June 16, 2025

Ms. Kelly Hammerle, Program Manager
Bureau of Ocean Energy Management (VAM-LD)
45600 Woodland Road
Sterling, VA 20166
http://www.regulations.gov/docket/BOEM-2025-0015/document

Re: Request for Information and Comments on the Preparation of the 11th National Outer Continental Shelf Oil and Gas Leasing Program [Docket No. BOEM-2025-0015]

Dear Ms. Hammerle:

Thank you for the opportunity to comment on the Bureau of Ocean Energy Management's (BOEM) Request for Information (RFI) and Comments on the Preparation of the 11th National Outer Continental Shelf (OCS) Oil and Gas Leasing Program ("2025 Leasing Program"). These comments are submitted on behalf of the Environmental Defense Center (EDC) and the undersigned organizations.

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EDC is a non-profit organization and law firm that defends nature and advances environmental justice on California's Central Coast through advocacy and legal action. The undersigned organizations seek to protect the California coast from the risks and impacts of offshore oil and gas development. Many of our groups are located along the state's central coast and have witnessed the devastating impacts that result from such development, including the infamous 1969 Santa Barbara oil spill and the 2015 Refugio Beach oil spill.

As an initial matter, preparation of the 2025 Leasing Program is premature and unnecessary. The 10th 5-Year Leasing Program already covers 2024–2029 and includes leasing sales scheduled for 2025, 2027, and 2029. There is no need for the Secretary to act pursuant to the Outer Continental Shelf Lands Act (OCSLA) to re-evaluate the nation's energy needs for another five-year period.

Should BOEM proceed with this process, it must comply with all applicable laws. First, it is unlawful to lease OCS areas previously withdrawn by President Biden pursuant to OCSLA Section 12(a)—which includes the Pacific OCS Region ("Region"). Second, it is unlawful to lease any areas that are within the boundaries of a national marine sanctuary. Third, exclusion of the Pacific Region from the leasing program is warranted pursuant to the OCSLA Section 18(a)(2) factors. Fourth, the OCSLA balancing test under Section 18(a)(3) likewise indicates that the Pacific Region must be excluded. Fifth, there are specific environmentally sensitive areas that must be excluded from leasing, as detailed herein. Finally, BOEM must prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), conduct consultation pursuant to Section 7 of the Endangered Species Act (ESA), and ensure compliance with the Coastal Zone Management Act (CZMA).

I. Legal Background

A. OCSLA

Originally enacted in 1953, OCSLA, 43 U.S.C. §§ 1331–1356b, reaffirmed federal control over resources on the OCS located beyond three nautical miles from a state's coast. OCSLA requires that oil exploration and production be "balanced with 'protection of the human, marine, and coastal environments.'" *Nat. Res. Def. Council v. Hodel*, 865 F.2d 288, 292 (D.C. Cir. 1988) (quoting 43 U.S.C. § 1802(1)–(2)); *see also* 43 U.S.C.§ 1332(3) (stating the OCS "should be made available for expeditious and orderly development, subject to environmental safeguards"). Under OCSLA, oil and gas exploration and production in the OCS involves four stages: 1) Interior's development of a five-year leasing program, 43 U.S.C. § 1344; 2) lease sales, *id.* § 1337; 3) exploration, *id.* § 1340; and 4) development and production, *id.* § 1351.

OCSLA provides for the development of an OCS leasing program by which the Secretary determines the "size, timing, and location of leasing activity which he determines will best meet national energy needs" over a five-year period. 43 U.S.C. § 1344(a). In selecting lease areas, the Secretary must consider eight factors listed in Section 18(a)(2), including the ecological characteristics of the region, a balancing of developmental benefits and environmental risks, and the relative environmental sensitivity and marine productivity of the region, among others. 43 U.S.C. § 1344(a)(2)(A)–(H).

OCLSA further demands consideration of environmental harms by requiring the OCS leasing program to "obtain a proper balance" of three factors. 43 U.S.C. § 1344(a)(3). The Secretary must balance "the potential for environmental damage, the potential for discovery of oil and gas, and the potential for adverse impact on the coastal zone" in selecting the timing and location of leasing. *Id.*

Section 12(a) of the statute provides the President with the unique authority to "from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf." 43 U.S.C. § 1341(a). This provision enables the President to determine that certain areas of the OCS must be excluded from the OCS leasing program for a set time period. The President may also act under Section 12(a) to withdraw areas from the OCS leasing program indefinitely. *See* Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf from Leasing Disposition, 44 Weekly Comp. Pres. Docs. 986, 986 (July 14, 2008).

The Secretary must also "invite and consider suggestions" from other federal agencies and the Governor of any State that may be affected by the program, 43 U.S.C. § 1344(c)(1), and consider any coastal zone management program developed by an affected coastal state. *Id.* § 1344(f)(5). OCSLA also gives coastal states the right to participate in decisions concerning the OCS "to the extent consistent with the national interest." *Id.* § 1332(4)(C). As part of the leasing program, the Secretary must "conduct environmental studies and prepare any environmental impact statement" required by NEPA, 42 U.S.C. § 4332(2)(c). 43 U.S.C. § 1344(b)(3).

B. National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 *et seq.*, authorizes the Secretary of Commerce to identify and designate certain areas of the marine environment with special national significance as national marine sanctuaries. 16 U.S.C. § 1431(b)(1). Designation as a national marine sanctuary enables the Secretary to develop a system to conserve and manage the sanctuaries, including regulating activities which may affect them. *Id.* § 1431(b)(2). The NMSA was designed to "maintain the natural biological communities" and to protect "natural habitats, populations, and ecological processes." *Id.* § 1431(b)(3). As such, the NMSA outlines specific prohibited activities including the destruction or injury of any sanctuary resource. *Id.* § 1436(1).[1] The NMSA authorizes the Secretary to promulgate regulations to carry out the statute, 15 C.F.R. Part 922, including sanctuary-specific prohibitions on certain activities. 16 U.S.C. § 1439. The exploration for, development, and production of oil and gas is one commonly prohibited activity in national marine sanctuaries. *See* 15 C.F.R. §§ 922.232(a)(1) (in the Chumash Heritage National Marine Sanctuary), 922.72(a)(1) (in the Channel Islands National Marine Sanctuary), and 922.82(a)(1) (in the Greater Farallones National Marine Sanctuary).

[1] A "sanctuary resource" is "any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archaeological, scientific, or aesthetic value of the sanctuary." 16 U.S.C. § 1432(8).

C. NEPA

Congress enacted NEPA in recognition that "each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment." 42 U.S.C. § 4331(c). It is the "responsibility of the Federal Government" generally to aim to "preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice." *Id.* § 4331(b)(4). In turn, "NEPA achieves its sweeping policy goals . . . through a set of action-forcing procedures that require that agencies take a hard look at the environmental consequences of their actions, and provide for broad dissemination of relevant environmental information." *Prutehi Litekyan: Save Ritidian v. United States Dep't of Airforce*, 128 F.4th 1089, 1100 (9th Cir. 2025) (internal quotations omitted).

NEPA requires the preparation of an EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). If a proposed federal action either "does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of [the proposed action's effects] is unknown," the federal agency must prepare an environmental assessment (EA). *Id.* § 4336(b)(2). The EA "shall be a concise public document . . . set[ting] forth the basis of [the] agency's finding of no significant impact or determination that an environmental impact statement is necessary." *Id*.

If the agency issues "a finding of no significant impact (FONSI), it must supply a convincing statement of reasons to explain why a project's impacts are insignificant . . . to show that the agency took the requisite hard look at the consequences of its action." *Ctr. For Biological Diversity v. Kempthorne*, 588 F.3d 701, 711 (9th Cir. 2009) (internal quotations omitted). Alternatively, if an EA's evidence and analysis demonstrates that the proposed action "has a reasonably foreseeable significant effect on the quality of the human environment," then the agency must prepare an EIS. 46 U.S.C. § 4336(b)(1). Courts have interpreted this standard as requiring an EIS when there are "substantial questions" regarding whether the project may have significant impacts. *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006) ("[A]n EIS 'must be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor.'"); *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998). The Ninth Circuit has repeatedly emphasized that the threshold for requiring an EIS is a "low standard." *Klamath Siskiyou Wildlands Center*, 468 F.3d at 562.

D. ESA

The ESA, 16 U.S.C. § 1531 *et seq.*, is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." *Tenn. Valley Authority v. Hill*, 437 U.S. 153, 180 (1978) ("*TVA v. Hill*"). The statute's fundamental purposes are "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species." 16 U.S.C. § 1531(b). To achieve these objectives, the ESA directs the

U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS)[2] to determine which species of plants and animals are "threatened" and "endangered" and place them on the list of protected species. *Id*. §§ 1533(a)(1), (c)(1). The ESA provides a variety of protections for species listed as threatened or endangered, to ensure not only the species' continued survival, but their ultimate recovery.

