Bureau of Ocean Energy Management

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eNGO Comments on 11th National OCS Oil and Gas Leasing Program

On behalf of the Natural Resources Defense Council, Earthjustice, Center for Biological Diversity, Defenders of Wildlife, Environmental Defense Center, and the other signatory groups, please accept these comments on the 11th National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program ("Draft Proposed Program" or "Program"). The Draft Proposed Program is a key decision about the nation's energy future. By deciding whether or not to open areas of the outer continental shelf (OCS) to future oil and gas drilling, the program has a direct effect on where and how energy will be produced in the coming decades and on the ecological integrity of our nation's oceans and coastline ecosystems. We are strongly opposed to the expansion of oil and gas activities in each of the proposed program regions—Alaska, the Pacific, and the Gulf of Mexico—and urge you to offer no new oil and gas leases in federal waters.

Interior should halt the development of a new offshore leasing program. Should BOEM proceed with finalizing its offshore leasing program, we strongly oppose new or expanded oil and gas activities in all regions of the OCS and urge the agency to offer no new lease sales in the new program. The costs of offshore oil and gas activities far outweigh any potential benefit of new leasing. Offshore drilling threatens the health of our public waters, the future of vulnerable wildlife, and the economic resiliency of human communities. Offshore oil and gas production impacts human health too. Oil produced offshore must be processed at refineries that emit toxic air pollutants and sicken frontline communities. Producing and consuming fossil fuels drives the climate crisis that is dramatically altering our environment.

Moreover, the United States does not need new offshore leasing to meet national energy needs. The Reconciliation Act[1] already requires BOEM to hold biannual offshore lease sales in the Gulf and six lease sales in Cook Inlet, Alaska over the next fourteen years. The country is producing record levels of oil and gas, and renewable sources of energy increasingly meet our needs at competitive prices and without emitting climate-polluting greenhouse gases. Transitioning from fossil fuels to renewable energy is critical to combatting the climate crisis, which threatens our environment, national security, and human lives. Developing a new offshore leasing program would waste government resources that could be better dedicated to combatting the climate crisis, protecting the ocean by heightening safety and environmental protection measures for existing fossil fuel operations, and advancing renewable energy sources, like offshore wind.

[1] Reconciliation Act of 2025, Pub. L. No. 119-21, § 50102, 139 Stat. 72, 139–42 (2025).

I. BOEM MUST PROVIDE A MEANINGFUL OPPORTUNITY FOR COMMENT.

Interior has a duty under OCSLA and its implementing regulations to solicit feedback from interested persons on the National Program.[2] During the development of the national program, BOEM has consistently held public meetings in affected areas to give individuals an opportunity to voice their concerns publicly.[3] These meetings give community members the chance to communicate directly with BOEM and to learn about the concerns of their fellow community members.

To date, however, Interior has not held *any* public meetings in Alaska, California, Alabama, Mississippi, Louisiana, Texas, or Florida, despite the fact these affected states' coasts are scheduled for leasing in the Draft Proposed Program. Prior to finalizing the program, BOEM must schedule public hearings where communities in affected regions can express their views. Otherwise, BOEM is effectively shutting coastal communities out of the process. Expanding oil and gas leasing in these areas would have significant consequences for coastal communities; those communities therefore *must* be a part of the public process.

II. EXTENSIVE LEASING IN THE NEW NATIONAL PROGRAM DOES NOT MEET THE NATION'S ENERGY NEEDS.

OCSLA requires BOEM to establish a leasing schedule designed to "best meet national energy needs."[4] BOEM's Draft Proposed Program schedules 34 sales over the next five years; despite the fact that the recently passed budget reconciliation act already schedules 36 sales over a fifteen-year period, at least 14 of which will be held during the same timeframe as the Draft Proposed Program.[5] Additional leasing is not required to meet the nation's energy needs.

Recent trends in energy production, the federal government's own energy analysis, and market factors clearly demonstrate that the United States does not need new oil and gas leasing to best meet our energy needs. Not only are substantial fossil fuel reserves already under lease, but the Reconciliation Act mandates that BOEM hold thirty-six offshore lease sales over the next fifteen years, obviating any arguable need to schedule lease sales in the offshore program.

Despite President Trump's unsubstantiated declaration of a national energy emergency,[6] the United States already produces immense quantities of fossil fuels. We are the world's leading

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[2] *See* 43 U.S.C. § 1344(f)(2); 30 C.F.R. § 556.203.

[3] *See e.g.* Public Hearings on the Draft Environmental Impact Statement for the Proposed Oil and Gas Leasing Program for 1997 to 2002, 61 Fed. Reg. 7016 (Feb. 23, 1996); Notice of availability of the Draft Environmental Impact Statement (EIS) for the Proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2002 to 2007, 66 Fed. Reg. 54275 (Oct. 26, 2001); Notice of Public Hearings on the Draft Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2007-2012, 71 Fed. Reg. 56167 (Sept. 26, 2006); Draft Proposed Programmatic Environmental Impact Study (PEIS) for Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2012-2017, 76 Fed. Reg. 70156 (Nov. 10, 2011); Notice of Availability of the 2019-2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program and Notice of Intent To Prepare a Programmatic Environmental Impact Statement, 83 Fed. Reg. 829 (Jan. 8, 2018).

[4] 43 U.S.C. § 1344(a).

[5] Reconciliation Act § 50102.

[6] Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025).

producer of oil and gas,[7] with U.S. crude oil and natural gas production hitting record levels in 2023 and 2024.[8] The United States has been a net exporter of petroleum since 2020,[9] producing more petroleum than required to meet national energy needs. Meanwhile, U.S. gasoline consumption has declined by five percent since 2018.[10] The Draft Proposed Program observes that, according to the U.S. Energy Information Administration (EIA)'s 2025 Annual Energy Outlook (AEO), the United States will continue to rely on oil and natural gas to meet "a significant share of its energy needs through 2050."[11] But BOEM fails to acknowledge that the 2025 AEO predicts that gasoline consumption will continue to fall, declining 17 percent by 2050—even without heightened federal standards for fuel economy and tailpipe greenhouse gas emissions put in place during the Biden administration.[12]

Moreover, new offshore lease sales are unlikely to significantly affect gasoline prices in the near future. Gas prices are largely determined by the cost of crude oil, which itself depends on a variety of geopolitical and economic factors, including economic growth and confidence in the economy, major world events, and production levels in other countries such as Saudi Arabia.[13] While increased U.S. crude oil production contributes to this mix of factors and tends to decrease crude oil prices,[14] it takes at least five to ten years—and longer in deeper waters—for oil production to begin on new offshore leases.[15]

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[7] U.S. Energy Information Administration (EIA), *U.S. Energy Production Has Increased Faster than Energy Consumption Over the Past 50 Years* (Oct. 29, 2024), https://www.eia.gov/todayinenergy/detail.php?id=63544.

[8] EIA, *Monthly Crude Oil and Natural Gas Production* (Nov. 28, 2025), https://www.eia.gov/petroleum/production/#oil-tab.

[9] Draft Proposed Program, at 4-6; EIA, *Oil and Petroleum Products Explained: Oil Imports and Exports* (last updated Jan. 19, 2024), https://www.eia.gov/energyexplained/oil-and-petroleum-products/imports-and-exports.php.

[10] Lucas David, *Is U.S. Gasoline Consumption Declining?*, ENERGY INSTITUTE BLOG (May 12, 2025), https://energyathaas.wordpress.com/2025/05/12/is-u-s-gasoline-consumption-declining/; *see* EIA, *Transportation Fuel Demand Remains Below Pre-Pandemic Levels* (Aug. 27, 2025), https://www.eia.gov/todayinenergy/detail.php?id=66005.

[11] Draft Proposed Program, at 15, 7-8 .

[12] EIA, *Annual Energy Outlook 2025*, tbl 2 (Jan. 6, 2026),https://www.eia.gov/outlooks/aeo/data/browser/#/?id=2-AEO2025&region=1-0&cases=ref2025~alttrnp&start=2023&end=2050&f=A&linechart=~~~~~~~ref2025-d032025a.83-2-AEO2025.1-0~alttrnp-d032125a.83-2-AEO2025.1-0~~&map=ref2025-d032025a.3-2-AEO2025.1-0&sourcekey=0. Data for motor gasoline under the category "Delivered energy consumption, All Sectors" in the alternative transportation case reflects a 17.9% decline from 2024 to 2050 (16.51 quads in 2024 to 13.56 quads in 2050). The alternative transportation case excludes from analysis certain transportation policies designed to increase fuel economy and decrease greenhouse gas emissions, including NHTSA corporate average fuel economy (CAFE) standards and EPA tailpipe greenhouse gas standards for light-duty vehicles in model year 2027+ and California Air Resources Board's Advanced Clean Truck (ACT) rule. EIA, *Annual Energy Outlook 2025: Case Descriptions*, 9 (Apr. 2025), https://www.eia.gov/outlooks/aeo/assumptions/pdf/case_descriptions.pdf.

[13] EIA, *What Drives Crude Oil Prices?,* 2-6, 11 (Apr. 10, 2025), https://www.eia.gov/finance/markets/crudeoil/reports_presentations/crude.pdf.

[14] EIA, *Gasoline Explained: Factors Affecting Gasoline Prices* (last updated Sept. 4, 2024), https://www.eia.gov/energyexplained/gasoline/factors-affecting-gasoline-prices.php.

[15] BOEM, *2024-2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program,* 1-12, 5-2 (Sept. 2023).

Even without new leasing, there is likely enough oil and gas supply in existing offshore leased areas to continue producing at significant rates for the near future. Offshore activity in federal waters accounts for about 14 percent of total domestic oil production and about 2 percent of total U.S. natural gas production, a sizable but not overwhelming contribution to our current national oil and gas energy needs.[16] The vast majority of federal offshore oil and gas production—around 97 percent—takes place in the Gulf.[17] The industry currently holds nearly two thousand leases to more than 10 million acres of the Gulf OCS, which contains substantial fossil fuel reserves.[18] Of these, only 402 leases covering 2 million acres are actively producing oil and gas, indicating room to increase production without new leasing.[19]

Federal law now mandates new leasing in the Gulf for the next fourteen years even absent a new offshore leasing program. The Reconciliation Act requires BOEM to hold thirty region-wide Gulf lease sales from 2025 through 2040, providing industry with biannual opportunities to bid on 80 million acres of OCS lands.[20] On top of that, the Act mandates four or five Cook Inlet lease sales during the Draft Proposed Program: one each in the years 2026 to 2028, one in 2030, and another in 2031.[21] Yet the Draft Proposed Program entirely fails to account for these mandated lease sales—and the extent to which they eliminate the need for additional leasing—in its discussion of national energy needs.[22]

BOEM must also consider the potential for renewable energy sources to replace the energy that might otherwise be generated from fossil fuel production resulting from the Draft Proposed Program. Although the Draft Proposed Program largely dismisses the role of renewable energy in meeting national energy needs,[23] renewables are in fact increasingly meeting U.S. needs,[24] and wind and solar provide cost-effective sources of electricity.[25] BOEM acknowledges that

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[16] BOEM, *Oil and Gas Energy*, https://www.boem.gov/factsheet/oil-and-gas-energy (last visitedNov. 7, 2025).

[17] BOEM, *Oil and Gas – Gulf of America*, https://www.boem.gov/regions/gulf-america-ocs-region/oil-and-gas-gulf-america (last visitedNov. 7, 2025).

[18] BOEM, *Combined Leasing Report (Jan. 1, 2026)*,https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/Lease%20stats%201-1-26.pdf?VersionId=gvJUVsvXPQ.g_4704oB1utmoyBnk2.DK ; BOEM, *2025 Estimated Oil and Gas Reserves Report Gulf of America OCS Region*, https://www.boem.gov/factsheet/2025-estimated-oil-and-gas-reserves-report-gulf-america-ocs-region (last visitedJan. 6, 2026).

[19] *Id*.

[20] Reconciliation Act, §§ 50102(a)(1)(B), 50102(b)(3)(A).

[21] *Id*. § 50102(a)(2)(B). Whether the 2026 sale overlaps with the five-year offshore leasing program depends upon when such program is finalized.

[22] Draft Proposed Program, chs. 4 & 7.

[23] *E.g.*, Draft Proposed Program at 4-3 ("EIA's 2025 AEO forecasts that the United States will continue its reliance on oil and natural gas to meet a significant share of its energy demands, even as alternative sources of energy provide an increasing share of U.S. energy supply"); *id.* at 7-20 (citing 2024 data on uses of fossil fuels and renewable energy for different purposes without taking into account increasing adoption of electric vehicles and other technological changes).

[24] Climate Central, *A Decade of Growth for U.S. Solar and Wind* (Mar. 12, 2025), https://www.climatecentral.org/climate-matters/solar-and-wind-2025 (compiling U.S. Energy Information Administration data).

[25] *See* Lazard, *Levelized Cost of Energy* 8 (June 2025), https://www.lazard.com/media/5tlbhyla/lazards-lcoeplus-june-2025-_vf.pdf.

renewables could "in some instances" serve as substitute energy sources for foregone OCS fossil fuel production, but it asserts that "the reality of renewable energy sources is that their growth is heavily dependent on policy and tax initiatives."[26] As the agency responsible for setting policies on offshore renewables, BOEM must provide a more accurate and nuanced treatment of the role of renewable energy in meeting national needs. BOEM's blanket disparagement of renewable energy sources ignores expert estimates of the levelized cost of electricity, in which renewables are often cheaper than fossil fuel sources even after subtracting tax benefits and subsidies.[27]

Critically, transitioning from fossil fuels to renewables is essential to avoiding the worst impacts of the climate crisis, which threatens the U.S. economy, infrastructure, and environment.[28] Indeed, climate change is already putting existing fossil fuel infrastructure at risk with increased storms and rising sea levels, with serious implications for neighboring communities at risk of toxic exposures.[29] One aspect of determining what energy source is "best" in a warming world is to determine what type of system is most resilient to increasing heat exposure, rising seas, increased storm intensity, increased drought and decreased fresh water availability, and the many other impacts of climate change. These types of considerations are directly relevant to whether expanded (or any) offshore oil and gas leasing best meets national energy needs. By failing to consider these types of climate considerations—indeed, by essentially censoring any discussion of climate change from the program[30] --Interior fails to fulfill this primary statutory duty. The Draft Proposed Program must consider both climate change and renewables as part of the full picture of "national energy needs" and broader "national needs."[31]

The United States does not need new offshore oil and gas leasing to meet national energy needs. Under the Reconciliation Act, BOEM will offer more Gulf acreage for lease during a five-year period than offered under any previous offshore leasing program, granting fossil fuel companies access to new leases on top of the millions of leased acres the industry is already sitting on. With U.S. oil and gas production reaching all-time highs and gasoline demand declining, no energy need justifies including new lease sales in the offshore program.

III. THE EXPANSION OF LEASING INTO NEW PROGRAM AREAS PRESENTS UNACCEPTABLE RISKS TO THE ENVIRONMENT, VULNERABLE AND TRIBAL COMMUNITIES AND VULNERABLE SPECIES.

The Draft Proposed Program opens up a number of program areas to oil and gas leasing—some that have never been leased before, and others that have never received any commercial

[26] Draft Proposed Program, at 7-20.

[27] Lazard, *Levelized Cost of Energy* 8 (June 2025), https://www.lazard.com/media/5tlbhyla/lazards-lcoeplus-june-2025-_vf.pdf.

[28] *See* Section V.A.1, *infra*.

[29] Lara J. Cushing et al., *Sea Level Rise and Flooding of Hazardous Sites in Marginalized Communities Across the United States*, 16(9711) NATURE COMMUNICATIONS (2025), https://www.nature.com/articles/s41467-025-65168-2; Jinxin Dong et al., *Climate Change Impacts on Coastal and Offshore Petroleum Infrastructure and the Associated Oil Spill Risk: A Review*, 10(7) J. OF MARINE SCI 849, https://www.mdpi.com/2077-1312/10/7/849.

[30] *See* Section V.A.1, *infra*.

[31] 43 U.S.C. § 1344(a); *id.* § 1332(3).

interest—putting thousands of miles of coastline at risk along with the sensitive environments, communities, economies, and vulnerable species that live in the areas.

A. The Alaska OCS Should Be Off Limits to Leasing.

BOEM should forgo oil and gas leasing in the sensitive and still un-industrialized Alaska outer continental shelf. Alaska's OCS planning areas are all remote, subject to extreme weather, and many are affected by seasonal sea ice. Offshore oil operations are inherently risky, dirty, noisy, and prone to accidents. These risks are exacerbated in many ocean areas offshore Alaska due to remoteness, harsh weather conditions, and lack of emergency response, as Shell's past efforts to mobilize and explore for oil in the Chukchi and Beaufort seas have shown. Mobilizing and drilling in these areas presents a real risk of large oil spills and loss of life, and the government's own experts agree that there is no way to contain and clean up a spill there.[32] Additionally concerning, the Alaska region Bureau of Safety and Environmental Enforcement (BSEE) does not have enough staff to sustain oversight of the leases that already exist.[33] Even if resources could be discovered and developed safely, they would not come to market for several years or decades, when the nation can least afford to continue to lock in fossil-fuel dependence. As a result, leasing should not be conducted anywhere on the Alaska OCS due to the unacceptable risks of exploration and development.

1. New Leasing Presents Unacceptable Risks to the Environment and Subsistence Communities in the Beaufort and Chukchi Seas.

Leasing in the Arctic Ocean is incompatible with its sensitive environment and subsistence needs and cultures of local communities. Alaska's Arctic waters and coasts have nourished inhabitants for millenia.[34] The assemblage of marine mammals found there includes species unique to the Arctic, such as ice seals, bowhead whales, and walruses.[35] The waters of the Beaufort and Chukchi Seas are home to millions of migratory birds from virtually all continents[36] as well as approximately one-fifth of the world's polar bears.[37] In addition to polar bears, numerous other

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[32] *See* S. Waldman & CLIMATEWIRE, *The U.S. Is Not Ready to Clean Up an Arctic Oil Spill*, SCIENTIFIC AMERICAN (July 19, 2017), https:/www.scientificamerican.com/article/the-u-s-is-not-ready-to-clean-up-an-arctic-oil-spill/.

[33] *See* Comment ID BOEM-2025-0483-0491, from the Alaska OCS Regional Director, Bureau of Safety and Environmental Enforcement (BSEE), to BOEM, (Dec. 13, 2025) (Regional Director stating that "BSEE's workforce in Alaska is currently below sustainable levels necessary to oversee current lease operations.").

[34] Tom Barry et al,, ARCTIC BIODIVERSITY ASSESSMENT: STATUS AND TRENDS IN ARCTIC BIODIVERSITY – SYNTHESIS 31
(Hans Meltofte ed., (2013), available at https://oaarchive.arctic-council.org/items/b32baf29-d9d7-4c9e-8598-877db37141da [hereinafter *ABA*]. *See also* Benjamin S. Halpern et al, *A global map of human impact on marine ecosystems*. 319 Science 948-952. (February 15, 2008) https://www.science.org/doi/10.1126/science.1149345

[35] NATIONAL COMMISSION ON THE BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING,
.FINAL REPORT TO THE PRESIDENT: DEEP WATER—THE GULF OIL DISASTER AND THE FUTURE OF OFFSHORE DRILLING 303 (2011)
http://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf.

[36] *Id*.

[37] *See* U.S. FISH AND WILDLIFE SERVICE, SPECIES STATUS ASSESSMENT FOR THE POLAR BEAR *(URSUS MARITIMUS)*

species are listed or proposed for listing as threatened or endangered species under federal law.[38] These include spectacled and Steller's eiders, Pacific walruses, and both fin and bowhead whales.[39]

Both the Beaufort and Chukchi Seas have numerous areas of heightened ecological significance,[40] including highly important habitat for marine mammals.[41] In first putting areas of the Arctic Ocean permanently off-limits to leasing, President Obama noted that the Department of the Interior had identified a total of six Environmentally Important Areas (EIAs) in the two seas. These high-value areas, far from substantiating limited set-asides, require a no-leasing regime throughout the Chukchi and Beaufort Seas, as implemented by Presidents Obama's and Biden's later withdrawals of the entirety of both seas from future oil leasing. They "[d]emonstrate the interconnectedness of this ecosystem, as the ecologically significant resources within the EIAs could be dramatically impacted by activities outside of those areas."[42] The resources concentrated in the EIAs are vulnerable to exterior threats, including from oil exploration and development; thus "[c]omprehensive protection of the area is warranted, as limiting protection to the EIAs would fail to protect ecosystem function and services critical to the region."[43] The comprehensive presidential withdrawals also cited the climate imperative of withdrawing the areas from future oil production that would exacerbate the climate crisis.

Protection of the Beaufort and Chukchi Seas is particularly important in light of the increasing impacts of climate disruption, including surface water warming, loss of sea ice, and ocean acidification in the region.[44] "Such conditions and stressors may increase the vulnerability of

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iii, 12 (Aug. 18, 2023) (stating an estimated global population of 26,000 and estimated Southern Beaufort, Northern Beaufort, and Chukchi Sea populations of 900, 980, and 2937, respectively); IUCN Polar Bear Specialist Group, *Summary of Polar Bear Population Status* (2026) https://www.iucn-pbsg.org/population-status/.

[38] NOAA Fisheries, *Endangered, Threatened, and Candidate Species in Alaska*, https://www fisheries noaa.gov/alaska/endangered-species-conservation/endangered-threatened-and-candidate-species-alaska#more-information (last visited Jan. 15, 2026).

