

**From:** [Daniel-Davis, Laura E](#)  
**To:** [Sanchez, Alexandra L](#)  
**Subject:** Re: Response to OIG royalty relief NPFR  
**Date:** Tuesday, April 13, 2021 9:27:30 PM

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Let's discuss tomorrow morning. And drop a placeholder into the report please.

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**From:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Sent:** Tuesday, April 13, 2021 6:58 PM  
**To:** Daniel-Davis, Laura E <[laura\\_daniel-davis@ios.doi.gov](mailto:laura_daniel-davis@ios.doi.gov)>  
**Cc:** Macdonald, Cara Lee <[cara\\_macdonald@ios.doi.gov](mailto:cara_macdonald@ios.doi.gov)>  
**Subject:** FW: Response to OIG royalty relief NPFR

Laura,

Do you need Scott to put this into DTS to review or is this email fine?

He needs by Thursday.

Thank you,

Alex

---

**From:** Mabry, Scott <[Scott.Mabry@bsee.gov](mailto:Scott.Mabry@bsee.gov)>  
**Sent:** Monday, April 12, 2021 5:43 PM  
**To:** Daniel-Davis, Laura E <[laura\\_daniel-davis@ios.doi.gov](mailto:laura_daniel-davis@ios.doi.gov)>  
**Cc:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>; Macdonald, Cara Lee <[cara\\_macdonald@ios.doi.gov](mailto:cara_macdonald@ios.doi.gov)>  
**Subject:** FW: Response to OIG royalty relief NPFR

Ms. Daniel-Davis,

Attached are our initial response for the notice of potential findings provided by the OIG, and related to special case royalty relief. The potential findings are:

- BSEE Did Not Have Policy for Special Case Royalty Relief (SCRR) Option 1
- BSEE Did Not Formalize Application Evaluation Procedures for SCRR Option 1
- No Formal Training on New Option 1 Program

As you can see in our response, BSEE generally agrees with the recommendations, but we are requesting some edits as well as clarification in a couple of areas. Our response is due back to the OIG this Thursday. I have also included the incoming notice. Please let us know if you have any concerns with the draft response. If you would like us to enter into DTS we can do that as well.

As a note, once we receive the final report, we will develop the corrective action plan, and track that to completion.

Please let me know if you have any questions.

Thank You  
Scott

---

**From:** Madden, Molly <[Molly.Madden@bsee.gov](mailto:Molly.Madden@bsee.gov)>

**Sent:** Monday, April 12, 2021 5:04 PM

**To:** Mabry, Scott <[Scott.Mabry@bsee.gov](mailto:Scott.Mabry@bsee.gov)>

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**Subject:** Response to OIG royalty relief NPFR

Hi Scott,

Attached is the proposed response to the OIG's Notice of Proposed Findings and Recommendations from its inspection of BSEE's royalty relief program (also attached). Chanielle coordinated input from the regions and Kevin has concurred with this draft. Please let us know if you have any concerns with this draft. We would like to enter it into DTS for your and ASLM's surname. Let us know, though, if you don't think this needs to go into DTS for ASLM.

Thanks,

Molly

--

**Molly Madden**

Chief - Office of Policy and Analysis  
Bureau of Safety and Environmental Enforcement

U.S. Department of the Interior

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**From:** [Moran, Jill C](#)  
**To:** [Sanchez, Alexandra L](#)  
**Cc:** [Macdonald, Cara Lee](#)  
**Subject:** Environmental Justice component in BLM oil and gas plan  
**Date:** Thursday, April 22, 2021 3:34:44 PM  
**Attachments:** [PUBLIC LANDS\\_BLM tells oil firm to protect Native American women -- Friday, March 6, 2020 -- www.eenews.net.pdf](#)  
[Tracked Changesv2 - Final ROD Update - Moneta Divide.pdf](#)

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Hi Alex,

I wanted to share some history on one of the BLM's environmental impact statements that relates to both oil and gas development and the safety of American Indian women and their communities. Given the ongoing review of the BLM's oil and gas program and the Secretary's commitment to addressing violence towards American Indian women, I thought it would be timely to share this with you as it may be of interest.

In February 2020, BLM-Wyoming published the Final EIS for the **Moneta Divide Natural Gas and Oil Development Project**. The Final EIS included language that responded to concerns raised in comments to the Draft EIS (I believe from the Western Watersheds Project) and aimed to further protection for tribes, particularly women, from the effects of oil and gas operations moving into areas near reservations. This is the first EIS that I am aware of that has included such language. It was not well received by the last administration and was eventually removed in the Record of Decision.

*In Chapter 3 (Affected Environment), p. 3-128:*

During public review of the Draft EIS, tribal and non-tribal members of the public expressed concerns that the safety of tribal members could be disproportionately affected by the large influx of non-local oil and gas workers, and that some members of the tribes could be more vulnerable to victimization due to their proximity to the workforce facility the Companies' have proposed to construct. While development in the Production area would stimulate greater economic opportunities for local residents, including environmental justice communities, rapid population growth stemming from the influx of oil and gas workers has the potential to adversely impact many qualities of life factors in surrounding communities. Some adverse impacts to quality of life factors, like crime, are likely to disproportionately affect tribal communities. The correlation between the influx of non-local oil and gas workers and significant increases in property and violent crimes is well documented (Archbold 2013; Carrington et al. 2010; Gourley and Madonia 2018; Perry 2007; Petkova et al. 2009; Ruddell and Thomas 2012; Ruddell et al. 2014; Finn et al. 2017). The Bureau of Justice Statistics has found that Native Americans experience violent crimes at rates far greater than the general population (Bureau of Justice Statistics 2004). Based on the studies cited above and statistics from the Bureau of Justice Statistics, it is possible that tribal members, especially women, may experience increased violent crime due to the influx of non-local oil and gas workers. However, there is no information available at this time to indicate

that this would occur as a result of development within the Moneta Divide Project Area.

*Chapter 4 (Environmental Consequences), p. 4-297, adds:*

Although development in the Production area would stimulate greater economic opportunities for local residents, including environmental justice communities, rapid population growth stemming from the influx of oil and gas workers has the potential to adversely impact many quality of life factors in surrounding communities (Section 4.15.3.2, Alternative 2). Some adverse impacts to quality of life factors, like crime, are likely to disproportionately affect tribal communities. As discussed in Section 3.16.5, Differential Patterns of Consumption and Exposure, Native Americans experience violent crime at rates much higher than the general public, Native American women are one of the most vulnerable groups in the country, and crimes against Native Americans are often perpetrated by non-Native Americans. Because Native Americans have a history of being disproportionately affected by crime, it can be assumed that rising crime rates would also have a disproportionately adverse impact on members of Eastern Shoshone and Northern Arapaho. Of tribal members, women would be most likely to disproportionately experience violent crime

The document then proposes the following mitigation measure *Chapter 4, p. 4-299:*

The BLM has developed a mitigation measure to address the disproportionate impact on tribal populations by the influx of oil and gas workers into the area. The BLM did not identify a need for any other mitigation measures for environmental justice at this programmatic level of analysis. The BLM may develop and apply mitigation measures during subsequent site-specific NEPA reviews based on needs identified at that time.

**• EJ-1 – The Companies will be encouraged to adopt and incorporate best practices from The United Nations Guiding Principles on Business and Human Rights (United Nations 2011) as part of their worker safety and environmental training program implemented before the start of construction. Best practices from the UN Guiding Principles include employee screening and background checks, law enforcement coordination, employee training, internal policing, and victim services. Adoption and implementation of best practices will help avoid impacts to Native American communities during project development and operation.**

When the Final EIS came out, E&E news picked up on it (see attached article) and this is how the former Secretary became aware of it. I can share the details with you, but as I mentioned above, months later the mitigation measure was rejected in the signed Record of Decision. Attached is the redline of the ROD - you can see the change there on pages 23-24.

Let me know if you'd like to chat about this sometime - I can also provide the relevant links to

the documents if you'd rather just look them over.

Thanks,  
Jill

--

Jill Moran  
Senior Policy Analyst  
Office of the Assistant Secretary - Land and Minerals Management  
U.S. Department of the Interior  
202.208.4114

## THE TRANSFORMATION OF THE ENERGY SECTOR

## PUBLIC LANDS

**BLM tells oil firm to protect Native American women**

Heather Richards, E&amp;E News reporter • Published: Friday, March 6, 2020



A landscape in the Wind River Reservation in Wyoming. Angela Burgess/USFWS

The Bureau of Land Management has advised an oil operator to help prevent violence against Native American women living nearby in Wyoming.

BLM recommended that Aethon Energy Management LLC and its partner, Burlington Resources Oil and Gas Co., adopt the U.N. Guiding Principles on Business and Human Rights for its central Wyoming oil and gas project.

Such a move is rare.

"I'm not certain but believe it's precedent setting," said Tom Nelson, vice president of operations for Aethon. "I expect industry will be weighing in on it, not just in Wyoming, but industry across the country would be interested in having a discussion on that."

Dallas-based Aethon has spent seven years trying to expand an oil and gas development in the center of Wyoming. The Moneta Divide project would allow industry to drill up to 4,250 new oil and gas wells northeast of the Wind River Reservation, where members of the Eastern Shoshone and Northern Arapaho nations reside.

BLM included the human rights recommendation in its final environmental analysis of the project published in February.

The guidelines "include employee screening and background checks, law enforcement coordination, employee training, internal policing, and victim services."

The BLM analysis notes that there are economic benefits to the local community from industrial development. But it also acknowledged the well-documented spikes in crime rates near oil field developments and included statistics relating to Native communities' vulnerability to crime from non-Natives.

"Native Americans experience violent crime at rates much higher than the general public, Native American women are one of the most vulnerable groups in the country, and crimes against Native Americans are often perpetrated by non-Native Americans," BLM wrote. "Since Native Americans have a history of being disproportionately affected by crime, it would stand to reason that rising crime rates would also have a disproportionately adverse impact on members of the Eastern Shoshone and the Northern Arapaho tribes."

The measure was first reported by the Wyoming news site *WyoFile*.

Brad Purdy, a spokesman for Wyoming BLM, said the agency couldn't force the company to adopt such actions but "encouraged" it to do so based on public comments it received during the National Environmental Policy Act process.

"Tribal and non-tribal members of the public expressed concern that a large influx of non-local workers may disproportionately impact local quality of life," Purdy said in an email.

Nelson said in an interview yesterday that Aethon was developing a response to the environmental justice recommendation, as well as others made by the agency in the final environmental review, which is out for public comment until late March.

Nelson said the company had not finalized a position. But he noted that the guidelines were a matter of concern.

A request to national BLM for more information on whether environmental justice parameters like the one suggested by the Wyoming office were common or precedented was not returned by press time.

Aethon first brought the Moneta project to BLM in 2013. The agency greatly reduced the size of the final environmental review to meet Interior Secretary David Bernhardt's 2017 order that analyses be kept to a page limit. A similar edict to expedite large projects through the permitting process has not been successful with Moneta.

Water quality issues have plagued the project in recent years.

The field expansion would greatly increase the expulsion of diluted wastewater through a seasonal gulch that feeds into a reservoir that serves the Wind River Reservation, which has brought in public criticism and EPA concerns.

The inclusion of the human rights guidelines comes after the recent death of 16-year-old Crow tribal member Selena Not Afraid. She died of hypothermia outside a rest stop in Montana in January.

Wyoming's Legislature passed a joint resolution this week that would implore Congress to address missing and murdered Native American women through greater law enforcement and tracking of such crimes. It was co-sponsored by two Native women in Wyoming's Legislature, Democratic Rep. Andi Clifford and Republican Sen. Affie Ellis.

"Wind River" is the name of a movie released in 2017, which centers on the death of an 18-year-old Native woman, raped by security workers at an oil rig site on the Wind River Reservation.

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U.S. Department of the Interior  
Bureau of Land Management

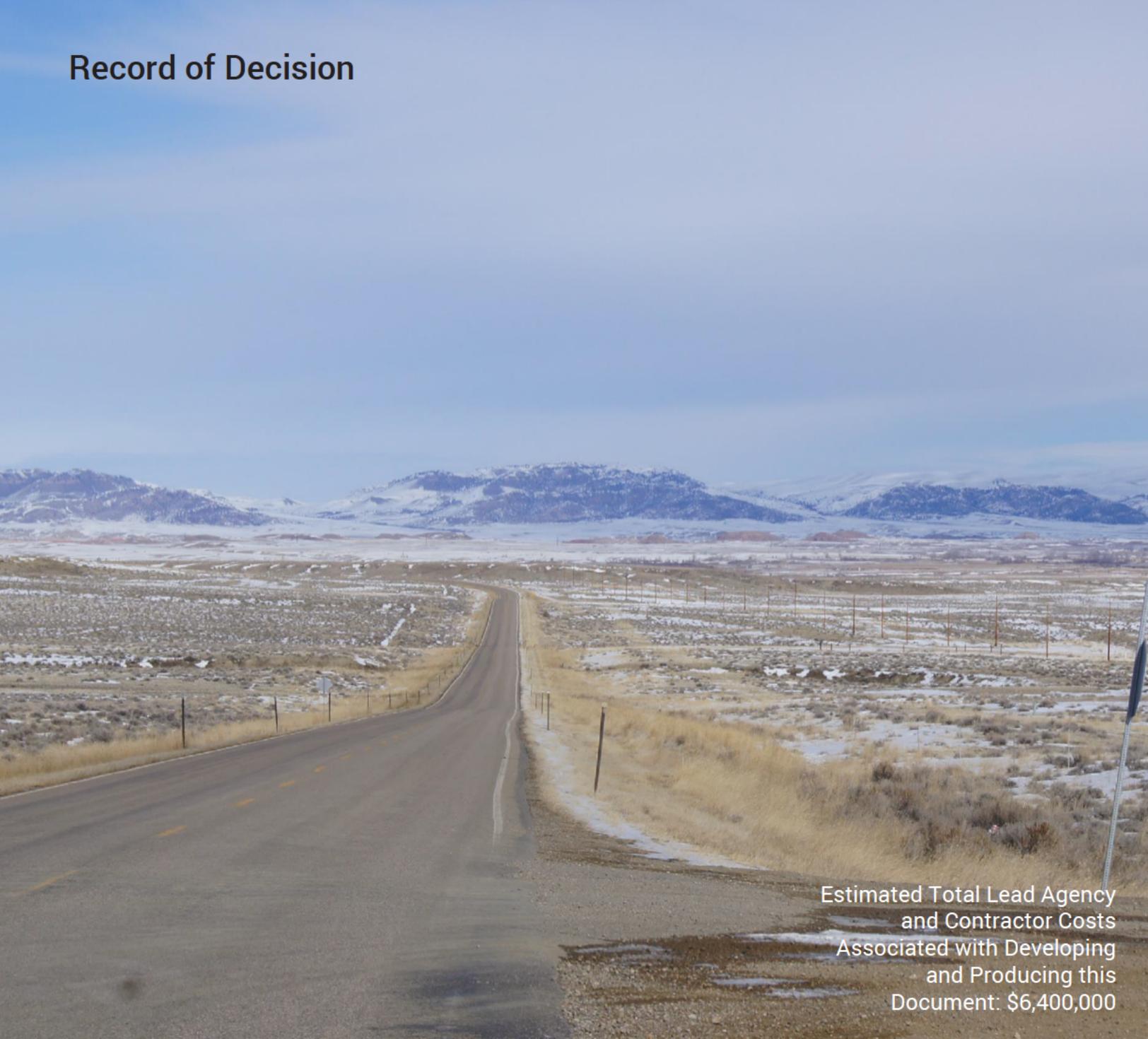
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# Moneta Divide Natural Gas and Oil Development Project

Wyoming – Wind River/Bighorn Basin District and High Plains District  
June 2020

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## Record of Decision



Estimated Total Lead Agency  
and Contractor Costs  
Associated with Developing  
and Producing this  
Document: \$6,400,000

The Bureau of Land Management is responsible for the stewardship of our public lands. The BLM's mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

**BLM/WY/PL-20/006+1310**

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(b) (5)

[Redacted] [Redacted]  
[Redacted] [Redacted]  
[Redacted] [Redacted]  
[Redacted] [Redacted]

## **ACRONYMS AND ABBREVIATIONS**

%	percent
ACHP	Advisory Council on Historic Preservation
ACM	Applicant Committed Measure
Aethon	Aethon Energy Operating LLC
APD	Application for Permit to Drill
bbl	barrel
BLM	Bureau of Land Management
BMP	Best Management Practice
Burlington	Burlington Resources Oil & Gas Company LP
CFO	Casper Field Office
CFR	Code of Federal Regulations
COA	Condition of Approval
CPF	Combined Processing Facility
CSU	Controlled Surface Use
DDA	Designated Development Area
DOI	Department of the Interior
EIS	Environmental Impact Statement
Encana	Encana Oil & Gas (USA) Inc.
EPA	U.S. Environmental Protection Agency
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act, as amended
FTE	Full Time Equivalent
GMI	Gun Barrel, Madden Deep and Iron Horse Natural Gas Development Project
LFO	Lander Field Office
Moneta Divide Project	Moneta Divide Natural Gas and Oil Development Project
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOA	Notice of Availability
NOI	Notice of Intent
NSO	No Surface Occupancy
PA	Programmatic Agreement
PHMA	Priority Habitat Management Area
POD	Plan of Development
RFO	Rawlins Field Office
RMP	Resource Management Plan
ROD	Record of Decision
ROW	Right-of-Way
SHPO	State Historic Preservation Office or Officer
TCP	Traditional Cultural Property
TLS	Timing Limitation Stipulation

## **Acronyms & Abbreviations**

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U.S.	United States
U.S.C.	United States Code
<del>WOGCC</del> <sup>(b) (5)</sup>	<del>Wyoming Oil and Gas Conservation</del> <del>Commission</del> (b) (5)
<del>WYPDES</del>	<del>Wyoming Pollutant Discharge Elimination</del> <del>System</del>
<del>OGCC</del>	<del>Wyoming Oil and Gas Conservation</del> <del>Commission</del>
<del>WYPDES</del>	<del>Wyoming Pollutant Discharge Elimination System</del>

## 1.0 Approval

I hereby approve the decision described in Section 4.0, *Decision*.

(b) (5) [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

\_\_\_\_\_

[Redacted]

Approval Date:

\_\_\_\_\_

## **2.0 Summary**

Aethon Energy Operating LLC (Aethon) and Burlington Resources Oil & Gas Company LP (Burlington) (referred to collectively as the Companies) proposed to the U.S. DOI BLM Lander Field Office (LFO) to develop new, and enhance existing, facilities for the exploration and production of oil and gas resources primarily in Fremont and Natrona counties, and partially within Sweetwater County, Wyoming. The project area is a checkerboard pattern of mixed ownership, alternating between sections of public and private landownership.

The Companies propose to drill and produce oil and gas resources and construct associated facilities on approximately (b) (5) acres located primarily on BLM-administered lands in the BLM LFO and Casper Field Office (CFO). The majority of the development would occur in the production area and would include 4,100 directional and vertical natural gas and conventional oil wells by Aethon and 150 directional and vertical natural gas wells by Burlington. Some of the supporting facilities would occur partially outside the production area, including treated water discharge pipelines, disposal wells spread between two disposal areas and a product pipeline. The product pipeline would extend approximately 120 miles through Fremont and Sweetwater counties on private, state, and public lands administered by the LFO and Rawlins Field Office (RFO).

Aethon proposes wells on both single- and multi-well pads and Burlington proposes using single well pads, with all wells being developed over a 15-year period. The life of the project, including drilling, production, and final reclamation, would be approximately 65 years, assuming the average life of a well is 50 years. The precise locations of wells have not been identified at this time. More than 830 wells have already been developed in the project area, with some plugged and abandoned.

### 3.0 Introduction

The Companies submitted a Plan of Development (POD) to the U.S. DOI BLM proposing to develop new and enhance existing facilities for the exploration and production of oil and gas resources. The proposal is referred to as Moneta Divide Natural Gas and Oil Development Project (Moneta Divide Project).

The Moneta Divide Project Area consists of approximately (b) (5) acres located primarily in Fremont and Natrona counties, Wyoming, approximately 40 miles northeast of Riverton, Wyoming, and partially in Sweetwater County. (b) (5) -The Project Area is located on lands and minerals administered by the BLM ((b) (5) surface acres, or (b) (5) percent of the Project Area) and the State of Wyoming ((b) (5) surface acres or (b) (5) percent of the Project Area), as well as private lands ((b) (5) acres, or 24 percent of the Project Area).

The Companies propose to drill a maximum of 4,250 wells over approximately 15 years within the Moneta Divide Production Area. (b) (5) -at an average rate ranging from 280 to 325 wells per year:

- **Aethon proposes to drill 4,100 wells** in the Gun Barrel, Powder Keg, Double Iron, and Talon Units, and other leases not within a federal unit (referred to as Aethon’s Operating Area, 185,396 acres) (b) (5)
- **Burlington proposes to drill 150 wells** in the Madden Deep Federal Exploratory Unit (referred to as Burlington’s Operating Area, 80,038 acres) (b) (5)

In addition to the new gas and oil wells, the Companies have proposed the following facilities:

- treated water discharge pipelines
- disposal wells
- roads
- pipelines and booster stations
- powerlines
- gas processing plant
- oil/condensate storage
- water treatment facilities
- combined processing facilities
- compressor stations
- equipment/pipe storage yards
- bio-composting facility
- water disposal wells
- workforce facility

The precise locations of the proposed wells and additional facilities have not been identified but will be proposed during site-specific permitting and subject to [additional](#) environmental review. The life of the project is assumed to be 65 years through final reclamation.

### 3.1 Background

Oil and gas exploration and production has been ongoing in the Moneta Divide Project Area since the 1920s and over 830 wells have been drilled. Other existing oil and gas facilities in the Production Area include, but are not limited to, evaporation ponds, permitted surface discharge outfalls, a bio-composting facility, field office buildings, roads, pipelines, powerlines, compressor stations, and a gas plant. Aethon and Burlington both have operations currently ongoing in the Production Area.

The Moneta Divide Project is an expansion of a previous project known as the Gun Barrel, Madden Deep, and Iron Horse Natural Gas Development Project (GMI Project). The BLM began preparing an Environmental Impact Statement (EIS) for the GMI Project in 2008. At that time, Aethon’s predecessor for the Moneta Divide Project, Encana Oil & Gas (USA), Inc. (Encana), and Burlington, along with Noble Energy, Inc., proposed to drill approximately 1,370 new wells within a 146,000-acre project area in the

## ***Introduction***

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Gun Barrel, Madden Deep, and Iron Horse federal units. These federal units are located entirely within the current proposed Moneta Divide Production Area.

During preparation of the EIS for the GMI Project, Encana modified its development proposal from 750 wells within a single federal unit to 3,600 wells within three existing federal units, one proposed federal unit, and surrounding lands. Encana also acquired Noble Energy, Inc.'s interest in the Iron Horse Unit and incorporated its proposed 500 wells in its modified proposal, for a total of 4,100 proposed wells. Burlington's proposal to drill 150 wells has not changed from the original GMI proposed action. The BLM determined it was necessary to restart the EIS process because of the difference between the original proposed action and Encana's revised proposed action. In 2012, Encana and Burlington submitted a Plan of Development (Appendix B, *Plan of Development*, to the Final EIS) for their revised proposal, renamed the Moneta Divide Project, and in January 2013, the BLM initiated this EIS to analyze that new proposal. Aethon acquired Encana's federal leases and other assets in the Moneta Divide Production Area in March 2015, and confirmed that the Proposed Action, as originally proposed by Encana, would remain the same.

(b) (5)

(b) (5)

## 4.0 Decision

The BLM has determined that the analysis contained within the Moneta Divide Project Final Environmental Impact Statement (FEIS) is adequate for the purposes of reaching an informed decision regarding the Moneta Divide Project. This Record of Decision (ROD) applies only to the BLM-administered public lands, including federal mineral estate, within the Project Area.

The BLM hereby selects and approves the FEIS Preferred Alternative, which was developed in response to comments received on the Draft EIS and from input from the Cooperating Agencies, and was designed to allow for development under valid existing lease rights while conserving a broad range of resource values.

The Preferred Alternative is approved in this ROD. Specific aspects of this approval (the decision) are outlined in subsequent portions of this ROD.

Under the decision, Aethon is approved to submit site-specific applications for natural gas and oil drilling and related development on federal lands within the Project **Area (b) (5) Area**, as described in the Moneta Divide Project FEIS under the BLM's Preferred Alternative, described further below. Future exploration and development activities, applications for permits to drill (APDs) and rights-of-way (ROW) are subject to the resource protection measures presented in Appendix [F of the Moneta Divide Project FEISA, Resource Protection Measures<sup>1</sup>](#), which may be applied as Conditions of Approval (COAs) during site-specific permitting and authorization processes.

Prior to any project-related operations occurring on public lands, required applications must be submitted to and considered by the BLM during site-specific environmental review. The FEIS was programmatic in nature, in that the exact location and design of facilities proposed by the Companies was unknown during the EIS development process. Subsequent National Environmental Policy Act (NEPA) analysis tiered to this EIS will be required prior to construction; see Appendix [A of the Moneta Divide Project FEIS B, NEPA Tiering Procedure<sup>2</sup>](#), for additional information. The BLM will decide to approve, modify, or deny permits for the exploration and development of federal oil and gas leases and related ancillary facilities incorporating the analysis in the EIS, the tiered NEPA documents, and this ROD.

Under the decision, Aethon can submit APDs and related ROWs for as many as 4,100 natural gas and oil wells, associated infrastructure and ancillary facilities, at a rate of up to 300 wells site-specifically approved per year during the approximate 15-year development period. Burlington ~~can~~ may submit APDs and related ROW for as many as 150 natural gas and oil wells, associated infrastructure and ancillary facilities, at a rate of up to 25 wells site-specifically approved per year during the approximate 15-year development period. The BLM hereby approves up to 20,132 acres of short-term disturbance and up to 6,208 acres of long-term disturbance during the anticipated 65-year life of the project as the result of site-specific proposals.

The decision adopts an amendment to the CFO Resource Management Plan (RMP), as detailed in Section 4.1. The amendment increases the area of BLM-administered land and mineral estate around the Cedar Ridge Traditional Cultural Property subject to protective management stipulations, including No Surface Occupancy (NSO) and Controlled Surface Use (CSU).

### 4.1 Casper Resource Management Plan Amendment

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<sup>1</sup> Appendix F of the Moneta Divide Project FEIS is available at <https://go.usa.gov/xQr83..>

<sup>2</sup> Appendix A of the Moneta Divide Project FEIS is available at <https://go.usa.gov/xQr83...>

The BLM approves amending the 2007 CFO RMP (BLM 2007a), as included in the Preferred Alternative in the FEIS. The amendment modifies the management prescriptions within and around the Cedar Ridge

Traditional Cultural Property (TCP) in the CFO to protect the site's sacred values. During Native American tribal consultation, the area recognized as the "boundary" of the TCP was expanded to encompass the entire ridge plus 1 mile and the area recognized as the "periphery" was expanded to encompass a 3-mile area around the boundary. The amendment applies protective management stipulations within the expanded boundary and periphery area (Map 3):

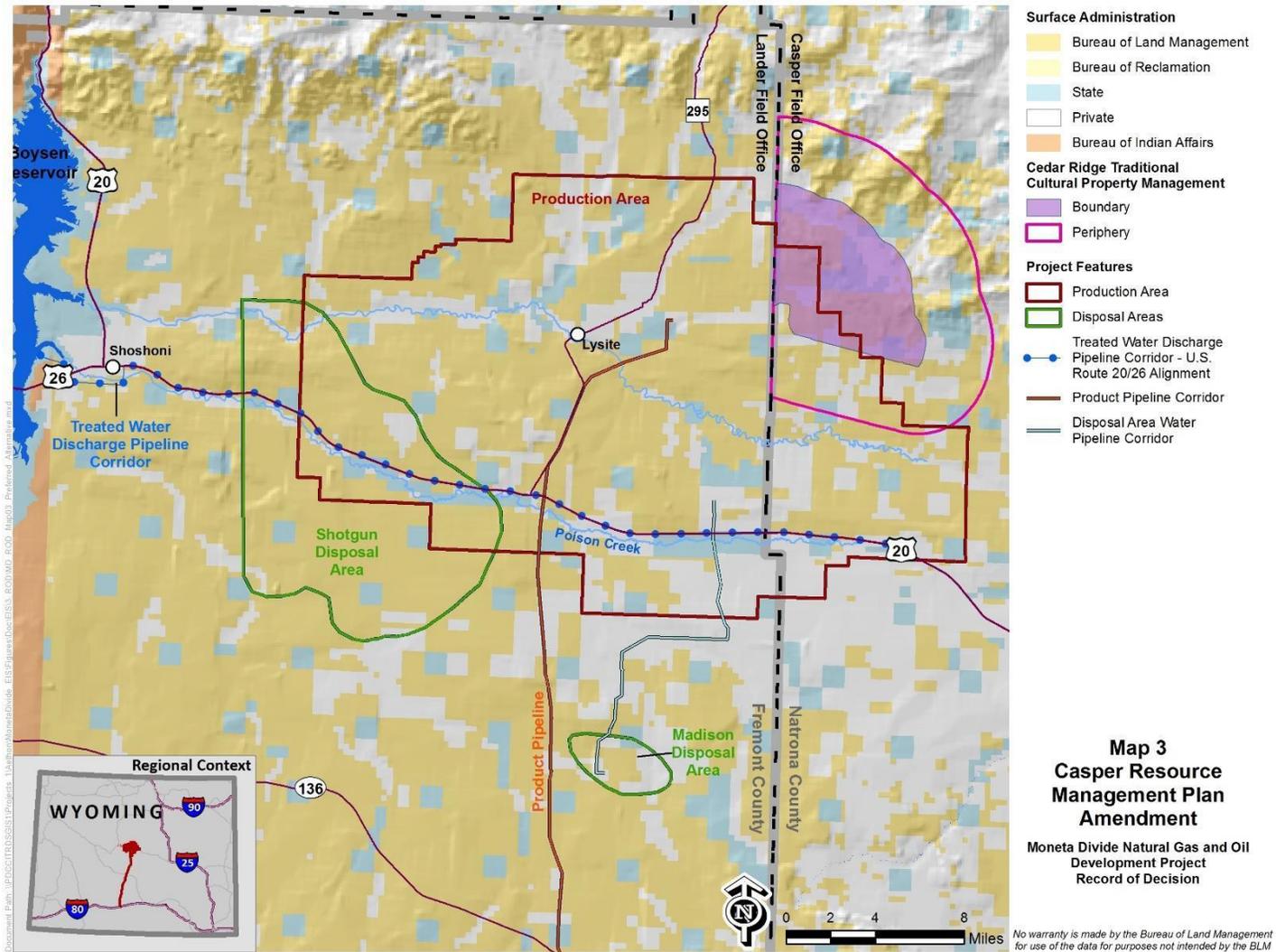
- Boundary: 23,990 total acres in CFO
- Periphery: 45,589 total acres in CFO

The land and mineral estate within the previous TCP boundary and periphery (as described in the 2007 CFO RMP) that is not affected by the proposed amendment, will continue to be managed according to the existing decisions in the CFO RMP (Decisions 7028-7033) (BLM 2007a). The CFO RMP is amended to apply the existing management decisions to the expanded boundary and periphery areas as follows:

- Fluid Leasable Minerals: The TCP footprint boundary is managed with an NSO stipulation. The periphery is managed with a CSU stipulation restricting or prohibiting surface occupancy unless the proponent and surface management agency arrive at an acceptable plan for mitigation of impacts. Surface-disturbing activities will be minimized by using techniques such as directional drilling or visual screening techniques wherever practicable in the periphery area.
- Salable Minerals (Mineral Materials): The TCP footprint boundary is managed as closed to salable mineral development. Within the periphery, development of salable minerals will be restricted to 5 acres or less.
- Other Minerals: A withdrawal will be pursued within the TCP footprint boundary. The withdrawal will segregate from operation of the public land laws, including the mining laws. The periphery will be available for locatable mineral entry.

The BLM LFO determined that a change in the underlying management of public lands within the TCP boundary and periphery in LFO will not be pursued at this time given existing RMP stipulations and protection measures that will be applied from the Programmatic Agreement (PA). If based on future conditions the BLM determines a change in management in LFO is needed, it will be evaluated through a separate NEPA action. The TCP boundary and periphery in LFO would continue to be managed according to the 2014 LFO RMP.

Map 13. **Project Area and Casper Resource Management Plan Amendment**



## **4.2 Project Components**

The Moneta Divide Project Area (b) (5) is composed of several major project components, which occupy distinct geographic footprints. These areas are distinguished based upon their spatial boundaries, the functions of the project components, and the administrative permitting process required for approval (e.g., APD, ROW grant). The Moneta Divide Project Area (327,645 acres) consists of:

- The Production Area (265,434 acres), in which the Companies propose to drill and produce oil and gas resources and construct associated facilities; and
- Components/facilities that are proposed primarily outside of the Production Area (62,211 acres), including (1) a single Treated Water Discharge Pipeline; (2) two Disposal Areas; and (3) a Product Pipeline.

The components/facilities that are proposed outside of the Production Area also overlap portions of the Production Area. The subsections that follow are organized by the four main project components:

(b) (5)

- Production Area
- Treated Water Discharge Pipeline Corridor to Boysen Reservoir
- Disposal Areas
- Product Pipeline Corridor

Table 1 summarizes the type and number of facilities that could be constructed, along with surface disturbance estimates. Project construction would only occur after APDs or ROW applications are submitted and site-specific tiered NEPA has been completed.

**Table 1. Project Components and Surface Disturbance Estimates**

Project Component	Number or Miles	Total Initial Disturbance (acres)	Total Long-term Disturbance (acres)
<b><i>Production Area</i></b>			
Single-well Pads for Vertical Wells – Aethon	410	1,640	246
Multi-well Pads – Aethon	898	6,735	1,661
Single-well Pads for Horizontal Wells – Aethon	100	750	185
Single-well Pads – Burlington	150	387	166
Gathering Pipelines – Aethon	576 miles	3,140	0
Gathering Pipelines – Burlington	23 miles	70	0
Roads – Aethon	806 miles	2,441	2,441
Roads – Burlington	23 miles	70	70
Equipment/Pipe Storage Yards	2	20	20
Gas Plant	1	80	80
Combined Process Facilities (including the permanent water treatment plants)	10	500	500
Semi-transportable Compressor Stations/Water Treatment Facilities	20	200	200
Product Pipeline Booster Stations	2	26	26
Workforce Facility	1	40	40
Bio-composting Facility	1	40	40
Electrical Distribution Lines	50 miles	350	16
Water Treatment Feeder Lines to Main Line	30 miles	182	0
<b>Production Area Total</b>	--	<b>16,671</b>	<b>5,691</b>
<b><i>Treated Water Discharge Pipeline</i></b>			
U.S. Route 20/26 Route (Main Line)	39 miles	379	0
<b>Treated Water Discharge Pipeline Total</b>	--	<b>379</b>	<b>0</b>
<b><i>Disposal Areas</i></b>			
Disposal Well Pads – Madison (multi-well pads)	5	23	9
Disposal Well Pads – Shotgun (single-well pads)	150	675	270
Madison Disposal Feeder Pipeline	18 miles	117	0
Disposal Well Access Roads	61 miles	186	186
Disposal Well Distribution Pipelines	61 miles	260	0
Electrical Distribution Line for Disposal Well Facilities	91 miles	639	28
Evaporation/Retention Ponds for Disposal Wells	5	25	25
<b>Disposal Areas Total</b>	--	<b>1,924</b>	<b>518</b>

**Table 1. Project Components and Surface Disturbance Estimates**

Project Component	Number or Miles	Total Initial Disturbance (acres)	Total Long-term Disturbance (acres)
<b>Product Pipeline</b>			
Product Pipeline	120 miles	1,159	0
<b>Product Pipeline Total</b>	--	<b>1,159</b>	<b>0</b>
<b>GRAND TOTAL</b>	--	<b>20,132</b>	<b>6,208</b>
<b>Percent of Project Area</b>	--	<b>(b) (5)</b>	<b>2.0%</b>

Note: Acres may not sum to total due to rounding.

-- Not applicable  
 ROW right-of-way

#### 4.2.1 Production Area

##### **Wells and Well Pads**

The decision allows for the development of up to 4,250 natural gas and oil wells in the Production Area.

Aethon may develop up to 4,100 natural gas and conventional oil wells at a rate of up to 300 wells per year (273 wells per year on average) over an approximate 15-year development period. Wells may be drilled vertically, directionally, and horizontally on a mix of single- and multi-well pads. Each single-well vertical pad will have an average initial surface disturbance of approximately 4 acres, and long-term surface disturbance after reclamation of 0.6 acre. Each multi-well directional pad location, containing up to four wells, will have an average initial surface disturbance of approximately 7.5 acres and long-term surface disturbance after reclamation of 1.9 acres. Actual pad sizes will depend on terrain limitations and other site-specific conditions.

Burlington may develop 150 vertically or directionally drilled natural gas wells from 150 single-well pads at a rate of up to 25 wells per year (10 wells per year on average) during a development period of approximately 15 years. Initial disturbance for Burlington’s well pads will average 2.6 acres, with long-term disturbance averaging 1.1 acres after reclamation. Actual pad sizes will depend on terrain limitations and other site-specific conditions.

While development is estimated to occur over 15 years, the actual pace of development will be driven by the Companies’ ability to manage produced water in accordance with federal, state, or local regulations, and could result in a longer development timeframe.

As noted in Table 1, the decision allows for Aethon to construct a new workforce facility (40 acres) to house up to 700 development and production workers within the Production Area.

##### **Processing Facilities and Gas Plant**

Production resulting from well development activities will necessitate the installation of production and gathering equipment co-located on well pads and, in Aethon’s case, at new locations within the Production Area. Production equipment co-located on well pads typically will include compressors,

dehydrators, additional separators, and storage tanks. Aethon will also construct the following facilities to accommodate production within its Operating Area:

- 10 central processing facilities (50 acres each)
- 20 semi-transportable compressor stations/water treatment facilities (10 acres each)
- Central gas plant (80 acres)

To support remediation efforts, Aethon may construct and operate a bio-composting facility, which is estimated to be 40 acres in size. Aethon operates an existing bio-composting facility in the Production Area on private land, and the new facility will expand Aethon's bio-composting capacity.

Burlington does not require new processing facilities.

### **Roads and Access**

Regional access to the Production Area will be from U.S. Route 20/26. (b) (5) -The exact location of internal access roads will depend on the final location of the well pads, the gas plant, combined processing facilities, workforce facility, and other ancillary facilities. Local and resource roads connecting a location to the nearest existing primary road will be 25 feet wide and will be within a 50-foot wide ROW to accommodate future pipeline placement. Roads will be adjacent to existing pipelines and powerlines wherever practical. An estimated 829 miles of road will be constructed in the Production Area. For more information on road construction and maintenance, see Final EIS Appendix H, *Transportation Plan*.

### **Gathering Pipelines**

The decision allows Aethon and Burlington to develop a network of gathering pipelines to transport hydrocarbons from well heads to processing facilities. Within Aethon's Operation Area, new gathering pipelines will generally occur adjacent to access roads within a 25-foot pipeline ROW, for a total road/pipeline ROW of 50 feet. Construction of pipelines consolidating multiple locations generally occur adjacent to local roads within a 55-foot pipeline ROW, for a total road/pipeline ROW of 80 feet. Pipeline trenches, up to 6 feet in depth and 18 to 36 inches wide, will be excavated mechanically with a backhoe or trencher. Aethon may construct an estimated 576 miles of new gathering pipeline for the Moneta Divide Project.

Burlington may construct up to 23 miles of gathering pipelines, co-located with access roads within a 50-foot ROW corridor, in its Operating Area in the Production Area. Trench construction and dimensions are expected to be similar to Aethon's.

### **Powerlines**

Aethon will co-generate electric power at its combined processing facilities (CPFs) within the Production Area. The decision allows Aethon to construct 50 miles of overhead electric distribution lines to support the distribution of power from cogenerating CPFs to CPFs without cogeneration equipment, semi-transportable compressor stations/water treatment facilities, the gas plant, and Product Pipeline booster stations. Prior to installation, Aethon must submit detailed design plans to the BLM during the APD and ROW application processes.

Burlington will not require construction of new overhead powerlines.

**Water Use**

Aethon will use fresh groundwater to drill each well and will use produced water for the completion of each well. An estimated 5,000 barrels (bbls) of fresh groundwater will be used for drilling operations, and 170,000 bbls of produced water will be used in the completion operations of each well for a total of approximately 175,000 bbls of water per well. Burlington will use fresh water for all drilling activities. Burlington estimates that drilling and completions operations will require approximately 20,000 bbls of fresh water per well. The volume of water used for drilling and completions is highly variable and may fluctuate depending on the drilling technique, depth of the well, and other factors. Fresh groundwater used in drilling activities will be obtained from either existing water supply wells or purchased from private fee landowner sources.

**Produced Water Management**

The decision provides for development of oil and gas wells that may generate, at full-field development, up to 1.4 million bbls of produced water per day. The majority of produced water will be generated from Aethon’s drilling and production activities, with a much lower volume produced by Burlington:

- Aethon’s drilling and production activities are estimated to generate a total of up to 1.4 million bbls of produced water per day at a maximum development of 4,100 new wells in year 15.
- Burlington’s drilling and production activities are estimated to generate a total of up to 20,700 bbls of produced water per day at a maximum development of 150 new wells in year 15.

The following subsections describe how Aethon will treat and dispose of the produced water from its operations. Should produced water volume exceed treatment or disposal capacities to the extent that Aethon will be unable to manage produced water in accordance with federal, state, or local regulations, then Aethon will shut in wells as needed.

Water Treatment

The decision allows for Aethon to install up to 10 permanent and 20 temporary water treatment facilities. The number of facilities, the level of treatment, and the treatment process will be determined by the water disposal method (e.g., disposal wells, surface discharge, evaporation ponds) and the resulting water quality will meet or exceed applicable state or federal standards.

Water Disposal

Produced water will be disposed of using the following methods:

- **Surface Discharge:** Aethon may discharge produced water at its permitted discharge outfalls into tributaries to Alkali Creek in compliance with Wyoming Pollutant Discharge Elimination System (WYPDES) permit number WY0002062.
- **Discharge Pipeline to Boysen Reservoir:** The decision by BLM allows for one high-capacity Treated Water Discharge Pipeline (48-inch) to Boysen Reservoir along the U.S. Route 20/26 ROW. Refer to Section 4.2.2, *Treated Water Discharge Pipeline*, for additional information about how discharge into Boysen Reservoir will be managed under (b) (5)
- **Disposal Wells:** The decision allows for Aethon to develop up to 160 disposal wells and associated facilities in the Shotgun and Madison Disposal Areas. Refer to Section 4.2.3, *Disposal Areas*, for additional information about how subsurface disposal will be managed. Burlington is currently permitted to inject produced water through the use of 10 existing Wyoming Oil and Gas Conservation Commission (WOGCC) permits. Existing disposal wells within the Production

Area are expected to accommodate the additional produced water from Burlington's plan of development of an additional 150 wells.

- **Retention/Evaporation Ponds:** Aethon may construct 10 retention/evaporation ponds in the Production Area to be co-located with permanent water treatment facilities at CPFs. These ponds will be used to store and/or evaporate produced water and/or treated produced water, as well as act as stabilizers for water management by adding additional retention capacity. The new ponds would have a capacity of 400,000 to 800,000 bbls and will be equipped with leak detection systems to prevent spills, as well as avian bird-protection design features consisting of radar-activated bird deterrents.
- **Off-Site Disposal:** Aethon may also transport produced water and/or produced water concentrate via truck to off-site facilities for disposal. Off-site disposal facilities that could potentially be used are in Evanston, Lander, Casper, and Lysite, Wyoming.

The BLM's preferred method of surface discharge is for Aethon to utilize one pipeline to Boysen Reservoir to discharge water that is treated to be of equal quality, or better, than water exiting Boysen Reservoir (at the Wind River, which is currently designated as Class 1 waters), as proposed in Aethon's Water Management Plan (Final EIS Appendix K). Until additional treatment plants and the treated water discharge pipeline are constructed, Aethon should dispose of water through other disposal methods, including evaporation ponds, disposal wells, and surface discharge under its current WYPDES permit.

#### Conservation and Monitoring Plan

Prior to discharge to any new, or existing but unused, discharge points, the Companies would be required to develop a conservation and monitoring plan that would identify monitoring and mitigation options to minimize the effects on drainages from surface discharge and surface-disturbing activities occurring on BLM-administered land. The plan would be developed in coordination with the BLM, Wyoming Department of Environmental Quality (DEQ), and other appropriate stakeholders. The conservation and monitoring plan would be subject to BLM approval and would identify monitoring methods, thresholds of significance or action levels, mitigation options to minimize impacts, and corrective actions in the event a threshold or action level is exceeded. Monitoring would focus on those areas of BLM-administered lands that would likely be most affected by surface discharge and surface disturbance. The plan would include the following components:

1. Identification of potential issues, including, but not limited to:
  - a. any new discharge point or currently unmonitored active discharge points;
  - b. erosion and sediment runoff originating from well pads, roads, or other sites on public lands;
  - c. erosion of channel banks, from surface discharge operations; and
  - d. stream salt buildup along stream bank.
2. Objectives and thresholds
3. Identification of potential management, which may include recommendations from Section 7.0, *Conclusions and Recommendations*, of Final EIS Appendix P, *AGWA Modeling Technical Report*.
4. Identification of models appropriate for use
5. Monitoring plan

Upon receipt of the plan, the BLM would assess the potential for impacts to resources on BLM administered lands from increased surface discharge from new, or currently unused discharge points, to determine if additional NEPA analysis is warranted. During any site-specific NEPA analysis, the BLM would determine if additional mitigation is warranted to minimize the effects of surface discharge on resources under the jurisdiction of the BLM. Subsequent NEPA reviews may include quantitative estimates of surface discharge to determine site-specific impacts on, for example, erosion, channel stability, salt build-up, and aquatic species on public lands. The BLM may use existing data and studies developed by Aethon to comply with its WYPDES permit requirements (e.g., Channel Stability Monitoring Reports) or it may conduct new quantitative or qualitative analysis as determined appropriate for the NEPA document. During any site-specific NEPA analysis, the BLM would determine if additional mitigation is warranted to minimize the effects of surface discharge on public land resources.

### 4.2.2 Treated Water Discharge Pipeline

The decision provides for the development of one high-capacity Treated Water Discharge Pipeline to Boysen Reservoir along the U.S. Route 20/26 corridor and Poison Creek drainage. (b) (5) - This pipeline would be approximately 39 miles long (28 miles in the Production Area and 11 miles outside of the Production Area), with a diameter of 48 inches and a disturbance width of approximately 80 feet. Approximately 30 miles of pipelines would transport treated water from water treatment facilities to the main Treated Water Discharge Pipeline to Boysen Reservoir.

Discharge into Boysen Reservoir through the pipeline would be regulated by Wyoming DEQ through a WYPDES permit. The water volumes discharged into Boysen Reservoir through the pipeline would depend on the level of treatment and the amount of water that would be disposed of through other means, including surface discharge, subsurface disposal, and evaporation.

The Treated Water Discharge Pipeline is within an RMP designated corridor until it reaches the town of Shoshone. Thereafter, it is outside of an LFO RMP-designated Corridor. In order for the BLM to approve the Treated Water Discharge Pipeline outside of RMP-designated corridors, Aethon will be required to show that it was not feasible to locate the entirety of the project facilities within the designated corridors. The feasibility will be further documented in the project-specific NEPA analysis when the ROW application is prepared.

### 4.2.3 Disposal Areas

The decision provides for Aethon to develop up to 160 Class 2<sup>1</sup> disposal wells for subsurface disposal of produced water and produced water concentrate, a byproduct of the proposed water treatment processes. The decision allows for 150 disposal wells within the Shotgun Disposal Area and 10 disposal wells within the Madison Disposal Area. (b) (5) - Within the Shotgun Disposal Area, the 150 disposal wells would be located on single well pads, and within the Madison Disposal Area, the 10 disposal wells would be located on 5 multi-well pads (2 wells per pad). The decision assumes Aethon would inject in accordance with WOGCC authorizations. Disposal capacities within both disposal areas are estimated to be up to 320,000 bbls total per day (2,000 bbls per well per day). If Aethon proposes to surpass this

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<sup>1</sup> Subsurface disposal wells are classified by the Underground Injection Control Program, established by the Safe Drinking Water Act (1996 as amended [P.L. 104-182]). Under Section 1425 of the Safe Water Drinking Act, the WOGCC has primacy for Class II injection wells, designated for disposal of wastewater produced in conjunction with the production of oil and gas.

volume of disposal, additional NEPA analysis may be required in accordance with the NEPA tiering procedures described in Appendix [A of the Moneta Divide Project FEIS B](#).

The decision also allows for the development of supporting facilities in both disposal areas, including access roads, distribution pipelines, electric distribution lines, and retention evaporation ponds. To support disposal activity in the Madison Disposal Area, Aethon could construct an 18-mile feeder pipeline to transport produced water and produced water concentrate from the Production Area to the Madison Disposal Area, along with a 30-mile overhead electric distribution line following Castle Garden Road from the Production Area to the Madison Disposal Area. The miles of new roads, pipelines, powerlines, and number of evaporation ponds are presented in Table 1.

#### 4.2.4 Product Pipeline

Subject to additional site-specific NEPA analysis, the decision provides for the development of a pipeline and associated facilities (e.g., booster stations) to transport natural gas and associated produced liquids, condensate, and oil from facilities in the Production Area. The Product Pipeline will originate in the Production Area and terminate near Wamsutter, Wyoming, delivering products to downstream pipelines in this area. The route will follow the Lost Creek Gathering Company pipeline, which corresponds with the Lost Creek 2 designated ROW corridor in the LFO (BLM 2014). This pipeline will be up to 36 inches in diameter and will extend for approximately 14 miles within the Production Area and 106 miles outside of the Production Area, including 87 miles in the LFO and 33 miles in the RFO. Although the approximate location of the corridor within which the pipeline would be constructed is known, the precise location has not yet been determined and subsequent site-specific NEPA analysis will be required once a ROW application for the pipeline is received by the BLM. During the site-specific NEPA analysis, additional restrictions and mitigation measures could be identified depending on the exact route and associated resource concerns.

### 4.3 Reclamation and Monitoring

Reclamation and associated monitoring requirements for the Moneta Divide Project are described in Final EIS Appendix E, *Reclamation Plan*, and are in conformance with Instruction Memorandum WY-2012-032 – Wyoming Reclamation Policy. The BLM will actively monitor resource conditions and reclamation success and, where deemed appropriate, direct the Companies to take corrective actions to improve reclamation methods and reduce short-and long-term impacts on resources. As described in Section 4.2.1, *Production Area*, the Companies will be required to develop a conservation and monitoring plan that will identify monitoring requirements on drainages affected by surface discharge and surface-disturbing activity occurring on BLM-administered land.

## **5.0 Moneta Divide Resource Protection Measures and Mitigation**

This section describes resource protection measures and mitigation measures that were identified during the Moneta Divide Project EIS process to avoid, minimize, rectify, reduce, or mitigate potential resource impacts.

~~All of the~~The mitigation measures and resource protection measures identified in the Final EIS that have been adopted as part of this decision are listed in section 5.2. ~~and These~~ would be applied during tiered, site-specific NEPA analysis of future applications (APDs and ROWs), as applicable. The mitigation measures and resource protection measures that have not been adopted as part of this decision are listed in section 5.3.

Additional resource protection measures and mitigation may be imposed during site-specific permitting based on adaptive management, site-specific environmental review and identified impacts, and regulations or guidance current at the time of site-specific permitting. During the tiered NEPA process, the BLM will review the resource protection measures and mitigation measures included in this ROD and may modify them to comply with current RMP decisions (e.g., Greater Sage-Grouse planning decisions) and other federal regulations and guidance.

### **5.1 Resource Protection Measures**

In general, resource protection measures include Applicant-Committed Measures (ACMs), identified in the Plan of Development, as well as the BLM Resource Management Plan (RMP) stipulations. Appendix F of the Moneta Divide Project FEISA, *Resource Protection Measures*, identifies the resource protection measures for the Moneta Divide Project. Some of the ACMs refer to BLM best management practices (BMPs). In some instances, there may be an overlap between an ACM proposed by the Companies and BLM RMP stipulations.

Under those circumstances, the BLM RMP stipulations would govern.

Some resource protection measures will be included as COAs during permitting for site-specific development of the Moneta Divide Project, as applicable, while some measures may be treated as guidelines for voluntary compliance by the Companies. COAs will apply to the Companies and their contractors and will be binding in the event that the facilities or infrastructure are transferred or operated by another entity. Applicability of resource protection measures is subject to valid existing lease rights. Consistent with valid lease rights, the Companies will implement the resource protection measures as listed in Appendix F of the Moneta Divide Project FEISA, *Resource Protection Measures*, but will retain the flexibility to utilize new technologies that provide equal or better resource protections while facilitating the operators' exploration, development and production goals. It is important to note that many of the ACMs were voluntarily proposed by the Companies, yet may not ultimately be implemented or could be modified pending completion of exploration and delineation of development areas. Other ACMs are tied to regulations and will be implemented. The BLM may augment this list of protection measures and include additional COAs during site-specific NEPA review.

### **5.2 Mitigation Measures Adopted**

In addition to the resource protection measures identified in Appendix F of the Moneta Divide Project FEISA, mitigation measures will be applied during site-specific permitting to mitigate the resource impacts described in Chapter 4.

## ***Moneta Divide Resource Protection Measures and Mitigation***

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*Environmental Consequences*, of the Moneta Divide Project Final EIS. The sections below identify mitigation measures by resource.

### ***Air Quality***

The BLM identified the following mitigation measures for air quality under the Preferred Alternative:

- **AQ-1** – The BLM would encourage the Companies to use hydraulic fracturing pumps (which are one of the major contributors to particulate matter and nitrogen oxides (NO<sub>x</sub>) emissions from oil and gas operations) within the Project Area to meet U.S. Environmental Protection Agency Tier 2 emissions standards.
- **AQ-2** – Aethon would continue to operate the Spring Creek monitoring site, which currently monitors criteria pollutants and meteorological parameters.

### ***Paleontology***

The BLM identified the following mitigation measures for paleontology under the Preferred Alternative:

- **PA-1** – Outcrop: These areas include bedrock exposure of the Wind River formation; therefore, pre-construction surveys for paleontological resources are necessary prior to surface disturbance. Full-time monitoring will be required during disturbance.
- **PA-2** – Mixed: These areas include bedrock exposures and areas of surficial sediment that were not mapped separately. Pre-construction surveys for paleontological resources are necessary prior to surface disturbance. The type of mitigation recommended—either full-time monitoring or spot inspection—will be specified based on the result of the survey.
- **PA-3** – Quaternary: These areas are covered by surficial sediments that are at least several feet thick. No survey is necessary prior to disturbance. Spot inspections will be necessary to determine if bedrock has been disturbed. It is anticipated, based on experience gained by spot inspections, that some adjacent areas may be excluded from spot inspection if it can be determined that bedrock is unlikely to be encountered.

### ***Vegetation***

The BLM identified the following mitigation measures for vegetation under the Preferred Alternative:

- **VE-1** – To minimize potential impacts on special status plant species, surface-disturbing activity would be avoided within 200 meters (approximately 1/8-mile) of special status plant species locations identified during site-specific surveys, with the exception of Porter's sagebrush.
- **VE-2** – To minimize potential impacts on Porter's sagebrush, surface-disturbing activity would be avoided within 100 meters (approximately 1/16-mile) of known locations.

### ***Wildlife***

For the management of Greater Sage-Grouse habitat, the management decisions, as presented in the Moneta Divide ROD, are in conformance with the BLM Wyoming ROD for Greater Sage-Grouse (2019). The BLM is currently enjoined from implementing the decisions in the 2019 Greater Sage-Grouse RODs and is relying on the 2015 Greater Sage-Grouse RODs for implementation of greater sage-grouse management actions. Depending on the court's resolution of the ongoing litigation, the BLM will implement the appropriate management for Greater Sage-Grouse. In this ROD, the BLM is not implementing any additional, or different, management for Greater Sage-Grouse ~~outside of~~ beyond what is currently either in the BLM Wyoming RODs for 2015 or 2019. The impact analyses contained in the 2015 and 2018 BLM Wyoming EISs for Greater Sage-Grouse, and the impact analysis presented in the 2020 BLM Wyoming

***Moneta Divide Resource Protection Measures and Mitigation***

Supplemental DEIS, are consistent (i.e., the changes in management that occurred as a result of the 2019 RODs did not result in differences in impacts). Regardless of which Greater Sage-Grouse ROD is ultimately implemented, the impacts as disclosed in the Greater Sage-Grouse EISs, and this ROD, would be consistent.

(b) (5) [Redacted text block]

[Redacted text block]

(b) (5) [Redacted text block]

[Redacted text block]

- [Redacted list item]

- [Redacted list item]
- [Redacted list item]
- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

[Redacted text block]

[Redacted text block]

[Redacted text block]

(b) (5) [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

Implementation of cultural resources mitigation measure CUL-1 would result in beneficial impacts on wildlife as a result of a reduction in night lighting. CUL-1 requires that all lighting on equipment, whether temporary or permanent, be pointed directly down and/or have a shroud around the light. The measure requires that light not be directed outside the area of the well pad or beyond the maximum distance required for safe operations. Besides mitigation measure CUL-1, the application of mitigation measures identified for other resources would not result in notable impacts on wildlife.

**Cultural Resources**

The development of the PA for Section 106 of the National Historic Preservation Act (NHPA) is required [in order](#) for the BLM to approve an alternative and is the mechanism through which eligible cultural resource impacts would be mitigated. The PA only addresses cultural resources within the LFO and CFO. Cultural resources within the RFO would be addressed separately when a ROW application for the Product Pipeline has been received by the RFO. In addition to the PA measures, the BLM identified the following mitigation measure for cultural resources under the Preferred Alternative:

- **CUL-1** – Due to the high visibility of drilling and workover rigs at night, as well as production facilities, all lighting on equipment (temporary or permanent) shall be pointed directly down and/or a shroud shall be placed around the light (directing the light downward). Shrouding and downward lighting will limit adverse impacts to high-quality views of the night sky for observation by Native American tribes during important ceremonial times. Light should not be directed outside of the area of the well pad or beyond the maximum distance required for safe operations. This distance may be determined at the site-specific well pad analysis.

**5.3 Mitigation Measures Not Adopted**

(b) (5) [Redacted]

[Redacted]

***Moneta Divide Resource Protection Measures and Mitigation***

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(b) (5) [Redacted]  
[Redacted]  
[Redacted]

EJ-1 was not adopted. The PA for the Moneta Divide Project identified the need for cultural resources awareness. The BLM and affected Tribes, with the assistance of the proponents, will develop cultural resources awareness and other personnel training as part of the PA .