Section 7 of the ESA requires federal agencies to consult with FWS and/or NMFS to ensure that their actions are "not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of critical habitat. 16 U.S.C. § 1536(a)(2). The consultation process is designed "to ensure compliance with the [ESA's] substantive provisions." *Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985). Section 7 defines the term "agency action" as "any action authorized, funded, or carried out" by the agency. 16 U.S.C. § 1536(a)(2). The term "action" is further defined by regulation as "all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies" and includes, among other examples, "granting of licenses." 50 C.F.R. § 402.02. As the Ninth Circuit has recognized, "the Supreme Court has interpreted the plain meaning of agency action broadly, in conformance with Congress's clear intent." *Pac. Rivers Council v. Thomas*, 30 F.3d 1050, 1054 (9th Cir. 1994); *see also TVA. v. Hill*, 437 U.S. at 173 (referring to Section 7 and concluding "[t]his language admits of no exception."). An agency action exists "whenever an agency makes an affirmative, discretionary decision about whether, or under what conditions, to allow private activity to proceed." *Karuk Tribe of California v. U.S. Forest Serv.*, 681 F.3d 1006, 1026–27 (9th Cir. 2012) ("*Karuk Tribe*").

If an action "may affect" or is likely to adversely affect a listed species, formal consultation is required. 50 C.F.R. §§ 402.14(a), 402.12(k). A concurrence that the action is not likely to adversely affect a species is only appropriate when "effects on listed species are expected to be discountable, or insignificant, or completely beneficial."[3] However, "[i]f the nature of the effects cannot be determined, benefit of the doubt is given to the species" and a concurrence is inappropriate.[4]

Formal consultation involves preparation of a biological opinion ("BiOp"). 16 U.S.C. § 1536(b)(3)(A). The BiOp must use the best available scientific information to evaluate the current status of the species and habitats, the effects of the action on species conservation, and cumulative effects. *Id.* § 1536(a)(2), (b)(3)(A); 50 C.F.R. §§ 402.02, 402.14(g)–(h). Through formal consultation, FWS or NMFS prepares a biological opinion as to whether the action will cause jeopardy or destroy or adversely modify critical habitat, and if so, suggests "reasonable and prudent alternatives" to the action. 16 U.S.C. § 1536(b)(3)(A). This analysis is critical because if the wildlife agency makes a jeopardy determination at the end of the consultation process, the action simply cannot go forward as is. *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 652 (2007). The consultation requirement reflects "a conscious decision

[2] FWS and NMFS share responsibility for implementing the ESA. *See* 16 U.S.C. § 1532(15). FWS retains jurisdiction over terrestrial species and freshwater aquatic species, while NMFS retains jurisdiction over marine species and most anadromous fish.
[3] FWS and NMFS, *Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act* at 3–12 (March 1998).
[4] *Id.*

by Congress to give endangered species priority over the 'primary missions' of federal agencies." *Karuk Tribe*, 681 F.3d at 1020 (quoting *TVA v. Hill,* 437 U.S. at 185).

E. CZMA and California Coastal Act

The CZMA was enacted to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone." 16 U.S.C. § 1452(1). Accordingly, "[e]ach Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." *Id.* § 1456(c)(1)(A). The CZMA provides that federal agencies carrying out such federal agency activities "shall provide a consistency determination to the relevant State agency . . . at the earliest practicable time." *Id.* § 1456(c)(1)(C). The CZMA's implementing regulations provide for the submittal of sufficient information to the state (in this case, the CCC) in order to consider the effects of the proposed action on coastal resources, and allow for a six-month review period. 15 C.F.R. §§ 930.58, 930.60(a). This consistency review process consists of determining whether the activity would "affect any land or water use or natural resource of the coastal zone," and whether it is consistent with the enforceable policies of the state's approved California Coastal Management Program (CCMP). 16 U.S.C. § 1456(c)(1)(A). The CCMP notes the national importance of the California coast, especially for its historic, cultural, aesthetic, and conservation values.[5]

The California Coastal Act ("Coastal Act") is the "foundation" of the CCMP and constitutes the state's CCMP for purposes of the CZMA.[6] Cal. Pub. Res. Code § 30008. The Coastal Act "was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California." *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles,* 55 Cal.4th 783, 793 (2012) (internal quotations omitted); *see* Cal. Pub. Res. Code, § 30000 *et seq*. Under the Coastal Act, the protection of the state's "natural and scenic resources is a paramount concern" and these resources must be protected to prevent further deterioration or destruction. Cal. Pub. Res. Code § 30001(b), (c). The Chapter 3 policies of the Coastal Act include, *inter alia*, protections for marine resources, biological productivity, water quality, environmentally sensitive habitat areas, archaeological and paleontological resources, commercial and recreational fishing, and scenic and visual qualities. Cal. Pub. Res. Code §§ 30230, 30231, 30234, 30240, 30244, and 30251.

II. Areas that Have Been Withdrawn Cannot Be Leased.

President Trump does not have the legal authority to lease OCS areas previously withdrawn by President Biden pursuant to OCSLA Section 12(a), which includes Northern California, Central California, and Southern California Planning Areas, among others. President Trump's decision to do so, and his inclusion of these areas within the 11th National OCS 5-Year Leasing Program, are in excess of his statutory authority granted by Congress via OCSLA and in violation of the constitutional separation of powers doctrine.

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[5] *See* Chapter 11 of the CCMP at 83, available at https://www.coastal.ca.gov/fedcd/ccmp-ch11.pdf.
[6] *Id.* at 82.

On January 6, 2025, President Biden issued a Memorandum on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Oil or Natural Gas Leasing, which withdrew specified areas from "disposition from oil or natural gas leasing for a time period *without specific expiration*" and "prevents consideration of withdrawn areas for *any future* oil or natural gas leasing."[7] Soon after, President Trump issued an Executive Order improperly revoking Biden's withdrawal.[8] Although the District Court of Alaska previously held that President Trump did not have a revocation power under OCSLA Section 12(a) in *League of Conservation Voters v. Trump*, the case was later mooted and vacated. *See League of Conservation Voters v. Trump*, 363 F.Supp.3d 1013 (D. Alaska, 2019). As such, there is no binding authority on this issue.

Section 12(a) of the OCSLA authorizes the President "from time to time" to "withdraw from disposition any of the unleased lands of the outer Continental Shelf," 43 U.S.C. § 1341(a), but it does not grant the President the authority to revoke a previous withdrawal. The language of the statute does not contain any reference to a presidential revocation power, and such a power should not be inferred from Congress' silence. If Congress had intended to provide the President with a revocation power in Section 12(a), it could have done so explicitly, as it has in other statutes. For example, the Forest Service Organic Administration Act of 1897 authorizes the President to "vacate altogether" any public forest reservations. 16 U.S.C. § 473. Similarly, the Pickett Act provides the President with discretionary withdrawal or reservations powers which would be "in force until revoked by [the President] or by an Act of Congress." 49 Stat. 660, 661 (1935), *repealed by* 90 Stat. 2792 (1976). OCSLA does not contain such explicit language, indicating Congress deliberately did not provide the President with revocation authority. This reading is consistent with historical interpretations of parallel statutes by the Executive Branch's Attorney Generals.[9]

Within the context of OCSLA, reading Section 12(a) to provide a presidential revocation power does not support Section 12's role as a limit on the leasing powers granted under Section 8, 43 U.S.C. § 1337. Section 8 authorizes the lease of OCS land to meet the nation's oil and gas needs, while Section 12 addresses restrictions on the use of OCS land, reserves rights for the Department of Defense, and provides the President's withdrawal power. Allowing the President to revoke previous withdrawals does not serve as a limit on the leasing powers of Section 8, but rather expands the President's role in leasing activity, circumventing the protective nature of the provision.

Furthermore, interpreting Section 12(a) to authorize presidential revocation of past withdrawals violates the Property Clause of the U.S. Constitution and the separation of powers doctrine. The Property Clause, U.S. Const. art. IV, Section 3, cl. 2, grants Congress the power to

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[7] *Emphasis added*, available at: https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2025/01/06/memorandum-on-the-withdrawal-of-certain-areas-of-the-united-states-outer-continental-shelf-from-oil-or-natural-gas-leasing/.

[8] Exec. Order No. 14148 §§ 2(vvv), 2(www), 90 Fed. Reg. 8237 (2025).

[9] In 1878, an Attorney General opinion on Presidential authority to designate public land for military purposes states, "if lands have been once set apart by the President . . . they cannot be restored to the condition of public lands . . . except by an authority of Congress." Camp Wright, 16 U.S. Op. Att'y Gen. 121, 123 (1878).

dispose of and regulate all territory or property belonging to the United States. As such, the President cannot regulate United States territory or property without Congress's delegation of this authority. OCSLA Section 12(a) does not delegate revocation power for the reasons discussed above, nor has Congress acquiesced this revocation power implicitly by failing to challenge previous withdrawal modifications or revocations.[10] Thus, President Trump's revocation of President Biden's withdrawal of certain areas from OCS leasing, without the delegated authority to do so, is in violation of the Property Clause and the separation of powers doctrine. Therefore, the 11th National OCS 5-Year Leasing Program must not include Biden's withdrawn areas.