[39] *Id.*

[40] AMAP/CAFF/SDWG. 2013. Identification of Arctic marine areas of heightened ecological and cultural significance: Arctic Marine Shipping Assessment (AMSA) IIc (hereinafter AMSA IIC Report). Available at https://oaarchive.arctic-council.org/items/1d567c4b-723b-48fa-8510-828edede09a7. *See also* Lisa Speer and Thomas Laughlin. 2011. *IUCN/NRDC Workshop to Identify Areas of Ecological and Biological Significance or Vulnerability in the Arctic Marine Environment: Workshop Report*, International Union for the Conservation of Nature, Natural Resources Defense Council.

[41] Janet T. Clark et al. *Biologically important areas for cetaceans within U.S. waters—Arctic Region. Aquatic Mammals* Vol. 41 Iss. 1 Pages 94-103. DOI:10.1578/AM.41.1.2015.94. (2015) https://www.aquaticmammalsjournal.org/wp-content/uploads/2015/02/AM_41.1_Complete_Issue.pdf

[42] *Fact Sheet: President Obama Protects 125 Million Acres of the Arctic Ocean*, THE AMERICAN PRESIDENCY PROJECT (Dec. 20, 2016), https://www.presidency.ucsb.edu/documents/fact-sheet-president-obama-protects-125-million-acres-the-arctic-ocean (hereinafter White House Fact Sheet).

[43] *Id.*

[44] Stuart Chapin III et al. 2014. Alaska. *Climate Change Impacts in the United States: The Third National Climate Assessment*, Jerry Melillo et al, eds. U.S. Global Change Research Program. pp. 514-536. Available at https://repository.library noaa.gov/view/noaa/19485/noaa_19485_DS1.pdf.

these species and habitat and reduce their resilience to impacts of oil and gas activities."[45] The sea ice is critical for survival of many Arctic species and dictates or influences oceanic and ecological processes and connections.[46] Its loss reduces vital habitat for seals, polar bears, walrus, and other ice- dependent species.[47] The rapidity of change dictates that even where adaptation is possible, for many species it will mean not evolutionary change but northward displacement, a strategy of severely limited utility in the high latitudes entailing, as it necessarily does, the reduction of available surface area for habitat.[48] Climate change in the Arctic is also leading to increased storms, sea level rise, melting permafrost, and coastal erosion. The cold and low salinity of the water make the Arctic more susceptible to acidification,[49] which is affecting the oceanographic and ecological systems of the Arctic in far- reaching ways.[50]

Alaska Native peoples rely on these unique ecosystems and the marine mammals they support for subsistence—in the words of North Slope elected representatives, "the ocean is our garden."[51] The habitat of a number of marine species important for subsistence, including bowhead whales, beluga whales, ringed seals, bearded seals, polar bears, and walruses, would overlap significantly with prospective oil and gas leasing in the Chukchi and Beaufort seas.[52] Expansion of oil and gas activities in this region pose risks to these species, including harm from increased vessel traffic, oil spills, seismic blasting for oil and gas exploration, and climate change exacerbated by continued extraction and combustion of fossil fuels produced from OCS leases.[53] These species rely on healthy and quiet seas to hunt, reproduce and communicate.[54] Many species also rely on the existence and persistence of sea ice every year, and, therefore, a stable climate system for their populations to survive and thrive.[55] Oil and gas drilling on the

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[45] White House Fact Sheet at 4.

[46] John Eamer et al. *Life Linked to Ice: A guide to sea-ice-associated biodiversity in this time of rapid change.* CAFF Assessment Series No. 10. Conservation of Arctic Flora and Fauna, Iceland (2013), https://oaarchive.arctic-council.org/server/api/core/bitstreams/0359d6b7-740c-4871-913f-1b92d0705ecb/content.

[47] White House Fact Sheet at 3.

[48] ABA at 94.

[49] Arctic Monitoring & Assessment Programme, *Arctic Ocean Acidification Assessment: Summary for Policymakers* (2013), https://www.amap.no/documents/doc/amap-arctic-ocean-%20acidification-assessment-summary-for-policy-makers/808.

[50] A.G. Andreev, et al., *The Distribution of the Carbonate Parameters in the Waters of Anadyr Bay of the Bering Sea and in the Western Part of the Chukchi Sea*. VOL. 50 OCEANOLOGY 39–50 2010, https://link.springer.com/article/10.1134/S0001437010010054.

[51] Fannie Suvlu et al. *Letter from Native Village of Barrow, City of Utqiagvik, and Ukpeagvik Inupiat Corporation to Kelly Hammerle, National Program Manager, BOEM, Re: BOEM Request for Information on IP'' National OCS Oil and Gas Leasing Program - Docket Number: BOEM-2025-0015* at 2 (June 16, 2025), Comment ID BOEM-2025-0015-19751.

[52] N.C. Young et al. *Alaska Marine Mammal Stock Assessments, 2022*, NOAA (July 2023), https://www.fisheries noaa.gov/s3/2023-08/Final-AFSC-SAR-Aug17-0.pdf.

[53] Upasana Khatri et al., *Offshore, Off-Limits, Making Oceans Off-Limits to Offshore Oil and Gas*. CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW (March 2025) https://www.ciel.org/wp-content/uploads/2025/03/Offshore-Off-Limits.pdf

[54] *See e.g.*, bowhead whales and ringed seals, *infra.*

[55] *See e.g.*, polar bears and pacific walrus, *infra.*

OCS of the Arctic Ocean threatens the ecosystems that these species rely on, thereby threatening the livelihoods and cultures of the many Alaska Native communities who subsist on these species.

As rich as ecosystems are in the region, they are also highly vulnerable. An Arctic Council assessment notes the "numerical dominance of relatively few key species in Arctic food webs, together with highly variable web interactions (for instance leading to community-wide cycles) and environmentally driven fluctuations with cascading effects through entire ecosystems."[56] Cascading consequences extend to human residents because biodiversity and the natural environment remain integral to the well-being of Alaska Native peoples, providing not only food but the everyday context and basis for social identity, cultural survival and spiritual life. These foods also lower the risk of metabolic diseases in residents who consume them regularly.[57] All of these important values are threatened by oil and gas activities. Some key Arctic subsistence species are detailed below.

Bowhead whale (*Balaena mysticetus*)

Each spring, the Western Arctic population of bowhead whales (*Balaena mysticetus*) migrates eastward from wintering areas in the Northern Bering and southern Chukchi seas. [58] Western Arctic bowhead whales migrate through the Chukchi and Beaufort Seas in the spring, eventually arriving in the eastern Beaufort Sea where they remain through the summer.[59] At the close of the summer and through the fall, the whales migrate back through the Beaufort and Chukchi Seas to the Bering Strait where they overwinter.[60] During the summer, when sea ice is limited, the geographic extent of bowhead whales encompasses the entirety of the Beaufort and Chukchi seas, and numerous sightings of whales, including mothers and calves, have been recorded year over year in the region.[61] From the coast of the Bering Sea to Gordon, the northeastern most village in Alaska, numerous Alaska Native villages are dotted along the migration route of the bowhead whale.[62]

Alaska Native peoples on the coast of the North Slope have relied on marine living resources since time immemorial. Bowhead whale harvests are celebrated and culturally significant traditions on the North Slope, and protecting bowhead whales in the Arctic Ocean is vital to

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[56] ABA at 34.

[57] Aaron Wernham, *Iñupiat Health and Proposed Alaskan Oil Development: Results of the First Integrated Health Impact Assessment/Environmental Impact Statement for Proposed Oil Development on Alaska's North Slope*. ECOHEALTH VOL. 4, PAGES 500, 500, 506, 507 (2007), https://link.springer.com/article/10.1007/s10393-007-0143-z

[58] N.C. Young et al. *Alaska Marine Mammal Stock Assessments, 2022*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), (July 2023) at 290 (Figure 1. Annual range of the Western Arctic stock of bowhead whales by season from satellite tracking data, 2006-2017) https://www.fisheries.noaa.gov/s3/2023-08/Final-AFSC-SAR-Aug17-0.pdf

[59] N.C. Young et al. at 290

[60] *Id.*

[61] *Id.*

[62] *Id.*

Iñupiat culture.[63] Whaling brings Kaktovik, an Iñupiat village situated between the Beaufort Sea and northern edge of the Arctic National Wildlife Refuge, together, and is an opportunity to stockpile a nutritious food source for future holidays and celebrations, including Thanksgiving, Christmas, and Nalukataq, the spring whaling festival which celebrates the success of whaling captains that year.[64]

Beluga whale (*Delphinapterus leucas*)

During the summer, two genetically distinct populations of beluga whales (*delphinapterus leucas*) inhabit Arctic waters spanning the eastern Chukchi Sea and the entirety of the Beaufort Sea.[65] The migratory patterns of the two populations are similar. During the fall, the belugas travel southwestward through the Chukchi Sea to overwinter south of the Bering Strait.[66] Aerial surveys have demonstrated that the Barrow Canyon region, which straddles the Beaufort and Chukchi Seas Planning Areas off the coast of Utqiaġvik, features the highest densities of belugas of both populations between July and October.[67]

Beluga whales are an important species for subsistence across eight North Slope communities: Wainwright, Point Lay, Utqiaġvik, Diomede, Kaktovik, Kivalina, Nuiqsut, and Point Hope.[68] In 2014, the Alaska Department of Fish and Game estimated that Utqiaġvik harvested 24.5 beluga whales, roughly 24,312 lbs. of meat.[69] Between 2017 and 2021, the North Slope Borough estimated that, on average, 27 Beaufort belugas and 41 Chukchi belugas were harvested every year.[70]

Ringed seal (*Pusa hispida hispida*)

The Arctic stock of ringed seals (*pusa hispida hispida*) is dispersed throughout the Chukchi and Beaufort seas. The species has an affinity for ice-covered waters, and the ringed seal population

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[63] Naiden, A. *Kaktovik Captain Landed the First Whale of the Season for the Region*, ANCHORAGE DAILY NEWS (September 2023) https://www.adn.com/arctic-sounder/news/2023/09/14/kaktovik-captain-landed-the-first-whale-of-the-season-for-the-region/

[64] *Id.*

[65] Kathleen M. Stafford et al. *Beluga whales in the western Beaufort Sea: Current state of knowledge on timing, distribution, habitat use and environmental drivers*, DEEP-SEA RESEARCH PART II: TOPICAL STUDIES IN OCEANOGRAPHY VOL. 152 PAGES 182-194 (June 2018) https://doi.org/10.1016/j.dsr2.2016.11.017

[66] N.C. Young et al. *Alaska Marine Mammal Stock Assessments, 2022*, National Oceanic and Atmospheric Administration (NOAA), (July 2023) at 92 https://www fisheries noaa.gov/s3/2023-08/Final-AFSC-SAR-Aug17-0.pdf

[67] Kathleen M. Stafford et al.

[68] North Slope Borough, *Documentation of Beluga Harvest*, ALASKA BELUGA WHALE COMMISSION (last visited November 26, 2025) [hereinafter *Documentation of Beluga Harvest*], https://www north-slope.org/departments/wildlife-management/co-management-organizations/alaska-beluga-whale-committee/abwc-research-projects/documentation-of-beluga-harvest/

[69] Alaska Department of Fish and Game, Harvest Information for Community: Utqiagvik (Barrow) 2014. https://www.adfg.alaska.gov/sb/CSIS/index.cfm?ADFG=harvInfo.harvest&CommID=55&Year=2014&primaryOnly (last visited December 1, 2025)

[70] Documentation of Beluga Harvest. These are the most recent data collections on subsistence harvest in Utqiaġvik and beluga harvest.

remains abundant in the Chukchi and Beaufort Seas year-round.[71] They raise their pups on the ice in late winter and early spring, and they molt atop the ice in late spring to early summer.[72] Although the seals spend time resting and rearing their young atop the sea ice, they spend a significant amount of time diving to forage for food.[73] From winter to early summer, when the sea ice begins to break apart, ringed seals maintain breathing holes to haul themselves onto the ice surface. They also inhabit subnivean lairs, a burrow excavated in the sea ice beneath the snow, where they give birth and raise their pups in the spring.[74] Ringed seals are an important Alaska Native subsistence species, as the animals are harvested for oil, food, clothing and other crafts.[75]

Bearded seal (*Erignathus barbatus nauticus*)

The bearded seal (*erignathus barbatus nauticus*) is another ice seal species important for subsistence in North Slope communities. The habitat range of the bearded seal extends from the eastern Beaufort Sea to Bristol Bay.[76] Some bearded seals migrate south ahead of the ice formation in the fall, but many bearded seals remain in the Beaufort and Chukchi Seas year-round.[77] Like ringed seals, Alaska Native communities have a wide range of uses for bearded seals, including clothing, oil, food, rope, cover for skin boats, and other crafts.[78]

Polar bear (*Ursus maritimus*)

Polar bears, the largest living bear species, are marine mammals that are evolutionarily adapted to Arctic sea ice habitat.[79] Ranging across the "ice-covered marine waters and adjacent coastal areas" of the Arctic region, two subpopulations of the species are present in the Chukchi and

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[71] N.C. Young et al. *Alaska Marine Mammal Stock Assessments, 2022*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), (July 2023) at 78 https://www.fisheries noaa.gov/s3/2023-08/Final-AFSC-SAR-Aug17-0.pdf at 78

[72] *Id.*

[73] Andrew L. Von Duyke et al. Ringed seal (Pusa hispida) seasonal movements, diving, and haul-out behavior in the Beaufort, Chukchi, and Bering Seas (2011–2017), ECOLOGY AND EVOLUTION VOL. 10 ISS. 12 (May 2020) https://doi.org/10.1002/ece3.6302

[74] Brendan P. Kelly et al. *Ringed Seal Winter Ecology and Effects of Noise Disturbance*, UNIVERSITY OF ALASKA INSTITUTE OF MARINE SCIENCE (December 1986) at 461 https://espis.boem.gov/final%20reports/147.pdf

[75] Mark A. Nelson et al. "Hunter-assisted study on ringed and bearded seal movements, habitat use, and traditional Knowledge" ALASKA DEPARTMENT OF FISH AND GAME (last visited December 1, 2025) https://www.adfg.alaska.gov/static/research/programs/marinemammals/pdfs/boem_2019_79_M13PC00015_ice_seal_tracking_appendices.pdf

[76] N.C. Young et al. *Alaska Marine Mammal Stock Assessments, 2022*, National Oceanic and Atmospheric Administration (NOAA), (July 2023) at 71 https://www fisheries noaa.gov/s3/2023-08/Final-AFSC-SAR-Aug17-0.pdf

[77] R. Gryba et al. Indigenous Knowledge of bearded seal (Erignathus barbatus), ringed seal (Pusa hispida), and spotted seal (Phoca largha) behaviour and habitat use near Utqiaġvik, Alaska, USA, ARCTIC SCIENCE VOL. 7 ISS. 4 (January 2021) https://doi.org/10.1139/as-2020-0052

[78] *Bearded seal (Erignathus barbatus) Uses*, ALASKA DEPARTMENT OF FISH AND GAME (last visited November 20, 2025), https://www.adfg.alaska.gov/index.cfm?adfg=beardedseal.uses

[79] 78 Fed. Reg. 28212 (May 15, 2008).

Beaufort Sea Planning Areas.[80] Polar bears are completely dependent upon Arctic sea ice for survival, using sea ice as a platform from which to hunt ice dependent seals, their primary food source; to make seasonal migrations between the sea ice where they feed and their terrestrial denning areas; and to find mates. Female polar bears give birth in snow dens excavated either on land or in the snow on top of the drifting sea ice.

Because of their specialized habitats and life history, polar bears are particularly vulnerable to sea ice loss. Polar bears cannot survive without large and accessible seal populations and vast areas of ice from which to hunt.[81] Sea ice loss due to climate change has been identified as one of the major stressors with the potential to affect polar bears, including the loss of denning habitat, access to declining prey species, and increased energy expenditures.[82] In part because of concerns about the declines in sea ice habitat throughout the species' range, the polar bear was listed as threatened under the Endangered Species Act in 2008.[83]

Even short of complete disappearance of sea ice, polar bears will experience a cascade of impacts from climate change, impairing nearly every aspect of their existence. Loss of sea ice has already led to declines in body condition, body size, reproduction, survival rates, population size, and denning habitat, and has altered movements and distribution of polar bears.[84] Loss of sea ice in the southern Beaufort Sea has specifically been linked to reduced polar bear body size and reproduction caused by a lack of nutrition; the loss of sea ice impairs hunting and increases energetic expenditures.[85]

Polar bears are an important subsistence and cultural species for Alaska Native peoples. They are hunted for their meat, and their claws and fur are used for traditional handicrafts and clothing.[86]

Pacific walrus (*Odobenus rosmarus divergens*)

One of the largest pinnipeds in the world, Pacific walruses are found in the shallow continental shelf waters along the coast of the Bering and Chukchi seas, and occasionally the Beaufort Sea, where they use broken sea ice and coastal haulouts to access feeding areas.[87] From April through July, Pacific walruses leave their winter breeding grounds in the Bering Sea to follow leads in the sea ice north into the Chukchi Sea where they remain throughout the summer before returning south again for the winter.[88] The species are generally found in waters less than 100 meters deep that "support a productive benthic invertebrate community," their primary source of

[80] FWS, Species Status Assessment for the Polar Bear (*Ursus maritimus*) at iii (Aug. 18, 2023).

[81] S. C. Amstrup *et al*., Forecasting the Range-wide Status of Polar Bears at Selected Times in the 21st Century, U.S. Geological Survey Administrative Report (2007).

[82] FWS Species Status Assessment for the Polar Bear at iii.

[83] 73 Fed. Reg. 28212 (May 15, 2008).

[84] Amstrup et al at 36.

[85] *Id*.

[86] Hannah Vorhees et al., *Traditional Knowledge about Polar Bears (Ursus maritimus) in Northwestern Alaska*, 67:4 ARCTIC VOL 523, 524 (December 2014).

[87] 82 Fed. Reg. 46618, 46642 (Oct. 5, 2016), FWS, Final Species Status Assessment for the Pacific Walrus (*Odobenus Rosmarus Divergens*) at 16 (May 2017).

[88] 81 Fed. Reg. at 36671; FWS, Species Status Assessment for the Pacific Walrus at 16-19.

food,[89] where they rely on nearshore broken ice pack as a critical foraging platform that allows them continual access to high-quality food patches, some of which otherwise would be prohibitively far from shore.[90] Summer sea ice is particularly important for female and juvenile walruses as a resting surface from which to access the seafloor during feeding dives. While adult males may venture further afield, females and juveniles embark on shorter foraging bouts closer to the ice. Females and juveniles may use terrestrial haul-outs when sea ice is not available, however these walruses must swim farther to feed, increasing energy expenditure, reducing body condition, and leading to nutritional stress, reduced reproductive capacity, and calf abandonment in breeding females.[91] Walruses also have historically relied upon sea ice for breeding, nursing, molting, and resting, and sea ice serves as protection, particularly for females and their young, from predators that may threaten them when they are hauled out on land.

Pacific walruses are an important cultural and subsistence resource for Indigenous communities along the Bering and Chukchi seas coasts.[92] Climate change, however, has greatly reduced the extent and thickness of summer sea ice over the past several decades and the loss of summer sea ice forces walruses to change their use of habitat in dramatic ways and expend more energy to reach critical feeding grounds. These changes increase walruses' vulnerability to predation and disturbance, resulting in increased mortality rates among calves, reductions in available prey, declines in individual health, and overall population decline. Due in large part to these climate-change related impacts, the U.S. Fish and Wildlife Service has determined that walruses warrant listing as endangered or threatened under the Endangered Species Act.[126]

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[89] 81 Fed. Reg., 36664, 36672 (Jul. 7, 2016); FWS, Species Status Assessment for the Pacific Walrus at 14, 19.

[90] Laidre, Kristin L. *et al.*, *Quantifying the sensitivity of Arctic marine mammals to climate- induced habitat change*, 18 ECOLOGICAL APPLICATIONS S97 (2008); Ray et al., Pacific Walrus: Benthic bioturbator of Beringia, 330 J. Experimental Marine Biology 403 (2006); GAY, CHADWICK V. & ANTHONY S. FISCHBACH, PACIFIC WALRUS RESPONSE TO ARCTIC SEA ICE LOSSES (Grillo, Debra ed. 2008); Kovacs, Kit M. *et al.*, *Impacts of changing sea-ice conditions on Arctic marine mammals*, 41 MARINE BIODIVERSITY 181 (2011).

[91] R. L. Taylor & M. S Udevitz, Demography of the Pacific walrus (Odobenus rosmarus divergens): 1974–2006 Marine Mammal Sci. (2014); Jay et al., Walrus areas of use in the Chukchi Sea during sparse sea ice cover, 468 Marine Ecology Progress Series 1-13 (2012); B. Kelly, Climate change and ice breeding pinnipeds, Univ. Alaska Fairbanks (2001); Cooper, Lee W. *et al.*, *Rapid seasonal sea-ice retreat in the Arctic could be affecting Pacific walrus* (Odobenus rosmarus divergens) *recruitment*, 32 AQUATIC MAMMALS 98 (2006); K.L. Laidre, Quantifying the sensitivity of Arctic marine mammals to climate- induced habitat change, 18 ECOLOGICAL APPLICATIONS S97 (2008); Kovacs *et al.* (2011) at 186; MacCracken, James G., *Pacific walrus and climate change: observations and predictions*, 2 ECOLOGY & EVOLUTION 2072 (2012); MacCracken, James E., *Trend in Pacific walrus* (Odobenus rosmarus divergens) *tusk asymmetry, 1990-2014*, 32 MARINE MAMMAL SCI. (2016); Larsen Tempel, Jenell T. & Shannon Atkinson, *Pacific walrus* (Odobenus rosmarus divergens) *reproductive capacity changes in three time frames during 1975-2010*, 43 P B Y 861 (2020); Born et al., Ch. 12: Anthropogenic impacts on the Atlantic walrus, The Atlantic Walrus, Elsevier, Inc. (2021).