## **6.0 What the Decision Does Not Provide**

Decisions contained within this document do not apply to non-federal lands; they apply only to BLM-administered federal lands, including federal minerals.

### **6.1 Site-Specific Authorizations**

This ROD does not authorize site-specific construction, maintenance, or use of new wells, pads, pipelines, roads, transmission lines or other facilities on BLM-administered lands. Rather, Aethon is required to submit APDs, Sundry Notices, and/or ROW applications for approval of wells, well pads, pipelines, roads, and other ancillary facilities associated with project development. The BLM will require site-specific environmental review and approval of such applications prior to initiation of surface-disturbing activities, in accordance with the NEPA Tiering Procedure, Appendix [A of the Moneta Divide Project FEISB](#).

### **6.2 Existing and Historical Authorizations**

This ROD in no way replaces any stipulations, COAs, or terms and conditions of any previously authorized and constructed APD, ROW, or ancillary facility permits in the Moneta Divide Project Area. Unless otherwise provided for in a future BLM decision (with accompanying NEPA compliance), future authorizations within the Moneta Divide Project Area will comply with the Preferred Alternative project components, the COAs, terms and conditions, and mitigation measures described in this ROD, as well as other site-specific measures as identified and decided upon by the BLM during the tiered NEPA reviews.

## **7.0 Summary of Alternatives**

### **7.1 Overview**

Five alternatives were considered in detail in the Moneta Divide Project Final EIS, including the Preferred Alternative. For a complete description of the alternatives, refer to Chapter 2 of the Final EIS, *Proposed Action and Alternatives*. Table ES-1 in the Executive Summary of the Final EIS compares all five alternatives and their potential impacts. Fifteen (15) additional alternatives were considered and eliminated from detailed study in the Final EIS, as explained in Section 2.4.1 of the Final EIS, *Alternatives Considered but Eliminated from Detailed Analysis*, and summarized in Section 7.2.7 of this document.

### **7.2 Alternatives Analyzed**

The five alternatives analyzed in detail in the Final EIS and summarized in the sections below are:

- Alternative 1 – No Action
- Alternative 2 – Proposed Action
- Alternative 3
- Alternative 4
- Preferred Alternative – Agency Preferred Alternative

#### **7.2.1 Alternative 1 – No Action**

According to 40 CFR 1502.14(d), the EIS must include the alternative of no action; this is the only alternative that does not need to respond to the BLM's Purpose and Need. Consideration of Alternative 1 provides a baseline for analyzing impacts (including cumulative impacts) resulting from implementation of the Proposed Action and other action alternatives. Alternative 1 assumes that the BLM Authorized Officer would deny the Companies' Proposed Action and no new drilling would occur on federal mineral estate except what is currently permitted and approved under previous NEPA documents and permitted under the Interim Drilling Plan during the EIS development process.

#### **7.2.2 Alternative 2 – Proposed Action**

Alternative 2 represents the Companies' development plans as proposed in the POD. As described in the POD, Aethon proposes to drill a maximum of 4,100 directional and vertical natural gas and conventional oil wells from single- and multi-well pads during a 15-year development period. Burlington proposes to drill a maximum of 150 directional and vertical natural gas wells from single-well pads during a development period of up to 15 years. The life of the project, including drilling, production, and final reclamation, would be approximately 65 years, assuming the average life of a well is 50 years. In addition to wells and associated ancillary facilities, Aethon proposed the following facilities subject to site-specific NEPA review:

- Ten central processing facilities and a gas plant.
- Two Treated Water Discharge Pipelines to Boysen Reservoir.
- Up to 50 water disposal wells in the Madison (10 wells) and Shotgun (40 wells) Disposal Areas, along with the associated roads, electric transmission, and pipeline network.

- A disposal well feeder pipeline to the Madison Disposal Area.
- A Product Pipeline from the Production Area to Wamsutter, Wyoming.

### **7.2.3 Alternative 3**

This alternative was developed to address technical and economic challenges of directional drilling within the Production Area along with the impact on local communities related to seasonal fluctuations in development activity resulting from wildlife Timing Limitation Stipulation (TLS)s. For Alternative 3, the maximum number of wells would be the same as Alternative 2, but the alternative differed from Alternative 2 substantively in the following ways:

- Assumed that all wells would be drilled vertically from single-well pads.
- The CFO RMP would be amended to establish a Designated Development Area (DDA) in the CFO portion of the Production Area outside of Greater Sage-Grouse PHMA, to emphasize oil and gas development.
- On an annual basis, the BLM would evaluate and, if appropriate based on LFO and CFO RMP criteria, grant exceptions to discretionary TLS in the LFO and CFO DDAs to allow year-round drilling in more areas, such as in big game crucial winter range. For analysis purposes, Alternative 3 assumed exceptions would be granted on an annual basis. In practice, the BLM would be required to evaluate each exception individually and make a determination in accordance with exception criteria of the LFO and CFO RMPs, and therefore exceptions may not be granted in all cases.

### **7.2.4 Alternative 4**

This alternative was developed to incorporate resource conservation considerations (e.g., multi-well pads and less disturbance) while also providing the Companies greater flexibility to use, treat, and dispose of water in response to changing technology and economic conditions. This alternative was developed in part to incorporate optional development approaches provided by Aethon regarding directional drilling, water use, and produced water management. Under Alternative 4, the maximum number of wells were assumed to be the same as Alternative 2, but differed substantively in the following ways:

- Aethon would drill approximately 88 percent of their 4,100 wells (3,590 wells) directionally from multi-well pads, an increase of 163 percent in the number of directionally drilled wells compared to Alternative 2. Of the remaining wells, 10 percent (410) would be drilled vertically from single-well pads and 2 percent (100) would be drilled horizontally from single-well pads. Burlington would develop all 150 wells from single-well pads, the same as Alternative 2. (This is also assumed under the Preferred Alternative.)
- Through extensive tribal consultation in accordance with Section 106 of the NHPA (Public Law 89-665; 54 U.S. Code [U.S.C.] 300101 et seq.), the BLM would expand the Cedar Ridge TCP boundary to encompass the entire ridge plus 1 mile (29,291 total acres) and expand the periphery of the TCP to encompass a 3-mile buffer around the TCP boundary (70,185 total acres) to protect the site's sacred values. The CFO RMP would be amended to apply management protections on public land within the expanded TCP boundary and periphery, including applying an NSO in the boundary and a CSU in the periphery. In LFO, a change in the underlying management of public lands within the TCP would be pursued through a separate NEPA action,

if necessary, and is not evaluated in this EIS. (This is also assumed under the Preferred Alternative.)

- Directional drilling from multi-well pads would be required within modeled areas found to have high performance Greater Sage-Grouse nesting habitat (modeled nesting habitat) (3,469 acres) in the Production Area to consolidate disturbance and reduce the overall acreage of disturbed areas. Refer to Chapter 3, Section 3.8.4.3, *Greater Sage-Grouse*, in the Final EIS for a description of the modeled nesting habitat.
- Water use, treatment, and disposal options differed from Alternative 2 in several substantive ways. Aethon would use up to 5,000 bbls of fresh groundwater for drilling and 170,000 bbls of produced water for completions per well. Prior to surface discharge, produced water would be treated to meet Wyoming Department of Environmental Quality standards, although Aethon may choose not to treat water to the same level proposed under Alternative 2 (of equal quality, or better, than water exiting Boysen Reservoir, a Class 1 water). Surface discharge from permitted locations would be a primary option to dispose of water, and Aethon may elect not to discharge water directly into Boysen Reservoir. Should direct discharge into Boysen Reservoir be necessary, a single Treated Water Discharge Pipeline would transport treated water to Boysen Reservoir along the U.S. Route 20/26 ROW and Poison Creek drainage to limit routing through undisturbed areas.
- The BLM would not approve disposal wells and associated facilities in Greater Sage-Grouse PHMA. As such, up to 160 disposal wells would be located in the Shotgun Disposal Area outside of PHMA. There would be no development in the Madison Disposal Area, which is entirely in PHMA.

### 7.2.5 Preferred Alternative

As a result of public comments on the Draft EIS and input from the Cooperating Agencies, the BLM developed a Preferred Alternative. The Preferred Alternative is addressed in Section 4.0, *Decision*. The Preferred Alternative was developed to incorporate resource conservation considerations like those included in Alternative 4 (e.g., multi-well pads and less disturbance), as well as providing the Companies flexibility to use, treat, and dispose of water in response to changing technology and economic conditions like Alternative 4; however, the Preferred Alternative incorporates water management measures in an effort to minimize impacts to BLM protected resources resulting from surface water discharge. The maximum number of wells would be the same as Alternative 4, and the pace of development would be driven by the Companies' ability to manage produced water in accordance with federal, state, or local regulations. Like Alternative 4, the Preferred Alternative would also include an amendment to the CFO RMP to increase protection measures for the Cedar Ridge TCP, but the Preferred Alternative differs from Alternative 4 substantively in the following ways:

- Instead of 160 disposal wells outside Greater Sage-Grouse PHMA in the Shotgun Disposal Area, the Preferred Alternative would include 150 disposal wells within the full extent of the Shotgun Disposal Area and 10 disposal wells within the Madison Disposal Area. The level of treatment of water would be determined by disposal method and would meet or exceed federal and state requirements.
- The BLM's preferred method of surface discharge is for Aethon to utilize one pipeline to Boysen Reservoir to discharge water that is treated to be of equal quality, or better, than water exiting

Boysen Reservoir (at the Wind River, which is currently designated as Class 1 waters<sup>2</sup>), as proposed in Aethon's Water Management Plan.

- Prior to discharge to any new, or existing but unused, discharge points, the Companies would be required to develop a conservation and monitoring plan that would identify monitoring and mitigation options to minimize the effects on drainages from surface discharge and surface-disturbing activities occurring on BLM-administered land. Upon receipt of the plan, the BLM would assess the potential for impacts to resources on BLM administered lands from increased surface discharge (e.g., erosion, channel bank salt build-up, aquatic resources) to determine if additional NEPA analysis is warranted. During any site-specific NEPA analysis, the BLM would determine if additional mitigation is warranted to minimize the effects of surface discharge on resources under the jurisdiction of the BLM.
- Disposal wells would be permitted to be developed within Greater Sage-Grouse PHMA and there would be no specific protection measures for Greater Sage-Grouse modeled nesting habitat. No additional restrictions related to Greater Sage-Grouse would be imposed beyond those prescribed in the RMPs.

### 7.2.6 Environmentally Preferable Alternative

In accordance with Council on Environmental Quality regulations (40 CFR 1505.2(b)), one or more environmentally preferable alternatives must be identified in the ROD. An environmentally preferable alternative is an alternative that would cause the least damage to the biological and physical environment and would best protect, preserve, and enhance historic, cultural, and natural resources. The BLM has determined that Alternative 1, No Action Alternative, is the environmentally preferable alternative. Under the No Action Alternative, no new drilling would occur on federal mineral estate except what is currently permitted and approved under previous NEPA documents and permitted under the Interim Drilling Plan. (b) (5)

### 7.2.7 Alternatives Considered, but Eliminated from Detailed Analysis

The BLM implemented a comprehensive alternatives development process that invited participation from the BLM Interdisciplinary Team and Cooperating Agencies, including federal, state, and local agencies and tribal governments. The following alternatives were considered but ultimately not carried forward for detailed analysis in the EIS:

- The BLM considered the potential for an alternative that would analyze all proposed wells drilled from multi-well pads. The BLM determined requiring all wells to be drilled directionally would not provide the Companies' adequate flexibility to develop their leases should they encounter unfavorable drilling conditions that would make directional or horizontal drilling unfeasible from a technical perspective. The BLM is analyzing an increased directional drilling/multi-well pad scenario under Alternative 4.
- The BLM considered a phased development alternative that would incrementally develop the Production Area to limit the amount of unreclaimed initial surface disturbance by requiring

<sup>2</sup> The Wyoming DEQ classifies surface waters according to existing and designated uses. Class 1 waters are referred to as "outstanding waters" and are the highest surface water classification. Uses include drinking water, cold water game fish, non-game fish, fish consumption, other aquatic life, recreation, wildlife, agriculture, industry, and scenic value.

## ***Summary of Alternatives***

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successful interim reclamation of one phase prior to proceeding to the next phase. This alternative was eliminated from further detailed analysis because the BLM found it reasonable to assume that the Companies' reclamation practices would sufficiently limit the amount of unreclaimed surface disturbance occurring within the Production Area.

- The BLM considered an alternative with fewer than the maximum number of 4,250 proposed wells, due to potentially limited down-hole spacing. The BLM determined that the Companies could fit the total number of proposed wells in the Production Area as proposed. Additionally, the BLM determined it did not have the authority to arbitrarily determine the number of wells the Companies can develop on their leases without sufficient basis, so this alternative was eliminated from further detailed analysis.
- The BLM considered an alternative that would restrict the number of wells that could be drilled per year compared to the Proposed Action (283 wells per year) to address local economic concerns. This alternative was eliminated from further detailed analysis because applying a drilling rate restriction would be unlikely to address concerns over boom-bust economic cycles, which was the basis for this suggested alternative. Furthermore, while not a drilling rate restriction, the BLM is analyzing the potential for a longer drilling timeframe under Alternative 4.
- The BLM considered the use of hydroelectric power generation as a beneficial use for produced water. This alternative was eliminated from further detailed analysis because it was clearly outside the plan of development proposed by the Companies and the BLM does not have authority to require this alternative.
- The BLM considered requiring the use of technology that separates water from hydrocarbons within wellbores and re-injects the water in the same well. This alternative was eliminated from further detailed analysis because this technology is most commonly only applied for two-phase separation (oil/water or gas/water), and the Moneta Divide Project would have three-phase production (oil, gas, and water).
- The BLM considered an alternative with enhanced site-specific protection for numerous cultural and fossil localities beyond the protection afforded by the LFO and CFO RMPs. This alternative was eliminated from further consideration because the BLM deemed it unnecessary in light of existing protections for cultural and paleontological resources.
- Cooperating Agencies discussed an alternative that would remove the 0.25-mile NSO buffer around Greater Sage-Grouse leks outside of PHMA in order to reduce limitations on development. This alternative was eliminated from further detailed analysis because it would not comply with the Greater Sage-Grouse goals and objectives of the LFO RMP and CFO RMP.
- The BLM considered an alternative that would extend the NSO buffer precluding surface-disturbing activities within 500 feet of wetlands and riparian areas stipulated by the LFO and CFO RMPs by an additional 250 feet in the Production Area. This alternative was eliminated from further detailed analysis because it was determined that the additional 250 feet captured very little mapped Greater Sage-Grouse brood-rearing habitat, which the alternative was intended to protect.
- The BLM considered an alternative that would eliminate all proposed development within Greater Sage-Grouse PHMA, including oil and gas wells in the Production Area, disposal wells, the southern Treated Water Discharge Pipeline, and the Product Pipeline. This alternative was eliminated from further detailed analysis because it would infringe upon valid existing lease rights and the area and would not be consistent with the goals and objectives of the LFO RMP and the CFO RMP.

- The BLM considered an alternative to amend the CFO RMP to limit noise sources to 10 A-weighted decibels above ambient noise measured at the perimeter (0.6 mile) of occupied Greater Sage-Grouse leks from March 1 to May 15 in non-PHMA in the CFO portion of the Production Area. The BLM analyzed this alternative in detail, but then removed it from consideration in the Draft EIS because it would be redundant with the CFO RMP, as amended. The CFO RMP, as amended by the 2015 RMP amendments, already includes noise restrictions for leks outside PHMA (Management Decision SSS 12).
- The BLM considered an alternative that would prohibit the subsurface disposal of produced water concentrate (the byproduct of the produced water treatment process), as proposed. This alternative was eliminated from further detailed analysis because prohibiting subsurface disposal would be outside of the BLM's authority.
- The Moneta Divide Project Plan of Development included a potential eastern Product Pipeline route from the Production Area to the Interstate 80 corridor near Rawlins, Wyoming. With the release of the LFO RMP in June 2014, it was determined that the proposed eastern Product Pipeline route was not within a ROW corridor designated in the LFO RMP, and the proposal for the alternate pipeline route was withdrawn.
- The Moneta Divide Project Plan of Development included the potential construction of powerlines along one of two potential Product Pipeline routes from the Interstate 80 corridor near either Wamsutter or Rawlins, Wyoming, to the Production Area. Aethon proposes to power all project facilities with natural gas generators located at facilities in the Production Area, or from other external power sources, so this alternative was eliminated from further detailed analysis.
- During the Draft EIS public comment period, several commenters requested consideration of a "No Surface Disposal Alternative". This alternative was considered but found not be feasible. Refer to Final EIS Appendix V, Section 16.0, as well as Final EIS Appendix X, *Comment Analysis Report*, for discussion regarding this alternative that was not carried forward. Similarly, other commenters on the Draft EIS requested that the project only utilize one of several other water management methods (i.e., injection only, treated water discharge pipelines only). These alternatives considered but not carried forward are also addressed in Final EIS Appendix X, within Table X-4 as part of the BLM's responses to public comments.

## **8.0 Management Considerations and Rationale for Decision**

The BLM prepared the Moneta Divide EIS to consider the Companies' POD and to decide whether to deny the proposal or, upon the submittal of site-specific permit applications, approve all project components as proposed, or approve some or all proposed project components with modifications. Based on the Final EIS analysis, the Authorized Officer has determined that the Preferred Alternative will best avoid or reduce impacts to sensitive resources while still allowing for recovery of natural gas and oil resources, as described in Section 4.0, *Decision*, of this ROD. This alternative will allow development on valid existing leases throughout the Moneta Divide Project Area and will best meet the purpose and need of the project.

The sections below outline additional considerations that contributed to the BLM's approval of the Preferred Alternative.

### **8.1 Purpose and Need for the Project**

#### **8.1.1 Proposed Action**

The purpose of BLM's action is to respond to the proposal by the Companies for the Moneta Divide Project by reviewing the POD in accordance with NEPA and determine the appropriate areas and restrictions for the Companies to develop their project within their existing federal leases. The BLM's need is to allow the Companies to develop their existing federal leases in accordance with the rights and limitations of the leases. The proposed development would exercise existing lease rights to drill for, extract, remove, and market commercial quantities of oil and natural gas. The Mineral Leasing Act of 1920, as amended, and the regulations and policies by which it is implemented recognize the right of lease holders to develop federal mineral resources to meet continuing needs and economic demands, so long as operations comply with applicable laws and regulations. This includes the right to build and maintain necessary improvements, subject to lease terms and conditions. The lessee has the right to use as much of the leased lands as is necessary to explore, develop, and dispose of the leased resource (43 CFR 3101.1-2), subject to lease terms, conditions, and stipulations. The BLM must analyze the environmental impacts on resources across public lands and jurisdictional boundaries.

#### **8.1.2 RMP Amendment Action**

The purpose of the proposed RMP amendments was to evaluate two amendments to the 2007 CFO RMP which were considered as part of Alternatives 3, 4, and the Preferred Alternative, in order to identify a portion of the Project Area with a development emphasis comparable to the management in the LFO RMP and to address the need for additional resource protections for the area around the Cedar Ridge TCP). Specifically, the actions to amend the RMP that were evaluated in the EIS included the following:

- The BLM would amend the CFO RMP to establish a DDA in the CFO portion of the Production Area outside of Greater Sage-Grouse PHMA as a component of Alternative 3. PHMA refers to BLM-administered lands identified as having the highest value to maintaining sustainable Greater Sage-Grouse populations (BLM 2015). This amendment was not carried forward in the Preferred Alternative.
- The Cedar Ridge TCP footprint boundary would be expanded to encompass the entire ridge plus 1 mile and the periphery would be expanded to a 3-mile buffer around the boundary. The BLM would amend the CFO RMP to apply management protections within the expanded Cedar Ridge

TCP boundary and periphery as a component of Alternative 4 and the Preferred Alternative. This amendment is included in the Preferred Alternative.

## **8.2 Analysis in the Moneta Divide Project Final EIS**

The Moneta Divide Project Final EIS includes a reasonable range of alternatives that were developed based on issues identified during scoping, public comments received on the Draft EIS, and input from Cooperating Agencies and other stakeholders during alternatives development and throughout the Moneta Divide EIS process. The Moneta Divide Project Final EIS provides an adequate analysis of potential impacts to resources that could result from the range of alternatives. The analysis in the Moneta Divide Project Final EIS provides for an informed understanding of potential impacts, disclosure of these potential impacts to the public, and sufficient information to allow for an informed decision.

## **8.3 Multiple-Use and Resource Impacts**

The decision implements the Preferred Alternative in the Moneta Divide Project Final EIS which provides the best balance of multiple uses within the Project Area and is best suited to sustain the long-term yield of resources while promoting stability of local and regional economies, environmental integrity, and conservation of resources for future generations (NEPA Section 101 and Federal Land Policy and Management Act [FLPMA], Section 302). The decision provides for the management of the Project Area in a manner that allows for exploration and production of oil and gas resources while also addressing impacts on key resources including air quality, wildlife, cultural resources, water, as well as other resources.

## **8.4 Conformance with BLM Land Use Plans**

The Moneta Divide Project Area crosses three BLM field offices: Lander, Casper, and Rawlins. Policies and guidelines for development within the Project Area are contained in the ROD and Approved RMP for each field office:

- LFO ROD and RMP, as amended (BLM 2014)
- CFO ROD and RMP, as amended (BLM 2007b)
- RFO ROD and RMP, as amended (BLM 2008)

The RMPs make federal minerals available for orderly and efficient development, allocate lands and/or federal minerals for leasing, and require all mineral actions to comply with goals, objectives, and resource restrictions (mitigations) required to protect other resource values. All RMPs contain stipulations, including, NSO, CSU, and TLS. These stipulations restrict the timing and location of mineral development activities to protect other resource values. Other measures, such as the application of BMPs and ACMs, are also required for development within the Project Area (BLM 2014; BLM 2015; BLM 2019).

The proposed development of natural gas and oil within the Moneta Divide Project Area is in conformance with the LFO RMP, CFO RMP, and RFO RMP, subject to site-specific NEPA review as described below. This EIS and subsequent decisions would incorporate decisions, terms, and conditions of use described in the three RMPs.

## **9.0 Consultation, Coordination, and Public Involvement**

The National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality regulations implementing NEPA, and the Bureau of Land Management (BLM) policies and procedures implementing NEPA require the BLM to involve the interested public and potentially affected parties in its decision-making process. Public involvement, consultation, and coordination was initiated prior to, and occurred throughout, preparation of the EIS. The BLM incorporated public involvement, consultation, and coordination through public meetings, informal meetings, individual contacts, news releases, newsletters, workshops, a planning website, social media posts, and the *Federal Register*.

### **9.1 Cooperating Agencies**

The BLM is required to prepare NEPA analyses and documentation “in cooperation with state and local governments” and other agencies with jurisdiction by law or special expertise (42 U.S.C. § 4331(a), 4332[2]), referred to as Cooperating Agencies. Prior to scoping, the BLM invited federal, state, and local government agencies, and potentially affected tribes to participate in the EIS process as Cooperating Agencies.

Cooperating Agencies provided input during initial preparation of the EIS and throughout the process related to issues for which they have jurisdictional authority or special expertise. They review draft information, participate in alternatives development, give overall advice on the process, and meet with the lead agency periodically to discuss EIS issues as a group. Nine organizations agreed to participate as Cooperating Agencies during the scoping phase of the EIS and six additional agencies agreed to participate in 2019:

- U.S. Fish and Wildlife Service\*
- U.S. Environmental Protection Agency\*
- Northern Arapaho Tribe
- Fremont County\*
- Natrona County\*
- Natrona County Weed and Pest District
- Lower Wind River Conservation District\*
- Natrona County Conservation District
- State of Wyoming and State Agencies\*
- Hot Springs County\*\*
- Hot Springs Conservation District\*\*
- Town of Thermopolis\*\*
- City of Riverton\*\*
- Town of Shoshoni\*\*
- City of Casper\*\*

During the Draft EIS scoping phase, six of the agencies signed a memorandum of understanding (MOU) with the BLM, as noted with an asterisk (\*). Six additional agencies signed MOUs in 2019 during the Draft EIS review and Final EIS preparation phase of the project, as noted by two asterisks (\*\*) in the list above. The MOUs outline each agencies’ responsibilities during the development of the EIS. Between

formal meetings, the BLM kept Cooperating Agencies informed by sending six newsletters that provided updates on project status.

Cooperating Agencies participated in the following workshops and meetings:

- A project overview meeting was held on March 13, 2013 in Casper, Wyoming, that introduced the agencies to the project, resource concerns, EIS process, and opportunities for involvement.
- Two alternative development workshops were held with Cooperating Agencies in Lander, Wyoming, as summarized below.
  1. **July 25, 2013.** The BLM provided the agencies with relevant information about the Moneta Divide Project and gathered suggestions on the potential elements to be incorporated into the alternatives. Following the workshop, the BLM researched the viability of the suggestions and coordinated with Cooperating Agencies on alternative elements. This information was then refined so it could be presented to the agencies at the next workshop.
  2. **August 22, 2013.** The BLM distributed materials developed as a result of the first workshop for Cooperating Agencies to review and comment on before the meeting. At the workshop, a preliminary draft of the alternatives was presented. During the meeting, the BLM solicited comments from Cooperating Agencies and revised the draft alternatives. Following the workshop, the BLM refined the alternatives and sent a copy of the revised alternatives to Cooperating Agencies.
- A meeting was held on March 12, 2015 in Casper, Wyoming, to discuss key issues distilled from Cooperating Agency comments after review of the Preliminary Draft EIS distributed by the BLM in November 2014.
- Comments from Cooperating Agencies regarding surface water and groundwater resources prompted the BLM to host two teleconferences on April 14 and 15, 2015, to have focused discussions on the technical analyses of water resources. Following refinement of the BLM's approach to surface water and groundwater analysis, the BLM held follow-up calls with interested Cooperating Agencies on October 27 and 29, 2015.
- A meeting was held on August 15, 2019 in Casper, Wyoming, to discuss a Preferred Alternative for the Final EIS. All of the Cooperating Agency representatives, including agencies that signed MOUs in 2019, were invited to this day-long meeting. The BLM also provided a summary presentation of the Draft EIS public comments received.

The Cooperating Agencies were provided opportunities to review draft versions of various project documents and work products within their area of expertise or jurisdictional authority. Examples of these documents include, but are not limited to the following:

- Versions of the alternatives
- Preliminary Draft EIS
- Preliminary Final EIS
- Air Quality Protocol and Technical Support Document
- Other technical reports and appendices (e.g., water management plan, water technical reports)

## **9.2 National Historic Preservation Act Section 106 Consultation**

Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, requires federal agencies to consider the effects of their actions on historic properties, following regulations issued by the Advisory Council on Historic Preservation (ACHP) codified at 36 Code of Federal Regulations 800. The BLM consulted with the Wyoming State Historic Preservation Office (SHPO) and the ACHP in accordance with Section 106. The BLM worked with Wyoming SHPO in compiling three cultural resource reports: (1) existing records search and summary of all known cultural resources within the Moneta Divide Project Area (Weston et al. 2014a), (2) Class III cultural resource survey of 5,000 acres (Weston et al. 2014b), and (3) historic linear resources report documenting all contributing and noncontributing segments of the historic linear resources that occur in the Moneta Divide Production Area (Rosenberg and Rosenberg 2014). The three reports were used to identify areas appropriate for subsequent surveys and as a source of information for tribal consultation and development of the PA. The BLM's consultation process with Wyoming SHPO is pursuant to Section 106 of NHPA.

The BLM, in coordination with the Tribes, the Companies, Wyoming SHPO, ACHP, and other cultural agencies and interested parties have prepared a PA pursuant to Section 106 of NHPA. The PA guides Section 106 consultation throughout project development and implementation, including development of any mitigation identified through the consultation process. Prior to publication of the Final EIS, the BLM hosted four meetings and 24 teleconferences to discuss preparation of the PA<sup>3</sup>. (b) (5) - Tribal consultation under Section 106 of NHPA was initiated in tandem with the EIS process, as described in Section 6.3 of the Final EIS.

## **9.3 Tribal Government-to-Government Consultation**

Prior to the scoping period, the BLM initiated government-to-government consultation with potentially affected and interested tribes as part of the Moneta Divide Project EIS process. In May and June 2013, letters were sent to 18 tribes inviting them to participate in project review and consultation under NHPA and NEPA. The tribal consultation letter provided information about the Moneta Divide Project and requested tribes submit questions, concerns, or comments to the BLM. In addition to consultation activities, the BLM invited the tribes to be Cooperating Agencies and to attend Cooperating Agency meetings, alternatives development workshops, and field trips. The BLM mailed consultation letters to the following tribes:

- Cheyenne and Arapaho Tribes
- Cheyenne River Sioux Tribe
- Chippewa Cree Tribe
- Crow Creek Sioux Tribe
- Crow Nation
- Eastern Shoshone Tribe
- Fort Peck Assiniboine and Sioux Tribes
- Lower Brule Sioux Tribe
- Northern Arapaho Tribe
- Northern Cheyenne Tribe
- Oglala Sioux Tribe

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<sup>3</sup> The PA for the Moneta Divide Project is available at <https://go.usa.gov/fxQr83>.

- Rosebud Sioux Tribe

- Shoshone-Bannock Tribe
- Sisseton-Wahpeton Oyate Tribes
- Standing Rock Sioux Tribe
- Three Affiliated Tribes of Mandan, Hidatsa, and Arikara
- Ute Tribe of the Uintah and Ouray Reservation
- Yankton Sioux Tribe

In follow up to the tribal consultation letters, BLM cultural resource specialists phoned tribes to establish contact and offered to set up meetings to discuss the Moneta Divide Project. The BLM organized four field trips in September 2013, June 2014, May 2015, and October 2018 to provide tribal representatives with an opportunity to tour the Project Area and, in support of the PA development, have on-site discussions. Consultation with tribes that have had an interest in the Moneta Divide Project continued throughout the course of the EIS process.

### **9.4 Endangered Species Act Section 7 Consultation**

The BLM consulted with the U.S. Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act, which requires federal agencies to evaluate their actions with respect to any species that are proposed or listed as endangered or threatened, and whose critical habitat, if any, has been formally designated.

As described in (b) (5) - *Biological Opinion, the Biological Opinion for the Moneta Divide Project*<sup>4</sup> impacts to Ute ladies'-tresses was evaluated as a result of the Preferred Alternative. Based on the presence of suitable habitat and the possibility that individuals and populations could occur in the project area, implementation of the Preferred Alternative within the Project Area *may affect, and is likely to adversely affect* the Ute ladies'-tresses. Individual plants and suitable habitat may be lost, destroyed or degraded due to construction and associated actions of project related activities, including the surface discharge of produced water under the limits of the Companies' Wyoming DEQ WYPDES permit. The *likely to adversely affect* determination is based on the potential volume and salinity of surface discharge water, despite the measures incorporated into the Preferred Alternative that would minimize impacts to resources such as soils, water, habitat and species. This determination is also based on the possibility that if individuals and populations occur in the project area, they and potential habitat could be lost, destroyed or degraded due to construction of project related activities.

Currently, individuals or populations of Ute ladies'-tresses are not known to occupy any areas within the project area. Restrictions put in place from the RMPs and resource protection measures prohibit surface-disturbing activities within 500 feet of surface waters and riparian/wetland areas that are associated with Ute ladies'-tresses habitat. These restrictions, along with the other protection measures included in the Preferred Alternative description, would minimize the potential for effect on Ute ladies'-tresses. Additionally, site-specific surveys would be carried out for individuals or populations prior to surface-disturbing activities, pursuant to the NEPA Tiering Procedure (Appendix [A of the Moneta Divide Project FEIS B](#)).

### **9.5 Public Involvement**

Public participation in the EIS process was initiated with the publication of the Notice of Intent (NOI) in the *Federal Register* on January 17, 2013. The NOI initiated the scoping process and invited public

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<sup>4</sup> [The Biological Opinion for the Moneta Divide Project is available at https://go.usa.gov/xQr83.](https://go.usa.gov/xQr83)

***Consultation, Coordination, and Public Involvement***

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participation by affected and interested agencies, organizations, and members of the public in determining the scope and issues to be addressed by the alternatives and analyzed in the EIS.

Additionally, the NOI provided a summary of the Moneta Divide Project, identified preliminary issues, provided information on submitting scoping comments, and provided contact information for further information.

Public involvement continued throughout the development of the EIS through both formal and informal channels. The BLM kept the public informed by posting updates on the project website (<https://go.usa.gov/xQr83>), as well as through periodic mailings or email notifications to the contacts on the project mailing list. With the release of the Draft EIS, the public had an opportunity to review the document and provide comments. In addition, the BLM held public meetings during the comment period for the Draft EIS, providing the public an opportunity to learn more about the project and ask the BLM questions. The public had an additional opportunity to review the Final EIS through the Notice of Availability (NOA), published in the Federal Register on February 21, 2020.

### **9.5.1 Public Scoping**

The scoping period began with publication of the NOI in the *Federal Register* on January 17, 2013, and ended on March 4, 2013. The BLM issued a press release on January 17, 2013, announcing the initiation of the EIS process, which was also posted on the project website. The scoping period provided an opportunity for the public to identify potential planning issues and concerns associated with the Moneta Divide Project EIS. Information obtained by the BLM during the scoping period is combined with issues identified by the agencies to form the scope of the EIS.

The BLM advertised the scoping meetings by mailing postcards to those identified on the project mailing list and posting a flyer on the BLM project website providing the dates, times, and locations of the scoping meetings. The BLM contacted approximately 450 organizations, including government agencies, tribes, interest groups, elected officials, businesses, and 300 unaffiliated individuals through the scoping notices, postcards, or directly through coordination.

Three scoping meetings were held February 12 through February 14, 2013, in Casper, Lander, and Riverton, Wyoming. The BLM, as well as the Companies, were available at the scoping meetings to answer questions and discuss project-related topics. The meetings were held in an open-house format that provided an opportunity for the public to learn and ask questions about the project, the planning and scoping process, and how to submit comments to the BLM.

A total of 134 individuals (not including the Companies, BLM, or consultants working on the Moneta Divide Project) filled out registration cards at the three public scoping meetings. Of the 134 registration cards, 39 cards were from the Casper meeting, 49 were from the Lander meeting, and 46 were from the Riverton meeting. The BLM received 106 scoping comment documents (scoping meeting comment forms, written comments, and email transmittals). Of the 106 submitted comment documents, 30 scoping-meeting comment forms were submitted at the scoping meetings, 30 scoping meeting forms were submitted via mail after the scoping meeting, and 46 comment documents were submitted via email.

The BLM identified 426 individual scoping comments covering a broad range of issue categories. The greatest numbers of comments within the scope of the EIS were associated with water (56), air quality (53), the NEPA process (53), and social and economic resources (50). Out of scope comments included general opinions of the project, comments on areas or projects outside the geographic range of analysis, comments on decisions and actions that will not be made in the EIS, and other comments that are not within the scope of analysis for the Moneta Divide Project EIS.

The Moneta Divide Project EIS Scoping Report summarizes the scoping process, scoping meetings, comments received, major issues, and copies of the individual comments, and is available on the project website at: <https://go.usa.gov/xQr83>.

### **9.5.2 Draft Environmental Impact Statement**

The NOA of the Moneta Divide Natural Gas and Oil Development Draft EIS was published in the *Federal Register* on April 19, 2019. The BLM published a press release on April 18, 2019, inviting the public to review the Draft EIS and submit comments. Although a 45-day public comment period is required for most EISs, a 90-day public comment period is required for RMPs and RMP amendments. As such, there was a 90-day public comment period for this EIS, during which the BLM held two public meetings. The dates and locations for each meeting were advertised at least 15 days in advance of the meetings through email, the Project website, and other public announcements. Appendix X to the Final EIS, *Comment Analysis Report*, contains a summary of the Draft EIS public comment process, comments received during the public comment period, and the BLM's responses to comments.

The Draft EIS public review period ended on July 18, 2019. A total of 75 unique comment documents were received during the course of the public comment period, including four duplicate comment letters. No form letters were received. Comments were received through the BLM's Comment Analysis and Response Application program (CARA), email, U.S. mail and at the public meetings. From the 75 individual comment letters/documents, there were a total of 544 individual comments consisting of 412 substantive comments and 132 non-substantive comments. Substantive comments covered a wide spectrum of thoughts, opinions, ideas, and concerns, with the greatest number of substantive comments associated with surface water, alternatives and wildlife.

### **9.5.3 Final Environmental Impact Statement**

The NOA for the Final EIS was published in the *Federal Register* on February 21, 2020, announcing the 30-day availability of the Moneta Divide Final EIS, the 30-day protest period for the CFO RMP amendment and the 60-day Governor's consistency review. The BLM received 22 Final EIS comment letters during the 30-day availability period. Comments were received from the following agencies, municipalities, organizations and individuals:

- Environmental Protection Agency
- City of Riverton
- City of Casper
- Western Watersheds
- The Wilderness Society
- Advance Casper
- Fifteen individuals, including two from one individual

Comments received during the Final EIS availability period covered a range of topics including, but not limited to, impacts to surface water and groundwater, impacts to public health from the evaporation ponds, NEPA tiering, air quality impacts, and safety impacts to Native American populations. The BLM considered comments received during preparation of the Record of Decision. Fourteen of the letters received were non-substantive and relayed support for the project. None of the comments required revisions to the Final EIS, conclusions or mitigation measures. The Final EIS comments and responses can be found on the project website: <https://go.usa.gov/xQr83>.

#### **9.5.4 Proposed RMP Amendment Protest and Reviews**

##### ***Protest Resolution***

The BLM’s planning regulations at 43 CFR 1610.5-2 allow any person who participated in the planning process and has an interest that may be adversely affected by the BLM’s planning decisions to protest proposed planning decisions within 30 days of when the NOA of the Proposed RMP Amendment/Final EIS was published in the Federal Register (February 21, 2020).

The Office of the BLM Director concluded that the BLM followed all applicable laws, regulations, and policies and considered all relevant resource information and public input in developing the Proposed RMP Amendment/Final EIS. Each protesting party has been notified in writing of the BLM’s findings and the disposition of their protests. The Office of the Director resolved the protests without making changes to the Proposed RMP Amendment/Final EIS. The Office of the Director’s decisions on the protests are summarized in the Moneta Divide Natural Gas and Oil Development Project Proposed RMP Amendment/Final EIS Protest Resolution Report, which is available on the following BLM website: <https://www.blm.gov/documents/wyoming/directors-protest-resolutions/protest-resolution-report/moneta-divide-natural-gas>.

The Office of the BLM Director received fourteen timely protest submissions. Eleven of the protesting parties were dismissed as having no standing. Two protesting parties were dismissed because they did not contain any valid protest points, pursuant to 43 CFR 1610.5-2. One protesting party had two valid protest issues, with their remaining comments, opinions or observations dismissed as not being valid protest issues. The two protest issues considered but denied covered the following two topics:

- Compliance with FLPMA – Migratory Bird Treaty Act and 2015 Wyoming Greater Sage-grouse Approved Land Use Plan Amendment Conformance
- Compliance with NEPA – Inadequate Analysis, Wildlife

##### ***Governor’s Consistency Review***

The BLM’s planning regulations require that RMPs be “consistent with officially approved or adopted resource-related plans, and the policies and procedures contained therein, of other Federal agencies, State and local governments, and Indian tribes, so long as the guidance and resource management plans also are consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands” (43 CFR 1610.3-2(a)). The BLM is aware that there are specific State laws and local plans relevant to aspects of public land management that are separate and independent of Federal law. However, the BLM is bound by Federal law; as a consequence, there may be inconsistencies that cannot be reconciled. The FLPMA and its implementing regulations require that the BLM’s RMPs be consistent with officially approved State and local plans only if those plans are consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands.

The 60-day Governor’s consistency review period ended on April 21, 2020. The Governor of Wyoming submitted a letter to the BLM Wyoming State Director, asserting that they found no inconsistencies between the BLM’s Proposed RMP Amendment/Final EIS and the State’s or local governments’ resource-related plans and procedures.

## 10.0 References

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- BLM. 2008. Record of Decision and Approved Rawlins Resource Management Plan. U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office, Rawlins Field Office. Available online: [http://www.blm.gov/wy/st/en/programs/Planning/rmps/rawlins/rod\\_armp.html](http://www.blm.gov/wy/st/en/programs/Planning/rmps/rawlins/rod_armp.html). December.
- BLM. 2014. Record of Decision and Approved Resource Management Plan for the Lander Field Office Planning Area. U.S. Department of the Interior, Bureau of Land Management, Wyoming Wind River Bighorn Basin District, Lander Field Office.
- BLM. 2015. Approved Resource Management Plan Amendments for Greater Sage-Grouse in the BLM Wyoming Casper, Kemmerer, Newcastle, Rawlins, Pinedale, and Rock Springs Field Offices. Available online: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=9153>. September.
- BLM. 2019. Draft Environmental Impact Statement for the Moneta Divide Natural Gas and Oil Development Project, Volume 2, Appendix F. April 19.

(b) (5)

- Weston, J.D., and S. Tosh McKetta, contributions by S. Brant, B. Gibson, R. Rosenberg, and C. Williamson. 2014a. Class I Existing Information Inventory for the Encana Oil & Gas (USA) Inc., and Burlington Resources Oil & Gas Company LP Moneta Divide Natural Gas and Oil Development Project, Fremont and Natrona Counties, Wyoming. Contract Publication Series 13-051. Cultural Resource Analysts, Inc. Sheridan, WY.
- Weston, J.D., and S.T. McKetta, with contributions by S.B. McKetta and B. Gibson. 2014b. Class III Cultural Resource Inventory of Selected Blocks within the Encana Oil & Gas (USA) Inc. and Burlington Resources Oil & Gas Company LP Moneta divide Natural Gas and Oil Development Project, Fremont and Natrona Counties, Wyoming. Contract Publication Series 13-053. Cultural Resource Analysts, Inc. Sheridan, WY.

**From:** [Culver, Nada L](#)  
**To:** [Sanchez, Alexandra L](#); [Lefton, Amanda B](#); [Knodel, Marissa S](#)  
**Subject:** RE: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.  
**Date:** Thursday, April 22, 2021 3:00:03 AM  
**Attachments:** [image001.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)

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Okay – took a shot at some overarching ones and moving the onshore ones about. I didn't re-include the issues in the (b) (5) section again (i.e. (b) (5)) so open to ideas on how to best do that.

Nada Wolff Culver  
Deputy Director, Policy and Programs  
Bureau of Land Management  
Cell: 202-255-6979  
[nculver@blm.gov](mailto:nculver@blm.gov)

---

**From:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Sent:** Wednesday, April 21, 2021 12:47 PM  
**To:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Subject:** RE: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.

Thank you, and this will continue to be whittled down and refined as to what's kept in the report and what isn't!  
Alex

---

**From:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>  
**Sent:** Wednesday, April 21, 2021 1:16 PM  
**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Subject:** RE: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.

Great. Will work from there. Thanks, Alex.

Nada Wolff Culver  
Deputy Director, Policy and Programs  
Bureau of Land Management  
Cell: 202-255-6979  
[nculver@blm.gov](mailto:nculver@blm.gov)

---

**From:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Sent:** Wednesday, April 21, 2021 11:15 AM  
**To:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel,

Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>

**Subject:** RE: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.

Re-worked the doc a bit. (b) (5)

[Redacted]

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**From:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>

**Sent:** Wednesday, April 21, 2021 1:04 PM

**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>

**Subject:** RE: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.

Hi Alex – Per the conversations this week, (b) (5)

Amanda and I were going to start with a list of proposed joint concerns/issues to address, as well, if that works for you?

Nada Wolff Culver  
Deputy Director, Policy and Programs  
Bureau of Land Management  
Cell: 202-255-6979  
[nculver@blm.gov](mailto:nculver@blm.gov)

---

**From:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>

**Sent:** Wednesday, April 21, 2021 8:40 AM

**To:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>

**Subject:** Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.

[Redacted]



## Sanchez, Alexandra L shared a file with you

Can you assist in putting these recs into the categories I've laid out at top? Thank you!



[DRAFT Proposed Reforms V2 Prioritized](#)



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**From:** [Knodel, Marissa S](#)  
**To:** [Culver, Nada L](#); [Sanchez, Alexandra L](#); [Lefton, Amanda B](#)  
**Subject:** Re: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.  
**Date:** Wednesday, April 21, 2021 1:56:17 PM  
**Attachments:** [image001.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)

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I copied and pasted the BOEM recs into the new format, but Amanda and I are going to try and "streamline" them, so look for edits tomorrow.

Peace,

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

---

**From:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>  
**Sent:** Wednesday, April 21, 2021 1:15 PM  
**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Subject:** RE: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.

Great. Will work from there. Thanks, Alex.

Nada Wolff Culver  
Deputy Director, Policy and Programs  
Bureau of Land Management  
Cell: 202-255-6979  
[nculver@blm.gov](mailto:nculver@blm.gov)

---

**From:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Sent:** Wednesday, April 21, 2021 11:15 AM  
**To:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Subject:** RE: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.

Re-worked the doc a bit. (b) (5)

[Redacted content]

(b) (5)

**From:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>

**Sent:** Wednesday, April 21, 2021 1:04 PM

**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>

**Subject:** RE: Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.

Hi Alex – Per the conversations this week, (b) (5)

Amanda and I were going to start with a list of proposed joint concerns/issues to address, as well, if that works for you?

Nada Wolff Culver  
Deputy Director, Policy and Programs  
Bureau of Land Management  
Cell: 202-255-6979  
[nculver@blm.gov](mailto:nculver@blm.gov)

**From:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>

**Sent:** Wednesday, April 21, 2021 8:40 AM

**To:** Culver, Nada L <[nculver@blm.gov](mailto:nculver@blm.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>

**Subject:** Sanchez, Alexandra L shared "DRAFT Proposed Reforms V2 Prioritized" with you.



**Sanchez, Alexandra L shared a file with you**

Can you assist in putting these recs into the categories I've laid out at top? Thank you!



[DRAFT Proposed Reforms V2 Prioritized](#)



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**From:** [djppacheco@everyactioncustom.com](mailto:djppacheco@everyactioncustom.com) on behalf of [Dave Pacheco](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] End Federal Fossil Fuel Leasing and Restore National Monuments ASAP!  
**Date:** Friday, March 26, 2021 10:07:41 AM

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Dear Secretary Deb Haaland,

Dear Sec. Haaland,

I'm a lifelong Utahn. (b) (6)

Please recommend that Pres. Biden re-establish Bears Ears and Grand Staircase-Escalante National Monuments, and then approve management plans that protect sacred sites, scientific resources, and crucial wildlife habitat. These are but small steps forward for our country to right the wrongs we've inflicted on native people. Wrongs that are still very present today, as you know. These actions would also be first steps in the right direction towards achieving 30x30 goals. Please act as soon as possible, as the resources in both Utah monuments are threatened by increased development and looting of sites.

Thank you for your climate leadership and for undertaking a long-overdue climate review of the federal fossil fuel programs. I urge you to undertake a full and rigorous environmental impact study to end new fossil fuel leasing and enact a managed decline of production, while simultaneously adding good jobs in the renewable energy sector. If done correctly, it will show what scientists have said: There's no room for further fossil fuel development if we want a livable planet.

Pollution from the world's already-producing oil and gas fields — if fully developed and without factoring in coal — would push warming well past 1.5 degrees Celsius. That means any new oil, gas or coal leasing on public lands and waters is incompatible with U.S. climate goals.

Phasing out the federal fossil fuel programs will benefit public health, especially that of low-income communities and communities of color who already experience disproportionate pollution and climate impacts. Cutting climate pollution and stopping the destruction of public land and ocean habitat for endangered species will prevent the worst of the climate and extinction crises.

These actions, taken together, would also be the backbone of sustainable, lasting, economic development. It can be done with nature as the dominant guiding force, and it can be done with a soft touch upon the land. Please be an Interior Secretary who changes the course of the nation's lands for the better. We certainly need it after the previous administration's actions in the wrong direction.

I urge you to work with other federal agencies, Congress, tribes and state governments to ensure an orderly phaseout of federal fossil fuel production — one that ensures a just and equitable transition for communities both economically dependent on, and affected by, federal fossil fuel development.

Please fully consider the social, economic and environmental costs of climate inaction. The United States must demonstrate strong global leadership by ending new leasing on public lands and waters.

Thank you for your consideration.

Sincerely,  
Dave Pacheco  
328 E Wilson Ave Salt Lake City, UT 84115-1745  
djppacheco@hotmail.com

**From:** [lesmiller3@everyactioncustom.com](mailto:lesmiller3@everyactioncustom.com) on behalf of [Lester Miller](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] End Federal Fossil Fuel Leasing on Federal Public Lands  
**Date:** Friday, March 26, 2021 9:31:46 AM

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Dear Secretary Deb Haaland,

Thank you for your climate leadership and for undertaking a long-overdue climate review of the federal fossil fuel programs. I urge you to undertake a full and rigorous environmental impact study to end new fossil fuel leasing and enact a managed decline of production. If done correctly, it will show what scientists have said: There's no room for further fossil fuel development if we want a livable planet.

As a nature and wildlife photographer who visits our magnificent federal public lands with family and friends, I am very concerned about the impact of climate change. It is heartbreaking to see the retreat of the glaciers such as in Glacier National Park. In every year of the Trump Administration, my photo trips were impaired or even cancelled due to record wildfires in the West. This had never happened before Trump. And I am extremely concerned about the impact of fossil fuels extraction and climate change on wildlife and biodiversity such as the polar bear, pika, pronghorn, porcupine caribou, birds, musk ox, grizzly bears, etc.

Pollution from the world's already-producing oil and gas fields — if fully developed and without factoring in coal — would push warming well past 1.5 degrees Celsius. That means any new oil, gas or coal leasing on public lands and waters is incompatible with U.S. climate goals.

Phasing out the federal fossil fuel programs will benefit public health, especially that of low-income communities and communities of color who already experience disproportionate pollution and climate impacts resulting in environmental racial injustice. Cutting climate pollution and stopping the destruction of public land and ocean habitat for endangered species will prevent the worst of the climate and extinction crises.

I urge you to work with other federal agencies, Congress, tribes and state governments to ensure an orderly phaseout of federal fossil fuel production — one that ensures a just and equitable transition for communities both economically dependent on, and affected by, federal fossil fuel development. Most of the Trump Administration's fossil fuels public lands leasing was illegal and there are many lawsuits outstanding by conservation groups. Areas where leasing was particularly egregious are the Arctic National Wildlife Refuge, Western Arctic, greater sage grouse habitat, the destruction of Bears Ears and Grand Staircase-Escalante National Monuments, areas near 12 national parks, and Chaco Culture National Historic Park. Leasing by disgraced former Acting BLM Director Pendley also appears to be illegal as he was unlawfully serving in his capacity without Senate confirmation. Illegal royalty reductions during the COVID pandemic should be clawed back, and the Methane Pollution Rule should be reinstated. I am still concerned that the BLM and U.S. Fish and Wildlife Service are operating without regard to environmental laws and favor the extraction industries over the public and wildlife.

Please fully consider the social, economic and environmental costs of climate inaction. The United States must demonstrate strong global leadership by ending new leasing on public lands and waters. Please also implement President Biden's Thirty-by-Thirty Plan to protect 30 percent of U.S. lands and waters by 2030 to save our climate, wildlife, federal public lands, and environment which is compatible with and will help achieve ending fossil fuels leasing on public lands and waters.

Thank you for your consideration.

Sincerely,  
Lester Miller  
3143 W Villa Dr Franklin, WI 53132-7705  
lesmiller3@aol.com

**From:** [pjohnson@everyactioncustom.com](mailto:pjohnson@everyactioncustom.com) on behalf of [Sr. Johnson](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] IT is Time to End Federal Fossil Fuel Leasing  
**Date:** Tuesday, March 30, 2021 9:07:48 AM

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Dear Secretary Deb Haaland,

We have so little time left to avoid climate catastrophe. I urge the Biden administration to do the concrete steps to help us meet and exceed the commitments made at the Paris accords.

Thank you for your climate leadership and for undertaking a long-overdue climate review of the federal fossil fuel programs. I urge you to undertake a full and rigorous environmental impact study to end new fossil fuel leasing and enact a managed decline of production. If done correctly, it will show what scientists have said: There's no room for further fossil fuel development if we want a livable planet.

Pollution from the world's already-producing oil and gas fields — if fully developed and without factoring in coal — would push warming well past 1.5 degrees Celsius. That means any new oil, gas or coal leasing on public lands and waters is incompatible with U.S. climate goals.

Phasing out the federal fossil fuel programs will benefit public health, especially that of low-income communities and communities of color who already experience disproportionate pollution and climate impacts. Cutting climate pollution and stopping the destruction of public land and ocean habitat for endangered species will prevent the worst of the climate and extinction crises.

I urge you to work with other federal agencies, Congress, tribes and state governments to ensure an orderly phaseout of federal fossil fuel production — one that ensures a just and equitable transition for communities both economically dependent on, and affected by, federal fossil fuel development.

Please fully consider the social, economic and environmental costs of climate inaction. The United States must demonstrate strong global leadership by ending new leasing on public lands and waters.

Thank you for your consideration.

Sincerely,  
Sr. Johnson  
6400 Minnesota Ave Saint Louis, MO 63111-2807  
[pjohnson@csjcarondelet.org](mailto:pjohnson@csjcarondelet.org)

**From:** [smkovacs@everyactioncustom.com](mailto:smkovacs@everyactioncustom.com) on behalf of [Sylvia Kovacs](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] PLEASE! End Federal Fossil Fuel Leasing  
**Date:** Friday, March 26, 2021 6:12:25 PM

---

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Secretary Deb Haaland,

Thank you for your climate leadership and for undertaking a long-overdue climate review of the federal fossil fuel programs. I know you will undertake a full and rigorous environmental impact study to end new fossil fuel leasing and enact a managed decline of production. If done correctly, it will show what scientists have said: There's no room for further fossil fuel development if we want a livable planet.

Pollution from the world's already-producing oil and gas fields — if fully developed and without factoring in coal — would push warming well past 1.5 degrees Celsius. That means any new oil, gas or coal leasing on public lands and waters is incompatible with U.S. climate goals. Phasing out these operations are exactly what Pres. Biden said he would do. Now we just need to hold him to it.

I know you know that phasing out the federal fossil fuel programs will benefit public health, especially that of low-income communities and communities of color who already experience disproportionate pollution and climate impacts. Cutting climate pollution and stopping the destruction of public land and ocean habitat for endangered species will prevent the worst of the climate and extinction crises.

I urge you to work with other federal agencies, Congress, tribes and state governments to ensure an orderly phaseout of federal fossil fuel production — one that ensures a just and equitable transition for communities both economically dependent on, and affected by, federal fossil fuel development.

I know you will fully consider the social, economic and environmental costs of climate inaction. The United States must demonstrate strong global leadership by ending new leasing on public lands and waters.

Congratulations on your Cabinet appointment. Those of us that have been working on sustainability issues for decades are so excited to see you, a Native American woman, appointed to a position to help Mother Earth and thereby the rest of us. The world needs to learn from Indigenous and Tribal groups.

Thank you for your consideration.

Be well, stay safe and stay healthy. We need you.

Sincerely,  
Sylvia Kovacs  
53 Asbury Rd Hackettstown, NJ 07840-4925  
[smkovacs@comcast.net](mailto:smkovacs@comcast.net)

**From:** [glenanderson@everyactioncustom.com](mailto:glenanderson@everyactioncustom.com) on behalf of [Glen Anderson](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] The public DEMANDS you STOP federal fossil fuel leasing!!!  
**Date:** Friday, March 26, 2021 8:38:14 AM

---

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Secretary Deb Haaland,

VOTERS DEMAND STRONG ACTIONS PROMPTLY to REVERSE ALL of Trump's incredibly stupid, corrupt and cruel policies!!!!

I'm glad you are reviewing climate aspects of the federal fossil fuel programs.

WE NEED A FULL, RIGOROUS, SCIENCE-BASED environmental impact study to end new fossil fuel leasing and enact a managed decline of production.

If done correctly, it will show what scientists have said: There's no room for further fossil fuel development if we want a livable planet.

Pollution from the world's already-producing oil and gas fields — if fully developed and without factoring in coal — would push warming well past 1.5 degrees Celsius. That means any new oil, gas or coal leasing on public lands and waters is incompatible with U.S. climate goals.

Phasing out the federal fossil fuel programs will benefit public health, especially that of low-income communities and communities of color who already experience disproportionate pollution and climate impacts. Cutting climate pollution and stopping the destruction of public land and ocean habitat for endangered species will prevent the worst of the climate and extinction crises.

I urge you to work with other federal agencies, Congress, tribes and state governments to ensure an orderly phaseout of federal fossil fuel production — one that ensures a just and equitable transition for communities both economically dependent on, and affected by, federal fossil fuel development.

Please fully consider the social, economic and environmental costs of climate inaction. The United States must demonstrate strong global leadership by ending new leasing on public lands and waters.

Thank you for your consideration.

Sincerely,  
Glen Anderson  
5015 15th Ave SE Lacey, WA 98503-2723  
[glenanderson@integra.net](mailto:glenanderson@integra.net)

**From:** [Ferraro, Arthur P](#) on behalf of [ZoomSupport, BLM](#)  
**To:** [Energy Review](#)  
**Subject:** Fwd: [EXTERNAL] Question for BLM Public Forum from Congressman Pete Olson  
**Date:** Wednesday, March 24, 2021 10:37:46 PM

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**From:** Pete olson <pete@absolutelyfocusmedia.com>  
**Sent:** Wednesday, March 24, 2021 7:40:01 PM  
**To:** ZoomSupport, BLM <BLM\_ZoomSupport@blm.gov>  
**Cc:** polson@hslawmail.com <polson@hslawmail.com>  
**Subject:** [EXTERNAL] Question for BLM Public Forum from Congressman Pete Olson

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

BLM Friends:

Thank you for allowing me to submit 2 questions about uncertainties with the “pause” on 2 of the poorest states in our nation, New Mexico and Louisiana. New Mexico has the most productive federal land affected by the “pause” – the Delaware Basin (part of the Permian Basin) in southeast New Mexico. Louisiana has the most productive off-shore drilling in federal waters – deep water Gulf of Mexico - affected by the “pause”. Here are my 2 questions:

1. “I’m involved in the domestic oil & gas business. Since I’m from Texas with very little federal lands, the “pause” has not had the impacts on us like it has on our neighbors in Louisiana, Oklahoma and New Mexico. All 3 of these states are among the poorest in America. New Mexico is the 2<sup>nd</sup> poorest state in the country, with nearly 20% living in poverty. The richest part of the Permian Basin is southeastern New Mexico, with over ½ of that land owned by the federal government. The New Mexico Oil and Gas Association reports that New Mexico will lose 62,000 jobs if the uncertain “pause” is extended, making New Mexico our poorest state. Is the Biden Administration considering modifications to the current complete national ban on new permits to minimize immediate damage to the economies in states like New Mexico, Louisiana and Oklahoma? Will job loss in poor states be given the highest priority?
2. “The Permian Basin Shale in west Texas and southeast New Mexico is the most productive oil and gas region in the entire world. Being a Texan, I know many of our companies drilling in the Permian Basin are operating in both states. These companies have purchased federal leases to drill on federal lands in New Mexico, but have been waiting for months for federal permit approval to actually drill. The “pause” puts all of that invested capital at risk. One

Texas company stands to lose \$10 million they spent to obtain a lease in February 2020 to drill on federal land because the required permits to drill on that leased federal land were not issued before the “pause” was announced. There are many situations like this one. Millions of dollars are at risk of being completely lost. Does the Biden Administration intend to fully reimburse these companies for their losses from the drilling “pause”?”