III. No Leasing Can Occur Within National Marine Sanctuaries.

The Pacific OCS region is home to about half of the nation's national marine sanctuaries.[11] Oil and gas exploration, development, or production pursuant to new leases is unlawful within certain designated national marine sanctuaries, including all marine sanctuaries designated as of July 14, 2008,[12][13] and those with site-specific regulations prohibiting such activities. Thus, both the Channel Islands National Marine Sanctuary (CINMS) and the Chumash Heritage National Marine Sanctuary (CHNMS), designated via the National Marine Sanctuaries Act, 16 U.S.C. § 1433, must be excluded from the final 11th National OCS Program.

The CINMS was designated as a national marine sanctuary in 1980, therefore qualifying for OCSLA Section 12(a) withdrawal under George W. Bush's Presidential Memorandum issued on July 14, 2008.[14] Aside from its withdrawal under OCSLA, the regulations governing sanctuary-specific activities in the CINMS also explicitly prohibit "exploring for, developing, or producing hydrocarbons." 15 C.F.R. § 922.72(a)(1). The regulations exempt oil and gas leases in effect prior to 1981, yet new leases are expressly prohibited. Therefore, BOEM may not issue new leases in the CINMS as part of the OCS program.

Additionally, the 2025 OCS program must exclude the CHNMS from new lease issuance. The CHNMS regulations expressly prohibit "exploring for, developing, or producing oil, gas, or minerals within the Sanctuary." 15 C.F.R. § 922.232(a)(1). Leases in effect before November 30,

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[10] In 2008, President George W. Bush modified previous withdrawals under Section 12(a) in 1992 and 1998. Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf from Leasing Disposition, 44 Weekly Comp. Pres. Docs. 986, 986 (July 14, 2008). Congress's previous failure to act is not sufficient evidence to interfere with the separation of powers expressed in the Constitution.

[11] BOEM, *Areas Under Restriction*, available at: https://www.boem.gov/oil-gas-energy/leasing/areas-under-restriction (last accessed June 12, 2025).

[12] Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf from Leasing Disposition, WEEKLY COMP. PRES. DOC. 986 (July 14, 2008).

[13] Within the Pacific OCS region, seven national marine sanctuaries were designated before July 18, 2008. These include: American Samoa (designated in 1986), Hawaiian Islands Humpback Whale (designated in 1999), Monterey Bay (designated in 1992), Channel Islands (designated in 1980), Olympic Coast (designated in 1994), Cordell Bank (designated in 1989), and Greater Farallones (designated in 1981). BOEM, *Areas Under Restriction*, available at: https://www.boem.gov/oil-gas-energy/leasing/areas-under-restriction (last accessed June 12, 2025).

[14] Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf from Leasing Disposition, WEEKLY COMP. PRES. DOC. 986 (July 14, 2008).

2024 may continue oil and gas production, but production pursuant to new leases is unlawful. *Id.* Accordingly, BOEM may not issue new leases for oil and gas production in the CHNMS.

The prohibition on new oil and gas production in both the CINMS and CHNMS is consistent with the purpose of the NMSA to "maintain the natural biological communities" and to protect "natural habitats, populations, and ecological processes." 16 U.S.C. § 1431(b)(3). Designation as a national marine sanctuary constitutes an acknowledgement of the marine environment's conservational, recreational, ecological, or cultural significance, among other qualities. *Id.* § 1431(a)(2). Allowing the exploration for, development of, and production of oil and gas greatly threatens the already recognized value of these marine sanctuaries. *Id.* § 1433.

IV. The Pacific Region Must Be Excluded Under the OCSLA Section 18(a)(2) Factors.

The development of a five-year offshore oil and gas leasing program is authorized by OCSLA. 43 U.S.C. § 1344. A leasing program identifies which areas of the OCS may be utilized for purposes of exploration and development of oil and gas deposits. In developing a leasing program, OCSLA requires the Secretary to consider "economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf" as well as the potential impact of exploration of oil and gas on "other resources values of the [OCS] and the marine, coastal, and human environment." *Id.* § 1344(a)(1).

Here, the Pacific Region has not been included in any Five-Year Leasing Program since the 1987-1992 Program, and no lease sales have occurred in this Region since 1984. And for good reason—new oil and gas leasing in the Region would have devastating effects on other resource values and the environment.

Leasing in this Region is likewise inappropriate upon consideration of the Section 18(a)(2) factors. OCSLA provides that the "timing and location of exploration, development, and production" of oil and gas "shall be based" on eight specified factors. *Id.* § 1344 (a)(2). These factors must be evaluated based on the best existing information available. *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 563 F.3d 466, 488 (D.C. Cir. 2009) ("*CBD v. DOI*"). Here, any reasonable application of these factors readily demonstrates that the Pacific Region is not an appropriate location to be opened for new leasing, as discussed below.

A. The Geographical, Geological, and Ecological Characteristics of the Pacific Region Render It Inappropriate for New Oil & Gas Development.

The Pacific Region includes ecological areas known for their global significance. The central coast of California, in particular, contains one of the rarest bio-regions in the world due to its location in the confluence of two major ocean currents which result in the highest biodiversity in the mainland United States. In fact, a National Park Service study conducted in 2003 found that the Gaviota Coast area adjacent to the Santa Barbara Channel is "one of the rarest global biomes" and is "one of only five such locations in the world" in terms of its natural resources.[15]

[15] National Park Service, U.S. Department of the Interior. *Gaviota Coast Draft Feasibility Study & Environmental Assessment*, at pp. 48–49 (April 2003).

The Pacific Region also includes hundreds of species that are not found anywhere else on the planet. The Region has received many special designations seeking to protect such resources.

In 1980, Congress established the Channel Islands National Park (CINP) and CINMS offshore Santa Barbara County.[16] A 2005 Biogeographic Assessment of the CINMS and surrounding area emphasized the linkages between the CINMS and other areas of Southern California. The study notes the ecological significance of the region given that the overlap of "oceanographic processes in the region foster the transport of materials, such as nutrients and fish and invertebrate larvae, between the marine (islands) and coastal habitats and are primary food sources that support biological communities," which also coincides with abundance of species.[17]

The CHNMS was recently designated in 2024 as the seventeenth national marine sanctuary and includes coastline and waters offshore San Luis Obispo and northern Santa Barbara counties. CHNMS is the first NMS to be submitted by local indigenous peoples and will also be tribally co-managed. As explained in the final Environmental Impact Statement (EIS) for the CHNMS, the purpose of designating the CHNMS "is to increase protection of the ecological, historical, and cultural qualities of the central California coastal marine environment," protecting the cultural heritage of some of the earliest documented human habitation in North America.[18]

In addition, the CINMS and the State of California designated several marine protected areas (MPAs) around the Channel Islands,[19] followed by the protection of many more MPAs along the mainland coast of California.[20] The MPA network was established as directed by the Marine Life Protection Act (MLPA) of 1999 utilizing six goals to guide the development process. Additionally, as directed by the MLPA, the network is to be evaluated every ten years, with the first decadal review having passed in 2023. The Decadal Management Review (DMR) report reviewed ten years of research and monitoring activities that indicate MPAs are positively contributing to the six goals of the MLPA, as evidenced by results that suggest "California's MPAs support populations of bigger and/or more abundant fish and invertebrates," are "more connected to one another and other parts of the coast than areas outside of MPAs," "contribut[e] to larval connectivity outside of their boundaries," and that "resilience to climate change-driven

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[16] Channel Islands National Marine Sanctuary, available at: http://channelislands.noaa.gov/; Channel Islands National Park, available at: http://www.nps.gov/chis/index.htm. For a detailed discussion of the biological and geographic attributes of the Santa Barbara Channel region, see NOAA's *A Biogeographic Assessment of the Channel Islands National Marine Sanctuary: A Review of Boundary Expansion Concepts for NOAA's National Marine Sanctuary Program*, NOAA Technical Memorandum NOS NCCOS 21 (November 2005), available at: https://repository.library.noaa.gov/view/noaa/2161.

[17] *A Biogeographic Assessment of the Channel Islands National Marine Sanctuary: A Review of Boundary Expansion Concepts for NOAA's National Marine Sanctuary Program*, NOAA Technical Memorandum NOS NCCOS 21 (November 2005), available at: https://repository.library.noaa.gov/view/noaa/2161.

[18] National Oceanic and Atmospheric Administration's Office of National Marine Sanctuaries, *Chumash Heritage National Marine Sanctuary Final Environmental Impact Statement: Volume I* at p. ix. (2024).

[19] Channel Islands National Marine Sanctuary, http://channelislands.noaa.gov/marineres/welcome.html.

[20] California Department of Fish and Wildlife, California Marine Protected Areas, MPAs, https://wildlife.ca.gov/conservation/marine/MPAS.