[92] FWS, Species Status Assessment for the Pacific Walrus at 46.

a) Seismic activity that accompanies offshore oil and gas leasing threatens marine subsistence species and Alaska Native culture and subsistence harvest practices.

The typically quiet waters of the Arctic allow for sound to travel and be heard by marine mammals at greater distances than non-Arctic waters.[93] Thus, the addition of more anthropogenic sources of sound, such as vessel traffic, seismic activity, and oil and gas production, poses an even greater risk to Arctic marine mammals. Seismic blasting and vessel traffic for oil and gas operations can cause acoustic masking, when frequencies from biological sounds like echolocation overlap with anthropogenic sounds, and behavioral disturbance, when a noise causes a response or a behavioral change.[94] Seismic blasting can disrupt daily activities like foraging, nursing, resting, mating and movement of the species, threatening the short-term and long-term health of the population. Proximity to seismic blasting is also known to cause debilitating hearing loss in cetaceans.[95] Marine species displacement and behavioral changes from seismic exploration and oil and gas production risks making marine subsistence hunting more dangerous for communities who have frequented the same hunting grounds year after year since time immemorial.

The service vessels and seismic airgun arrays utilized for oil and gas exploration introduce anthropogenic noise to the marine environment and subsistence harvesters have already experienced negative impacts to traditional harvest practices caused by sound from seismic exploration. For example, for seismic surveys conducted in the Beaufort and Chukchi Sea planning areas between 2006 and 2008, a study showed that the extensive seismic activity on the Chukchi and Beaufort Seas had adverse effects on marine subsistence activities, despite BOEM having issued a finding of no significant impact.[96] Between January and May 2007, the North Slope Borough Department of Wildlife Management interviewed 215 active harvesters about the impacts and benefits of oil and gas development on the North Slope. Noise pollution from vessel traffic and seismic activity was a major concern among respondents. One hunter shared that whaling vessels needed to travel further distances from the shore to find whales, and that a hunter fatality was caused by venturing into these further and harsher waters of the Chukchi

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[93] Morgan J. Martin et al., *Exposure and behavioral responses of tagged beluga whales (Delphinapterus leucas) to ships in the Pacific Arctic*, MARINE MAMMAL SCIENCE (October 2022) https://doi.org/10.1111/mms.12978.

[94] *Id*.

[95] Lindy Weilgart et al., *A Review of the Impacts of Seismic Airgun Surveys on Marine Life*, Submitted to the CBD Expert Workshop on Underwater Noise and its Impacts on Marine and Coastal Biodiversity (February 25-27, 2014) http://www.cbd.int/doc/?meeting=MCBEM-2014-01.

[96] *Alaska G&G Permits*, BUREAU OF OCEAN ENERGY MANAGEMENT (BOEM) https://www.boem.gov/regions/alaska-ocs-region/alaska-gg-permits (last visited January 13, 2026); Stephen R. Braund & Associates, *Impacts and Benefits of Oil and Gas Development to Barrow, Nuiqsut, Wainwright, and Atqasuk Harvesters*, NORTH SLOPE BOROUGH DEPARTMENT OF WILDLIFE MANAGEMENT. (July 2009) *at Executive Summary vi* https://www.north-slope.org/wp-content/uploads/2022/04/Braund-NSB-Oil-and-Gas-Impacts-July-09-1.pdf.

Sea.[97] Hunters in Wainwright and Utqiagvik cited 51 instances of displacement of marine mammals as a result of offshore oil and gas development activities.[98]

Harvesters from Utqiagvik who had frequented the same hunting areas for decades agreed that displacement of marine species was forcing them to travel further than they typically would. One hunter remarked that the baleen of bowhead whales, used for numerous crafts and tools, became more difficult to harvest following seismic exploration.[99]

Past seismic airgun surveys in the Beaufort and Chukchi have mostly been carried out during the summer and fall when sea ice extent is more limited.[100] This time period is also at the height of the endangered bowhead whale's migration through the Chukchi and Beaufort seas.[101] Oil and gas exploration and development anywhere in the bowhead whale's habitat range threatens to disrupt the annual migration, feeding and reproductive behaviors of the species. Bowhead whales are important bioindicators of ocean health, and changes to their population or behavior could have cascading impacts throughout the marine environment.[102] Citing BOEM, authors of a 2012 paper on the risks associated with offshore oil and gas development in the Arctic wrote that traditional harvesters practice extreme quiet during whaling expeditions because they know that the species is extremely sensitive to sound. Hunters remarked that even the slightest noise, like an oar striking the side of a boat, could reduce chances of a successful hunt.[103]

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[97] Stephen R. Braund & Associates, *Impacts and Benefits of Oil and Gas Development to Barrow, Nuiqsut, Wainwright, and Atqasuk Harvesters*, NORTH SLOPE BOROUGH DEPARTMENT OF WILDLIFE MANAGEMENT. (July 2009) *at Executive Summary vi* https://www north-slope.org/wp-content/uploads/2022/04/Braund-NSB-Oil-and-Gas-Impacts-July-09-1.pdf

[98] *Id.* at iii.

[99] *Id*. at 32 and 106; *See also* Steve McCutcheon Collection, ANCHORAGE MUSEUM, *Baleen B1990.14.5.AKNative.7.8* https://www.anchoragemuseum.org/exhibits/arctic-remix/remix-objects/baleen/; Alena Naiden, ANCHORAGE DAILY NEWS Etching salmon and belugas on bowhead baleen, Alaska elders and youth partake in Iñupiaq art form, (October 16, 2024) https://www.adn.com/arctic-sounder/news/2024/10/16/etching-salmon-and-belugas-on-bowhead-baleen-alaska-elders-and-youth-partake-in-inupiaq-art-form/

[100] *Alaska G&G Permits*, BUREAU OF OCEAN ENERGY MANAGEMENT (BOEM) https://www.boem.gov/regions/alaska-ocs-region/alaska-gg-permits (last visited January 13, 2026)

[101] N.C. Young et al. *Alaska Marine Mammal Stock Assessments, 2022*, National Oceanic and Atmospheric Administration (NOAA), (July 2023) at 290 (Figure 1. Annual range of the Western Arctic stock of bowhead whales by season from satellite tracking data, 2006-2017) https://www fisheries.noaa.gov/s3/2023-08/Final-AFSC-SAR-Aug17-0.pdf

[102] *See* J.C. George et al. *Arctic Report Card 2020: Bowhead whales: recent insights into their biology, status and resilience*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (2020) https://doi.org/10.25923/cppm-n265 ; *see also* Kathi A. Lefebvre et al. *Bowhead whale faeces link increasing algal toxins in the Arctic to ocean warming*, NATURE VOL. 644, PAGES 693–698 (2025) https://doi.org/10.1038/s41586-025-09230-5

[103] Jeff Goodyear et al. *Environmental Risks with Proposed Offshore Oil and Gas Development off Alaska's North Slope*. NATURAL RESOURCES DEFENSE COUNCIL (NRDC), (August 2012) *at* Page 1 https://www.ourenergypolicy.org/wp-content/uploads/2013/09/drilling-off-north-slope-IP.pdf (Source: citing Bureau of Ocean Energy Management, Science and Technology Journal 9 Issue 2 (2012).)

Hunters also experienced increased difficulty of harvesting seal skin, important for clothing and arts and crafts like skin whaling boats and drums.[104] Ringed seals have been documented abandoning their subnivean breathing holes and lairs at higher than normal rates in response to seismic blasting for oil and gas exploration.[105] Lair abandonment can be fatal for nursing pups, and for pups whose mothers force them into the water too early in response to seismic activity. Although pups can be brought with their mothers to alternate lairs, pups with insufficient blubber may not survive the journey or recover enough body heat to survive on arrival.[106] In a study that repeatedly observed ringed seal lair abandonment behaviors over a six year period found that the abandonment rate of subnivean lairs in undisturbed areas in shorefast ice was 4.0%, while the abandonment rate was 32.5% in seal structures exposed to industrial noise like seismic blasting.[107]

Lair abandonment can increase risks of predation of both adults and pups, at the same time reducing the population available for subsistence harvest. Lair abandonment can also decrease the reliability of subsistence harvest areas that are frequented by hunters year over year.[108] When sea ice extent is minimal in the summer and fall, ringed seals have been observed occupying open-water south of the pack ice, leaving them especially vulnerable to oil spills, vessel traffic associated with oilfield services, and anthropogenic noise pollution.[109] If oil and gas exploration is allowed to happen in the Beaufort and Chukchi Seas, the disruption of ringed seal habitat could limit subsistence harvest access.

Bearded seals have been documented transiting through potential OCS lease blocks, and areas important for foraging are in the immediate vicinity of potential seismic activity and oil and gas drilling.[110] The overlap of bearded seal habitat with potential OCS exploration and production

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[104] Stephen R. Braund and Associates, at iii. and 29

[105] Brendan P. Kelly et al., Ringed Seal Winter Ecology and Effects of Noise Disturbance, Outer Continental Shelf Environmetnal Assessment Program Research Unit 232 at 451, https://espis.boem.gov/final%20reports/147.pdf

[106] Brendan P. Kelly et al *Responses Of Ringed Seals (Phoca hispida) To Noise Disturbance*, UNIVERSITY OF ALASKA FAIRBANKS, THE GEOPHYSICAL INSTITUTE (January 1988) https://downloads.regulations.gov/FWS-R7-ES-2021-0055-0010/attachment_2.pdf

[107] Brendan P. Kelly et al. (1988) *Ringed Seal Winter Ecology and Effects of Noise Disturbance*, UNIVERSITY OF ALASKA FAIRBANKS, INSTITUTE OF MARINE SCIENCE, (December 1986) https://espis.boem.gov/final%20reports/147.pdf at 27

[108] Henry P. Huntington et al. Evaluating the Effects of Climate Change on Indigenous Marine Mammal Hunting in Northern and Western Alaska Using Traditional Knowledge, FRONT. MAR. SCI., SEC. GLOBAL CHANGE AND THE FUTURE OCEAN VOL. 4 (September 2017) https://www frontiersin.org/journals/marine-science/articles/10.3389/fmars.2017.00319/full

[109] Andrew L. Von Duyke et al. *Ringed seal (Pusa hispida) seasonal movements, diving, and haul-out behavior in the Beaufort, Chukchi, and Bering Seas (2011–2017)*, ECOLOGY AND EVOLUTION VOL. 10 ISS. 12 (May 2020) https://doi.org/10.1002/ece3.6302 at Figure 2.

[110] Lori T. Quakenbush et al.. *Pinniped movements and foraging: village-based satellite tracking and collection of traditional ecological knowledge regarding ringed and bearded seals*. U.S. DEPT. OF THE INTERIOR, BUREAU OF OCEAN ENERGY MANAGEMENT, ALASKA OUTER CONTINENTAL SHELF REGION, ANCHORAGE, AK OCS Study BOEM 2019-079. 131 pp + appendices (June 2023) at 54 and 55 (Figures 28 and 29) https://www.adfg.alaska.gov/static/research/programs/marinemammals/pdfs/boem_2019_79_M13PC00015_ice_seal_tracking_report.pdf

activity poses risks to the species and risks displaces populations from waters frequented by subsistence hunters who depend on reliable harvests.

Beluga whales, another important subsistence species for Alaska Native communities, are reliant on sound for survival. Beluga whale vocalizations allow them to communicate with each other, hunt for prey, and understand their surroundings using echolocation.[111]

Failure to adequately understand the impacts of seismic activity on marine species risks limiting Alaska Natives' access to subsistence resources,[112] which is a civil right recognized by both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.[113] The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) also recognizes Indigenous peoples' right to "just and fair redress" when deprived of their means of subsistence.[114]

Local traditional knowledge and the well-documented experiences of hunters from the last attempt to expand offshore oil and gas development into the Arctic Ocean must be considered as the agency considers new oil and gas leasing in the region. To protect the subsistence rights of Alaska Native peoples on the North Slope, BOEM should not hold lease sales in the Beaufort Sea, Chukchi Sea, or High Arctic Planning Areas.[115]

b) A spill in the Arctic would irreparably harm subsistence practices and would be impossible to clean up effectively due to harsh conditions.

Oil spills are an inevitable consequence of offshore drilling. The National Oceanic and Atmospheric Administration (NOAA) responds to over a hundred oil spills in federal waters every year.[116] These spills, especially catastrophic oil spills, are a threat to human health and the

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[111] NOAA Fisheries, *5 Facts About How Belugas Use Sound*, (March 2023) https://www fisheries noaa.gov/alaska/outreach-and-education/5-facts-about-how-belugas-use-sound (last visited December 1, 2025)

[112] Protection of the Arctic Marine Environment (PAME) Secretariat, Management of Arctic Marine Oil and Gas Associated Noise, ARCTIC COUNCIL (May 2025) https://oaarchive.arctic-council.org/server/api/core/bitstreams/c2a558a2-8b59-422f-8dcd-dcf0a77d3214/content (discussing the impacts of oil and gas activities on the abundance and accessibility of marine life essential to subsistence in the Arctic)

[113] *See* International Convention on Civil and Political Rights, Mar. 23, 1973, 999 U.N.T.S. 171; *see also* International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

[114] United Nations, General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (October 2007), art. 20, at page 7 https://www.refworld.org/legal/resolution/unga/2007/en/49353 (last visited Nov. 10, 2025).

[115] Less information is available on the reliance of subsistence species on the High Arctic environment compared to the Beaufort and Chukchi Seas, although it is clear that ringed seals utilize deep-water Arctic Basin habitat between 70° N latitude and 75° N latitude, the furthest extent of the Beaufort Sea Planning Area. Andrew L. Von Duyke et al. (2020) https://doi.org/10.1002/ece3.6302). In the absence of baseline information on marine mammal use of the High Arctic, leasing in this area is inappropriate.

[116] National Oceanic and Atmospheric Administration, Office of Response and Restoration, *Looking for Information about Oil Spills?* https://response.restoration.noaa.gov/about/media/looking-information-about-oil-spills.html (last visited December 18, 2025).

marine environment. It is well documented that "shoreline cleanup operations in the Arctic and Subarctic are more challenging than those in more temperate and populated regions because of environmental and logistical challenges."[117] The head of the Coast Guard has previously remarked that Arctic Ocean sea conditions on "a pretty darned good day" are akin to those that made *Deepwater Horizon* cleanup operations "virtually impossible."[118]

Indeed, the best available science demonstrates that oil spills cannot be cleaned up in the Arctic, and that oil can travel for thousands of miles across the region, should a spill occur. The most distinctive and greatest risk of a spill in the Arctic is the risk that a blowout will continue, unabated, throughout the long winter. In the fall, the "quick transition from open-water to 100% ice means that the ability to respond degrades very rapidly."[119] At that point, it becomes impossible to stop a blowout. In addition, the oil becomes encapsulated in ice, where it can travel for over a thousand miles before being released during the spring breakup.[120]

Even in the short "open water" season, ice floes, hurricane-strength storms, and extensive fog would affect access and working conditions during spill response.[121] In an assessment of two sites in the Beaufort and Chukchi Seas, a study commission by BOEM concluded mechanical recovery would be impossible for an average of 43 percent of the time from July through October.[122] Dispersants could not be applied every one out of five days, and *in situ* burning would be possible to attempt only two-thirds of the time.[123]

The difficulty with conducting oil and gas operations in the Arctic is exacerbated by the fact that so little infrastructure exists in the region. As succinctly summarized by a Commandant of the U.S. Coast Guard, "there is nothing up there to operate from at present and we're really starting from ground zero."[124] "The lack of infrastructure in the Arctic would be a significant liability in the event of a large oil spill. . . . It is unlikely that responders could quickly react to an oil spill unless there were improved port and air access, stronger supply chains and increased capacity to handle equipment, supplies and personnel."[125] Yet, even with sufficient infrastructure in place, response capacity would be severely limited in the Arctic. Even in the much calmer waters of the Gulf of Mexico, oil spill response methods are woefully ineffective, and in any event, "cannot

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[117] Huifang Bi et al., *Oil spills in coastal regions of the Arctic and Subarctic: Environmental impacts, response tactics, and preparedness*, 958 SCIENCE OF THE TOTAL ENVIRONMENT 178025 at 1 (Dec. 16, 2024), https://pubmed.ncbi nlm nih.gov/39689468/.

[118] S. Waldman & CLIMATEWIRE, *The U.S. Is Not Ready to Clean Up an Arctic Oil Spill*, SCIENTIFIC AMERICAN (July 19, 2017), https:/www.scientificamerican.com/article/the-u-s-is-not-recady-to-clean-up-an-arctic-oil-spill/ .

[119] Nuka Planning Group, LLC, *Estimating an Oil Spill Response Gap for the U.S. Arctic Ocean*. 28 (Jun 10, 2016), [hereinafter *Response Gap Analysis*].

[120] Presidential Oil Spill Commission at 302.

[121] *Id.*

[122] Response Gap Analysis at ii.

[123] *Id.*

[124] Deborah Zabarenko, *Arctic Oil Spill Would Challenge Coast Guard*. REUTERS. June 20, 2011. Available at https://www reuters.com/article/us-arctic-oil/arctic-oil-spill-would-challenge-coast-guard-idUSTRE75J6O620110620.

[125] National Research Council, *Responding to Oil Spills in the U.S. Arctic Marine Environment* (2014) [hereinafter *National Research Council*], available at https://www nationalacademies.org/read/18625/chapter/2.

simply be transferred to the Arctic."[126] These existing, inadequate technologies have not been sufficiently tested in realistic Arctic conditions.[127]

Oil from a major spill in the Arctic Ocean could readily affect waters and coasts throughout the U.S. Arctic and beyond.[128] These impacts occur even on the implausible assumption that spill response measures work as well as they did in the marginally effective response to the *Deepwater Horizon* disaster in 2010, although conditions in the Arctic are far harsher and responders far harder to mobilize than in the Gulf of Mexico.[129]

Oil spill response expert and retired NOAA official Doug Helton underscored these points, testifying in Congress in 2025 that Arctic environmental conditions "would severely complicate any [oil spill] cleanup response" and highlighting the immense logistical challenges for spill response in this region.[130]

Areas at risk include the coastline of the Arctic National Wildlife Refuge, home to the greatest density of polar bear maternity dens in the U.S. Also threatened is sensitive shoreline habitat for nursing beluga whales, ice seals, and many other species. Offshore, oil is likely to cover highly productive and vulnerable marine areas. These include Barrow Canyon, an important stopping place for migrating whales and high densities of summering seabirds like shearwaters, eiders, and loons. They also include Hanna Shoal, a critical area for the Pacific walrus, ice seals, and the polar bears that feed on them.[131] Canadian and Russian marine areas are under threat as well and so is the biologically and economically critical Bering Strait.

Spill countermeasures would also cause serious damage to Arctic resources. The mode of operation of dispersants – breaking up oil, distributing it throughout the water column, and settling dispersant-oil mixtures on the ocean floor – combined with their demonstrated toxicity, especially when mixed with oil,[132] makes them of particular concern in the Arctic. Arctic ecosystems are characterized by relatively short and simple food chains—for example "phytoplankton- zooplankton-fish-seal-polar bear or phytoplankton-zooplankton-whale."[133] Such

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[126] National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Final Report to the President: Deep Water The Gulf Oil Disaster and the Future of Offshore Drilling 302 (January 2011) [hereinafter National Oil Spill Commission Report]. http://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf at 303-04.

[127] National Research Council.

[128] *See* Mark West, *The Fate of the Arctic in Offshore Oil Blowouts*, Natural Resources Defense Council (NRDC), (2016), Available at https://www.nrdc.org/sites/default/files/fate-oil-arctic-ocean-blowouts-report.pdf.

[129] *Id*. at 18.

[130] Hearing on H.R. 513, H.R. 931, H.R. 2250, H.R. 2556, H.R. 3168 & H.R. 3176 Before the H. Comm. on Nat. Res. Subcomm. on Energy & Mineral Res., 119th Cong. at 3 (May 20, 2025) (statement of Mr. Doug Helton, Former Reg'l Operations Supervisor, Emergency Response Div. (Retired), NOAA, available at https://www.congress.gov/119/meeting/house/118250/witnesses/HHRG-119-II06-Wstate-HeltonD-20250520.pdf.

[131] Speer and Laughlin.

[132] *See, e.g*., Roberto Rico-Martínez et al., *Synergistic Toxicity of Macondo Crude Oil and Dispersant Corexit 9500A® to the Brachionus Plicatilis Species Complex (Rotifera)*. Environmental Pollution Vol. 173 Pages 5-10. (2013) https://doi.org/10.1016/j.envpol.2012.09.024

[133] Chapman, P.M. and M. J. Riddle. 2005. *Toxic effects of contaminants in polar marine environments*. Environmental Science & Technology 5:200–207. *See also* Tom Harner 1997. *Organochlorine contamination of the*

ecological simplicity poses inherent risks—losing a single species can have extremely serious repercussions.[134] Characteristically lower rates of reproduction among Arctic species, as well as stresses induced through climate change- related fluctuations in temperature, ice cover, and ocean acidity, only serve to further compound the ecosystems' vulnerability.[135]

The region's short food chains anchored in benthic productivity and constrained by the short "open water" season, are highly vulnerable to the effects of toxic oil-dispersant mixtures settling on the sea bottom. The risks are all the more serious because of the acknowledged lack of good data on the functioning of Arctic marine ecosystems. Even in much better studied and understood pelagic systems like the Gulf of Mexico, serious dispersant impacts continue to come to light.[136] Added to the potentially severe environmental consequences for Arctic Ocean species and systems is the possibility that dispersant exposure has contributed to the documented human lifespan impacts of working to clean up major oil spills in Alaska.[137]

Traditional hunters have expressed deep concerns with oil spill risk associated with offshore production in the Arctic Ocean, including the immense hurdles to accessing areas where spills could occur and cleaning up oil from water or ice. [138] Harvesters with generations of traditional knowledge about the conditions of the waters off their coastline have said that oil spill would not be possible to clean up, especially amidst sea ice.[139] This traditional knowledge aligns with the science and the known limits of oil and gas industry technology today, as discussed in Section V.B.