My email is [polson@hslawmail.com](mailto:polson@hslawmail.com). My text/cell is 281-216-0842.

Thank you in advance for your inclusion of my questions in the forum.

Very respectfully,

Pete Olson  
United States House of Representatives  
Texas Congressional District 22  
2009 - 2021

**From:** [Feldgus, Steven H](#)  
**To:** [Sanchez, Alexandra L](#)  
**Subject:** Feldgus, Steven H replied to a comment in "DRAFT Oil and Gas Report 8-5-21 - formatted sanchez comments for review"  
**Date:** Thursday, October 21, 2021 2:22:34 PM  
**Attachments:** [517c4cd5-508b-43ee-925b-1031426b4ece-c84dbc72-9dc3-4968-9c7a-35de864f3308-f52ad3a2-0501-45be-b414-ea005ec61aec-8424e2b2-574d-479a-b3ea-7f7be591f958-74cd8c63-1486-4501-a68f-10e258724016](#)

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DRAFT Oil and Gas Report 8-5-21 - formatted sanchez comments for review.docx



You left a comment



Feldgus, Steven H replied

[Go to comment](#)

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DRAFT

(b) (5)

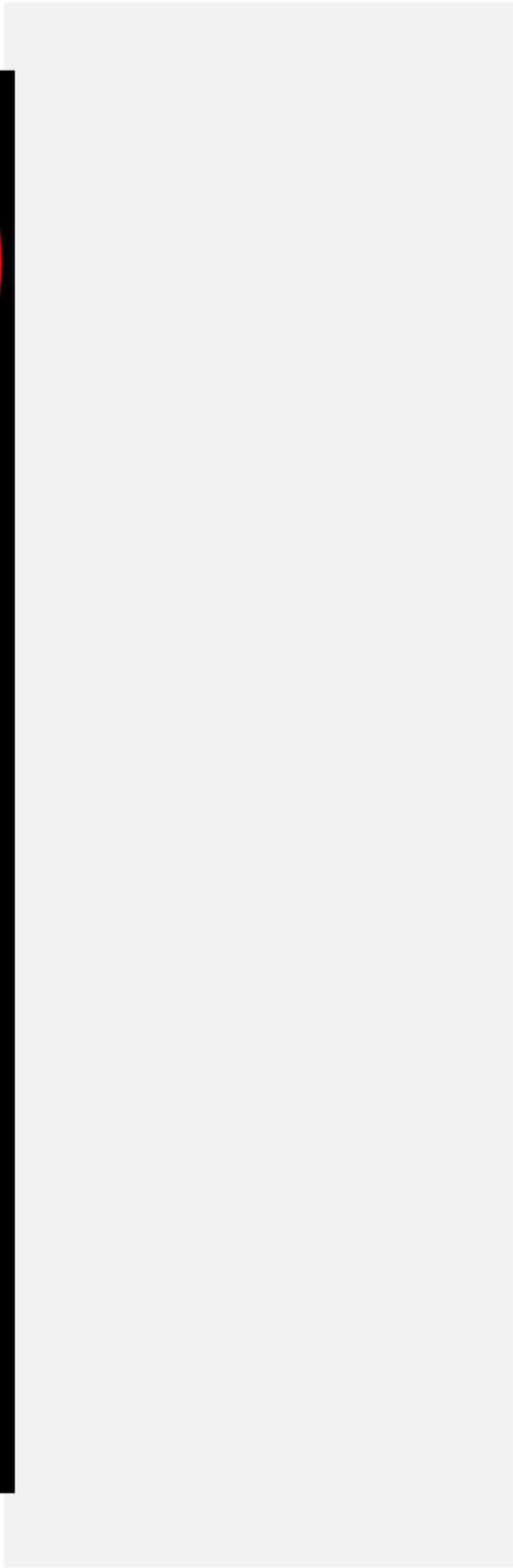
# REPORT ON THE FEDERAL OIL AND GAS LEASING PROGRAM

2021

*Prepared by the U.S. Department of the Interior  
in response to Executive Order 14008*



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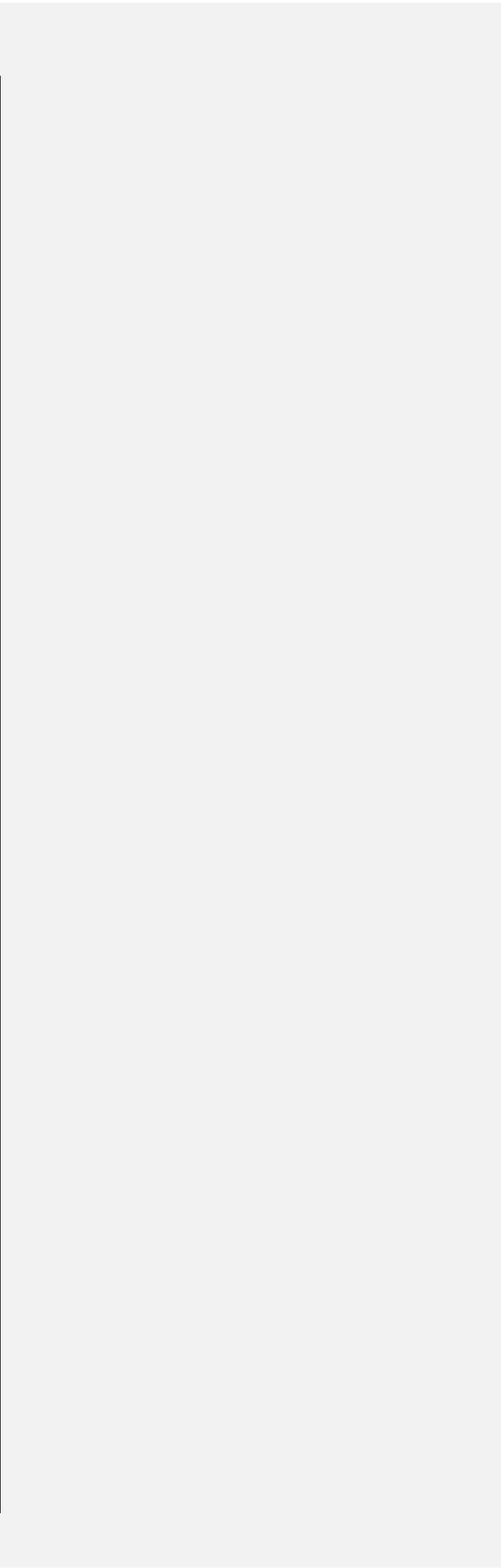
(b) (5)

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(b) (5)

**From:** [Daniel-Davis, Laura E](#)  
**To:** [Sanchez, Alexandra L](#)  
**Subject:** Fw: Formatted version  
**Date:** Tuesday, August 10, 2021 10:08:30 AM  
**Attachments:** [DRAFT Oil and Gas Report 8-5-21 - formatted.docx](#)

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---

**From:** Feldgus, Steven H <[steve\\_feldgus@ios.doi.gov](mailto:steve_feldgus@ios.doi.gov)>  
**Sent:** Thursday, August 5, 2021 9:07 AM  
**To:** Daniel-Davis, Laura E <[laura\\_daniel-davis@ios.doi.gov](mailto:laura_daniel-davis@ios.doi.gov)>  
**Subject:** Formatted version

---

Steve Feldgus, Ph.D.  
Deputy Assistant Secretary for Land and Minerals Management  
U.S. Department of the Interior  
[Steve\\_feldgus@ios.doi.gov](mailto:Steve_feldgus@ios.doi.gov)  
He/him/his

DRAFT

# REPORT ON THE FEDERAL OIL AND GAS LEASING PROGRAM

2021

*Prepared by the U.S. Department of the Interior  
in response to Executive Order 14008*



(b) (5)

**(b) (5)**

(b) (5)

(b) (5)

(b) (5)

**From:** [Schwartz, Melissa A](#)  
**To:** "Patel, Vedant R. EOP/WHO"  
**Cc:** [Hayes, David J. EOP/WHO](#); [Harding, Stephenne S. EOP/CEQ](#); [Hill, Matt D. EOP/WHO](#); [Lee-Ashley, Matt G. EOP/CEQ](#); [Tobar, Pili D. EOP/WHO](#); [Washburn, Libby R. EOP/WHO](#); [Kelly, Katherine P](#); [Taylor, Rachael S](#); [Cherry, Tyler A](#); [Daniel-Davis, Laura E](#)  
**Subject:** RE: [EXTERNAL] Re: FYI: Interior Department Report Finds Significant Shortcomings in Oil and Gas Leasing Programs  
**Date:** Friday, November 26, 2021 11:36:53 AM

---

I have spoken to Daly – he just doesn't like the answers

---

**From:** Patel, Vedant R. EOP/WHO <(b) (6)>  
**Sent:** Friday, November 26, 2021 12:35 PM  
**To:** Schwartz, Melissa A <melissa\_schwartz@ios.doi.gov>  
**Cc:** Hayes, David J. EOP/WHO <(b) (6)>; Harding, Stephenne S. EOP/CEQ <Stephenne.S.Harding@ceq.eop.gov>; Hill, Matt D. EOP/WHO <(b) (6)>; Lee-Ashley, Matt G. EOP/CEQ <Matthew.G.Lee-Ashley@ceq.eop.gov>; Tobar, Pili D. EOP/WHO <(b) (6)>; Washburn, Libby R. EOP/WHO <(b) (6)>; Kelly, Katherine P <Kate\_Kelly@ios.doi.gov>; Taylor, Rachael S <rachael\_taylor@ios.doi.gov>; Cherry, Tyler A <tyler\_cherry@ios.doi.gov>; Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>  
**Subject:** [EXTERNAL] Re: FYI: Interior Department Report Finds Significant Shortcomings in Oil and Gas Leasing Programs

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

AP could use a touch I think.

--

Vedant Patel | [@VedantPatel46](#)

Assistant Press Secretary

(b) (6)

On Nov 26, 2021, at 8:43 AM, Schwartz, Melissa A <[melissa\\_schwartz@ios.doi.gov](mailto:melissa_schwartz@ios.doi.gov)> wrote:

Reminding everyone that this will go out at 11:30. Many reporters have indicated that they have had background conversations regarding the report since Wednesday. I would flag that most have been given inaccurate information, so we'll watch closely and do everything we can to shape.

Thanks

Melissa Schwartz (she/her)  
Communications Director  
Office of the Secretary  
Department of the Interior

---

**From:** Schwartz, Melissa A

**Sent:** Wednesday, November 24, 2021 12:02:49 PM

**To:** Hayes (b)(6) >; Harding, Stephenne S. EOP/CEQ <[Stephenne.S.Harding@ceq.eop.gov](mailto:Stephenne.S.Harding@ceq.eop.gov)>; 'Hill, Matt D. EOP/WHO' <(b) (6) >; Matt Lee-Ashley ([matthew.g.lee-ashley@ceq.eop.gov](mailto:matthew.g.lee-ashley@ceq.eop.gov)) <[matthew.g.lee-ashley@ceq.eop.gov](mailto:matthew.g.lee-ashley@ceq.eop.gov)>; 'Patel, Vedant R. EOP/WHO' <(b) (6) >; 'Tobar, Pili D. EOP/WHO' <(b) (6) >; Washburn, Libby R. EOP/WHO <(b) (6) >

**Cc:** Kelly, Katherine P <[Kate\\_Kelly@ios.doi.gov](mailto:Kate_Kelly@ios.doi.gov)>; Taylor, Rachael S <[rachael\\_taylor@ios.doi.gov](mailto:rachael_taylor@ios.doi.gov)>; Cherry, Tyler A <[tyler\\_cherry@ios.doi.gov](mailto:tyler_cherry@ios.doi.gov)>; Daniel-Davis, Laura E <[laura\\_daniel-davis@ios.doi.gov](mailto:laura_daniel-davis@ios.doi.gov)>

**Subject:** FYI: Interior Department Report Finds Significant Shortcomings in Oil and Gas Leasing Programs

All –

In coordination with David/CPO team, we are poised to issue the below press release at 11:30 on Friday. If it leaks today, we should consider whether or not we would share early. Nearly all of our core reporters are on leave – we are not tracking any embargoed plans.

Please flag any questions

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## **Interior Department Report Finds Significant Shortcomings in Oil and Gas Leasing Programs**

*Review Identifies Reforms to Ensure Fair Return to Taxpayers*

**WASHINGTON** – The Department of the Interior today released its report on federal oil and gas leasing and permitting practices, following a review of onshore and offshore oil and gas programs. The report identifies significant reforms that should be made to ensure the programs provide a fair return to taxpayers, discourage speculation, hold operators responsible for remediation, and more fully include communities and Tribal, state, and local governments in decision-making.

“Our nation faces a profound climate crisis that is impacting every

American. The Interior Department has an obligation to responsibly manage our public lands and waters – providing a fair return to the taxpayer and mitigating worsening climate impacts, while staying steadfast in the pursuit of environmental justice,” said **Secretary Haaland**. “This review outlines significant deficiencies in the federal oil and gas programs, and identifies important and urgent fiscal and programmatic reforms that will benefit the American people.”

The report completes the review of the federal oil and gas programs called for in [Executive Order 14008](#) and focused primarily on necessary reforms to the fiscal terms, leasing process, and remediation requirements related to the federal oil and gas programs.

The Interior Department is committed to modernizing its oversight of oil and gas leasing and development to help address the climate and biodiversity crises and to advance environmental justice. The Biden-Harris administration is actively developing a National Climate Strategy for how the nation will reduce greenhouse gas emissions and achieve net zero to address the climate emergency.

In order to restore balance to the programs, the Department’s report makes a number of specific recommendations, including adjusting royalty and bonding rates, prioritizing leasing in areas with known resource potential, and avoiding leasing that conflicts with recreation, wildlife habitat, conservation, and historical and cultural resources, all of which are consistent with pending congressional proposals.

The Department will continue to conduct appropriate outreach to stakeholders including state and local governments, Tribes, conservation and environmental justice communities, and industry and labor.

The Department conducted an extensive review of oil and gas development on public lands and waters following Executive Order 14008, including hosting a virtual public forum. The report reflects input received by the Department through robust engagement with state and local officials, members of Congress, and Tribes, as well as from a wide range of interests including the oil and gas industry, conservation groups, labor unions, Indigenous organizations, and the general public. The review also comes after years of the Government Accountability Office, the Department’s Office of Inspector General, and several congressional committees and members of Congress highlighting the need for meaningful modernization of the programs.

###

**From:** [Knodel, Marissa S](#)  
**To:** [Sanchez, Alexandra L](#); [Lefton, Amanda B](#)  
**Subject:** Re: Revised draft  
**Date:** Sunday, May 2, 2021 12:36:49 PM  
**Attachments:** [Comprehensive Review Report Offshore DRAFT 30 Apr 21 LDD AL MSK.docx](#)

---

And here you go!

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

---

**From:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Sent:** Sunday, May 2, 2021 12:23 PM  
**To:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Subject:** RE: Revised draft

Thank you!

---

**From:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Sent:** Sunday, May 2, 2021 12:23 PM  
**To:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Subject:** Re: Revised draft

Success! Thanks, Amanda.

Alex -- (b) (5)

and then we should be good to go.

Peace,

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

---

**From:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Sent:** Sunday, May 2, 2021 12:05 PM  
**To:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>; Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>

**Subject:** RE: Revised draft

OK-redone and hopefully attached here

---

**From:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Sent:** Sunday, May 2, 2021 11:49 AM  
**To:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Subject:** Re: Revised draft

Hey Amanda,

Did you attach the right version? I'm not seeing any new edits from you and some of the things I addressed in the version I circulated are still in this one.

Peace,

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

---

**From:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Sent:** Sunday, May 2, 2021 10:49 AM  
**To:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>; Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Subject:** RE: Revised draft

Here are my comments on top of Marissa's note that there are one or two outstanding Laura requests that we need to address, such as (b) (5) . I just want to think about that.

---

**From:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Sent:** Sunday, May 2, 2021 10:31 AM  
**To:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Subject:** Re: Revised draft

Hey Amanda and Alex,

Attached are my edits on top of Laura's for your review. I didn't use track changes, but added some language to address a few of her comments, accepted most of her edits, and left a few

comments, so feel free to reference the version Alex sent for comparison.

Peace,

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

---

**From:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Sent:** Sunday, May 2, 2021 10:13 AM  
**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Cc:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Subject:** Re: Revised draft

I can take a look in 30

Sent from my iPhone

On May 2, 2021, at 9:18 AM, Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)> wrote:

YES!

So for next steps on readying to share with others tomorrow-

Can you go through this version (by this afternoon?) and accept the changes you're cool with. It's okay if there are still comments in it when we share, but if you can clean up the ones that are easy fixes that would be great!

I need to combine this with the onshore doc, make the change on **(b) (5)**, and do formatting fixes.

Thanks – I'm around if there are questions, etc.

---

**From:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Sent:** Sunday, May 2, 2021 9:08 AM  
**To:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>; Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Subject:** Re: Revised draft

Go TEAM!

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

---

**From:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Sent:** Saturday, May 1, 2021 3:37 PM  
**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Cc:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Subject:** Re: Revised draft

Great news. Thank you. Go Marissa!

On May 1, 2021, at 2:22 PM, Sanchez, Alexandra L  
<[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)> wrote:

Amanda and Marissa,

Laura wanted me to convey that she thought that the draft was really good and flows well. (go team!) Also, we may still need to cut some but we are in good shape. She didn't review my formatted version initially but got back to me about those edits, saying she was overall good with them, but she wants to discuss generally with the team how we should consistently format the recommendation sections for both onshore and offshore (and potentially number them for ease of reference).

Also, (b) (5)

[REDACTED]

Let me know of questions.

Thank you!  
Alex

---

**From:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Sent:** Saturday, May 1, 2021 7:06:04 AM  
**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Subject:** Re: Revised draft

Agreed, this works just great for now, thanks Alex!

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---

**From:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Sent:** Saturday, May 1, 2021 6:40:03 AM  
**To:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Cc:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Subject:** Re: Revised draft

Good idea, I will take a look at those. We will have time for tweaks, too.  
Thank you both so much!

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---

**From:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Sent:** Saturday, May 1, 2021 6:33:38 AM  
**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Cc:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Subject:** Re: Revised draft

Thanks, Alex. I don't have any concerns with this going to Laura in this format. When we have more time, I might adjust the headers to make them more consist with how the team characterized the recommendations in the last meat draft, but I won't get to that by Laura's 8am. So good for now.

Thanks so much!

>

> On May 1, 2021, at 6:13 AM, Sanchez, Alexandra L  
> <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)> wrote:

>

>

> Went back and forth on if this was the best way to characterize the recommendations, instead of using a numerical list. I may reformat so

they're not in the table of contents. These were the only edits I made.  
TBD what Laura thinks. If you have concerns, let me know. If not, have a  
nice Saturday!

> Alex

> <Draft Offshore 050121.docx>

<Comprehensive Review Report\_Offshore\_DRAFT\_30 Apr 21\_LDD.docx>

(b) (5)

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(b) (5)

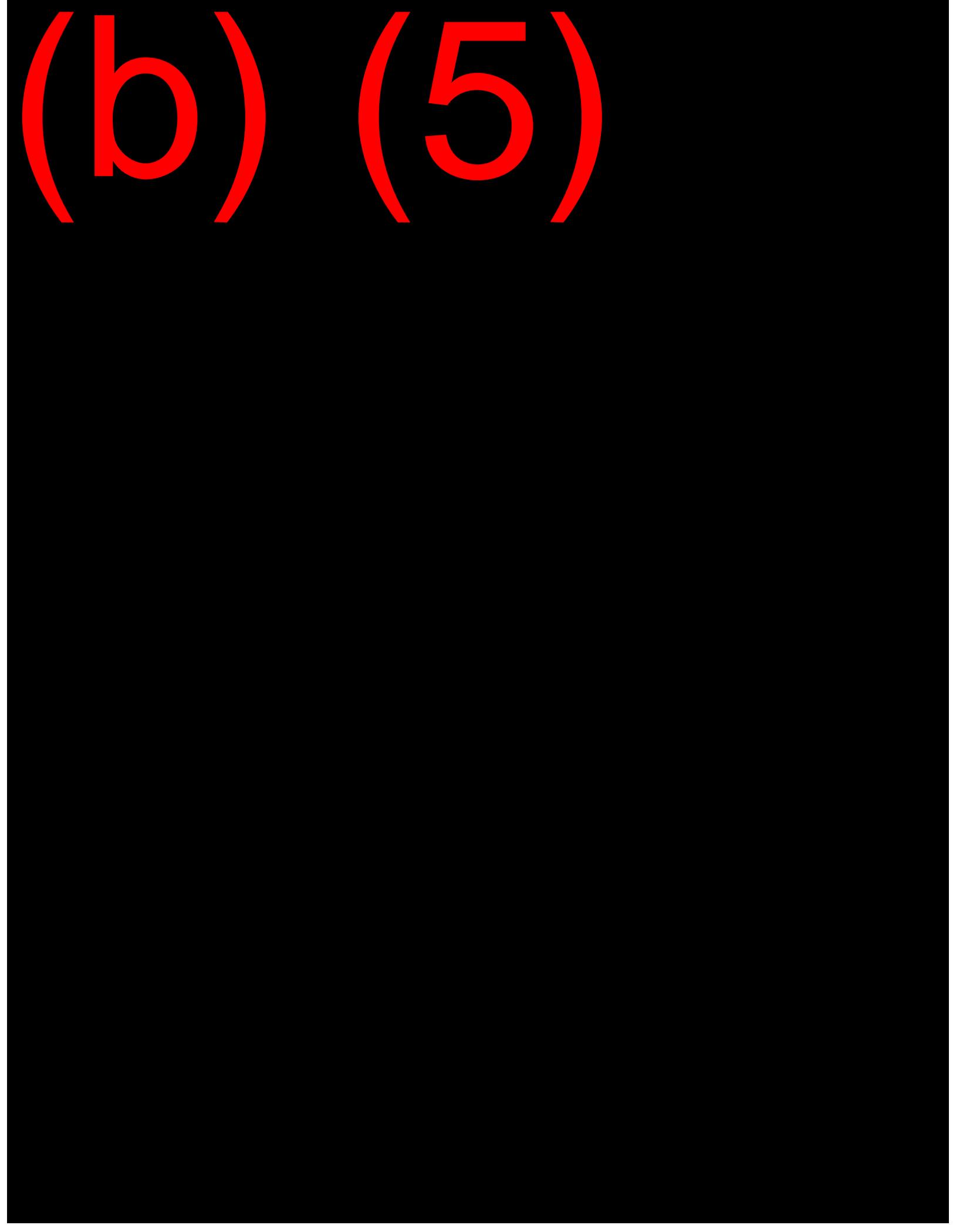
(b) (5)

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(b) (5)

**From:** [Lefton, Amanda B](#)  
**To:** [Knodel, Marissa S](#); [Sanchez, Alexandra L](#)  
**Subject:** RE: Revised draft  
**Date:** Sunday, May 2, 2021 12:05:40 PM  
**Attachments:** [Comprehensive Review Report Offshore DRAFT 30 Apr 21 LDD AL.docx](#)

---

OK-redone and hopefully attached here

---

**From:** Knodel, Marissa S <Marissa.Knodel@boem.gov>  
**Sent:** Sunday, May 2, 2021 11:49 AM  
**To:** Lefton, Amanda B <Amanda.Lefton@boem.gov>; Sanchez, Alexandra L <alexandra\_sanchez@ios.doi.gov>  
**Subject:** Re: Revised draft

Hey Amanda,

Did you attach the right version? I'm not seeing any new edits from you and some of the things I addressed in the version I circulated are still in this one.

Peace,

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

---

**From:** Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
**Sent:** Sunday, May 2, 2021 10:49 AM  
**To:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>; Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>  
**Subject:** RE: Revised draft

Here are my comments on top of Marissa's note that there are one or two outstanding laura requests that we need to address, such as (b) (5) . I just want to think about that.

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Peace,

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

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I can take a look in 30

Sent from my iPhone

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YES!

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**Subject:** Re: Revised draft

Go TEAM!

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
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Also, (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Let me know of questions.

Thank you!

Alex

---

**From:** Knodel, Marissa S <[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)>  
**Sent:** Saturday, May 1, 2021 7:06:04 AM  
**To:** Sanchez, Alexandra L <[alexandra\\_sanchez@ios.doi.gov](mailto:alexandra_sanchez@ios.doi.gov)>; Lefton, Amanda B <[Amanda.Lefton@boem.gov](mailto:Amanda.Lefton@boem.gov)>  
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---

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**Subject:** Re: Revised draft

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> Went back and forth on if this was the best way to characterize the recommendations, instead of using a numerical list. I may reformat so they're not in the table of contents. These were the only edits I made. TBD what Laura thinks. If you have concerns, let me know. If not, have a nice Saturday!

> Alex

> <Draft Offshore 050121.docx>

<Comprehensive Review Report\_Offshore\_DRAFT\_30 Apr 21\_LDD.docx>

(b) (5)

**From:** [Knodel, Marissa S](#)  
**To:** [Lefton, Amanda B](#); [Sanchez, Alexandra L](#)  
**Subject:** Re: Revised draft  
**Date:** Sunday, May 2, 2021 11:48:48 AM  
**Attachments:** [Comprehensive Review Report\\_Offshore\\_DRAFT\\_30 Apr 21\\_LDD \(003\) \(Knodel, Marissa S\).docx](#)

---

Hey Amanda,

Did you attach the right version? I'm not seeing any new edits from you and some of the things I addressed in the version I circulated are still in this one.

Peace,

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

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YES!

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I need to combine this with the onshore doc, make the change on (b) (5), and do formatting fixes.

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Go TEAM!

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Also, (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Let me know of questions.

Thank you!  
Alex

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Get [Outlook for iOS](#)

---

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> <Draft Offshore 050121.docx>

> <Comprehensive Review Report\_Offshore\_DRAFT\_30 Apr 21\_LDD.docx>

(b) (5)

**From:** [Knodel, Marissa S](#)  
**To:** [Lefton, Amanda B](#); [Sanchez, Alexandra L](#)  
**Subject:** Re: Revised draft  
**Date:** Sunday, May 2, 2021 10:31:49 AM  
**Attachments:** [Comprehensive Review Report Offshore DRAFT 30 Apr 21 LDD.docx](#)

---

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> <Draft Offshore 050121.docx>

<Comprehensive Review Report\_Offshore\_DRAFT\_30 Apr 21\_LDD.docx>

(b) (5)

**From:** [Daniel-Davis, Laura E](#)  
**To:** [Sanchez, Alexandra L](#)  
**Subject:** Re: Sanchez, Alexandra L shared "Draft Offshore 050121" with you.  
**Date:** Saturday, May 1, 2021 11:08:50 AM  
**Attachments:** [image010.png](#)  
[image011.png](#)  
[image012.png](#)  
[image013.png](#)  
[image014.png](#)  
[Comprehensive Review Report Offshore DRAFT 30 Apr 21 LDD.docx](#)

---

Sharing back, with some comments and light edits. It's really good and flows well - thank goodness! Let me know if you want me to convey that to Amanda and Marissa along with my edits. We may still need to cut some but in good shape.

We should format the onshore part in the same way they have done here, with

(b) (5)  
[Redacted text block]

[Redacted text block]

We can plan to talk later tomorrow when you and Nada do your next edits of onshore.

Laura

---

**From:** Sanchez, Alexandra L <alexandra\_sanchez@ios.doi.gov>  
**Sent:** Saturday, May 1, 2021 5:51 AM  
**To:** Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>  
**Subject:** RE: Sanchez, Alexandra L shared "Draft Offshore 050121" with you.

Attached here is their draft. Only changes I made were to have headers for their recommendations. We can discuss, since they do appear in the table of contents, and somewhat serve as spoilers!

**From:** Sanchez, Alexandra L <alexandra\_sanchez@ios.doi.gov>  
**Sent:** Saturday, May 1, 2021 5:50 AM  
**To:** Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>; Sanchez, Alexandra L <alexandra\_sanchez@ios.doi.gov>  
**Subject:** Sanchez, Alexandra L shared "Draft Offshore 050121" with you.

[Redacted text block]



## Sanchez, Alexandra L shared a file with you

Here's the document that Sanchez, Alexandra L shared with you.



[Draft Offshore 050121](#)



This link only works for the direct recipients of this message.

Open

(b) (5)

**From:** [Knodel, Marissa S](#)  
**To:** [Sanchez, Alexandra L](#); [Lefton, Amanda B](#)  
**Subject:** Updated offshore section for interim report  
**Date:** Friday, April 30, 2021 6:48:24 PM  
**Attachments:** [Comprehensive Review Report Offshore DRAFT 30 Apr 21.docx](#)

---

Hey Alex and Amanda,

Attached is the updated offshore section for the interim report, incorporating Amanda's initial comments and edits, and changing the wording on the recommendations to align with the onshore section.

AWESOME work everyone. Alex, let me know if you need anything else. I'll be away from computers and Internet until 1/1:30 p.m. tomorrow, but around the rest of the weekend.

Peace,

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

(b) (5)

**From:** [Knodel, Marissa S](#)  
**To:** [Sanchez, Alexandra L](#)  
**Subject:** Draft offshore section of interim report  
**Date:** Friday, April 30, 2021 2:14:04 PM  
**Attachments:** [Comprehensive Review Report Offshore DRAFT 28 Apr 21.docx](#)

---

Marissa Knodel  
Advisor, Bureau of Ocean Energy Management  
202.538.2415  
[Marissa.Knodel@boem.gov](mailto:Marissa.Knodel@boem.gov)

(b) (5)

**From:** [Knodel, Marissa S](#)  
**To:** [Sanchez, Alexandra L](#)  
**Subject:** Knodel, Marissa S replied to a comment in "DRAFT Report - Onshore - 4.27.21"  
**Date:** Thursday, April 29, 2021 8:53:56 PM  
**Attachments:** [3352d870-d2dd-4971-97ed-edd5fa9c17ad5b4c8369-b690-4606-b5da-6fa35cd35839de2b7c3c-9cdd-4104-992c-62d5280d8d1617dfd631-8c74-4fb1-9f37-2825b4737f54f1d9bf2f-bf02-4362-8ecb-8dc9682124fd](#)

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DRAFT Report - Onshore - 4.27.21.docx



You left a comment



Knodel, Marissa S replied

[Go to comment](#)

[Why am I receiving this notification from Office?](#)

(b) (5)

**From:** [Ravas, Theodore J](#)  
**To:** [Macdonald, Cara Lee](#)  
**Cc:** [Creative Services, OFAS](#); [Sanchez, Alexandra L](#)  
**Subject:** Re: Print job for the WH  
**Date:** Thursday, April 29, 2021 10:06:05 AM

---

Yes. I'm in the office and available to Teams today. Let me know what time works for you.

## Theodore Ravas

U.S. Department of the Interior  
Office of Facilities and Administrative Services (OFAS)  
Creative Communication Services  
1849 C Street NW RM 1647  
Washington, DC 20240  
202.437.1266  
For more information visit our website at: <http://www.doi.gov/ofas>  
Graphics mailbox [ofas\\_creative\\_services@ios.doi.gov](mailto:ofas_creative_services@ios.doi.gov)

---

**From:** Macdonald, Cara Lee <cara\_macdonald@ios.doi.gov>  
**Sent:** Wednesday, April 28, 2021 9:26 PM  
**To:** Ravas, Theodore J <theodore\_ravas@ios.doi.gov>  
**Cc:** Creative\_Services, OFAS <OFAS\_Creative\_Services@ios.doi.gov>; Sanchez, Alexandra L <alexandra\_sanchez@ios.doi.gov>  
**Subject:** Print job for the WH

Good evening!

ASLM has a critically important report for the WH that is due pursuant to an executive order. When finished, we expect it to be around 50 pages. May we have a Teams meeting with you (and anyone on your print team you desire to include) tomorrow (Thursday) to discuss the details regarding having you and your team prepare it? Please let me know your availability and I will send you a meeting invite.

Many thanks!  
Cara Lee

\*\*\*\*TELEWORKING CONTACT NUMBER: (Cell) 202.578.4543

Cara Lee Macdonald  
Chief of Staff to the Assistant Secretary,  
Land and Minerals Management  
U.S. Department of the Interior  
1849 C Street NW, Room 6624  
Washington, D.C. 20240  
(Off) 202.208.2654  
(Cell) 202.578.4543

[cara\\_macdonald@ios.doi.gov](mailto:cara_macdonald@ios.doi.gov)

**From:** [Crutchfield, Craig C. EOP/OMB](#)  
**To:** [Taylor, Rachael S](#); [Evans, Beatrix C. EOP/OMB](#); [Van Der Heide Escobar, Jennifer](#); [Daniel-Davis, Laura E](#); [Klein, Elizabeth A](#); [Razo, Abdiel D](#); [Burnett, Ben D. EOP/OMB](#)  
**Subject:** RE: [EXTERNAL] RE: DOI/OMB Meeting about Energy Leasing  
**Date:** Thursday, February 25, 2021 4:34:27 PM

---

+ Ben.

Here are some of questions we have started to ask ourselves as we turn to the FY22 Budget baseline.

Establishing the current law baseline for energy leasing and associated receipts in the FY22 Budget, including:



---

**From:** Taylor, Rachael S <rachael\_taylor@ios.doi.gov>  
**Sent:** Thursday, February 25, 2021 3:35 PM  
**To:** Evans, Beatrix C. EOP/OMB <(b) (6)>; Van Der Heide Escobar, Jennifer <jennifer\_vanderheideescobar@ios.doi.gov>; Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>; Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>; Razo, Abdiel D <abdiel\_razo@ios.doi.gov>  
**Cc:** Crutchfield, Craig C. EOP/OMB <(b) (6)>  
**Subject:** RE: [EXTERNAL] RE: DOI/OMB Meeting about Energy Leasing

Thanks for your patience, Beatrix – it took some shuffling but we’re now all available at 4 for the meeting as requested.

I know that revenue projections may come up but if there are other specific policy questions relating to leasing that you want us to come prepared to address we’d welcome any additional information before the call.

---

**From:** Evans, Beatrix C. EOP/OMB <(b) (6)>  
**Sent:** Thursday, February 25, 2021 2:58 PM  
**To:** Van Der Heide Escobar, Jennifer <jennifer\_vanderheideescobar@ios.doi.gov>; Daniel-Davis, Laura E <laura\_daniel-davis@ios.doi.gov>; Klein, Elizabeth A <Elizabeth\_Klein@ios.doi.gov>; Taylor, Rachael S <rachael\_taylor@ios.doi.gov>; Razo, Abdiel D <abdiel\_razo@ios.doi.gov>  
**Cc:** Crutchfield, Craig C. EOP/OMB <(b) (6)>  
**Subject:** [EXTERNAL] RE: DOI/OMB Meeting about Energy Leasing

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Hello,  
Hope you are all having a good day. Just wanted to re-up this email and +Abdiel.  
Thank you,

Beatrix Evans | Confidential Assistant  
Office of Management and Budget

(b) (6)

---

**From:** Evans, Beatrix C. EOP/OMB  
**Sent:** Wednesday, February 24, 2021 6:59 PM  
**To:** 'jennifer\_vanderheideescobar@ios.doi.gov' <[jennifer\\_vanderheideescobar@ios.doi.gov](mailto:jennifer_vanderheideescobar@ios.doi.gov)>; 'rachael\_taylor@ios.doi.gov' <[rachael\\_taylor@ios.doi.gov](mailto:rachael_taylor@ios.doi.gov)>; 'laura\_daniel-davis@ios.doi.gov' <[laura\\_daniel-davis@ios.doi.gov](mailto:laura_daniel-davis@ios.doi.gov)>; 'Elizabeth\_Klein@ios.doi.gov' <[Elizabeth\\_Klein@ios.doi.gov](mailto:Elizabeth_Klein@ios.doi.gov)>  
**Cc:** Crutchfield, Craig C. EOP/OMB <(b) (6)>  
**Subject:** DOI/OMB Meeting about Energy Leasing

Hello,

My boss, Candace Vahlsing, would like to have a meeting to discuss Energy Leasing with you all of you and members of our team. Would Friday, Feb 26<sup>th</sup>, at 4:00-4:30pm be possible? Please let me know, thank you.

Cc'ing our Branch Chief Craig for any questions.

Best,  
Beatrix

-

Beatrix Evans | Confidential Assistant  
White House Office of Management and Budget

(b) (6)

**From:** [Lukas, William A](#)  
**To:** [Klein, Elizabeth A](#); [Trujillo, Tanya M](#); [Taylor, Rachael S](#); [Daniel-Davis, Laura E](#); [Estenoz, Shannon A](#); [Pula, Nikolao I](#); [Newland, Bryan](#); [Anderson, Robert T](#); [Roberts, Lawrence S](#); [Kelly, Katherine P](#); [Landa, Mackenzie \(Kenzie\) L](#); [Wiseman, Maria K](#); [Beard, Douglas](#); [Applegate, David](#); [Plumlee, Geoffrey S](#); [Ryker, Sarah J](#); [Stockdon, Hilary F](#)  
**Cc:** [Villa, Cristina M](#)  
**Subject:** Climate Presentation: First Meeting of the DOI Climate Task Force  
**Date:** Tuesday, May 18, 2021 1:06:25 PM  
**Attachments:** [DOI Climate Task Force Briefing May 18 2021 v2.pdf](#)

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Good afternoon

For your reference, attached is the USGS presentation for this afternoon's Briefing from USGS on Climate Science Initiatives. Thank you.

Bill Lukas | 202-208-4457 | [571-286-2356](tel:571-286-2356)  
USGS Liaison to Water & Science and  
Acting Deputy Chief of Staff - USGS  
[asws\\_liaison@usgs.gov](mailto:asws_liaison@usgs.gov)

---

**From:** Klein, Elizabeth A  
**Sent:** Monday, May 17, 2021 11:32 AM  
**Subject:** First Meeting of the DOI Climate Task Force  
**When:** Tuesday, May 18, 2021 2:00 PM-3:00 PM.  
**Where:**

Agenda:

- Welcome and Overview of Secretary's Order & DOI Climate Task Force
- Climate: Briefing from USGS on Climate Science Initiatives
- NEPA: Discussion of Current NEPA Approaches and Procedures

DOI Climate Task Force (created by this SO: [SO 3399 Climate Crisis \\_Transparency and Integrity to Decision-Making Processes \(doi.gov\)](#))

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# DOI Current State of Climate Science

MAY 18, 2021

U.S. Department of the Interior  
U.S. Geological Survey

# Agenda

1. Overview of DOI Climate Science Needs
2. Climate Science to Support Executive Orders
3. Current Status of USGS Climate Science - Priorities
4. Opportunities



# 1. Overview of DOI Science Needs

# DOI Climate Science Needs

- ▶ Climate Translation and Access to Data
- ▶ Climate System, Improved Forecasting & Extreme Events (Models)
- ▶ Ecological Transformation / Climate Resilience
- ▶ Vulnerability and Risk Assessment
- ▶ Support for DOI Regulatory Policy – ESA, NEPA, etc...
- ▶ Decision science, uncertainty and risk tolerance
- ▶ Impacts of renewable energy
- ▶ Coastal Change and Resilience
- ▶ Water Quality and Quantity & Riverine Systems – Flooding & Drought
- ▶ Carbon Sequestration & Greenhouse Gases Emissions



## 2. Climate Science Needed to Support Executive Orders

# E.O. 13990 *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*

- ▶ **White House Led IWG on the Social Cost of Greenhouse Gas (OMB, OSTP, NEC-led)**
- ▶ **(b) (5)**
  - [Redacted]
  - [Redacted]
  - [Redacted]
  - [Redacted]
  - [Redacted]
  - [Redacted]
- ▶ **Other coordination:** DOI SCGHG team

# E.O. 14008 *Tackling the Climate Crisis at Home and Abroad*

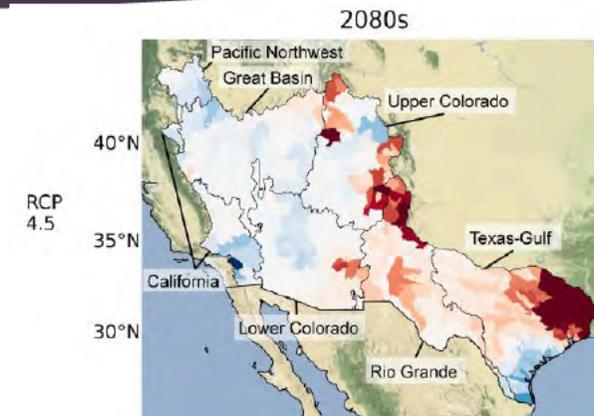
## Sections that will Benefit from DOI Climate Science:

- ▶ Section 102 – International Policy (Carbon Sinks, Arctic, Critical Ecosystems)
- ▶ Section 103 – Prioritizing Climate in Foreign Policy & National Security
- ▶ Section 201 – Policy (linkage between biodiversity & climate)
- ▶ Section 207 – Renewable Energy
- ▶ Section 208 – Oil and Gas Development on Public Lands and Offshore Waters.
- ▶ Section 211 – Climate Action Plans & Data & Infrastructure Products to Improve Adaptation and Resilience
- ▶ Section 215 – Civilian Climate Corps
- ▶ Section 216 – Conserving our Nation's Land & Waters

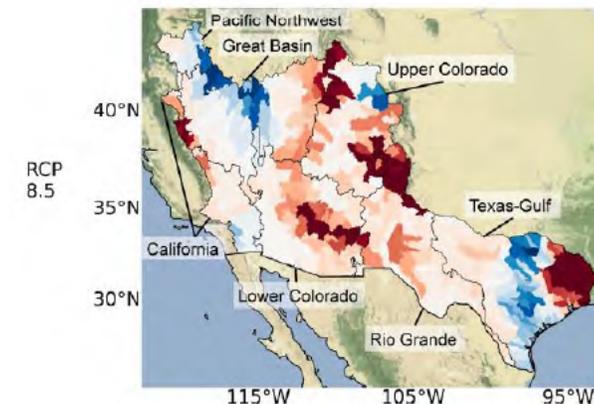
### 3. USGS Science Priorities in Support of DOI

# USGS Climate Science

- ▶ As the Nation's largest earth, water, and biological science agency, the USGS plays an essential role in understanding Earth's past, present, and future climate.
- ▶ For more than a century, USGS has identified the local to global implications of climate change on our lands, waters, wildlife, and the lives and livelihoods of all people.
- ▶ USGS brings to bear a unique and broad range of capabilities to climate science, occurring within all its missions.



Modeled streamflow under future RCP scenarios compared to historical trends (red is lower)



# The Broad Reach of USGS Climate Science

- ▶ The USGS brings its expertise to partnerships with federal, state, local, and Tribal entities; academia; and international organizations.
- ▶ USGS science contributes to authoritative, comprehensive efforts such as
  - National Climate Assessment (NCA5)
  - Intergovernmental Panel on Climate Change (IPCC6)
  - National security planning
  - Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)

# USGS Climate Science Priorities

**USGS has diverse Climate Science Priorities that support DOI and OSTP priorities, including:**

- ▶ Geologic carbon and greenhouse gases
- ▶ Biologic carbon sequestration (Blue Carbon)
- ▶ Coastal change hazards and resilience
- ▶ Climate Adaptation Science



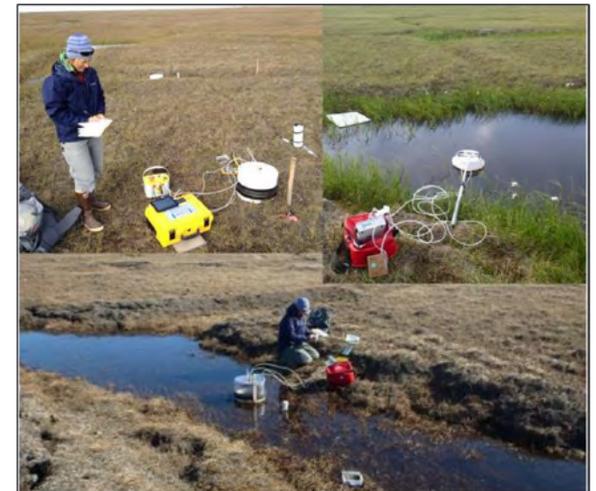
# USGS Climate Science

## Carbon Sequestration and Greenhouse Gas Emission

- ▶ National potential for carbon sequestration (geologic, biologic, and blue carbon)
- ▶ Monitoring and inventory of Greenhouse Gas (GHG) emissions from Federal lands.
- ▶ CO<sub>2</sub> geologic storage and CO<sub>2</sub>-enhanced oil recovery.
- ▶ National Assessment of GHG Emissions from Federal Lands (2018).
- ▶ Origin, distribution, and resource-potential of non-hydrocarbon natural gases.
- ▶ Estimating amount of CO<sub>2</sub> that could be stored in underground reservoirs.
- ▶ Assessing environmental risks of storing CO<sub>2</sub> in underground reservoirs.
- ▶ Role of wetlands, including coastal wetlands and Blue Carbon for climate mitigation
- ▶ Incorporation of biological carbon sequestration in ecosystem restoration
- ▶ Understanding carbon resources in Boreal and Arctic



CO<sub>2</sub> injection well in Mississippi



USGS scientist documenting effects of land degradation in the Arctic National Wildlife Refuge, including increased release of methane and carbon dioxide.

# USGS Climate Science

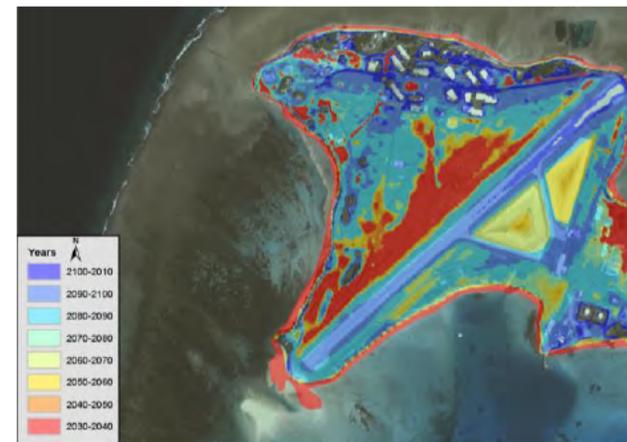
## Coastal Change Hazards & Resilience

Understanding, modeling and forecasting natural coastal processes and responses to climate change and human intervention to inform emergency response, long-term planning, and resource management.

- ▶ Real-time coastal storm erosion and flooding forecasts; in partnership with NOAA, extended delivery to 2/3 of US coast
- ▶ Assessed the value of reefs in reducing risks during future storms along US coral-fronted coasts
- ▶ Decision-support to state-level officials to understand impacts of storm, sea-level rise, and restoration scenarios
- ▶ Enhancing capacity to forecast change in habitats and landscapes critical to DOI, and complex environments such as bluffed and permafrost coasts
- ▶ Developing observations for and sustained delivery to those communities most at risk nationwide, throughout the contiguous and territorial U.S.



Regional forecasts of coastal erosion and flooding during major storms provide guidance for emergency response and resource management.



Modeling of future climate scenarios indicates when Kwajalein Atoll will be flooded annually by storm waves, impacting infrastructure and contaminating freshwater resources.

# USGS Climate Science Climate Adaptation Science

## Climate Adaptation Science Center (CASC) Regions

The CASCs collaborate across boundaries to address shared ecosystems, watersheds, and landscapes



- ▶ **Mission:** Delivering science to help fish, wildlife, water, land, and people adapt to a changing climate
- ▶ BIA Tribal Resilience Liaison program has placed 8 Tribal Liaisons within the CASC network

# Current Science Activities across the USGS mission

- ▶ Tribal Adaptation Planning
- ▶ Climate impacts & adaptation for fish, wildlife and their habitats
- ▶ Physical Changes – Drought, Fire, Permafrost, Sea Level
- ▶ Historical Patterns of Climate Change
- ▶ Examine linkages between biodiversity and climate change
- ▶ Economics of climate change, including the social cost of carbon



Researchers capture invasive bull trout using electroshocking



## 4. Opportunities

- [Redacted]
- [Redacted]
- [Redacted]

# Opportunities to Leverage USGS Climate Science

- ▶ Risk reduction and enhancing resilience, particularly underserved communities
- ▶ Science supporting climate resiliency, adaptation & mitigation
- ▶ Economic implications (e.g. social costs of carbon, ecosystem services)
- ▶ “30 by 30” initiative: Conservation based on carbon management potential
- ▶ Public health implications (with CDC, NIH, etc.)
- ▶ Civilian Climate Corps. (Needs Science Component)



Habitat availability for threatened and endangered species (Pea Island, NC; USFWS, LCC)

# Contact Information

## Doug Beard

**Director, National Climate Adaptation  
Science Center**

**Co-chair USGS Climate Science  
Coordinating Committee**

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## Sarah Ryker

**Associate Director – Energy and  
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## Hilary Stockdon

**USGS Science Advisor for Coastal  
Change Hazards**

**Co-chair USGS Climate Science  
Coordinating Committee**

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## Geoff Plumlee

**USGS Chief Scientist**

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## Anne Kinsinger

**Associate Director – Ecosystems**

[akinsinger@usgs.gov](mailto:akinsinger@usgs.gov)

March 26, 2021

The Honorable Deb Haaland  
Secretary  
United States Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20242

Dear Secretary Haaland:

As the Department of the Interior undertakes the comprehensive review of the federal oil and gas program, as called for in Executive Order 14008 by President Biden on January 27, 2021, I request that you consider the policy modifications as prescribed by my bill, S.607, the End Speculative Oil and Gas Leasing Act, and include them as part of your recommendations to improve stewardship of our public lands.

The change in policy prescribed by S.607 would end the practice of leasing federal lands with no or low oil and gas development potential by requiring the Bureau of Land Management (BLM) to assess lands' mineral development potential before offering those lands for lease, and then prohibiting leasing on any lands found to have low or no development potential by the aforementioned assessment. Prohibiting leasing on public lands with no or low potential would allow the BLM to reprioritize these lands for other, better uses like managing the lands for wilderness, habitat conservation, recreation, or other suitable multiple-use purposes.

Furthermore, by requiring the BLM to offer only medium- and high-potential lands, the BLM could prioritize development in areas that are most economical for oil and gas production. As a result, public lands would not be needlessly encumbered by speculative property interests, and the BLM will save time and money that is currently spent issuing, monitoring, and otherwise administering low potential land leases that generate little or no revenue.

On balance, this change in policy would eliminate an existing practice that has numerous costs and no benefit to the public, and would make free other public lands for more valuable use.

I hope you will give this request your full consideration. Your staff may contact Kyle Chapman ([Kyle\\_Chapman@cortezmasto.senate.gov](mailto:Kyle_Chapman@cortezmasto.senate.gov)) in in my office for further questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Catherine Cortez Masto". The signature is written in a cursive, flowing style.

Catherine Cortez Masto  
United States Senator

April 28, 2021

The Honorable Deb Haaland  
Secretary, Department of the Interior  
1849 C Street, N.W.  
Washington D.C. 20240

Dear Secretary Haaland:

I write regarding the Department of the Interior's federal oil, gas, and coal leasing programs. For too long, these programs have benefited private interests with American families bearing the costs. Fossil fuel companies make off with large profits, while the pollution they cause and facilitate harms our public lands, waters, and ecosystems; causes health problems in nearby communities; and contributes to global climate change.

This must end, and I commend President Biden's decision to pause new leasing while the Department analyzes its programs and determines the best path forward. It is my belief that the Department should reform the programs so that the costs of fossil fuel extraction and combustion are no longer socialized on the general public but are instead borne by the companies responsible for production. I propose alternative ways to shift the costs of fossil fuel extraction and combustion on public lands and waters to producing companies. First, the amount of money producing companies pay the government could be set to reflect the true environmental and public health costs of fossil fuel extraction and combustion. Under an alternative approach, Interior could require that producers remove from the atmosphere an amount of greenhouse gases (GHGs) equivalent to the lifecycle emissions generated from the fossil fuels they extract from public lands and waters.

I divide this comment into four sections, in which I review: (1) the costs and benefits of federal fossil fuel production and how they are unequally spread between producing companies and the public; (2) Interior's legal authorities; (3) appropriate adjustments to royalty rates to reflect the social cost of carbon (SCC); and (4) options for the sequestration of emissions.

## **I. Costs and Benefits Are Spread Unevenly Between Producing Companies and the Public**

In 2019, the six largest oil and gas companies in the U.S. reported almost \$56 billion in profits. For the period 1990-2019, these six companies have reported a total of more than \$2.4 trillion in profits.<sup>1</sup> While companies do not report the percentage of their profits that are generated from federal production, it is certainly a considerable portion. In 2019, 24 percent of domestic oil

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<sup>1</sup> "Padding Big Oil's Profits," Taxpayers for Common Sense (Feb. 12, 2020), <https://www.taxpayer.net/energy-natural-resources/padding-big-oils-profits/>

production and 12 percent of natural gas production occurred on public lands and waters.<sup>2</sup> Coal, while far less profitable than oil and gas due to declining demand, is even more widely produced on public lands, with federal production accounting for approximately 40 percent of total domestic production.<sup>3</sup>

There is reason to believe that federal production may be more profitable than production on state or private land. Many states and private landowners charge significantly higher royalty rates than the federal rate of 12.5 percent for onshore production. Texas, North Dakota, New Mexico, Colorado, Montana, Utah, and Wyoming, all major producing states, charge higher royalty rates for oil and gas production on state land, with Texas charging double the federal rate.<sup>4</sup> An analysis of royalty rates charged by private landowners in Texas and Louisiana found rates double the federal rate.<sup>5</sup>

In 2019, the Department collected approximately \$8.2 billion from fossil fuel producers for production on public lands and waters.<sup>6</sup> Removing the over \$400 million collected from coal producers, the remaining \$7.8 billion collected from oil and gas producers equals just 14 percent of the six largest oil and gas companies' profits in 2019.

On the other side of the ledger, it would appear that the costs of federal production borne by the public clearly outweigh the benefits provided by the relatively meagre revenues collected by the Department and shared with producing states. Carbon dioxide emissions from fossil fuels produced on federal lands represent almost a quarter of total domestic CO<sub>2</sub> emissions, while methane emissions from fossil fuels produced on federal lands represent almost a tenth of total domestic methane emissions.<sup>7</sup> Using the interim SCC estimate of \$51/ton for 2020,<sup>8</sup> the total costs imposed on the public by fossil fuel production on federal lands is an estimated \$68 billion per year.

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<sup>2</sup> "Revenues and Disbursements from Oil and Natural Gas Production on Federal Lands," Congressional Research Service (Sept. 22, 2020), pgs. 5 – 6, <https://fas.org/sgp/crs/misc/R46537.pdf>

<sup>3</sup> "Challenges to Ensuring a Fair Return for Federal Energy Resources," U.S. Governmental Accountability Office (Sept. 24, 2019), pg. 1, <https://www.congress.gov/116/meeting/house/109987/witnesses/HHRG-116-II06-Wstate-RuscoF-20190924.pdf>

<sup>4</sup> Nicole Gentile, "Federal Oil and Gas Royalty and Revenue Reform," Center for American Progress (June 19, 2015), <https://www.americanprogress.org/issues/green/reports/2015/06/19/115580/federal-oil-and-gas-royalty-and-revenue-reform/>

<sup>5</sup> *Id.*

<sup>6</sup> Query for all fossil fuel revenues in 2019 made on U.S. Department of the Interior Natural Resources Revenue Data website, <https://revenue.data.doi.gov/explore/?commodity=Oil%2CGas%2CCoal%2COil%20or%20gas%20%28pre-production%29%2COil%20Shale%2CTar%20Sands%2CNatural%20gas%20liquids&dataType=Revenue&location=N&mapLevel=State&offshoreRegions=true&period=Calendar%20Year&year=2019>

<sup>7</sup> Merrill, *et al.*, "Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005–14," U.S. Geological Survey, pg. 1, <https://pubs.usgs.gov/sir/2018/5131/sir20185131.pdf>

<sup>8</sup> "Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990," Interagency Working Group on Social Cost of Greenhouse Gases (Feb. 2021), pg. 5, [https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument\\_SocialCostofCarbonMethaneNitrousOxide.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf)

These climate-related costs, while staggeringly large, are far from the only costs of federal production borne by the public. Remediation costs associated with abandoned wells and mines are also substantial. Abandoned oil and gas wells leak methane and pose a safety hazard, while abandoned mines pollute streams and ground water and defile the landscape. It has been estimated that plugging all abandoned wells on federal and non-federal lands would cost between \$12 and \$24 billion.<sup>9</sup> And estimates put the unfunded costs associated with reclaiming abandoned coal mines on federal and non-federal lands at nearly \$11 billion.<sup>10</sup>

There are public health costs borne by communities in close proximity to fossil fuel production on federal lands. In August 2019, I visited the Wind River Indian Reservation in Wyoming, where I met with leaders from the Eastern Shoshone and Northern Arapaho tribes. They told me that on some days, there is a “green haze” in the air due to the methane emissions from oil and gas production on Bureau of Land Management (BLM) lands in the area. Methane emissions, in addition to their climate warming effects, also degrade air quality, and increase the health risks associated with breathing bad air, especially among children and the elderly.<sup>11</sup>

Finally, federal production may also threaten endangered species, harm delicate ecosystems, and impede conservation and recreational opportunities on public lands and waters. Indeed, analysis shows that fully 90 percent of BLM lands are available for oil and gas leasing, while only 10 percent are designated for conservation or recreation.<sup>12</sup>

## **II. The Law Permits Interior to Correct this Imbalance Between Private Profit and Public Harm**

The Department’s coal, oil, and gas leasing programs are primarily governed by the Mineral Leasing Act (MLA), the Federal Land Policy and Management Act (FLPMA), and the National Environmental Policy Act (NEPA). The FLPMA directs Interior to manage public lands in a manner to “conform to changing needs and conditions [...] without permanent impairment of the productivity of the land and the quality of the environment” in order to meet “the present and future needs of the American people”<sup>13</sup>

Critically, the congressional declaration of policy found in the FLPMA states that public lands should “be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.”<sup>14</sup> Nine years prior to the passage of the FLPMA, the Johnson administration published a

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<sup>9</sup> Raimi, *et al.*, “Green Stimulus for Oil and Gas Workers: Considering a Major Federal Effort to Plug Orphaned and Abandoned Wells,” Columbia Center on Global Energy Policy (July 2020), pg. 6,

[https://www.energypolicy.columbia.edu/sites/default/files/file-uploads/OrphanWells\\_CGEP-Report\\_071620.pdf](https://www.energypolicy.columbia.edu/sites/default/files/file-uploads/OrphanWells_CGEP-Report_071620.pdf)

<sup>10</sup> “The Abandoned Mine Reclamation Fund: Issues and Legislation in the 116th Congress,” Congressional Research Service (Feb. 24, 2020), pg. 1, <https://crsreports.congress.gov/product/pdf/IF/IF11352>

<sup>11</sup> “Methane Pollution from the Oil & Gas Industry Harms Public Health,” Environmental Defense Fund, [https://www.edf.org/sites/default/files/content/methane\\_rule\\_health\\_fact\\_sheet\\_reboot\\_final\\_no\\_citations.pdf](https://www.edf.org/sites/default/files/content/methane_rule_health_fact_sheet_reboot_final_no_citations.pdf)

<sup>12</sup> “Open for Business,” The Wilderness Society, <https://www.wilderness.org/sites/default/files/media/file/Report-Open%20for%20Business.pdf>

<sup>13</sup> 43 USC §1702(c).

