and other vulnerable species.[259] In Florida, manatee-related tourism generates over $8 million annually, contributing to local economies, creating jobs, and raising awareness about

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[253] *Id*.
[254] 43 U.S.C. § 1344(a)(2)(D).
[255] Jordan Koetje, *Whale Watching: A Win-Win for the Economy and the Whales in Massachusetts*, NAT'L MARINE SANCTUARIES (Dec. 2020), sanctuaries.noaa.gov/news/dec20/whale-watching-in-stellwagen-bank.html.
[256] *Id*.
[257] M. Van Deren et al., EARTH ECON., THE WHALES IN OUR WATERS: THE ECONOMIC CONTRIBUTION OF WHALE WATCHING IN SAN JUAN COUNTY, at 4 (2019), static1.squarespace.com/static/561dcdc6e4b039470e9afc00/t/5c48a1e442bfc14525263268/1548264128844/SRKW_EarthEconomics_Jan2019-Digital.pdf.
[258] *Id*.
[259] *Id*. at 7.

conservation.[260] These benefits are highly incompatible with the demonstrated risks posed by offshore oil and gas drilling; thus, BOEM should exclude the East and West Coast Planning Areas from the 11th National OCS Program.

III. BOEM SHOULD NOT PURSUE SEISMIC BLASTING WHERE IT DOES NOT INTEND TO LEASE

In addition to soliciting comments on this RFI, BOEM also shared its intent to begin establishing a path forward for geological and geophysical ("G&G" or "seismic") activities off the Atlantic coast.[261] We are deeply concerned about the potential impacts of seismic airgun testing on marine wildlife, particularly due to the insubstantial oil and gas resources present in these regions, and because any alleged benefits from offshore oil and gas development are not worth the myriad risks, as presented in this letter, negating the need for seismic surveys in the first place.

This was also the case in 2017, when the Obama administration denied multiple applications to conduct seismic surveys because "the value of obtaining the information from the surveys does not outweigh the risks of obtaining said information," citing in particular potential harms to the endangered North Atlantic right whale.[262] Given BOEM's stated intent to "receive new G&G permit applications in the near future"[263] alongside development of the current oil and gas program, we urge the agency to incorporate the following evidence about the detrimental impacts of such activities into its current analysis.

It is undisputed that sound is a fundamental element of the marine environment. Fishes, whales, and other wildlife depend on it for breeding, feeding, navigating, and avoiding predators. Seismic surveys can dramatically degrade the acoustic environment, threatening all marine life, from the smallest zooplankton to the largest megafauna. Seismic testing has been shown to cause as much as a 64 percent decline in zooplankton abundance and a 200 to 300 percent increase in mortality within a 1.2 kilometer range.[264] Airgun noise can also kill or decrease the viability of fish eggs and larvae, which are part of the zooplankton community.[265] Such impacts on zooplankton have the potential to devastate the entire marine ecosystem, as these organisms serve as an important food source for many species, including the highly endangered North Atlantic right whale, and are a critical foundation in the marine food web.

It is well established that the high-intensity pulses produced by airguns can cause a range of negative impacts on marine mammals, including broad habitat displacement, disruption of vital foraging and

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[260] Pienaar, E. (2014). Measuring the Economic Value of the Environment and Natural Resources. *University of Florida*, doi.org/10.32473/edis-uw385-2013.

[261] RFI, 90 Fed. Reg. at 17974.

[262] Letter from Abigail R. Hopper, Dir., BOEM, to Michael Celata, Gulf of Mexico Reg'l Dir., BOEM, Re: Airgun Seismic Survey Permit Applications (Jan. 5, 2017) (on file with commenters).

[263] *Id*.

[264] McCauley, R.D., Day, R.D., Swadling, K.M., Fitzgibbon, Q.P., Watson, R.A., & Semmens, J.M. (2017). Widely Used Marine Seismic Survey Air Gun Operations Negatively Impact Zooplankton. *Nature Ecology & Evolution*, *1*(7), 0195, doi.org/10.1038/s41559-017-0195.