Oil that persists in the habitats of subsistence species causes serious harm to those species and the people who rely on them. In 2012, ice seals that were exposed to oil in the Bering Strait were found to have hepatic, pulmonary, and cardiac lesions alongside elevated levels of pollutants in their tissue. These seals were initially harvested for subsistence consumption, but were instead submitted for post mortem examination due to their visible signs of petroleum exposure.[140]

Canadian Arctic and speculation on future trends. Int. J. Environment and Pollution. 8(1/2): 51-72. https://www researchgate net/publication/264438886_Organochlorine_contamination_of_the_Canadian_Arctic_and_speculation_on_future_trends

[134] Barcott, B. 2011. *In Thawing Arctic, Fragile Food Web at Risk of Unraveling*. InsideClimate News. 23 Feb. 2011. Available at http://insideclimatenews.org/news/20110223/arctic-food-web-climate-change-polar-bears-part-i.

[135] *Id*.

[136] *See, e.g.*, DeLeo, D.M., D.V. Ruiz-Ramos, I.B. Baums, and E.E. Cordes. 2015. *Response of deep-water corals to oil and chemical dispersant exposure*. Deep-Sea Research II. Available at http://dx.doi.org/10.1016/j.dsr2.2015.02.028. (All three species of coral examined showed more severe declines from exposure to dispersants and dispersant-oil mixtures than from oil alone.)

[137] *See, e.g.*, Tim King *Oil Worker life spans and dangerous times in a world of BP and greed*. Salem-News. June, 30, 2012. Available at http://www.salem-news.com/articles/june302010/oil-lifespans.php.

[138] Stephen R. Braund & Associates, *Impacts and Benefits of Oil and Gas Development to Barrow, Nuiqsut, Wainwright, and Atqasuk Harvesters*, NORTH SLOPE BOROUGH DEPARTMENT OF WILDLIFE MANAGEMENT. (July 2009) at 62 https://www north-slope.org/wp-content/uploads/2022/04/Braund-NSB-Oil-and-Gas-Impacts-July-09-1.pdf

[139] *Id.*

[140] Raphaela Stimmelmayr et al, Oil fouling in three subsistence-harvested ringed (Phoca hispida) and spotted seals (Phoca largha) from the Bering Strait region, Alaska: Polycyclic aromatic hydrocarbon bile and tissue levels and

Human ingestion of oiled marine species risks consumption of the polycyclic aromatic hydrocarbons (PAHs) that accumulate in the tissues of marine species exposed to oil spill exposure.[141] PAHs can be deadly in marine species,[142] and the same is the case for humans who consume them.[143] PAHs are carcinogenic, and can result in cancerous tumors impacting a number of organs including the skin, lungs, pancreas, esophagus, bladder, colon, and female breast. Risk of developing cardiovascular diseases (CVD), including atherosclerosis, hypertension, thrombosis, and myocardial infarction have also been documented as a result of PAH exposure.[144]

In addition to consumption risks, oil spills in the marine environment could reduce the availability of subsistence species by causing death and displacement of those species. The *Exxon Valdez* disaster, a catastrophic oil spill caused by an oil tanker that ran aground while traversing through Prince William Sound, caused significant harm to the marine environment. The spill collapsed the herring fishery and devastated the pink salmon population. One study found that pink salmon and Pacific herring embryos exposed to even trace amounts of PAHs via Alaska North Slope crude oil experienced abnormal hearts, reduced cardiorespiratory function, and hemorrhaging in the head as they grew into juveniles.[145] Both of these species, alongside other varieties of salmon (chum, coho, chinook and sockeye) and other species of fish (e.g. pacific halibut, smelts, Arctic cisco, and Arctic grayling) are harvested for subsistence in villages along the coasts of the Chukchi and Beaufort Seas.[146] In 2023, Wainwright harvested roughly 10,513 pounds of fish, averaging about 73 pounds of fish per household.[147] An oil spill in the Beaufort or Chukchi Seas could imperil access to fish stocks that are important for subsistence throughout North Slope communities. In a place where the living resources of the sea are vital to the wellbeing of the people who live along its coasts, there is no amount of acceptable risk for a

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pathological findings, MARINE POLLUTION BULLETIN VOL. 130 PAGES 311-323, (May 2018) https://doi.org/10.1016/j.marpolbul.2018.02.040.

[141] California Office of Environmental Health Hazard, *PAHs in Fish and Shellfish*, https://oehha.ca.gov/fish/pahs-fish-and-shellfish (last visited December 18, 2025)

[142] Stimmelmayr et al.

[143] Manthar Ali Mullah et al. *Polycyclic aromatic hydrocarbon and its effects on human health: An overview*, CHEMOSPHERE VOL. 296 (June 2022) https://doi.org/10.1016/j.chemosphere.2022.133948.

[144] *Id.*

[145] John P. Incardona et al, *Very low embryonic crude oil exposures cause lasting cardiac defects in salmon and herring*, SCI. REP. 5 (September 8, 2015) https://doi.org/10.1038/srep13499.

[146] Craig George et al., A Field Guide to the Common Fishes of the North Slope of Alaska, DEPARTMENT OF WILDLIFE MANAGEMENT, NORTH SLOPE BOROUGH & MJM RESEARCH (July 2009) https://www north-slope.org/wp-content/uploads/2022/04/Field_Guide_to_NS_Fishes_2009_George_Moulton_Johnson.pdf

[147] Jane Litvin et al. *Technical Paper No. 511 The Harvest and use of Wild Resources in Wainwright, Alaska, 2023* ALASKA DEPARTMENT OF FISH AND GAME DIVISION OF SUBSISTENCE (June 2025) https://www.adfg.alaska.gov/techpap/TP511.pdf

catastrophic oil spill. This is particularly troubling because Interior has estimated there is a "75 percent chance of one or more large [oil] spills" if the Chukchi Sea is developed.[148]

As the science overwhelmingly demonstrates, the risks of irreparable damage from oil spills and the certainty of damage from exploration, are far too great for it ever to be in the public interest to lease these areas. President Obama cited these risks in his withdrawal of 125 million acres of U.S. Arctic from oil and gas leasing, noting that the Arctic "is a unique, vibrant, and vulnerable ecosystem that is home to several Federally listed and candidate species under the Endangered Species Act, including iconic and culturally valuable species, and upon which many Alaska Native communities rely for subsistence use and cultural traditions."[149] He expressly relied on the fact that Arctic exploration and development posed significant and largely unavoidable threats owing to the Arctic's "harsh environmental conditions, geographic remoteness, and a relative lack of fixed infrastructure."[150]

2. Arctic Sea Conditions Are Too Harsh and Unpredictable for Safe Development and Effective Spill Containment is Virtually Impossible.

Local conditions create serious challenges for exploration and development

Meteorologic and marine conditions in the Chukchi and Beaufort Seas mean no drilling in the OCS there is safe drilling. As the President's oil spill commission noted: "[t]he Alaskan Arctic is characterized by extreme cold, extended seasons of darkness, hurricane-strength storms, and pervasive fog—all affecting access and working conditions."[151] No amount of oversight and preparation can change the fact that the same conditions making human error there so disastrous also make it entirely predictable. The inordinately well-financed Shell drilling effort in 2012 in both seas illustrated this only too well, with the stress of environmental challenges translating into a sobering string of miscalculations, mistakes, and reversals by company personnel and contractors.[152]

In the Chukchi and Beaufort Seas, fog persists for long periods of time and weeklong storms occur with extreme winds.[153] Ocean currents flow in complex patterns reversing direction rapidly and varying significantly in both magnitude and local direction.[154] Subsurface circulation can be just as complex and trend in the opposite direction.[155] Waves run to 20 feet.[156] And even

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[148] Obama, B. *Fact Sheet: President Obama Protects 125 Million Acres of the Arctic Ocean* [hereinafter "Obama Withdrawal Fact Sheet"], p.1. December 20, 2016. Official supporting rationale for presidential decision, available at https://www.doi.gov/sites/doi.gov/files/uploads/2016_arctic_withdrawal_fact_sheet_for_release.pdf.

[149] *Id.*

[150] *Id.*

[151] National Oil Spill Commission Report at 263.

[152] Kroh, K. and M. Conathan. 2013. *Timeline: Documenting Shell's 2012 Arctic Drilling Debacle* (2013), https://thinkprogress.org/timeline-documenting-shells-2012-arctic-drilling-debacle-6258b89aeead/.

[153] Pew Environment Group, *Oil Spill Prevention and Response in the U.S. Arctic Ocean: Unexamined Risks, Unacceptable Consequences* (2010) [hereinafter *Pew Environmental Group*] http://www.pewtrusts.org/~/media/legacy/uploadedfiles/peg/publications/report/Oil20Spill20Preventionpdf.pdf.

[154] National Research Council.

[155] *Id.*

[156] Pew Environment Group.

as climate change will likely continue to shrink the polar ice cap, that will likely be accompanied by significant increases in wave height extremes and wind intensification.[157] Indeed, winds already show an increasing trend over the past 30 years, and large waves over the past decade.[158]

Some of the gravest challenges to drilling operations and safety are associated with ice. Even in the summer, ice intrudes on drill sites,[159] as Shell found out in 2012, when within a day of finally sinking a drill bit into the Chukchi seafloor its rig had to cap operations and flee before a floe roughly the size of Manhattan.[160] Indeed, throughout the summer, ice conditions in the Chukchi and Beaufort Seas remain highly variable.[161] Moreover, at the end of the brief drill season, when freeze up comes, ice free waters transition to ice cover in a matter of days.[162] As new ice forms, it would rapidly encapsulate any spilled oil, to release it later on the surface during break up.[163] Once encapsulated, the oil could travel enormous distances over winter, as much as 1200 miles net of backtracking.[164]

Even during the "open water" exploration and drill season, spill response would often be impossible. In a study of two sites in the Canadian Beaufort (a near shore site roughly as close in as previously leased U.S. Beaufort Sea leases and another further offshore comparable to now-relinquished U.S. Chukchi leases), a study commission by the National Energy Board of Canada concluded that oil spill response countermeasures often could not be brought to bear effectively. Containment and recovery would be impossible for an average of 46 percent of the open water time from June through October for the near offshore site and 47 percent for the far offshore one.[165]

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[157] Khon, V.C. et al. 2014. *Wave heights in the 21st century Arctic Ocean simulated with a regional climate model*. 41 Geophys. Res. Letters 2956-61.

[158] National Research Council.

[159] *Id*.

[160] Kim Murphy, *Ice threat halts Shell's drilling in Arctic Ocean after one day*, LA TIMES (Sep. 10, 2012), http://articles.latimes.com/2012/sep/10/nation/la-na-nn-shell-ice-arctic-drilling-chukchi-20120910.

[161] *Id.*

[162] *Id.*

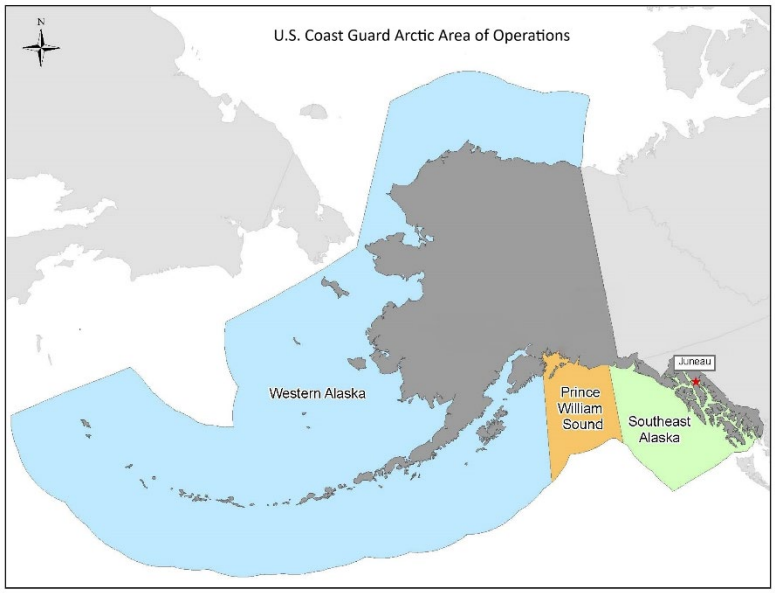
[163] LOOKNorth, Oil Spill Detection and Modeling in the Hudson and Davis Straits, Final Report R-13-087-1096 (2014), https://www.ugpti.org/smartse/research/citations/downloads/Warren-Oil_Spill_Detection_and_Modelling-2014.pdf.

[164] National Research Council; *see also* National Oil Spill Commission at 302 ("oil-spill response efforts are complicated year-round by the remote location and the presence of ice, at all phases of exploration and possible production").

[165] National Energy Board of Canada. 2011. *Spill Response Gap Study for the Canadian Beaufort Sea and Davis Strait*. Available at http://aleutianriskassessment.com/documents/A2A6V0_-_SL_Ross_Environmetal_Research_Limited_-_Spill_Response_Gap_Study_for_the_Canadian_Beaufort_Sea_and_the_Canadian_Davis_Strait.pdf. (Because this study conservatively looked only at response availability during fully "open water" conditions and did not count other days from June through October when drilling would be allowed but some ice would be present, it very likely underestimated summer season days on which remediation would be ineffective.).

Dispersants—whatever their marginal efficacy and irrespective of their environmental impacts, discussed below—could not be applied aerially 54 percent of that time near shore, and 52 percent at the farther offshore site; for in situ burning the percentages were 50 and 52, respectively.[166]

Lack of Emergency Infrastructure and Gaps in Oil Spill Response.



The remote location of Arctic OCS drilling sites and their distance from additional oil spill response support require oil and gas operators to plan and prepare for self-rescue and emergency response.[167] The United States Coast Guard (USCG) station does not have a station in the Arctic.[168] The closest stations are in Dutch Harbor and Kodiak, Alaska, over a thousand miles away.[169] The USCG Area of Responsibility for Alaska covers over 3,853,500 square miles and more than 47,300 miles of shoreline across Alaska and the Arctic.[170] As shown in the map, the USCG Area of Responsibility is currently limited to the EEZ (200 miles offshore) and would need to be expanded to include the High Arctic OCS Planning Area, which extends well beyond the EEZ. Furthermore, the USCG lacks sufficient ice-breaking vessel capability, funds, and resources to effectively respond to oil spills, disasters, or provide emergency response in the High Arctic.[171]

Only two airports, Utqiagvik and Deadhorse, can accommodate cargo planes. Once planes land there, a very limited road system runs along the Arctic coastline.[172] There are a few port infrastructure facilities where marine vessels can bring in supplies only during a few months of the year when the water is open.[173]

The Arctic's remote location, limited infrastructure, and harsh weather conditions could delay or hinder oil spill response efforts during an emergency. For most of the year, sea ice, wind, and visibility, along with other physical factors, surpass the operational limits of equipment; as a

[166] *Id.*
[167] Harvey Memorandum at 8.
[168] *Id.*
[169] *Id.*
[170] *Id.*; U.S. Coast Guard, Arctic District, https://www.pacificarea.uscg.mil/Our-Organization/Arctic-District/
[171] *Id.*
[172] *Id.*
[173] *Id.*

result, emergency response may be unsuccessful or impossible – this situation is known as the oil spill response gap.[174]

Mechanical oil spill response is mandated under the Oil Pollution Act of 1990 (OPA) for all US OCS waters.[175] Operators must demonstrate this capability to secure exploration and production permits. This capability has not been established for the High Arctic.[176] More effort is needed to acquire and design equipment that works reliably in this region, and to determine the seasons when response is feasible.[177] Alternative oil spill response methods like in situ burning and dispersants are not currently authorized as the primary response under OPA.[178] Although the federal government can approve in situ burning or dispersant use during an actual spill, operators must first prove they have sufficient mechanical response capacity to obtain a permit.[179] In situ burning and dispersant application do not remove oil from the environment and can result in air and water pollution.[180]

There is minimal prepositioned oil spill response equipment and trained emergency responders in the Arctic.[181] The current toolkit meets the minimum federal and state standards for mechanical oil spill response, and is not currently designed to respond to an oil spill in the High Arctic OCS Planning Area.[182]

Blowout Control

Arctic-specific well-capping and containment systems would be required for any High Arctic OCS Planning Area drilling operations.[183] The Arctic Ocean's severe weather conditions require built-for-purpose equipment. Arctic operators must have their own equipment or contract a system that meets Arctic engineering standards, including a well-capping stack, containment dome, and surface processing vessel, to control a blowout.[184] The system must be located near the well site to ensure rapid well control. A well containment system is also needed, in addition to the well capping system, to manage a well blowout where well capping alone could result in hydrocarbons escaping or breaching into the sea.[185] These systems have not yet been proven effective for the High Arctic OCS water depths and ice conditions, and significant technical work remains to validate these systems.[186]

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[174] Harvey Memorandum at 11.
[175] *Id.*
[176] *Id.*
[177] *Id.* at 11-12.
[178] *Id.* at 12.
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id*. at 12.
[184] *Id.*
[185] *Id.*
[186] *Id.*

3. Arctic Ocean Oil Would Not Benefit U.S. Consumers.

Quite apart from the numerous ways in which exploration and development of Arctic Ocean oil resources is contrary to the public interest, they offer no rational upside to Americans. These fuels could not make it to market until after we need to be largely finished transitioning away from reliance on fossil fuels. In addition to the time needed for the OCSLA approval process, due to the small annual window for exploration and development activities, the inevitable interruptions during those windows for ice flows, whale migrations, rough weather, and equipment failures, and the current lack of infrastructure, these fuels could not reach American consumers for decades. For example, in 2015, before Shell abandoned its Arctic Ocean drilling effort altogether on leases it won in 2008, its CEO said production was still about 15 years off.[197]

4. Leasing is Irresponsible in the High Arctic.

By including a High Arctic sale in the Program, BOEM disregards an array of serious problems. The lack of resource potential,[187] sheer technical infeasibility of developing fossil fuels in the High Arctic, and the near-impossibility of monitoring[188] and spill cleanup—all discussed elsewhere in these comments—should each alone be enough to remove the area from the Draft Proposed Program.

Another critical problem is that Interior would run afoul of international law by leasing in the extended continental shelf. The U.S. has unilaterally laid claim to these areas, purporting to be "in accordance with the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (Convention)."[189] The Convention requires party states to submit information on their extended continental shelf claims to the Commission on the Limits of the Continental Shelf (Commission).[190] The Commission must then make recommendations on the extended continental shelf limits before the Convention recognizes them as binding.[191] While the U.S. is not a party to the Convention and generally not bound by its provisions, the U.S. Department of State has consistently referred to portions of the Convention, particularly those establishing jurisdictional limits, as "customary international law" binding on all nations.[192] Therefore, if the U.S. was a party to the Convention, its claim to the extended continental shelf would be, at best, premature.[193] As a non-party, the U.S. would still need to submit its extended continental shelf

[187] *See, e.g.* Draft Proposed Plan at 5-11 ("Currently, BOEM describes the High Arctic Planning Area as having negligible resource potential.").

[188] *See, e.g.* Bureau of Safety and Environmental Enforcement, Alaska OCS Regional Director, Comment, BOEM-2025-0483-0491 (Nov. 28, 2025) ("BSEE's workforce in Alaska is currently below sustainable levels necessary to oversee current lease operations.").

[189] ECS Executive Summary at 6.

[190] United Nations Convention on the Law of the Sea art. 76(8), Dec. 10, 1982, 1833 U.N.T.S 397 (Convention).

[191] *Id*.

[192] ECS Executive Summary at 7 (originally published in 2023, this document was revised by the Trump Administration in 2025 to reflect a change to the name of the Gulf of Mexico. The Administration had the opportunity to revise the acknowledgement of the Convention as reflecting customary international law at the time, but did not.).

[193] *See* M. Salavitch*, The United States Has Declared the Boundaries of Its Extended Continental Shelf: What Comes Next?*, FORDHAM INT'L LAW J. (Apr. 30, 2024) (Salavitch 2024), https://www.fordhamilj.org/iljonline/the-

claim information package to the Commission for its expansion declaration to gain any legal validity.[194] Additionally, other countries dispute much of the area claimed by the U.S.[195] Leasing activity in these areas would not only cause conflicts with neighboring states but could also further violate the Convention.[196]

Legality aside, BOEM admits that it knows very little about the High Arctic. [197] Based entirely on that lack of knowledge, BOEM ranks the region as the least environmentally sensitive OCS area, stating that its "environmental sensitivity score . . . reflects significant knowledge gaps rather than low ecological importance."[198] And BOEM fails to engage with what *is* known about the region—facts that demonstrate the High Arctic is in fact extremely ecologically sensitive and already under enormous strain due to climate change.

For example, BOEM includes just one sentence on how the area "supports critical ice-obligate marine mammals including polar bears and ringed seals."[199] It fails to mention in the same section that these polar bears and ringed seals are listed as threatened under the Endangered Species Act.[200] And the primary threat to both species is the loss of sea ice.[201] The sea ice on which they rely—historically a constant feature of the High Arctic—is decreasing in minimum extent by 12.2% per decade.[202] As the planet continues to warm, these threatened animals will face increasingly extraordinary challenges. In addition to providing a surface on which to live and hunt, sea ice forms the basis of their food chain. The salt expelled from water that becomes sea ice allows the formation of the algae that feeds organisms such as zooplankton.[203] Those

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united-states-has-declared-the-boundaries-of-its-extended-continental-shelf-what-comes-next (explaining that the U.S. "boundaries were not determined 'based on the recommendations' of the [Commission] and therefore are not 'final and binding' as a matter of treaty law under [the Convention].") (citing Convention art. 76(8)).