<sup>14</sup> 43 USC §1701(a)(8)

report warning of the risk that continued combustion of fossil fuels would lead to planetary warming. Congress' decision to specifically direct the protection of "air and atmospheric values" in the FLPMA must be interpreted as a conscious decision to act on the warnings it was receiving about the relationship between fossil fuel combustion and climate change.<sup>15</sup>

The FLPMA, the MLA, and NEPA all provide Interior with significant discretion in determining which lands to lease for fossil fuel extraction and what conditions to attach to said extraction. The MLA sets a floor for royalties, but not a ceiling.<sup>16</sup> Implementing regulations allows the Department to impose "reasonable measures as may be required [...] to minimize adverse impacts."<sup>17</sup>

Indeed, BLM has already recognized that it has the authority to impose such mitigation measures. In response to a federal court decision ordering it to assess the GHG emissions from an oil and gas lease sale, BLM identified three ways in which it could require GHG mitigation measures before an oil and gas well received a permit to drill. It could incorporate GHG mitigation measures into best management practices (BMPs) for oil and gas production. It could incorporate them as conditions of approval (COAs). Finally, it could incorporate them as "applicant-committed measures" or add them to necessary state air quality permits.<sup>18</sup> Such mitigation measures include technical solutions such as requiring vapor recovery systems and conversion to electric, solar, or mechanical pumps.<sup>19</sup>

### **III. Interior Could Adjust Royalty Rates to Reflect the True Costs of Fossil Fuel Production on Public Lands and Waters**

As discussed in part I of this comment, the substantial costs associated with production and combustion of fossil fuels from public lands and waters are borne mostly by the public. Meanwhile, the profits from federal fossil fuel production flow largely to producing companies. One way to correct this imbalance and maximize total social welfare would be to ensure that producing companies pay the government an amount equal to the total costs generated by the extraction and combustion of fossil fuels produced on public lands and waters.

The most straightforward way to internalize the large negative externalities associated with fossil fuel production would be to charge producing companies a surcharge based on the SCC. Because the MLA only sets a floor on royalties, this could be done by adding a SCC-based surcharge to the existing royalty rate.<sup>20</sup> Such a surcharge would be calculated by multiplying the

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<sup>15</sup> Pleune, *et al.*, "A Road Map to Net Zero Emissions for Fossil Fuel Development on Public Lands," *Environmental Law Reporter*, Vol. 50, pg. 10736, [https://www.eli.org/sites/default/files/docs/elr\\_pdf/50.10734.pdf](https://www.eli.org/sites/default/files/docs/elr_pdf/50.10734.pdf)

<sup>16</sup> *See, e.g.*, 30 U.S.C. §226(b)(1)(A)

<sup>17</sup> 43 CFR §3101.1-2

<sup>18</sup> Pleune, *et al.*, "A Road Map to Net Zero Emissions for Fossil Fuel Development on Public Lands," *Environmental Law Reporter*, Vol. 50, pg. 10739, [https://www.eli.org/sites/default/files/docs/elr\\_pdf/50.10734.pdf](https://www.eli.org/sites/default/files/docs/elr_pdf/50.10734.pdf)

<sup>19</sup> *Id.*

<sup>20</sup> For a more fulsome discussion of this and other options for charging federal producers for the environmental costs associated with the fossil fuels they produce, see, Krupnick, *et al.*, "Putting a Carbon Charge on Federal Coal: Legal and Economic Issues," *Environmental Law Reporter*, Vol. 46, pg. 10572 *et seq.*, <https://elr.info/news-analysis/46/20572/putting-carbon-charge-federal-coal-legal-and-economic-issues>.

SCC by the sum of the net GHG emissions (expressed in carbon dioxide-equivalents) generated by the extraction and combustion of the produced fossil fuel. It would be extremely important to include net methane emissions generated during extraction, given their prevalence in the fossil fuel supply chain and their powerful heat-trapping properties. In addition, the cost of local air quality problems and their health consequences should be factored into this charge.

The primary counter-argument to increasing royalty rates or other fees assessed by the Department on producers of fossil fuels on public lands and waters has been that doing so will not reduce fossil fuel production and will instead simply drive producing companies to shift production to non-federal lands and waters.<sup>21</sup>

Recent analysis has shown, however, that such carbon leakage to non-federal lands and waters would be incomplete. Depending on the elasticity of demand for oil and gas, a carbon-based surcharge on federal production would result in between 53 and 74 percent of the ensuing reduction in federal supply replaced by new non-federal production.<sup>22</sup> While this may seem like a lot of leakage, it still would result in substantial emissions reductions. For example, applying a SCC-based surcharge to federal oil and gas production would reduce net GHG emissions by 18 million metric tons of carbon dioxide equivalent per year using a SCC of \$50/ton and 42 million metric tons of carbon dioxide equivalent a year using a SCC of \$125/ton in a low demand elasticity scenario.<sup>23</sup>

In a higher demand-elasticity scenario, which may be more probable due to the increasing cost competitiveness of low -carbon alternative technologies in the power and transportation sectors and the growing popular and political backlash against single-use plastics, net emission reductions would grow to almost 33 and 76 million metric tons of carbon dioxide equivalent per year, respectively. That's the equivalent of taking or 7.2 or 16.5 million cars off the road.<sup>24</sup> And since these calculations do not include the coal sector, actual emissions reductions might be even larger.<sup>25</sup>

What's more, a SCC of \$50 or \$125/ton is modeled to significantly increase oil and gas royalties by 47 and 64 percent, respectively,<sup>26</sup> thereby providing the federal government as well as state, local, and tribal governments a significant source of new revenues to address climate, air quality, and other environmental concerns related to fossil fuel production on public lands and waters.

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<sup>21</sup> See, e.g., API comments of DOI review of the federal oil and natural gas program, American Petroleum Institute (April 15, 2021), pg. 27, <https://www.api.org/-/media/Files/News/Letters-Comments/2020/API-Comments-for-DOI-Comprehensive-Review-of-Federal-Oil-and-Gas-Program.pdf>

<sup>22</sup> Brian Prest, "Supply-Side Reforms to Oil and Gas Production on Federal Lands," Resources for the Future (March 2021), [https://media.rff.org/documents/WP\\_20-16\\_Updated.pdf](https://media.rff.org/documents/WP_20-16_Updated.pdf)

<sup>23</sup> Prest & Stock, "Climate Royalty Surcharges," National Bureau of Economic Research (March 2021), pg. 17, [https://www.nber.org/system/files/working\\_papers/w28564/w28564.pdf](https://www.nber.org/system/files/working_papers/w28564/w28564.pdf)

<sup>24</sup> Calculations done with the Environmental Protection Agency's greenhouse gas equivalency calculator, available at <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>

<sup>25</sup> While it is unlikely that there will be any new leases for coal, there may be lease renewals in the future, at which point, a carbon surcharge based on the SCC could be added.

<sup>26</sup> Prest & Stock, "Climate Royalty Surcharges," National Bureau of Economic Research (March 2021), pg. 17, [https://www.nber.org/system/files/working\\_papers/w28564/w28564.pdf](https://www.nber.org/system/files/working_papers/w28564/w28564.pdf)

In sum, imposing a carbon surcharge based on the SCC would significantly reduce GHG emissions, improve local air quality, and provide governments with additional revenues. It is consistent with the MLA, which only sets a floor on royalty rates. And it would be entirely consistent with the FLPMA's directives to preserve "ecological, environmental, air and atmospheric [...] values" in order to meet the needs of the future generations who will be most burdened by climate change. Indeed, given the text of the FLPMA, it would be inconsistent *not* to act, as it is the status quo that clearly contravenes the law's objectives.

#### **IV. Interior Could Require Federal Producers to Sequester an Equivalent Mass of Carbon Dioxide**

As discussed in part II of this comment letter, BLM has already recognized that it has the authority to mitigate pollution by imposing technological solutions. These technological solutions can be incorporated into BMPs or COAs or on an ad hoc basis. Carbon pollution is no different than the types of air or water pollution where BLM has already acknowledged its inherent authority under the FLPMA and NEPA to act.

The Department therefore would seem to have the authority under the FLPMA and NEPA to require that federal production result in net zero emissions.<sup>27</sup> With respect to methane emissions that have both a warming effect and an effect on local air quality, the Department should require that these emissions be eliminated at the source, in order to mitigate localized air quality issues. But for the carbon dioxide emissions generated from the combustion of fossil fuels produced on public lands and waters, Interior could require that producers remove an equivalent amount from the atmosphere.

Requiring the sequestration of an equivalent mass of carbon dioxide would have precedent and be economical. As noted, BLM clearly has the authority to require technological solutions to mitigate pollution. In addition, other industries are starting to invest in direct air capture of carbon dioxide as a way to become net zero emitters. For example, United Airlines recently announced that it will invest in a project being built by Occidental Petroleum to capture and sequester one million tons of carbon dioxide each year.<sup>28</sup> This project will offset 10 percent of United's emissions, and will help the company achieve its net zero emissions target.<sup>29</sup>

Direct air capture costs are falling, and current estimates are that per-ton capture costs will fall below \$60 per ton by 2040.<sup>30</sup> If direct air capture proves to be anything like renewable energy or battery storage, its cost curve will fall more quickly than estimated. Given the relatively competitive costs associated with direct air capture, Interior could provide federal producers a

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<sup>27</sup> For a more fulsome discussion of this subject, *see*, Pleune, *et al.*, "A Road Map to Net Zero Emissions for Fossil Fuel Development on Public Lands," *Environmental Law Reporter*, Vol. 50, [https://www.eli.org/sites/default/files/docs/elr\\_pdf/50.10734.pdf](https://www.eli.org/sites/default/files/docs/elr_pdf/50.10734.pdf).

<sup>28</sup> Tracy Rucinski, United Airlines invests in carbon-capture project to be 100% green by 2050, *Reuters* (Dec. 10, 2020), <https://www.reuters.com/article/united-ar/ins-climate-occidental/united-airlines-invests-in-carbon-capture-project-to-be-100-green-by-2050-idUSKBN28K1NE>

<sup>29</sup> *Id.*

<sup>30</sup> Fasihi, *et al.*, "Techno-economic assessment of CO2 direct air capture plants," *Journal of Cleaner Production*, Vol. 224, pgs. 957 *et seq.*, <https://www.sciencedirect.com/science/article/pii/S0959652619307772>

choice: pay a SCC-based royalty surcharge or install direct air capture technology to become a net zero producer on federal lands and waters.

## **V. Conclusion**

The federal oil, gas, and coal leasing programs currently shift massive environmental burdens from private producers to the American public. These burdens include exacerbating global climate change and degrading local air quality. Meanwhile, a disproportionate share of the profits from federal production accrues to producing companies. This status quo is not only unjust, it is inconsistent with federal law. I therefore urge the Department to right these wrongs and bring the programs into conformity with federal law. Two strong options for achieving this goal are (1) to add a SCC-based surcharge to royalty rates; and (2) to require net zero production through the use of direct air capture technologies.

I thank you for your attention to these issues and stand ready to assist you in any way I can.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sheldon Whitehouse". The signature is fluid and cursive, with a prominent initial "S".

Sheldon Whitehouse  
United States Senator

**From:** [Anderson, Robert T](#)  
**To:** [Klein, Elizabeth A](#)  
**Subject:** FW: [EXTERNAL] Joint Native Village of Kaktovik and Kaktovik Inupiat Corporation Letter  
**Date:** Tuesday, April 27, 2021 1:26:14 PM  
**Attachments:** [FINAL NVK KIC Ltr to Secretary Haaland w.attachments 04.26.2021.pdf](#)  
**Importance:** High

---

Robert Anderson  
Principal Deputy Solicitor  
Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240  
(202) 208-4210

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**From:** Deam, Seth R <seth.deam@sol.doi.gov>  
**Sent:** Monday, April 26, 2021 8:18 PM  
**To:** Anderson, Robert T <Robert.Anderson@sol.doi.gov>  
**Cc:** Moody, Aaron G <Aaron.Moody@sol.doi.gov>; Romanik, Peg A <PEG.ROMANIK@sol.doi.gov>  
**Subject:** FW: [EXTERNAL] Joint Native Village of Kaktovik and Kaktovik Inupiat Corporation Letter  
**Importance:** High

Bob, FYSA, attached is a letter sent to the Secretary and senior DOI leadership today from Kaktovik Native Village & Corporation on a range of concerns about federal management of ANWR. Among the letter's attachments is a legal memorandum I signed in December noting a lack of authority for FWS to prohibit ORVs in ANWR by local rural residents engaged in subsistence activities. If it is beneficial, I can provide the background for that memo and how it came to be released to Kaktovik. Best, Seth

---

**From:** Matthew Rexford <[nvkaktovik@gmail.com](mailto:nvkaktovik@gmail.com)>  
**Sent:** Monday, April 26, 2021 9:43 AM  
**To:** [Debra\\_haaland@ios.doi.gov](mailto:Debra_haaland@ios.doi.gov); [Shannon\\_estonoz@ios.doi.gov](mailto:Shannon_estonoz@ios.doi.gov); Williams, Martha M <[martha\\_williams@ios.doi.gov](mailto:martha_williams@ios.doi.gov)>; Daniel-Davis, Laura E <[laura\\_daniel-davis@ios.doi.gov](mailto:laura_daniel-davis@ios.doi.gov)>; Culver, Nada L <[nada\\_culver@ios.doi.gov](mailto:nada_culver@ios.doi.gov)>; Siekaniec, Greg E <[greg\\_siekaniec@fws.gov](mailto:greg_siekaniec@fws.gov)>; Padgett, Chad B <[cpadgett@blm.gov](mailto:cpadgett@blm.gov)>; [alex.ortiz@mail.house.gov](mailto:alex.ortiz@mail.house.gov); [kaleb\\_froehlich@murkowski.senate.gov](mailto:kaleb_froehlich@murkowski.senate.gov); [Larry\\_burton@sullivan.senate.gov](mailto:Larry_burton@sullivan.senate.gov)  
**Subject:** [EXTERNAL] Joint Native Village of Kaktovik and Kaktovik Inupiat Corporation Letter

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Dear Secretary Haaland,

Please find attached to this email message a scanned signed joint letter from the Native Village of Kaktovik and the Kaktovik Inupiat Corporation. Feel free to contact me at the information below if you have any questions.

Sincerely,

*Matthew Rexford*

*Tribal Administrator*

NATIVE VILLAGE OF KAKTOVIK

*P.O. Box 52*

*Kaktovik, AK 99747*

*Phone: (907) 640-2042 or 2043*

*Fax: (907) 640-2044*



April 26, 2021

The Honorable Deb Haaland  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240  
[Debra\\_haaland@ios.doi.gov](mailto:Debra_haaland@ios.doi.gov)

Dear Secretary Haaland:

As indigenous Iñupiat from the remote village of Kaktovik in the extreme northeastern corner of Alaska we extend our congratulations to you on your historical accomplishment in becoming the first indigenous person to become the Secretary of the Interior. We are writing you today as Kaktovikmiut representatives of the only community that resides inside the Coastal Plain Area of the Arctic National Wildlife Refuge (ANWR or Refuge). We represent our people as the Native Village of Kaktovik (NVK) a federally recognized tribe and as the Kaktovik Iñupiat Corporation (KIC) an Alaska Native Claims Settlement Act (ANCSA) corporation.

We are writing to you today on several issues and concerns we have with the management of ANWR. First, both NVK, KIC, and the City of Kaktovik support oil and gas leasing in the Coastal Plain, in fact, we have worked for over 40 years to see the opening of the Coastal Plain to oil and gas development and to realize on the intent and goals of ANCSA. We are concerned that Executive Order 13990 ignores our hard work to get where we are today, where we are on the cusp of real self-determination with respect to our lands and future. How can this be taken away from us with no engagement with our community? We are on record in Congress throughout the debate supporting opening the Coastal Plain to oil and gas leasing to provide meaningful jobs and business opportunities for our people.

In 1971, ANCSA provided that KIC received 92,000 acres of land around our community to build economic sustainability for our people, the Kaktovikmiut. Due to this private land ownership, we are an inconvenient truth in the ANWR debate – outside environmental organizations choose to ignore our existence. To acknowledge that a group of people have used the Coastal Plain as their

home for thousands of years does not fit the narrative, especially when that same community supports resource development on their lands and the adjacent federal lands. We are a small community with limited resources, yet we do what we can to speak up for ourselves.

Kaktovik has fought for oil and gas leasing in the Coastal Plain for decades. It was not until the Tax Cuts and Jobs Act of 2017 (Tax Act) that we were able to realize our vision, a vision that has now appears to have been extinguished by Executive Order 13990 titled “Protecting Public Health Tackling Climate Crises” and Executive Order 14008 titled “Tackling the Climate Crisis at Home and Abroad”, both of which target the Coastal Plain Oil and Gas Leasing Program either directly (EO 13990) or indirectly (EO 14008) by pausing leasing and permitting. Our community has constantly been caught between federal actions that impact our ability to develop a vibrant, sustainable economic future. The passage of ANCSA in 1971 was supposed to allow Kaktovik Iñupiat Corporation (KIC) the economic freedoms to develop its lands to benefit our community. However, ANCSA was followed by the passage of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) which compromised our ability to access and develop our lands. ANILCA extended ANWR, under the management and oversight of U.S. Fish and Wildlife Service (FWS), to cover the Coastal Plain and closed off our ability to develop our lands through Section 1003. Section 1003 was finally lifted under the Tax Act 30 years after its passage. We do not want to go back in time, nor should we have to as administrations change.

We support oil and gas development not only on our lands but on the adjacent federal lands to provide for economic opportunities through jobs and businesses. Executive Order 13985 titled “Advancing Racial Equity and Supporting Underserved communities” speaks to the racial inequality of underserved communities – this is our community – we are an indigenous underserved community, yet we are also the ones feeling the pain of both EO 13990 and EO 14008 by stalling leasing and permitting of programs. Each of the Kaktovik-based entities supported full leasing of the Coastal Plain with the appropriate mitigations and stipulations presented in the Record of Decision-this was in-part our document! The Kaktovikmiut were an active part of the process and by ignoring the ROD, EO 13990 ignores our people. At the same time, EO 13175 requires “Consultation with Indigenous People”. We were actively consulted with by the Bureau of Land Management (Bureau) throughout the entire National Environmental Protection Act (NEPA) Environmental Impact Statement (EIS) process – this administration cannot throw that away! You cannot have one executive order requiring indigenous consultation, and a parallel EO that completely ignores that consultation. The Bureau invited the Native Village of Kaktovik to participate in tribal consultation through a Government-to Government (G2G) agreement and as a result NVK is listed on the cover of the Record of Decision. Throughout the G2G we felt that the Bureau was fair and diligent in its approach to assessing impacts to the land, waters, and wildlife within the Coastal Plain area and we agree with the final EIS with its mitigations, stipulations and required operating procedures. They ensure adaptive and best management practices. The Native American Rights Fund (NARF) refused to assist NVK through the process because of our support of oil and gas leasing – we were shocked that NARF could refuse our request for assistance yet provide direct assistance to tribal groups located over 160 miles away across the Continental Divide of the Brook Range. We are aware that your department is now embedded with some of these same NARF attorneys from Alaska which causes us pause.

After the passage of the Tax Act, KIC on separate attempts has tried to permit a seismic program on its own lands to assess its resource potential. This is our right as a private landowner; however, we do acknowledge that to acquire sufficient data to provide for full coverage over our own lands that conducting low-impact seismic over the adjacent lands is necessary. We are required to obtain two major federal permits to conduct our program, one is an Incidental Harassment Authorization (IHA) required under the Marine Mammals Protection Act (MMPA) due to the Endangered Species Act (ESA) listing of polar bears as threatened species and an Environmental Assessment (EA) under NEPA. The IHA request was submitted to FWS and the EA to the Bureau for processing in the fall of 2020 and both had gone through the public process. We had met all the requirements to conduct the program and were on the cusp of acquiring permits for a 2021 seismic program but were thwarted by the issuance of Secretarial Order 3395 that suspended permit activities on federal lands. Since a significant area of our program was on private lands, we felt that this was a bad decision but at the time due to the delay in the permit from FWS we felt that we did not have time to challenge it. Following not receiving the permit we worked with the FWS on an extension of our permit to conduct our activities in 2022, after providing updated material to the FWS and the Bureau covering the exact same area, which was already modeled for polar bear denning in a letter dated March 1, 2021 we receive the following in a letter from the Department dated April 9, 2021 signed by Martha Williams, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service and Nada Culver, Exercising the Delegated Authority of the Director, Bureau of Land Management (attached) which states “In consultation with the Department of the Interior’s Office of the Solicitor, BLM and FWS are reviewing your requests, including, in particular, your recent request for an IHA and an evaluation of the environmental and other analysis that may be required under the National Environmental Policy Act (NEPA) and other laws, as well as the President’s direction contained in Executive Order 13990.” Our original permit had already gone through NEPA and been reviewed under the Marine Mammal Protection Act with respect to denning polar bear. Its apparent that all that is being swept away under the guise of EO 13990. Where does this leave us and the promise we have under law and regulation to permit activities on our own lands? There is no path forward for us in the single sentence. We are asking that our permit applications proceed and to not stall us in our endeavors. The result of this action is to destroy new, high-paying jobs to our community and the establishment of new services for the program which is at odds with several Executive Orders issued relating to racial inequality and underserved communities. This revisit of our permits comes at a significant expense to my ANSCA corporation – how will we be compensated for those expenses?

We have not been consulted on any of the EO’s or Secretarial Orders that have been issued since January 21, 2021 nor were we consulted on the Biden-Trudeau agreement for protection of the Porcupine caribou herd. An agreement that happened almost simultaneously as the Biden announcement to reinstate EO 13175. We feel like there is a federal steamroller moving in our direction trying to quash any form of self-determination we have gained. What do you have to offer us in lieu of lost economic and growth opportunities – surely not solar panels for local energy? Where is it equity, or should we say racial equity, in any of this? How do we invoke the construct of EO 13985 to assist us?

Kaktovik did not want to be an island in the middle of a Refuge but it happened anyway – and as a result we have become an inconvenient truth. Living inside the Refuge since ANILCA has been difficult, the federal management oversight of the FWS has not performed its duty to our community as required under ANILCA to perform a Traditional Access Study as required. By way of example, we have not received the access to our traditional lands and native allotments that we were promised under ANILCA. Please see attached Memorandum dated December 23, 2020 by the Director of the U.S. Fish and Wildlife Service with accompanying Regional Solicitor Memorandum to the Director, U.S. Fish and Wildlife dated December 21, 2020 (also attached). We spent over 3 years working with the Department of the Interior providing historic, pre-ANILCA, information on the year-round use of Off-Road Vehicles (ORV) to our native allotments in the wilderness areas. In the memorandum the Director clearly states, “During discussion with the Department of Interior in 2019, Kaktovik residents provided evidence of ORV’s being traditionally employed for subsistence purposes prior to 1980, and such uses are authorized under existing statute, Service regulation, and policy, notwithstanding the lack of a formal study or determination.” It is truly a travesty for our people, many of whom have passed on since the passage of ANILCA, to have been denied year-round access to their native allotments. It has taken us 30 years for anyone in the Department to pay attention to this serious oversight and neglect by FWS because outside pressure from outside environmental groups, outdoor clothing companies, and backcountry tourism has maintained this view of a pristine wilderness. Our subsistence cabins have been broken into and used as shelter by the same groups who have access through the backcountry by rafting during the summer months and yet we could not access our cabins to protect them because we were not allowed to by the FWS.

Section 1110(b) of ANILCA states “Notwithstanding any other provisions of this Act or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.” Yet in February 2020 our school burned to the ground, as two in-holders within the Refuge KIC and the City of Kaktovik, applied for Section 1110(b) access using the Standard Form 299, to move temporary school modules across the Coastal Plain prior to the end of the winter season, so that we could have a temporary school in place for our children to resume their education. After several attempts to engage and receive authority, that is provided to us, we were forced to file for a Supplemental Use Permit (SUP) under the Comprehensive Conservation Plan (CCP) for sea ice travel to move the modules to Kaktovik prior to the end of the sea ice season. While we were able to ultimately move all the modules to the community, the operation had to take on additional safety measures and increased risk in the event spring storms potentially causing loss of sea ice. To date, we still have not received a response from FWS on our original SF 299 application. Due to the tragedy from the loss of our school we have decided as a community that we need to have a permitted overland winter access route for emergency purposes. Such a route can also significantly

lower the cost of goods and consumables to Kaktovik. Similar Community Winter Access Trails in the National Petroleum Reserve – Alaska and in the Gates of the Arctic National Park have demonstrated these savings. KIC will be resubmitting a new SF 299 to the Refuge for permanent winter access so that the Kaktovikmiut can reap the benefits of these costs savings as well.

Likewise, in 2009 the FWS decided to begin issuing permits for polar bear tourism based in Kaktovik. This was done without consideration to Section 1307 of ANILCA which specifically states that the Secretary “shall give preference” to Alaska Native corporations and to local residents. This was not done by the FWS, they did not work with the Kaktovikmiut to ensure that there were meaningful benefits to our community through tourism. Following the advent of polar bear viewing in our community we have mostly experienced negative impacts. We understand that polar bears are an iconic animal that represents the impacts of the changing climate but to us they are a nuisance and a danger to our residents. Several of the permit holders run day trips to our community thereby leaving any opportunity for our locally-owned businesses to benefit from the tourist economy this generates – instead, the economy resides with the air carriers and tour companies based well outside our community. In many public meetings with Refuge management, we have expressed our concerns over polar bear viewing and the necessity of addressing Section 1307 to work with KIC and our residents to ensure we have a meaningful opportunity to compete for existing visitor service. We would also like you to please review Secretarial Order 3392 dated January 15, 2021 on polar bear tourism (attached). Again, we have worked hard with the Department to address our long-standing concerns with respect to the way the FWS implemented tourism in our community. One of the positive benefits of COVID-19 is that no permits were issued by FWS for the 2020 viewing season – this was a huge relief to us, our community, and the polar bears. Secretarial Order 3392 requires the FWS Director to “complete a Polar Bear Commercialization Study to assess the impacts of these activities on the community of Kaktovik...” within six months of the date of the SO. In our most recent discussions with the Refuge manager, it appears that the Refuge is treating polar bear tourism as ‘business as usual’. As far as we know, there has been no attempt to initiate a new Polar Bear Commercialization Study as directed but instead it was explained that they would continue to work through and complete their current analysis which many in our community has ardently objected to. We demand that the intent of SO 3392 be implemented as written, this is our document and the only acknowledgement and representation that Section 1307 of ANILCA was not implemented in the manner that was intended. This is the only way that we can hold the Refuge manager and the FWS Director accountable to their lack of empathy to our community and to our need for tourism dollars to stay within local hands. This should not have been a hard win for us, and we will not give up on this because ANILCA is clear and it is the law and cannot be ignored. We have been treated paternalistically by the FWS since 1980 when ANILCA was passed but we will continue to fight for the rights it provided us.

Both memos direct the FWS to do what it is required to do under the law, under ANILCA, nothing more – nothing less.

The North Slope of Alaska is comprised of 8 communities, we are related by family and cultural ties across our region. Six of our eight communities are in federal enclaves, whether in Conservation Units like Kaktovik and Anaktuvuk Pass, or in the National Petroleum Reserve-Alaska,

our community locations predate federal actions to surround us and create these 'islands' with federal lands. This is another case of the federal government taking our lands and then trying to govern us. We have a different experiment in Alaska called ANCSA however because of our situation on the North Slope the federal government continuously puts up barriers in the name of 'environmental protections' yet the federal government has been one of the biggest polluters in our region. In our community of Kaktovik the U.S. Navy and Airforce bulldozed our village and buried our houses in the 1940's for strategic purposes. Another forced relocation occurred in the 1950's. When the general public thinks of ANWR they think of a pristine wilderness however parts of this area were desecrated by the military long-before the environmental movement began. Our community has never received a public apology or any sort of restitution from the military for its actions. This disturbs us and we can't help but see the irony in the notion of the environmental movement to turn our region into a monument that would further restrict our movements and activities over our own lands.

This is wrong, do not turn back the clock on us, we are the people of the Coastal Plain and we deserve to be heard and we are imploring you as a fellow Native American to assist us in our own view of self-determination. We believe it is time for consultation on the many decisions that are being made/forced upon us without our input. As we have demonstrated in this letter, we have come a long way to realize our dreams for Kaktovik on several levels and we do not wish to become wards of the federal government. When there is talk of addressing racial inequality in underserved communities that implies 'empowerment' of those communities and their residents. We would like to believe that we can work with your department, but we are wary based on what we have seen come out to date. We have not seen one action that would benefit us as an indigenous Iñupiat community only those that take something away.

Again, congratulations on your confirmation Ms. Haaland as Secretary of the Interior. We hope that we can meet and Native Americans that have the common goal of providing for our people. We would like to invite you to our community to see for yourself our area. Thank you for your time.

Sincerely,



Edward Rexford, Sr  
President  
Native Village of Kaktovik



Matthew Rexford  
President  
Kaktovik Iñupiat Corporation

Cc: Congressman Don Young  
Senator Dan Sullivan  
Senator Lisa Murkowski  
Shannon Estenoz - Principal Deputy Assistant Secretary – Fish, Wildlife and Parks

Martha Williams, Principal Deputy Director, Exercising the Delegated Authority of the  
Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service  
Greg Siekaniec, Director, Alaska Region, Fish and Wildlife Service  
Laura Daniel-Davis, Principal Deputy Assistant Secretary – Land and Mineral  
Management  
Nada Culver – Deputy Director of Policy and Programs, Exercising delegated  
authority of the BLM director  
Chad Padgett, Alaska State Director – Bureau of Land Management

#### ATTACHMENTS

074605 Rexford KIC Extension signed letter, 04.09.2021  
Traditional Access in the Arctic National Wildlife Refuge, 12.23.2020  
Alaska Regional Solicitor Memorandum, 12.21.2020  
Secretarial Order 3392, 01.15.2021



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Alaska Region  
4230 University Drive, Suite 300  
Anchorage, Alaska 99508-4626  
Tel: (907)271-4131 Fax: (907)271-4143

TO: Director, U.S. Fish and Wildlife Service

THROUGH: Deputy Solicitor, Division of Parks and Wildlife

FROM: Regional Solicitor, Alaska Region

## I. INTRODUCTION

This memorandum assesses whether the use of off-road vehicles (ORVs) by local rural residents engaged in subsistence uses within the Arctic National Wildlife Refuge (Arctic Refuge) is authorized under current law. In light of the statutory and regulatory framework, agency practice, and constitutional concerns, this memorandum concludes that the U.S. Fish and Wildlife Service (“Service”) currently lacks an adequate legal basis for prohibiting the use of ORVs in the Arctic Refuge by local rural residents engaged in subsistence activities.

## II. LEGAL FRAMEWORK

Several provisions of the Alaska National Interest Lands Conservation Act (ANILCA) protect the use of various means of surface transportation to access federal public lands within Alaska. Whether a means of surface transportation is protected by ANILCA often depends on the purpose of the access. For instance, Sections 1110(a) protects the use of snowmachines, motorboats, airplanes, and certain nonmotorized methods for travel to and from villages and homesites. Sections 1110(b) assures adequate and feasible access to inholdings. Section 1111 facilitates temporary access by the State of Alaska and private landowners for certain purposes.

Most relevant here are the access protections afforded to local rural residents engaged in subsistence uses. Section 811(a) of ANILCA provides that “rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.” 16 USC § 3121(a). Section 811(b) further requires federal land managers to permit “appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulations.” 16 USC § 3121(b).

The Service manages the federal public lands located within National Wildlife Refuges (NWRs or “Refuges”). To that end, the Service has promulgated regulations implementing various ANILCA requirements as they pertain to Refuge lands in Alaska. The subsistence access protections afforded by Section 811 of ANILCA are reinforced and clarified at 50 CFR § 36.12. Subsection (a) of this provision expressly permits the use of “snowmobiles, motorboats, dog teams and *other means of transportation*

*traditionally employed by local rural residents engaged in subsistence uses*” within the Refuges, “except at those times and in those areas restricted or closed by the Refuge Manager.” (Emphasis added.) Meanwhile, subsection (b) specifies the circumstances under which the Refuge Manager may restrict or close a route or area to these types of access, and subsection (c) requires the provision of certain types of public notice prior to implementing such restrictions or closures.

Consistent with the allowance for “reasonable regulation” in Section 811(b), and the criteria and notice requirements specified in 50 CFR § 36.12(b)-(c), the Service has promulgated several regulations that restrict or close specific Refuge lands to the use of off-road vehicles<sup>1</sup> (ORVs), even by local rural residents engaged in subsistence. *See* 50 CFR § 36.39(b)(closing Alaska Maritime NWR to all public access except by permit), (c)(2)(restricting the use of ORVs in Alaska Peninsula/Becharoff NWR Complex), (i)(3)(restricting the use of ORVs in Kenai NWR), and (j)(1)(restricting the use of ORVs in Kodiak NWR). There are no regulations specific to the Arctic NWR prohibiting the use of ORVs.

Arctic Refuge management has prohibited the unpermitted use of ORVs within the Arctic Refuge, even in the context of local rural residents engaged in subsistence uses. This has resulted from the misunderstanding that where the Service has not formally determined that ORVs have been “traditionally employed by local rural residents engaged in subsistence uses” in the Arctic Refuge, such use of ORVs does not qualify for authorization under Section 811 or 50 CFR § 36.12, and is instead prohibited by 43 CFR § 36.11(g)(1). The latter provision, part of the Department of the Interior’s regulations implementing Section 1110(a) of ANILCA, states that “the use of [ORVs] in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the appropriate Federal agency... or pursuant to a valid permit.” Per 43 CFR § 36.11(b), this provision does not apply to the use of surface transportation used by local rural residents engaged in subsistence activities.

### III. DISCUSSION

Whether the use of ORVs within the Arctic Refuge by local rural residents engaged in subsistence uses is authorized by Section 811 and 36 CFR § 36.12 or prohibited by 43 CFR § 36.11(g)(1) hinges on whether ORVs are considered to have been traditionally employed in the Arctic Refuge for such purposes. To date, neither the Department nor the Service have answered the latter question in the affirmative or negative. Rather, the Service has merely acknowledged that a formal determination has not yet been made. The Service’s Revised Comprehensive Conservation Plan for the Arctic Refuge, published in 2015, states, “Off-road vehicles as defined in 50 CFR 36.2 have not been determined to be a traditional means of subsistence access for Arctic Refuge.” This language does not expressly prohibit the use of ORVs in the Arctic Refuge by local rural residents engaged in subsistence uses, nor does it reflect a determination that ORVs have not been traditionally employed for such purposes. However, it has reportedly been cited as a basis for prohibiting (or requiring a permit for) the use of ORVs in the Arctic Refuge, even by local rural residents engaged in subsistence uses, based on the inference that since no traditional use determination has been made, such use is not protected by Section 811 and 50 CFR § 36.12, and is thus prohibited by 43 CFR § 36.11(g)(1). Prohibiting local rural residents engaged in subsistence from using

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<sup>1</sup> The term “Off-road vehicles” is defined by 50 CFR § 36.2 to mean “any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmobiles as defined in this section. It includes, but is not limited to four-wheel drive or low-pressure-tire vehicles, motorcycles and related two-, three-, or four-wheel vehicles, amphibious machines, air-thrust boats, recreation vehicle campers, and any other means of transportation deriving motive power from any source other than muscle or wind.” The term ORVs thus encompasses the all-terrain vehicles (ATVs) and four-wheelers commonly used by Alaska’s rural residents while engaged in subsistence uses.

ORVs within ANWR based on the absence of a traditional use determination raises several legal concerns.

a. Traditional Use Determinations

The ANILCA and the implementing regulations do not define “traditionally employed”, reference traditional use determinations, or explain how particular means of surface transportation may be allowed or prohibited based on such determinations. But the Service did explain the meaning the phrase “traditionally employed” in the Preamble to its 1981 Final Rule providing management regulations for Alaska NWRs. In the portion of the Section-by-Section Analysis addressing 50 CFR § 36.12, the Service states:

It should be noted that the types of access vehicles covered by § 36.12 include “other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.” ...The limitations of the quoted phrase, if any, will be addressed as appropriate in future rulemaking efforts. (46 FR 31824.)

In other words, the Service announced that it does not construe the phrase “traditionally employed” as used in Section 811 or 50 CFR § 36.12 as a basis for limiting the types of surface transportation that local rural residents can utilize when engaged in subsistence uses. Meanwhile, in the Analysis of Comments section concerning Section 36.12, the Service states:

Another organization recommended that the Fish and Wildlife Service prohibit motorized surface transportation other than snowmachines and motorboats (e.g., ATV’s) except by permit upon a demonstration of “traditional use” by the local rural resident. The Service has decided against this recommendation for this rulemaking exercise since (1) the Service wants to avoid another permit requirement, if possible, (2) the restrictions, closure, and other regulatory provisions of § 36.12 should adequately protect refuge values, at least for this interim period, and (3) the Service would not adopt such a new proposal without additional notice and comment. (46 FR 31820.)

This text demonstrates that the Service specifically considered but declined to adopt a proposal to prohibit the use of ATVs (a form of ORV) within Alaska NWRs except by permit, and supports the notion that the use of ORVs (including ATVs) for subsistence uses is authorized under Section 811 and 50 CFR § 36.12 unless the Service determines that they do not qualify as “traditional” means (not the other way around). This text also strongly implies that it is not incumbent upon local rural residents to demonstrate that a particular means of access qualifies as a “traditional use.” It follows that under the current regulations, the Service bears the burden of demonstrating that a particular means of access is not a traditional use such that it is not protected under Section 811 and 50 CFR § 36.12.

The interpretations announced in the Preamble to the 1981 Final Rules have been reflected in decades of agency practice in the other Alaska NWRs, where local rural residents engaged in subsistence uses are allowed to use ORVs, with or without a positive traditional use determination, as long as such use is not prohibited by the Refuge-specific regulations at 50 CFR § 36.39. The Arctic Refuge is unique among Alaska NWRs in purporting to require a positive traditional use determination as a pre-requisite to the lawful use of specific forms of surface transportation by local rural residents engaged in subsistence uses.<sup>2</sup>

In light of Service’s stated position that the “traditionally employed” language of 50 CFR § 36.12 will not be used to limit permissible means of access for local rural residents engaged in subsistence uses, along

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<sup>2</sup> Based on information provided to the Office of the Solicitor, Alaska Region via email correspondence dated November 24, 2020.

with the Service's prevailing practice in all of the other Alaska NWRs, the Arctic Refuge's asserted prohibition likely constitutes an unexplained and unlawful departure from the Service's existing interpretations and policies. See Encino Motocars, LLC v. Navarro, -- U.S. --, 136 S.Ct. 2117 (2016).

b. Notice

A related concern is whether the Service has provided adequate notice of the asserted prohibition consistent with the requirements of 50 CFR § 36.12(c). Again, there are no regulatory provisions that expressly address the use of ORVs within the Arctic Refuge by local rural residents engaged in subsistence uses. Nor does the Revised CCP expressly notify the public that such use of ORVs is prohibited. While certain language in the Revised CCP may create an inference that such use might not be authorized by Section 811 and 50 CFR § 36.12, it does not compel the conclusion that such use is prohibited, and thus fails to provide any notice of a proposed or existing prohibition, much less each type of specific notice required under 50 CFR § 36.12(c). The asserted prohibition thus runs afoul of the Service's own regulations implementing Section 811.

c. Due Process

It is also doubtful that the asserted prohibition could be successfully enforced in criminal court. The Due Process Clause of the Fifth Amendment requires that a criminal law provide the kind of notice that will enable ordinary people to understand what the law prohibits. City of Chicago v. Morales, 527 U.S. 41, 56 (1999) (citing Kolender v. Lawson, 461 U.S. 352, 357 (1983)). As the Supreme Court stated in United States v. Williams, "A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." 553 U.S. 285, 304 (2008). Here, there are no statutory or regulatory provisions that plainly prohibit the use of ORVs in the Arctic Refuge by local rural residents engaged in subsistence uses. The Service has not determined that such use is not traditional, so as to clearly except such use from the protections of Section 811 and 50 CFR § 36.12 and subject it to the general prohibition at 43 CFR § 36.11(g)(11). At most, the Revised CCP implies that the use of ORVs in the Arctic Refuge, even for subsistence uses, *might* be prohibited, but this implication does not constitute fair notice what is actually prohibited. The fact that other Alaska NWRs allow the use of ORVs by local rural residents engaged in subsistence uses despite the lack of positive "traditional use" determinations provides potential evidence of selective and arbitrary enforcement. These Due Process concerns argue strongly against prosecuting local rural residents for violating 43 CFR § 36.11(g)(1) for using ORVs in the Arctic Refuge while engaged in subsistence uses.

#### IV. CONCLUSION

For the reasons explained above, the Service currently lacks an adequate legal basis for prohibiting the use of ORVs in the Arctic Refuge by local rural residents engaged in subsistence activities. Because the Service has not determined that ORVs have not been traditionally used in the Arctic Refuge by local residents engaged in subsistence uses, such use of ORVs remains authorized by Section 811 of ANILCA and FWS's implementing regulations at 50 CFR § 36.12(a).

Prior to the Service issuing a negative "traditional use" determination in the Arctic Refuge or elsewhere, this office recommends that the Department first complete a rulemaking that defines key terms and establishes criteria for rendering such determinations. Doing so would conform with commitments made in the Preamble to the 1981 rule and increase the likelihood that subsequent traditional use determinations would survive judicial review under the APA's arbitrary and capricious standard.

To the extent that the use of ORVs by local residents engaged in subsistence within the Arctic Refuge causes or is likely to cause any of the conditions specified at 50 CFR § 36.12(b), the Refuge Manager may take action to restrict or close a route or area of the Refuge to ORVs.<sup>3</sup> The appropriate vehicle to establish such restrictions or closures is a rulemaking process that includes the types of public notice required by 50 CFR § 36.12(d).

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<sup>3</sup> These conditions are “an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or other purposes and values for which the refuge was established.” 50 CFR § 36.12(b).



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

In Reply Refer To:  
FWS/BLM/074605

Mr. Mathew Rexford, President  
Kaktovik Iñupiat Corporation  
P.O. Box 73  
Kaktovik, Alaska 99747

Dear Mr. Rexford:

Thank you for your letter(s) of March 1, 2020, to the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS) requesting consideration of Kaktovik Iñupiat Corporation's applications and Plan of Operations for a seismic permit and associated incidental harassment authorization (IHA) for 2022 instead of 2021. This letter also responds to your subsequent submittal of an amended IHA application to FWS.

In consultation with the Department of the Interior's Office of the Solicitor, BLM and FWS are reviewing your requests, including, in particular, your recent request for an IHA and an evaluation of the environmental and other analysis that may be required under the National Environmental Policy Act (NEPA) and other laws, as well as the President's direction contained in Executive Order 13990.

We will be in touch regarding next steps with regard to your request once we have completed that review.

Sincerely,

Martha Williams  
Principal Deputy Director  
Exercising the Delegated Authority of the  
Director, U.S. Fish and Wildlife Service

Nada Wolff Culver  
Senior Advisor to the Secretary  
Exercising the Delegated Authority of the  
Director, Bureau of Land Management



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



IN REPLY REFER TO:  
FWS/D/073990

## Memorandum

To: Regional Director, U.S. Fish and Wildlife Service, Region 11

From: Director, U.S. Fish and Wildlife Service

Subject: Traditional Access in the Arctic National Wildlife Refuge

This memorandum directs the U.S. Fish and Wildlife Service (Service) to allow appropriate use of off-road vehicles (ORVs) traditionally employed by local rural residents engaged in subsistence uses within the Arctic National Wildlife Refuge (Arctic Refuge). This type of use is authorized under current law unless closed pursuant to the criteria and procedures in Service regulations. As outlined below, the Region will engage with local rural residents and other resource partners to complete a Traditional Access Study within one year of the issuance of this memo; study will be completed by December 23, 2021.

In conjunction with this memorandum, the attached memorandum from the Deputy Solicitor dated December 21, 2020, shall be made available to the following community leaders, management partners, and key stakeholders, as well as made available pursuant to any relevant internal or external inquiries:

- Community Leadership in:
  - Arctic Village, Chalkyitsik, Fort Yukon, Kaktovik, Venetie, and Wiseman
- Management Partners and Key Stakeholders:
  - Native Village of Kaktovik, Kaktovik Iñupiat Corporation, Arctic Slope Regional Corporation, State of Alaska ANILCA Implementation Program

During discussion with the Department of the Interior in 2019, Kaktovik residents provided evidence of ORVs being traditionally employed for subsistence purposes prior to 1980, and such uses are authorized under existing statute, Service regulation, and policy, notwithstanding the lack of a formal study or determination.

Documenting subsistence and other traditional activities generally occurring in the area, along with methods and means generally employed to access or engage in those activities, is a longstanding Refuge commitment and key to ensuring the continuation of these and other protected public uses. A baseline understanding of what was generally occurring is foundational to management.

The Refuge's Revised Comprehensive Conservation Plan commits to initiating a traditional access study by 2021. The Traditional Access Study must be completed by December 23, 2021. During this process and throughout implementation, the following actions should be taken:

- communicate, discuss, and work closely with the affected communities, Subsistence Regional Advisory Councils, regional Alaska Native partners, and the State of Alaska;
- address or elevate any management issues to the Director's office; and
- provide a consistent and accessible resource for administering applications for temporary and more permanent access requests and requirements (e.g., SF-299 intake).

By January 11, 2021, the Regional Director will provide an outline to the Deputy Director and Director of the milestones, including updates on and plans for outreach, along with a timeline to complete the Traditional Access Study. Any expectations, questions, or additional information regarding the study, this memorandum, or the Deputy Solicitor's Memorandum may also be communicated at that time.

Attachment



THE SECRETARY OF THE INTERIOR  
WASHINGTON

**ORDER NO. 3392**

**Subject:** Local Participation in Commercial Polar Bear Viewing Services in the Arctic National Wildlife Refuge and Other Commercial Visitor Services in Alaska Conservation System Units

**Sec. 1 Purpose.** This Order is intended to address the provision of commercial polar bear viewing services in the Arctic National Wildlife Refuge (ANWR) and the full implementation of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) Sections 1307 and 1308 (16 U.S.C. 3197, 3198).

**Sec. 2 Authorities.** This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, as well as other relevant statutes.

**Sec. 3 Background.** The Department of the Interior (Department of DOI) regularly authorizes the provision of visitor services (e.g., guided tours, or the operation of public use facilities) in conservation system units (CSUs) in Alaska—the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System. Alaska Native corporations and local residents may compete in public solicitations by the Department to provide such services. However, if unchecked, competition from third parties—providers from outside the local community or even from outside Alaska—can effectively frustrate the efforts of Alaska Native corporations and other local residents to compete for and provide these visitor services. This is unsurprising. Sophisticated third-party organizations often benefit from economies of scale, training opportunities available in urban areas, and other advantages not available to small operators from isolated communities in Alaska.

Kaktovik is an example of a community in Alaska where the Alaska Native corporation, the Tribe, and local residents have shared their concerns that they are unable to effectively compete for DOI permits to provide visitor services in adjacent conservation system units. With respect to polar bear viewing in the vicinity of Kaktovik, residents have shared various concerns, including concerns that guides fail to take into account the effects of their operations on the community and regularly trespass on lands owned by the local Native-owned village corporation, Kaktovik Iñupiat Corporation. A similar concern has been raised with respect to guided backpacking trips within Gates of the Arctic National Park, where residents have expressed that such activities authorized by the National Park Service (NPS) historically provide little or no benefit to the Alaska Native and other local residents of Anaktuvuk Pass and that guides regularly trespass on lands owned by the local Native-owned village corporation, Nunamiut Corporation. The residents of Kaktovik, Anaktuvuk Pass, and other remote villages affected by CSUs often express the belief that they have been denied a benefit promised to them by Congress in the ANILCA. Specifically, section 1307 of ANILCA provides for a preference to the “most directly affected” Alaska Native corporation(s), and/or to local residents, when awarding permits to conduct visitor services in Alaska’s national parks, monuments, and wildlife refuges.

In passing section 1307 of ANILCA, Congress recognized that the creation and expansion of national parks, monuments, and wildlife refuges in Alaska would have an impact, including a socio-economic impact, on Alaska Native and local residents. Alaska Native corporations and local residents were

therefore provided with a preference under ANILCA so that they would benefit from opportunities to provide visitor services within the CSUs. Congress did not equivocate in section 1307, which establishes clearly that the Secretary “shall give preference” to Alaska Native corporations and to local residents. We believe it is the view of many Alaskans, including the residents of Kaktovik and Anaktuvuk Pass, that Congress’ promise in Section 1307 has not been fulfilled in the 40 years since its passage. It is the purpose of this Order to ensure the fulfillment of Congress’ objective in section 1307 of ANILCA—that the most directly affected Alaska Native corporation(s) and local residents receive a meaningful preference in the selection of visitor service providers, other than guided sport fishing and hunting, in order to realize those mutual benefits within neighboring CSUs.

**Sec. 4 Policy.** The Department should work to fill the gap between the policy purpose of Section 1307 of ANILCA and the current lack of Alaska Native and/or local involvement in visitor services in some of Alaska’s CSUs. To accomplish this the NPS and the U.S. Fish and Wildlife Service (FWS) should:

- a. examine current practices and, if appropriate, establish and implement new policies that reflect ANILCA Section 1307’s purpose and objectives;
- b. work with Alaska Native corporations and local residents to ensure these entities have a meaningful opportunity to compete for existing visitor services opportunities offered in CSUs;
- c. reconsider the scope of revenue-producing visitor services to be offered in CSUs; and
- d. evaluate and, where necessary amend, commercial visitor service operator selection criteria to accomplish the purposes of ANILCA section 1307.

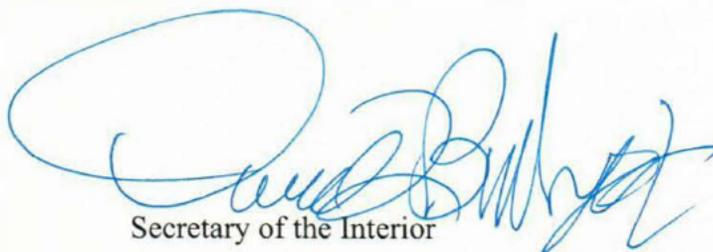
**Sec. 5 Implementation.**

- a. Prior to authorizing any future commercial polar bear viewing-related activities in the Arctic National Wildlife Refuge, and within six months of the date of this Order, the FWS Director shall complete a Polar Bear Commercialization Study to assess the impacts of these activities on the community of Kaktovik, on other affected communities, and on polar bears. The Polar Bear Commercialization Study (Study) shall consider commercial polar bear tourism's impacts on: existing infrastructure and the availability of air transportation to village residents; Iñupiat cultural practices; polar bear habitat and behavior, including habituation to human activities and its effects on the safety of the community in Kaktovik; economic opportunities for the village of Kaktovik and other affected communities; and such other impacts as the FWS Director deems appropriate. In conducting this Study and developing the parameters of a potential permitting program for commercial polar-bear viewing activities, the FWS Director shall solicit and consider information and perspectives from affected tribes, Alaska Native corporations, local residents, and local government officials, and shall ensure that all new and renewed polar bear tourism permits will be issued in accordance with the ANILCA preference for contracting with the local residents and affected Alaska Native corporations.

- b. The Assistant Secretary for Fish and Wildlife and Parks shall, within 60 days of the date of this Order, submit a report to the Deputy Secretary, including:
1. A description of all current visitor service contracts awarded to Alaska Native corporations and local residents through the ANILCA section 1307 preference and all current Federal employee positions for which the ANILCA section 1308 local resident hiring preference was successfully implemented; and
  2. A plan for the NPS and FWS to work with affected Alaska Native corporations and local residents to ensure these entities have a meaningful opportunity to compete for the provision of visitor services in CSUs and to develop any changes to current policies or regulations necessary to increase the number of entities benefiting from the ANILCA Section 1307 preference and the number of local residents benefiting from the ANILCA section 1308 (16 U.S.C. 3198) local hire preference for positions within CSUs.

**Sec. 6 Effect of Order.** This Order is intended to improve the internal management of the Department. This Order and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provision of this Order and any Federal laws or regulations, the laws or regulations will control.

**Sec. 7 Expiration Date.** This Order is effective immediately. It will remain in effect until its provisions are implemented and completed, or until it is amended, superseded, or revoked.



Secretary of the Interior

Date: January 15, 2021

**From:** [Austin Ahmasuk](#)  
**To:** [Klein, Elizabeth A](#)  
**Cc:** [Melanie Bahnke](#); [Mary David](#); [Brandon Ahmasuk](#); [jhooper@avcp.org](mailto:jhooper@avcp.org); [Joy Anderson](#); [Vivian Korthuis](#); [Lauren Divine](#); [Marissa J. Mercurieff](#); [Mellisa Johnson](#)  
**Subject:** [EXTERNAL] Implementation of the Northern Bering Sea Climate Resilience Area  
**Date:** Thursday, April 29, 2021 12:39:22 PM  
**Attachments:** [2021 04 02 NMFS Comment on Climate Resilience - Final \(1\) \(1\).pdf](#)  
[2021 04 15 Secretary Deb Haaland - Oil and Gas - final \(2\).pdf](#)  
[2021 04 28 Letter to the President on the NBSCRA - Final.pdf](#)  
[NBSCRA One page summary final.pdf](#)

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Dear Elizabeth Klein,

Good morning from Nome, Alaska.

Attached please find a letter (and attachments) from a group of organizations concerned about the Bering Sea sent to President Biden representing over 70 tribes from Western Alaska on implementation of [Executive Order 13754](#) creating the Northern Bering Sea Climate Resilience Area.

The Northern Bering Sea is incredibly rich both ecologically and culturally. It is home to world class fisheries including salmon and halibut and one of, if not the, largest marine mammal migration in the world. The Indigenous Peoples living in the Northern Bering Sea Region have an innate and ancestral connection to the lands and waters and have been stewards of the area for millennia. However, the Northern Bering Sea is facing multiple threats. In addition to climate change, increased shipping, destructive ocean bottom trawling, mining, oil and gas and unusual mortality events are threatening our way of life.

We are grateful that President Biden reinstated the Executive Order because it provides a pathway for our Tribes to exercise self-determination and elevates our rightful role in decision-making with regard to management of activities in the Northern Bering Sea. We are excited to finally have a role in decision-making affecting our lives and livelihoods.

We are ready to discuss implementation including the creation of the Federal Task Force and the Tribal Advisory Council and are ready to submit recommendations as early as May about who we recommend for the Tribal Advisory Council.

We are convinced the Executive Order provides the best model for Tribal engagement in the future both in Alaska and Nationally and look forward to working with you.

We would like to request a meeting with you regarding the implementation of the Executive Order. Please let us know when you might be available for a virtual meeting.

Sincerely,

Austin Ahmasuk  
Marine Advocate  
Kawerak, Inc.  
(907) 434-0962



April 2, 2021

Mr. Benjamin Friedman  
Deputy Under Secretary for Operations  
National Oceanic and Atmospheric Administration  
Submitted via email at: [OceanResources.Climate@noaa.gov](mailto:OceanResources.Climate@noaa.gov)

Re: Climate Recommendations for Fisheries and Protected Resources

Dear Mr. Friedman:

Please accept these comments on behalf of the Aleut Community of St. Paul Island Tribal Government, Association of Village Council Presidents, Bering Sea Elders Group, Kawerak, Inc., Ocean Conservancy, and The Pew Charitable Trusts U.S. Arctic Program in response to the request for information regarding Section 216(c) of Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*. We are concerned about the global climate crisis and applaud NMFS for reaching out to gather the necessary input in addressing these problems.

The Aleut Community of St. Paul Island is the federally designated name used to identify the community of Unangan, also known as Aleuts, residing on St. Paul Island in the Bering Sea. The Association of Village Council Presidents (AVCP) is the regional non-profit Tribal consortium for 56 federally recognized Tribes in the Yukon-Kuskokwim Delta. The Bering Sea Elders Group (BSEG) is an association of Elder Representatives appointed by 38 Tribes in the Yukon-Kuskokwim and Bering Strait regions. Kawerak, Incorporated (Kawerak) is the Alaska Native non-profit Tribal consortium for the 20 federally recognized Tribes of the Bering Strait region. Ocean Conservancy is a national non-profit organization working to protect the ocean from today's greatest global challenges. The Pew Charitable Trusts is an independent non-profit organization that works to improve public policy, inform the public, and invigorate civic life.

These comments focus on climate-driven disruptions in the Bering Sea that have placed the ecosystem in peril, with devastating impacts on both fisheries and protected resources. The Bering Sea is an exceptional ecosystem of tremendous ecological, economic, and cultural importance. It supports one of the largest fisheries in the world and provides critical habitat for marine and terrestrial plants and wildlife. The Bering Sea region is home to numerous communities of Central Yup'ik, Cup'ik, St. Lawrence Island Yupik, Unangan, and Inupiaq people and Tribes that reside between the southern Chukchi Sea and the Aleutian and Pribilof Islands. Indigenous people of the region have an innate connection to the lands and waters that they have been stewards to for millennia and whom also live a low-carbon lifestyle. The people of the region are especially vulnerable to the impacts of climate change, of which they did little to create. Executive Order 13754—reinstated under the same Executive Order to which these comments respond—recognized the extreme ecological and cultural importance of the northern Bering Sea and made it the policy of the United States to “enhance the resilience of the northern Bering Sea region by conserving the region’s ecosystem, including those natural resources that provide important cultural and subsistence value and services to the people of the region.”

The call for information specifically seeks recommendations on how to make fisheries and protected resources more resilient to climate change. Climate-ready fishery management comes in many forms, and it is critical that the range of management actions to respond to climate change are inclusive, equitable, and include precautionary measures that do not assume that industrial-scale fishing is appropriate everywhere.