[265] *See, e.g.*, Booman, C., Dalen, J., Leivestad, H., Levsen, A., Meeren, T.V., & Toklum, K. Effects from airgun shooting on eggs, larvae, and fry, FISKEN OG HAVET (1996) (Norwegian with English summary); Dalen, J., & Knutsen, G.M. (1987). Scaring effects in fish and harmful effects on eggs, larvae and fry by offshore seismic explorations. In H.M. Merklinger (Ed.), Progress in Underwater Acoustics (pp. 93-102), doi.org/10.1007/978-1-4613-1871-2_12; Kostyuchenko, L.P. (1973). Effect of elastic waves generated in marine seismic prospecting on fish eggs on the Black Sea, *Hydrobiological Journal, 9*(5): 45-8.

breeding behaviors, loss of biodiversity, and in some circumstances, injury or mortality.[266] Seismic can cause sublethal effects like masking of communication, temporary hearing loss, and suppression of reproductive- and foraging-related behaviors.[267] Studies show that large whales respond to increases in noise with habitat displacement, behavioral changes, and alterations in patterns of vocalization.[268]

Consistent with the seismic surveys' acoustic footprint, these impacts can be felt on an extraordinarily wide geographic scale. For example, a single seismic airgun survey has been shown to cause endangered fin and humpback whales to stop vocalizing—a behavior essential to breeding and foraging—over an area of at least 100,000 square nautical miles, and can cause baleen whales to abandon habitat over the same scale.[269] The intermittency of airgun pulses hardly mitigates their effects since their acoustic energy spreads over time and can sound virtually continuous at distances from the array.[270]

We are particularly troubled by the prospect of seismic testing occurring in North Atlantic right whale habitat, including critical habitat. According to modeling from Cornell University and NOAA, the endangered North Atlantic right whale is particularly vulnerable to masking effects from airguns and other sources given the acoustic and behavioral characteristics of its calls.[271] Noise has also been linked to chronic stress in right whales, which can impact growth and suppress immune system functioning and reproduction.[272] Repeated assault from airgun surveys would add to already urbanized levels of background noise and the already health-compromised population, likely resulting in population-level harm.[273]

Airguns are also known to affect a broad range of other marine mammal species beyond baleen whales. For example, sperm whale foraging appears to decline significantly on exposure to even

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[266] *See, e.g.*, Gordon, J., Gillespie, D., Potter, J., Frantzis, A., Simmonds, M.P., Swift, R., & Thompson, D. (2003). A review of the effects of seismic surveys on marine mammals. *Marine Technology Society Journal*, *37*(4), 16-34, doi.org/10.4031/002533203787536998; Weilgart, L. (2013). A review of the impacts of seismic airgun surveys on marine life. Submitted to the CBD Expert Workshop on Underwater Noise and its Impacts on Marine and Coastal Biodiversity, 25-7 February 2014, London.

[267] Fraser (2014), *supra* note 150.

[268] Rolland, R.M., Parks, S.E., Hunt, K.E., Castellote, M., Corkeron, P.J., Nowacek, D.P., … & Kraus, S.D. (2012). Evidence that ship noise increases stress in right whales. *Proceedings of the Royal Society B: Biological Sciences*, *279*(1737), 2363-8, doi.org/10.1098/rspb.2011.2429.

[269] Clark, C.W., & Gagnon, G.C. (2006). Considering the temporal and spatial scales of noise exposures from seismic surveys on baleen whales. *IWC/SC/58 E*, *9*; Macleod, K., Simmonds, M.P., & Murray, E. (2006). Abundance of fin (*Balaenoptera physalus*) and sei whales (*B. borealis*) amid oil exploration and development off northwest Scotland. *Journal of Cetacean Research & Management*, *8*(3), 247-54, doi.org/10.47536/jcrm.v8i3.720.

[270] Clark, C.W., Ellison, W.T., Southall, B.L., Hatch, L., Van Parijs, S.M., Frankel, A., & Ponirakis, D. (2009). Acoustic masking in marine ecosystems: Intuitions, analysis, and implication. *Marine Ecology Progress Series*, *395*, 201-22, doi.org/10.3354/meps08402.

[271] *Id*.

[272] Rolland et al. (2012), *supra* note 268.