[194] *See* ECS Executive Summary at 7.

[195] *See, e.g.,* I. M. Stevenson, *3 questions answered about Interior's High Arctic plans*, ENERGYWIRE May 5, 2025), https://www.eenews.net/articles/3-questions-answered-about-interiors-high-arctic-plans/ (explaining that more than 94,000 square miles of the High Arctic overlaps with Canada's claims).

[196] *See* Convention art. 83; *see also id.* art. 82 (requiring states to make payments for exploiting continental shelf resources beyond 200 nautical miles).

[197] Draft Proposed Program at 10-20.

[198] *Id*.

[199] *Id*.

[200] NOAA, Ringed Seal: Conservation & Management, https://www.fisheries noaa.gov/species/ringed-seal/conservation-management (explaining that the Arctic subspecies is listed as threatened) (last visited Dec. 20, 2025); *see also* NOAA, Ringed Seal: Overview ("*World map providing approximate representation of the Arctic subspecies of ringed seal"* showing range throughout the High Arctic), https://www.fisheries noaa.gov/species/ringed-seal/overview (last visited Dec. 20, 2025).

[201] NOAA, Ringed Seal: Overview, ("Loss of sea ice and snow cover on the ice poses the main threat to this species."), https://www fisheries noaa.gov/species/ringed-seal/overview (last visited Dec. 20, 2025); U.S. Fish & Wildlife Serv., The U.S. Fish and Wildlife Service Finds Polar Bear Status Remains Threatened (Sept. 25, 2023) ("The Service listed the polar bear as threatened due to the loss of its sea ice habitat.").

[202] NASA, *Arctic Sea Ice Minimum Extent – Earth Indicator (*last updated Sept. 25, 2025), https://science.nasa.gov/earth/explore/earth-indicators/arctic-sea-ice-minimum-extent/.

[203] F. Lehner, *Key Facts about Arctic Sea Ice*, POLAR BEARS INT'L (July 1, 2024), https://polarbearsinternational.org/news-media/articles/arctic-sea-ice-key-facts.

zooplankton are eaten by Arctic cod, which are eaten by seals, which are eaten by polar bears.[204] The extensive infrastructure required for any High Arctic development would further degrade the sea ice and this region as habitat for Arctic species.

Regarding polar bears, the High Arctic overlaps with the range of both Alaskan subpopulations, the Southern Beaufort Sea and the Chukchi Sea bears.[205] At the time the Fish and Wildlife Service designated critical habitat for these bears, it noted that the critical sea ice habitat zone did not extend north of the EEZ line (the southern boundary line of the High Arctic) because the agency was limited by regulation "to designating critical habitat only on lands and waters under U.S. jurisdiction."[206] BOEM neglects to consider whether, now that the U.S. is asserting jurisdiction to these extraterritorial waters, it should extend the bears' designated critical habitat.[207] The U.S. laid claim to this territory just over two years ago,[208] leaving agencies little time to make such considerations. Indeed, despite being provided with numerous studies to inform consideration of how High Arctic development could affect polar bears and their habitat,[209] BOEM simply claims that the area is "data-deficient"; nevertheless, it proposes to sell oil and gas leases there.[210]

All this aside, leasing in the High Arctic does not make sense because Interior recently concluded that the area's "petroleum potential is negligible."[211] In addition, the oil spill response problems discussed elsewhere would be magnified in the extremely remote high seas of the Arctic. Further, as discussed in more detail elsewhere, the expense and risk of exploration and drilling—already excessive throughout Alaska—would be exacerbated in such a far-flung area.

5. Cook Inlet is Critically Important to Coastal Communities and Should Be Off Limits to Expanded Leasing.

Cook Inlet, a tidal estuary bounded by the Kenai Peninsula, underpins the ecology, culture, and economy of southcentral Alaska. BOEM acknowledges that Cook Inlet is one of the most ecologically sensitive regions of the OCS.[212] The Inlet hosts unique wildlife and stunning

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[204] *Id*.

[205] *See* Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Polar Bear (Ursus maritimus) in the United States, 75 Fed. Reg. 76086, 76088 (Dec. 7, 2010) (showing ranges of the two bear populations).

[206] 75 Fed. Reg. 76121.

[207] *See, e.g.*, R. Wilson *et. al*, *Identifying polar bear resource selection patterns to inform offshore development in a dynamic and changing Arctic*, 5 ECOSPHERE 10 Figure 3 (Oct. 31, 2014), **https://doi.org/10.1890/ES14-00193.1** (Showing medium to high probability of use by polar bears of area north of the Chukchi planning area in June and September).

[208] *See,* I. M. Stevenson, *3 questions answered about Interior's High Arctic plans*, ENERGYWIRE (May 5, 2025), https://www.eenews.net/articles/3-questions-answered-about-interiors-high-arctic-plans/.

[209] *See* Letter from Emily Ringer, Dir. Policy, Polar Bears International, to Kelly Hammerle, BOEM, BOEM-2025-0015-25316 (June 16, 2025).

[210] Draft Proposed Plan at 10-20.

[211] BOEM, *Map: Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf* (2021), https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/2021_National_Assessment_Map_BTU_COLORS_GOAR_ECS.pdf.

[212] Draft Proposed Program at 8-7, 8-11.

ecosystems, in addition to providing crucial habitat for species listed as endangered or threatened under the Endangered Species Act (ESA) such as the critically endangered Cook Inlet beluga whale, the northern sea otter, and Steller's eider, an Arctic sea duck.[213] Cook Inlet is a central pillar of subsistence and culture for many Alaska Native communities, including Nanwalek, Ninilchik, Port Graham, Seldovia, and Tyonek.[214] It also hosts Alaska's largest city and many smaller coastal communities. The Inlet supports tourism, recreation, and sport fishing—key components of the local economy—by providing habitat for fish, stunning scenery, and opportunities for boating and viewing wildlife.[215]

A single company, Hilcorp, was the sole bidder in the past two OCSLA sales held for Cook Inlet, but no production has resulted from these leases; nor from any federal leases to date.[216] Hilcorp is also the primary oil and gas company operating in state waters in Cook Inlet. The company's activities in Alaska have been characterized by a pattern of environmental and safety violations. The Alaska Oil and Gas Conservation Commission (AOGCC) has issued more than 60 enforcement actions against the company, noting a "track record of noncompliance" in 2023.[217] In 2024 alone, AOGCC fined Hilcorp $903,577 over five separate orders for violations including the failure to test wells and mechanical integrity, unauthorized injections, and reporting failures.[218] In late 2025, AOGCC assessed the second-largest single penalty ever against the company, noting its "repeated failure to comply with AOGCC rules and regulations."[219] Hilcorp

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[213] 50 C.F.R. § 17.11(h); Draft Proposed Program (Nov. 2025) at 10-11 to 10-12.

[214] BOEM, *Final Supplemental Environmental Impact Statement: Cook Inlet Planning Area Oil and Gas Lease Sale 258* at 121-122 (Oct. 2025), https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2025_1113%20Final%20SEIS.pdf?VersionId=Owsj.NB8m6SaiIKFXP6PccLv3nv5X9eH; BOEM, *Final Environmental Impact Statement: Cook Inlet Planning Area Oil and Gas Lease Sale 258*, at 127-130(Oct. 2022), https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2022_1020%20LS%20258%20FEIS.pdf.

[215] BOEM, *Final Supplemental Environmental Impact Statement: Cook Inlet Planning Area Oil and Gas Lease Sale 258* at 118-119 (Oct. 2025); BOEM, *Final Environmental Impact Statement: Cook Inlet Planning Area Oil and Gas Lease Sale 258*, at 121-123 (Oct. 2022).

[216] Draft Proposed Program (Nov. 2025) at 3-13; BOEM, *Analysis of Bids by Company (Lease Sale 244)* (June 21, 2017), https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Alaska-Region/Leasing-and-Plans/Leasing/Lease-Sales/Sale-244---Cook-Inlet/2017_0621_LS-244-Analysis-of-Bids-by-Company.pdf.

[217] Alex DeMarban, *Alaska regulators fine Hilcorp $267,500, saying oil producer has a 'track record' of violations* (June 1, 2023), https://www.adn.com/business-economy/energy/2023/06/01/alaska-regulators-fine-hilcorp-267500-saying-oil-producer-has-a-track-record-of-violations/; AOGCC, Decision and Order Re: Re: Failure to Notify of Changes to Approved Permit, Milne Point Unit I-27, Other Order 199, Docket No. OTH-23-015 (May 31, 2023).

[218] Yereth Rosen, *Alaska regulators fine Hilcorp $50,000 for overdue test at Cook Inlet well*, ALASKA BEACON (Sept. 20, 2024), https://alaskabeacon.com/briefs/alaska-regulators-fine-hilcorp-50000-for-overdue-test-at-cook-inlet-well/.

[219] Y. Rosen, Alaska regulators order Hilcorp to pay nearly $700,000 for gas injections at North Slope field, Alaska Beacon (Nov. 28, 2025), https://alaskabeacon.com/2025/11/28/alaska-regulators-order-hilcorp-to-pay-nearly-700000-for-gas-injections-at-north-slope-field/.

has also engaged in protracted disputes over financial transparency[220] and fought legislative efforts to require it to pay the same taxes as other oil companies.[221] Taken together, these events raise serious concerns about Hilcorp's fitness to operate in the OCS. As Hilcorp is the most likely bidder in Cook Inlet, BOEM should take this information into account when it analyzes leasing risks. Before pursuing its highly aggressive leasing plan in Cook Inlet, the agency must carefully analyze the impacts of additional oil and gas leasing on the economy, wildlife, and communities of Cook Inlet.

6. Environment and Community in Other Alaska Regions.

In addition to the Chukchi and Beaufort Seas, High Arctic, and Cook Inlet, BOEM also proposes to lease in 11 other Alaska OCS planning areas: Hope Basin, Norton Basin, St. Mathew-Hall, Navarin Basin, Aleutian Basin, Bowers Basin, Aleutian Arc, St. George Basin, Shumagin, Kodiak, and the Gulf of Alaska.[222] These regions cover thousands of miles of coast—nearly all of western and southern Alaska.[223] BOEM's choice to expend administrative resources on this leasing effort is bewildering. Even under the terms of its flawed analysis, there is no discernible reason for scheduling these sales. These areas do not have oil and gas development value, but they do have critical, vulnerable ecosystems that support Alaskan communities and priceless cultural practices.

There are no existing leases and no existing oil and gas infrastructure in any of these 11 areas.[224] They have never commercially produced oil or gas.[225] BOEM considers all of the areas to either have negligible resources (the Aleutian Arc, Aleutian Basin, Bowers Basin, and St. Matthew-Hall) or negligible development value (Gulf of Alaska, Hope Basin, Kodiak, Navarin Basin, Norton Basin, Shumagin, and St. George Basin).[226]

BOEM presents no evidence of current, credible industry interest in leasing these other 11 sectors. On the other hand, BOEM displays awareness that these areas are home to globally important ecosystems that support critical subsistence species on which hundreds of primarily Alaska Native communities rely, as well as numerous other species that live in and migrate through the region.[227] BOEM even admits its analysis is flawed and fails to capture the true

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[220] *See, e.g.*, Alaska Public Interest Research Group, May 2024 Update (May 2024), https://www.akpirg.org/hilcorp-update-may-2024; C. Rocchi et al., Making Alaskans Whole: How Regulators Can Restore Trans-Alaska Pipeline System Lands and Recover Billions for the Public, 41:2 ALASKA LAW REV. 359, 386-88 (2025).

[221] D. Cole, Bill to close Hilcorp loophole faces another key Senate committee vote, Reporting from Alaska (May 5, 2025), https://www.dermotcole.com/reportingfromalaska/2025/5/5/6i27dwv6xgrkuqjjsx51mcgpnrp1jw.

[222] Draft Proposed Program at 7.

[223] *Id.* at 1-2, Fig. 1-1.

[224] *Id*. at 3-7.

[225] *Id.* at 3-12 to 3-14.

[226] *Id*. at 5-14.

[227] *See id*. at 10-11 to 10-20; *see also, e.g.,* Manilaq Assoc., Kotzebue, https://www maniilaq.org/northwest-alaska/kotzebue/ (last visited Dec. 23, 2025) (describing the residents "among whom subsistence activities are an integral part of the lifestyle"); Kawerak, Inc., Diomede, https://kawerak.org/our-region/diomede/ (last visited Dec. 24, 2025) ("Diomede is a traditional Ingalikmiut Eskimo village with a subsistence lifestyle. Seal, polar bear, blue crab, and whale meat are the preferred foods.").

ecological importance of certain areas.[228] But the agency ignores the information that it does have, which counsels against leasing: for example, it proposes to lease in the Hope Basin, which it considers "the most ecologically sensitive planning area," a place of "extraordinary ecological importance" with hydrological conditions that create "foraging hotspots" and particularly efficient food webs.[229] There is no explanation for BOEM's choice to include the Hope Basin in the program while excluding other areas, which it considers less ecologically sensitive.[230]

BOEM also provides little attention to the major climate change-related harms that are already affecting these areas, including warming ocean temperatures, species die-offs, and coastal erosion.[231] In these regions, subsistence fisheries are closed,[232] glacial melt is intensifying flooding,[233] houses have already begun to fall into the ocean, and people have died from falling through ice in areas that previously would have been frozen solid at the same time of year.[234] Alaska is already experiencing the disastrous effects of climate change that continued fossil fuel extraction will only intensify. In addition, any oil and gas development in these areas would require extensive new infrastructure and pose a myriad of direct threats to the ocean environment and the species and people that rely on it. Like all other Alaska areas, the logistics of responding to an oil spill or other disaster would be hideously complicated or impossible due to these areas' remoteness and extreme weather. In one very recent example, on January 5, 2026, when a crabbing vessel was grounded on St. George Island–releasing an unknown amount of fuel and threatening the area's wildlife and cultural resources–Alaska's Department of Environmental

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[228] *See* Draft Proposed Program at 10-18 (The Norton Basin "demonstrates a surprisingly low sensitivity score that may not fully capture its ecological significance."); *id.* at 10-19 ("St. Matthew-Hall Planning Area in the central Bering Sea exhibits a surprisingly low sensitivity score that contrasts with its known ecological importance as part of one of the most productive marine ecosystems on the planet. This discrepancy likely reflects data gaps . . .").

[229] *Id*. at 10-11.

[230] *See id*. at 10-27.

[231] *See* Letter from Melanie Bahnke, President, Kawerak, Inc., Jaylene Wheeler, Executive Dir., Bering Sea Elders Group, and Vivian Korthius, Chief Exec. Off., Association of Village Council Presidents, to Doug Burgun, Secretary of the Interior at 4-5, BOEM-2025-0015-35243 (June 16, 2025); Y. Rosen, Relocation of eroding Alaska Native village seen as a test case, ALASKA PUBLIC MEDIA (April 22, 2024), https://alaskapublic.org/news/2024-04-22/relocation-of-eroding-alaska-native-village-seen-as-a-test-case; J. Sutter, Tragedy of a village built on ice, CNN.COM (Mar. 29, 2017), https://www.cnn.com/2017/03/29/us/sutter-shishmaref-esau-tragedy.

[232] *See, e.g.*, Kuskokwim River Inter-Tribal Fish Commission, *Kuskokwim River Salmon Situation Report* at 3-7 (Sep. 2021) (detailing the "[p]rolonged Chinook [s]almon [c]rash" and the 2021 "[u]nprecedented" chum crash on the Kuskokwim River); Erickson, E., *Yukon River communities balance conservation, survival amid near-total salmon fishing closures*, ALASKA PUBLIC MEDIA (June 10, 2024)

[233] *See* J. Garrett, Global report highlights Mendenhall Glacier's rapid retreat as a catalyst of climate change, warns impacts may speed up, JUNEAU INDEPENDENT (Dec. 3, 2025), https://www.juneauindependent.com/post/global-report-highlights-mendenhall-glacier-s-rapid-retreat-as-a-catalyst-of-climate-change-warns-i#:~:text=The%20rapid%20retreat%20of%20a,the%20release%20from%20Suicide%20Basin..

[234] *See* J. Sutter, Tragedy of a village built on ice, CNN.COM (Mar. 29, 2017), https://www.cnn.com/2017/03/29/us/sutter-shishmaref-esau-tragedy; E. Stone *et. al*, One month after Halong, here's what rebuilding looks like in six Y-K Delta communities, ALASKA PUBLIC MEDIA (Nov. 17, 2025), https://alaskapublic.org/news/public-safety/2025-11-17/one-month-after-halong-heres-what-rebuilding-looks-like-in-six-y-k-delta-communities.

Conservation announced that due to weather it would likely be "several days to a week" until responders could even board the vessel, and that salvage operations might be paused "until spring."[235]

BOEM appears to understand that these waters support many other uses like subsistence, as well as vital fishing and tourism economies, and that they hold vast renewable energy potential.[236] Concerningly, however, BOEM belittles the importance of these other uses—in particular failing to appreciate the true significance of subsistence. BOEM makes the troubling decision to ignore Tribal leaders who have been vocally opposed to oil and gas leasing for decades.[237] Three Tribal organizations that advocate for over 70 western Alaska Native Tribes once again called on BOEM during the Request for Information period not to lease in the Bering Sea.[238] They described the cultural and ecological importance of the region, "a rich resource area [they] have relied upon for thousands of years."[239] And they eloquently communicated a vital truth that BOEM still refuses to accept: "*there is no replacement value for subsistence.*"[240] BOEM's failure to understand that subsistence cannot be replaced infects the analysis of every Alaska planning area. Despite stating that subsistence "is irreplaceable as a social and cultural matter," in the very next paragraph BOEM "specifically requests public comments on the quantification and monetization of environmental and social costs, particularly impacts on subsistence resources."[241] BOEM reveals here that while it uses words like "irreplaceable" to describe subsistence, it still plans to assign a dollar value to something Alaska Native people have already stressed to the agency "cannot be quantified."[242]

The people, wildlife, and environment of these Alaska areas have—by BOEM's own admission—almost nothing to gain, and everything to lose from oil and gas development in their areas. These extremely important and sensitive areas must be removed from the leasing program.

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[235] Alaska Dep't of Env't Conservation, Situation Report, F/V Arctic Sea Grounding, St. George Island, Spill # 26459900501 (Jan. 8, 2026).

[236] *See* Draft Proposed Program at 8-3 to 8-17.

[237] *See* Letter from Melanie Bahnke, President, Kawerak, Inc., Jaylene Wheeler, Executive Dir., Bering Sea Elders Group, and Vivian Korthius, Chief Exec. Off., Association of Village Council Presidents, to Doug Burgun, Secretary of the Interior, BOEM-2025-0015-35243 (June 16, 2025) (Kawerak, BSEG, AVCP Letter).

[238] *Id*.; *See also* STATEMENT: Kawerak, Association of Village Council Presidents, and Bering Sea Elders Group Appreciate Protections for Their Waters from Oil and Gas Leasing, Assoc. of Village Council Presidents (Jan. 6, 2025), https://www.avcp.org/2025/01/06/kawerak-association-of-village-council-presidents-and-bering-sea-elders-group-appreciate-protections-for-their-waters-from-oil-and-gas-leasing/.

[239] *Id.* at 3.

[240] *Id*. at 4.

[241] Draft Proposed Program at 6-7.

[242] Kawerak, BSEG, AVCP Letter at 4.

B. BOEM Should Not Offer New Oil and Gas Leases in the Pacific.

1. New Oil and Gas Leasing in the Pacific Will Devastate Thriving Marine Ecosystems.

The Pacific Coast marine habitats are among the most productive and diverse in the world.[243] The West Coast's offshore and coastal waters are classified as a Large Marine Ecosystem, a term that captures the extensive and integrated marine habitat that underpins the abundant marine life offshore California.[244] The California Current Large Marine Ecosystem (CCLME or "California Current") is one of five of a class of Large Marine Ecosystems that are characterized by cold, nutrient-rich coastal upwelling that generate areas of high primary productivity.[245] The California Current itself is more than 2,000 miles long and contains more than 400 estuaries and bays.[246] The Draft Proposed Program notes that the California Current "drives one of the most productive upwelling ecosystems in the world" and "supports many productive fisheries, a large and diverse marine mammal assemblage, and abundant seabird populations."[247]

As the Draft Proposed Program observes, the Pacific Region is home to numerous species that are listed as threatened or endangered under the ESA.[248] Such species include, but are not limited to: marine mammals, like the southern sea otter, the Guadalupe fur seal, the sei whale, and the blue whale; birds, such as the western snowy plover, the marbled murrelet, the California least tern, and the short-tailed albatross; invertebrates, like the black abalone and the white abalone; fish, including the southern California steelhead, the scalloped hammerhead shark, and the tidewater goby; and sea turtles—the loggerhead turtle, leatherback turtle, green turtle, and olive ridley turtle.[249] The Pacific Region planning areas also include critical habitat for many listed species.[250] In addition, this region is home to marine species that NOAA has proposed to be listed due to their rapidly declining populations in the Pacific, including the Sunflower Sea Star (Pycnopodia helianthoides)[251] and the Tope Shark (Galeorhinus galeus).[252] Many other species

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[243] *See* Draft Proposed Program at 10-21–10-24.

[244] Jennifer A. Brown et.al., *Developing Science-Based Indicator Portfolios for National Marine Sanctuary Condition Reports,* National marine sanctuaries conservation series ONMS-19-07, at 1 (2019).