The following paragraphs will detail the many overlapping threats facing the Bering Sea ecosystem, and propose a path forward. Climate-ready fishery management in the Bering Sea includes looking at fisheries management in the context of this ecosystem-wide crisis, which extends beyond fishery-specific impacts. Climate-ready fishery management must center the importance of Bering Sea Indigenous Peoples’ ways of life in NOAA’s approach to research, management, and policy. It must also apply an equitable approach to fishery management. In the North Pacific, the National Marine Fisheries Service (NMFS) and the North Pacific Fisheries Management Council (NPFMC) must make meaningful efforts to collaborate and partner with Indigenous people of the northern Bering Sea, and there must be dedicated Tribal voting seats on the NPFMC. An ecosystem-based and precautionary approach should be applied, and there should be critical examination of expansion of industrial commercial fisheries into the northern Bering Sea. Any such expansion would have irreparable impacts on an ecosystem in flux and collapse and impacts on Indigenous food security, traditional cultural activities, and spiritual practices. NOAA should engage in partnerships and collaborative research to create a shared understanding of the Bering Sea. Meaningful

and ongoing Tribal involvement in research, at all levels and in all aspects, will better contribute to fuller and more actionable understandings of the changes we continue to see and experience first-hand. Traditional Knowledge is highly valuable in understanding climate change and must play a central role in management decisions.

***The Importance of the Bering Sea for the Continuance and Sustainability of Indigenous Ways of Life Must be Central to NOAA's Approach to Research, Management, and Policy***

Indigenous Peoples have been sustained for millennia by the incredibly productive Bering Sea region, including the countless species of seabirds, marine mammals, fish and invertebrates. Our oceans have critical cultural and subsistence value for coastal communities, and also provide jobs, food, and small scale exports that boost our national economy, making them some of the most valuable ecosystems in the world. However, the Bering Sea, as a distinct and dynamic region containing some of the world's largest and most productive fisheries, is now being threatened by climate change and human-induced impacts.<sup>1</sup>

Due to the amplified impacts of climate change in high latitudes, the Bering Sea is warming at a significantly faster rate than oceans in temperate zones. Indicator species such as zooplankton, seabirds, and marine mammals are showing signs of stress and population declines under warmer, more acidic, and increasingly toxic conditions as a result of harmful algal blooms and increasingly ice-free ocean conditions.

Climate change is an existential threat to the Bering Sea ecosystem. These unprecedented environmental changes are coupled and compounded by human-driven stressors, including increased marine traffic, fishing activities, mining exploration and extraction, marine debris, and seabird and marine mammal unusual mortality events

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<sup>1</sup> RB Smith, *Oily Substance Found Near Savoonga Remains A Mystery*, THE NOME NUGGET (July 24, 2020), <http://www.nomenugget.net/news/oily-substance-found-near-savoonga-remains-mystery>; Catherine Rubano, *Bering Strait Region Sees More Debris from Russian Side, But Source Still Unknown*, KNOM (Oct. 17, 2020), <https://www.knom.org/wp/blog/2020/10/17/bering-strait-region-sees-more-debris-from-russian-side-but-source-still-unknown>; Atle Staalesen, *LNG tanker loses engine power on Northern Sea Route*, THE BARENTS OBSERVER (Jan. 19, 2021), <https://thebarentsobserver.com/en/arctic-Ing/2021/01/Ing-tanker-loses-engine-power-northern-sea-route>.

that occurred in 2011<sup>2</sup> and 2019.<sup>3</sup> Alaska Native marine mammal subsistence hunters have witnessed startling changes to marine mammal health.<sup>4</sup> Salmon are dying due to heat stress not long after they enter river ecosystems, causing shock in communities across the region. These stressors exceed the capacity of current single-species management, and demands systematic management changes in favor of adaptable and dynamic Indigenous-led approaches to preserve long-term ecosystem health in the Bering Sea.<sup>5</sup> Further compounding this stress is the lack of inclusive efforts to achieve comprehensive and integrated monitoring, observation, research, and response in the Bering Sea region, which effectively excludes coastal community members and Tribes from current decision-making process.

These human-ecosystem interactions threaten the entire Bering Sea, but they are especially concerning in biologically diverse areas with uniquely high ecological value relative to the larger ecosystem. For example, the Pribilof Islands marine ecosystem is a biologically rich microcosm of the Bering Sea, and has often been referred to as a bellwether for change, offering abundant evidence of the environmental changes that have already occurred and are currently underway or expanding.

Collective climate stressors are accelerating the decline of the Bering Sea ecosystem. There is an urgent need to adopt precautionary management measures for those development stressors and to conserve biodiversity and subsistence opportunities. Resource managers must address these changes, and leaders must act to stop carbon pollution to prevent ecological collapse.

### ***Apply a Precautionary and Equitable Approach to Fishery Management in the Northern Bering Sea***

Commercial fishing, while economically beneficial, can disrupt the region's delicate food webs by removing large volumes of fish (targeted and prohibited species) and damaging fragile benthic habitat. An increase in marine traffic heightens the risk of major events like oil spills and whale strikes and introduces millions of gallons of

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<sup>2</sup> NOAA, Diseased Ice Seals and Unusual Mortality Events, <https://www.fisheries.noaa.gov/alaska/marine-life-distress/diseased-ice-seals#2011-2016-unusual-mortality-event>.

<sup>3</sup> NOAA, NOAA Fisheries Declares Unusual Mortality Event Due to Elevated Strandings of Ice Seals in the Arctic (Sept. 12, 2019), <https://www.fisheries.noaa.gov/feature-story/noaa-fisheries-declares-unusual-mortality-event-due-elevated-strandings-ice-seals>.

<sup>4</sup> Lex Treinen, *The mysterious case of the sinking seals*, KTUU (Dec. 30, 2019), <https://www.ktuu.com/content/news/The-mysterious-case-of-the-sinking-seals-566571471.html>.

<sup>5</sup> Raymond-Yakoubian and Daniel. 2019. An Indigenous approach to ocean planning and policy in the Bering Strait region of Alaska. *Marine Policy* 97 (2018) 101–108.

wastewater, chemicals, trash, and noise pollution.<sup>6</sup> Marine pollution poses significant threats to wildlife and overall ecosystem health, especially in the remote Arctic where enforcement is lacking. It is imperative that NMFS/NOAA use Traditional Knowledge to better understand the shifts in the carrying capacity of the Bering Sea that Indigenous people are witnessing.

Commercially important species like Pacific cod (*Gadus macrocephalus*) and pollock (*G. chalcogrammus*) have historically been confined to the southeastern reaches of the Bering Sea.<sup>3</sup> In recent years, however, these species have moved into the northern Bering Sea. One indication of this northward shift is in the collapse of the Pacific cod fishery in the Gulf of Alaska, which was closed in December 2019 in response to record low numbers. Since 2012, the center of the Bering Sea pollock population has moved northward at a rate of 18 miles per year. Researchers have observed a sharp decrease in the availability of prey for young walleye pollock in the southern Bering Sea during warmer years, which limits the survival of pollock during their first winter and decreases recruitment over consecutive years.<sup>7</sup>

Changes in the abundance, distribution, and energy content of forage fish may affect the survival and growth of apex predators like seabirds and marine mammals. Survival rates are generally highest when ample forage fish are available, while disease and starvation rates increase when prey availability is low. It is critical that resource managers consider the ways that human consumption of marine resources can exacerbate climate impacts and further disrupt the Bering Sea ecosystem.

NMFS and the NPFMC must make commitments to be inclusive of Indigenous people, Tribes, and Traditional Knowledge as part of their processes in real and substantial ways. NMFS and the NPFMC must make meaningful efforts to collaborate with Indigenous people of the northern Bering Sea, and there must be dedicated Tribal voting seats on the NPFMC. In order to protect subsistence ways of life, at risk, endangered or otherwise protected species, and the sustainability of the ecosystem as a whole - no expansion of industrial commercial fisheries in the northern Bering Sea should take place.

### ***Climate Change/Ocean Acidification***

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<sup>6</sup> Melissa Parks, Austin Ahmasuk, Barry Compagnoni, Andrew Norris, Roger Rufe, *Quantifying and mitigating three major vessel waste streams in the northern Bering Sea*, MARINE POLICY (Aug. 2019).

<sup>7</sup> Van Pelt, T.I., North Pacific Research Board, *The Bering Sea Project: Understanding ecosystem processes in the Bering Sea* (Ed., 2015).

As part of the fastest-warming region on Earth, the Bering Sea is in peril and its changes may have ripple effects around the world. Traditional Knowledge, together with national and international research, suggests that the region is undergoing an unprecedented environmental shift, with troubling consequences for the marine ecosystem.<sup>8</sup> Over the past five years, the winter atmospheric conditions that influence the region have been significantly different from the historical norm.<sup>9</sup> Sea surface temperatures in the northern Bering Sea have been as much as 5°C warmer than the historical average.<sup>10</sup> The lack of winter sea ice in most of the Bering Sea defies previous climate forecasts, which predicted that we would not see these conditions until 2050.<sup>11</sup> Meanwhile, observations and data indicate that the distributions, population sizes, and survival of key marine species are changing drastically, with increasing reports of massive die-offs of seabirds and marine mammals.<sup>12</sup>

Like most modern environmental challenges, these disruptions in the Bering Sea are driven by climate change. Left unchecked, our consumption of fossil fuels will have countless negative impacts not just to the Bering Sea ecosystem, but also to the entire country and world. Management agencies should contribute to climate change mitigation by implementing policies that reduce carbon emissions.

### ***Marine Traffic/Shipping***

While some decision-makers celebrate the fact that the loss of Arctic sea ice creates new “opportunities” for marine shipping and tourism, military exercises, resource extraction and more, there are significant concerns that these new activities will cause additional harm to the Bering Sea ecosystem.<sup>13</sup> A rise in vessel traffic increases the likelihood of major events like oil spills and whale strikes and entanglements<sup>14</sup> and also

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<sup>8</sup> NOAA, 2020 Arctic Report Card, <https://arctic.noaa.gov/Report-Card>.

<sup>9</sup> NOAA Fisheries, *Scientific teams set out to track unprecedented changes in the Eastern Bering Sea* (April 18, 2019).

<sup>10</sup> NOAA Alaska Fisheries Science Center, Alaska Marine Ecosystem Status Report: 2018 Eastern Bering Sea Executive Summary (2019), <https://access.afsc.noaa.gov/REFM/REEM/EcoWeb/index.php?ID=28>.

<sup>11</sup> Hal Bernton, *As Bering Sea ice melts, Alaskans, scientists, and Seattle’s fishing fleet witness changes on a massive scale*, SEATTLE TIMES (Sept. 15, 2019).

<sup>12</sup> Davis Hovey, *Years of data suggest ecosystem shifts in the Northern Bering Sea*, KNOM (Aug. 5, 2019).

<sup>13</sup> Davis Hovey, *NSEDC Concerned Crab Stock Could Crash, ADF&G Moving Forward with Winter Season*, KNOM (Feb. 11, 2020), <https://www.knom.org/wp/blog/2020/02/11/nsedc-concerned-crab-stock-could-crash-adfg-moving-forward-with-winter-season/>.

<sup>14</sup> Rosalind M. Rolland, Katherine M. Graham, Raphaela Stimmelmayer, Robert S. Suydam, John C. George, *Chronic stress from fishing gear entanglement is recorded in baleen from a bowhead whale (*Balaena mysticetus*)*, MARINE MAMMAL SCIENCE (2019).

raises the risk of pollution from the discharge of wastewater, chemicals, trash or debris.<sup>15</sup>

Another concern surrounding increased marine traffic is the impact of vessel-generated noise on marine mammals, which use sound to communicate. Marine mammals exposed to noise from marine traffic can suffer from increased stress levels, hearing loss, changes in behavior, injuries or death.<sup>16</sup> Constant noise could force marine mammals out of their usual or preferred habitats, potentially reducing their ability to find prey.

Although there are still gaps in our understanding of how increased marine traffic will affect the Bering Sea ecosystem, it is clear that these activities pose enough risk to warrant caution.

### ***The Need for Collaborative Research***

The Indigenous and Tribal signatories to this letter emphasize that Indigenous Peoples have lived in the Arctic for millennia. As stewards of our lands and waters we have developed inextricable connections that form the foundation of our own understandings of our environments, including marine, freshwater, terrestrial, atmospheric, and ice. Our knowledge has been passed down from generation to generation, and is continually updated, adapted, and reshaped as our individual and collective experiences and observations inform them. Our view of the 'ecosystem' is holistic and recognizes different systems, and the connections between them, such as the physical, biological, chemical, social, and cultural systems.

Alaska Native organizations, Tribes, and communities are extremely concerned about environmental and other changes happening in the Arctic and are eager to contribute to our collective understanding of them. Arctic research must incorporate Indigenous roles that those communities and experts can offer. Our desire is to work to create a collaborative, effective, and widely beneficial understanding of the Arctic and have meaningful involvement and leading roles in research to better understand the changes we continue to see first-hand.

The ability to do this is largely dependent on the relationships between federal agencies, like NMFS, and Tribes and Tribal organizations. We encourage NMFS to continue to work to build equitable relationships that can foster equitable, collaborative, and co-productive research endeavors. This can be done via the development of

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<sup>15</sup> Melissa Parks, Austin Ahmasuk, Barry Compagnoni, Andrew Norris, Roger Rufe, *Quantifying and mitigating three major vessel waste streams in the northern Bering Sea*, MARINE POLICY (Aug. 2019).

<sup>16</sup> Clear Seas, Underwater Noise and Marine Mammals, <https://clearseas.org/en/underwater-noise/>.

specific partnerships, via increased communication and engagement, and by ensuring that internal agency capacity is available for these efforts. Within the Alaska Region of NMFS, including at the research hub for the Arctic region—the Alaska Fisheries Science Center (AFSC)—we would like to see, in particular, more Tribal Liaisons and a dramatic increase in non-economic social science staff. These changes would improve NFMS’s ability to develop relationships and carry out collaborative and meaningful research, as well as benefit agency work at all levels by facilitating better connections with and understandings of Indigenous peoples, communities, concerns, and knowledges.

### ***Marine Debris/Plastics Pollution***

Despite its small population and remote location, Alaska’s coast is littered with thousands of tons of marine debris, the majority of which is fishing-related gear. Human-generated waste is deliberately or accidentally deposited in oceans and waterways, making its way to the Arctic from lower latitudes. Marine debris is generated by vessels of all types and sizes operating in and outside of the Arctic. Weather events and ocean currents may transport large volumes of debris from afar. Growing populations, increased maritime activity, and consumer preference for plastic-based single-use products have resulted in a rapid accumulations of marine debris, which threatens wildlife and ecosystem health in numerous ways.

Most marine debris contains plastic. Each year millions of tons of plastic leak into the ocean from coastal regions alone—equivalent to dumping the contents of one garbage truck into the ocean every minute.<sup>17</sup> Without significant action, there may be more plastic than fish in the world’s oceans, by weight, by 2050. According to the United Nations, marine plastics pollution costs an annual \$13 million per year in damage to marine ecosystems, including impacts to marine productivity, fisheries, and tourism. In addition to the direct economic costs, marine plastic pollution has adverse impacts that are more difficult to quantify, including effects on human health, food chains, and other essential economic and societal systems.

Globally, approximately 20% of marine debris is generated at sea.<sup>18</sup> Abandoned, lost, or discarded fishing gear, also known as derelict fishing gear, is one of the most pervasive and harmful types of marine debris, and is the most common type of marine debris

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<sup>17</sup> World Economic Forum, *The New Plastics Economy: Rethinking the Future of Plastics* (2016).

<sup>18</sup> Ocean Health Index, *Trash Pollution*, <http://www.oceanhealthindex.org/methodology/components/trash-pollution>.

found in the Bering Sea region.<sup>19</sup> Due to the high level of fishing activity in the region, fishing nets (trawl, seine, and gill nets), lines and ropes, and plastic bands are frequently adrift or washed ashore.<sup>20</sup> These materials can entangle animals and result in death through starvation and strangulation. Although once less common in the Bering Sea ecosystem, marine debris is increasing. We recommend that NOAA and NMFS prioritize addressing working with the Bering Sea region's Tribes and Indigenous organizations in the region in identifying the threats and potential policies needed to mitigate threats to Indigenous food security<sup>21</sup> from marine debris.

### ***Tribal Sovereignty and Building Meaningful Roles for Tribes in Management***

The United States must not turn its attention away from meaningful Tribal involvement in coastal and maritime management. Contemporary ecosystem management recognizes the importance of communities' participation in effective management; if sought collaboratively, this participation could address many concerns of national interest. If a program existed for communities—including Tribes—to collaborate with state and federal government in managing the nation's coastal areas and resources, more effective management would result.

The reinstated Northern Bering Sea Climate Resilience Area Executive Order seeks to create a Tribal role in the future of the northern Bering Sea. We wholeheartedly welcome this effort, are eager to be involved, and urge NMFS to ensure inclusion of Indigenous Peoples. Including Bering Sea communities and Tribes, as well as their Traditional Knowledge, in coastal and marine resource management will only strengthen federal processes.

### ***Critical Next Steps***

Coastal communities, Tribes, and ocean conservation organizations are in agreement that the Bering Sea is in peril, due in large part to the human-created stressors described in this letter. We are facing an ecological crisis that requires timely actions and changes in management strategies and practices, as well as precautionary measures to strengthen the resilience of the Bering Sea ecosystem. Importantly, this includes the incorporation of community observations, tribal perspectives, and

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<sup>19</sup> Alaska Marine Stewardship Foundation, Analysis of Trawl, Seine and Cargo Net Samples from Marine Debris Cleanups in Alaska (2014).

<sup>20</sup> Alaska Marine Stewardship Foundation, A Review of Marine Debris Surveys, Accumulations and Cleanup Projects in Alaska through 2014 (2014).

<sup>21</sup> Inuit Circumpolar Council, Alaska, Alaskan Inuit Food Security Conceptual Framework: How to Assess the Arctic from an Inuit Perspective—Summary and Recommendations Report (2015) (created as part of 2015 Alaskan Inuit Food Security Conceptual Framework Technical Report).

Traditional Knowledge and integration with Western science to ensure the Bering Sea continues to operate as a highly productive and valuable marine ecosystem.

Thank you for the opportunity to comment and please do not hesitate to contact any of the organizations for further information.

Sincerely,



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Melanie Bahnke  
President  
Kawerak, Inc.



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Vivian Korthuis  
Chief Executive Officer  
Association of Village Council Presidents



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Amos Philemonoff, Sr.  
President  
Aleut Community of St. Paul Island



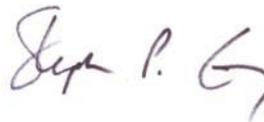
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Mellisa Johnson  
Executive Director  
Bering Sea Elders Group



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Scott Highleyman  
Vice President, Conservation Policy  
and Programs  
Ocean Conservancy



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Steve Ganey  
Vice President Environment  
The Pew Charitable Trusts

CC: Senator Lisa Murkowski  
Senator Dan Sullivan  
Congressman Don Young  
North Pacific Fishery Management Council  
Jim Balsiger, Regional Administrator, National Oceanic and Atmospheric  
Administration



The Honorable Deb Haaland, Secretary  
Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Submitted via email to: [energyreview@ios.doi.gov](mailto:energyreview@ios.doi.gov)

April 15, 2021

**Re: Comments on the Department of the Interior's Federal Oil and Gas Program**

Dear Secretary Haaland:

Congratulations on your confirmation as Secretary of the Interior. As Tribes and Tribal organizations, we are very pleased that you are leading this important agency that affects so many Indigenous Peoples across our country. Thank you for the opportunity to provide comments on the Department of the Interior's (DOI) Oil and Gas Program in response to Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad.

Kawerak Inc., Association of Village Council Presidents (AVCP), the Bering Sea Elders Group (BSEG) and the Aleut Community of St. Paul Island collectively represent over 70 Tribes in Western Alaska, the Bering Sea, and Bering Strait regions. We rely and depend on a healthy marine ecosystem for our ways of life. As stewards of our land and water, we request to be included in management decisions and that Traditional/Indigenous Knowledge and western science be equitably treated in the decision-making process.

Climate-driven disruptions in the Bering Sea have placed the ecosystem in peril, with devastating impacts to both fisheries and protected resources. The Bering Sea is an exceptional ecosystem of tremendous ecological, economic, and cultural importance. It supports one of the largest fisheries and marine mammal migrations in the world. The Bering Sea region is home to the Central Yup'ik, Cup'ik, St. Lawrence Island Yupik, Unangan, and Inupiaq people and Tribes that reside between the southern Chukchi Sea and the Aleutian and Pribilof Islands. We, the Indigenous people of the region, have an innate connection to the lands and waters and have been stewards to this area for millennia. Indigenous Peoples continue to be sustained by the incredibly productive Bering Sea region, including the countless species of seabirds, marine mammals, fish and invertebrates. Our oceans have critical cultural and subsistence value for coastal communities, and also provide jobs, food, and exports that contribute significantly to our national economy.

Due to the amplified impacts of climate change in high latitudes, the Bering Sea is warming at a significantly faster rate – up to 3 times the rate of temperate zones. The people of the region are especially vulnerable to the impacts of climate change, which we did little to create. Along with a loss of sea ice, populations of red king crab, ice seals, walrus, and other marine species we depend on have been devastated. Indicator species such as zooplankton, seabirds, and marine mammals are showing signs of stress and population declines under warmer, more acidic, and increasingly toxic conditions as a result of harmful algal blooms and increasingly ice-free ocean conditions. Climate change is an existential threat to the Bering Sea ecosystem. These unprecedented environmental changes are coupled with and compounded by human-driven stressors, including increased marine traffic, destructive commercial fishing, oil and mining exploration and extraction, marine debris, increased militarization and seabird and marine mammal unusual mortality events.

Just last year we had to respond to a major foreign marine debris event in the Bering Strait, that later reached the Pribilof Islands. A Russian LNG tanker travelling south through the Bering Strait in January 2021, lost engine power, only narrowly avoiding a major catastrophe.

In 2016, President Obama issued an Executive Order creating the Northern Bering Sea Climate Resilience Area ([Executive Order 13754](#)). It was issued in direct response to concerns expressed by Tribes along the Bering Sea coast and answered our request for a meaningful role in decision-making on policies related to the Northern Bering Sea. The Executive Order was revoked by President Trump and then reinstated on the first day of the Biden-Harris Administration in [Executive Order 13990](#). The Executive Order permanently withdrew the Norton Sound Planning Area and the lease blocks within the St. Matthew Hall Planning Area lying within 25 nautical miles of St. Lawrence Island. The President used section 12(a) under the Outer Continental Shelf Leasing Act.

In addition to the withdrawals, the Executive Order establishes a set of policies aimed at protecting our people and our subsistence ways of life in the face of increasing effects of climate change. It creates a formal, efficient mechanism for Tribes to provide their advice and recommendations on policies affecting our region by creating the *Bering Intergovernmental Tribal Advisory Council*, comprised of 9 to 11 Tribal members from the Northern Bering Sea and a *Federal Agency Task Force*, comprised of approximately 12 representatives of federal agencies. The Tribal Advisory Council is specifically charged with “providing input and recommendations on activities, regulations, guidance, or policy that may affect actions or conditions in the Northern Bering Sea Climate Resilience Area, with attention given to climate resilience; the rights, needs, and knowledge of Alaska Native Tribes; the delicate and unique ecosystem; and the protection of marine mammals and other wildlife.”

As we work toward implementation of the Executive Order, we want to use this opportunity to once again share our concerns about offshore drilling in the region. Tribes of the Northern Bering Sea have long opposed offshore drilling in the region since the early 1980s when the Native Villages of Gambell and Stebbins sued the Federal Government for holding lease sales in the Norton and Navarin Basin planning areas (*Native Village of Gambell v. Hodel*, 869 F.2d 1273 (9th Cir. 1989)).

More recently, when the Trump Administration proposed leasing in the 2019-2024 Five-Year Program, we were on record opposing oil and gas leasing in the Norton Sound, St. Matthew-Hall, Navarin Basin, Aleutian Basin, Hope Basin, and St. George Basin.

We remain opposed to leasing in our region and want to ensure you recognize the desire for permanent withdrawals in the Norton Sound, St. Matthew-Hall, Navarin Basin, Aleutian Basin, Hope Basin, and St. George Basin. The risks in the Bering Sea have not diminished in the forty years since the Gambell litigation on oil and gas leases in the early 80's.

To ensure that you have all of the documentation from our respective organizations on our collective efforts to protect the Northern Bering Sea from offshore oil and gas activities, we attach:

- Letter dated August 3, 2017 from Kawerak responding to the Request for Information and Comments on the Preparation of the 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Program. In this letter, Kawerak encouraged BOEM to maintain the approach for the 2017-2022 Five-Year Program for waters in the Northern Bering Sea region. Should BOEM have revised the current management plan, Kawerak was opposed to oil and gas lease sales in the Hope, Norton, St. Mathew Hall, and Navarin Basin and asked to exclude the Hope, Norton, St. Mathew Hall, and Navarin Basin Planning areas from any new plans.
- Letter from AVCP and BSEG responding to the Request for Information and Comments on the Preparation of the 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Program. Both organizations requested that BOEM exclude the Norton Sound, St. Matthew Hall, Navarin Basin, Aleutian Basin, and St. George Basin from the 2019-2024 Five-Year Program. The Tribes in the region were unanimous that they did not support inclusion of these areas in a five-year program and made that clear in their resolutions.
- Kawerak, Inc. Resolution 2017-08: Resolution advising all sectors of government on the importance of our Indigenous way of life in the Northern Bering Sea.
- AVCP Resolution 17-05-01: Resolution to reinstate the provisions of the Executive Order creating the Northern Bering Sea Climate Resilience Area.
- Bering Sea Elders Group Resolution dated September 22, 2017: Resolution to reinstate the provisions of the Executive Order creating the Northern Bering Sea Climate Resilience Area.
- AVCP resolution 16-10-02: Resolution to sustain tribal safety and food security in the Northern Bering Sea and Bering Strait Region to promote the self-determination of our people in the management of natural resources and habitat in the Northern Bering Sea and Bering Strait Region.
- Bering Sea Elders Group Resolution: dated June 15, 2016 Resolution to regain and sustain tribal food safety and food security in the Northern Bering Sea and Bering Strait

Region and to promote the self-determination of our people in the management of natural resources and habitat in the Northern Bering Sea and Bering Strait region.

- Kawerak, Inc. Resolution 2016-04: Resolution to sustain tribal safety and food security in the Northern Bering Sea and Bering Strait Region and to promote the self-determination of the tribes in the future management of natural resources and habitat in the Northern Bering Sea and Bering Strait region.
- Statement of support dated December 9, 2016 from the Alaska Federation of Natives: White House action on Alaskan Arctic Resilience elevates the voice of Alaska Native Tribes.
- Inuit Circumpolar Council of Alaska letter dated August 5, 2016 supporting Northern Bering Sea protections.
- Bering Sea Elders Group resolution dated September 10, 2014 expressing a vision for the Northern Bering Sea.
- 2014 and 2015 Food security resolutions adopted by tribes in the AVCP and Kawerak regions.

In closing, we continue to oppose oil and gas leasing in the Norton Sound, St. Matthew-Hall, Navarin Basin, Aleutian Basin, Hope Basin, and St. George Basin. We look forward to working with you to implement the important processes, recognitions, and protections implemented by Executive Order 13754.

Sincerely,



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Melanie Bahnke  
President  
Kawerak, Inc.



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Vivian Korthuis  
Chief Executive Officer  
Association of Village Council Presidents



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Amos Philemonoff  
President  
Aleut Community of St. Paul Island



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Mellisa Johnson  
Executive Director  
Bering Sea Elders Group



April 28, 2021

President Joe Biden  
President of the United States  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear President Biden:

As Tribes and Tribal organizations of Western Alaska, Eastern and Northern Bering Sea, representing over 70 federally recognized Tribes, we are deeply grateful to you for reinstating the Northern Bering Sea Climate Resilience Area.

The indigenous people living in the Northern Bering Sea Region have an innate connection to the lands and waters and have been stewards to this area for millennia. Indigenous Peoples continue to be sustained by the incredibly productive Bering Sea by the countless species of seabirds, marine mammals, fish and other wildlife. The region, home to one of the largest marine mammal migrations on the planet, has been experiencing climate change at a rate three times the rest of the planet. Along with a loss of sea ice, populations of red king crab, ice seals, walrus, and other marine species we depend on have been devastated. These unprecedented environmental changes are coupled with increased vessel traffic, destructive commercial fishing, oil and mining exploration and extraction, marine debris, increased militarization and unusual seabird and marine mammal mortality events. Just last year we had to respond to a major foreign marine debris event in the Bering Strait, that later reached the Pribilof Islands. A Russian LNG tanker travelling south through the Bering Strait in January 2021, lost engine power, only narrowly avoiding a major catastrophe.

The Northern Bering Sea Climate Resilience Area was originally created by [Executive Order 13754](#) in December 2016. We—along with our friends, allies and partners—dedicated years to advocating for the protections detailed in the Executive Order. The Executive Order provides a pathway for our Tribes to exercise self-determination and elevates our rightful role in decision-making with regard to management of activities in the Northern Bering Sea such as destructive fisheries, increased shipping, oil and gas and mining, oil spills and other contamination, marine debris events and other impacts that affect our subsistence ways of life. Given these extreme threats to our communities, the need to fully implement the Northern Bering Sea Climate Resilience Area was critical in 2016, and even more dire in 2021.

The Executive Order creates two decision-making bodies: 1) The Federal Agency Task Force and 2) The Bering Intergovernmental Tribal Advisory Council. We would like to work with the Biden-Harris Administration to set up the structure to implement the Executive Order and begin to address the many issues we are facing in the northern Bering Sea region. We recognize some progress has already been made, but there is much more work to be done. In addition to implementing the Northern Bering Sea Climate Resilience Area, we hope to work with your Administration and Congress to pass complementary legislation that will provide more permanent protections for our region.

We believe the Executive Order can provide a model for the Biden-Harris Administration to work with Tribes and allow for shared management and self-determination, as well as respect for Traditional knowledge. We look forward to working together with your Administration. To reach us, please contact either, Mellissa Johnson, Executive Director, Bering Sea Elders Group, [director@beringseaelders.org](mailto:director@beringseaelders.org) or Austin Ahmasuk, Marine Advocate, Kawerak Inc., [Aahmasuk@Kawerak.org](mailto:Aahmasuk@Kawerak.org).

Sincerely,



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Melanie Bahnke  
President  
Kawerak, Inc.



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Vivian Korthuis  
Chief Executive Officer  
Association of Village Council Presidents



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Amos Philemonoff  
President  
Aleut Community of St. Paul Island



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Mellisa Johnson  
Executive Director  
Bering Sea Elders Group

Cc:

Deb Haaland, Secretary, Department of the Interior

Tommy Beaudreau, Nominee Deputy Secretary, Department of the Interior

Elizabeth Washburn, Special Assistant to the President, Domestic Policy Council,  
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Larry Roberts, Chief of Staff, Department of the Interior

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Jennifer Hooper, Natural Resources Director, Association of Village Council Presidents, [jhooper@avcp.org](mailto:jhooper@avcp.org)

Lauren Divine, Ecosystem Conservation Office Director, Aleut Community of St. Paul Island, [lmdivine@aleut.com](mailto:lmdivine@aleut.com)

Erin Dougherty Lynch, Senior Staff Attorney, Native American Rights Fund, [dougherty@narf.org](mailto:dougherty@narf.org)

Attachments:

Summary of the Northern Bering Sea Climate Resilience Area

Comments on the Department of the Interior’s Federal Oil and Gas Program

Comments to NOAA on Climate Recommendations for Fisheries and Protected Resources

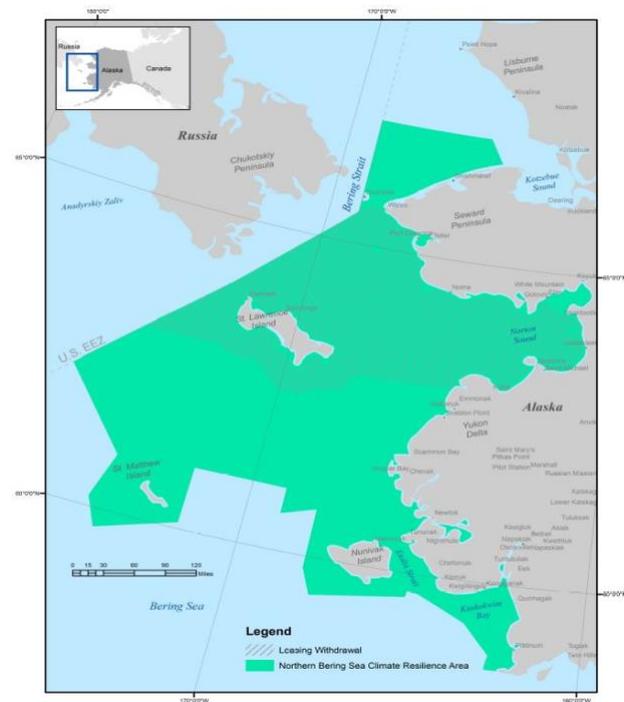


## Northern Bering Sea Climate Resilience Area Summary

### **What is the Northern Bering Sea Climate Resilience Area?**

At the direct request of the Tribes in the region, President Obama created the Northern Bering Sea Climate Resilience Area through an Executive Order issued in 2016. That Executive Order was revoked by President Trump and then reinstated on the first day of the Biden Administration.

The Northern Bering Sea Climate Resilience Area encompasses 112,300 square miles of ocean area. The indigenous people living here have an innate connection to the lands and waters and have been stewards to this area for millennia. Indigenous Peoples continue to be sustained by the incredibly productive Bering Sea by the countless species of seabirds, marine mammals, fish and other wildlife. The region, home to one of the largest marine mammal migrations on the planet, has been experiencing climate change at a rate three times the rest of the planet. Along with a loss of sea ice, populations of red king crab, ice seals, walrus, and other marine species we depend on have been devastated. These unprecedented environmental changes are coupled with increased vessel traffic, destructive commercial fishing, oil and mining exploration and extraction, marine debris, increased militarization and unusual seabird and marine mammal mortality events.



The Northern Bering Sea Climate Resilience Area designation provides a critical pathway for the more than 70 Tribes in the region to exercise self-determination and provides an opportunity to be equal contributors on policy decisions facing the Northern Bering Sea. The Executive Order requires that traditional knowledge be included in the federal decision-making process. It also prohibits offshore oil and gas drilling and destructive trawling on the ocean floor in the Resilience Area. This is critically important to the Tribes and people of this region.

To implement the Northern Bering Sea Climate Resilience Area, the federal government is required to create a Bering Intergovernmental Tribal Advisory Council comprised of 9 to 11 Tribal members from the Northern Bering Sea and a Federal Agency Task Force, comprised of representatives of federal agencies, that is responsible for coordinating Federal activities with the Tribal Advisory Council. The Tribal

Advisory Council is specifically charged with “providing input and recommendations on activities, regulations, guidance, or policy that may affect actions or conditions in the Northern Bering Sea Climate Resilience Area, with attention given to climate resilience; the rights, needs, and knowledge of Alaska Native tribes; the delicate and unique ecosystem; and the protection of marine mammals and other wildlife.”

### **How Did the Climate Resilience Area Come About?**

The Climate Resilience Area was the result of a direct request made by more than 70 Tribes in the Northern Bering Sea region. The effort was led by Kawerak Inc., AVCP, and the Bering Sea Elders Group. [Kawerak Inc.](#), is a non-profit tribal consortium representing 20 tribes formed in 1970 to provide a wide range of services to residents of the Bering Strait Region. Kawerak has conducted decades of social and fisheries science since the 1970’s. They have worked for decades to achieve better protection of the Northern Bering Sea, leading to the partnerships that achieved the NBSCRA. [Association of Village Council Presidents \(AVCP\)](#), a non-profit tribal consortium, created in 1964, representing 56 member tribes of the Yukon Kuskokwim Delta created to promote self-determination and protection and enhancement of cultural and traditional values, similarly, has had strong interests in protecting the Northern Bering Sea region. [The Bering Sea Elders Group \(BSEG\)](#) was founded in 2007 to address concerns related to large scale destructive fishing in the Bering Strait and Yukon-Kuskokwim coastal regions—specifically the impact of trawling on the bottom has on subsistence and its irreplaceable ecosystems. BSEG is made up of elders from both the AVCP and Kawerak regions.

In 2008, BSEG, Kawerak, and AVCP entered into Memorandum of Understandings (MOUs) to collaborate on the goal of preventing trawling on the ocean bottom in the Northern Bering Sea. These MOUs were the beginning of what continues to be, a long and productive relationship. Between 2008 and 2016, BSEG, AVCP, and Kawerak each passed resolutions calling for the long-term permanent protection for the [Northern Bering Sea Research Area](#); urging the federal government to undertake a rigorous tribal consultation process and ensure Tribal Self-Determination for decisions affecting the Northern Bering Sea; and affirming the commitment to protect traditional ways of life and the future of the region. The three organizations passed similar [resolutions](#). This led to President Obama creating the Northern Bering Sea Climate Resilience Area.

In the years following President Trump’s revocation of the Northern Bering Sea Climate Resilience Area, the three organizations, joined by the [Aleut Community of St. Paul Island Tribal Government](#), worked together toward the eventual reinstatement and to address individual issues, such as offshore oil and gas drilling, voting seats for Alaska Native Tribal representatives on the North Pacific Fishery Management Council, and the establishment of a permanent bottom trawling boundary to protect the ecosystem of and subsistence resources in the Northern Bering Sea.

### **What’s Next?**

It is an historic time for Tribes and their government-to-government relationship with the Federal government. Deb Haaland is the first Indigenous Secretary of the Department of the Interior, and she has committed to “honoring our nation-to-nation relationship with Tribes.” Implementation of the Northern Bering Sea Climate Resilience Area is an important part of fulfilling that commitment and ensuring that Bering Sea Tribes have increased control over actions that may harm or benefit the communities in the region and their cultures, languages, traditional practices, and food security.

**From:** [Schwartz, Melissa A](#)  
**To:** [Culver, Nada L](#); [Feldgus, Steven H](#); [Razo, Abdiel D](#); [Decker, Danielle K](#); [Gray, Morgan](#); [O'Connor, Niall W](#); [Rezaeerood, Paniz](#); [Alonso, Shantha R](#); [Taylor, Rachael S](#); [Cherry, Tyler A](#); [Wallace, Andrew G](#); [Anderson, Robert T](#); [Gosar, Mili N](#); [Kelly, Katherine P](#); [Klein, Elizabeth A](#); [Roberts, Lawrence S](#); [Van Der Heide Escobar, Jennifer](#)  
**Subject:** FW: [EXTERNAL] Comment on leasing ruling  
**Date:** Tuesday, June 15, 2021 5:07:48 PM  
**Attachments:** [gov.uscourts.lawd.179675.139.0.pdf](#)

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Flagging this for folks. Bob is reviewing now. We are using the following holding statement if asked: "We are reviewing the judge's opinion and will comply with the decision. The Interior Department continues to work on an interim report that will include initial findings on the state of the federal conventional energy programs, as well as outline next steps and recommendations for the Department and Congress to improve stewardship of public lands and waters, create jobs, and build a just and equitable energy future."

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**From:** Alex Guillen <aguillen@politico.com>  
**Sent:** Tuesday, June 15, 2021 5:48 PM  
**To:** Interior Press <interior\_press@ios.doi.gov>  
**Subject:** [EXTERNAL] Comment on leasing ruling

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Hello, does Interior have any comment on the ruling this afternoon from Judge Doughty in Louisiana blocking President Biden's executive order pausing oil and gas leasing?

Thank you,

**Alex Guillen** | Energy Reporter | **POLITICO**PRO

1000 Wilson Boulevard, 8<sup>th</sup> Floor | Arlington, VA 22209

Phone: 703.341.4619

Email: [aguillen@politico.com](mailto:aguillen@politico.com) | Twitter: [@alexguillen](https://twitter.com/alexguillen) | Website: [www.POLITICOPro.com](http://www.POLITICOPro.com)

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

**STATE OF LOUISIANA ET AL**

**CASE NO. 2:21-CV-00778**

**VERSUS**

**JUDGE TERRY A. DOUGHTY**

**JOSEPH R. BIDEN, JR. ET AL**

**MAG. JUDGE KATHLEEN KAY**

**MEMORANDUM RULING**

The issue before this Court is whether the Plaintiff States<sup>1</sup> are entitled to a preliminary injunction against the Government Defendants<sup>2</sup> as a result of the implementation of a “pause” of new oil and natural gas leases on public lands or in offshore waters (“Pause”) after Executive Order 14008 was signed by President Joseph R. Biden, Jr. (“President Biden”) on January 27, 2021.

The Plaintiff States alleged the Government Defendants<sup>3</sup> violated provisions of the Administrative Procedure Act, (“APA”) entitling Plaintiff States to a preliminary injunction.

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<sup>1</sup> The Plaintiff States consist of the States of Louisiana, Alabama, Alaska, Arkansas, Georgia, Mississippi, Missouri, Montana, Nebraska, Oklahoma, Texas, Utah, and West Virginia.

<sup>2</sup> Government Defendants consist of Joseph R. Biden, Jr. in his official capacity as President of the United States; Deb Haaland, in her official capacity as Secretary of the Interior; Michael Nedd, in his official capacity as Deputy Director of the Bureau of Land Management; Chad Padgett, in his official capacity as Director of the Bureau of Land Management Alaska Office; Raymond Suazo, in his official capacity as Director for the Bureau of Land Management Arizona Office; Karen Mouristen, in her official capacity as Director for the Bureau of Land Management California Office; Jamie Connell, in his official capacity as Director for the Bureau of Land Management Colorado Office; Mitchell Leverette, in his official capacity as Director for the Bureau of Land Management Eastern States Office; John Ruhs, in his official capacity as Director for the Bureau of Land Management Idaho Office; John Mehlhoff, in his official capacity as Director for the Bureau of Land Management Montana – Dakotas Office; Jon Raby, in his official capacity as Director for the Bureau of Land Management Nevada Office; Steve Wells, in his official capacity as Director for the Bureau of Land Management New Mexico Office; Barry Bushue, in his official capacity as Director for the Bureau of Land Management Oregon-Washington Office; Greg Sheehan, in his official capacity as Director for the Bureau of Land Management Utah Office; Kim Liebhauser, in her official capacity as Director for the Bureau of Land Management Wyoming Office; Amanda Lefton, in her official capacity as Director of the Bureau of Ocean Energy Management; Michael Celata, in his official capacity as Regional Director of the Bureau of Ocean Energy Management Gulf of Mexico Office; Lars Herbst, in his official capacity as Regional Director of Bureau of Safety and Environmental Enforcement Gulf of Mexico OCS Office; and Mark Fesmire, in his official capacity as Regional Director of the Bureau of Safety and Environmental Enforcement Alaska and Pacific Office.

<sup>3</sup> With the exception of President Biden, who is not an “agency” under the Administrative Procedures Act.

A Motion for Preliminary Injunction [Doc. No. 3] was filed by Plaintiff States on March 31, 2021. An Opposition [Doc. No. 120] was filed by Government Defendants on May 19, 2021. A Reply [Doc. No. 126] was filed by Plaintiff States on May 28, 2021.

Having considered the pleadings, the record, the applicable laws, evidence, and oral arguments of counsel, for the reasons set forth herein, this Court finds Plaintiff States have satisfied the requirements for a preliminary injunction. Accordingly, Plaintiff States' Motion for Preliminary Injunction is GRANTED.

## **I. BACKGROUND**

The factual statements made herein should be considered as findings of fact regardless of any heading or lack thereof. Similarly, the legal conclusions should be taken as conclusions of law regardless of any label or lack thereof.

On March 24, 2021, Plaintiff States filed a Complaint [Doc. No. 1] against Government Defendants asking for declaratory and injunctive relief as to Section 208 of Executive Order 14008, which ordered the Secretary of the Interior to pause new oil and gas leases on public lands, or in offshore waters pending completion of a comprehensive review. This allegedly resulted in the halting of new oil and gas leases on public lands and offshore waters in violation of the United States Constitution, the APA, the Outer Continental Shelf Lands Act ("OCSLA"), and the Mineral Leasing Act ("MLA").

The Motion for Preliminary Injunction was filed by Plaintiff States on March 31, 2021. Briefs have been filed by Plaintiff States and by Government Defendants. Amici Curiae briefs were filed by the County of Daggett, County of Rio Blanco, County of Uintah and County of Wayne [Doc. No. 116] and by Center for Biological Diversity, Cook Inletkeeper, Defenders of Wildlife, Friends of the Earth, Healthy Gulf, National Resources Defense Council, Oceana,

Sierra Club and Wilderness Society [Doc. No. 123]. Per a status conference held on June 3, 2021 [Doc. No. 127], the court set oral arguments on these issues to be heard on June 10, 2021.

The oral arguments were heard on that day in Lafayette, Louisiana.

**1. Executive Order 14008**

On January 27, 2021, President Biden issued Executive Order 14008<sup>4</sup>, entitled “Tackling the Climate Crisis at Home and Abroad.” At issue in this proceeding is Section 208 of the Executive Order, which reads as follows:

Sec. 208. Oil and Natural Gas Development on Public Lands and in Offshore Waters. To the extent consistent with applicable law, the Secretary of the Interior shall pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior’s broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters. The Secretary of the Interior shall complete that review in consultation with the Secretary of Agriculture, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of Energy. In conducting this analysis, and to the extent consistent with applicable law, the Secretary of the Interior shall consider whether to adjust royalties associated with coal, oil, and gas resources extracted from public lands and offshore waters, or take other appropriate action, to account for corresponding climate costs.

*Id.*

The implementation of Section 208 of Executive Order 14008 by the remaining Government Defendants (“Agency Defendants”) is at issue based upon the alleged violation of the APA by the government agencies. 5 USC 551, et seq.

A court may review a Presidential Executive Order. A President’s authority to act, as with the exercise of any governmental power, must stem either from an act of Congress, or from the Constitution itself, or a combination of the two. Medellin v. Texas, 552 U.S. 491, 128 S. Ct.

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<sup>4</sup> Tackling the Climate Crisis at Home and Abroad, 86 FR 7619

1346, 170 L. Ed. 2d 190 (2008); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952); California v. Trump, 379 F. Supp. 3d 928 (N.D. Cal. 2019), aff'd, 963 F.3d 926 (9th Cir. 2020), cert. granted sub nom. Trump v. Sierra Club, 141 S. Ct. 618, 208 L. Ed. 2d 227 (2020); and Sierra Club v. Trump, 379 F. Supp. 3d 883 (N.D. Cal. 2019), aff'd, 963 F.3d 874 (9th Cir. 2020), cert. granted, 141 S. Ct. 618, 208 L. Ed. 2d 227 (2020).

Plaintiff States have based their Motion for Preliminary Injunction on violations by the Government Agencies pursuant to the APA. Although President Biden is not an agency subject to the APA, whether Section 208 of the Executive Order 14008 would be consistent with applicable law is at issue. California, 379 F. Supp. 3d 928. In reviewing the lawfulness of the defendants' conduct, the Court begins each inquiry by determining whether the disputed action exceeds statutory authority. Sierra Club v. Trump, 379 F.Supp. 3d 883 (N.D. Cal. 2019).

A President may not transgress constitutional limitations. Courts determine where constitutional boundaries lie. Indigenous Env't Network v. Trump, 428 F. Supp. 3d 296 (D. Mont. 2019).

The case of League of Conservation Voters v. Trump, 363 F. Supp. 3d 1013 (D. Alaska 2019), vacated and remanded sub nom. League of Conservation Voters v. Biden, 843 F. App'x 937 (9th Cir. 2021) involved issues centered on OCSLA, which is one of the acts at issue in this proceeding. President Trump issued an Executive Order, (EO 13795) which purported to revoke previous Executive Orders involving a prior land withdrawal from OCSLA.<sup>5</sup> The Court found OCSLA allowed the President to withdraw lands from disposition, but it did not allow a President to revoke a prior withdrawal. The Court held that since OCSLA does not give the President specific authority to revoke a prior withdrawal, the power to revoke a prior withdrawal

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<sup>5</sup> 43 U.S.C. 1341(a) allows a President of the United States to withdraw from disposition any of the unleased lands of the Outer Continental Shelf.

lies solely with Congress under the Property Clause of the United States Constitution. U.S. Const. art. IV, § 3, cl. 2.

Similarly, since OCSLA does not grant specific authority to a President to “Pause” offshore oil and gas leases, the power to “Pause” lies solely with Congress. Therefore, Plaintiff States have made a showing that there is a substantial likelihood that President Biden exceeded his powers in Section 208 of Executive Order 14008.

## **2. Administrative Procedure Act**

Plaintiff States’ Motion for Preliminary Injunction centers upon alleged violations of the APA by the Agency Defendants, which includes the U.S. Department of the Interior (“DOI”), the U.S. Bureau of Land Management (“BLM”), the U.S. Bureau of Ocean Energy Management (“BOEM”), the U.S. Bureau of Safety and Environmental Enforcement and named officials.

The APA allows judicial review of certain agency actions. The Plaintiff States allege that in implementing Section 208 of Executive Order 14008, the Agency Defendants violated the following provisions of the APA:

- i. Acted contrary to law in violation of 5 USC 706(2)(A) and (C);
- ii. Acted in an arbitrary and capricious manner in violation of 5 USC 706(2)(A);
- iii. Failed to provide notice and comment required by 5 USC 553(a); and
- iv. Unreasonably withheld and unreasonably delayed agency required activity in violation of 5 USC 706(1).

Each of these allegations will be discussed in greater detail herein.

## **3. The Outer Continental Shelf Lands Act**

Congress passed the OCSLA more than 70 years ago. OCSLA declares “the outer Continental Shelf” to be “a vital national resource reserve held by the Federal Government for the

public.” 43 U.S.C. §1332(3). To maximize the benefit of that resource, OCSLA directs the Secretary of the Interior to make the Shelf “available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs.” Enesco Offshore Co. v. Salazar, 781 F. Supp. 2d 332, 339 (E.D. La. 2011) (noting “OCSLA’s overriding policy of expeditious development”).

OCSLA facilitates the Shelf’s expeditious development by directing the Secretary to administer a leasing program to sell exploration interests in portions of the Shelf to the highest bidder. 43 U.S.C. §§1334(a), 1337(a)(1). To this end, OCSLA sets out a four-step process in which the Secretary must (1) create a Five-Year Leasing Program, (2) hold lease sales, (3) grant or deny exploration permits and plans, and (4) grant or deny final development and production plans. Hornbeck Offshore Servs., L.L.C. v. Salazar, 696 F. Supp. 2d 627, 632 (E.D. La. 2010) (citing Sec’y of the Interior v. California, 464 U.S. 312, 337, 104 S. Ct. 656, 78 L. Ed. 2d 496 (1984)). Each step must follow stringent administrative requirements designed to maximize the chances for the public – including affected states and industry—to provide input on those lease sales.

Current lease sales in the Outer Continental Shelf are governed by the 2017-2022 Five-Year Oil and Gas Leasing Program (“Five-Year Program”). The process of creating the Five-Year Program began in 2014 during the Obama Administration. The BOEM published a Request for Information (“RFI”) in the Federal Register and sent a letter to all Governors, Tribes, and interested federal agencies requesting input on the Program. 79 Fed. Reg. 34349 (June 16, 2014). BOEM received over 500,000 comments in response to the RFI, allowing it to discharge its obligation under OCSLA to take into account economic, social, and environmental values in making its leasing decisions. 43 U.S.C. § 1344(a); Five-Year Program [Doc. No. 3, Exh 1]. In

2015, BOEM published the Draft Proposed Program. That published draft incorporated responses to the RFI comments and set out a draft schedule of potential lease sales. That started a 60-day comment period in which BOEM received over one million comments. 80 Fed. Reg. 4941 (Jan. 29, 2015). After considering those comments, BOEM next published the Proposed Program, thereby starting a new 90-day comment period. 81 Fed. Reg. 14881 (Mar. 18, 2016). Again, BOEM received over one million comments, held public meetings, and created environmental impact statements in compliance with the National Environmental Policy Act (NEPA).

After that, BOEM published the Proposed Final Program (“PFP”) November 2016. In it, the Secretary determined which areas to include in the lease sales. The PFP schedules ten (10) region-wide lease sales in the areas of the Gulf of Mexico that are not under the Congressional moratorium or otherwise unavailable for leasing. Final Program S-2. The PFP also observed that “[i]n the Gulf of Mexico, infrastructure is mature, industry interest and support from affected states and communities is strong, and there are significant oil and gas resources available.” Thus, “[t]o take advantage of these incentives to OCS activity, the region-wide sale approach makes the entire leasable Gulf of Mexico OCS area available in each lease sale.” *Id.*

On January 17, 2017—60 days after the Final Program was transmitted to President Obama and Congress—the Secretary approved the Final Program, “which schedules 11 potential oil and gas lease sales, one sale in the Cook Inlet (Alaska) Program Area and 10 sales in the GOM Program Areas,” with “one sale in 2017, two each in 2018-2021, and one in 2022.” Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program 3 (Jan. 17, 2017).

The Final Program approved and scheduled two lease sales relevant in this proceeding. The first is GOM OCS Oil and Gas Lease Sale 257. Lease Sale 257 would have comprised the Western and Central Planning Areas of the Gulf of Mexico. The second is Lease Sale 258 in Cook Inlet, Alaska.

#### **4. The Mineral Leasing Act**

The Federal Government also holds energy-producing lands onshore. Congress has likewise made those lands available for development. Under the MLA, the Secretary of the Interior is required to hold lease sales “for each State where eligible lands are available at least quarterly.” 30 U.S.C. §226(b)(1)(A). MLA provides that for oil and natural gas leases on federal lands, in States other than Alaska, 50 percent of bonuses, production royalties, and other revenues are granted to the State in which the lease is located, and 40 percent is granted to the Reclamation Fund, which maintains irrigation systems in several Western States. 30 U.S.C. §191(a). For leases in Alaska, 90 percent of revenues are granted to the State. *Id.*

BLM has the authority to lease public lands with oil and gas reserves to private industry for development under MLA, the Federal Land Policy and Management Act, 43 U.S.C. §§1701-1787, and the BLM’s own regulations and plans, see 43 C.F.R. Part 1600 (Planning, Programming, and Budgeting); 43 C.F.R. §§3120 (Competitive Leases) and 3160 (Onshore Oil and Gas Operations). BLM’s regulations also provide for quarterly lease sales, 43 C.F.R. §3120.1-2(a) (“Each proper BLM office shall hold sales at least quarterly if lands are available for competitive leasing.”)

## **II. STANDING**

At issue in this proceeding is whether the Agency Defendants exceeded their statutory and/or constitutional authority in implementing a pause on new oil and natural gas leases on

public lands and in offshore waters. However, this Court must first determine whether it has judicial power to hear the case. The United States Constitution limits exercise of judicial power to certain “cases” and “controversies.” U.S. Constitution Article III Section 2.

Under the doctrine of “standing,” a federal court can exercise judicial power only where a plaintiff has demonstrated that it (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that it is likely to be redressed by a favorable decision. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The party invoking federal jurisdiction bears the burden of establishing these elements. Id. at 561.

### **1. Plaintiff States’ Argument**

The Plaintiffs in this case are thirteen (13) states. States are not normal litigants for purposes of invoking federal jurisdiction. Massachusetts v. E.P.A., 549 U.S. 497, 518, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007). Rather, a state is afforded “special solicitude” in satisfying its burden to demonstrate the traceability and redressability elements of the traditional standing inquiry whenever its claims and injury meet certain criteria. Id. at 520; Texas v. United States, 809 F.3d 134, 151–55 (5th Cir. 2015), as revised (Nov. 25, 2015). Specifically, a state seeking special solicitude standing must allege that a defendant violated a congressionally accorded procedural right that affected the state’s “quasi-sovereign” interests in, for instance, its physical territory or lawmaking function. Massachusetts, 549 U.S. at 520–21; Texas, 809 F.3d at 151–55.

Plaintiff States allege they have standing under the normal inquiry, and because they are entitled to special solicitude. Plaintiff States aver they have standing to challenge the Pause because the Government Defendants’ actions harm Plaintiff States’ sovereign, proprietary, and *parens patriae* interests.

Plaintiff States allege the Pause deprives Plaintiff States of a substantial share of the proceeds from leasing sales under OCSLA, the Gulf of Mexico Energy Security Act (“GOMESA”) and MLA. Plaintiff States attach the Declarations of Jerome Zeringue (“Zeringue”) [Doc. No. 3, Exh. 6], Professor David E. Dismukes (“Dismukes”) [Doc. No. 3, Exh. 4], and Professor Timothy J. Considine (“Considine”) [Doc. No. 3, Exh. 2].

**Declaration of Jerome Zeringue**

Zeringue is a member of the Louisiana State Legislature representing LaFourche and Terrebonne Parishes. He is Chairman of the Appropriations Committee and was previously a member of the Natural Resources Committee. Zeringue is familiar with the Coastal Master Plan, which is the Louisiana coastal restoration plan. He declared that the Coastal Master Plan is funded primarily by revenue from oil and gas proceeds from the Outer Continental Shelf under OCSLA. The current Coastal Master Plan is based upon \$389 million in GOMESA expenditures over the next three years.

Zeringue declares that the cancellation of Lease 257 caused an immediate short-term loss for projected funds under OCSLA. He further declares that if the funds vanish or are reduced, Louisiana will essentially be left without a major source of funding for a \$50 billion coastal recovery and restoration program.

**Declaration of David E. Dismukes**

Dismukes is a Professor, Executive Director, and Director of the Policy Analysis at the Center for Energy Studies at LSU. He is also a Professor in the Department of Environmental Sciences and Director of the Coastal Marine Institute in the College of the Coast and Environment at LSU.

He additionally is a Consulting Economist with Acadian Consulting Group, L.L.C., a research and consulting firm that specializes in the analysis of regulatory, economic, financial, accounting, statistical, and public policy issues associated with regulated and energy industries. Dismukes is an expert in the analysis of economic, statistical, and public policy issues in energy and regulated industries. He has testified as an energy expert on energy issues on over 150 occasions and has testified as an expert before the U.S. Senate, the U.S. House of Representatives, and several state legislatures.

Dismukes gave his opinion as to the harm he believes will occur due to the Pause on new oil and gas leasing and drilling permits. He believed Louisiana would be harmed by the Pause due to the reduction in oil production, economic activity and state revenues resulting from the cancellation of Oil and Gas Lease Sale 257 and from Planned Lease Sales 259 and 261.

Dismukes further declared the Pause will cause a reduction in oil production, economic activity and state revenues due to foregone drilling under existing federal oil and gas leases and by reduced production by, and investment in, Louisiana's refining and chemical manufacturing industries caused by higher oil and gas prices.

He further believes the Pause will impact drilling in the Permian Basin, which will directly and immediately harm the States of Texas and Louisiana by resulting in fewer jobs for Louisiana and Texas gas sector workers and lower production of oil and gas, which will result in higher oil and gas prices.