[21] California Department of Fish and Wildlife, California's Marine Protected Area Network Decadal Management Review (2022).

events is thought to be a core benefit of a connected network of MPAs."[21] The state is currently evaluating petitions to amend the existing MPA network or to create new MPAs along the California coast and islands. In addition, a federal ecological preserve was established by then-President Nixon and currently exists offshore near the City of Santa Barbara.[22]

The Pacific Region is also home to numerous species that are listed as threatened or endangered under the ESA and would likely be impacted by new oil and gas development. These include, but are not limited to: the southern sea otter, the Guadalupe Fur Seal, the light-footed Ridgway's rail, western snowy plover, marbled murrelet, California least tern, short-tailed albatross, Hawaiian petrel, and California Ridgway's rail (under FWS jurisdiction); and black abalone, white abalone, sei whale, blue whale, fin whale, North Pacific right whale, humpback whale, sperm whale, southern California steelhead, scalloped hammerhead shark, southern green sturgeon, tidewater goby, loggerhead turtle, leatherback turtle, green turtle, and olive ridley turtle (under NMFS jurisdiction). The Pacific Region likewise includes critical habitat for many listed species. These species and habitats are part of what makes this Region unique and worthy of the multiple protections it has been awarded by federal and state agencies. Therefore, the Pacific Region must be excluded based on its ecological resources.

B. There Are Considerable Environmental Risks to Leasing in the Pacific Region and No Developmental Benefits.

The Pacific Region has already experienced the devastating effects of major oil spills stemming from offshore oil and gas production. On January 28, 1969, a major blow-out occurred on Platform A in the Santa Barbara Channel, and oil spilled into the ocean for days. *See California v. Norton*, 311 F.3d 1162, 1165–67 (9th Cir. 2002) (describing factual background prior to spill). The blow out is attributed to federal regulators' waiver of safety requirements. *Id.* at 1166 (noting that the spill "might have been avoided but for a failure of federal oversight"). This was the largest spill in history at that time—referred to as "the spill that was heard around the world"—with estimates of spilled oil ranging up to 780,000 barrels.[23] "As President Nixon aptly observed, the Santa Barbara spill changed the nation's attitudes towards the environment. Some would trace the current framework of environmental protections in substantial measure directly to the Santa Barbara oil spill." *Norton*, 311 F.3d at 1167 (internal citations omitted). There is no question that new leasing in the Pacific Region would present all of the "far reaching effects and perils that go along with offshore oil production." *Id.* at 1173.

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[21] California Department of Fish and Wildlife, California's Marine Protected Area Network Decadal Management Review (2022).
[22] *Outer Continental Shelf Off California: Establishment of Santa Barbara Channel Ecological Preserve*, 34 Fed. Reg. 5,655–56 (Mar. 26, 1969) (Public Land Order 4587). The order was issued by President Nixon's Secretary of the Interior, Walter J. Hickel. *Id*. at 5,651.
[23] Robert Sollen, *An Ocean of Oil: A Century of Political Struggle Over Petroleum Off the Coast of California* at p. 62, The Denali Press (1998).

More recently, on May 19, 2015, an oil pipeline ruptured at Refugio State Beach Park, releasing more than 120,000 gallons of heavy crude oil into the surrounding environment.[24] The spill devastated approximately 150 miles of the California coast.[25] Thousands of acres of shoreline and subtidal habitat were destroyed, and an untold number of animals—including marine mammals—were injured or killed.[26] The spill also forced the closure of fisheries and beaches, which jeopardized local businesses and caused an estimated 140,000 lost recreational user days between Santa Barbara and Ventura Counties.[27] Upon investigation, the Pipeline and Hazardous Materials Safety Administration (PHMSA) determined that the pipeline rupture was a result of "progressive external corrosion," and that the pipeline's cathodic protection system intended to prevent such corrosion—had failed.[28] Ultimately, PHMSA found pervasive metal loss throughout the entirety of the Las Flores Pipeline System,[29] and it concluded that cathodic protection is ineffective in buried, insulated pipelines.[30]

Wildlife, including threatened and endangered species, face many threats associated with offshore oil and gas development. For example, in March 2017, BOEM prepared a Biological Assessment (BA) intended to cover "routine oil and gas development activities that are currently underway or are reasonably foreseeable in the Southern California Planning Area."[31] In that BA, BOEM concluded that such activities, namely the risk of oil spills, are likely to adversely affect the California Least Tern, Southern Sea Otter, and Western Snowy Plover and their critical habitat.[32] Numerous aspects of oil and gas production likely harm sensitive wildlife, including from operational discharges to the ocean, traffic of support vessels, disruptions to behavior from noise, and the risk of another catastrophic oil spill.

In addition to the many risks associated with conventional offshore oil drilling, unconventional practices such as hydraulic fracturing and acidizing (known as well stimulation treatments or "WSTs") have intensified environmental concerns and pose unique and unknown risks to the sensitive marine environment. These practices occurred throughout the Santa Barbara Channel until litigation challenging their use resulted in an injunction on such practices. *See Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 865 (9th Cir. 2022) ("*EDC v. BOEM*"). For example, at the time of the first lawsuit on this issue, plaintiffs had challenged the

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[24] California Department of Fish and Wildlife et al., *Refugio Beach Oil Spill Final Damage Assessment and Restoration Plan/Environmental Assessment*, p. 4 (June 2021) [hereinafter "NRDA"], available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=193144&inline.
[25] *Id.* at 18.
[26] *Id.* at 3–9.
[27] *Id.* at 3.
[28] Pipeline and Hazardous Materials Safety Administration, *Failure Investigation Report, Plains Pipeline, LP, Line 901, Crude Oil Release, May 19, 2015, Santa Barbara County, California*, pp. 3, 14 (May 2016) [hereinafter "PHMSA Report"], available at: https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/PHMSA_Failure_Investigation_Report_Plains_Pipeline_LP_Line_901_Public.pdf
[29] The Las Flores Pipeline System consists of two onshore corroded pipelines, CA-324 and CA-325. CA-324 is approximately eleven miles long and runs along the Gaviota Coast. CA-325 is more than one hundred miles long and travels from Gaviota to Kern County.
[30] *Id.* at 14.
[31] BOEM, Offshore Oil and Gas Development and Production Activities in the Southern California Planning Area, BA U.S. FWS Regulated Endangered and Threatened Species ("FWS BA") at 1.
[32] FWS BA at 53–55.

approval of fifty-one Applications for Permits to Drill (APDs) and Applications for Permits to Modify (APMs) authorizing WSTs. *See Env't Def. Ctr. v. Bureau of Safety and Env'l Enforcement*, *et al.*, No. 2:14-cv-09281-PSG (C.D. Cal.).

The use of WSTs creates new risks and impacts. The technologies utilized in drilling and production are significantly different today. *See Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 937 F. Supp. 2d 1140, 1157 (N.D. Cal. 2013) (concluding that recent fracking practices present new and significant impacts, requiring further environmental analysis). Fracking involves pumping a mixture of water, sand, and chemicals down a well at extremely high pressures to break apart a hydrocarbon-bearing geologic formation and increase oil or gas production. Acidizing uses the application of one or more acids, typically hydrofluoric and hydrochloric acids, to the well or underground geologic formation, and may also be done at high pressures. In addition, offshore oil operators commonly use a technology that they characterize as "routine acidizing" or "acid washes." These treatments rely on similar types and concentration of acids that acidizing does, and pose similar impacts, but rely upon less volume of acid solution. The use of WSTs also extends the operating life of aging platforms. As the Ninth Circuit noted in its ruling enjoining the use of WSTs:

> Well stimulation treatments pose a variety of risks. Not all of the chemicals used in well stimulation treatments have been studied, but the known chemicals include carcinogens, mutagens, toxins, and endocrine disruptors. These chemicals can harm aquatic animals and other wildlife in the areas where well stimulation treatments are used. Well stimulation treatments also emit pollutants, including carcinogens and endocrine disruptors, into the air. And the high pressures used in these treatments can increase the risk of oil spills, especially because well stimulation treatments are often used on old wells. Enhanced well life and increased production thus come with a potential environmental price.

EDC v. BOEM, 36 F.4th at 865. Specifically, the risks associated with these practices include impacts to water quality due to discharges of toxic chemicals found in well stimulation fluids, air quality impacts including greenhouse gas emissions, impacts to many threatened and endangered species, including the blue whale, fin whale, humpback whale, and the southern sea otter, and risks to other fish, birds, and aquatic organisms including invertebrate species that comprise the base of the food chain. The use of WSTs also presents the potential for spills related to accidental release of chemicals during transport to and from oil and gas platforms, from chemicals stored on platforms, and from the disposal of such chemicals through underground injection or direct discharge to the marine environment. Moreover, there are geologic hazards associated with purposely fracturing the geologic formation and injecting additional fluids in seismically active areas. Finally, there are significant risks regarding whether well casings have been designed to safely accommodate the increased pressures associated with offshore well stimulation activities, and whether offshore platforms and wells have been designed for the extended life associated with well stimulation activities.