[245] M.C. Aquarone & S. Adams, *Chapter XIV-44 California Current: LME #3*, *Large Marine Ecosystems of the World*, at 1, available at https://iwlearn net/resolveuid/d83a5000-72c5-4348-a98f-07ed599dcacd#:~:text=Adams,climate%20and%20strong%20coastal%20upwelling.

[246] *Id*.

[247] Draft Proposed Program at 10-22, 9-19.

[248] *Id*. at C-1–C-10.

[249] *Id*.

[250] *Id*. at 10-24.

[251] NOAA Fisheries, *NOAA Fisheries Proposes Listing Sunflower Sea Star as Threatened under Endangered Species Act*, (March 15, 2023), https://www fisheries noaa.gov/feature-story/noaa-fisheries-proposes-listing-sunflower-sea-star-threatened-under-endangered-species;
Endangered and Threatened Wildlife and Plants; Threatened Listing Determination for the Sunflower Sea Star Under the Endangered Species Act; Public Hearings, 88 Fed. Reg. 21600 (April 11, 2023).

[252] NOAA Fisheries, *90-Day Finding on a Petition to List the Tope Shark Under the Endangered Species Act*, (April 28, 2022), https://www fisheries.noaa.gov/action/90-day-finding-petition-list-tope-shark-under-endangered-species-

inhabit this region that are not listed under the ESA, such as the California sea lion, Bottlenose dolphin, Western gull, and hundreds of other marine species.[253] Below is a list of at least some of the key species that would be harmed by new leasing in the Pacific Region:

Blue Whales

Biologically important areas ("BIAs") for blue whales have been identified along the coast of California. Of the nine BIAs that overlap with the predicted density of blue whales listed in the paper by Calambokidis, *et al*. (2015), the largest in area is the Gulf of the Farallones and the Monterey Bay to Pescadero BIA.[254] Blue whales travel along the U.S. West Coast, specifically the California Coast, during the summer and fall months for feeding[255] before migrating south to their breeding grounds. Calambokidis and Barlow (2020) estimated blue whale abundance for the U.S. west coast at 1,898 whales, based on updated photographic ID data through 2018 using mark-recapture methods.[256] Becker et al. (2020) estimated blue whale abundance at 670 whales, using habitat-based species distribution models from line-transect data collected from 1991 to 2018.[257] With higher aggregation numbers in identified BIAs, opening the Pacific OCS to new oil and gas operations could have negative impacts on the health of the Pacific stock of the blue whale population.

Humpback Whales

In the North Pacific Ocean, humpback whales tend to alternate between winter breeding areas, including those in the western North Pacific Ocean, Hawai'i, Mexico, and Central America. They then move to more coastal feeding areas in spring, summer, and fall that range from California, north into Alaskan waters, and west to waters off Russia.[258] Humpbacks primarily occur near the edge of the continental slope and deep submarine canyons, where upwelling

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act; Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Tope Shark as Threatened or Endangered Under the Endangered Species Act; Public Hearings, 87 Fed. Reg. 25209 (April 28, 2022); CBD & Defend Them All Foundation, Petition to List the Tope Shark (Galeorhinus galeus) as Endangered or Threatened Under the Endangered Species Act (Feb. 15, 2022), https://media fisheries.noaa.gov/2022-02/Petition_Tope%20Shark%20ESA%20Listing%2015%20February%202022%20FINAL_508.pdf.

[253] Channel Islands: Marine Animals, National Park Service (June 21, 2022), https://www nps.gov/chis/learn/nature/marine-animals htm; Channel Islands: Seabirds & Shorebirds, National Park Service (June 25, 2016), https://www.nps.gov/chis/learn/nature/seabirds.htm.

[254] John Calambokidis et al., *4. Biologically Important Areas for selected cetaceans within U.S. waters – West coast region*, 41(1) AQUATIC MAMMALS 39, 41-43 (2015).

[255] Angela R. Szesciorka et al., *Timing is everything: Drivers of interannual variability in blue whale migration*, 10 SCI REP 7710, at 1 (2020), https://doi.org/10.1038/s41598-020-64855-y

[256] John Calambokidis & Jay Barlow, *Updated abundance estimates for blue and humpback whales along the U.S. west coast using data through 2018*, NOAA technical memorandum NMFS-SWFSC-634 , at 14 (September 2020), https://repository.library.noaa.gov/view/noaa/27104.

[257] Elizabeth A. Becker et al., *Habitat-based density estimates for cetaceans in the California Current Ecosystem based on 1991- 2018 survey data*, NOAA Technical Memorandum NMFS-SWFSC-638, at 27 (2020), https://repository.library.noaa.gov/view/noaa/27826.

[258] John Calambokidis et al., *Movements and population structure of humpback whales in the North Pacific*, 17 MARINE MAMMAL SCIENCE 769, 778-84 (2001) http://dx.doi.org/10.1111/j.1748-7692.2001.tb01298.x.

concentrates zooplankton near the surface for feeding.[259] Of the seven BIAs that overlap with the predicted density of blue whales listed in the paper by Calambokidis, *et al*., the one along Morro Bay to Point Sal shows this area to be a congregation spot for feeding by this population.[260]

Substantial coastal development is occurring in many regions throughout the range of the California coast and noise associated with construction (e.g., pile driving, blasting or explosives) has the potential to affect humpbacks by generating sound levels that may disturb humpback whales or adversely affect their hearing.[261] Low-frequency sound comprises a large proportion of this increase, stemming from a variety of sources, including shipping, oil and gas exploration, and military activities. Detrimental effects associated with anthropogenic sound include hearing loss, masking, and temporary threshold shifts in hearing, so social communication could be impacted, as well as fluctuations in stress hormones, change in behavior such as departure from prime foraging areas or alteration in migratory routes or timing.[262] Opening up the Pacific OCS to new oil and gas operations could have negative impacts on the health of the humpback whale population.

Gray Whales

Despite there being two recognized populations of gray whales in the Pacific (eastern and western populations), it is suggested that both populations' feeding areas and migration routes are along the U.S. West Coast.[263] Gray whales migrate along the West Coast during the south bound trip to Baja California and Mexico in the winter for breeding, and the northbound trip to arctic waters for feeding in the summer.[264] Of the loosely defined phases of this migration through California waters, gray whales utilize state and federal waters from Morro Bay to San

[259] National Marine Fisheries Service, *Endangered Species Act Section 7(a)(2) Biological and Conference Opinion: Development and Production of Oil and Gas Reserves and Beginning Stages of Decommissioning within the Southern California Planning Area of the Pacific Outer Continental Shelf Region*, NMFS Consultation Number: 2023-02183, at 27 (2024), https://www fisheries.noaa.gov/s3//2024-02/boem-bsee-oil-and-gas-2-27-24-dl.pdf

[260] John Calambokidis et al., *4. Biologically Important Areas for selected cetaceans within U.S. waters – West coast region*, 41(1) Aquatic Mammals 39, 41-42 (2015), available at https://cascadiaresearch.org/files/Calambokidisetal2015BIAs.pdf

[261] NOAA Fisheries, *Endangered Species Act Section 7(a)(2) Biological and Conference Opinion: Development and Production of Oil and Gas Reserves and Beginning Stages of Decommissioning within the Southern California Planning Area of the Pacific Outer Continental Shelf Region*, NMFS Consultation Number: 2023-02183, at 30-31 (2024), https://www.fisheries noaa.gov/s3//2024-02/boem-bsee-oil-and-gas-2-27-24-dl.pdf.

[262] NOAA Fisheries, *Endangered Species Act Section 7(a)(2) Biological and Conference Opinion: Development and Production of Oil and Gas Reserves and Beginning Stages of Decommissioning within the Southern California Planning Area of the Pacific Outer Continental Shelf Region*, NMFS Consultation Number: 2023-02183, at. 30-31 (2024), https://www.fisheries noaa.gov/s3//2024-02/boem-bsee-oil-and-gas-2-27-24-dl.pdf.

[263] John Calambokidis et al., *4. Biologically Important Areas for selected cetaceans within U.S. waters – West coast region*, 41(1) Aquatic Mammals 39, 43-46 (2015), available at https://cascadiaresearch.org/files/Calambokidisetal2015BIAs.pdf

[264] *Id.*

Diego.[265] Of particular concern is the Eastern North Pacific (ENP) gray whale population, whose habitat extends across the entire West Coast OCS region.

ENP gray whales are facing ongoing and increasing threats from vessel strikes, fisheries bycatch, ocean contaminants, anthropogenic noise, whale watching, and ocean warming. Data collected in an unusual mortality event (UME) in 2023 indicates that gray whale strandings increased and calf production had declined precipitously. According to scientists, seventy gray whales were found stranded in Mexico between December 19, 2024 and March 31, 2025,[266] and according to NMFS, an additional forty seven gray whales have stranded in the United States this year (twenty-seven in California, thirteen in Washington, and seven in Oregon) as of June 12, 2025 (with additional mortalities likely to be documented through the end of June, 2025).[267] This level of mortality is similar to the number of gray whales found stranded in Mexico in 2020 (at the beginning of the UME)[268] and has prompted scientists to ask if gray whales are "at a tipping point in their history."[269] Furthermore, only fourteen cow-calf pairs, a record low, were documented on the calving grounds in 2025, and Mexican researchers have documented an increase in the number of whales with a poor body condition in 2025 compared to previous years.[270] Given this population's pronounced vulnerability, increased stressors from potential oil and gas activity are a significant concern.

Fin Whales

Fin whales are listed as endangered under the ESA and have a global distribution. Information suggests fin whales are present year-round in southern California waters with movements into central California and Baja California and returning to the Southern California Bight.[271] In the Calambokidis, *et al.* (2015) study, visual boat-based sightings were used to create the distribution

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[265] *See* David J. Rugh, Kim E.W. Shelden & Alisa Schulman-Janiger, *Timing of the gray whale southbound migration (Eschrichtius robustus)*, 3(1) Journal of Cetacean Research and Management 31, 35-36 (2001), https://doi.org/10.47536/jcrm.v3i1.897

[266] Sergio Martínez et al., *Annual Research Report for the 2025 Gray Whale (Eschrichtius robustus) Winter Season in Laguna San Ignacio and the Bahía Magdalena Lagoon Complex, Baja California Sur, Mexico*. Gray Whale Research in Mexico, at 20 (2025), https://graywhaleresearchmexico.org/sites/default/files/documents/2025-gwrm-final-report-english-web-9-june-2025_0.pdf.

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

[268] *2019-2023 Eastern North Pacific Gray Whale UME (CLOSED)*, NOAA Fisheries (last visited January 13, 2026), fisheries.noaa.gov/national/marine-life-distress/2019-2023-eastern-north-pacific-gray-whale-ume-closed.

[269] Sergio Martínez et al., *Annual Research Report for the 2025 Gray Whale (Eschrichtius robustus) Winter Season in Laguna San Ignacio and the Bahía Magdalena Lagoon Complex, Baja California Sur, Mexico*. Gray Whale Research in Mexico, at 3 (2025), https://graywhaleresearchmexico.org/sites/default/files/documents/2025-gwrm-final-report-english-web-9-june-2025_0.pdf.

[270] *Id.* at 13.

[271] Erin A. Falcone & Gregory S. Schorr, *Distribution and demographics of marine mammals in SOCAL through photo-identification, genetics, and satellite telemetry: a summary of surveys conducted 1 July 2012 – 30 June 2013*, Naval Postgraduate School Technical Report NPS-OC-14-002CR, at 5 (2013) https://hdl handle.net/10945/39523

map and there were notable concentrations in waters west of Santa Lucia Bank.[272] Falcone and Schorr (2013) collected photographic evidence of individually-identified whales in the California Current for all four seasons, and including one satellite tracked individual with movement from south Baja California by February and north to Monterey area by June.[273]

Photo identification efforts in Southern California indicate that within-region movements are more common than inter-regional movements. This suggests regional subpopulations may exist for fin whales as seen for blue whales.[274] The North Pacific population summers from the Chukchi Sea to California, and winters from California southward. Fin whales can occur year-round off California, Oregon, and Washington.[275] Širovic et al. (2017) propose the possibility of a southern California resident population through acoustic data along with their seasonal movements, although this is not yet clear.[276] Additional telemetry studies would be necessary to fully flesh out the population stocks along with genetics and acoustics.[277]

The threats to fin whales due to underwater noise, pollutants, marine debris, and habitat degradation, are difficult to quantify, although recent studies are finding concerning levels of persistent organic pollutants[278] and microplastics, including plastic additives,[279] in the blubber of fin whales, and there is a growing concern that the increasing levels of anthropogenic noise in the ocean may be a habitat concern for fin whales that use low frequency sound to communicate.[280]

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[272] John Calambokidis et al., *4. Biologically Important Areas for selected cetaceans within U.S. waters – West coast region*, 41(1) Aquatic Mammals 39, 52-53 (2015), available at https://cascadiaresearch.org/files/Calambokidisetal2015BIAs.pdf

[273] Erin A. Falcone & Gregory S. Schorr, *Distribution and demographics of marine mammals in SOCAL through photo-identification, genetics, and satellite telemetry: A summary of surveys conducted 1 July 2012 – 30 June 2013*, Naval Postgraduate School Technical Report NPS-OC-14-002CR, 22-24 (2013) https://hdl handle net/10945/39523

[274] John Calambokidis et al., *4. Biologically Important Areas for selected cetaceans within U.S. waters – West coast region*, 41(1) Aquatic Mammals 39, 52 (2015), available at https://cascadiaresearch.org/files/Calambokidisetal2015BIAs.pdf

[275] James V. Carretta et al., *U.S. Pacific Marine Mammal Stock Assessments: 2022. Department of Commerce*, NOAA-TM-NMFSSWFSC-684, at 212 (2023) https://www fisheries.noaa.gov/s3/2024-12/Pacific_SARs_Final_2023.pdf.

[276] Ana Širovic et al., *Fin whale song variability in southern California and the Gulf of California*. 7 Scientific Reports 10126, at 4-8 (2017) https://doi.org/10.1038/s41598-017-09979-4

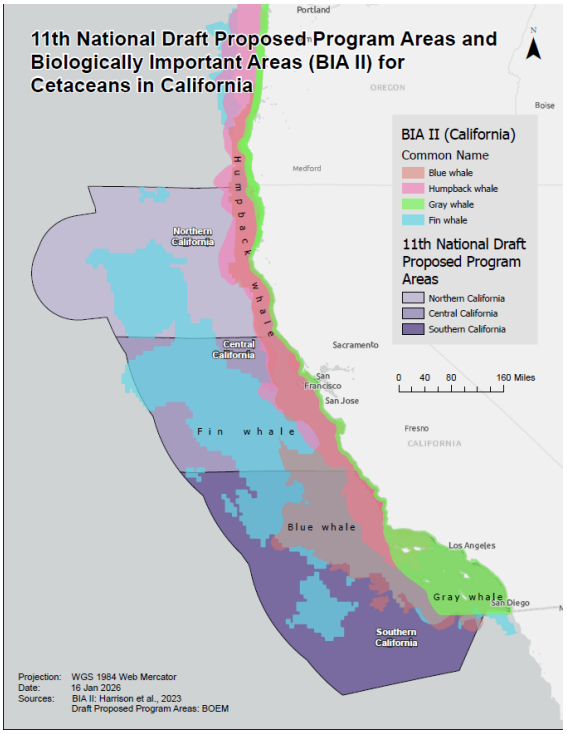
[277] Karen K. Martien et al., *Progress report on genetic assignment of humpback whales from the California-Oregon feeding aggregation to the mainland Mexico and Central America wintering grounds,* NOAA Technical Memorandum NMFS-SWFSC-635, at 16-17 (2020) https://repository.library noaa.gov/view/noaa/27220

[278] Marianna Pinzone et al., *POPs in free-ranging pilot whales, sperm whales and fin whales from the Mediterranean Sea: influence of biological and ecological factors*, 142 ENVIRONMENTALRESEARCH 185, 187-192 (2015) https://doi.org/10.1016/j.envres.2015.06.021.

[279] *See, generally,* Maria Cristina Fossi et al., *Are baleen whales exposed to the threat of microplastics? A case study of the Mediterranean fin whale (Balaenoptera physalus)*, 64 Marine Pollution Bulletin 2374 (2012) https://doi.org/10.1016/j.marpolbul.2012.08.013.

[280] National Marine Fisheries Service, *Endangered Species Act Section 7(a)(2) Biological and Conference Opinion: Development and Production of Oil and Gas Reserves and Beginning Stages of Decommissioning within the*

Our mapping shows that the proposed program areas overlap with biologically important areas for these cetacean species.[281]



Sea Otters

Due to the now banned fur trade of otters, the current southern sea otters are descendants from a small population that survived in Big Sur. The current southern sea otter range is from just south of Point Conception to slightly north of Santa Cruz.[282] The southern sea otter population has grown by a rate of about 5%, significantly less than its northern counterparts.[283] Possible reasons for this slower growth rate are unclear, however, it is believed to be partly caused by exposure to human-related contaminants and pathogens.[284] A sea otter survey conducted by the California Department of Fish and Game, United States Geologic Service-Biological Resource Division, and the Monterey Bay Aquarium places some of the highest counts of otters between Point Sur

Southern California Planning Area of the Pacific Outer Continental Shelf Region, NMFS Consultation Number: 2023-02183, at 24-26 (2024), https://www fisheries.noaa.gov/s3//2024-02/boem-bsee-oil-and-gas-2-27-24-dl.pdf.

[281] https://experience.arcgis.com/experience/51a9e25c75a1470386827439a918e056

[282] Marine Mammal Commission, *Annual Report to Congress*, at 117 (2012), https://www.mmc.gov/wp-content/uploads/annualreport_2012.pdf

[283] *Id.* at 118.

[284] Melissa Miller et al., submitted to California Regional Water Quality Control Board, *Persistent organic pollutant concentrations in southern sea otters (Enhydra lutris nereis): Patterns with respect to environmental risk factors and major causes of mortality,* at 1-2 (2007), https://amarine.com/wp-content/uploads/2018/01/Final-Prop13-Report.pdf

and Morro Bay.[285] Given this population's pronounced size reduction, increased stressors from potential oil and gas activity are a significant concern.

Black Abalone

Black abalone was an important cultural resource for coastal Indigenous peoples spanning the last 10,000 years.[286] However, due to intense commercial overfishing during the early to mid-1970s, black abalone is now considered an endangered species under the U.S. ESA. In response, NOAA designated some areas as critical habitat to help combat one of the five extinction risk factors identified by NMFS. The risks towards black abalone include low abundance, low growth and productivity, compromised spatial structure and population connectivity, low genetic diversity, and continued manifestation and spread of withering syndrome.[287] Critical habitat encompasses rocky intertidal and subtidal habitat (to a depth of 6 meters) within five segments of the CCLME: (1) Del Mar Landing Ecological Reserve (Sonoma County) to Point Bonita (Marin County); (2) south of San Francisco Bay to Natural Bridges State Beach (Santa Cruz County); (3) Pacific Grove (Monterey County) to Cayucos (San Luis Obispo County); (4) Montana de Oro State Park (San Luis Obispo County) to just south of Government Point (Santa Barbara County); and (5) Palos Verdes Peninsula extending from the Palos Verdes/Torrance border to Los Angeles Harbor.[288] Coastal offshore areas include the Farallon Islands, Año Nuevo Island, San Miguel Island, Santa Rosa Island, Santa Cruz Island, Anacapa Island, Santa Barbara Island, and Santa Catalina Island.[289]

Black abalone are most commonly observed in the middle and lower intertidal, in habitats with complex surfaces and deep crevices that provide shelter for juvenile recruitment and adult survival.[290] "They are able to withstand extreme variations in temperature, salinity, moisture, and wave action, and are usually strongly aggregated, with some individuals stacking two or three on top of each other."[291] Abalone are broadcast spawners, meaning individuals release their gametes

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[285] Randall D. Clark, *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, at 193-94 (2005), https://repository.library.noaa.gov/view/noaa/2161

[286] Hannah Haas et al., *Black abalone (Haliotis cracherodii) population structure shifts through deep time: Management implications for southern California's northern Channel Islands*, 9(8) Ecology and evolution 4720, 4720-22 (2019), https://doi.org/10.1002/ece3.5075

[287] NOAA Fisheries, *Endangered Species Act Section 7(a)(2) Biological and Conference Opinion: Development and Production of Oil and Gas Reserves and Beginning Stages of Decommissioning within the Southern California Planning Area of the Pacific Outer Continental Shelf Region*, NMFS Consultation Number: 2023-02183, at 44 (2024), https://www.fisheries noaa.gov/s3//2024-02/boem-bsee-oil-and-gas-2-27-24-dl.pdf.

[288] *Id.*

[289] *Id.*

[290] Glenn VanBlaricom et al., *Status Review Report for Black Abalone (Haliotis cracherodii Leach, 1814)*, National Marine Fisheries Service, at 17-19 (2009), https://repository.library.noaa.gov/view/noaa/16216/noaa_16216_DS1.pdf

[291] NOAA Fisheries, *Endangered Species Act Section 7(a)(2) Biological and Conference Opinion: Development and Production of Oil and Gas Reserves and Beginning Stages of Decommissioning within the Southern California Planning Area of the Pacific Outer Continental Shelf Region*, NMFS Consultation Number: 2023-02183, at 45 (2024), https://www.fisheries noaa.gov/s3//2024-02/boem-bsee-oil-and-gas-2-27-24-dl.pdf.

into the water column and rely on external fertilization.[292] Thus, abalone must be in close enough proximity to one another to successfully reproduce. Elevated water temperatures resulting from local discharges, warm water events, and climate change could exacerbate disease effects on black abalone. Given this population's extended vulnerability and significant cultural value, increased stressors from potential oil and gas activity are a significant concern.