Dismukes further declared the Pause would also affect revenues from initial lease payments, royalties, and rentals, which would immediately harm the States of Alabama, Louisiana, Mississippi, and Texas, who receive 37.5% of revenues under GOMESA. In 2020, nearly \$95.3 million was dispersed to Texas, \$156 million to Louisiana, \$50 million to Alabama,

and \$51.9 million to Mississippi. Dismukes projected that based upon BOEM estimates, the three cancelled or suspended lease sales (257, 259 and 261) will result in a decline in GOMESA funding of more than \$1 billion.

Dismukes also declared the Pause would result in reduced funding for the Coastal Master Plan, which is used to fund the continuing loss of land mass along Louisiana's coast.

Further Dismukes testified the Pause would result in a substantial number of lost jobs in the oil and gas industry (which accounted for \$6.8 billion in wages in 2019). These job losses would result in reduction of Louisiana's energy export economy, and the loss of 114 jobs for each deep-water well not drilled as a result of the Pause. He additionally noted losses to state and local government revenues as a result of the Pause.

#### **Declaration of Timothy J. Considine**

Considine is a Professor of Energy Economics with the School of Energy Resources and the Department of Economics at the University of Wyoming. He earned a B.A. in Economics from Loyola University in 1975, an M.S. from Purdue University in Agricultural Economics in 1977, and a Ph.D. from Cornell University in Natural Resources Economics in 1981. He is an expert in the analysis of economic, statistical, and public policies in energy and regulated industries.

Considine gave an opinion in regard to the economic impact a leasing moratorium and a drilling ban would have on the States of Wyoming, New Mexico, Colorado, Utah, North Dakota, Montana, and Alaska. Under a leasing moratorium over the next 5 years (2021-2025), the average annual investment loss to Wyoming would be \$2.3 billion; the average annual investment loss to New Mexico would be \$2.6 billion; to Colorado \$586 million; to Utah \$248 million; to North Dakota \$279 million; to Montana \$56 million; and to Alaska \$412 million.

Considine also opined these States would lose a combined average of 58,676 jobs annually for the years 2021-2025.

Considine further estimated costs to said states under a drilling ban, and all would have significant annual investment losses for the years 2021-2025.

Considine estimates harm to state revenue for the said states if a leasing moratorium were imposed. Under his estimates, for the years 2021-2025, the annual revenue losses to Wyoming would be \$304 million; to New Mexico \$946 million; to Colorado \$59 million; to Utah \$27 million; to North Dakota \$136 million; to Montana \$40 million; and to Alaska \$100 million.

## **2. Government Defendants' Argument**

In opposition, the Government Defendants attack Plaintiff States standing for its 5 U.S.C.A. § 706(2) APA Claims.<sup>6</sup> Government Defendants do not attack Plaintiff States' standing with regard to their failure to provide notice and comment, and their unreasonably withheld and unreasonably delayed claims. The Government Defendants object to Plaintiff States' standing on its APA 706(2) claims on the basis of redressability.

Government Defendants argue that setting aside the individual lease sale postponements will not redress Plaintiff States alleged injuries (reduction in income, job losses and overall economic losses) because a favorable decision would not redress those injuries. Government Defendants argue that if the individual sale postponements were set aside, that relief would not compel the agency to hold a lease sale because the agency has discretion to "implement another postponement with a different rationale." [Doc. No. 120 page 23].

In other words, Government Defendants maintain they cannot be compelled to actually sell the lease, instead, the Court can only remand the lease sales back for further consideration in

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<sup>6</sup> Contrary to law and arbitrary and capricious.

which the Government Defendants could admittedly “come up with another reason” to postpone the lease sales. The lease sales would never go through, and Government Defendants argue that the Plaintiff States would not receive any proceeds.

Additionally, Government Defendants argue the Plaintiff States will not be harmed by the Pause because development activity from exploration through drilling and production has continued at the same levels as the preceding four years and because no existing lease has been cancelled as a result of the Pause. Government Defendants attach the Declaration of Walter D. Cruickshank (“Cruickshank”) [Doc. No. 120-1], the Declaration of Peter Cowan (“Cowan”) [Doc. No. 120-4] and the Declaration of Mustafa Haque (“Haque”) [Doc. No. 120-3].

**Declaration of Walter D. Cruickshank**

Cruickshank is a Deputy Director of BOEM in the United States Department of the Interior. He declared that under OCSLA, the DOI is responsible for the administration of energy and mineral exploration and development on the Outer Continental Shelf (“OCS”). Many of the DOI responsibilities for implementing OCSLA have been delegated to BOEM. These delegated responsibilities include conducting oil and gas lease sales, issuing leases on the OCS, and approving exploration and development plans under those leases. As part of his duties, Cruickshank supervises the BOEM Regional Directors.

Cruickshank denies that any existing OCS leases have been cancelled as a result of the Pause, or the comprehensive review. He also denies there is a drilling ban in existence. He states Gulf of Mexico development activity from exploration through drilling and production has continued at the same levels as the preceding four years.

Cruickshank also denies President Biden has “banned all new domestic oil and gas production by imposing a drilling moratorium.” He declares that BOEM has approved 13 exploration plans from January 20, 2021 to March 24, 2021.

He further declares the effects of the actions related to Lease Sales 257 and 258 will not have an immediate impact on royalty revenues during the pending litigation. Royalty-generating production on a new lease does not typically begin sooner than five years from the date the lease was issued.

Cruickshank further declares that the United States’ interests would be harmed by a preliminary injunction as it would frustrate the DOI’s ongoing process of determining how best to carry out OCS leasing responsibilities and the mandated comprehensive review.

#### **Declaration of Peter Cowan**

Cowan is employed by the U.S. DOI, BLM, in Grand Junction, Colorado, as Senior Mineral Leasing Specialist. In his role, Cowan coordinates and develops leasing policy and guidance, analyzes the effectiveness of leasing oil and gas, and oversees manuals, handbooks, and procedural guidance to implement BLM’s mineral leasing program.

Cowan lists several lawsuits against BLM under the NEPA. Due to numerous lawsuits and adverse decisions in several lawsuits, BLM’s NEPA workload has been growing. He declares that because the existing NEPA analysis was found to be inadequate, BLM is obligated to do additional NEPA for at least seven lease sales involving over 200 leases and 200,000 acres of land.

Cowan declared that in light of this growing accumulation of NEPA analysis and adverse decisions, BLM postponed lease sales in the first quarter of 2021 to do additional NEPA analysis. He stated that the lease sale deferrals that BLM undertook in the first quarter of 2021

were not the first time BLM has deferred sales to perform additional NEPA analysis, as it occurred under the prior administration.

Cowan also denied that BLM has implemented a drilling or production moratorium as BLM continues to review and approve drilling permits at rates similar to the prior administration. He further stated BLM has interpreted the statutory phrase “eligible lands are available for leasing” to mean, at a minimum, that “all statutory requirements and reviews, including compliance with NEPA have been met.”

#### **Declaration of Mustafa Haque**

Haque is employed by the U.S. DOI, BLM, Division of Fluid Minerals (“DFM”) in the Headquarters office in Grand Junction, Colorado, as a Petroleum Engineer. He oversees BLM’s reservoir management program, including determining whether the wells are capable of producing oil and gas of a sufficient value to exceed direct operating costs.

Haque examined the Declarations of Considine and Dismukes and believes both fail to consider important facts. He first states that the Declarations fail to account for the significant amount of federal leased acreage that is not yet producing oil and gas. He attaches a chart which shows that over half of leased federal land (13.89 million acres) is leased but not yet producing oil and gas. Therefore, there is no reason to expect an imminent drop off in production from a temporary pause on leasing.

Second, Haque states that jobs will not be lost because a Federal Reserve Bank study shows jobs will just move across state borders with a shift in drilling from federal acreage.

Third, Haque disputes that a leasing pause would result in higher costs from having to purchase more costly crude from foreign sources.

### **3. Injury in Fact**

A plaintiff seeking to establish injury in fact must show that it suffered “an invasion of a legally protected interest” that is “concrete,” “particularized,” and “actual or imminent, not conjectural or hypothetical.” Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548, 194 L. Ed. 2d 635 (2016), as revised (May 24, 2016). For an injury to be “particularized,” it “must affect the plaintiff in a personal and individual way.” Id. at 1548. A “concrete” injury must be “de facto,” that is, it must “actually exist.” “Concrete” is not, however necessarily synonymous with “tangible.” Intangible injuries can nevertheless be “concrete.” Id., at 1548-49.

This Court finds the Plaintiff States’ alleged injuries are both particularized and concrete. They have alleged loss of proceeds as a result of the Pause for new oil and gas leases on federal lands and waters, from bonuses, land rents, royalties, and other income. Plaintiff States have also alleged loss of jobs and economic damage as a direct result of the Pause. These alleged damages are concrete, particularized, and imminent.

### **4. Traceability**

Plaintiff States must now show a “fairly traceable” link between their alleged injuries and the Pause of new oil and gas leases on federal lands and in federal waters. As a general matter, the causation required for standing purposes can be established with “no more than de facto causality.” Dep’t of Com. v. New York, 139 S. Ct. 2551, 2556, 204 L. Ed. 2d 978 (2019). The plaintiff need not demonstrate that the defendant’s actions are “the very last step in the chain of causation.” Bennett v. Spear, 520 U.S. 154, 169–70, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997).

Plaintiff States must establish the Pause would result in the damages they allege. They have. The Declaration of Jerome Zeringue [Doc. No. 3-6], the Declaration of Professor Timothy J. Considine [Doc. No. 120-2], and the Declaration of Professor Davie E. Dismukes [Doc. No. 3-

4] are sufficient to establish the Pause at issue would result in damages including, funding for the Coastal Master Plan (which funds Louisiana’s coastal restoration and recovery), reduction in State revenues, damages to the economy, loss of jobs, higher oil and gas prices, and reduction in the energy export economy.

Therefore, Plaintiff States can prove traceability.

## **5. Redressability**

The redressability element of standing to sue requires a plaintiff to demonstrate “a substantial likelihood that the requested relief will remedy the alleged injury in fact.” El Paso Cty., Texas v. Trump, 982 F.3d 332, 341 (5th Cir. 2020).

Government Defendants attack this element with the Declaration of Walter D. Cruickshank [Doc. No. 120-1], the Declaration of Peter Cowan [Doc. No. 120-4], and the Declaration of Mustafa Haque [Doc. No. 120-3]. Government Defendants argue that there has been no pause in drilling and permits for “existing” leases because drilling in federal lands is still proceeding at approximately the same rate as the prior four years, and therefore, a favorable ruling for Plaintiff States will not redress their alleged injuries. However, these declarations only address “existing leases,” not “new leases.” Just the cancellation of Lease Sale 257 itself has had immediate impact due to loss of bonus payments and ground rents.

Additionally, a Pause for any significant length of time would allegedly result in other losses. Professor Considine [Doc. No. 3-2] noted that most oil and gas produced in the U.S. in the last decade has used technology known as hydraulic fracturing and horizontal drilling. Considine stated that oil and gas wells that use this technology produce at high rates just after initial production, but face steep production declines thereafter, raising the importance of drilling new wells to offset the production declines from previously completed wells.

This Court believes that Plaintiff States have also satisfied the redressability element.

### **6. Special Solitude**

Although this Court has found the Plaintiff States have proven standing through the normal inquiry, they also can establish standing as a result of special solitude. Plaintiff States assert a congressionally bestowed procedural right (the APA), and the government action at issue affects the Plaintiff States' quasi-sovereign interests (damage to economics, loss of jobs, coastal erosion funding, funding for state and local governments). Massachusetts, 549 U.S. at 519–20.

Therefore, any infirmity in Plaintiff States' demonstration of traceability or redressability are remedied by Plaintiff States' special solitude.

### **III. JUDICIAL REVIEW**

Although Plaintiff States have standing, the Court must additionally examine whether Plaintiff States' causes of action are reviewable. This question requires the determination of the meaning of the congressionally enacted provision creating a cause of action. The Court applies the traditional principles of statutory interpretation to determine whether Congress did in fact authorize the causes of action alleged by Plaintiff States. Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 128, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014).

Plaintiff States' Complaint sets forth ten Claims for Relief. Counts I, II, III, IV, V, VI, VII, and VIII are claims under the APA for unreasonable delay pursuant to 5 U.S.C. 706 (Counts I and VI), failure to employ notice and comment in violation of 5 U.S.C. 706 (Counts II and VIII), for acting contrary to law in violation of 5 U.S.C. 706 (Counts III and V) , and for acting in an arbitrary and capricious manner pursuant to 5 U.S.C. 706 (Counts IV and VII).

Count IX is a citizen suit under OCSLA pursuant to 43 U.S.C. 1349 and Count X is an ultra vires claim which alleges that the President and the applicable agencies violated the U.S.

Constitution and statutory authority and/or did not have authority to enact or implement a Pause on new oil and gas leases on federal land and in federal waters.

Eight of Plaintiff States' claims are under the APA. The APA imposes four requirements that must be satisfied before a federal court can review agency action. First, it must be demonstrated by plaintiffs that it is within the "zone of interests" to be protected by the statutes allegedly violated by the defendants. Second, no statute may preclude judicial review. Third, the Pause must constitute a "final agency action." And fourth, the Pause must not be "committed to agency discretion by law." Texas v. United States, No. 6:21-CV-00003, 2021 WL 2096669, at \*21 (S.D. Tex. Feb. 23, 2021).

Government Defendants maintain that the Pause (and lease cancellation/postponements) are not "final agency actions," and that the Pause is "committed to agency discretion by law" under OCSLA and under MLA.

### **1. Zone of Interests**

Congress, through the APA, has provided a cause of action for persons seeking redress against the federal government for violating other federal laws. 5 U.S.C. 702, 706. Congress has limited the availability of an APA cause of action to persons who allege an injury that is "arguably" within the "zone of interests" to be protected or regulated by the relevant statute. Collins v. Mnuchin, 938 F.3d 553, 573–74 (5th Cir. 2019), cert. granted, 141 S. Ct. 193, 207 L. Ed. 2d 1118 (2020), and cert. granted, 141 S. Ct. 193, 207 L. Ed. 2d 1118 (2020). The benefit of any doubt goes to the plaintiff. The test is not "especially demanding" and the test forecloses suit only when the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be reasonably assumed that Congress authorized that plaintiff to sue. Collins, 938 F.3d at 574.

This element does not need extended discussion. Clearly, the Plaintiff States are within the “zone of interest” of all eight of their causes of action against Government Defendants under the APA. Plaintiff States’ interests are within the purposes of the APA for their contrary to law, failure to provide notice and comment, arbitrary and capricious, and unreasonably withheld or unreasonably delayed claims. Additionally, Plaintiff States’ claims for a citizen suit under OCSLA and ultra vires claim are also within the “zone of interests”.

## **2. Statutory Preclusion to Judicial Review**

5 U.S.C. 701(a)(1) excepts the application of the APA to the extent that statutes preclude judicial review. Government Defendants have cited no statutes which preclude judicial review of Plaintiff States’ claims. This Court has found no statutes which preclude Plaintiff States’ APA claims. Therefore, the Court concluded there is no statutory preclusion to judicial review of the Plaintiff States’ claims.

## **3. Final Agency Action**

5 U.S.C. 704 provides that “final agency actions” for which there is no other adequate remedy in a court are subject to judicial review. The Government Defendants argue that the Pause and/or the lease cancellations/postponements are not “final agency actions.”

To determine whether an agency action is final, two conditions are required to be satisfied. First, the action must mark the consummation of the agency’s decision-making process. It must not be of a merely tentative or interlocutory nature. Second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow. U.S. Army Corps of Engineers v. Hawkes Co., 136 S. Ct. 1807, 1813, 195 L. Ed. 2d 77 (2016); Bennett, 520 U.S. at 177–78.

Government Defendants argue the challenged decisions are merely interim postponements of lease sales, not decisions to forego the sales entirely, citing Am. Petroleum Inst. v. U.S. E.P.A., 216 F.3d 50, 68 (D.C. Cir. 2000), as amended (Aug. 18, 2000) and Shawnee Trail Conservancy v. Nicholas, 343 F. Supp. 2d 687, 701 (S.D. Ill. 2004), for the proposition that interim postponements are not “final agency action.”

In American Petroleum Institute, 216 F.3d at 68, the court stated that a decision to defer taking action is not a final action reviewable by the courts. The court went on to say the announcement of an agency’s intent to establish law and policy in the future is not the actual promulgation of a final regulation. In Shawnee Trail Conservancy, 343 F. Supp. 2d at 701, the court held that the Forest Service’s decision about how and when to conduct an all-terrain vehicles and off-highway motorcycles use review was not a final agency action.

The Plaintiff States maintain that the Pause itself is a final agency action, as is each cancellation and postponement. The label “pause” is not dispositive of whether the agency action is final. State of La. v. Dep’t of Energy, 507 F. Supp. 1365, 1371 (W.D. La. 1981), aff’d sub nom. Dep’t of Energy v. State of Louisiana, 690 F.2d 180 (Temp. Emer. Ct. App. 1982). As long as an agency has completed its decision-making on a challenged rule—even one interim in nature – the rule satisfies the first prong of the finality test. Nat. Res. Def. Council v. Wheeler, 955 F.3d 68, 79–80 (D.C. Cir. 2020).

There is no real question that Plaintiff States have met the second prong of the *Bennett* test, because the Pause and/or Lease cancellations are actions from which legal consequences will flow. The only real question is whether the Pause and/or lease cancellations mark the consummation of the decision-making process.

Numerous analogous cases support Plaintiff States' position: Texas v. United States, No. 6:21-CV-00003, 2021 WL 723856, at \*32 (S.D. Tex. Feb. 23, 2021), opinion amended and superseded, No. 6:21-CV-00003, 2021 WL 2096669 (S.D. Tex. Feb. 23, 2021), (a 100 day pause of deportations was final agency action); Enesco Offshore Co., 781 F. Supp. 2d at 334–36, (a blanket moratorium on deepwater drilling in the Gulf of Mexico was a final agency action); Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt., No. CV168418PSGFFMX, 2018 WL 5919096, at \*5 (C.D. Cal. Nov. 9, 2018), (a document that effectively lifted a moratorium constituted final agency action); Dunn-McCampbell Royalty Int., Inc. v. Nat'l Park Serv., No. CIV.A.V 06 59, 2007 WL 1032346, at \*5 (S.D. Tex. Mar. 31, 2007), (a plan that effectively closed an area to drilling operations was final agency action); Nat. Res. Def. Council, Inc. v. Hodel, 865 F.2d 288 (D.C. Cir. 1988), (portions of the Five-Year Plan under OCSLA could be reviewed so a decision to “Pause” the 5-year plan should also be able to be reviewed.); Texas, 809 F.3d 134, (a DACA memo which made millions more persons eligible for the DAPA program and extended the employment authorization for three years, instead of two, was a final agency action); Wilbur v. U.S. ex rel. Barton, 46 F.2d 217 (D.C. Cir. 1930), aff'd sub nom. U.S. ex rel. McLennan v. Wilbur, 283 U.S. 414, 51 S. Ct. 502, 75 L. Ed. 1148 (1931) (the temporary withdrawal of public lands by the Secretary of the DOI was found to be a final agency action); Al Otro Lado, Inc. v. McAleenan, 349 F. Supp 3d 1168 (S.D. Cal. 2019), (an unwritten policy of limiting asylum seekers at ports of entry from accessing the asylum process by based on false claims of capacity restraints was final agency action); Amadei v. Nielsen, 348 F. Supp. 3d 145 (E.D.N.Y. 2018), (an unwritten policy of searching travelers for identification documents after disembarking from domestic flights was a final agency action); BNSF Ry. Co. v. Equal Emp. Opportunity Comm'n, 385 F. Supp. 3d 512 (N.D. Tex. 2018); (the issuance by EEOC of a right to sue letter was a final

agency action); Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017), (a decision to stay, pending reconsideration, of the implementation of a final rule was a final agency action); Velesaca v. Decker, 458 F. Supp. 3d 224 (S.D.N.Y. 2020), appeal withdrawn sub nom. Velesaca v. Wolf, No. 20-2153, 2020 WL 7973940 (2d Cir. Oct. 13, 2020), (a no-release policy was found to be a final agency action); Gomez v. Trump, 485 F. Supp. 3d 145 (D.D.C.), amended in part, 486 F. Supp. 3d 445 (D.D.C. 2020), and amended in part sub nom. Gomez v. Biden, No. 20-CV-01419 (APM), 2021 WL 1037866 (D.D.C. Feb. 19, 2021) (State Department's Policy suspending VISA processing and adjudication due to COVID-19 was a final agency action); Natural Resources Defense Council, 955 F.3d 68, (EPA's rule suspending a prior rule was a final agency action); Becerra v. United States Dep't of Interior, 276 F. Supp. 3d 953 (N.D. Cal. 2017), (the postponing of the application of a rule was final agency action); and W. Energy All. v. Jewell, No. 1:16-CV-00912-WJ-KBM, 2017 WL 3600740 (D.N.M. Jan. 13, 2017), (BLM's practice of cancelling or deferring lease auction sales less frequently than quarterly, for reasons other than lack of eligible parcels under MLA, was a final agency action).

These cases show that a "final agency action" does not have to be permanent. Additionally, there is a strong presumption of judicial review. Establishing unreviewability is a heavy burden. Texas, 809 F.3d at 163–64.

This Court has determined that the Pause in new oil and gas leases on federal lands and in federal waters, as well as the cancellation of Lease Sale 257, the stoppage of Lease Sale 258, and the cancellation or postponements of "eligible lands" under the MLA, are final agency actions that are reviewable under the APA.

#### **4. Committed to Agency Discretion by Law**

Under 5 U.S.C. 701(a)(2), a court is unable to review an agency decision that is committed to agency discretion by law. Government Defendants argue that the decision to pause new oil and gas leases under MLA or under OCSLA are within its discretion. The Government Defendants cite several statutes in which the agency is granted discretion. Additionally, the Government Defendants argue that they have the discretion to reconsider a decision.

However, there is a huge difference between the discretion to stop or pause a lease sale because the land has become ineligible for a reason such as an environmental issue, and, stopping or pausing a lease sale with no such issues and only as a result of Executive Order 14008.

The discretion to pause a lease sale to eligible lands is not within the discretion of the agencies by law under either OSCLA or MLA. OSCLA directs the Secretary of the DOI to make the OSC available for expeditious development. Enesco Offshore Co., 781 F. Supp. 2d at 339. OCSLA also directs the Secretary of the DOI to administer a leasing program to sell exploration interests in portions of the OSC to the highest bidder. 43 U.S.C.A. § 1334(a) and 1337(a)(1).

OCSLA sets up a four-step process to set up a Five-Year Program. Currently, the Five-Year Program in effect is from 2017-2022. At least one (Lease Sale 257) of the lease sales to be sold in the Five-Year Program has been cancelled due to the Pause. Another (Lease Sale 258) was halted at the selling stage due to the Pause. The Five-Year Program currently in effect went through a substantial vetting process, which included millions of comments, approval from affected Governors, publishing of a Final Program that was sent to the President and Congress, and final approval by the Secretary of the DOI.

Congress, through MLA, has also made energy-producing lands onshore available for development. Under MLA, the Secretary of DOI is required to hold lease sales for each state where eligible lands are available at least quarterly. 30 U.S.C. 226(b)(1)(A).

In Western Energy Alliance, 2017 WL 3600740, the court held a BLM policy, in which BLM cancelled or deferred eligible lands and did not have the lease sales quarterly was a final agency action that violated the APA. The court denied defendant's Motion to Dismiss the plaintiff's claims that BLM was required to hold lease sales for eligible lands quarterly and did not have the discretion to do less, as long as there were eligible lands. In other words, the plaintiffs had a cause of action based on these allegations.

The fact that a statute grants broad discretion to an agency does not render the agency's decisions completely unreviewable unless the statutory scheme, taken together with other relevant materials, provides absolutely no guidance to how that discretion is to be exercised. Texas, 809 F.3d at 168.

That is not the case here. Both MLA and OCSLA set forth requirements to hold lease sales of eligible land and sets forth how it is to be conducted.

The agencies could cancel or suspend a lease sale due to problems with that specific lease, but not as to eligible lands for no reason other than to do a comprehensive review pursuant to Executive Order 14008. Although there is certainly nothing wrong with performing a comprehensive review, there is a problem in ignoring acts of Congress while the review is being completed.

Additionally, two previous rulings from the Office of the Solicitor on February 12, 1996, [Doc. No. 14, PR 61] and on January 5, 1981, [Doc. No. 121 PR 56] confirm that any significant revisions of an existing Five-Year OCSLA Plan would require the Secretary of the Interior to

revise it “in the same manner that it was originally developed.” In other words, the Secretary of the DOI cannot make any significant changes to the Five-Year Plan without going through the same procedure by which the Five-Year Plan was developed. The Pause and/or cancellation of one of the Lease Sales set out in the Five-Year Plan is subject to review. This Court finds the agency actions at issue are not barred from APA review as actions committed to agency discretion by law. The claims of Plaintiff States are reviewable by this Court.

#### **IV. IS THERE A PAUSE?**

Before addressing whether the implementation of a Pause by Agency Defendants violates the APA, a determination must be made whether there is one. Government Defendants concede that Lease Sale 257 and Lease Sale 258 were postponed/delayed because of Section 208 of Executive Order 14008. However, with respect to the lease sales under MLA, Government Defendants maintain the Pause in Section 208 had nothing to do with the six to seven new oil and natural gas lease sales cancelled in the first quarter of 2021, and with the new oil and natural gas lease sales cancelled in April, 2021.

The Government Defendants conceded at oral argument that zero (0) new sales have been completed by the Government Defendants under MLA during both the first and second quarters of 2021. (With the exception of a lease sale that received no bids in the last quarter of 2020 but it was purchased in the first quarter of 2021).

Agency action need not be in writing to be final and judicially reviewable pursuant to the APA. An unwritten policy can still satisfy the APA’s final agency action requirement. *Al Otro Lado, Inc. v. McAleenan*, 349 F.Supp. 3d 1168 (S.D. Cal. 2019); *Amadei*, 348 F. Supp. 3d 145; *Bhd. of Locomotive Engineers & Trainmen v. Fed. R.R. Admin.*, 972 F.3d 83 (D.C. Cir. 2020); *Velesaca*, 458 F. Supp. 3d 224.

It is the effect of the agency rule that is most relevant. (A personnel manual letter implemented the executive order). Nat'l Treasury Emps. Union v. Reagan, 685 F. Supp. 1346 (E.D. La. 1988).

In order for Plaintiff States to obtain a preliminary injunction against a new oil and natural gas lease Pause, they would need to demonstrate they have a substantial likelihood of proving on the merits that a Pause based upon Executive Order 14008 was implemented by Agency Defendants.

The first evidence of a Pause is Section 208 of Executive Order 14008, which states: “To the extent consistent with applicable law, the Secretary of the Interior shall **pause** new oil and natural gas leases in public lands or in offshore waters pending a comprehensive review...”. 86 Fed. Reg. 7619 (emphasis added). By its own terms, the Pause applies to both onshore and offshore new oil and natural gas leases.

As to leases under OCSLA, there is strong evidence of a Pause. There is not much doubt that Lease Sale 257 and Lease Sale 258 were rescinded/postponed because of the Pause. The Record of Decision (“ROD”) scheduling Lease Sale 257 was rescinded to comply with Executive Order 14008. 86 Fed. Reg. 10132 (February 18, 2021). The public review period previously published for Lease Sale 258 was rescinded in response to Executive Order 14008. 86 Fed. Reg. 10994 (February 23, 2021). On February 9, 2021, BOEM Acting Director, Walter D. Cruickshank sent a Request for Authorization [Doc. No. 121, PR 45] to Laura Daniel-Davis, Senior Advisor to the Secretary, recommending the rescission of the previous ROD with regard to Lease Sale 257, due to Executive Order 14008. The ROD as to Lease Sale 257 was immediately rescinded [Doc. 121, RP 47-48] due to Executive Order 14008.

Additionally, on January 20, 2021, (the day President Biden was sworn in), Walter Cruickshank sent an email to Loren Thompson [Doc. No.121, PR 17], in which he stated they had received instructions to withdraw any notices that were pending at the Federal Register, which included the Final Notice of Sale for Lease Sale 257 and the Notice of the Record of Decision for Lease 257. (The Notice of the Record of Decision was evidently withdrawn too late because it was published). Cruickshank told Thompson in the email that the withdrawals do not signify anything more than the new leadership team wanting to evaluate the pending items. This email was sent one week prior to Executive Order 14008 being signed on January 27, 2021.

As to on-land leases under MLA, the Executive Order, by its own terms, applies the Pause to both new oil and natural gas leases in public land, or in offshore waters. On January 20, 2021, Scott de la Vega, Acting Secretary of the Interior, issued Order No. 3395, which withdrew delegation of authority to Department Bureaus and offices (including the Asst. Secretary of Policy, Management and Budget, Asst. Secretary of Land and Minerals Management, the Secretary and Deputy Secretary of the DOI) to issue any onshore or offshore fossil fuel authorization, including leases. [Doc. No. 121, PR 13-14].

On the same day the Executive Order was issued (January 27, 2021), the U.S. DOI, BLM published a “Fact Sheet” about the Executive Order President Biden was signing that day. One section was entitled “HITTING PAUSE ON NEW OIL AND GAS LEASING.” It discussed the Executive Order directing the DOI to “pause” new oil and gas leasing on public lands and offshore waters. Nothing in the Fact Sheet indicated that the Agency Defendants were not going to pause new oil and gas leases on public lands. Fact Sheet: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy

Future (Jan. 27, 2021), <https://www.blm.gov/press-release/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>.

Since the date of Executive Order 14008, no new oil and gas leases on federal lands have taken place. None of the scheduled sales for the first quarter took place. A March 9, 2021 Nevada lease sale was postponed [Doc. No. 121, PR 72]. (No reason given.) On February 17, 2021, a March 25, 2021 Colorado sale was postponed [Doc. No. 120, PR 73]. (No reason given.) On February 12, 2021, lease sales in Colorado, Montana, Wyoming and Utah scheduled for March 2021 were postponed [Doc. No. 120, PR 74]. (Project status was listed as “Paused”). The reason listed was to confirm the adequacy of underlying environmental analysis [Doc. No. 120, PR 76].

Also, on February 12, 2021, a Utah oil and gas lease sale scheduled for March 30, 2021 was postponed. The reason listed was to determine whether additional NEPA needed to be conducted to determine if parcels were suitable to be offered [Doc. No. 120, PR 77]. On January 27, 2021, the DOI, BLM published Errata #1 with regard to an internet-based competitive oil and gas lease in Nevada, which consisted of 17 parcels containing approximately 73,600 acres. The Notice stated the March 9, 2021, sale had been postponed [Doc. No. 120, PR 78]. (No additional reasons given.)

On February 12, 2021, a Memorandum [Doc. No. 12, PR 79-80] from Travis Annatoyn to Laura Daniel-Davis stated it was Annatoyn’s opinion that lease sales set in Colorado or Montana and the Dakotas be postponed due to lack of analysis on greenhouse gas emissions due to a 2020 lawsuit. The Memorandum also recommended cancelling lease sales scheduled in Utah and Wyoming due to lack of an environmental analysis.

Also, on February 12, 2021, [Doc. No. 120, PR 81-82], Mitchell Leverette sent a Memorandum to Michael D. Nedd of BLM, recommending postponing the scheduled March 18, 2021 lease sales in Alabama and Mississippi (14 parcels, 5,439 acres) and rescheduling the sale for June 17, 2021. The reasons given were to complete additional air quality analysis to comply with the *Wild Earth Guardians* opinion.

On February 11, 2021, in a Memorandum to Michael Nedd by Gregory Sheehan, a March 30, 2021 competitive lease sale in Utah was recommended to be postponed in order to re-evaluate the parcels due to an opinion in the *Rocky Mountain Wild* Case [Doc. No. 120, PR 83-84].

On March 1, 2021, in an email from Laura Daniel-Davis to Michael Nedd, [Doc. No. 120, PR 86], Daniel-Davis told Nedd that Department officials, with delegated authority to approve onshore lease sales, are postponing further consideration of Quarter Two Sales (including authorization of the sales) pending decisions on how the Department will implement the Executive Order on Tackling the Climate Crisis at Home and Abroad with respect to onshore sales. Daniel-Davis told Nedd to post on the relevant website: “The oil and gas lease sales scheduled for April 2021 have been postponed.”

The Plaintiff States allege the postponements based on an additional need for further environmental analysis is pretextual in order to give a reason (other than Executive Order 14008) for the Pause. Some of these will need to be explored on the merits of this lawsuit. However, based upon Agency Defendants’ own records, no reasons were given for many of these cancellations, and the April, 2021 cancellations were as a direct result of the Executive Order 14008. Therefore, this Court believes the Plaintiff States have a substantial likelihood of success

on the merits on proving the Agency Defendants have implemented the Executive Order Pause to both on land sales under MLA and to offshore sales under OCSLA.

## **V. PRELIMINARY INJUNCTION**

A preliminary injunction is an extraordinary remedy never awarded of right. Benisek v. Lamone, 138 S. Ct. 1942, 1943, 201 L. Ed. 2d 398 (2018). In each case, the courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

The standard for a preliminary injunction requires a movant to show (1) the substantial likelihood of success on the merits, (2) that he is likely to suffer irreparable harm in the absence of a preliminary injunction, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. Benisek, 138 S. Ct. at 1944. The party seeking relief must satisfy a cumulative burden of proving each of the four elements enumerated before a temporary restraining order or preliminary injunction can be granted. Clark v. Prichard, 812 F.2d 991, 993 (5th Cir. 1987). None of the four prerequisites has a quantitative value. State of Tex. v. Seatrain Int'l, S. A., 518 F.2d 175, 180 (5th Cir. 1975).

### **1. Likelihood of Success on the Merits**

#### **(a) Contrary to law 5 U.S.C. 706 (2)(A) and (C)**

Title 5 U.S.C. 706 (2)(A) and (C) authorizes courts to hold unlawful and set aside agency actions not in accordance with law, or in excess of statutory authority. Plaintiff States assert that the Pause on new oil and gas leases on federal land and in federal waters pending a comprehensive review is not in accordance with law and exceeds the agencies authority under both the OSCLA and under MLA.

The Court must first determine whether Plaintiff States' challenges are programmatic challenges or discrete agency actions. Government Defendants cite Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 890–93, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990) in support of its argument that the Plaintiff States are making a programmatic APA challenge, rather than to discrete agency actions. In Lujan, 497 U.S. 871, the plaintiff sought review of a land withdrawal review program. The court found requests for wholesale improvement of the entire program, rather than discrete agency actions, cannot be reviewed under the APA.

Plaintiff States argue this is not a programmatic challenge, but a challenge as to discrete agency actions—the Pause itself, the cancellation of Lease Sale 257, the stoppage of Lease Sale 258, and the cancellation of other leases. This Court agrees. Plaintiff States are not challenging the entire program. They are attacking a Pause of federal oil and gas leasing allegedly in violation of two Congressional statutes—MLA and OCSLA.

Next, the Court will determine whether Plaintiff States have a substantial likelihood of success on the merits that the Government Defendants' Pause is contrary to law. The Pause is in violation of both OCSLA and of MLA. As previously discussed, both statutes require the Agency Defendants to sell oil and gas leases. OCSLA has a Five-Year Plan in effect, in which requires eligible leases to be sold. As noted in the previously discussed opinions of the Office of the Solicitor, the Agency Defendants have no authority to make significant revisions in OCSLA Five-Year Plan without going through the procedure mandated by Congress. MLA requires the DOI to hold lease sales, where eligible lands are available at lease quarterly.

By pausing the leasing, the agencies are in effect amending two Congressional statutes, OCSLA and MLA, which they do not have the authority to do. Neither OCSLA nor MLA gives the Agency Defendants authority to pause lease sales. Those statutes require that they continue

to sell eligible oil and gas leases in accordance with the statutes. Therefore, the Plaintiff States have a substantial likelihood of success on the merits of this claim. The legislative powers are granted to the legislative branch. U.S. Const. art. I, § 1.

**(b). Arbitrary and Capricious 5 U.S.C. 706(2)(A)**

Federal administrative agencies are required to engage in reasoned decision-making. Allentown Mack Sales & Serv., Inc. v. N.L.R.B., 522 U.S. 359, 374, 118 S. Ct. 818, 139 L. Ed. 2d 797 (1998). Plaintiff States allege the Pause is arbitrary and capricious under 5 U.S.C. 706(2)(A) both as to MLA and OCSLA claim.

If an administrative agency does not engage in reasoned decisionmaking, a court, under the APA, shall hold unlawful and set aside agency action, findings and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. 706(2)(A).

The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based. Sec. & Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 87, 63 S. Ct. 454, 87 L. Ed. 626 (1943).

Neither Executive Order 14008, nor the cancellation of sale of Lease Sale 257, offers any explanation for the Pause (other than to perform a comprehensive review). It also gives no explanation for the postponement of Lease Sale 257, other than reliance on Executive Order 14008.<sup>7</sup> A command in an Executive Order does not exempt an agency from the APA's reasoned decisionmaking requirement. California v. Bernhardt, 472 F. Supp. 3d 573, 600–01 (N.D. Cal. 2020). A decision supported by no reasoning whatsoever in the record cannot be saved merely because it involves an Executive Order. Texas, 2021 WL 2096669, at \*39–41.

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<sup>7</sup> 86 Fed. Reg. 10132

The rescission of Lease Sale 257 and the Executive Order itself<sup>8</sup> provides no rationale for departing from OCSLA or MLA requirements.

As to Lease Sale 258, BOEM cancelled both the public comment and public meetings with regard to Lease Sale 258. No explanation was given, other than to rely on Executive Order 14008.<sup>9</sup>

BLM did not publish a formal notice in the Federal Register halting MLB quarterly land sales but did publish a Fact Sheet which noted the President's Executive Order. No explanation (other than the Executive Order) was given. After that, the regional BLM offices began posting postponement or cancellation notices for March and April 2021 lease sales, again, without explanation.

The omission of any rational explanation in cancelling the lease sales, and in enacting the Pause, results in this Court ruling that Plaintiff States also have a substantial likelihood of success on the merits of this claim.

**(c) Failure to Provide Notice and Comment**

Plaintiff States also claim they are entitled to injunctive relief under the APA because the Pause and lease cancellations are substantive rules that required notice and comment pursuant to 5 U.S.C. 553. The APA requires rules to undergo notice and comment unless they are exempt. 5 U.S.C. 553(a)(b). The two exceptions set forth in 5 U.S.C. 553 are (1) interpretive rules, general statements of policy, or rules of agency organization, procedure, and practices, and (2) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

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<sup>8</sup> 86 Fed. Reg. 7624-25

<sup>9</sup> 86 Fed. Reg. 10994

The only exception which could possibly apply is the first. These exceptions are to be narrowly construed. Texas, 809 F.3d at 171. Section 553 was enacted to give the public an opportunity to participate in the rule-making process. U.S. Dep't of Lab. v. Kast Metals Corp., 744 F.2d 1145, 1153 n.17 (5th Cir. 1984).

Is the implementation of the Executive Order Pause an interpretive rule, general statement of policy, or a rule of agency organization, procedure, or practice? In analyzing whether an agency pronouncement is a statement of policy or a substantive rule, the starting point is the agency's characterization of the rule. Pros. & Patients for Customized Care v. Shalala, 56 F.3d 592, 596 (5th Cir. 1995). As to the offshore leases, there is no classification, just reference to Executive Order 14008. As to the land leases, the Government Defendants deny there is any pause at all, so the language in Executive Order 14008 should also be referenced. In reading Section 208 of Executive Order 14008, there is no classification. The Executive Order language states: "To the extent consistent with applicable law, the Secretary of the Interior shall pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review" *...Id.*

In looking closely at an agency's actions, the Fifth Circuit instructs district courts to evaluate two criteria to distinguish policy statements from substantive rules: whether the rule (1) imposes any rights and obligations, and (2) genuinely leaves the agency and its decisionmakers free to exercise discretion. Texas, 809 F.3d at 171. In evaluating the first criteria, the Executive Order effectively commands that the DOI stop performing its obligations under OCSLA and MLA to sell oil and natural gas leases. The impact is legal in nature, effectively stopping the scheduled sale of Lease Sale 257, putting the brakes on Lease Sale 258, and stopping the quarterly lease sales, under MLA. In evaluating whether the rule leaves the agency and its

decisionmakers free to exercise discretion, the Court notes the wording in the Executive Order, which states, “To the extent consistent with applicable law,” but also notes the wording “shall pause.” This does not leave the agency free to exercise discretion unless they disobey a Presidential Executive Order.

This Court believes that the Pause in Executive Order 14008 is a substantive rule as implemented by the DOI and MLB, and the exceptions to 5 U.S.C. 553 do not apply.

The “Pause” is also not procedural, because it modifies substantive rights and interests under the “substantial impact test”. Texas, 809 F.3d at 176. Therefore, the exceptions in 5 U.S.C. 553 do not apply and notice and comment was required under 5 U.S.C. 553 (b) and (c).

It is uncontested that no notice and comment was conducted by the Agency Defendants pursuant to 5 U.S.C. 553. Since there was no notice and comment, there is a substantial likelihood of success on the merits by Plaintiff States on this claim. Texas, 809 F.3d at 177–78; Natural Resources Defense Council, 955 F.3d at 85.

**(d) Unreasonably Withheld and Unreasonably Delayed**

5 U.S.C. 706(1) provides that the reviewing court under the APA shall compel agency action unlawfully withheld or unreasonably delayed. In Norton v. S. Utah Wilderness All., 542 U.S. 55, 124 S. Ct. 2373, 159 L. Ed. 2d 137 (2004), an environmental group brought an action against the DOI, BLM and others seeking to compel agency action under 5 U.S.C. 706(1) in light of the defendants’ alleged failure to manage off-road vehicle use in federal lands classified as wilderness study areas. The Supreme Court held that a claim under 5 U.S.C. 706(1) to compel agency action unlawfully withheld or unreasonably delayed can only proceed where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take.

Plaintiff States are asking this Court to compel the Government Defendants to complete the sale of Lease Sale 257 and to compel the Government Defendants to re-start the procedure for Lease Sale 258, and to compel the Government Defendants to conduct sales of eligible onshore leases under the MLA. These are “discrete agency actions.” The question is whether these are actions the Government Defendants are “required to take.”

The Government Defendants argue that they have discretion to determine whether to go forward with Lease Sale 257, Lease Sale 258, and lease sales under the MLA. Additionally, the Government Defendants argue that they also have the right to reconsider their decisions and therefore, those are not actions that the Government Defendants are “required to take.”

However, both Lease Sale 257 and Lease Sale 258 were in the Five-Year Program that was approved in accordance with law under OCSLA. Lease Sale 257 was actually scheduled for sale on March 17, 2021. The Secretary of DOI approved the Notice of Sale in a Record of Decision.<sup>10</sup> In the ROD, the Secretary of DOI, in relying on the Final Supplemental Impact Statement determined that Alternative A – a nationwide lease sale with minor exclusions – would be in the best interest of the Nation and meets the purposes of OCSLA.<sup>11</sup> When the sale of Lease Sale 257 was postponed, the only reason given was Executive Order 14008<sup>12</sup> As it has been previously determined that there is a substantial likelihood of success on the merits that Section 208 of Executive Order 14008 is contrary to law, and in excess of authority, the reliance on nothing but Executive Order 14008 results in a substantial likelihood of success on the merits of the unreasonably withheld claim under 5 U.S.C. 706(1) as to Lease Sale 257. Without any

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<sup>10</sup> 86 Fed. Reg. 6365 (January 21, 2021)

<sup>11</sup> Approval 5, 8, 10 and 11

<sup>12</sup> 86 Fed. Reg. 10132 (Feb. 18, 2021)

other reason to delay the sale, the Government Defendants were legally required to go through with the sale of Lease Sale 257.

Lease Sale 258 was included in the Five-Year Program, but the sale had not been set or approved by the Secretary of the DOI. BOEM released a Call For Information and Nominations, in the Federal Register to allow parties to indicate interest in parcels of the sale area.<sup>13</sup> BOEM also released a Notice of Intent to prepare an Environment Impact Statement, which provided the public with an opportunity to comment on the scope of the lease sale.<sup>14</sup> In January, 2021, after accounting for comments, BOEM published a Notice of Availability indicating the area proposed for sale in the Cook Inlet and a draft environmental impact statement.<sup>15</sup> The reason for the cancellation or the stoppage of the procedure for the ultimate sale of Lease Sale 258 was also Executive Order 14008.

As discussed previously, the Office of the Solicitor's two opinions, [Doc. No. 121, PR-56 and PR 62] to the DOI show that the Secretary of the DOI and other Agency Defendants do not have the authority to make significant revisions to OCSLA Five-Year Plan without Congressional approval. In this Court's opinion, pausing, stopping and/or cancelling lease sales scheduled in OCSLA Five-Year Plan would be significant revisions of the plan.

Without a valid reason to stop Lease Sale 258, the Agency Defendants were also required to complete the statutorily required procedure for the sale of Lease Sale 258.

Additionally, at least some of the onshore leases were cancelled due to the Pause, without any other valid reason. Some were cancelled to do additional environmental analysis, (which

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<sup>13</sup> 85 Fed. Reg. 55859 (Sept. 10, 2020)

<sup>14</sup> 85 Fed. Reg. 55861 (Sept. 10, 2020)

<sup>15</sup> 86 Fed. Reg. 4116 (Jan. 15, 2021)

Plaintiff States maintain is pretextual), but the Pause has obviously been implemented by Agency Defendants for some of the lease sales.

Therefore, this Court finds that the Plaintiff States are substantially likely to prevail upon the merits under 5 U.S.C. 706(1) with regard to Lease Sale 257, with regard to Lease Sale 258, and with regard to eligible lands under the MLA.

## **2. Irreparable Injury**

This issue is also contested by Government Defendants. Plaintiff States must demonstrate “a substantial threat of irreparable injury” if the injunction is not issued. Texas, 809 F.3d at 150. For the threat to be sufficiently “substantial,” plaintiff must show it is likely to suffer irreparable harm in the absence of preliminary relief. Winter, 555 U.S. at 20. For the injury to be sufficiently “irreparable,” plaintiffs need only show it “cannot be undone through monetary remedies.” Burgess v. Fed. Deposit Ins. Corp., 871 F.3d 297, 304 (5th Cir. 2017).

As shown by the Declarations of Professor Timothy J. Considine, Professor David E. Dismukes and Jerome Zeringue, Plaintiff States are alleging they would sustain damages due to reduced funding for bonuses, ground rent, royalties, and rentals as a result of the Pause of new oil and gas leases in federal waters or on federal land. Additionally, Louisiana is also claiming damage for reduced funding to the Coastal Master Plan, which would reduce proceeds that are used in Louisiana’s coastal recovery and restoration program. Plaintiff States are also claiming damages through loss of jobs in the oil and gas sector, higher gas prices, losses by local municipalities and governments, as well as damage to Plaintiff States’ economy. Additionally, Plaintiff States argue that they will not be able to recover money damages against the Government Defendants due to sovereign immunity. Texas, 809 F.3d at 186 and Texas, 2021 WL 2096669, at \*47.

Government Defendants maintain, through the Declaration of Peter Cowan, Declaration of Mustafa Haque and Declaration of Walter P. Cruickshank that drilling permits and drilling is continuing at the same level as it did previously as to existing leases. However, just with the loss of proceeds from Lease Sale 257, which would have been already completed, Plaintiff States would have been entitled to ground rents and bonuses that they will not receive. The Plaintiff States have alleged very substantial damages from Government Defendants, which would be difficult, if not impossible to recover, due to sovereign immunity. Even though existing leases are proceeding, the fact that new oil and gas leases on federal lands and in federal waters are paused will ultimately result in losses to Plaintiff States which they will likely not be able to recover.

Accordingly, this Court finds the Plaintiff States have demonstrated a substantial threat of irreparable injury.

### **3. The Balance of Equities and The Public's Interest**

Plaintiff States have satisfied the first two elements to obtain a Preliminary Injunction. The final two elements they must also satisfy are that the threatened harm outweighs any harm that may result to the Government Defendants, and, that the injunction will not undermine the public interest. Valley v. Rapides Par. Sch. Bd., 118 F.3d 1047, 1051 (5th Cir. 1997). These two factors overlap considerably. *Texas*, 809 F.3d at 187. In weighing equities, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. Winter, 555 U.S. at 24. The public interest factor requires the court to consider what public interests may be served by granting or denying a preliminary injunction. Sierra Club v. U.S. Army Corps of Engineers, 645 F.3d 978, 997–98 (8th Cir. 2011).

Both sides argue equity and public interest favor their side. This Court believes both the factors weigh in favor of Plaintiff States. If the Pause were enjoined, the Government Defendants would simply be doing what they had already been doing and doing what they were statutorily required to do under OCSLA, the Five-Year Program, and MLA. The Government Defendants even maintain there is no Pause with regard to MLA, so there would not be any harm in enjoining the Government Defendants from implementing a Pause, which they deny even exists.

The Plaintiff States' claims are substantial. Millions and possibly billions of dollars are at stake. Local government funding, jobs for Plaintiff State workers, and funds for the restoration of Louisiana's Coastline are at stake. Plaintiff States have a reliance interest in the proceeds derived from offshore and on land oil and gas lease sales.

Additionally, the public interest is served when the law is followed. Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C., 710 F.3d 579, 585 (5th Cir. 2013). The public will be served if Government Defendants are enjoined from taking actions contrary to law.

Therefore, this Court finds that Plaintiff States have satisfied all four elements required for a preliminary injunction to be issued.

## **VI. CONCLUSION**

The Plaintiff States have satisfied all four elements required for a preliminary injunction to be issued. After considering all factors, this Court has determined that a preliminary injunction should be issued by Plaintiff States against the Government Defendants.

The Court will now address the geographic scope. This Court does not favor nationwide injunctions unless absolutely necessary. However, it is necessary here because of the need for uniformity. Texas, 809 F.3d at 187–88. The Agency Defendants' lease sales are located on

public lands and in offshore waters across the nation. Uniformity is needed despite this Court's reluctance to issue a nationwide injunction. Therefore, the scope of this injunction shall be nationwide.

Additionally, this Court will address security under FED. R. CIV. P. 65. The requirement of security is discretionary. Kaepa, Inc. v. Achilles Corp., 76 F.3d 624, 628 (5th Cir. 1996). Plaintiff States are thirteen sovereign states. The Government Defendants pay a substantial amount of proceeds under the MLA and OCSLA to Plaintiff States. The Court will not require Plaintiff States to post security for this Preliminary Injunction.

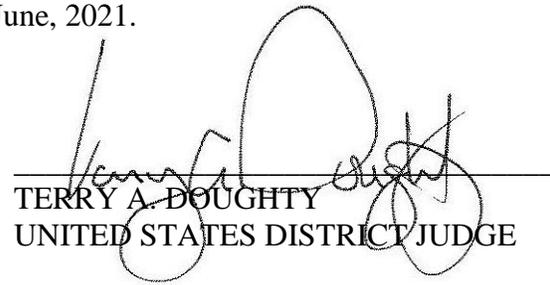
For the foregoing reasons, the Court GRANTS Plaintiff States' Motion for Preliminary Injunction [Doc. No. 3]. Therefore, the U.S. Department of the Interior, the United States Bureau of Land Management, the United States Bureau of Ocean Energy Management, and the United States Bureau of Safety and Environmental Enforcement, along with their directors, employees and Secretary are hereby ENJOINED and RESTRAINED from implementing the Pause of new oil and natural gas leases on public lands or in offshore waters as set forth in Section 208 of Executive Order 14008, 86 Fed. Reg. 7619, 7624-25 (Jan. 27, 2021) as to all eligible lands, both onshore, and offshore.

Additionally, said Agency Defendants shall be ENJOINED and RESTRAINED from implementing said Pause, with respect to Lease Sale 257, Lease Sale 258, and all eligible lands onshore.

This preliminary injunction shall remain in effect pending the final resolution of this case, or until further orders from this Court, the United States Court of Appeals for the Fifth Circuit, or the United States Supreme Court.

No security bond shall be required under Federal Rule of Civil Procedure 65.

MONROE, LOUISIANA, this 15th day of June, 2021.



TERRY A. DOUGHTY  
UNITED STATES DISTRICT JUDGE

**From:** [Pete Stauffer](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] Comments from Surfrider Foundation/ Surf Industry Manufacturers Association  
**Date:** Wednesday, April 14, 2021 5:20:35 PM  
**Attachments:** [Surfrider\\_SIMA Letter Offshore Drilling 3 26 21.pdf](#)

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Please see attached. Thank you!

Pete Stauffer | Environmental Director | Surfrider Foundation |  
503.887.0514. | [pstauffer@surfrider.org](mailto:pstauffer@surfrider.org) | tw: [@PeteStauffer](#)  
He/ him/ his ([what's this?](#))



April 1st, 2021

Interior Secretary Deb Haaland  
Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Dear Secretary Haaland,

The Surfrider Foundation and the Surf Industry Manufacturers Association (SIMA) appreciate the Biden administration's recent action to place a "temporary pause" on new oil and gas leasing on public lands and waters. This decision effectively cancels the Department's draft offshore drilling plan for 2019 – 2024, and will protect valuable marine and coastal ecosystems, as well as the communities and businesses that depend on these resources. Specifically, it will protect an ocean recreation and tourism industry valued annually at nearly \$130 billion annually in the United States.

Nevertheless, we are concerned that the majority of U.S. federal waters remain potentially vulnerable to new oil and gas development in future 5-year offshore drilling programs developed by the Department of Interior. This includes the East Coast, West Coast, and Eastern Gulf of Mexico, which have been protected from new oil and gas lease sales for decades. Accordingly, we ask that the Department take steps to end the federal offshore oil and gas leasing program.

Opposition to offshore drilling is bipartisan and continues to grow across the U.S. To date, more than 380 municipalities on the Atlantic, Pacific and Gulf of Mexico coasts have officially voiced their opposition to offshore drilling. More than 55,000 businesses have joined regional business alliances opposing new offshore oil and gas development. Finally, nine states, including Virginia, Florida, Delaware, New Jersey, New York, New Hampshire, Maine, California and Oregon have passed laws that would prohibit oil and gas drilling and related infrastructure in their waters.

For these reasons and more, we ask that you work to establish permanent protections for U.S. waters from new oil and gas development through administrative action.

Sincerely,

Dr. Chad Nelsen  
Chief Executive Officer  
Surfrider Foundation

Paul Naude  
Vice President of SIMA  
President of the SIMA Environmental Fund

**From:** [Richard Charter](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] comments on Energy Review, The Ocean Foundation  
**Date:** Thursday, April 15, 2021 10:59:16 AM  
**Attachments:** [DOI Coastal Coordination Program The Ocean Foundation.pdf](#)

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Please find attached our comments on the present review of oil and gas leasing policies, as requested during the public forum on this topic.

Thanks very much.

Richard Charter  
Senior Fellow  
The Ocean Foundation  
Coastal Coordination Program  
[waterway@monitor.net](mailto:waterway@monitor.net)



# THE OCEAN FOUNDATION

## Coastal Coordination Program

April 14, 2021

Re: Written comments submitted in the context of the March 15, 2021 public forum on the hydrocarbon leasing pause on federal lands and prioritization of climate resilience, and pursuant to Executive Orders 13990 and 14008.

Bureau of Ocean Energy Management  
U.S. Department of Interior  
1849 C Street, NW  
Washington, DC 20240

Via email to: [energyreview@ios.doi.gov](mailto:energyreview@ios.doi.gov)

To Whom It May Concern:

Thank you for this opportunity to express support for the current pause and review of the federal oil and gas leasing program. As you know, this program has been on the U.S. Government Accountability Office's high risk list of federal programs for a decade and has not been comprehensively reviewed in nearly forty years. The legitimate concerns raised by GAO and others reflect the sad reality that the program fails to properly protect public lands, coastal and western communities, taxpayers, and wildlife. We applaud the Secretary's stated intent to implement common-sense reforms to ensure that the program lives up to the Interior Department's balanced mission, protects taxpayers, and aligns with the Biden administration's climate goals. Fossil fuel extraction on federal lands is responsible for nearly a quarter of our nation's total greenhouse gas emissions, and the Administration now appears to be serious about cutting the country's outsized contribution to global warming.

The program, as currently constructed, does not balance the uses of our nation's public lands, waters, and resources. Reforming the system has the clear support of the public. Western voters overwhelmingly want oil and gas development on federal public lands to be stopped or strictly limited -- not expanded -- and the ongoing pause on leasing public lands enjoys net support from all voters. Recently, more than 50 Gulf-based organizations also wrote a letter to the Administration applauding the leasing pause and urging a just transition for Gulf communities.

Sensitive regions of our Outer Continental Shelf (OCS) have long been recognized by Congress and prior Administrations as worthy of protection from the routine adverse impacts and unacceptable risks that inevitably result from offshore oil and gas exploitation. Bipartisan congressional concern posed by these harmful impacts on our "Clean Coast" regional economies and the environment led to twenty-seven consecutive years of the annual renewal of an OCS moratorium as part of the yearly Interior Appropriations bill, followed by subsequent Administrations that also acknowledged the wisdom of keeping our sensitive waters off limits to hydrocarbon leasing and drilling. In addition, the bipartisan Gulf of Mexico Energy Security Act (GOMESA) recognized the clear conflict between potential future OCS oil and gas infrastructure in the Eastern Gulf of Mexico and mission-critical military space-use conflict areas as well as with Gulf Coast visitor-serving economies. And in the closing weeks of the prior Administration, decade-long

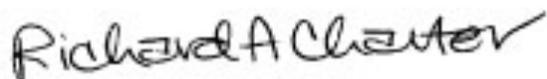
deferrals of new OCS leasing off of Florida, Georgia, South Carolina, North Carolina, and the Commonwealth of Virginia were implemented by Executive Order.

The time has come to make protection of the OCS fully permanent. No future Five-Year OCS Oil and Gas Leasing Program should put our OCS regions or frontier waters in further jeopardy. Instead, permanent protection needs to be implemented via available mechanisms so that the interim, year-by-year, approach to OCS deferrals can be replaced by reliable protection in perpetuity. We support the Administration's recently-stated commitment to advance the 30x30 goal by supporting local, state, private, and tribally led nature conservation and responsible restoration efforts. We further applaud efforts to responsibly deal with the mounting cleanup and remediation costs of the myriad unaddressed orphan wells scattered across the country. The longstanding Taylor Energy site problem in the Gulf of Mexico today stands as solemn testimony to the need to ensure that all operators in any offshore region possess the fiscal and technical capacity to successfully cope with and shut-in any of the worst-case scenarios that may take place. This situation, along with the Deepwater Horizon accident, is proof that oil and gas operations on the OCS have the potential to create challenges beyond the scope of human intervention, leaving the environment itself and coastal communities and their residents to bear incalculable damage in the long term. Abatement of the current irresponsible levels of discharge of methane by hydrocarbon extraction and processing activities needs to proceed expeditiously, either voluntarily by the operators or through imposed sanctions for failure to comply. The adverse climate implications of fugitive methane emissions and combustion byproducts are too great to ignore, and the volume of wasted energy represented by the release of fugitive methane and lost to flaring is entirely unacceptable to society and to the planet itself.