Moreover, Platforms in the Pacific Region do not operate in isolation, but rely upon extensive infrastructure to transport, process, store, and refine the oil and gas and bring it to market. These activities, like operations at the platforms themselves, are known to result in

accidents caused by human error, weather events, mechanical and other equipment failures, and other incidents that can result in spills of oil and other hazardous substances to the surrounding marine and terrestrial environment.

In addition to the direct environmental risks, increased fossil fuel production and consumption will result in untenable climate change impacts. The Intergovernmental Panel on Climate Change (IPCC), Union of Concerned Scientists, and the California Climate Change Center have published several studies that identify how climate change will affect the environment.[33] These impacts include an increase in water temperatures, rise in sea level, reduction of the Sierra snowpack, increase in severity and frequency of storms, increased droughts, famine, changes in ecosystems, increase in heat waves, increases in pests and diseases, flooding, retreating glaciers, ozone formation, and the potential for wildfires.[34] As noted by the IPCC, there is overwhelming scientific consensus that not only is climate change occurring, but also that human activities are a significant contributing factor.[35] In fact, some scientists attribute the largest changes in climate to human-made greenhouse gases,[36] and several note that "most of the observed warming over the last 50 years is likely to have been due to the increase in greenhouse gas concentrations."[37] According to Dr. James Hansen, "[t]he two most important greenhouse gases…are carbon dioxide and methane."[38] The increases in carbon dioxide and

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[33] IPCC, 2023: Sections In: *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II, and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J, Romero], IPCC, 33-115. *See* also IPCC Fifth Assessment Report: Climate Change 2013; IPCC Fourth Assessment Report: Climate Change 2007; IPCC Third Assessment Report: Climate Change 2001; IPCC Second Assessment Report: Climate Change 1995; IPCC First Assessment Report 1990.
Union of Concerned Scientists. 2006. California Global Warming Impacts and Solutions, available at http://www.ucsusa.org/clean_california/ca-global-warming-impacts.html. California Climate Change Center reports include: Baldocchi and Wong, 2006; Battles et al., 2006; Cavagnaro et al., 2006; Cayan et al., 2006a; Cayan et al., 2006b; Cayan et al., 2006c; Drechsler et al., 2006; Franco and Sanstad, 2006; Fried et al., 2006; Gutierrez et al., 2006; Joyce et al., 2006; Lenihan et al., 2006; Luers et al., 2006; Luers and Moser, 2006; Medellin et al., 2006; Miller and Schlegel, 2006; Moritz and Stephens, 2006; Vicuña, 2006; Vicuña et al., 2006; Westerling and Bryant, 2006.
[34] Emanuel, K., *Increasing Destructiveness of Tropical Cyclones Over the Past 30 Years* (Nature, vol 436, August 4, 2005), P.J. Webster, et al., *Changes in Tropical Cyclone Number, Duration, and Intensity in a Warming Environment* (Science, vol. 309, September 16, 2005), NASA Earth Observatory, *Record Low for June Arctic Sea Ice* (June 2005 at earthobservatory.nasa.gov/Newsroom/NewImages/images.php3?img_id=16978), A.J. Cook et al., *Retreating Glacier Fronts on the Antarctic Peninsula Over the Past Half-Century* (Science, vol. 308, April 22, 2005), R.B. Alley et al., *Ice-Sheet and Sea-Level Changes* (Science, vol. 310, October 21, 2005), E.D. Domack, et al., *Stability of the Larsen B Ice Shelf on the Antarctic Peninsula During the Holocene Epoch* (Nature, vol. 436, August 4, 2005), F.S. Chapin III, et al., *Role of Land Surface Changes in Arctic Summer Warming* (Science, vol. 310, October 28, 2005), M. Hopkin, *Amazon Hit by Worst Drought for 40 Years: Warming Atlantic Linked to Both US Hurricanes and Rainforest Drought* (Nature, October 11, 2005), I.T. Stewart, et al., *Changes Toward Earlier Streamflow Timing Across Western North America* (Journal of Climate, vol. 18, April 2005).
[35] Thomas R. Karl & Kevin E. Trenberth, *Modern Global Climate Change*, 302 SCIENCE (Dec. 5, 2003); K. Hasselmann, et al., *The Challenge of Long-Term Climate Change,* 302 SCIENCE 5652, 1923-25 (Dec. 12, 2003).
[36] Hansen, J., *Defusing the Global Warming Time Bomb,* Scientific American, March 2004; Levin, K. and Pershing, J., *Climate Science 2005: Major New Discoveries* (World Resources Institute, March 2006), citing Barnett, T., et al., *Penetration of Human-Induced Warming into the World's Oceans,* Science, vol. 309, July 8, 2005.
[37] McCarthy, J.J., *et al*, Eds., *Climate Change 2001: Impacts, Adaptation, and Vulnerability,* Cambridge Univ. Press, Cambridge, at 21, 2001 [not attached, but incorporated by reference]; see also Oreskes, N. *The Scientific Consensus on Climate Change,* Science, Vol. 36, December 3, 2004, and Karl, *supra*.
[38] Hansen, J. *supra* at 347.

methane are attributable to the increased rate of fossil fuel (i.e., coal, oil, gas) use.[39] NASA recently reported a carbon dioxide level of 430 parts per million.[40]

The concern about climate change has increased recently due to the realization that there is a "lag time" between the changes in the environment and the warming effect. Scientists now agree that "the climate system will continue to change for many decades (centuries for sea level) even in the absence of future changes in atmospheric composition."[41] Some warn that we may be approaching the "point of no return."[42] Others note that global temperatures can "change substantially in only a decade or two" and that we could be on the path to another rapid change in climate temperatures and resulting effects.[43] Accordingly, the pressure on modern society to cease contributing to climate change through greenhouse gas emissions is even greater than previously thought.

Given these significant risks, there are no development benefits that would support including the Pacific Region in the leasing program. California's coastal economy is heavily dependent on tourism, recreation, and fishing. In 2019, ocean related tourism and recreation contributed $28 billion to California's GDP, which grew from $19.5 billion in 2016.[44] The recreational studies from the Ocean Protection Council found that the most frequently reported coastal activity is "sightseeing" specifically along scenic highways, bringing in revenue to coastal cities not tied to ocean centered businesses.[45] The economic impact of an oil spill on California's coastal economy could have a catastrophic effect on the nation.

C. There Is No Regional or National Energy Market Need for This Program.

New OCS leasing is unnecessary to meet national energy needs. In terms of regional energy markets and need, California is making great strides to become fossil-free in the near future. The State adopted Renewable Portfolio Standards of 60% renewable energy by 2030. Cal. Pub. Util. Code § 399.11. More recent legislation set a 100% renewable energy target by 2045. S.B. 100, 2017-2018 Reg. Sess. (Cal. 2018). Several other states are also transitioning from fossil fuels to clean renewable energy. At a national level, we can achieve 80% of our energy needs from energy efficiency, renewable energy, and electric grid enhancements, by 2050, and at

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[39] *Id.*
[40] NASA, *Carbon Dioxide*, available at https://climate.nasa.gov/vital-signs/carbon-dioxide/?intent=121#:~:text=LATEST%20MEASUREMENT:,download%20data (last updated Apr. 2025).
[41] Wigley, T.M.L., *The Climate Change Commitment*, Science, vol. 37, March 18, 2005; Meehl, G.A., et al, *How Much More Global Warming and Sea Level Rise?"* Science, vol. 307, March 18, 2005; Karl, T.R. *supra;* Hasselmann, K., *supra,* Levin, K., *supra*.
[42] Alley, R.B., *Abrupt Climate Change*, Scientific American, November 2004.
[43] Broecker, W.S., *Chaotic Climate: Global temperatures have been known to change substantially in only a decade or two. Could another jump be in the offing?* Scientific American, November 1995.
[44] Natural Resources Defense Council, *A Healthy Ocean for All: The Promise of 30x30 for California*, available at https://www.nrdc.org/sites/default/files/healthy-ocean-30x30-california-fs.pdf (citing Eastern Research Group, Inc., NOAA Office for Coastal Management, *The National Significance of California's Ocean Economy* (2015), available at https://coast.noaa.gov/data/digitalcoast/pdf/california-ocean-economy.pdf).
[45] Colgan, Charles S, Sarah Jenkins, Philip King, Center for the Blue Economy, *Coastal Recreation in California: Beyond the Beach* (2021).

a reduced cost.[46] In addition, the U.S. is an exporter of oil, so it would be disingenuous to state that new development is necessary to meet national energy demand.[47]

Moreover, additional oil and gas leasing is already made possible pursuant to the 2024-2029 Leasing Program, with leasing sales scheduled for 2025, 2027, and 2029. As of June 1, 2025, there are 2,147 active leases in the United States, yet only 432 of them are currently producing oil or gas.[48] As such, when there are thousands of tracts with effective leases not presently producing there is no need to open new areas to leasing.