Coastal Pelagic Species

Coastal pelagic species include four finfish (Pacific sardine, Pacific (chub) Mackerel, northern anchovy, and jack mackerel) and the market squid.[293] The east-west boundary of essential fish habitat ("EFH") for coastal pelagic species is defined as "all marine and estuarine waters from the shoreline along the coasts of California, Oregon, and Washington offshore to the limits of the exclusive economic zone ("EEZ")."[294] The southern boundary extends into Mexico and the northern boundary is more dynamic due to seasonal changes. Sardine and Pacific mackerel tend to migrate as the season changes, feeding in the north during the summer months and moving to the south for spawning.[295] During spawning events and if concentrations are high, eggs and larvae may be concentrated 50-150 km offshore to the north of Point Conception.[296] Given the expanse of EFH and the various anthropogenic impacts to the marine environment, increased stressors from potential oil and gas activity are a significant concern.

Groundfish

Groundfish EFH considers over ninety species with varying collections of information on life history characteristics. The identification of EFH for groundfish by the Pacific Fishery Management Council utilizes boundaries set by the international Northern Pacific Fisheries Commission and is refined by three identified characterizations:

> [1] Depths less than or equal to 3,500 m (1,914 fm) to mean higher high water level (MHHW) or the upriver extent of saltwater intrusion, defined as upstream and landward to where ocean-derived salts measure less than 0.5 ppt during the period of average annual low flow. [2] Seamounts in depths greater than 3,500 m as mapped in the EFH assessment geographic information system (GIS). [3] Areas designated as HAPCs not already identified by the above criteria.[297]

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[292] *Id.*

[293] *Appendix D: Description and identification of Essential Fish Habitat for the Coastal Pelagic Species Fishery Management Plan*, Pacific Fishery Management Council, at D-1 (1998), https://www.pcouncil.org/documents/2022/01/appendix-d-description-and-identification-of-efh-for-the-coastal-pelagic-species-fmp.pdf/

[294] *Id.* at D-2.

[295] *Id.* at D-29–D-30.

[296] *Id.* at D-30.

[297] Pacific Fishery Management Council, *Pacific Coast Groundfish Fishery Management Plan: For the California, Oregon, And Washington Groundfish Fishery*, at 102 (2025) https://www.pcouncil.org/documents/2022/08/pacific-coast-groundfish-fishery-management-plan.pdf/

Many of the underwater formations are seen as important for the continued propagation of groundfish, and new oil and gas operations will threaten the numerous EFHs.[298]

Southern California Steelhead (*Oncorhynchus mykiss*)

Southern California steelhead naturally occur as a resident freshwater form (the rainbow trout) or as a sea-run (anadromous) form (southern California steelhead).[299] The southern California steelhead life cycle involves three main stages: 1) adult spawning and the development of eggs and juveniles in streams and rivers, 2) migration of juveniles from natal streams to the ocean, sometimes with substantial residence in estuaries, while undergoing physiological and morphological changes for life in the marine environment (smoltification), and 3) the growth of oceanic steelhead into mature adults, which then return to their natal or other accessible streams or rivers for spawning.[300] Anadromous and resident forms of *O. mykiss* can interbreed and each form, under appropriate conditions, can produce progeny of the other form.[301] The reasons why some southern California steelhead migrate to the ocean and others remain resident in streams are complex, with anadromous vs. resident life cycles determined by genetic differences interacting with juvenile growth rates, sizes, and fat stores, which are, in turn, driven by environmental influence like temperature, food supplies, and intraspecific competition.[302]

Tragically, widespread development has greatly reduced southern California steelhead runs; while such runs used to host tens of thousands of fish, current runs amount to only a few individuals, and probably less than 500 sea-run individuals throughout the species' entire range.[303] As a result, the anadromous component of southern California steelhead was listed as "endangered" under the ESA in 1997.[304]

Tidewater Goby (*Eucyclogobius newberryi*)

According to the USFWS, tidewater gobies (*Eucyclogobius newberryi*) are small fish found in California coastal brackish water lagoons, estuaries, and marshes. Tidewater gobies rarely exceed two inches in length and are short-lived.[305] According to U.S. Fish and Wildlife Service:

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[298] NOAA Office of National Marine Sanctuaries, *Chumash Heritage National Marine Sanctuary Draft Environmental Impact Statement: Volume I,* at 99 (2023), https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/chumash/2024-chnms-feis-vol-1.pdf

[299] NMFS, *Southern California Steelhead Recovery Plan* ("NMFS Report 2012"), at 2-1 to 2-4 (2012).

[300] *Id*. at 2-1 to 2-2.

[301] *Id*. at 2-1 to 2-4.

[302] Neala W. Kendall et al.*, Anadromy and Residency in Steelhead and Rainbow Trout (Oncorhynchus mykiss): A Review of the Processes and Patterns*, 73 CAN. J. OF FISHERIES AND AQUATIC SCI. 319, 324 (2015).

[303] NMFS Report 2012 at xiii, 2-12.

[304] *Id*.; *see also* 62 Fed. Reg. 43937 (August 18, 1997), available at https://www.govinfo.gov/content/pkg/FR-1997-08-18/pdf/97-21661.pdf.

[305] US Fish and Wildlife Service, Tidewater Goby Webpage, available at https://www.fws.gov/species/tidewater-goby-eucyclogobius-newberryi (last viewed January 15, 2026).

> "The coastal lagoons and estuaries where [tidewater gobies]live are naturally dynamic, with temperature and salinity levels varying daily, seasonally, or annually. Adults can tolerate these extreme conditions; however, eggs and larvae need more stable conditions to survive and develop. Tidewater gobies can breed multiple times within their roughly one-year lifespan. Few other fish species survive the extreme conditions of lagoons."[306]

Tidewater gobies once inhabited 150 California lagoons and estuaries. In the 1980s, tidewater gobies were found by researchers to be disappearing from many locations.[307] The tidewater goby was listed as endangered under the Endangered Species Act in 1994. Tidewater gobies face manythreats. Habitat loss, introduced predators, and drought due to climate change threaten tidewater gobies.[308] Oil spills threaten tidewater gobies.[309] The Recovery Plan for the Tidewater Goby sets forth "recovery actions" for the species, including Action 1.2.5 to prevent further water quality contamination, including contamination resulting from "oil spills."[310]

California Red-legged Frog (*Rana draytonii*)

According to U.S. Fish and Wildlife Service, "[t]he California red-legged frog is the largest native frog in the western United States."[311] It was "once found in forty-six counties stretching from southern Mendocino County, California, inland to Shasta County, California and south to Baja California, Mexico."[312] It is the iconic "Celebrated Calaveras County Jumping Frog" used in frog jumping competitions and made famous by Mark Twain.[313] It spends most of its life in or near water sources, such as streams or stock ponds, which are used for breeding, and "moves into neighboring upland areas to feed and shelter when stream flow levels are high."[314] "In the summer, they seek relief from the heat by hiding under rocks or boulders, leaf litter, small stream channels or animal burrows."[315] According to the National Park Service, "[i]t is reddish in color on the underside of the legs and belly, and communicates with a series of short soft grunts. It is found in ponds, pools and streams and wet meadows."[316]

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[306] *Id*.
[307] *Id*.
[308] *Id*.
[309] US Fish and Wildlife Service, *Recovery Plan for the Tidewater Goby* at 50 and C-4 (referencing oil spill contamination in Humboldt Bay) (December 7, 2005), available at https://ecos fws.gov/docs/recovery_plan/051207.pdf.
[310] *Id*. at 50
[311] *U.S. Fish and Wildlife Service, California Reg-Legged Frog* ("USFWS (2026)"), available at https://www fws.gov/species/california-red-legged-frog-rana-draytonii (last viewed January 15, 2026).
[312] *Id*.
[313] National Park Service, *California Red-legged Frog Webpage* ("NPS (2026)"), available at https://www.nps.gov/yose/learn/nature/caredfrog.htm (last viewed on January 15, 2026).
[314] USFWS (2026).
[315] *Id*.
[316] NPS (2026).

According to U.S. Fish and Wildlife Service:

> Habitat loss and alteration, as well as non-native species, are the primary factors that have negatively impacted the California red-legged frog throughout its range. In the Central Valley of California, more than 90% of historic wetlands have been diked, drained or filled, primarily for agricultural development and secondarily for urban development.[317]

As a result, the species was listed as threatened in 1996.[318]

The U.S. Fish and Wildlife Service describes the frog's current range as follows:

> Today, the frog is known to occur in thirty-five counties in California extending along the California Range from southern Mendocino County to Santa Barbara County, through the northern Transverse Ranges from Santa Barbara County to Los Angeles County, and in isolated populations in the Sierra Nevada foothills, Riverside County, and San Diego County. The California red-legged frog is no longer found in the Central Valley, but is still found in the San Francisco Bay Area and along the Central Coast of California."[319]

A 2020 oil spill in the Cuyama River oiled at least two California red-legged frogs.[320]

Birds

The Central Coast between the Monterey Bay National Marine Sanctuary (MBNMS) and the Channel Islands National Marine Sanctuary (CINMS) is largely undeveloped, thereby providing important habitat types (e.g., wetlands, coastal scrub, dunes) to a multitude of threatened and endangered species (e.g., Western snowy plover, Gaviota tar plant). This section of the central coast and nearshore waters are included in the California State Lands Commission's Significant Lands Inventory. This area was included in the Inventory in part because of the presence of California brown pelican, California least tern, and large numbers of shorebirds.[321] The California Current overlaps with several marine Important Bird Areas identified by Audubon.[322] The CCLME is also along the Pacific Flyway migration route.[323] New oil and gas leasing will

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[317] *Id*.

[318] *Id*.; *see also* 61 Fed. Reg. 25813 (May 23, 1996), available at https://www.govinfo.gov/content/pkg/FR-1996-05-23/pdf/96-12901.pdf.

[319] *Id*.

[320] Oiled Wildlife Care Network, *Oil Spill Activation – Cuyama River Incident Webpage*, available at https://owcn.vetmed.ucdavis.edu/oil-spill (last viewed January 15, 2026).

[321] California State Lands Commission, *Inventory of Unconveyed State School Lands and Tide and Submerged Lands Possessing Significant Environmental Values*, 56-69 (1975), https://www.slc.ca.gov/wp-content/uploads/2018/11/1975-InvUnconveyedLands.pdf

[322] California IBA Map (Marine IBAs in California), AUDUBON.MAPS.ARCGIS.COM, available at https://audubon.maps.arcgis.com/apps/webappviewer/index.html?id=4e13561a76304c0687ec273a32bea3a2 (last visisted January 13, 2026).

[323] *See* Joanne M. Morten et al., Global Marine Flyways Identified for Long-Distance Migrating Seabirds From Tracking Data. Global Ecology and Biogeography, 34(2) Global Ecology and Biogeography e70004, at 8-10 (2025), https://doi.org/10.1111/geb.70004.

have the potential to impact seabirds especially in the event of an oil spill. Oil spills can impact sea birds during primary oiling leading to hypothermia and death.[324] Secondary impacts occur during release of oil and clean-up activities which results in decreased population size, lower reproductive rates, reduced habitat occupancy, reduced food supply, altered foraging behavior, emigration, and direct/indirect mortality. [325]

Western Snowy Plover (*Charadrius nivosus nivosus*)

The western snowy plover is a small, long-legged, short-necked shorebird. Its coloring is pale tan with white underparts and dark patches on the sides of the neck and around to the chest.[326] According to U.S. Fish and Wildlife Service:

> The Pacific coast breeding population of the western snowy plover extends from the State of Washington to Baja California, Mexico, with the majority of breeding birds found in California. These plovers winter primarily in coastal California and Mexico. The coastal population of the western snowy plover is threatened throughout its range by loss and disturbance of nesting sites.[327]

The western snowy plover was listed as a federally threatened species in 1993.[328]

Western snowy plovers are threatened by oil spills.[329] The 2015 Refugio Oil Spill contaminated plovers with tar, and the birds were observed foraging in and around tar on the beach.[330] Numerous plovers were oiled at the Coal Oil Point Reserve during that spill.[331] According to Reserve Manager Dr. Cristina Sandoval in 2015, "[a] snowy plover chick was recently killed after it became stuck in a thick tar ball that had washed ashore."[332]

California Least Tern (*Sterna antillarum browni*)

The California least tern is the smallest tern species, measuring under10 inches in length and having a wing length of about 4 inches.[333] U.S. Fish and Wildlife Service describes the

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[324] G.S. Fraser et al., *Estimating the numbers of aquatic birds affected by oil spills: pre-planning, response, and post-incident considerations*, 30(2) Environmental Reviews 323, at 335 (2022).
[325] *Id.* at 332-34.
[326] US Fish and Wildlife Service, *Western Snowy Plover Webpage*, available at https://www fws.gov/species/western-snowy-plover-charadrius-nivosus-nivosus (last viewed January 15, 2026).
[327] 58 Fed. Reg. 12,864 *Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Pacific Coast Population of the Western Snowy Plover* (March 5, 1993).
[328] *Id*.
[329] Shelly Leachman, UCSB, The Current, *Protecting the Plover* (May 27, 2015), available at https://news.ucsb.edu/2015/015466/protecting-plover.
[330] University of California Natural Reserve System, *Refugio Oil Spill Fouls NRS Reserve* (May 27, 2015), available at https://ucnrs.org/refugio-oil-spill-fouls-nrs-reserve/.
[331] *Id*.
[332] Tyler Haden, *Barge Spills Crude Off Coal Oil Point*, THE SANTA BARBARA INDEPENDENT (October 29, 2010), available at https://www.independent.com/2010/10/29/barge-spills-crude-off-coal-oil-point/
[333] US Fish and Wildlife Service, *California Least Tern Webpage*, available at https://www fws.gov/species/california-least-tern-sterna-antillarum-browni (Last viewed January 15, 2026).

subspecies as having "a short, forked tail, and a long, slightly decurved, tapered bill."[334] Female and male California least terns "are characterized by a black cap, gray wings with black wingtips, white underbody, orange legs and a black-tipped yellow bill."[335] They forage over nearshore waters as well as estuaries and river mouths.[336] They prey on slender-bodied fish, including anchovies and topsmelt.[337]

Least tern habitat was significantly reduced by the 1960s, mainly due to coastal development and human recreational beach use.[338] The population has consequently fallen from "uncountable thousands" to just several hundred by the time the species was listed as federally endangered in 1970.[339]

California least terns breed "along the Pacific coast from San Pablo Bay, California, in the north, to San Jose del Cabo, in the state of Baja California Sur, Mexico, to the south."[340] Breeding areas include the South San Diego Bay Unit of San Diego Bay National Wildlife Refuge and Oceano Dunes State Vehicular Recreation Area in San Luis Obispo County.[341] California least terns also occur in Alameda, Los Angeles, Ventura, Monterey, Marin, Orange, and Santa Barbara Counties.[342] According to U.S. Fish and Wildlife Service, they nest on 23 sites, "some of which are natural and others are man-made and include beaches close to river mouths, estuaries, and coastal embayments."[343] Breeding season lasts from mid-April to mid-September, with terns nesting "in colonies of typically of 15 to 300 pairs."[344] Least tern sites "require active management activities, including protection from disturbance and predators, and or, vegetation management to retain habitat suitability."[345]

Oil spills pose a threat to the California least tern.[346] One study examined the use of artificial pools stocked with fish to serve as alternative feeding areas to attract least terns and enable them

[334] *Id*.
[335] *Id*.
[336] *Id*.
[337] *Id*.
[338] *Id*.
[339] *Id*.
[340] *Id*.
[341] US Fish and Wildlife Service, *2025 5-Year Review for the California Least Tern: Summary and Evaluation*, at 10-23 13 (August 2025).
[342] US Fish and Wildlife Service, California least tern, (*Sternula antillarum brown*), ECOS, https://ecos fws.gov/ecp/species/8104.
[343] US Fish and Wildlife Service, *California Least Tern Webpage*, available at https://www fws.gov/species/california-least-tern-sterna-antillarum-browni.
[344] *Id*.
[345] *Id*.
[346] US Fish and Wildlife Service, *2025 5-Year Review for the California Least Tern: Summary and Evaluation*, at 62 (August 2025).

to feed without becoming oiled in the ocean, bay, estuary, or river mouth where they may feed.[347]

Offshore oil and gas development would harm the many species that depend on the California Current for its unique physical and biological characteristics. New oil and gas development will cause oil spills in addition to noise and water quality impacts that harm ocean wildlife. Even BOEM has recognized likely impacts of offshore oil drilling to at least some of these species.[348] 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."[349] 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 its critical habitat.[350] 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.

a) New oil and gas leasing in the Pacific increases the risk of oil spills.

On May 19, 2015, an onshore oil pipeline along the Santa Barbara County coastline ruptured, releasing more than 120,000 gallons of heavy crude oil into the surrounding environment including Refugio State Beach Park.[351] Some estimates have put the volume of oil spilled into the ocean at over 400,000 gallons (10,750 bbl) of oil.[352] The spill devastated approximately 1500 acres of shoreline habitat.[353] Thousands of acres of shoreline and subtidal habitat were destroyed, and hundreds of animals—including marine mammals—were injured or killed.[354] 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.[355]

Any oil spill resulting from future oil and gas development in the Pacific Region would impact coastal marine life that could last decades, including weakened resiliency of resident organisms

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[347] *See, generally,* Keane Biological Consulting, Inc., prepared for California Department of Fish and Game, *Final Report: Experiment to Protect Least Terns during an Oil Spill at the Port of Los Angeles Pier 400 Least Tern Nesting Area, 2006 Least Tern Nesting Season* (December 30, 2006).

[348] BOEM, Offshore Oil and Gas Development and Production Activities in the Southern California Planning Area, Biological Assessment U.S. FWS Regulated Endangered and Threatened Species ("FWS BA") (2019) at 16, available at https://downloads.regulations.gov/FWS-R8-ES-2023-0132-0011/content.pdf

[349] *Id.* at 1.

[350] *Id.* at 16, 44–49, 59–60.

[351] California Department of Fish and Wildlife et al., *Refugio Beach Oil Spill: Final Damage Assessment and Restoration Plan/Environmental Assessment*, 4 (June 2021) [hereinafter "NRDA"], https://www nfwf.org/sites/default/files/2022-09/refugio-beach-oil-spill-final-damage-assessment-restoration-plan-2-03-2021.pdf

[352] Expert Report of Igor Mezic, Ph.D., *Andrews v. Plains All American Pipeline, LP*, October 21, 2019, pp. 16-17.

[353] California Department of Fish and Wildlife et al., *Refugio Beach Oil Spill: Final Damage Assessment and Restoration Plan/Environmental Assessment*, at 3 (June 2021) [hereinafter "NRDA"]

[354] *Id*. at 3–7.

[355] *Id*. at 3, 8.

to future oil spills.[356] As past oil spills in the Pacific Region have already demonstrated—and on multiple occasions—discharges of oil in the Pacific have devastating effects on the ocean and coastal ecosystems and their species. As described in more detail below, oil can impact marine life through various pathways. Accordingly, BOEM should not put the Pacific region at risk from oil spills.

b) Expanded oil and gas leasing will have harmful noise impacts on Pacific wildlife.

If offshore oil drilling were expanded in California waters, seismic blasting and additional background noise would harm wildlife in the California Current.[357] Noise impacts would continue through the site assessment, construction, operation, and decommissioning phases, with varying degrees of severity.

In 2012, BOEM conducted a workshop specifically to consider the impacts of man-made noise on fish, fisheries, and invertebrates which revealed a significant gap in understanding.[358] Since then, studies have found marine invertebrates are sensitive to anthropogenic noise, indicating that anthropogenic noise may influence ocean biodiversity.[359] In the larval stage for crustaceans, bivalve, and gastropods, anthropogenic sound exposure has been shown to cause delayed hatching and development, impaired embryotic development, significantly increased larvae abnormality, and increased mortality.[360] It is imperative that BOEM consider available information regarding how noise may impact all types of marine species, including marine invertebrates.

Noise impacts on marine wildlife would occur at all stages of any additional oil and gas development. The OCS-related helicopter and service-vessel traffic will produce a broad array of sounds at frequencies and intensities that may be detected by marine mammals, sea turtles, and invertebrates.[361] The intensity and duration of these sounds could directly and adversely affect marine life by physically injuring hearing, producing behavioral or physiological disturbances leading to displacement and avoidance, and/or masking their ability to utilize sounds produced for echolocation or communication.[362] Impacts from deep-water oil and gas development activities begin during seismic surveys and last through decommissioning.[363] These impacts include not only an increase in underwater sound but an increase in light emissions and vessel

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[356] *See, e.g.,* J. W. Fleeger et al., *What Promotes the Recovery of Salt Marsh Infauna After Oil Spills?*, 42 Estuaries and Coasts 204 (August 7, 2018).

[357] *See generally* Marta Solé et al., *Marine invertebrates and noise*, 10 Frontiers in Marine Science 1129057 (2023).

[358] *See* Normandeau Associates, Inc., Workshop Report for the U.S. Dept. of the Interior, Bureau of Ocean Energy Management, *Effects of Noise on Fish, Fisheries, and Invertebrates in the U.S. Atlantic and Arctic from Energy Industry Sound-Generating Activities*, at 37-70 (2012).

[359] Marta Solé et al., *Marine invertebrates and noise*, 10 Frontiers in Marine Science 1129057, at 2 (2023).

[360] *Id.* at 15.

[361] U.S. Minerals Management Service, Deepwater Gulf of Mexico Environmental and Socioeconomic Data Search and Literature Synthesis Volume I: Narrative Report, OCS Study MMS 2000-049, at 247-50 (2000).

[362] *Id.* at 247.

[363] Erik E. Cordes et.al., *Environmental impacts of the deep-water oil and gas industry: a review to guide management strategies*, 4 Frontiers in Environmental Science, 3–12, (September 16, 2016).

activity.[364] Due to this continuation of noise impacts throughout the entire oil and gas development process, it is critical that BOEM consider relevant available information on noise impacts.

c) Expanded oil and gas leasing in the Pacific will degrade the region's water quality.