Offshore, of the more than 12 million acres of public waters under lease, over 9.3 million (or 77%) of those acres are unused and non-producing. The current pause in new leasing should, in fact, be continued and made permanent with these numbers in mind. Onshore and offshore, the oil and gas industry is sitting on approximately 7,700 unused, approved permits to drill, a backlog that provides ample evidence of the speculative nature of some permittees.

Thank you for your dedication to the sustainability of our oceans, to diminishing the level of excess carbon in our atmosphere, to the safety of our coastal waters and shoreline communities, and to ensuring that a new direction and a just transition for the various federal hydrocarbon leasing programs takes place, both onshore and offshore.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Charter". The signature is written in a cursive, slightly slanted style.

Richard Charter  
Senior Fellow  
The Ocean Foundation  
Coastal Coordination Program  
waterway@monitor.net

**From:** [Ellen R. Wald, Ph.D.](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] Energy Review as Called for in Executive Order 14008  
**Date:** Wednesday, April 14, 2021 9:48:37 AM  
**Attachments:** [Comment on Energy Review as Called for in Executive Order 14008.pdf](#)

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April 14, 2021

The Honorable Deb Haaland  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240  
[energyreview@ios.doi.gov](mailto:energyreview@ios.doi.gov)

Re: Energy Review as Called for in Executive Order 14008

By email at [energyreview@ios.doi.gov](mailto:energyreview@ios.doi.gov)

Dear Ms. Secretary:

I write in response to a request for additional information by the Department of the Interior on energy review as called for in Executive Order 14008 and online forum held on March 25, 2021.

My name is Ellen R. Wald, Ph.D. I am a senior non-resident fellow at the Global Energy Center at the Atlantic Council, the founder and president of Transversal Consulting, and an adjunct professor at Jacksonville University. Past appointments include visiting assistant professor at the University of Georgia, Majewski Fellow in Economic Geology at the American Heritage Center at the University of Wyoming, Visiting Scholar at the University of Cambridge, and lecturer at Boston University. I am a columnist on the energy industry and investing at [investing.com](http://investing.com). I earned my doctorate in history with a focus on the energy industry at Boston University and my A.B. magna cum laude from Princeton University. The views I share in this letter are mine and do not represent those of any institution with which I am affiliated.

The most obvious results of new restrictions on energy production on federal land would be economic difficulties, primarily job losses in affected regions and higher fuel prices. Such a policy change would also be a negative sign to all investors in the United States—not simply energy investors—who would view a drastic change in policy as unreliable. One of the greatest economic advantages for the United States has always been the reliability of the rule

of law, but if major policies which were formerly bipartisan are open to drastic changes upon the arrival of a new administration, businesses and investors will come to lose faith in the system.

For much of his tenure, President Obama took pride in his administration's efforts to open more federal land to oil and gas drilling. During his administration, the nation experienced a drastic rise in production and the most significant impact of the shale revolution.<sup>[1]</sup> He discussed this openly and credited domestic oil and gas production with helping add jobs for the economy.<sup>[2]</sup> President Obama's policies were then continued by President Trump, creating a reliable and stable condition that led to the highest rate of oil production ever in 2019.<sup>[3]</sup>

Now, that reliability is disrupted by Biden administration's decision to reassess production on federal land and the possibility that the administration will curtail production; the Biden administration already placed a one-year moratorium on future leases for natural gas and oil.<sup>[4]</sup> These unprecedented dynamics leaves businesses and investors anxious about the drastic changes that can occur in the United States based on nothing more than the decisions of a new administration. As I wrote recently in the Hill, "Business ventures will now see a risk of unreliability every four years."<sup>[5]</sup> This is a dangerous precedent to set, for energy and for business in general.

Even though quite a few energy companies tried to prepare for the possibility of curtailed production on federal land by obtaining permits in advance, the new administration already invalidated 70 previously approved permits less than 10 days into its term in office.<sup>[6]</sup> Again, business will hesitate to rely on the word of the American government, and there is evidence that they already are hesitating.

In the energy industry, we have already seen that the uncertainty alone is enough to scare away business. The price of oil has risen in the last two and a half months (WTI rose more than 10% from inauguration day to April 5), but production has not. With prices often in the mid-60 dollar range, many experts believed production would rise, but it did not because producers were nervous about impending government decisions.<sup>[7]</sup>

The Federal Reserve Bank of Dallas recently surveyed oil and gas producers about their plans for the future and many attributed uncertainty from the federal government to their decisions not to increase oil rigs and failure to increase production.<sup>[8]</sup> 58% of the respondents expressed concern that "increased federal regulation will make their business unprofitable." They feel that even though "American hydrocarbons are the most regulated, safest and most reliable sources of clean barrels relative to other sources" the government seems "bent on killing the domestic oil and gas industry." Oil prices are high enough that energy firms could profitably expand operations but are holding off because the moratorium and lack of clarity surrounding the future of federal oil and gas leases "have created political risk and pose a long-term threat." Firms are extremely hesitant to move forward with long term projects because they fear that these projects will require federal approval that will not be forthcoming. The unbalanced and unclear approach the Biden administration is taking with respect to energy is already hurting American energy security. Oil and gas producers, like other businesses, need

regulatory stability from the American government, or fuel prices will keep rising and job numbers will not grow.

Lest anyone believe that lower U.S. production is a net gain for the environment, that is not the case. A government decision to decrease (or simply not increase) production on U.S. federal land would not impact global demand numbers, global production numbers or greenhouse gas emissions. The world still needs and wants oil and gas. Before the coronavirus pandemic, global demand was slightly above 100 million barrels per day, and the U.S. was producing just under 13% of that. The U.S. can produce less, but does not change global oil demand. If the world does not get the oil from the United States, it will get the oil elsewhere—and the U.S. will miss out on the industry jobs. If the U.S. does not produce the oil but someone else does, the fuel will be more expensive (with less on the market) and especially more expensive in the U.S. due to shipping and sales costs. Moreover, and perhaps most importantly, if the oil is produced elsewhere, the world will not benefit from the strict environmental regulations in the U.S. that ensure the cleanest production and transportation methods. In short, the world will see an environmental negative from losing U.S. production, and the U.S. economy would suffer too.

Finally, by banning federal leasing of natural gas and oil, the U.S. puts itself at further disadvantage to China. Domestically produced natural gas and oil provide the feedstock to produce necessary products such as plastics, chemicals, disinfectants, PPE, refrigerant and other medical necessities. America has the ability to produce these key items entirely domestically—without relying on supply chains from China—but if we curb oil and gas production by ending oil and gas leasing on federal land, we will severely handicap ourselves.<sup>[9]</sup> Instead, the United States will be forced to rely on China for these vital products, even though they could easily and safely be produced at home.

The American economic success story is due to the hard work and innovation of great men and women, but it is also due to the stable environment for business which has been created by a rule of law and consistent leadership and policy. For 12 years, through Democrat and Republican leadership, the government has promoted and permitted exceptional endeavors that have added jobs and decreased the cost of fuel. A sudden change of course would shock business leaders and leave investors of today and the future wondering if they can trust the United States.

Sincerely,

Ellen R. Wald, Ph.D.

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[1] <https://money.cnn.com/2016/07/21/investing/trump-energy-plan-obama-oil-boom/index.html>

[2] [https://www.politico.com/news/stories/1012/82484\\_Page2.html](https://www.politico.com/news/stories/1012/82484_Page2.html)

[3] <https://www.eia.gov/energyexplained/oil-and-petroleum-products/where-our-oil-comes-from.php>

[4] <https://www.houstonchronicle.com/business/energy/article/Biden-executive-orders-nail-in-coffin-oil-and-gas-15906911.php>

[5] <https://thehill.com/opinion/energy-environment/538072-bidens-treatment-of-energy-firms-is-no-way-to-run-a-healthy>

[6] <https://www.bloomberg.com/news/articles/2021-01-29/biden-yanks-just-approved-drilling-permits-for-additional-review>

[7] <https://www.investing.com/analysis/now-that-oil-prices-are-up-whats-keeping-us-production-down-200569380>

[8] <https://www.dallasfed.org/research/surveys/des/2021/2101.aspx#tab-report>

[9] <https://www.energy.senate.gov/services/files/5AB138AA-9FE9-4E8A-BA84-C87F101E9B51>

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Ellen R. Wald, Ph.D.

President, Transversal Consulting

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April 14, 2021

The Honorable Deb Haaland  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240  
energyreview@ios.doi.gov  
Re: Energy Review as Called for in Executive Order 14008

By email at energyreview@ios.doi.gov

Dear Ms. Secretary:

I write in response to a request for additional information by the Department of the Interior on energy review as called for in Executive Order 14008 and online forum held on March 25, 2021.

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For much of his tenure, President Obama took pride in his administration's efforts to open more federal land to oil and gas drilling. During his administration, the nation experienced a drastic rise in production and the most significant impact of the shale revolution.<sup>1</sup> He discussed this openly and credited domestic oil and gas production with helping add jobs for the economy.<sup>2</sup> President Obama's policies were then continued by President Trump, creating a reliable and stable condition that led to the highest rate of oil production ever in 2019.<sup>3</sup>

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<sup>3</sup> <https://www.eia.gov/energyexplained/oil-and-petroleum-products/where-our-oil-comes-from.php>

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Lest anyone believe that lower U.S. production is a net gain for the environment, that is not the case. A government decision to decrease (or simply not increase) production on U.S. federal land would not impact global demand numbers, global production numbers or greenhouse gas

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<sup>6</sup> <https://www.bloomberg.com/news/articles/2021-01-29/biden-yanks-just-approved-drilling-permits-for-additional-review>

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<sup>8</sup> <https://www.dallasfed.org/research/surveys/des/2021/2101.aspx#tab-report>

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Sincerely,

Ellen R. Wald, Ph.D.

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<sup>9</sup> <https://www.energy.senate.gov/services/files/5AB138AA-9FE9-4E8A-BA84-C87F101E9B51>

**From:** [michaeljohnsheppard@everyactioncustom.com](mailto:michaeljohnsheppard@everyactioncustom.com) on behalf of [Michael Sheppard](#)  
**To:** [Energy Review](#)  
**Subject:** [EXTERNAL] Leasing of Public Land for Fossil Fuel Production  
**Date:** Tuesday, April 6, 2021 4:44:21 AM

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This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Secretary Deb Haaland,

I am writing to ask you to undertake a study to assess the environmental impact of fossil fuel production on public land and to start a sensible but sustained reduction in the production of these fuels. Such an environmental study should show what scientists have already said, namely that there is no room for the further development of fossil fuels if we are to avoid ruining the planet. Further development of oil and gas production will result in global warming increasing above 1.5 degrees Celsius, and this would be incompatible with United States climate goals. Phasing out the fossil fuel programs will benefit public health, especially that of low-income communities and colored communities, who already experience disproportionate pollution and climate impacts. Cutting climate pollution and stopping the destruction of public land and ocean habitat for endangered species will prevent the worst of the climate and extinction crises. Please work with other agencies, and with Congress, tribes and state governments, in order to bring about an orderly phasing out of federal fossil fuel production, one that ensures a fair transition for communities that are both economically dependent on, and affected by, federal fossil fuel development. Please bear fully in mind the social, economic, and environmental consequences of not taking the necessary action on climate change. The new US administration under President Biden can and must show strong world leadership in dealing with climate change. It can start by ending any new leasing for fossil fuel production on public lands and waters.

Sincerely,  
Michael Sheppard  
28 Windermere Court, East Drive East Sussex BN2 0BU  
[michaeljohnsheppard@yahoo.com](mailto:michaeljohnsheppard@yahoo.com)

**From:** [Tom.Magness@EagleLeadership.com](mailto:Tom.Magness@EagleLeadership.com)  
**To:** [Energy Review](#)  
**Cc:** [Tom.Magness@EagleLeadership.com](mailto:Tom.Magness@EagleLeadership.com)  
**Subject:** [EXTERNAL] Open Comment Period: Oil & Gas Lease Ban  
**Date:** Wednesday, April 14, 2021 8:20:45 AM  
**Attachments:** [Secretary Haaland Letter Magness 4.14.2021.pdf](#)

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**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Please see below letter (also included as attachment) provided as input for the open comment period on the Administration's ban on energy leases on federal lands. Thank you for your consideration on this critical issue.

Dear Secretary Haaland:

As a former commander in the U.S. Army Corps of Engineers, I wanted to thank you for the opportunity to put forth my comment to help inform Interior's interim report on the issue of the Federal Oil and Gas Program, as I believe my background and perspective is important to the conversation.

My primary concern is the impact the federal leasing ban will have on our country's national security, as a result of increased reliance on countries like Russia and Saudi Arabia for our energy needs. If recent incidents in the Suez Canal have taught us anything, it is the fragility of energy security and the importance of energy independence.

Should the Biden administration decide to move forward on the federal leasing ban, our imports from foreign sources have the potential to increase by 2 million barrels a day and spend \$500 billion more on energy from foreign suppliers by 2030, according to an [analysis](#) last year. This would put our country at a severe disadvantage and leave the United States vulnerable to supply shortages from adversarial nations.

Another detrimental impact of the ban is the effect on jobs in our country, as the same analysis predicts the potential of nearly 1 million jobs lost by 2022, in top producing states including your home state of New Mexico, Utah, Colorado and Wyoming. Now is not the time to put good paying oil and gas jobs at risk, while our country continues to rebound from the economic downturn brought on by the COVID-19 pandemic.

In addition, I would like to highlight a 2016 [report](#) from the Obama administration's Department of Interior which concluded that "America's greenhouse gas emissions will be little affected by leasing decisions and could, in fact, increase slightly in the absence of new U.S. Outer Continental Shelf leasing." The report further states,

“Foreign sources of oil will substitute for reduced OCS supply, and the production and transport of that foreign oil would emit more GHGs.” In addition, by decreasing our usage of natural gas, the United States could revert back to its reliance on coal and other less clean forms of energy, which would also have a negative impact on emissions.

The United Nations [Emissions Gap Report 2020](#) recently found that the United States has made the most progress of any major economy in reducing its carbon footprint. The report noted that while greenhouse gas emissions per capita continue to rise in China, India, and Russia, emissions in the United States have dropped on average 0.4% annually over the last ten years. If the Biden administration’s mission is to continue reducing our country’s carbon footprint, relying on other countries such as Russia and India for our energy needs is the wrong path forward in meeting our climate goals.

The United States is a global leader in energy and halting new oil and gas development on federally owned lands will cause us to forfeit that position and allow OPEC, Russia and Middle Eastern countries to rush in and fill the void. As a Nation, we have had energy security and independence as critical goals for decades. Now that we have obtained this position, it is no time to forfeit these advantages.

Madam Secretary, as a Commander in the Army Corps of Engineers, I have had to make decisions that measure the needs of the Nation and impact on our Environment. It is possible to make decisions that advance the considerations for both. I invite you to please reconsider the moratorium on oil and gas leases on federal lands, as it is critical to our allies abroad and our country’s domestic energy security at home.

Sincerely,  
Tom Magness  
U.S. Army Colonel, retired  
Former Commander, U.S. Army Corps of Engineers

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Sincerely,  
Tom Magness  
U.S. Army colonel, retired  
Former Commander, U.S. Army Corps of Engineers

**From:** [Dell Morgan | Morgan Energy Corp](#)  
**To:** [Energy Review](#)  
**Cc:** [Leib, Lauren A](#)  
**Subject:** [EXTERNAL] REFERENCE: DEPARTMENT OF THE INTERIOR PUBLIC FORUM ON OIL AND GAS PROGRAM  
**Date:** Tuesday, April 13, 2021 9:39:05 PM  
**Attachments:** [BLM PROTEST LETTER -ETCHEVERRY RANCH LIMITED PARTNERSHIP LLP.docx](#)  
**Importance:** High

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**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

**REFERENCE: DEPARTMENT OF THE INTERIOR PUBLIC FORUM ON OIL AND GAS PROGRAM**

Attached is a Protest Letter sent by me as a partner of the Etcheverry Ranch Limited Partnership, LLP to the BLM dated November 16, 2020. This letter highlighted numerous points of concern about a proposed Federal Oil/Gas Lease Sale of 1856.51 acres of minerals underneath our deeded land that took place on January 14, 2021.

Among other reasons, this protest letter had the following reasons for protest: Federal Land Policy and Management Act, Migratory Bird Treaty Act, National Environment Policy Act, Environmental Justice, General Wildlife, Health & Safety, Socioeconomics, Vegetation, Visual Resource Management.

Our land has been in our family since before New Mexico was a state. We feel that the current Federal Oil & Gas lease form, leasing rules, and leasing regulations are severely out of date and are in direct conflict of the Federal Government goals of increasing Green Energy Production. Furthermore, they severely disadvantage and affect surface landowners with deeded property above the Federal minerals, and deeded minerals directly offsetting Federal leases.

Since this letter was written, the minerals described in the attached letter were put up for lease sale and were awarded to three separate entities.

Because President Biden stopped Oil & Gas leasing on Federal lands, the actual leases have not been finalized. We think that based upon the outcome of the Oil and Gas sale, our original concerns expressed in the attached letter, and subsequent events that have occurred that these leases should not be finalized. These reasons in our attached letter, and reasons outlined below specific to our ranch can also apply to family farmers and ranchers nationwide.

These comments and the attachment are being submitted for consideration in the current Department of Interior discussion forum on Oil and Gas.

1. We have been approached by three solar and/or wind companies to lease or purchase our deeded surface land to put in wind and solar farms to generate green energy. The most recent company approached us last week. Each company specifically states that they will not be interested if there is oil/gas drilling or production on the ranch that would interfere with their solar arrays or wind turbines.
  - a. SOLUTION: Prohibit Federal Oil and Gas Leases underneath Privately Deeded Surface Lands. There are millions of acres of minerals owned by the Federal Government, where the Federal Government also owns the surface that could be leased without affecting current ranching, farming, or green energy development.
  - b. SOLUTION: Prohibit Federal Oil and Gas Leases within a 25-mile radius of any existing or proposed Green Energy Project. There are wind farms and solar farms to our East and West. We are in the middle of these areas and our property with prolific sun and wind could easily be added to the existing and proposed grid. If the Government is

serious and wants to shift to Green Energy, the Federal Government needs to protect Green Energy Areas.

2. The leases that were awarded on the three Federal Lease Parcels underneath our deeded land ranged in value from \$11, \$22, \$33 per acre. These small bonuses hardly reflect large potential oil and gas reserves. This means that 1856.51 Acres of Green Energy potential surface area that will generate millions of dollars in taxes for the Federal Government will be halted for a pittance of lease bonus payments received from the Federal Leases. These leases are not in an active drilling area. Any wells that might be drilled would be considered wildcats. The prospects of future royalties being paid to the Federal Government on these lands are minimal. The future royalties, if any, would be significantly less than taxes generated from wind and solar.
  - a. SOLUTION: Require that any Federal Oil/Gas bonus and Annual lease payments start at a minimum of \$250/Acre. This will ensure that there is a real interest in drilling instead of obtaining leases with the winning bidder's main objective being brokering or selling the lease. This is proven by the lack of any major oil and gas company winning the bid. The bonus payment paid to the Federal Government is a pittance of what the land could generate in Green Energy revenue taxes over 40-50 years. Decline curves on oil or gas production would pay small royalties to the Federal Government after 4-7 years.
  - b. SOLUTION: As mentioned in the attached letter, fix the current Federal Oil and Gas lease to reflect current market conditions: a 25% Royalty, and a maximum 3-year lease with a continual drilling clause. This will ensure that there is a real interest in drilling a lease, and that a real oil and gas company is seeking to secure the lease to drill it.
3. One of the companies that bid on the tracts is an Abstract company that does not drill or produce Oil and Gas. They act as a front company for other companies, and attempt to broker leases they secure. Other companies that bid on the leases are speculating that they can broker the lease to an oil company that will drill it. This ties the land up under the current government lease form for 10 years. It prohibits us from either selling or leasing our land for Green Energy because there is the potential in the future that someone might drill the land and would want to build roads and pad sites where solar panels or wind turbines might be placed. This should not be allowed. The entity being awarded any lease, should be the entity that is required to drill the lands.
  - a. SOLUTION: Require, as has been done with all private deeded leases in the past on our ranch, that the entity leasing the minerals cannot assign or sell it until it is drilled, and production is found without our prior approval. This would stop speculative nomination and leasing of Federal Lands by brokers and entities only interested in trying to sell their lease for a profit. A farmout agreement would be acceptable if it were a legitimate farm-out that was going to be drilled within the leasing period.

Bottom Line: We want to be able to sell or lease our deeded land to Green Energy companies that are interested in putting in MW of Green Energy now. Because of the current Federal Oil/Gas lease rules and regulations and lease forms, we are being prohibited from doing so because the Green Energy Companies do not want to spend money putting in Green Energy solar and wind projects that may be required to be terminated because of a speculative oil/gas lease that may or may not be drilled. The fact that someone wants to speculate on a Federal Oil and Gas Mineral lease underneath our deeded land will cost our family untold monetary losses from both a sale of our properties and future royalties we might receive from wind and solar.

We respectfully request that the antiquated oil and gas lease forms, rules and regulations be changed to stop the unfairness to both the Federal Government and Private landowners like ourselves that is currently taking place. Please consider the points raised in the attached letter and in this email when formulating your policies for the future.

Sincerely,

J. Dell Morgan

Partner, Etcheverry Ranch Limited Partnership, LLP | Lovington, New Mexico

3410 98<sup>th</sup> St | Suite 4116

Lubbock, Texas 79423

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[dmorgan@morganenergycorp.com](mailto:dmorgan@morganenergycorp.com)

**J. DELL MORGAN  
ETCHEVERRY RANCH LIMITED PARTNERSHIP LLP**

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November 16, 2020

**Via Certified Mail 7013 1090 0001 6612 7163 & Via Email: BLM\_NM\_Jan2021Protest@blm.gov**

**Attention: State Director**  
Bureau of Land Management  
New Mexico State Office  
301 Dinosaur Trail  
Santa Fe, NM 87508

**Re: Protest of the January 2021 Oil and Gas Lease Sale Parcels:**

- **NM-2021-01-0372**
- **NM-2021-01-0376**
- **NM-2021-01-0378**

Dear State Director,

Attached is a copy of the letter dated July 20,2020, reference 3120 (9220) from Julie Ann Serrano of your office, sent to Etcheverry Ranch Limited Partnership LLP. My Mother, Nancy Etcheverry, is General Partner of that Partnership and is [REDACTED] years old. As her son and as a partner of the partnership, I officially handle Oil & Gas matters for the Partnership which owns the overlying Surface consisting of 1856.51 acres of Federal Minerals you state are Listed as:

T. 15 S. R 33 E. NMPM  
Section 1: Lots 3-4, S2NW, SW;  
Section 12: W2NE, NW;  
Section 13: S2;  
Section 15: E2;  
Section 24: All

As stated in the guidelines, Ms. Serrano's letter and in subsequent conversations and emails with Lauren Leib of your office, we are listing below our reasons for protesting the lease sale of the above acreage described as Parcels:

- **NM-2021-01-0372**
- **NM-2021-01-0376**
- **NM-2021-01-0378**

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**PROTEST POINTS:**

1. The land described in the lease sale of which our partnership owns the surface above the Federal Minerals has been declared a Severe Drought area by the USDA. Any oil and gas operations resulting from the Oil and Gas Leases could easily cause fires based upon the current conditions of the grasslands. Furthermore, we need all of grass currently available for cattle operations because the grassland has been so severely drought affected. We object to any use of our surface land for any oil and gas operations until any drought has been declared over for at least two years thereby allowing the ranch to restore the natural green vegetation. The CRMD programs designed and administered by the USDA require 10 years to return lands to their natural habitat.
2. On September 8, 2020, President Trump stopped all drilling on Federal Lands in the Atlantic including his front yard of Mar a Lago stating it would “maintain the beautiful ocean and would for a long time to come”. We desire to maintain our beautiful front yard of our ranch, which has been owned by our family since before New Mexico obtained statehood, by protesting any drilling for Federal minerals in what is our front yard. Furthermore, Joe Biden, if inaugurated as President, has stated that he would ban drilling and fracking on Federal Lands. We further object to any lease of Federal Minerals under our land until the next president is inaugurated and they have had time to promulgate their future oil and gas policies, including fixing the current Federal Government Oil and Gas Lease Form to reflect current market conditions and landowner concerns.
3. We object to the fact that the value of our entire ranch consisting of over 30 Sections (30 Square Miles) will suffer major monetary depreciated value by the additional roads, power lines, pad sites, tank batteries, drilling activities, well and pipeline maintenance, et al that future oil and gas activities would bring to this deeded land referenced above. A future sale of our ranch would severely lower the price that we would receive because of any ongoing or future possible oil and gas operations on the proposed leased mineral acreage. We protest the loss of monetary value of our property because of this lease sale.
4. Federal Oil and Gas leases are severely outdated and have not been substantially changed since 1920, 100 years. BLM leases allow for a 10-year lease while typical oil and gas leases in Lea County on Private and State Land are 2-5 years. Federal Leases require only a 12.5% royalty, while current private leases pay 22.5% - 25%. As the landowner and mineral owner of other mineral interests offsetting the proposed Federal Leases above, we object to the fact that an oil/gas company would not lease from our family partnership in the future because they can receive more favorable terms from the Federal Government. We object to the current Federal Oil and Gas Lease as written.
5. Furthermore, Federal Leases can be assigned to another company, including bad operators that have little concern for the land, water, and landowner’s rights. Any future assignment to a poorly managed operator could cause long term economic damage to our Surface and severely negatively affect the value of our ranch. We object to the Federal Oil and Gas Lease Provisions that allow assignment without approval of the landowner.

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6. Our extensive Oil and Gas Surface Use and Damages Agreement would have to be modified to include annual damages, lack of normal operations, maintenance and use. This will cost us legal fees running into the thousands of dollars. We will require annual payments clauses for damages from any use of our surface on an ongoing basis. This would include, but not be limited to: Pad Sites, Roads, Pipeline Right-of Ways, Electrical poles, grazing acreage taken out of use. We object to any company that refuses to sign a new Oil and Gas Surface Use and Damage Agreement and pay any legal fees thereof to bring our Surface Damages and Usage Agreements up to date.
7. We have been approached by two Green Energy Wind Companies for a wind farm on our deeded surface land that is above the acreage that is applicable to the proposed Federal Oil and Gas lease. The wind companies specifically require that the land being used by them not be used for future oil and gas activity. Oil and gas activities could interfere with the possibility of significant future annual revenue that would benefit the Etcheverry Ranch Limited Partnership LLP. We object to the lease sale because it could cost us hundreds of thousands of dollars annually in future wind and/or solar royalties alone. We believe any future wind or solar farm on the described parcels would generate more in tax revenues over 30-50 years for the Federal Government than any future royalty revenues derived from leasing the Oil and Gas mineral rights in the parcels especially considering oil and gas decline curves and the low oil and gas royalty of 12.5% paid to the Federal Government.
8. Any horizontal drilling and subsequent fracking on a Federal Lease would have to be analyzed by an independent Geologist and Geophysicist to ascertain that there would be no drainage from our deeded minerals offsetting the Federal leases. We object to having to pay for any future independent analysis and legal fees thereof because of this proposed lease. Furthermore, we object to any drainage that might occur on our deeded minerals offsetting the federal leases.
9. Any drainage as determined by an independent petroleum engineer or as found in Item #8 would require a lease with the appropriate Etcheverry Partnership requiring a 25% royalty on our pooled portion of minerals. We object to any pooled agreement with the 12.5% Federal Royalty.
10. The land was designated a flyway for migratory birds by the USDA, and at the USDA's request, we put in ladders in the water tanks we have for cattle so that the birds would not continue to drown and would have a way to get out of the tanks. We object to any operations that would interfere with migratory birds or native birds on the ranch.
11. Because the of the migratory and native birds on the ranch, and because of the severe drought as so designated by Federal Agencies, we ask that an Environmental Impact Study be completed on our deeded acreage above the Federal Minerals to evaluate how any Oil and Gas activities would affect the Surface, Surface Water and the subterranean Water, or animals that used the designated area before any minerals under our ranch are put up for lease.

**J. DELL MORGAN  
ETCHEVERRY RANCH LIMITED PARTNERSHIP LLP**

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12. Water pollution and sourcing of water are a major concern of our Ranch Partnership. Oil and Gas Operations by another energy company resulted in severe pollution of the ground water on the ranch so badly that we could not use the water for our personal use. After we took legal action, the energy company settled, and it has further taken them over 18 years of continual daily remediation to get the ground water back to within useable standards which still has not been totally completed.
13. Before any lease is finalized we respectfully request that BLM Certify they are in full compliance with all federal and state laws and regulations including the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA) and any subsequent regulations and court orders or judgments thereto.
14. We object to any lease of the above parcels without a legal opinion on the current mineral ownership.

For all the reasons stated above, we request that the Parcels referenced above proposed for leasing be withdrawn immediately. Furthermore, the Federal Government's Oil and Gas Leases as written are woefully inadequate, and outdated. As such, the lease of the above parcels will cause incalculable future economic harm to our family partnership, and environmental damages to our land.

Thank you for allowing us to express our concerns, and a special thank you to Lauren Leib of your office for so promptly answering all my questions via phone and email. If I can provide any additional information, please find my contact information below.

Sincerely,

J. Dell Morgan  
Partner, Etcheverry Ranch Limited Partnership LLP

Attachments:

- 1). BLM Letter 3120 (9220) from Julie Ann Serrano.
- 2). BLM Email String with Lauren Leib.

**From:** [Melissa Whaling](#)  
**To:** [Energy Review](#)  
**Cc:** [Sierra Weaver](#)  
**Subject:** [EXTERNAL] SELC Comments - DOI Offshore Drilling Review  
**Date:** Thursday, April 15, 2021 4:43:03 PM  
**Attachments:** [FINAL Comments Drilling Forum 04.15.2021 w attachments.pdf](#)

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**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Dear Ms. Davis,

The Southern Environmental Law Center submits these comments in response to the Department of Interior's request for input on a comprehensive review of its federal oil and gas program. We look forward to working with the Biden administration to see these policy objectives implemented in the months ahead. Thank you for the consideration of these comments.

Sincerely,

**Melissa L. Whaling** (she/her)

Science & Policy Associate

[Southern Environmental Law Center](#)

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# SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

601 WEST ROSEMARY STREET, SUITE 220  
CHAPEL HILL, NC 27516-2356

Facsimile 919-929-9421

April 15, 2021

*Submitted via electronic mail*

Laura Daniel Davis  
Principal Deputy Assistant Secretary of Land and Minerals Management  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240  
[energyreview@ios.doi.gov](mailto:energyreview@ios.doi.gov)

**Re: Comments on a Request for Input on the Department of Interior's Review of the Federal Oil and Gas Program**

Dear Ms. Davis,

The Southern Environmental Law Center (“SELC”) submits these comments in response to the Department of Interior’s (“Department” or “DOI”) request for input on a comprehensive review of its federal oil and gas program.<sup>1</sup> This review was called for in President Biden’s January 27, 2021 Executive Order *Tackling the Climate Crisis at Home and Abroad*.<sup>2</sup> We applaud the steps the Biden administration is taking to combat the climate crisis, including its current review of the offshore oil and gas leasing program. This opportunity to transition to a more resilient clean energy economy is of paramount importance to protecting the Southeast’s wildlife and natural resources from the unprecedented impacts from climate change, as well as from the direct risks of fossil fuel development.

For the reasons detailed below, SELC strongly urges the Department to permanently ban offshore drilling in the Mid- and South Atlantic Planning Areas and address the regulatory deficiencies of current offshore drilling operations in the Gulf of Mexico. The Southeast coast will continue to be negatively affected by sea level rise, flooding, and extreme storms, underscoring the need to take immediate action to address climate change and the burning of fossil fuels that drives it. In addition, our organization and the partners we work with in Virginia, North Carolina, South Carolina, and Georgia would be directly affected by offshore oil and gas activities in the Mid- and South Atlantic Planning Areas, and coastal communities in Alabama are already being harmed by the negative impacts of current offshore oil and gas development in the Gulf of Mexico Planning Areas. We urge the Biden administration to act now to reduce these threats and focus on proactively fostering climate resilience for the Southeast’s vulnerable communities and ecosystems.

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<sup>1</sup> Press Release, *Interior Department Announces Details for Public Forum on Federal Oil and Gas Program*, U.S. DEP’T OF THE INTERIOR (DOI) (Mar. 18, 2021), <https://www.doi.gov/pressreleases/interior-department-announces-details-public-forum-federal-oil-and-gas-program>.

<sup>2</sup> Executive Order 14,008, *Tackling the Climate Crisis at Home and Abroad* (Jan. 27, 2021).

## I. BACKGROUND

### A. Severe Climate Change Impacts to the Southeastern Coast Necessitate Strong Action on Offshore Drilling

Indisputably, the extraction, production, and consumption of fossil fuels has been the primary contributor to the greenhouse gas accumulation in the atmosphere beyond natural levels, thereby causing climate change.<sup>3</sup> About 75 percent of total U.S. anthropogenic greenhouse gas emissions in 2018 originated from fossil fuels.<sup>4</sup> Recent research has confirmed that the oil and gas industry has had an even larger impact on climate change than previously thought.<sup>5</sup>

More powerful storms, rising seas, and increasingly commonplace flooding are just a few of the signs that the impacts of climate change have already arrived on the southeastern coast. Tidal flooding and the damage and disruption it causes is becoming more regular in cities from Norfolk, Virginia to Savannah, Georgia.<sup>6</sup> Charleston, South Carolina, for example, experienced 89 minor tidal flooding events on 76 days in 2019, shattering the record set in 2015 of 58 minor tidal flooding events.<sup>7</sup> In 2020, Charleston saw 68 minor tidal flooding events and the most major tidal flooding events—tides over 8 feet—ever recorded in a single year.<sup>8</sup> These increased flooding trends are indicative of the reality of rising seas that communities are struggling to adapt to up and down the southeastern coast.<sup>9</sup> Before the middle of this century, experts expect some areas like Charleston and Norfolk will experience over 180 days of tidal flooding in one year, equivalent to a flooding event every other day.<sup>10</sup> The National Oceanic and Atmospheric Administration’s (“NOAA”) 2017 Intermediate-High scenario curve projects between 2 and 2.5 feet of sea level rise along the South Atlantic by 2050, compared to baseline sea levels in the year 2000 (Figure 1).

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<sup>3</sup> Gabriel Blanco et al., *Drivers, trends, and mitigation*, in CLIMATE CHANGE 2014: MITIGATION OF CLIMATE CHANGE, 351-411 (Ottmar Edenhofer et al. eds, 2014),

[https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc\\_wg3\\_ar5\\_chapter5.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_chapter5.pdf).

<sup>4</sup> *Energy and the environment explained: Where greenhouse gases come from*, U.S. ENERGY INFO. ADMIN. (EIA) (last visited Apr. 15, 2021), <https://www.eia.gov/energyexplained/energy-and-the-environment/where-greenhouse-gases-come-from.php>.

<sup>5</sup> Benjamin Hmiel et al., *Preindustrial <sup>14</sup>CH<sub>4</sub> indicates greater anthropogenic fossil CH<sub>4</sub> emissions*, NATURE (Feb 19, 2020), <https://www.nature.com/articles/s41586-020-1991-8>.

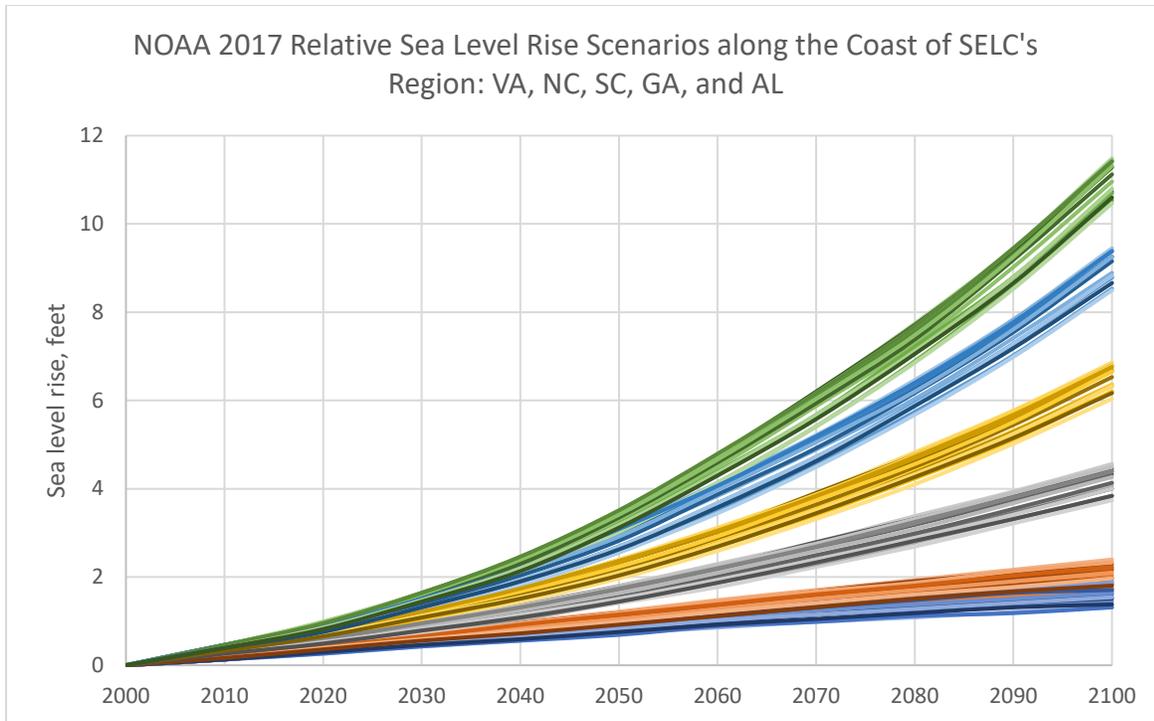
<sup>6</sup> William V. Sweet et al., *2019 State of U.S. High Tide Flooding with a 2020 Outlook*, NAT’L OCEANIC & ATMOSPHERIC ADMIN. (NOAA) (July 2020), [https://tidesandcurrents.noaa.gov/publications/Techrpt\\_092\\_2019\\_State\\_of\\_US\\_High\\_Tide\\_Flooding\\_with\\_a\\_2020\\_Outlook\\_30June2020.pdf](https://tidesandcurrents.noaa.gov/publications/Techrpt_092_2019_State_of_US_High_Tide_Flooding_with_a_2020_Outlook_30June2020.pdf).

<sup>7</sup> Bo Petersen & Mikaela Porter, *Charleston and the South Carolina Coast Flooded a Record 89 Times in 2019*, POST & COURIER (Jan. 3, 2020), [https://www.postandcourier.com/news/charleston-and-the-south-carolina-coast-flooded-record-times-in/article\\_7c18ee5e-2e3b-11ea-8784-23ddbc8d4e0c.html](https://www.postandcourier.com/news/charleston-and-the-south-carolina-coast-flooded-record-times-in/article_7c18ee5e-2e3b-11ea-8784-23ddbc8d4e0c.html).

<sup>8</sup> Chloe Johnson, *Charleston Recorded Second Highest Number of Tidal Floods in 2020, Most Ever Major Floods*, POST & COURIER (Jan. 4, 2021), [https://www.postandcourier.com/news/charleston-recorded-second-highest-number-of-tidal-floods-in-2020-most-ever-major-floods/article\\_ed736228-4e92-11eb-af25-67108736d76c.html](https://www.postandcourier.com/news/charleston-recorded-second-highest-number-of-tidal-floods-in-2020-most-ever-major-floods/article_ed736228-4e92-11eb-af25-67108736d76c.html).

<sup>9</sup> Analysis of tidal data for Charleston, S.C., for example, has shown that sea level rise and astronomical tides along accounted for 75 percent of moderate tidal flooding occurrences in 2019, meaning that this increase in tidal flooding cannot be explained by regular water level variances.

<sup>10</sup> William V. Sweet et al., *Global and Regional Sea Level Rise Scenarios for the United States*, NOAA (Jan. 2017), [https://tidesandcurrents.noaa.gov/publications/techrpt83\\_Global\\_and\\_Regional\\_SLR\\_Scenarios\\_for\\_the\\_US\\_final.pdf](https://tidesandcurrents.noaa.gov/publications/techrpt83_Global_and_Regional_SLR_Scenarios_for_the_US_final.pdf).



**Figure 1.** Projections of sea level rise along the southeastern coast from the NOAA 2017 sea level rise scenarios, projecting localized estimates of sea level rise relative to the year 2000 for tide gauges in Virginia, North Carolina, South Carolina, Georgia, and Alabama. From top to bottom, the scenarios are Extreme (green), High (light blue), Intermediate-High (yellow), Intermediate (grey), Intermediate-Low (orange), and Low (dark blue).<sup>11</sup>

Extreme rainfall has also become more frequent and damaging throughout the Southeast.<sup>12</sup> Hurricane Florence in 2018 dropped approximately 8 trillion gallons of rain on North Carolina, according to National Weather Service radar estimates, and accumulated nearly 36 inches of rainfall recorded at one gauge.<sup>13</sup> In a climate scenario where today’s emission levels remain constant, the number of extreme rain storms in the Southeast could increase by two to three times the historic average by the end of the 21st century.<sup>14</sup> Before the end of the century, throughout the Southeast, extreme summer thunderstorms that typically result in 100-year flooding events are expected to drop between 40 and 80 percent more rain than today.<sup>15</sup> The Southeast has already experienced several billion-dollar storms that have been at least partially attributed to climate change.<sup>16</sup>

<sup>11</sup> William V. Sweet et al., *Data: Global and Regional Sea Level Rise Scenarios for the United States*, NOAA (Jan. 2017), <https://tidesandcurrents.noaa.gov/publications/techrpt083.csv>.

<sup>12</sup> David R. Easterling et al., *Precipitation Change in the United States*, in CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, VOL. I, 207-230 (Donald J. Wuebbles et al. eds., 2017), <https://doi.org/10.7930/J0H993CC>.

<sup>13</sup> Nat’l Weather Serv., *Hurricane Florence: September 14, 2018*, NOAA (last visited Apr. 14, 2021), <https://www.weather.gov/ilm/HurricaneFlorence>.

<sup>14</sup> David R. Easterling et al., *supra* note 12.

<sup>15</sup> Andreas F. Prein et al., *Increased rainfall volume from future convective storms in the US*, NATURE CLIMATE CHANGE (Dec. 2017), <https://doi.org/10.1038/s41558-017-0007-7>.

<sup>16</sup> Nat’l Ctr. Env’t Info., *Billion-Dollar Weather and Climate Disasters: Overview*, NOAA (last visited Apr. 14, 2021), <https://www.ncdc.noaa.gov/billions/>.

Even in the absence of climate change, the Southeast coast is particularly prone to strikes from tropical storms,<sup>17</sup> with some cities experiencing a return period of 1-2 years.<sup>18</sup> Climate change is increasing the risks of these storms; the Atlantic basin sees more major hurricanes (i.e., Category 3 or higher) today than it did before the 1980s.<sup>19</sup> In addition, our warming climate is producing greater storm surge,<sup>20</sup> rainfall,<sup>21</sup> and property damage<sup>22</sup> each time a hurricane hits. Climate change is also causing tropical storms to become less predictable,<sup>23</sup> gain strength more rapidly,<sup>24</sup> and withstand maximum intensity well outside the geographic “hurricane zone.”<sup>25</sup> Hurricane season itself is also becoming longer,<sup>26</sup> and the destructive potential of August storms, for example, is expected to increase by 40 to 50 percent by the end of the century.<sup>27</sup>

As a result of these observed and projected effects of climate change, research predicts that the Southeast will suffer the harshest economic consequences from climate change compared to other regions in the U.S.<sup>28</sup> These impacts will be felt most acutely by frontline communities already facing other stressors, such as poverty and social injustices.<sup>29</sup> Under-resourced communities often lack the capacity to prepare for and adapt to climate disasters due to limited financial resources, as well as barriers to political participation and decision-making.<sup>30</sup>

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<sup>17</sup> Xing Chen et al., *Variations in streamflow response to large hurricane-season storms in a southeastern U.S. watershed*, J. HYDROMETEOROLOGY (Feb. 1, 2015), <https://doi.org/10.1175/JHM-D-14-0044.1>.

<sup>18</sup> Robert A. Muller & Gregory W. Stone, *A climatology of tropical storm and hurricane strikes to enhance vulnerability prediction for the southeast U.S. coast*, J. COASTAL RSCH. (2001), <https://www.jstor.org/stable/4300254>.

<sup>19</sup> Peter J. Webster et al., *Changes in tropical cyclone number, duration, and intensity in a warming environment*, SCI. (Sept. 16, 2005), <https://doi.org/10.1126/science.1116448>.

<sup>20</sup> Ning Lin et al., *Physically based assessment of hurricane surge threat under climate change*, NATURE CLIMATE CHANGE (Feb. 14, 2012), <https://doi.org/10.1038/nclimate1389>.

<sup>21</sup> See, e.g., Christina M. Patricola & Michael F. Wehner, *Anthropogenic influences on major tropical cyclone events*, NATURE (Nov. 14, 2018), <https://doi.org/10.1038/s41586-018-0673-2>.

<sup>22</sup> Morris A. Bender et al., *Modeled impact of anthropogenic warming on the frequency of intense Atlantic hurricanes*, SCI. (Jan. 22, 2010), <https://doi.org/10.1126/science.1180568>.

<sup>23</sup> Hurricane trajectories are meandering and stalling more, making their behavior harder for meteorologists to predict. This was exemplified by Hurricane Sandy’s abrupt left-hand turn towards the New Jersey coast in 2012 and Hurricanes Harvey and Florence’s stalling over Houston, TX, and Wilmington, NC, respectively. See, e.g., Timothy Hall, *Webinar: How Climate Change is Impacting Hurricanes*, S. ALL. CLEAN ENERGY (May 30, 2018), <http://www.cleanenergy.org/2018/05/30/climate-change-impacting-hurricanes/>.

<sup>24</sup> Kieran T. Bhatia et al., *Recent increases in tropical cyclone intensification rates*, NATURE COMM’NS (Feb. 7, 2019).

<sup>25</sup> Geophysical Fluid Dynamics Laboratory, *Global Warming and Hurricanes*, NOAA (last updated Mar. 29, 2021), <https://www.gfdl.noaa.gov/global-warming-and-hurricanes/>.

<sup>26</sup> *Id.*

<sup>27</sup> Barry D. Keim et al., *Spatial and temporal variability of coastal storms in the North Atlantic Basin*, MARINE GEOLOGY (Sept. 2004), <https://doi.org/10.1016/j.margeo.2003.12.006>.

<sup>28</sup> See, e.g., Solomon Hsiang et al., *Estimating economic damage from climate change in the United States*, SCI. (June 30, 2017), <https://doi.org/10.1126/science.aal4369>.

<sup>29</sup> CHESTER HARTMAN & GREGORY D. SQUIRES (EDS.), *THERE IS NO SUCH THING AS A NATURAL DISASTER: RACE, CLASS AND HURRICANE KATRINA* (2006). See also, e.g., Zack Colman & Daniel Cusick, *2 Hurricanes Lay Bare the Vulnerability of America's Poor*, SCI. AM. (Oct. 1, 2018), <https://www.scientificamerican.com/article/2-hurricanes-lay-bare-the-vulnerability-of-americas-poor/>.

<sup>30</sup> Sylvia N. Wilson & John P. Tiefenbacher, *The barriers impeding precautionary behaviours by undocumented immigrants in emergencies: The Hurricane Ike experience in Houston, Texas, USA*, ENV’T HAZARDS (Mar 1, 2012), <https://doi.org/10.1080/17477891.2011.649711>.

It is crucial that future actions by the Department consider both the severe climate change impacts the Southeast is already facing and the outsized threat this poses to our communities.

## **B. Recent Executive Actions Require the Administration to Take a Meaningful Look at Offshore Drilling in the United States**

On January 27, 2021 President Biden signed Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, directing all federal agencies to “combat the climate crisis” by, among other things, “paus[ing] new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices.”<sup>31</sup> Executive Order 14008 also directs federal agencies to take “bold, progressive action” to “increase resilience to the impacts of climate change.”<sup>32</sup> The administration defends these directives by highlighting “the Secretary of the Interior’s broad stewardship responsibilities over the public lands and in offshore waters,” and in light of “climate and other impacts associated with oil and gas activities.”<sup>33</sup>

Other executive actions further bolster this mission. On January 20, 2021, President Biden issued Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, which establishes a policy of science-based decisionmaking in the face of climate change.<sup>34</sup> The order instructs agencies to “immediately commence work to confront the climate crisis” and to take other action towards protecting our environment.<sup>35</sup> This order also reestablished standards requiring climate change science to be considered in proposals involving federal spending, indicating a much-needed shift toward proactive planning to increase the nation’s climate resilience.<sup>36</sup> These Executive Orders provide reason for DOI to thoughtfully incorporate the best available science into its review of the offshore oil and gas program, including how the program will impact—and be impacted by—climate change.

Even the previous administration, which was dedicated to expanding fossil fuel development from the outset, recognized the unpopularity of offshore oil and gas drilling by issuing a ten-year moratorium on offshore energy leasing off the coasts of North Carolina through Florida beginning July 1, 2022.<sup>37</sup> This was in response to a steady outpouring of opposition to offshore drilling from coastal leaders and local governments. Both former President Trump’s decision to temporarily ban drilling, as well as the urgent need to address the root causes of climate change as directed by President Biden, support the actions laid out below to protect our coast.

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<sup>31</sup> Executive Order 14,008 § 208.

<sup>32</sup> *Id.* § 201.

<sup>33</sup> *Id.* § 208.

<sup>34</sup> Executive Order 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (Jan. 20, 2021), § 1.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Presidential Memorandum, *Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition* (Sept. 25, 2020), <https://www.presidency.ucsb.edu/documents/memorandum-withdrawal-certain-areas-the-united-states-outer-continental-shelf-from-3>.

## II. OFFSHORE DRILLING IS WRONG FOR THE SOUTHEAST COAST

### A. OCSLA Provides Rigorous Procedural and Substantive Requirements for the Development of Offshore Oil and Gas Resources

In 1978, Congress declared the Outer Continental Shelf (“OCS”) to be “a vital national resource reserve held by the Federal Government for the public.”<sup>38</sup> The OCS “should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs.”<sup>39</sup> Furthermore, OCS management must be “conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.”<sup>40</sup> In fulfilling these mandates and determining which areas to include in a leasing program, the Bureau of Ocean Energy Management (“BOEM”) within DOI must conduct a thorough analysis as required under the Outer Continental Shelf Lands Act (“OCSLA”).

BOEM must consider the eight factors outlined in Section 18 of OCSLA when determining the timing and location of offshore oil and gas exploration, development, and production.<sup>41</sup> These factors include, among others, the laws, goals, and policies of affected States, competing uses of the sea and seabed, and relative environmental sensitivity and marine productivity.<sup>42</sup> Upon consideration of these factors, BOEM must develop its leasing program “so as 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.”<sup>43</sup>

In 2016, the Obama administration removed the Atlantic Planning Areas from the 2017-2022 leasing program<sup>44</sup> after “weigh[ing] all eight of the Section 18 factors...and...balanc[ing] the potential for environmental damage, the discovery of oil and gas, and adverse impacts on the coastal zone.”<sup>45</sup> This decision was based in large part on three factors: (1) strong coastal opposition, (2) substantial potential conflicts with military operations and commercial uses of the ocean (e.g., commercial fishing and tourism), and (3) current market conditions and persistently

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<sup>38</sup> 43 U.S.C. § 1332(3).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* § 1344(a)(1).

<sup>41</sup> *Id.* § 1344(a)(2)(A)–(H).

<sup>42</sup> *Id.*; see also *California by Brown v. Watt*, 668 F.2d 1290, 1297 (D.C. Cir. 1981) (describing Section 18 process and listing factors with which Secretary must make leasing program consistent).

<sup>43</sup> 43 U.S.C. § 1344(a)(3).

<sup>44</sup> SELC, on behalf of 44 conservation groups, submitted comments on the 2017-2022 Draft Proposed Program urging the Bureau of Ocean Energy Management (“BOEM”) to remove the Atlantic Planning Areas from consideration. Those comments are incorporated by reference. See Letter from SELC et al. to Kelly Hammerle, Five-Year Program Manager, U.S. BOEM, & Geoffrey Wikel, Div. Env’t. Assessment Chief, U.S. BOEM (Mar. 30, 2015), <https://southernenvironment.sharefile.com/d-s52187b0c154242daa79289c1bbb22dd7>.

<sup>45</sup> U.S. BOEM, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROPOSED PROGRAM (Mar. 2016), <http://www.boem.gov/2017-2022-Proposed-Program-Decision> [hereinafter “2017-2022 PP”], at S-2, S-11; see also 43 U.S.C. § 1344(a)(2)(A)–(H).

low oil prices.<sup>46</sup> The decision to remove the Atlantic Planning Areas was also based on “careful consideration of the comments received from Governors of affected states.”<sup>47</sup> Furthermore, the Obama administration’s decision was based on the need for “significant additional analysis...to determine how oil and gas leasing activities may fit within the already established, complex multiple use landscape along the Atlantic OCS.”<sup>48</sup> Such an analysis has still not been done.

A similar result was eventually achieved during the Trump administration. On April 28, 2017, former President Trump issued his Executive Order, *Implementing an America-First Offshore Energy Strategy*, which called on BOEM to revise Obama’s five-year program to include lease sales in the Atlantic Planning Areas.<sup>49</sup> A steady outpouring of opposition to offshore drilling followed, from coastal leaders and local governments.<sup>50</sup> Those draft proposed plans were delayed “indefinitely” and never finalized.<sup>51</sup> And just before leaving office, former President Trump, citing local opposition, issued a presidential memorandum enacting a ten-year moratorium on offshore energy leasing off the coasts of North Carolina through Florida beginning July 1, 2022.<sup>52</sup> This stunning course reversal from an administration traditionally dedicated to expanding fossil fuel development showcases the powerful opposition and widespread unpopularity of Atlantic drilling.

Meanwhile, over recent years, the reasons for excluding the region from offshore oil and gas development have continued to become even more compelling:

- *Every East Coast governor, including the governors of Virginia, the Carolinas, and Georgia have now publicly stated they don’t want drilling off their shores;*

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<sup>46</sup> 2017-2022 PP at S-8 - S-10 (discussing ocean-dependent tourism, commercial and recreational fishing, commercial shipping and transportation, military activities, and NASA activities in the Atlantic OCS). *See also id.* at S-10 (“[T]he current market of increased onshore production and persistently low oil prices reduces the need for oil and gas development in the Atlantic at this time.”). *See also* Press Release, *Interior Department Announces Next Step in Offshore Oil and Gas Leasing Planning Process for 2017-2022*, U.S. DOI (Mar. 15, 2016), <https://www.doi.gov/pressreleases/interior-department-announces-next-step-offshore-oil-and-gas-leasing-planning-process> (“When you factor in conflicts with national defense, economic activities such as fishing and tourism, and opposition from many local communities, it simply doesn’t make sense to move forward with any lease sales in the coming five years.”)

<sup>47</sup> 2017-2022 PP at S-2 (referring to expressions of either opposition or concern from the Governors of New Jersey, Delaware, and South Carolina). *See also id.* at 9-1, Table 9-1.

<sup>48</sup> *Id.* at S-10.

<sup>49</sup> Executive Order 13,795, *Implementing an America-First Offshore Energy Strategy* (Apr. 28, 2017).

<sup>50</sup> SELC, on behalf of 51 conservation groups, submitted comments on the 2019-2024 Draft Proposed Program urging BOEM to remove the Atlantic Planning Areas from consideration. Those comments are incorporated by reference. *See* Letter from SELC et al. to K. Hammerle, U.S. BOEM (Mar. 9, 2018), <https://southernenvironment.sharefile.com/d-s24749776abd040679b04217206a39ba3>.

<sup>51</sup> Timothy Puko, *Trump’s Offshore Oil-Drilling Plan Sidelined Indefinitely*, WALL ST. J. (Apr. 25, 2019), <https://www.wsj.com/articles/trumps-offshore-oil-drilling-plan-sidelined-indefinitely-11556208950>.

<sup>52</sup> Presidential Memorandum, *Withdrawal of Certain Areas of the United States Outer Continental Shelf From Leasing Disposition*, *supra* note 37. Notably, although President Trump publicly stated that he was protecting the coast of Virginia from offshore leasing, his official presidential memorandum did not formalize such protections. *See* Brett Hall, *Trump says he’s extending offshore drilling ban off Virginia, North Carolina coasts*, WAVY (Sept. 26, 2020), <https://www.wavy.com/news/politics/north-carolina-politics/trump-says-hes-extending-offshore-drilling-ban-off-virginia-north-carolina-coasts/>.

- *More than 250 communities* have passed formal resolutions opposing offshore drilling (as of April 2021);
- Permits for seismic testing, the precursor to offshore drilling, were held up in federal court for more than two years and eventually expired;
- The economic contributions from ocean-based industries—which are incompatible with offshore drilling—have increased;
- Dozens of additional fishing, tourism, and small business associations, as well as military stakeholders, have sent letters and passed resolutions opposing offshore drilling;
- Unprecedented plans are in the works for offshore wind energy development on the East Coast;
- Scientific exploration continues to unearth the presence of natural resources at risk from oil and gas development;
- Critically endangered North Atlantic right whales that migrate and calve in the Mid- and South Atlantic are hovering at the brink of extinction and suffering alarming mortality rates;
- Scientific research continues to reveal the negative impacts of oil and gas exploration on marine ecosystems and the dire climactic consequences of continuing to pursue fossil fuel development;
- Hurricanes have intensified with climate change, further demonstrating the unique challenges for oil and gas development;
- Critical offshore drilling safety measures like the Well Control Rule, which was implemented in order to prevent an event like the *Deepwater Horizon* oil spill, have been weakened;
- Offshore energy production has become less competitive with other energy sources, and appetite for offshore oil and gas leases is lower than it has been in years; and
- Consumption of oil and natural gas is projected to plateau over the next five years.

Excluding the Mid- and South Atlantic Planning Areas from oil and gas activity remains the best decision for protecting the region’s natural resources and coastal communities. In the Department’s comprehensive review of the oil and gas program, it should consider not only exclusion from the next 5-year offshore leasing program, but also permanent protection for this valuable and fragile area.

## **B. Local Opposition to Offshore Drilling is Strong**

In deciding what areas of the OCS to lease for development, 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.”<sup>53</sup> Historically, states play a key role in offshore leasing decisions, and BOEM has deferred to the states’ positions regarding drilling off their coasts.