D. The Pacific Region Is Inappropriate for New Oil & Gas Leasing Due to Its Location with Respect to Other Uses of the Sea and Seabed.

The Pacific Region is home to a myriad of other sensitive coastal and marine uses that are incompatible with new oil and gas production, including tribal uses, fisheries, navigation, offshore wind, and recreation.

There are many Native American tribes that use the ocean. For example, the Chumash use tomols to cross the Santa Barbara Channel to reach the Channel Islands and use the ocean for subsistence fishing.[49] This Region is also culturally and archaeologically significant due to its historic native American populations. *EDC v. BOEM*, 36 F.4th at 880 (noting that the Region contains "Submerged remains of the Chumash people" and that "Congress expressly designated the Channel Islands National Park to protect important cultural resources, including 'archaeological evidence of substantial populations of Native Americans.' 16 U.S.C. § 410ff(6).").

In addition, this Region supports offshore wind (OSW) development. California has set clean energy goals like those found in bill AB 525 (August 2022), which directed the California Energy Commission (CEC) to adopt planning goals of two to five gigawatts (GW) of offshore wind energy by 2030 and twenty-five GW by 2045. In 2022, BOEM initiated and completed an OSW energy lease sale for the Humboldt and Morro Bay Leases (five in total). The current lease holders are in various stages of the survey process to evaluate their lease areas before submitting construction and operations plans.

As noted above, the Pacific Region is also home to diverse ecosystems and highly productive fisheries that provide benefits to our local communities and economies, including fishing, tourism, and recreation. The Region is home to multiple national parks, marine sanctuaries, and monuments, as well as federal and state MPAs. These special areas are large economic drivers for coastal states that offer visitor opportunities for non-consumptive activities,

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[46] Vignesh Gowrishankar & Amanda Levin, *America's Clean Energy Frontier: The Pathway to a Safer Climate Future*, NRDC, at 5 (Sept. 2017), https://www.nrdc.org/sites/default/files/americas-clean-energy-frontier-report.pdf.
[47] Bloomberg News, "The U.S. is Exporting Oil and Gas at a Record Pace," December 12, 2017. Available at https://www.bloomberg.com/news/articles/2017-12-12/u-s-fuels-the-world-as-shale-boom-powers-record-oil-exports.
[48] Combined Leasing Report (As of June 1, 2025), available at https://www.boem.gov/sites/default/files/documents/Lease%20stats%206-1-25.pdf.
[49] NPS, https://www.nps.gov/chis/learn/historyculture/tomolcrossing.htm.

such as sailing, whale watching, kayaking, diving, surfing, and sightseeing, and support businesses such as hotels, restaurants, and transportation, to name a few.

The Santa Barbara Channel Region supports all the above-listed uses and provides large economic benefits to our coastal communities. As the CINMS Advisory Council noted in a comment letter to BOEM, this Region has important economic impacts. The Advisory Council referenced a National Oceanic and Atmospheric Administration (NOAA) study that determined, from 2010-2012, the average economic impact from marine recreational fishing in the CINMS was "more than $31.4 million in output, $18.7 million in value added, $11.0 million in income and more than 200 jobs."[50] Another NOAA economic study of commercial fishing determined "landings from CINMS generated $27,275,539 in harvest revenue, $45,396,225 in output, $30,894,393 in value added, $27,836,552 in total income and 659 full and part-time jobs across five counties."[51]

E. Offshore Leasing in the Pacific Region Is Prohibited by California Laws, Goals, and Policies Identified by the Governor as Relevant.

The input of coastal states, such as California, must be given specific consideration when deciding which areas will be included in the National OCS Lease program. BOEM is required to send letters to governors of affected states requesting that they identify specific laws, goals, and policies that BOEM should consider during preparation of the five-year program. 43 U.S.C. § 1344(c)(1); 30 C.F.R. § 556.202. Here, several important state laws would prohibit new leasing in the Pacific Region.

The California Public Resources Code Section 6245 expressly prohibits the California State Lands Commission (SLC) from entering into any new lease which authorizes the construction of oil- and gas-related infrastructure in state waters within the Pacific OCS area. Cal. Pub. Res. Code § 6245(a). In reviewing applications for existing lease renewals, extensions, amendments, or modifications, the law requires the Commission to consider whether the lease renewal, extension, amendment, or modification (1) is necessary to protect the marine environment or human health and safety, (2) is beneficial to the state for more than lease revenue, and (3) will impact the volume of oil and gas transported. *Id.* § 6245(c)(1)–(3). Accordingly, this law limits the availability of infrastructure to transport oil and gas produced in the Pacific OCS Region, thereby placing it at odds with BOEM's expansion of oil and gas production in the Region. Moreover, proposed legislation would require additional considerations, including the project's history of oil spills, financial responsibility, and the potential impact on public resources. A.B. 1448, 2025-2026 Reg. Sess. (Cal. 2025).

OCSLA's regulations specifically require BOEM to ask states "to identify the relationship between any oil and gas activity and the State under sections 305 and 306 of the

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[50] Leeworthy, V.R. and D. Schwarzmann, *Economic impact of the recreational fisheries in local county economies in the Channel Islands National Marine Sanctuary 2010, 2011, 2012* (2015) NOAA's Office of National Marine Sanctuaries Conservation Science Division, available at: http://sanctuaries.noaa.gov/science/socioeconomic/channelislands/pdfs/cinms-rec-report.pdf.
[51] *Id.*

CZMA, 16 U.S.C. 1454 and 1455." 30 C.F.R. § 556.202(c). Pursuant to the CZMA, California has a federally approved coastal management program that is implemented by the California Coastal Commission (CCC). The CZMA requires federal government and federally permitted activities to comply with state coastal zone management programs approved under the CZMA. As such, the CCC has "regulatory authority over oil and gas leasing, exploration, development and production activities on the OCS."[52] In 2017 during a previous leasing process, the CCC concluded that oil and gas development off California's coast would not be consistent with California's coastal protection laws, which include the Coastal Act and the California Coastal Sanctuary Act.[53] The CCC also identified the 852 square miles of coastal state waters it had recently designated as a network of MPAs pursuant to the 1999 Marine Life Protection Act.[54] Opening up new OCS areas to oil and gas leasing is inconsistent with the protection of these exceptional resources—which are even more numerous today.

California has a long history of protecting its coastal environment and economy from the risks and impacts of offshore oil and gas development. In 1994, the state legislature passed the California Coastal Sanctuary Act, which prohibits the state from entering into any new leases within state tidelands designated as part of the California Coastal Sanctuary. Cal. Pub. Res. Code § 6240 *et seq.* Since that time, the state has terminated several preexisting oil leases.

In 1999, the State of California and several environmental groups challenged the federal government's decision to "suspend" (i.e., renew) thirty-six federal oil and gas leases that had been sold between 1968 and 1984. The Ninth Circuit Court of Appeals held that the Minerals Management Service was required to conduct full environmental review and submit the leases to the CCC for consistency review pursuant to the CZMA. *Norton*, 311 F.3d 1162. The court noted that there was "substantial evidence in the record" that the lease suspensions would have "adverse effects" on endangered and threatened species, including the southern sea otter, and their habitats, as well as on "ecologically significant or critical areas," including the Monterey Bay and Channel Islands National Marine Sanctuaries. *Id.* at 1176. The court also found evidence of "highly controversial environmental effects" due to the risks and impacts of an offshore oil spill. *Id.* at 1176–77. The court concluded that renewing the oil leases would result in adverse impacts to the California coast.

New fossil fuel production would also conflict with the State of California's Renewable Portfolio Standards of 60% renewable energy by 2030, Cal. Pub. Util. Code § 399.11, and legislation setting a 100% renewable energy target by 2045. S.B. 100, 2017-2018 Reg. Sess. (Cal. 2018). Local communities throughout the State have adopted even more stringent requirements; for example, the City of Santa Barbara passed a climate action plan setting a target

[52] Letter from Dayna Bochco, Chair, California Coastal Commission, to Kelly Hammerle, National Program Manager, Bureau of Ocean Energy Management, at 2 (Aug. 9, 2017), https://documents.coastal.ca.gov/reports/2017/8/w6b/w6b-8-2017-corresp.pdf.
[53] *Id*.
[54] *Id.*

of 100% carbon neutrality by 2035.[55] Any additional oil and gas production activities will add new greenhouse gas emissions and undermine California's ability to meet its legal mandates.

F. The Pacific Region Is Rich in Marine Productivity and Is Environmentally Sensitive.

As explained above, this Region is one of the most important bioregions on the planet. Additionally, this area is incredibly sensitive to stressors.