[273] *See, e.g.*, Nowacek, D.P., Clark, C.W., Mann, D., Miller, P.J., Rosenbaum, H.C., Golden, J.S., … & Southall, B.L. (2015). Marine seismic surveys and ocean noise: Time for coordinated and prudent planning. *Frontiers in Ecology & Environment*, *13*(7), 378-86, doi.org/10.1890/130286.

moderate levels of airgun noise, with potentially serious long-term consequences,[274] and harbor porpoises have been seen to engage in strong avoidance responses fifty miles from an airgun array.[275] Seismic activity has been implicated in the long-term loss of marine mammal biodiversity off the coast of Brazil.[276] Broader work on other sources of undersea noise, including noise with predominantly low-frequency components, indicates that beaked whale species may be highly sensitive to seismic activity as well.[277] Seismic surveys have indeed been linked with strandings of beaked whales.[278]

Finally, there exists a significant body of research demonstrating the impacts of seismic airgun blasting on marine fishes.[279] A research study in North Carolina demonstrated a 78 percent decline in snapper-grouper species abundance after a seismic airgun survey occurred.[280] Even brief playbacks of predominantly low-frequency noise from speedboats have been shown to significantly impair the ability of some fish species to forage.[281] A study of Atlantic salmon showed that exposure to simulated seismic airgun blasts increased the production of stress hormones.[282] Other impacts of anthropogenic noise on fishes include habitat abandonment, reduced reproductive performance,

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[274] Miller, P.J., Johnson, M.P., Madsen, P.T., Biassoni, N., Quero, M., & Tyack, P.L. (2009). Using at-sea experiments to study the effects of airguns on the foraging behavior of sperm whales in the Gulf of Mexico. *Deep Sea Research Part I: Oceanographic Research Papers*, *56*(7), 1168-81, doi.org/10.1016/j.dsr.2009.02.008.

[275] Bain, D.E., & Williams, R. (2006). Long-range effects of airgun noise on marine mammals: Responses as a function of received sound level and distance. *IWC/SC/58/E35*.

[276] Parente, C.L., Araújo, J.P.D., & Araújo, M.E.D. (2007). Diversity of cetaceans as tool in monitoring environmental impacts of seismic surveys. *Biota Neotropica*, *7*, 49-56, doi.org/10.1590/S1676-06032007000100007.

[277] *See, e.g.,* Tyack, P.L., Zimmer, W.M., Moretti, D., Southall, B.L., Claridge, D.E., Durban, J.W., … & Boyd, I.L. (2011). Beaked whales respond to simulated and actual navy sonar. *Plos One*, *6*(3), e17009, doi.org/10.1371/journal.pone.0017009; Soto, N.A., Johnson, M., Madsen, P.T., Tyack, P.L., Bocconcelli, A., & Fabrizio Borsani, J. (2006). Does intense ship noise disrupt foraging in deep-diving Cuvier's beaked whales (*Ziphius cavirostris*)?. *Marine Mammal Science*, *22*(3), 690-9, doi.org/10.1111/j.1748-7692.2006.00044.x; Cox, T.M., Ragen, T.J., Read, A.J., Vos, E., Baird, R.W., Balcomb, K., … & Benner, L. (2005). Understanding the impacts of anthropogenic sound on beaked whales. *Journal of Cetacean Research & Management*, *7*(3), 177-87, doi.org/10.47536/jcrm.v7i3.729.

[278] Fraser (2014), *supra* note 150.

[279] *See*, *e.g.*, Weilgart, L. (2018). The impact of ocean noise pollution on fish and invertebrates. *OceanCare & Dalhousie University*.

[280] Paxton, A.B., Taylor, J.C., Nowacek, D.P., Dale, J., Cole, E., Voss, C.M., & Peterson, C.H. (2017). Seismic survey noise disrupted fish use of a temperate reef. *Marine Policy*, *78*, 68-73, doi.org/10.1016/j.marpol.2016.12.017.

[281] Purser, J., & Radford, A.N. (2011). Acoustic noise induces attention shifts and reduces foraging performance in three-spined sticklebacks (*Gasterosteus aculeatus*). *Plos One*, *6*(2), e17478, doi.org/10.1371/journal.pone.0017478.

[282] Sverdrup, A., Kjellsby, E., Krüger, P.G., Fløysand, R., Knudsen, F.R., Enger, P.S., … & Helle, K.B. (1994). Effects of experimental seismic shock on vasoactivity of arteries, integrity of the vascular endothelium and on primary stress hormones of the Atlantic salmon. *Journal of Fish Biology*, *45*(6), 973-95, doi.org/10.1111/j.1095-8649.1994.tb01067.x.

and hearing loss.[283] Additional studies have demonstrated increased mortality in scallops[284] and compromised immune function in spiny lobsters.[285]

It is well established that marine wildlife—from zooplankton to marine mammals—are at extreme risk from seismic activity. Given the ecological diversity of the East Coast Planning Areas, as described previously in this letter, we strongly urge BOEM not to pursue harmful seismic testing activity in these areas, particularly when considering the likely lack of available energy resources in these areas.