Coastal opposition in the Southeast continues to weigh against opening the Mid- and South Atlantic Planning Areas to offshore drilling. Dozens of members of Congress and other

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<sup>53</sup> 43 U.S.C. § 1344(a)(2)(F).

elected officials from this region have publicly spoken out strongly and consistently against offshore drilling.<sup>54</sup> During the Trump administration, Governors of every East Coast State from both political parties either formally asked BOEM for their states to be excluded from offshore drilling plans or publicly expressed opposition to such plans.<sup>55</sup>

Virginia Governor Ralph Northam cited the importance of the military to the Hampton Roads' economy, the incompatibility of offshore drilling with naval operations off Virginia, and the importance of Virginia's significant tourism and seafood industries to the state's economy.<sup>56</sup> North Carolina Governor Roy Cooper stated that "offshore drilling threatens tourism, which is a vital economic driver," and that "[w]e cannot afford to endanger our ecologically sensitive coastlines or the natural resources that are the foundation of our state's tourism industry and coastal economy."<sup>57</sup> South Carolina Governor Henry McMaster similarly requested that South Carolina be excluded from the latest leasing program based on the "need for increased production from a variety of other sources," including renewables; the State's pristine natural resources strong tourism and commercial fishing industries; the risks associated with onshore infrastructure; and the risks associated with placing offshore drilling platforms in the middle of "Hurricane Alley."<sup>58</sup> Finally, Georgia Governor Brian Kemp publicly stated, "I support increasing our nation's energy independence, but I do not support seismic testing or offshore drilling off the Georgia coast in order to do so."<sup>59</sup>

The communities and local governments along the East Coast that would be most affected by any offshore oil and gas development have also spoken up in opposing offshore drilling and seismic testing, with *more than 250 communities* on the East Coast formally opposing offshore drilling in the Atlantic, as of April 2021.<sup>60</sup>

Offshore oil and gas development also conflicts with the laws, goals, and policies of the Mid- and South Atlantic states. Under Virginia law, the development of infrastructure to support offshore oil and gas production is not permitted in State waters.<sup>61</sup> Under North Carolina's coastal management plan, offshore energy development "shall avoid significant adverse impact

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<sup>54</sup> See, e.g., Letter from 62 Members of Congress to Former Sec'y Ryan Zinke, U.S. DOI (Aug. 11, 2017), [https://connolly.house.gov/uploadedfiles/connolly\\_oppose\\_atlantic\\_offshore\\_drilling.pdf](https://connolly.house.gov/uploadedfiles/connolly_oppose_atlantic_offshore_drilling.pdf); Letter from 12 State Attorneys General to Former Sec'y R. Zinke, U.S. DOI (Feb. 1, 2018), [https://usa.oceana.org/sites/default/files/662/2018\\_02\\_01\\_-\\_ags\\_of\\_nc\\_ca\\_ct\\_de\\_me\\_ma\\_md\\_nj\\_ny\\_or\\_ri\\_va\\_1.pdf](https://usa.oceana.org/sites/default/files/662/2018_02_01_-_ags_of_nc_ca_ct_de_me_ma_md_nj_ny_or_ri_va_1.pdf).

<sup>55</sup> See *They Don't Agree on Everything, But They Agree on One Thing*, SELC (2020), [https://www.southernenvironment.org/uploads/petitions/OSD\\_GovernorsQuotes\\_F.pdf](https://www.southernenvironment.org/uploads/petitions/OSD_GovernorsQuotes_F.pdf).

<sup>56</sup> Letter from Va. Gov. Ralph Northam to Former Sec'y R. Zinke, U.S. DOI (Jan. 10, 2018), <https://southernenvironment.sharefile.com/d-s1cb0e6ccc092403187a85a785b6abec1>.

<sup>57</sup> Letter from N.C. Gov. Roy Cooper to Former Sec'y R. Zinke, U.S. DOI (Jan. 10, 2018), <https://files.nc.gov/governor/documents/files/Letter%20to%20Interior%20Sec.%20Zinke.pdf?TxOtbCpxQwNVaspqASeIN5w9bK15btfZ>.

<sup>58</sup> Letter from S.C. Gov. Henry McMaster to Former Sec'y R. Zinke, U.S. DOI (Jan. 16, 2018), [https://usa.oceana.org/sites/default/files/4046/2018\\_01\\_16\\_-\\_sc\\_gov\\_henry\\_mcmaster\\_to\\_zinke.pdf](https://usa.oceana.org/sites/default/files/4046/2018_01_16_-_sc_gov_henry_mcmaster_to_zinke.pdf).

<sup>59</sup> Wes Wolfe, *Kemp discusses environment, Deal legacy*, BRUNSWICK NEWS (Oct. 10, 2018), [https://thebrunswicknews.com/news/local\\_news/kemp-discusses-environment-deal-legacy/article\\_fc0854fc-bfd5-5bc4-aa03-10830ba9d9e9.html](https://thebrunswicknews.com/news/local_news/kemp-discusses-environment-deal-legacy/article_fc0854fc-bfd5-5bc4-aa03-10830ba9d9e9.html).

<sup>60</sup> See Online GIS layer, *Coastal Opposition to Offshore Drilling*, SELC (last visited Apr. 7, 2021), <https://www.southernenvironment.org/explore-the-interactive-map>.

<sup>61</sup> Va. Code § 28.2-1208.

upon coastal resources or uses, public trust areas and public access rights.”<sup>62</sup> Under South Carolina’s budget, use of state and local funds for planning, permitting, or leasing related to offshore oil and gas is banned.<sup>63</sup> Furthermore, the S.C. coastal management plan states that “the preservation of the highest and best use of the seacoast of the State is as a source of public and private recreation...and the preservation of this use is a matter of the highest urgency and priority.”<sup>64</sup> Likewise, the Georgia Coastal Management Act provides broad protection to all coastal species and areas and recognizes that the coastal area “provides a natural...resource which has become vitally linked to the economy of Georgia’s coast and to that of the entire state.”<sup>65</sup> Moreover, the Georgia legislature passed a resolution in 2020 declaring “their support for Georgia’s coastal tourism and fisheries” and voicing “their opposition to oil exploration and drilling activities, including seismic testing, off of the Georgia coast.”<sup>66</sup>

### C. Numerous Ocean Uses on the Atlantic OCS Conflict with Offshore Drilling

OCSLA also requires BOEM to consider the location of each region “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].”<sup>67</sup> Exploring and drilling for oil and gas in the Atlantic OCS would conflict with a number of vital ocean uses, of both economic importance (e.g., commercial and recreational fishing, tourism and recreation, and offshore wind energy development) and national security importance (e.g., Department of Defense and NASA operations).

#### i. Economic Uses

Existing uses of the Mid- and South Atlantic OCS provide the adjacent states with significant economic benefits. Data from the Center for the Blue Economy show that in 2017, there were more than 286,000 ocean-related jobs in Virginia, North Carolina, South Carolina, and Georgia combined.<sup>68</sup> The ocean economy paid more than \$9.2 billion in wages and contributed more than \$18 billion in GDP to the region.<sup>69</sup> Notably, these numbers are even higher than when the Department decided not to pursue offshore drilling in the region five years ago.

Commercial fishing is a significant contributor to the GDP of affected coastal states. In 2018 alone, commercial fishermen in Virginia landed 362 million pounds of fish worth \$177 million; in North Carolina, 55 million pounds worth \$78 million; in South Carolina, 8 million

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<sup>62</sup> 15A N.C. Admin. Code 07M .0401(a)(2015).

<sup>63</sup> When signing the bill into law, Governor Henry McMaster said he “will do whatever it takes to make sure we never see offshore drilling or seismic testing off of South Carolina’s coast.” Heather Richards, *S.C. governor signs budget saying ‘no’ to oil and gas*, E&E NEWS (May 30, 2019), <https://www.eenews.net/energywire/2019/05/30/stories/1060427133>.

<sup>64</sup> S.C. Code Ann. § 48-43-520.

<sup>65</sup> Ga. Code Ann. § 12-5-321.

<sup>66</sup> Ga. Resolution L.C. 39 2396S- 1, <https://usa.oceana.org/sites/default/files/17335/hr48.pdf>.

<sup>67</sup> 43 U.S.C. § 1344(a)(2)(D).

<sup>68</sup> Nat’l Ocean Econ. Program (NOEP), *Ocean Economy Data*, MIDDLEBURY INST. INT’L STUDIES MONTEREY (last visited Apr. 2, 2021), <http://www.oceaneconomics.org/Market/ocean/oceanEcon.asp?IC=N&dataSource=E>.

<sup>69</sup> *Id.*

pounds worth \$21 million; and in Georgia, 7 million pounds worth \$16 million.<sup>70</sup> Notably, the Mid-Atlantic and South Atlantic Fishery Management Councils, as well as numerous local fishing industry associations, have stated their strong opposition to offshore drilling.<sup>71</sup>

Ocean-dependent tourism and recreation is also critical to the coastal economy, accounting for more than 196,000 jobs and contributed more than \$8.2 billion to the GDP in 2017.<sup>72</sup> Visitors travel from all over the country to the Atlantic coast to take advantage of the unique beaches and natural resources the region has to offer. In addition to supporting local businesses such as hotels and restaurants, visitors venture into the ocean to surf, swim, view wildlife, fish, scuba dive, and boat, among a number of other activities.<sup>73</sup> Four federally-protected National Seashores exist along the Southeast coast for public enjoyment of ecosystems and wildlife: Assateague Island in Virginia, Cape Hatteras and Cape Lookout in North Carolina, and Cumberland Island in Georgia. Eight National Monuments and Historic Sites in the region provide educational and recreational opportunities for the public: Colonial Park, Fort Monroe, and George Washington Birthplace in Virginia; Fort Raleigh in North Carolina; Fort Sumter and Charles Pinckney in South Carolina; and Forts Frederica and Pulaski in Georgia. Collectively, these areas contribute \$724.6 million in economic output, support 8,407 jobs, and receive approximately 21 million visitors each year.<sup>74</sup>

Recreational fishing is also a vital part of the tourist economy along the Atlantic coast. Recreational fishermen caught 19 million pounds of fish off the coast of Virginia, 27 million pounds off the coast of North Carolina, 12 million pounds off the coast of South Carolina, and 6 million pounds off the coast of Georgia in 2018.<sup>75</sup> All told, the commercial and recreational fishing industries and the tourist economy contribute billions in GDP to affected states. The many businesses, tourism authorities, and associations in our region who rely upon and work for

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<sup>70</sup> NOAA FISHERIES, FISHERIES OF THE UNITED STATES: 2018 (Feb. 2020), [https://media.fisheries.noaa.gov/dam-migration/fus\\_2018\\_report.pdf](https://media.fisheries.noaa.gov/dam-migration/fus_2018_report.pdf), at 12.

<sup>71</sup> Letter from Mid-Atl. Fishery Mgmt. Council to Former Sec’y R. Zinke, U.S. DOI (Apr. 25, 2017), [https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/590205949de4bb5a9350a1c7/1493304726561/MAFMC\\_DOI\\_2017-04-25.pdf](https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/590205949de4bb5a9350a1c7/1493304726561/MAFMC_DOI_2017-04-25.pdf) (“The environmental risks associated with offshore oil development are *not consistent* with the Council’s vision for healthy and productive ecosystems...” (emphasis added)). See also S. Atl. Fishery Mgmt. Council, Policy for the Protection and Restoration of Essential Fish Habitats from Energy Exploration and Development Activities (Dec. 14, 2015), <http://cdn1.safmc.net/wp-content/uploads/2016/11/28102846/SAFMCEnergyPolicyDec1415.pdf>. See also *Grassroots Opposition to Offshore Drilling and Exploration in the Atlantic Ocean and off Florida’s Gulf Coast*, OCEANA (last visited April 7, 2021), <https://usa.oceana.org/climate-and-energy/grassroots-opposition-offshore-drilling-and-exploration-atlantic-ocean-and>.

<sup>72</sup> NOEP, *supra* note 68.

<sup>73</sup> See *Coastal Georgia Human Use Mapping Project*, THE NATURE CONSERVANCY (last visited Apr. 12, 2021), <http://tnc.maps.arcgis.com/apps/MapJournal/index.html?appid=1a48c0b3afdb49ec8edd136a1d4bbbe4> (illustrating the extensive recreational opportunities the Georgia coast provides to residents and visitors alike).

<sup>74</sup> Nat’l Parks Conservation Ass’n. & Nat. Res. Def. Council, *SpOILED Parks: The Threat to our Coastal National Parks from Expanded Offshore Drilling* (May 2018), <https://www.nrdc.org/resources/spoiled-parks-threat-our-coastal-national-parks-expanded-offshore-drilling>.

<sup>75</sup> NOAA FISHERIES, *supra* note 70, at 56.

a healthy ocean have spoken up against drilling.<sup>76</sup> Offshore oil and gas activities would inherently conflict with these existing and vital uses of the Atlantic Planning Areas.

Finally, the Atlantic coast contains abundant offshore wind potential, and a number of areas off of Virginia, North Carolina, South Carolina, and Georgia are either under assessment for offshore wind development or in advanced stages of the leasing and construction planning processes. The first offshore wind turbines in federal waters were constructed in the summer of 2020 in a research lease off Virginia Beach.<sup>77</sup> Construction and operations planning has been submitted to BOEM, and site characterization activities are either underway or completed, for commercial projects off Virginia Beach, Virginia and Kitty Hawk, North Carolina, which, combined, will have the potential to power up to 850,000 homes.<sup>78</sup> The agency is also considering beginning wind leasing in additional areas off North Carolina as well as off the coast of South Carolina.<sup>79</sup> Responsibly-developed offshore wind development in the Atlantic is critical to our nation's energy future, and indeed a critical part of President Biden's clean energy goals, and offshore oil and gas activity would interfere with this important clean energy resource.

ii. *National Security Operations*

In addition, oil and gas development in the Atlantic Planning Areas would interfere with the nation's national security activities, including Department of Defense ("DOD") operations at Norfolk Naval base in Virginia, the Virginia Capes Operations Area stretching from Delaware to North Carolina, the U.S. Navy's undersea warfare training range, and King's Bay Naval Submarine Base in Georgia. The Norfolk Naval Station is the world's largest navy base, and the U.S. Navy and other branches of the U.S. military area regard the Atlantic as critical for training and testing. In a 2015 report, DOD stated that areas considered for lease in the Atlantic would interfere with military training and readiness.<sup>80</sup> Indeed, according to BOEM, "DOD's assessment identifies much of the area offshore Virginia, as well as significant portions of the Program Area offshore North Carolina, as areas that should not be made available for oil and gas development, as such development would be incompatible with DOD's activities."<sup>81</sup> Approximately 82 percent of the areas off the coast of Virginia are used for military training and readiness operations and unsuitable for oil and gas development.<sup>82</sup>

Likewise, oil and gas activity would conflict with operations at NASA's Wallops Flight Facility off the eastern shore of Virginia, and NASA has identified other areas within the

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<sup>76</sup> See OCEANA, *Grassroots Opposition to Atlantic Offshore Drilling and Exploration in the Atlantic Ocean and Eastern Gulf of Mexico*, *supra* note 71.

<sup>77</sup> Press Release, *Dominion Energy Completes Construction of First Offshore Wind Project in U.S. Federal Waters*, DOMINION ENERGY (June 29, 2020), <https://news.dominionenergy.com/2020-06-29-Dominion-Energy-Completes-Construction-of-First-Offshore-Wind-Project-in-U-S-Federal-Waters>.

<sup>78</sup> See James Bennett, *Webinar: U.S. Outer Continental Shelf Renewable Energy*, U.S. BOEM (Feb. 4, 2021), <https://hubfortheclub/public/cccff5>.

<sup>79</sup> See *South Carolina Activities*, U.S. BOEM (last visited Apr. 12, 2021), <http://www.boem.gov/South-Carolina/>.

<sup>80</sup> See U.S. DEP'T OF DEF., *DoD MISSION COMPATIBILITY PLANNING ASSESSMENT: BOEM 2017-2022 OUTER CONTINENTAL SHELF (OCS) OIL AND GAS LEASING DRAFT PROPOSED PROGRAM* (Oct. 30, 2015), <https://usa.oceana.org/sites/default/files/662/2017-2022-dod-ocs-report.pdf>, at 1-2, 30-33.

<sup>81</sup> 2017-2022 PP at S-9.

<sup>82</sup> See Attachment 1 for maps depicting DOD exclusion areas off the coast of Virginia, North Carolina, South Carolina, and Georgia.

Atlantic Planning Areas as important for mission activities.<sup>83</sup> Wallops Flight Facility is a “key location for operational testing, integration, and certification of NASA and commercial orbital launch technologies,” and “the presence of oil and gas related activity could result in NASA’s inability to meet its own launch commit criteria.”<sup>84</sup> In addition, NASA has designated danger zones and restricted areas associated with the Wallops Flight Facility’s rocket testing and shuttle launches that coincide with much of the previously proposed Atlantic Planning Areas.<sup>85</sup> BOEM should heed NASA’s concerns regarding oil and gas development in the Mid- and South Atlantic by enacting permanent protections from offshore drilling in these areas.

In sum, potential conflicts between existing ocean uses and drilling in the Atlantic are varied and significant. BOEM found in 2016 “incompatibility between the many and longstanding competing uses in the Atlantic and oil and gas activities in those areas.”<sup>86</sup> BOEM’s conclusion remains true today, and the numerous conflicts discussed above weigh heavily in favor of permanently protecting the Mid- and South Atlantic Planning Areas from oil and gas activities.

#### **D. The Coastal and Marine Ecosystems of the Mid- and South Atlantic are Ecologically Significant and Sensitive**

The Mid- and South Atlantic OCS is a region of outstanding ecological diversity, home to countless marine mammal, fish, invertebrate, sea turtle, bird, and coral species, including some endangered and threatened species. The region is used as a migratory superhighway by birds and fish, and the shelf break and upper slope also features the highest diversity of marine mammals in the Mid- Atlantic and South Atlantic.<sup>87</sup>

The region boasts offshore canyons, hard bottom and live bottom habitats, deepwater coral systems, and migratory corridors. NOAA has stated that the region’s deepwater corals may be “the best developed, most extensive deep coral areas in U.S. waters.”<sup>88</sup> The following additional offshore areas are of particular concern: Grays Reef National Marine Sanctuary, Hatteras Slope, Wimble Shoals, the Charleston Bump, the Point, Cape Lookout and Cape Fear *Lophelia* Banks, and Ten Fathom Ledge. In addition, scientific exploration continues to unearth the presence of these diverse habitats. In 2018, researchers discovered an “unbelievable”

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<sup>83</sup> 2017-2022 PP at 4-10.

<sup>84</sup> *Id.* at S-10.

<sup>85</sup> U.S. BOEM, OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM: 2017-2022 DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT (Mar. 18, 2016), <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Resource-Evaluation/Resource-Assessment/Draft-Programmatic-Environmental-Impact-Statement-VolumnI.pdf>, at 3-49.

<sup>86</sup> 2017-2022 PP at S-9 – S-10.

<sup>87</sup> *Id.* at 2-19 (citations omitted).

<sup>88</sup> Steve W. Ross & Martha S. Nizinski, *State of deep coral ecosystems in the US southeast region: Cape Hatteras to southeastern Florida*, in THE STATE OF DEEP CORAL ECOSYSTEMS IN THE UNITED STATES: 2007, 233-270 (S. Elizabeth Lumsden et al. eds), [https://www.coris.noaa.gov/activities/deepcoral\\_rpt/Chapter6\\_Southeast.pdf](https://www.coris.noaa.gov/activities/deepcoral_rpt/Chapter6_Southeast.pdf), at 233 (citations omitted).

ecosystem of cold-water corals 160 miles off the coast of Charleston, South Carolina, that had previously been hidden.<sup>89</sup>

The coast adjacent to the Mid- and South Atlantic Planning Areas is similarly diverse in species and habitats, characterized by unique and sensitive shorelines, prominent salt marshes, fragile barrier islands, and immensely productive marine habitats and fisheries. The 200-mile string of narrow barrier islands known as the Outer Banks sits off the coast of North Carolina, and South Carolina's coastline is dotted with more than 40 barrier islands and sea islands.<sup>90</sup> Nearly 925,000 acres of salt marsh, one of the most productive ecosystems in the world, cover the coasts of North Carolina, South Carolina and Georgia.<sup>91</sup> The following coastal areas are of particular concern: the Chesapeake Bay, the Pamlico/Albemarle Estuary, and Cape Hatteras National Seashore.

Several endangered species also make their homes in the terrestrial and marine environments of the Mid- and South Atlantic and warrant special consideration when considering impacts from any future oil and gas exploration and development. The critically endangered North Atlantic right whale is found exclusively along the Atlantic coast of North America; the waters off the Carolinas, Georgia, and Florida are especially important for the conservation of the species as they are its only known calving grounds, hosting valuable and vulnerable right whale mothers and calves from November through April each year. The waters off Virginia are also essential, as both a critical part of the species' migratory route, as well as an increasingly recognized foraging ground, hosting at least a subset of right whales year-round. Critical habitat stretches from Cape Fear, North Carolina to Cape Canaveral, Florida.<sup>92</sup>

The conservation status of the North Atlantic right whale is dire. In the wake of an alarming number of human-caused deaths of North Atlantic right whales in 2017, the National Marine Fisheries Service ("NMFS") declared an Unusual Mortality Event under the Marine Mammal Protection Act for all U.S. waters in which right whales occur.<sup>93</sup> This designation is still in effect. At least 34 whales are known to have been killed since 2017, and an additional 15 animals have been documented with serious injuries from which they will likely not recover.<sup>94</sup> The loss of at least 49 right whales since 2017 represents over 13 percent of the total population, which is now estimated at approximately 356 individuals.<sup>95</sup> Of these 356 individuals, no more

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<sup>89</sup> Chris D'Angelo, *Scientists Discover Giant Deep-Sea Coral Reef Off Atlantic Coast*, HUFFINGTON POST (Aug. 25, 2018), [https://www.huffingtonpost.com/entry/scientists-discover-giant-deep-sea-coral-reef-off-atlantic-coast\\_us\\_5b81c298e4b0cd327dfd415e](https://www.huffingtonpost.com/entry/scientists-discover-giant-deep-sea-coral-reef-off-atlantic-coast_us_5b81c298e4b0cd327dfd415e).

<sup>90</sup> *Healthy Coastal Ecosystems*, S.C. SEA GRANT (last visited Apr. 14, 2021), <https://www.scseagrant.org/healthy-coastal-ecosystems/>.

<sup>91</sup> Denise Sanger & Catharine Parker, *Guide to the Salt Marshes and Tidal Creeks of the Southeastern United States*, S.C. DEP'T NAT. RES. (2016), <https://www.saltmarshguide.org/>.

<sup>92</sup> Endangered and Threatened Species; Critical Habitat for Endangered North Atlantic Right Whale, 81 Fed. Reg. 4,838 (Jan. 27, 2016) (codified at 50 C.F.R. pt. 226).

<sup>93</sup> *2017–2021 North Atlantic Right Whale Unusual Mortality Event*, NAT'L MARINE FISHERIES SERV. (NMFS) (last visited Feb. 12, 2021), <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event>.

<sup>94</sup> *Id.*

<sup>95</sup> Heather M. Pettis et al., *North Atlantic Right Whale Consortium 2020 Annual Report Card*, N. ATL. RIGHT WHALE CONSORTIUM (Jan. 2021), [https://www.narwc.org/uploads/1/1/6/6/116623219/2020narwcreport\\_cardfinal.pdf](https://www.narwc.org/uploads/1/1/6/6/116623219/2020narwcreport_cardfinal.pdf), at 4.

than 77 are breeding females.<sup>96</sup> NMFS identifies oil and gas exploration, development, and production as one of the activities most likely to affect North Atlantic right whale critical habitat.<sup>97</sup>

The beaches and waters off the Southeast coast are also important for the threatened loggerhead sea turtle. Both marine and terrestrial critical habitat has been designated for the species throughout a significant portion of the Mid- and South Atlantic Planning Areas and neighboring beaches.<sup>98</sup> The Southeast is one of the most important nesting sites for loggerhead sea turtles worldwide, hosting thousands of nests each summer.<sup>99</sup> Thus, limiting anthropogenic disturbances to these areas is paramount for the global conservation of this species. The 2008 Loggerhead Recovery Plan notes that several aspects of oil and gas activities threaten these populations.<sup>100</sup> In particular, NMFS raised concern that oil spills and cleanup would gravely impact *Sargassum* habitat.<sup>101</sup>

The region is also home to many sensitive fish species. In 2017, NMFS designated critical habitat for endangered distinct population segments of Atlantic Sturgeon in North Carolina, South Carolina, Georgia and Virginia.<sup>102</sup> Cumulative impacts from infrastructure development are a concern for these newly designated areas. Much of the Mid- and South Atlantic OCS is also designated as Essential Fish Habitat (“EFH”) and Habitat Areas of Particular Concern (“HAPC”) by NMFS. HAPCs are subsets of EFHs which are “rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area.”<sup>103</sup>

In addition to threatened and endangered species, a number of federally protected lands showcase the Southeast’s sensitive coastal environments and provide the public opportunities for birding and wildlife viewing. The federal government has designated more than 20 National Wildlife Refuges (“NWR”) along the Southeast coast, including, but not limited to: Chincoteague, Fisherman Island, and Back Bay NWRs in Virginia; Alligator River, Currituck, and Pea Island NWRs in North Carolina; ACE Basin, Savannah, Pinckney Island, and Tybee NWRs in South Carolina; and Harris Neck, Wolf Island, and Wassaw NWRs in Georgia. The NWR system exists “for the conservation, management and...restoration of the fish, wildlife and

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<sup>96</sup> *Id.* at 6.

<sup>97</sup> 81 Fed. Reg. at 4,851.

<sup>98</sup> Endangered and Threatened Species: Critical Habitat for the Northwest Atlantic Ocean Loggerhead Sea Turtle Distinct Population Segment (DPS) and Determination Regarding Critical Habitat for the North Pacific Ocean Loggerhead DPS, 79 Fed. Reg. 39,856 (July 10, 2014); Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northwest Atlantic Ocean Distinct Population Segment of the Loggerhead Sea Turtle, 79 Fed. Reg. 39,755 (July 10, 2014).

<sup>99</sup> U.S. FISH & WILDLIFE SERV. (FWS) & NMFS, RECOVERY PLAN FOR THE NORTHWEST ATLANTIC POPULATION OF THE LOGGERHEAD SEA TURTLE (*CARETTA CARETTA*): SECOND REVISION (Dec. 2008), <https://www.fisheries.noaa.gov/resource/document/recovery-plan-northwest-atlantic-population-loggerhead-sea-turtle-caretta>, at I-2.

<sup>100</sup> *Id.* at I-52.

<sup>101</sup> 79 Fed. Reg. at 39,884.

<sup>102</sup> Endangered and Threatened Species; Designation of Critical Habitat for the Endangered New York Bight, Chesapeake Bay, Carolina and South Atlantic Distinct Population Segments of Atlantic Sturgeon and the Threatened Gulf of Maine Distinct Population Segment of Atlantic Sturgeon, 82 Fed. Reg. 39,160 (Aug. 17, 2017).

<sup>103</sup> *Fish Habitat*, MID-ATL. FISHERY MGMT. COUNCIL (last visited Apr. 2, 2021), <http://www.mafmc.org/habitat/>.

plant resources and their habitats...”<sup>104</sup> NWRs in the Southeast provide migratory and breeding habitats for a wide range of waterfowl, shore birds (including threatened species such as the piping plover and red knot), and migratory warblers. Notably, South Carolina’s ACE Basin NWR is one of the largest, most ecologically important wetland complexes on the east coast.

The National Estuarine Research Reserve (“NERR”) System also protects a number of sensitive sites along the Mid- and South Atlantic coast, including Virginia’s Chesapeake Bay NERR, South Carolina’s ACE Basin and North Inlet Winyah Bay NERRs, Georgia’s Sapelo Island NERR, and four sites in North Carolina: Masonboro Island, Rachel Carson, Currituck Banks, and Zeke’s Island NERRs. In addition, two National Marine Sanctuaries exist off the Southeast coast: Gray’s Reef off Georgia, and Monitor off North Carolina.

A number of sensitive areas along the Mid- and South Atlantic coasts also receive state protection. Virginia, for example, protects the Bethel Beach, Savage Neck Dunes, and Wreck Island Natural Area Preserves. North Carolina protects Bald Head Island State Natural Area, Jockey’s Ridge State Park, and Lea Island State Natural Area, among others. South Carolina protects the Baruch-North Island, Yawkey-South Island, and Santee Coastal Reserves. And lastly, Georgia protects the Sea Island Hammocks, Little Wahoo Island, and St. Catherines Island Bar Natural Areas. This list presents only a small sampling of the coastal areas under state protection.

BOEM has previously identified many of the above environmentally important areas in the Mid- and South Atlantic OCS that would be at risk from oil and gas development.<sup>105</sup> The uniqueness and importance of the geographical, geological, and ecological characteristics of the Mid- and South Atlantic OCS and adjacent coasts, as well as their high sensitivity, weigh heavily in favor of a permanent ban on offshore oil and gas leasing in the Mid- and South Atlantic Planning Areas.

### **E. Offshore Drilling Poses Too High a Risk of Oil Spills**

Among the many environmental risks of offshore oil and gas activity are the risks of catastrophic oil spills. A catastrophic oil spill would be devastating to Mid- and South Atlantic coast states and sensitive ecosystems. The *Deepwater Horizon* spill 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.<sup>106</sup> 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 of

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<sup>104</sup> *About: National Wildlife Refuge System*, U.S. FWS (last visited Apr. 2, 2021), <http://www.fws.gov/refuges/about/>.

<sup>105</sup> 2017-2022 PP at 1-8. Attachment 2 to these comments contains detailed maps that highlight marine and coastal resources, including protected habitat areas, that would be affected by future oil and gas development.

<sup>106</sup> *See generally, e.g.*, U.S. COAST GUARD, ON SCENE COORDINATOR REPORT: DEEPWATER HORIZON OIL SPILL (Sept. 2011), <https://repository.library.noaa.gov/view/noaa/283>, at v, 33.

Mexico.<sup>107</sup> As described in detail in our past comments, both the spill itself and the cleanup caused significant environmental harm.<sup>108</sup>

In the past five years, research has continued to emerge demonstrating the lasting impacts of the *Deepwater Horizon* spill on the Gulf of Mexico. Bottlenose dolphins in the Gulf continue to be impacted by oil exposure from the spill.<sup>109</sup> Sperm whales are expected to have suffered a 26 percent population decline by 2025 from oil exposure, which, in combination with ongoing seismic activity in the same area, is leading to abortions, calf abandonment, and starvation.<sup>110</sup> Impacts to migratory birds are also still being felt, far beyond Gulf ecosystems.<sup>111</sup> Recent scientific modeling confirms that the oil spill reduced biomass of big reef and demersal fish by 25-50 percent and 40-70 percent, respectively, and some of these populations may take 30 years or more to recover.<sup>112</sup> Deep-sea corals impacted by the spill could also take up to three decades to fully recover.<sup>113</sup> Six years after the spill, heavily oiled areas of Gulf salt marsh habitat were still recovering.<sup>114</sup> 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.<sup>115</sup>

Also, additional research continues to be published on the toxic effects of the dispersant *Corexit* used after the oil spill on sea life such as oysters<sup>116</sup> and deep sea corals.<sup>117</sup> In fact, based

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<sup>107</sup> See Bryan P. Wallace et al., *Effects of the Deepwater Horizon oil spill on protected marine species*, ENDANGERED SPECIES RSCH. (Jan. 31, 2017), <https://doi.org/10.3354/esr00789> (cataloguing research studies documenting the impacts of the *Deepwater Horizon* disaster on marine species).

<sup>108</sup> See generally Letters from SELC et al. to BOEM, *supra* notes 44, 50.

<sup>109</sup> Brian C. Balmer et al., *Long-term trends in a northern Gulf of Mexico common bottlenose dolphin (*Tursiops truncatus*) population in the wake of the Deepwater Horizon oil spill*, J. CETACEAN RSCH. & MGMT. (Jan. 2018), <https://www.researchgate.net/publication/328076117> Long-term trends in a northern Gulf of Mexico common bottlenose dolphin *Tursiops truncatus* population in the wake of the Deepwater Horizon oil spill.

<sup>110</sup> Nicholas A. Farmer et al., *Population consequences of disturbance by offshore oil and gas activity for endangered sperm whales (*Physeter macrocephalus*)*, BIOLOGICAL CONSERVATION (Sept. 18, 2018), <https://doi.org/10.1016/j.biocon.2018.09.006>.

<sup>111</sup> Kent Erdahl, *Minnesota requests BP oil spill money to help loons recover*, KARE 11 (May 3, 2018), <https://www.kare11.com/article/news/minnesota-requests-bp-oil-spill-money-to-help-loons-recover/89-548676286>.

<sup>112</sup> Cameron H. Ainsworth et al., *Impacts of the Deepwater Horizon oil spill evaluated using an end-to-end ecosystem model*, PLOS ONE (Jan. 25, 2018), <https://doi.org/10.1371/journal.pone.0190840>.

<sup>113</sup> Fanny Girard et al., *Projecting the recovery of a long-lived deep-sea coral species after the Deepwater Horizon oil spill using state-structured models*, J. APPLIED ECOLOGY (Jan. 22, 2018), <https://doi.org/10.1111/1365-2664.13141>.

<sup>114</sup> Corianne Tatariw et al., *Salt marsh denitrification is impacted by oiling intensity six years after the Deepwater Horizon oil spill*, ENV'T POLLUTION (Sept. 18, 2018), <https://doi.org/10.1016/j.envpol.2018.09.034>.

<sup>115</sup> Leila J. Hamdan et al., *The impact of the Deepwater Horizon blowout on historic shipwreck-associated sediment microbiomes in the northern Gulf of Mexico*, NATURE SCI. REPORTS (June 28, 2018), <https://www.nature.com/articles/s41598-018-27350-z>.

<sup>116</sup> Lindsay Jasperse et al., *Comparative toxicity of Corexit® 9500, oil, and a Corexit®/oil mixture on the eastern oyster, *Crassostrea virginica* (Gmelin)*, AQUATIC TOXICOLOGY (July 20, 2018), <https://doi.org/10.1016/j.aquatox.2018.07.015>.

<sup>117</sup> Dannise V. Ruiz-Ramos et al., *Stress response of the black coral *Leiopathes glaberrima* when exposed to sub-lethal amounts of crude oil and dispersant*, ELEMENTA SCI. ANTHROPOCENE (Dec. 14, 2017), <https://doi.org/10.1525/elementa.261>.

on new research that echoes past findings, dispersants were ineffective at degrading oil and may have even added to the ecological damage by increasing the toxicity of the oil itself.<sup>118</sup>

Public health surveys also show that oil spill responders are still suffering from various health issues from oil exposure, such as chronic respiratory distress, headaches, and gastrointestinal problems.<sup>119</sup> Thousands of medical claimants are still awaiting their day in court.<sup>120</sup> Public health experts have estimated that 170,000 Gulf residents have died of spill-related illnesses.<sup>121</sup> As demonstrated by the *Deepwater Horizon* disaster, oil spills cause both immediate and long-lasting damage to marine and coastal environments, and the destructive impacts of large spills are immediate and severe.

Although the *Deepwater Horizon* spill was particularly devastating, it was not unprecedented. In fact, catastrophic spills and pollution events are common on the OCS. In 1979, an exploratory well in the Gulf of Mexico blew out and spilled 140 million gallons of oil over the course of 10 months.<sup>122</sup> In 1989, the Exxon Valdez spilled more than 11 million gallons of oil into Alaska's Prince William Sound.<sup>123</sup> In 2009, the Montara oil rig spilled between 29,600 and 222,000 barrels of oil into the Timor Sea over the span of ten weeks.<sup>124</sup> 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.<sup>125</sup> In 2017, the Gulf of Mexico saw the largest oil spill since *Deepwater Horizon*, spilling upwards of 400,000 gallons of oil from the sea floor.<sup>126</sup> In 2018, a deepwater exploratory rig off the coast

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<sup>118</sup> Claire B. Paris et al., *BP Gulf science data reveals ineffectual subsea dispersant injection for the Macondo blowout*, FRONTIERS MARINE SCI. (Oct. 30, 2018), <https://doi.org/10.3389/fmars.2018.00389>.

<sup>119</sup> Jennifer Rusiecki et al., *The Deepwater Horizon oil spill Coast Guard cohort study*, OCCUPATIONAL & ENV'T MED. (Sept. 12, 2017), <http://dx.doi.org/10.1136/oemed-2017-104343>; Kaitlyn B. Gam et al., *Association between Deepwater Horizon oil spill response and cleanup work experiences and lung function*, ENV'T INT'L (Sept. 30, 2018), <https://doi.org/10.1016/j.envint.2018.09.058>.

<sup>120</sup> David Hammer, *Thousands of cleanup workers that claim BP oil spill made them sick haven't had their day in court*, WWL NEWS (Apr. 21, 2018), <https://www.wwtv.com/article/news/local/investigations/david-hammer/thousands-of-cleanup-workers-that-claim-bp-oil-spill-made-them-sick-havent-had-their-day-in-court/289-543806235#:~:text=David%20Hammer-.Thousands%20of%20cleanup%20workers%20that%20claim%20BP%20oil%20spill%20made.and%20chemicals%20made%20them%20sick.>

<sup>121</sup> Dahr Jamail, *BP's Toxic Gulf Coast Legacy: When Covering Up a Crime Takes Precedence Over Human Health*, TRUTHOUT (May 14, 2018), <http://www.truth-out.org/news/item/44440-when-covering-up-a-crime-takes-precedence-over-human-health-bp-s-toxic-gulf-coast-legacy>.

<sup>122</sup> Mark Stevenson & Molly O'Toole, *'79 Gulf spill leaves sobering lessons for BP*, NBC NEWS (June 4, 2010), [http://www.nbcnews.com/id/37514348/ns/disaster\\_in\\_the\\_gulf/t/gulf-spill-leaves-sobering-lessons-bp/](http://www.nbcnews.com/id/37514348/ns/disaster_in_the_gulf/t/gulf-spill-leaves-sobering-lessons-bp/).

<sup>123</sup> Off. Response & Restoration, *Exxon Valdez Oil Spill*, NOAA (last visited Apr. 14, 2021), <http://response.restoration.noaa.gov/oil-and-chemical-spills/significant-incidents/exxon-valdez-oil-spill>.

<sup>124</sup> *Exploration and Development Risks*, PEW CHARITABLE TRUSTS (Sept. 1, 2013), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/0001/01/01/exploration-and-development-risks>.

<sup>125</sup> 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), <https://www.nola.com/environment/2019/02/shell-offshore-to-pay-22-million-fine-for-2016-gulf-spill.html>.

<sup>126</sup> Scott Eustis & Raleigh Hoke, *Oil and Gas in the Gulf of Mexico*, HEALTHY GULF (Apr. 2018), available at <https://www.healthygulf.org/blog/8-years-since-bp-disaster-new-report-documents-oil-and-gas-impacts>.

of Halifax, Canada spewed 36,000 gallons of toxic drilling mud into the Atlantic Ocean.<sup>127</sup> 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.<sup>128</sup> 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 is enhanced by the region's strong hurricanes and tropical storms, which are becoming more intense due to climate change. History shows that offshore drilling and hurricanes don't mix. An SELC report catalogues the disastrous consequences that have occurred when oil and gas infrastructure is placed in the path of hurricanes.<sup>129</sup> For example, in 2004 Hurricane Ivan damaged a cluster of subsea oil wells, resulting in a leak that has been ongoing for more than 16 years.<sup>130</sup> The very next year, when Hurricanes Katrina and Rita struck Louisiana a month apart, they inflicted \$10 billion worth of damage to energy infrastructure—damaging 115 oil platforms and 558 pipelines—and spilled nearly 11 million gallons of crude oil into the Gulf, more than the 1989 Exxon Valdez oil spill in Alaska.<sup>131</sup> One spill caused by Katrina released the largest amount of oil into a metropolitan area on record: one million gallons into the densely populated St. Bernard Parish, after storm surge dislodged and lifted a storage tank holding petroleum products.<sup>132</sup>

Hurricanes also trigger devastating air pollution events when coming in contact with oil and gas infrastructure, as exemplified by Hurricane Harvey in 2017. The storm damaged 22 percent of all oil refineries in the Houston area, leaking more than 2 million pounds of dangerous air pollutants into the communities and natural environment around Texas.<sup>133</sup> Government and industry officials have both openly recognized the vulnerability of oil and gas infrastructure in the face of hurricanes, even warning against new energy infrastructure investments in hurricane-prone regions.<sup>134</sup>

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<sup>127</sup> 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), <https://www.nationalobserver.com/2018/06/22/news/bp-canada-spews-thousands-litres-toxic-mud-during-offshore-drilling-incident-near>.

<sup>128</sup> Holly McKenzie-Sutter, *Newfoundland's largest-ever oil spill is now impossible to clean up*, FIN. POST (Nov. 20, 2018), [https://business.financialpost.com/commodities/energy/n-l-s-largest-ever-oil-spill-is-now-impossible-to-clean-up-regulatory-board?fbclid=IwAR1iRo0FzVvYF28O067Z2gdnVLM4zBcDRg2MTJ5bsVoH9zSjFVKL8DpMoza8&link\\_id=0&can\\_id=9369efdd43860614887a5d8da43e9934&source=email-disaster-oil-spill-friday-day-of-action&email\\_referrer=email\\_457718&email\\_subject=disaster-oil-spill-friday-day-of-action](https://business.financialpost.com/commodities/energy/n-l-s-largest-ever-oil-spill-is-now-impossible-to-clean-up-regulatory-board?fbclid=IwAR1iRo0FzVvYF28O067Z2gdnVLM4zBcDRg2MTJ5bsVoH9zSjFVKL8DpMoza8&link_id=0&can_id=9369efdd43860614887a5d8da43e9934&source=email-disaster-oil-spill-friday-day-of-action&email_referrer=email_457718&email_subject=disaster-oil-spill-friday-day-of-action).

<sup>129</sup> Melissa L. Whaling, *Too Much to Lose: Offshore Drilling & Hurricanes in the Southeast*, SELC (Oct. 24, 2018), [https://www.southernenvironment.org/uploads/words\\_docs/Hurricane\\_Drilling\\_Report\\_0620\\_F\\_LR\(1\).pdf](https://www.southernenvironment.org/uploads/words_docs/Hurricane_Drilling_Report_0620_F_LR(1).pdf).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> U.S. GOV'T ACCOUNTABILITY OFF. (GAO), CLIMATE CHANGE: ENERGY INFRASTRUCTURE RISKS AND ADAPTATION EFFORTS (Jan. 31, 2014), available at <https://www.gao.gov/products/GAO-14-74> (“U.S. energy infrastructure is increasingly vulnerable to a range of climate change impacts, particularly...in areas prone to severe weather.”). See also ENERGENCY CORP., BUILDING A RESILIENT ENERGY GULF COAST: EXECUTIVE REPORT (2010), [http://www.energy.com/content/our\\_community/environment/GulfCoastAdaptation/Building\\_a\\_Resilient\\_Gulf\\_Coast.pdf](http://www.energy.com/content/our_community/environment/GulfCoastAdaptation/Building_a_Resilient_Gulf_Coast.pdf), at 6 (predicting that this threat could have “significant impact[s] on the growth and re-investment trajectory in the region”). See also James Bradbury et al., *Climate Change and Energy Infrastructure Exposure to Storm*

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 recently estimated that approximately 2,408,000 gallons of oil could be spilled if the Atlantic Planning Areas were opened to oil and gas development.<sup>135</sup> According to NOAA, the Gulf sees dozens of spills per year, a phenomenon it deems an “unfortunate but inevitable part of the Gulf Coast economy” and “something we have to live with.”<sup>136</sup> 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. The risk of catastrophic and chronic oil spills is too great a threat for the Mid- and South Atlantic OCS and the communities along the Atlantic coast that depend upon a healthy coastal environment.

## F. Offshore Drilling Presents Too Few Benefits to the Region

As discussed in these and previous comments, oil and gas development activities would jeopardize the diverse and abundant marine ecosystem of the Mid- and South Atlantic in many ways. Meanwhile, the benefits would be few. The Mid- and South Atlantic Planning Areas do not have substantial oil and gas resources,<sup>137</sup> and leasing in the region would have a relatively minor impact on regional and national energy markets.<sup>138</sup> That was the conclusion drawn by BOEM five years ago, and the same is true today.

Furthermore, according to a 2018 analysis by the Applied Economics Clinic and commissioned by SELC, “[o]ffshore energy production has become less economic in recent years and is unlikely to compete with other energy sources.”<sup>139</sup> The Energy Information Administration projected in its 2021 Annual Energy Outlook that the share of renewables in the U.S. electricity generation mix will more than double over the next 30 years, while share of

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*Surge and Sea-Level Rise*, U.S. DEP’T OF ENERGY (July 2015), [https://www.energy.gov/sites/prod/files/2015/07/f24/QER%20Analysis%20-%20Climate%20Change%20and%20Energy%20Infrastructure%20Exposure%20to%20Storm%20Surge%20and%20Sea-Level%20Rise\\_0.pdf](https://www.energy.gov/sites/prod/files/2015/07/f24/QER%20Analysis%20-%20Climate%20Change%20and%20Energy%20Infrastructure%20Exposure%20to%20Storm%20Surge%20and%20Sea-Level%20Rise_0.pdf), at 3, 13 (stating that “an extensive amount of U.S. energy infrastructure is currently exposed to damage from hurricane storm surge” and emphasizing “the importance of limiting investments in new critical infrastructure in areas currently exposed to storm surge”).

<sup>135</sup> Abel Valdivia, *Analysis: Trump Offshore Plan Could Cause More Than 5,000 Oil Spills*, CTR. FOR BIOLOGICAL DIVERSITY (Jan. 31, 2018), [https://www.biologicaldiversity.org/news/press\\_releases/2018/offshore-drilling-01-31-2018.php](https://www.biologicaldiversity.org/news/press_releases/2018/offshore-drilling-01-31-2018.php).

<sup>136</sup> *Response Continues for Spill Near Port Sulphur, Louisiana*, MAR. EXEC. (Dec. 14, 2018), <https://maritime-executive.com/article/response-continues-for-spill-near-port-sulfur-louisiana>.

<sup>137</sup> The U.S. EIA estimates that the Atlantic OCS contains just 5 percent of the nation’s technically recoverable offshore oil and gas, see *Assessment of Undiscovered Oil and Gas Resources of the Nation’s Outer Continental Shelf, 2016a*, U.S. BOEM (Jan. 2018), <https://www.boem.gov/2016a-National-Assessment-Fact-Sheet/>, and just 1 percent of the nation’s technically recoverable oil (i.e., onshore and offshore), see *2019 Annual Energy Outlook, Oil and Gas Supply Module*, U.S. EIA (Jan. 2019), <https://www.eia.gov/outlooks/aeo/assumptions/pdf/oilgas.pdf>.

<sup>138</sup> 2017-2022 PP at S-10 (finding that “the energy security of the United States will remain strong without offshore leasing in the Atlantic”).

<sup>139</sup> Tyler Comings et al., *A Critique of an Industry Analysis on Claimed Economic Benefits of Offshore Drilling in the Atlantic*, APPLIED ECON. CLINIC (Dec. 2018), [https://www.southernenvironment.org/uploads/words\\_docs/AEC OSD Economic Report F.pdf](https://www.southernenvironment.org/uploads/words_docs/AEC OSD Economic Report F.pdf), at 1.

fossil fuels will remain flat or decline.<sup>140</sup> The report projects stagnant oil and gas consumption therefore reducing the need to increase the availability of oil for use in the United States.<sup>141</sup>

The purported developmental benefits of drilling in the Mid- and South Atlantic Planning Areas would also be few because the region does not currently have the infrastructure, suppliers, or expertise to support the offshore oil and gas industry. As recently as 2018, BOEM found that, in the Mid- and South Atlantic, “an emerging oil and gas industry could result in low, immediate local economic effects for nearby communities” and that a “large proportion of workers during the exploration and development phases are likely to be sourced from other places” such as the Gulf of Mexico.<sup>142</sup> This was confirmed by a 2015 report by the Monterey Institute’s Center for the Blue Economy and commissioned by SELC.<sup>143</sup>

We also urge the Department to recognize and consider its own plans to impose nationwide carbon emission restrictions in the near future, as well as the commitments made by current state and municipal governments to reduce dependence on fossil fuels in response to the threats of climate change. As DOI conducts its review of the national offshore oil and gas program, it should acknowledge and consider how these limits will impact our nation’s energy markets and needs. Expanding offshore drilling into frontier areas like the Atlantic Planning Areas is unreconcilable with President Biden’s plans to combat the inevitable threats associated with climate change.

Since any benefit that offshore development might confer on local economies or regional and national energy markets would be minimal, and injury to the Atlantic OCS and adjacent areas could be significant, the Mid- and South Atlantic Planning Areas should be excluded from any future offshore leasing program.

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<sup>140</sup> Kenneth Dubin, *EIA projects renewables share of U.S. electricity generation mix will double by 2050*, EIA (Feb. 8, 2021), <https://www.eia.gov/todayinenergy/detail.php?id=46676#>.

<sup>141</sup> Through 2050, crude oil production is predicted to decrease, and natural gas production is predicted to increase, while consumption of both is expected to plateau. The United States is expected to become a net exporter of liquid fuels. See generally U.S.EIA, ANNUAL ENERGY OUTLOOK 2021 WITH PROJECTIONS TO 2050 (Feb. 3, 2021), <https://www.eia.gov/outlooks/aeo/>.

<sup>142</sup> U.S. BOEM, 2019-2024 NATIONAL OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM (Jan. 2018), <https://www.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 DPP”], at 8-3.

<sup>143</sup> “In a frontier region such as the...Atlantic, most of the specialized equipment and workforce is not present and must be provided from outside the region, particularly in the exploration phase.” Charles S. Colgan, *The Economic Effects of Outer Continental Shelf Oil and Gas Exploration and Development in the South Atlantic Region: Issues and Assessment*, MIDDLEBURY INST. INT’L STUDIES MONTEREY (Dec. 2015), [https://www.southernenvironment.org/uploads/audio/Center\\_for\\_the\\_Blue\\_Economy\\_Atlantic\\_Offshore\\_Drilling.pdf](https://www.southernenvironment.org/uploads/audio/Center_for_the_Blue_Economy_Atlantic_Offshore_Drilling.pdf), at 3. Indeed, the Atlantic’s “proximity to the Gulf of Mexico region means that many existing firms will seek to be suppliers to Atlantic operations.” *Id.* at 3-4. Thus, “the majority of business and personal income in the exploration phase leaves the region very quickly until exploration activity becomes very large or a find is made.” *Id.* at 11.

### III. THE DEPARTMENT MUST SEEK OPPORTUNITIES TO IMPROVE EXISTING OFFSHORE DRILLING ACTIVITIES IN THE GULF OF MEXICO

#### A. Oversight of Offshore Drilling Safety Must be Strengthened

In addition to protecting the Mid- and South Atlantic Planning Areas from the introduction of offshore drilling for the first time, the Department must also strengthen protections in areas where offshore drilling is already taking place, such as in the Gulf of Mexico. Insufficient regulatory oversight over the oil and gas industry significantly amplifies the human and environmental risks of drilling.

In the wake of the *Deepwater Horizon* disaster, former President Obama established the independent National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling (“BP Oil Spill Commission”), to investigate the causes of the disaster, and make specific recommendations for offshore drilling safety. As a result of their investigations, overwhelming concerns were raised about the Department’s mismanagement of offshore drilling, and many recommendations were made for regulatory oversight reform. In response to these conclusions, the Obama administration promulgated the Well Control Rule—the most comprehensive safety and environmental regulation developed in the wake of the *Deepwater Horizon* spill. The Well Control Rule, which involved an unprecedented level of stakeholder input, drew extensively on lessons learned from the *Deepwater Horizon* disaster and was put in place specifically to prevent this type of disaster from happening again. The BP Oil Spill Commission applauded this move, calling it “the most broadly important measure” to come out of its findings.<sup>144</sup>

Under the Trump administration, however, only two years after these groundbreaking measures went into effect, the Department decided to significantly weaken the Well Control Rule.<sup>145</sup> Members of BP Oil Spill Commission unanimously spoke out against the rollback, stating that it will “aggravate the inherent risks of offshore operations, put workers in harm’s way, and imperil marine waters in which drilling occurs.”<sup>146</sup> Particularly troublesome were the amendments that: 1) further incorporated industry standards by reference, 2) eliminated third-party inspection requirements, 3) weakened real-time monitoring and BOP equipment standards, and 4) abandoned previous DOI policies at the request of the industry.<sup>147</sup> DOI provided no analysis on how these critical changes would impact offshore drilling safety, only offering purported economic benefits to the industry. To make matters worse, the Trump administration

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<sup>144</sup> See Letter from Bob Graham & William K. Reilly, BP Oil Spill Commission Co-chairs, to Former Sec’y R. Zinke, U.S. DOI (May 8, 2017), <http://oscaction.org/wp-content/uploads/Secretary-Zinke-letter.pdf>, at 2.

<sup>145</sup> Press Release, *BSEE Sustains Safety and Environmental Protection while Reducing Regulatory Burden*, BUREAU SAFETY & ENV’T ENFORCEMENT (Apr. 27, 2018), <https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/BSEE-sustains-safety-and-environmental>.

<sup>146</sup> Letter from B. Graham & W.K. Reilly to R. Zinke, *supra* note 144.

<sup>147</sup> SELC, on behalf of 57 conservation groups, submitted comments on the proposal, urging the Bureau of Safety and Environmental Enforcement (“BSEE”) to reject the proposed changes. Those comments are incorporated by reference. See Letter from SELC et al. to Scott A. Angelle, Dir., U.S. BSEE (Aug. 6, 2018) [https://www.southernenvironment.org/uploads/words\\_docs/WCR\\_Comments\\_FINAL\\_without\\_attachments\\_V\\_2.pdf](https://www.southernenvironment.org/uploads/words_docs/WCR_Comments_FINAL_without_attachments_V_2.pdf).

also rolled back the Production Safety Systems Rule, another Obama-era safety rule stemming from *Deepwater Horizon* reforms.<sup>148</sup>

Rolling back the very regulations that were put in place to prevent a disaster like the *Deepwater Horizon* oil spill from recurring is foolish and reckless. Indeed, according to the Interior Department’s own assessment, reducing regulatory oversight of offshore drilling makes losses of well control and catastrophic oil spills *more likely*.<sup>149</sup> Accordingly, the Department must immediately reverse the Trump administration’s dangerous rollback and restore these Obama-era rules that made offshore drilling safer.

Aside from promulgating the Well Control Rule, other areas of DOI’s regulatory oversight of the oil and gas industry have fallen short of what is needed to address the inherent risks of industry practices and mismanagement in the Department. For example, a recent Government Accountability Office report found that oil spill restoration efforts are deficient, and collaboration among oil spill responders is lacking.<sup>150</sup> The report found that as of January 2018, about 14 percent of the \$1 billion in restoration funds dedicated to the Exxon Valdez oil spill had not been spent, and only about 13 percent of at least \$8.1 billion in restoration funds dedicated to the *Deepwater Horizon* spill had been spent.<sup>151</sup> In its comprehensive review, the Department must thoroughly investigate ways to improve such a disturbingly weak regulatory environment and poor industry track record.

## **B. The Transition Towards a Clean Energy Economy in the Gulf Should be Just and Equitable**

As DOI and the Biden administration take “bold, progressive action” to “immediately commence work to confront the climate crisis,” as directed by Executive Orders 14008 and 13990,<sup>152</sup> it must continuously seek out ways to make its offshore oil and gas program more socially equitable across Alabama and the rest of the Gulf of Mexico states.

The deep inequities of environmental and climate impacts cannot be overstated. Socially vulnerable, low-income, marginalized, and underserved communities in the Southeast bear the brunt of impacts from both climate change and oil and gas development. As discussed above in Section I.A, these communities are disproportionately vulnerable to climate hazards and have less ability to adapt to the shocks and stressors of climate change.<sup>153</sup> Furthermore, the infrastructure footprint of risky oil and gas operations—like extraction, storage, and refining—overlaps with low-income and predominantly Black and Brown communities in disproportionate numbers.<sup>154</sup> Finally, due to systematic injustices in oil spill response and recovery, communities

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<sup>148</sup> Oil and Gas and Sulphur Operations on the Outer Continental Shelf-Oil and Gas Production Safety Systems, 83 Fed. Reg. 49,216 (Sept. 28, 2018).

<sup>149</sup> 2019-2024 DPP at 7-35, 7-34.

<sup>150</sup> U.S. GAO, *Offshore Oil Spills: Restoration and Federal Research Efforts Continue, but Opportunities to Improve Coordination Remain* (Jan. 2019), <https://www.gao.gov/products/GAO-19-31>.

<sup>151</sup> *Id.*

<sup>152</sup> Executive Order 14,008 § 201; Executive Order 13,990 § 1.

<sup>153</sup> See, e.g., Zack Colman & Daniel Cusick, *supra* note 29.

<sup>154</sup> See, e.g., Lesley Fleischman & Marcus Franklin, *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities*, NAACP & CLEAN AIR TASK FORCE (Nov. 2017), [http://www.catf.us/wp-content/uploads/2017/11/CATF\\_Pub\\_FumesAcrossTheFenceLine.pdf](http://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf).

of color are often disproportionately affected by the impacts of oil spills.<sup>155</sup> These realities should inform the Department's review of the federal oil and gas program as well as any other actions it takes to confront climate change.

To that end, we urge the Department to focus its greenhouse gas mitigation and climate change efforts on the needs of those who are most vulnerable. For example, underserved communities currently reliant on offshore oil and gas jobs in the Gulf of Mexico should be the first beneficiaries of renewable energy job opportunities and clean energy infrastructure investments. Policies aimed at reducing greenhouse gas emissions must also prioritize the shutdown of dangerous and polluting facilities adjacent to poor, Black, and Brown communities with equal financial support and urgency. We also urge the Department to follow the leadership of local and Indigenous peoples regarding decisions about oil and gas activities that affect their communities. Finally, the costs and burden of such a transition must be paid for by the industries that have polluted and poisoned the Gulf of Mexico for decades.

#### IV. CONCLUSION

The Southeast coast is already grappling with the devastating impacts of climate change, and these changes are expected to worsen in the foreseeable future. Offshore oil and gas resources have never been developed in the Atlantic, and any future plan to do so would not only make climate change worse, but would directly threaten the bustling coastal communities and fragile and unique ecosystems that make the region special. Rather than contributing to the threats facing coastal communities, the administration should focus on proactively fostering climate resilience in our communities and ecosystems. We look forward to working with the Biden administration to see these policy objectives implemented in the months ahead.

Thank you for the consideration of these comments.

Sincerely,



Sierra B. Weaver, Senior Attorney  
Southern Environmental Law Center



Melissa L. Whaling, Science & Policy Associate  
Southern Environmental Law Center

[Attachments]

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<sup>155</sup> See, e.g., Hari M. Osofsky et al., *Environmental Justice and the BP Deepwater Horizon Oil Spill*, 20 N.Y.U. Env't L.J. 99 (2012), [https://scholarship.law.umn.edu/faculty\\_articles/415/](https://scholarship.law.umn.edu/faculty_articles/415/).

# **ATTACHMENT 1**