This is illustrated well by the establishment of national marine sanctuaries. In enacting the NMSA, Congress provided authority for the Secretary of Commerce to protect areas of special national significance in the marine environment by designating them as national marine sanctuaries. 16 U.S.C. § 1431 *et seq*. The primary objective of these sanctuaries is to protect the resources of the marine environment, while also enhancing public awareness, sustainable use, and research, among other goals. *Id.* § 1431(3)–(5). The CHNMS encompasses Essential Fish Habitat (EFH) like the East Santa Lucia Bank EFH Conservation Area (43,105,280 acres) and Big Sur Coast/Port San Luis EFH (1,875,028,480 acres).[56] These areas have been evaluated as important for the continued propagation of groundfish, a target species for both commercial and recreational fisheries. The unique oceanic current system of Point Arguello/Conception that benefits invertebrates also draws in many of the region's seabirds, waterbirds, and shorebirds, which use the area for breeding, over-wintering, and longer-term residencies.[57]

Congress established the CINMS and CINP in 1980 due to the Santa Barbara Channel region's incredible natural attributes. In designating the CINMS, oil development was cited as one of the primary threats to the important ecology of the area.[58] A CINMS Biogeographic Assessment of the area from Pt. Sal to Pt. Dume,[59] along with the National Park Service study of the Gaviota Coast,[60] confirms the incredible importance of this region. BOEM should consider information from these two federal documents, as well as the CINMS Management Plan and related EIS, Channel Islands marine reserves 5-year report,[61] and scientific information related to the MLPA process.

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[55] City of Santa Barbara Climate Action Plan (2024), available at https://sustainability.santabarbaraca.gov/sites/default/files/2024-03/CAP%20-%20Together%20to%20Zero%20Draft.pdf.

[56] National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, *Chumash Heritage National Marine Sanctuary Draft Environmental Impact Statement* at p. 99 (2023).

[57] Briggs, K.T., W.B. Tyler, D.B. Lewis, and D.R. Carlson, *Bird communities at sea off California: 1975 to 1983* (1999) Studies in Avian Biology 11.

[58] *Final Environmental Impact Statement on the Proposed Channel Islands Marine Sanctuary* (May 1980).

[59] NOAA Technical Memorandum NOS NCCOS 21. *A Biogeographic Assessment of the Channel Islands National Marine Sanctuary* (November 2005).

[60] National Park Service, *Gaviota Cost Feasibility Study* (2003).

[61] California Department of Fish and Game, Partnership for Interdisciplinary Studies of Coastal Oceans, Channel Islands National Marine Sanctuary, and Channel Islands National Park, *Channel Islands Marine Protected Areas: First 5 Years of Monitoring: 2003-2008* (2008), available at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=31325&inline=true.

This Region has experienced significant loss of ecologically important species in the past several years. For example, our kelp forests have experienced a decline due to stressors such as rising sea temperatures and overharvesting/overgrazing by local predators.[62] Kelp plays a vital role in the California Current's ecosystem and many species of commercial, recreational, conservation, and ecosystem importance (e.g. spiny lobster, red abalone, red urchin, sea otters) are dependent on kelp. The unbalanced ecosystem has led to the population decline of many ecologically and economically important species like red abalone which is experiencing recreational fisheries closure due to low population numbers.[63] Our coastline is also vulnerable to invasive algae, the full effects of which are still unknown.[64]

The Secretary must consider all of this information in order to "make a good faith determination of the relative environmental sensitivity...of the various regions based upon the best 'existing information' available." *CBD v. DOI,* 563 F.3d at 488 (quotations omitted).

G. Any Relevant Environmental and Predictive Information Would Demonstrate that the Pacific Region Must Be Excluded.

As demonstrated above, the Pacific Region is incredibly environmentally rich and also sensitive. Given the diversity of this Region and the recent events that have caused declines in many important species, the consideration of impacts, species, and habitats with adequate predictive information would demonstrate devastating potential impacts of new leasing in this Region.

In sum, a reasonable application of the Section 18(a)(2) factors would demonstrate that no new leasing is appropriate in the Pacific Region.

V. OCSLA's Balancing Test Requires that No New Leasing Occur in the Pacific Region Due to Its Significant Environmental and Coastal Zone Potential Impacts.

In addition, Section 1344(a)(3) requires the Secretary to select the timing and location of leases "to the maximum extent practicable, 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." 43 U.S.C. § 1344(a)(3). Because this "balancing test" is a "condensation of the factors specified in Section 18(a)(2)" an omission or error in the analysis of any one of the factors will also affect the balancing requirement and impact the validity of the leasing program. *CBD v. DOI*, 563 F. 3d at 488.

As detailed above, new offshore oil and gas development would result in significant environmental impacts. In addition to the impacts caused by routine exploration, development,

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[62] *See* California Department of Fish and Wildlife, *"Perfect Storm" Decimates Northern California Kelp Forests* (March 30, 2016), available at https://cdfwmarine.wordpress.com/2016/03/30/perfect-storm-decimates-kelp/.
[63] *See* Fishing California, *California Recreational Abalone Fishery to Be Closed in 2018* (Dec. 8, 2017), available at https://fishincalifornia.com/2017/12/08/california-recreational-abalone-fishery-closed-2018/ .
[64] *See* University of California Santa Cruz, Articles, Publications, and News Broadcasts regarding invasive algae dated Oct. 7, 2022, available at https://www.eeb.ucsc.edu/pacificrockyintertidal/data-products/invasive-species/index.html.

and production activities, new development poses increased risks of leaks, explosions, and oil spills. The 2015 Refugio Oil Spill in Santa Barbara County is just one of many examples that illustrates the significant impacts oil development has on our coastlines.

Moreover, the Ninth Circuit has recognized that offshore oil development negatively impacts California's coastal zone. 43 U.S.C. § 1344(a)(1). In *California v. Norton,* the court noted that the "lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far-reaching effects and perils that go along with offshore oil production." 311 F.3d at 1173. The court therefore required the federal government to submit the lease suspensions to the CCC for review. The CCC subsequently objected to the lease suspensions on the grounds, *inter alia*, that "[g]ranting the lease suspensions could *prima facie* significantly increase the risk of oil spills, and consequent environmental impacts."[65] The Commission found that development of the leases would result in potential impacts to marine resources and water quality, commercial fishing, visual resources, and geological stability.[66] Such impacts demonstrate that sensitive regions, such as the Pacific Region, must be excluded from new leasing.

Similarly, in 2022, the court upheld the important requirement to undergo consistency review with the CCC with respect to BOEM's approval of the use of unconventional drilling techniques. *See EDC v. BOEM*, 36 F.4th at 887–90.

Given these impacts to the environment and coastal zone specifically, the balancing test tips sharply in favor of excluding the Pacific Region from any new leasing.

VI. BOEM Should Exclude Certain Areas from the Leasing Program.

As the RFI indicates, BOEM will consider nominations for specific areas to be excluded from the OCS program.[67] We ask that BOEM exclude from the 11th National OCS Program the entire Pacific OCS Region, all national marine sanctuaries and monuments, as well as other State and Federally protected areas such as MPAs and Federal Ecological Preserves. As discussed above, OCSLA Section 12(a) does not provide the President with the power to revoke the past withdrawal of areas from OCS oil and gas leasing. Therefore, the entire Pacific OCS Region, withdrawn by former President Biden, must be excluded from the new program. Additionally, national marine sanctuaries and monuments should be excluded because of their ecological, cultural, and recreational value. New oil and gas leasing is also legally prohibited in many national marine sanctuaries, including the CINMS and CHNMS. Other State and Federally protected areas, including MPAs and Ecological Preserves, should be excluded from the OCS program because their use in oil and gas production threatens the health of these marine areas already recognized for their significance and value.

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[65] *See*, *e.g.*, California Coastal Commission, *Staff Report and Recommendations on Consistency Determinations*, hearing date August 11, 2005 (emphasis in original).
[66] *Id*.
[67] BUREAU OF OCEAN ENERGY MGMT., Request for Information, 90 Fed. Reg. 17972, 17976 (Apr. 30, 2025) ("RFI").

VII. BOEM Must Prepare an EIS Under NEPA.

Under NEPA, an EIS must be prepared for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C); *see id.* § 4336(b)(1) ("An agency shall issue an environmental impact statement with respect to a proposed agency action requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment."). The EIS must describe, among other things, the "reasonably foreseeable environmental effects of the proposed agency action," "any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented," and "a reasonable range of alternatives to the proposed agency action." *Id*. Such analysis ensures that environmental impacts and alternative courses of action are fully explored and disclosed to the public prior to expending significant resources developing and approving any government program.

There is no question that the 2025 Leasing Program meets the test for significance. As detailed above, offshore oil drilling presents a host of adverse impacts to water quality, marine life, cultural resources, air quality, climate change, and many other aspects of the human environment. Critically, the effects of oil spills cannot be underestimated. These potential impacts readily trigger the requirement for an EIS. *See Klamath Siskiyou Wildlands Center*, 468 F.3d at 562 ("[A]n EIS 'must be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor.'"); *Idaho Sporting Congress*, 137 F.3d at 1150.