IV. BOEM SHOULD CONDUCT A NEPA REVIEW OF THE 11TH NATIONAL OCS PROGRAM

BOEM stated in the RFI that, "in lieu of a NEPA analysis" for the 11th National OCS Program, the agency will prepare "an environmental analysis document that will contain those Section 18 analyses that involve environmental considerations" but not an analysis of alternatives.[286] While we recognize that the D.C. Circuit has found NEPA review to be unripe at the national OCS program stage,[287] we believe that BOEM erred in concluding that NEPA review is not required for five-year leasing programs under the D.C. Circuit's reasoning. BOEM should prepare a programmatic EIS ("PEIS"), as has been done in every other national OCS program development cycle, to ensure that environmental impacts and alternatives are fully analyzed before any irreversible leasing decisions are made.

NEPA requires that federal agencies prepare an EIS for any major action significantly affecting the human environment.[288] Preparation of an EIS ensures both that agencies consider environmental effects and alterative courses of action and that the public is given an opportunity to weigh in on those impacts and alternatives. Conducting a full PEIS with analysis of alternatives would therefore ensure that BOEM and the public are both fully informed as to the potential environmental impacts of the 11th National OCS Program and the means by which the program could be altered to mitigate impacts on coastal economies, natural resources, and coastal and marine wildlife. The appropriateness of preparing a PEIS is only underscored by the fact that EISs have been prepared for each OCS leasing program since the first five-year program was published in 1980.[289]

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[283] McCauley, R., Fewtrell, J., Duncan, A., Jenner, C., Jenner, M.N., Penrose, J., ... & McKabe, K. (2000) Marine seismic surveys: Analysis and propagation of air-gun signals; and effects of air-gun exposure on humpback whales, sea turtles, fishes, and squid, *Australian Petroleum Production and Exploration Association*; McCauley, R.D., Fewtrell, J., & Popper, A.N. (2003). High intensity anthropogenic sound damages fish ears. *The Journal of the Acoustical Society of America*, *113*(1), 638-42, doi.org/10.1121/1.1527962; Scholik, A.R., & Yan, H.Y. (2002). Effects of boat engine noise on the auditory sensitivity of the fathead minnow, *Pimephales promelas*. *Environmental Biology of Fishes*, *63*, 203-9, doi.org/10.1023/A:1014266531390.

[284] Day, R.D., McCauley, R.D., Fitzgibbon, Q.P., Hartmann, K., & Semmens, J.M. (2017). Exposure to seismic air gun signals causes physiological harm and alters behavior in the scallop *Pecten fumatus*. *Proceedings of the National Academy of Sciences*, *114*(40), E8537-46, doi.org/10.1073/pnas.1700564114.

[285] Fitzgibbon, Q.P., Day, R.D., McCauley, R.D., Simon, C.J., & Semmens, J.M. (2017). The impact of seismic air gun exposure on the haemolymph physiology and nutritional condition of spiny lobster, *Jasus edwardsii*. *Marine Pollution Bulletin*, *125*(1-2), 146–56, doi.org/10.1016/j.marpolbul.2017.08.004.

[286] RFI, 90 Fed. Reg. at 17976.

[287] *See CBD v. Interior*; *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588 (D.C. Cir. 2015) [hereinafter *CSE v. Jewell*].

[288] 42 U.S.C. § 4332(C).

[289] RFI, 90 Fed. Reg. at 17976; *see also* U.S. DEP'T OF THE INTERIOR, 5-YEAR OCS PROGRAM, at 149, 217 (1980), boem.gov/sites/default/files/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/PFP%2080-82.pdf (referencing the EIS prepared for the leasing program).

BOEM erred in relying on the two D.C. Circuit opinions in finding that a PEIS is not required for the 11th National OCS Program.[290] The D.C. Circuit has not considered that issue in the first instance.

V. CONCLUSION

For the reasons discussed above, BOEM should not proceed with considering any of the East or West Coast Planning Areas for inclusion in the 11th National OCS Program. Not even three years ago, each of the East and West Coast Planning Areas was removed from the 10th National OCS Program following widespread bipartisan opposition to their inclusion. That opposition has only grown in the intervening years—and potential threats to marine and coastal wildlife, natural resources, economies, and local communities remain.

Thank you for your consideration of these comments.

Sincerely,

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[*signature page continues*]

[290] RFI, 90 Fed. Reg. at 17976.

Friends of Merrymeeting Bay
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[Attachments]