BOEM has stated in the RFI that, instead of preparing a programmatic EIS under NEPA as it previously has for five-year leasing programs, BOEM will prepare an "environmental analysis document" that "will not include an analysis of alternatives."[68] Alternatives analysis is a critical component of the decision-making process because it "ensure[s] that the agency has before it and takes into account all possible approaches to" addressing an action's objectives and helps agencies identify and assess reasonable alternatives that will avoid or minimize "potential environmental impacts." *W. Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958, 980 (D. Idaho 2021). Without such alternatives analysis, BOEM's "environmental analysis document" is thus an inadequate substitute for assisting BOEM to develop the 2025 Leasing Program.

BOEM must prepare an EIS for its 2025 Leasing Program because it is a major federal action that will have "a reasonably foreseeable significant effect on the quality of the human environment." 42 U.S.C. § 4336(b)(1). This was confirmed in a 2024 Congressional Research Report on five-year offshore oil and gas leasing programs which stated that, "with BOEM's five-year programs[,] the significance of the program's impact on the environment is assumed . . . [t]herefore, BOEM prepares a programmatic EIS (PEIS) concurrently with preparation of the five-year program."[69] The CRS Report explained that a programmatic EIS is needed at the

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[68] RFI at 17976.
[69] Five-Year Offshore Oil and Gas Leasing Program: History and Background (2025), available at https://www.congress.gov/crs-product/R44504#:~:text=The%20leasing%20decisions%20in%20BOEM's,for%20the%20five%2Dyear%20programs.

leasing program development stage to analyze "the environmental impact of the federal program in question from a broad regional perspective," and that "more detailed and geographically focused analyses . . . are also conducted at the planning, leasing, and exploration and development stages."[70] In addition, a DOI memorandum on "Managing the NEPA Process" for offshore activities lists the "[a]pproval of a 5-year offshore oil and gas leasing program" as a "major action[] normally requiring an EIS."[71] That memorandum further states that, if the overseeing agency "propose[s] not to prepare an EIS, an [EA] will be prepared," confirming NEPA review is obligatory during the development of OCS five-year leasing programs.

None of the statutory exceptions that would allow BOEM to avoid preparing a NEPA document apply here. The statute provides that preparation of an "environmental document" is not required if:

> (1) the proposed agency action is not a final agency action . . . ;
> (2) the proposed agency action is excluded pursuant to [NEPA categorical exclusions] or another provision of law;
> (3) the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law; or
> (4) the proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action.

42 U.S.C. § 4336(a). The 2025 Leasing Program does not fall under any of these four categories. First, an OCS five-year leasing program is a major federal action (and a final agency action). Second, no categorical exclusions designated by BOEM or any other agency apply here. Third, BOEM has not shown that preparing an environmental document would conflict with the requirements of any other law. Finally, the 2025 Leasing Program is not "a nondiscretionary action with respect to which [BOEM] does not have authority to take environmental factors into consideration in determining whether to take the proposed action." 42 U.S.C. § 4336(a). Indeed, OCSLA explicitly requires BOEM "to take environmental factors into consideration" in developing the program. *See* 43 U.S.C. § 1344(a) (directing the Bureau to consider environmental factors in preparing the National OCS Program). As none of the exceptions to undergoing NEPA review apply, BOEM must prepare an EIS for the 2025 Leasing Program.

BOEM incorrectly asserts in its RFI that "environmental analysis under NEPA is not required for a National OCS Program"[72] and cites two cases from the United States Court of Appeals for the D.C. Circuit, issued in 2009 and 2015.[73] Those cases do not stand for the sweeping proposition that a leasing program is not subject to NEPA such that an EIS is not required. BOEM is therefore incorrect that it need not conduct NEPA environmental review at this stage of the 2025 Leasing Program. A five-year leasing program is a "major Federal action"

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[70] *Id.* at fn. 41.
[71] Department of the Interior, Department Manual: Managing the NEPA Process—Minerals Management Service, May 27, 2004, available at: https://www.doi.gov/sites/doi.gov/files/elips/documents/516-dm-15.pdf.
[72] RFI at 17976.
[73] *Id.* (citing to *CBD v. DOI*, 563 F.3d 466 (D.C. Cir. 2009) and *Center for Sustainable Economy v. Jewell*, 779 F.3d 588 (D.C. Cir. 2015)).

that will "significantly affect[] the quality of the human environment" and requires preparation of an EIS. 42 U.S.C. § 4332(C).

VIII. BOEM Must Conduct Section 7 Consultation Under the ESA.

The 2025 Leasing Program is an agency action that may affect species listed as endangered or threatened under the ESA. Therefore, consultation pursuant to Section 7(a)(2) of the ESA is required. 16 U.S.C. § 1536(a)(2). This section is the "heart of the ESA." *Karuk Tribe*, 681 F.3d at 1019. It places the "ultimate duty" on the agency to ensure their action does not jeopardize the very existence of listed species. *See Defenders of Wildlife v. Flowers*, 414 F.3d 1066, 1070 (9th Cir. 2005) (internal quotations omitted).

The 2025 Leasing Program is an "agency action" under the ESA because it is "authorized" by the federal government and is discretionary. *See* 16 U.S.C. § 1536(a)(2); *Karuk Tribe,* 681 F.3d at 1011. Further, as detailed above, new leasing would threaten listed species with the many adverse impacts that come with offshore oil drilling—including the risk of oil spills. Accordingly, it readily meets the trigger for consultation, that it "may affect" listed species. These species include, but are not limited to: the southern sea otter, the Guadalupe Fur Seal, the light-footed Ridgway's rail, western snowy plover, marbled murrelet, California least tern, short-tailed albatross, Hawaiian petrel, California Ridgway's rail, black abalone, white abalone, sei whale, blue whale, fin whale, North Pacific right whale, humpback whale, sperm whale, southern California steelhead, scalloped hammerhead shark, southern green sturgeon, tidewater goby, loggerhead turtle, leatherback turtle, green turtle, and olive ridley turtle. Even BOEM has recognized likely impacts of offshore oil drilling to at least some of these species, as explained above.[74] In addition, the 2025 Leasing Program threatens to destroy or adversely modify the critical habitat of these species.

The ESA applies to actions like OCSLA five-year leasing programs that are forward-looking in nature. *California Sportfishing Prot. All. v. FERC*, 472 F.3d 593, 597 (9th Cir. 2006) ("The statute looks to the future effect of contemplated actions by the agency."). In fact, the ESA regulations require an agency to "review its actions at the *earliest possible time*" to assess impacts. 50 C.F.R. § 402.14(a) (emphasis added). Consistent with that principle, courts have repeatedly found programmatic actions to be subject to consultation, even where additional site-specific approvals may be required. *See Pac. Rivers Council v. Thomas*, 30 F.3d at 1051 (concluding that a programmatic document that "set out guidelines" for forest management was an ESA agency action); *Karuk Tribe*, 681 F.3d at 1011 (finding that Notices of Intent to conduct mining activity are agency actions even though future permits may be required before mining can occur); *see also Citizens for Better Forestry v. U.S. Dep't of Agric*., 481 F. Supp. 2d 1059, 1095 (N.D. Cal. 2007) ("The Ninth Circuit has undeniably interpreted ESA to require consultation on programmatic actions and rules, including consultation at the planning stage, not just the site-specific stage."). Requiring consultation for the development of BOEM's 2025 Leasing Program is squarely in line with this precedent.

[74] *See* FWS BA.

IX. BOEM Must Ensure Compliance with the CZMA.

The 2025 Leasing Program is a "Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone." 16 U.S.C. § 1456(c)(1)(A). It is therefore subject to the CZMA's consistency review process: it must be "carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." *Id.* BOEM must provide a consistency determination to the CCC for review. *Id.* § 1456(c)(1)(C). In doing so, BOEM must submit adequate information to the CCC so that the state can consider the effects of the leasing program on coastal resources and review it for consistency with enforceable policies of the CCMP, including Chapter 3 of the Coastal Act. *See* 15 C.F.R. §§ 930.58, 930.60(a); Cal. Pub. Res. Code § 30008.

X. Conclusion

Accordingly, we urge BOEM not to proceed with the process of developing the 2025 Leasing Program. Should it continue to do so, it must ensure compliance with all applicable laws as explained herein, and specifically, it must exclude the Pacific Region from any new leasing.

Sincerely,

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Climate Hawks Vote, RL Miller, President

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Coastal Band of the Chumash Nation, Mati Waiya, Tribal Chair

Community Environmental Council, Sigrid Wright, CEO/Executive Director

Get Oil Out!, Michael Lyons, President

Heal the Ocean, Karina Johnston, Executive Director

Santa Barbara Channelkeeper, Ted Morton, Executive Director

Santa Barbara County Action Network, Ken Hough, Co-Executive Director

San Francisco Bay Physicians for Social Responsibility, Robert M. Gould, MD, President

Santa Cruz Climate Action Network, Pauline Seales, Organizer

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