Toxins that are released during the oil and gas drilling process will directly impact ocean water quality and marine species, and climate change will intensify such effects, as well as the impact of oil spills.

Wastewater from oil and gas production creates wastewater, called "produced water," that is "composed of formation water, re-injection water/steam and treatment chemicals utilized during drilling, fracturing, stimulation, production and oil–water/oil-sand separation processes."[365] Produced water generally contains various hazardous pollutants such as petroleum hydrocarbons, polycyclic aromatic hydrocarbons, toxic anions, heavy metals, radionuclides and other treatment chemicals.[366] Though most generated operational discharges are expected to dissipate in the water column, prolonged exposure to the hazardous pollutants in these discharged fluids may have sublethal effects on marine mammals or sea turtles.[367] Such discharges could also indirectly impact marine species through reduction of prey or ingestion of affected prey species.[368]

The Draft Proposed Program acknowledges that existing vessel traffic, industrial operations, and offshore oil and gas operations release a variety of pollutants which degrade the Pacific Ocean's water quality.[369] The Draft Proposed Program also recognizes the existing presence of legacy organochlorine pesticides, pharmaceuticals, industrial chemicals, PFAS (like dichlorodiphenyltrichloroethane) and polychlorinated biphenyls (PCBs) in the marine and coastal ecosystem.[370]

Increased oil and gas development in the Pacific region will increase the discharge of these various pollutants into the ocean, the impacts of which are further exacerbated by environmental changes like ocean acidification and hypoxia. These exacerbated effects of additional pollutants will impact human health as the result of coastal communities eating Pacific-sourced seafood which contains these toxins. As the climate warms through the overproduction of greenhouse gases like carbon dioxide, the ocean will continue to experience acidification, hypoxia, and

[364] *Id*. at 5–8.

[365] Ganiyu, S. O., et al. *Advanced oxidation processes for the degradation of dissolved organics in produced water: A review of process performance, degradation kinetics and pathway*, 429 Chemical Engineering Journal, 132492 (February 1, 2022).

[366] *Id*.

[367] U.S. Minerals Management Service, Deepwater Gulf of Mexico Environmental and Socioeconomic Data Search and Literature Synthesis Volume I: Narrative Report, OCS Study MMS 2000-049, at 247 (2000).

[368] *Id*.

[369] Draft Proposed Program at 9-20.

[370] *Id*.

warming. These cumulative stressors will lead to a greater accumulation of mercury and other toxins in seafood and increase the chance for food-borne pathogens to enter the food supply.[371]

In addition, water quality impacts could be exacerbated by climate change.[372] Scientists' current understanding of the ocean and how humans interact with it has changed extensively over the decades. Changes to California's ocean are occurring rapidly and unpredictably outside of the expectations of scientists, amplifying the impacts of current ocean stressors.[373] A warming climate directly impacts our oceans in many ways, including a continual increase in the ocean's interior temperature.[374] Increased greenhouse gases, particularly carbon dioxide (CO_2), also directly impact ocean chemistry as the ocean absorbs a substantial amount of carbon.[375] The combined changes to the water chemistry and ambient temperature can strongly affect dissolution rates of various compounds.[376]

In summary, the Northern, Central, and Southern California planning areas overlay some of the most productive, diverse, and sensitive environmental regions in the world. New and expanded oil and gas development in the Pacific Region will harm the Region's ocean and coastal ecosystems that are already under enormous environmental stressors. In light of the likely effects that oil and gas development in the Pacific would have on these ecosystems, exclusion of these planning areas from BOEM's subsequent environmental evaluations in the second and third program analyses is warranted.

Moreover, new oil and gas leases would undermine California's efforts to protect coastal and ocean wildlife. In December 2025, the California Ocean Protection Council (OPC) approved its 2026-2030 Strategic Plan reflecting the Council's investments and priorities.[377] The Plan serves as a roadmap for safeguarding California's coastal and ocean habitats and wildlife and building community resilience to climate change. In the Plan, California affirmed its goal of conserving thirty percent of coastal waters and funding multiple projects to address threats to biodiversity in

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[371] Ziska, L., et.al., *Ch. 7: Food Safety, Nutrition, and Distribution, in* The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment. (U.S. Global Change Research Program, Washington, DC, 189–216, 2016), at 190, 193, 195, 203, http:// dx.doi.org/10.7930/J0ZP4417.

[372] *See, generally, id*.

[373] Emily Osborne, et al., *Decadal variability in twentieth-century ocean acidification in the California Current Ecosystem*, 13 Nature Geoscience 43 (2020), doi:10.1038/s41561-019-0499-z; Warren Cornwall, *Ocean Heat Waves Like the Pacific's Deadly 'Blob' Could Become the New Normal*, Science.Org (Jan 31, 2019), https://www.science.org/content/article/ocean-heat-waves-pacific-s-deadly-blob-could-become-new-normal (last visited 1/14/2026).

[374] Lijing Cheng et.al., *How fast are the oceans warming?*, 363(6423) Science 128, 129 (2019), https://doi.org/10.1126/science.aav7619

[375] Carlos Garcia-Soto et. al., *An Overview of Ocean Climate Change Indicators: Sea Surface Temperature, Ocean Heat Content, Ocean pH, Dissolved Oxygen Concentration, Arctic Sea Ice Extent, Thickness and Volume, Sea Level and Strength of the AMOC (Atlantic Meridional Overturning Circulation*), 8 Frontiers in Marine Science 642372, at 2, 6, 19 (2021).

[376] R. Rodolfo-Metalpa et. al., *Coral and Mollusc Resistance to Ocean Acidification Adversely Affected by Warming*, 1 Nature Climate Change 308 (2011), doi: 10.1038/nclimate1200.

[377] *See* California Ocean Protection Council, *Strategic Plan 2026-2030: Safeguarding Our Coast and Ocean for All Californians* (2025), https://opc.ca.gov/wp-content/uploads/2025/11/2026-2030-OPC-Strategic-Plan-508.pdf.

estuaries.[378] California also set goals to restore at least 2,000 acres of kelp forest, 7,000 acres of coastal wetlands, 100 acres of native oyster beds, and 200 acres of eelgrass meadows by 2030.[379] The addition of new oil and gas leases in the Pacific Region would directly undermine these state efforts. The construction, operation, and decommissioning phases of any additional oil or gas lease would directly and/or indirectly impact all of these ocean and coastal habitats. Therefore, the Pacific Region must be excluded from the program based on the importance and sensitivity of its ecological resources.

2. New OCS Development Will Have Negative Consequences for Human Health.

Additional oil and gas drilling off California's coast will impact the health of California's coastal and inland communities. Namely, new development will exacerbate the air quality of California communities that are already in nonattainment status, and poison commercially viable fish that communities consume.

BOEM acknowledges in the Draft Proposed Program that multiple areas along the Pacific, including "large sections of the Southern California coast and the San Francisco Bay are out of attainment" for ozone and particulate matter (PM).[380] An increase in emissions will lead to an increase of ozone and PM in the atmosphere.[381] California adopted Renewable Portfolio Standards of sixty percent renewable energy by 2030.[382] More recent legislation set a 100% renewable energy target by 2045.[383] Several other states are also transitioning from fossil fuels to clean renewable energy. The shift from fossil fuels negates the need for more extraction and will lend numerous benefits to the health of all. According to EPA, higher daily ozone concentrations are associated with "increased asthma attacks, increased hospital admissions, increased daily mortality, and other markers of morbidity."[384] PM is associated with human disease, especially cardiovascular and cerebrovascular disease.[385]

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[378] *Id.* at 23.

[379] *Id.* at 25.

[380] Draft Proposed Program at 9-19.

[381] Andrea Pozzer, Martin G. Schultz & Detlev Helmig, *Impact of U.S. Oil and Natural Gas Emission Increases on Surface Ozone Is Most Pronounced in the Central United State*s, 54 Environmental Science & Technology 12423, 12423-24 (September 9, 2020), doi: 10.1021/acs.est.9b06983.
Arideep Mukherjee & Madhoolika Agrawal, *World Air Particulate Matter: Sources, Distribution and Health Effects*, 15(2) Environmental Chemistry Letters 283 (February 23, 2017).

[382] Cal. Pub. Util. Code § 399.11.

[383] S.B. 100, 2017-2018 Reg. Sess. (Cal. 2018).

[384] U.S. EPA, *Health Effects of Ozone in the General Population*, EPA.Gov (March 27, 2025), https://www.epa.gov/ozone-pollution-and-your-patients-health/health-effects-ozone-general-population.

[385] Jonathan O. Anderson, Josef G. Thundiyil & Andrew Stolbach, *Clearing the Air: A Review of the Effects of Particulate Matter Air Pollution on Human Health,* 8(2) Journal of Medical Toxicology 166 (2012), doi: 10.1007/s13181-011-0203-1.

3. New Oil And Gas Development Will Negatively Impact California's Blue Economy.

Given the California coast and ocean's stunning natural beauty and abundant biodiversity, it is no surprise that fishing and marine tourism and recreation contribute a significant amount to California's economy. The federal government has responded to tribes, local communities, and local and state elected officials by protecting some of the region's invaluable marine treasures. As a result, California is home to the United States' largest and most comprehensive network of National Marine Sanctuaries.[386] Favoring ocean protection over mineral and/or fossil fuel extraction has been enormously beneficial to California's marine ecosystems and the fishermen and businesses that depend on them. California's investments in conservation have imparted benefits that far surpass any benefits that use of these marine areas for extractive purposes would provide.

a) New OCS development threatens California's thriving commercial fishing industry.

Many coastal communities' economic and social wellbeing depends on commercial fishing. California's commercial fisheries are already experiencing declines due to warming waters and ocean acidification, and new offshore drilling on the West Coast would introduce additional stressors that could dramatically exacerbate these threats to commercial fishing-dependent communities.[387] Impacts on fisheries and the environment, as identified throughout the Draft Proposed Program, can negatively impact the human environment.[388] There are five main impacts to fisheries resources and fishers from oil and gas development: (1) declines in the quality (e.g., contaminant load) of landed, targeted fish species, (2) increased mortality for targeted species, (3) loss of access to target species (via displacement), (4) change in catchability, and (5) direct impacts to fishers' health.[389] Impacts (1) and (5) require further analysis by BOEM due to their direct public health impacts. Expanding oil and gas development in California would have far-reaching and deleterious impacts on fishers' lives, their communities, and the social and economic well-being of these coastal regions.

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[386] Galvanized by the seminal 1969 Santa Barbara oil spill, California has led the United States in marine protection. California has the United States' largest network of National Marine Sanctuaries: Greater Farallones National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Monterey Bay National Marine Sanctuary, and Channel Islands National Marine Sanctuary. The state's commitment to marine protection also extends to state waters—in 1999, California passed the Marine Life Protection Act, which created 124 Marine Protected Areas in state waters comprising approximately 16 percent of California's coastal waters.

[387] The Ocean Acidification and Hypoxia (OAH) Task Force Report states, "OAH will have severe environmental, ecological and economic consequences for the West Coast, and requires a concerted regional management focus. OAH is a problem that is expected to grow in intensity with far greater impacts to come, particularly along the West Coast, where regional ocean circulation patterns dramatically heighten the potentially devastating effects of OAH." F. Chan, et.al., *The West Coast Ocean Acidification and Hypoxia Science Panel: Major Findings, Recommendations, and Actions,* California Ocean Science Trust, Oakland, California, USA, 5 (April 2016).

[388] *See* Draft Proposed Program at 11-8.

[389] Nathan Andrews et.al., *Oil, fisheries and coastal communities: A review of impacts on the environment, livelihoods, space and governance*, 75 Energy Research & Social Science 102009, at 5-6 (2021).

b) New OCS development threatens California's robust marine tourism and recreation economy.

California's coastal economy is heavily dependent on marine tourism and recreation. California's marine economy in 2021 accounted for $51.3 billion, forty-seventy percent of which was from tourism and recreation and only five percent of which was attributed to offshore mineral resources.[390] Employment data for the tourism and recreation sector also contrast starkly with those of the oil and gas sector and affirm the social value of the tourism and recreation economies. In 2021, the tourism and recreation sector provided sixty-seven percent of all ocean jobs while only one percent of ocean jobs came from offshore mineral resources.[391] Contrary to the argument that increased oil and gas production will bring jobs to California, it would increase the risk of an oil spill which would harm California's tourism and recreation economy. Further, the state's thriving tourism and recreation and renewable energy industries provide economic and social benefits that far surpass any economic benefits that increased offshore oil and gas development can offer; for example, over 50% of California's population likely visits the coast for recreation each year, and the most popular coastal uses are nonconsumptive uses, including beach going, swimming, scenic drives, and photography.[392] An oil spill could prevent tourists and California's population from partaking in such activities and have a catastrophic effect on California's coastal economy.

4. New OCS Development Would Have Negative Impacts on Other Established Coastal and Marine Industries And Users in the Pacific.

The Pacific Region is composed of many ocean users (offshore wind, aquaculture, military, marine protected areas, national marine sanctuaries, etc.) with their own spatial allotment that would be impacted by new oil development. New oil production in the California Current would drastically threaten the region's thriving ocean and coastal economies, all of which are wholly dependent on healthy marine ecosystems. In particular, new oil leasing will have negative impacts on offshore wind and other renewable energy sources, and MPAs.

a) Expanded leasing in the Pacific Region would conflict with offshore wind development.

In 2022, BOEM auctioned commercial OSW energy lease sales for the Humboldt and Morro Bay Leases (five in total).[393] The designated areas located adjacent to Morro Bay and Humboldt Bay comprise over 373,000 acres (about 583 square miles).[394] California set its own clean energy goals in AB 525 (August 2022), which directed the California Energy Commission (CEC) to

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[390] NOAA, *2024 Marine Economy Report: California*, https://coast.noaa.gov/data/digitalcoast/pdf/marine-economy-california.pdf.

[391] *Id.*

[392] Charles Colgan, Phil King & Sarah Jenkins, *Coastal Recreation in California: Beyond the Beach*, Center for the Blue Economy, at 6 (November 2021), https://www middlebury.edu/institute/sites/default/files/2021-12/California%20Recreation%20Report%20v8-final%20for%20web.pdf

[393] BOEM, *California Offshore Wind Draft Proposed Programmatic Environmental Impact Statement, Volume I: Chapters 1-4* at ES-1 (November 2024), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/2024_1021_CA_PEIS_Vol_I_508c_0.pdf.

[394] *Id.*

adopt planning goals of two to five gigawatts (GW) of offshore wind energy by 2030 and twenty-five GW by 2045.[395] The current lease holders are in various stages of the survey process to evaluate their lease areas before submitting construction and operations plans. Considering both federal and state offshore wind development that is currently underway off California's coast, BOEM should forego any new leasing in the Region.

Other types of marine energy technologies, such as wave, tidal, and ocean current systems, could also contribute to the West Coast's energy needs. Such technologies can offer the following benefits to the nation's energy and security needs: (1) "powering coastal microgrids for disaster recovery," (2) "supporting offshore data center operations with subsea cooling and edge computing," and (3) "engaging other offshore and coastal industrial processes."[396]

b) New leasing off California's coast would threaten State and Federal Marine Protected Areas.

In 1980, Congress established the Channel Islands National Park (CINP) and Channel Islands National Marine Sanctuary (CINMS) offshore Santa Barbara County.[397] 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 "[o]ceanographic 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.[398]

The Chumash Heritage National Marine Sanctuary (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

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[395] A.B. 525, 2021-2022 Reg. Sess. (Cal. 2021); California Energy Commission, *CEC Adopts Offshore Wind Energy Strategic Plan to Support California's 100% Clean Electricity Future* (July 10, 2024), https://www.energy.ca.gov/news/2024-07/cec-adopts-offshore-wind-energy-strategic-plan-support-californias-100-clean (last visited Jan. 22, 2026).

[396] Dan Hellin, PacWave, Comment Letter re Docket BOEM-2025-0015, available at: https://www regulations.gov/comment/BOEM-2025-0015-25325 (last visited January 14, 2026).

[397] National Park Service, Oceans, Coasts & Seashores: Marine Protected Areas, NPS.GOV (May 25, 2017), https://www nps.gov/subjects/oceans/mpa.htm.

For a detailed discussion of the biological and geographic attributes of the Santa Barbara Channel region, see Randall D. Clark, *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.

[398] Randall D. Clark, *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, at 202 (November 2005), available at: https://repository.library noaa.gov/view/noaa/2161.

California coastal marine environment," protecting the cultural heritage of some of the earliest documented human habitation in North America.[399]

In addition, the CINMS and the State of California designated several MPAs around the Channel Islands,[400] followed by the protection of many more MPAs along the mainland coast of California.[401] The MPA network was established as directed by the Marine Life Protection Act (MLPA) of 1999, utilizing six goals to guide the development process. California's MPA Network has 124 MPAs and 14 special closures along the entire coast and this year has been included in the International Union for Conservation of Nature (IUCN) Green List of Protected and Conserved Areas.[402]

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 "[r]esilience to climate change-driven events is thought to be a core benefit of a connected network of MPAs."[403] 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.[404]

The Program needs to recognize the existence of state MPAs and adequately consider the effects of new oil and gas development on national marine sanctuaries.

c) The Program would also threaten the lifeways of California Native American tribes.

There are over 170 California Native American tribes with intrinsic ties to land and water. We strongly encourage respectful government-to-government consultation and meaningful engagement with all tribes, allowing for time to adequately absorb and respond to this project. There are many culturally significant areas and resources to tribes that are at times similar and

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

[400] Channel Islands National Marine Sanctuary, Marine Reserves, http://channelislands noaa.gov/marineres/welcome html (last visited January 14, 2026).

[401] California Department of Fish and Wildlife, California Marine Protected Areas (MPAs): Find an MPA, https://wildlife.ca.gov/conservation/marine/MPAS (last visited January 5, 2026).

[402] IUCN Press Release, California's Marine Protected Area Network joins IUCN Green List – more than doubling number of sites worldwide, IUCN.org (June 12, 2025), https://iucn.org/press-release/202506/californias-marine-protected-area-network-joins-iucn-green-list-more-doubling;California Department of Fish and Wildlife, California's Marine Protected Area Network Decadal Management Review, at 1 (2022).

[403] *Id.* at ES-4.

[404] *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 5,656.

others unique. One example of culturally significant resources to the Chumash include species found in Carpinteria waters.[405] Additionally, Chumash tomol paddlers use the beaches and waters of the Carpinteria area to practice for their annual crossing to Limuw, also known as Santa Cruz Island. This is one example of many illustrating the strong ties tribal communities maintain with the natural environment.

In light of the serious harms that increased oil and gas development in the Pacific would have on California's ecology, communities, and economy, BOEM must remove the Pacific Region from its leasing program.

C. BOEM Cannot and Should Not Open Parts of the Eastern Gulf to Oil And Gas Leasing.

As the only part of the Gulf largely free from drilling infrastructure and the noise and pollution of drilling, the eastern Gulf serves as highly important habitat for marine wildlife, including whales, dolphins, and sea turtles, and as an important military testing area. The Gulf is the exclusive home of the critically endangered Rice's whale, a species that scientists estimate may have less than 50 individuals remaining.[406] Although the Rice's whale is known to inhabit areas throughout the entire Gulf of Mexico, the most undeveloped portion of the whale's habitat lies in the Eastern Gulf and protection of that habitat is critical to ensuring the whale's survival.[407] Millions of people who live in Gulf Coast states depend on this productive marine environment to support coastal fisheries, tourism, and recreational opportunities.[408] Fishing and shrimping are also part of the traditional livelihoods and culture of many Gulf communities.[409]

No leasing has occurred in the Eastern Gulf since 1988 and for good reason. Florida's citizens and government representatives have long opposed drilling in the Eastern Gulf.[410] Just last month, the Florida congressional delegation sent a letter strongly opposing opening the area to leasing.[411] The Department of Defense has likewise supported a leasing moratorium in the eastern Gulf because it is an "irreplaceable national asset used . . . to develop and maintain the

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[405] Santa Ynez Band of Chumash Indians, *Impacts of Climate Change on the Santa Ynez Band of Chumash Indians* in OEHHA 2022 Indicators of Climate Change in California, at VII-150 (2022), https://oehha.ca.gov/sites/default/files/media/epic/downloads/06santaynez.pdf;
Michael Vincent McGinnis, Roberta Reyes Cordero & Matt Stadler, White Paper for the Wishtoyo Foundation, *Tribal Marine Protected Areas: Protecting Maritime Ways and Cultural Practices*, at 3 (2004), https://static1.squarespace.com/static/5459dd35e4b0eb18b9b5599b/t/56bb76be859fd0422da8978d/1455126215937/TribalMPAsWhitePaper.pdf.

[406] BOEM, *2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program Final Programmatic Impact Statement* 111 (Sept. 2023).

[407] *Id*. at 111, 203-04, 277.

[408] *Id*. at 118 ("Communities in the GOM Region depend on the ocean economy for employment and income.").

[409] *Id*. at 119–20.

[410] Joselow, M., Florida Republicans support drilling–just not off their own coasts, Climate 202 (Jan. 31, 2023); Marcus, N., *Offshore oil drilling in Florida still possible despite ban*, U.S. News (Jan. 15, 2019).

[411] Letter from Florida Delegation to President Donald Trump (December 4, 2025), https://www rickscott.senate.gov/services/files/3D6AAAA4-DFDC-419B-9911-12E3CC6252C2.

readiness of our combat forces."[412] Florida's Defense Support Initiative also sent a letter urging for protections of the Eastern Gulf due to national security concerns and the economic importance of the Test and Training Range.[413] Based on widespread opposition to oil and gas activities in this region, the majority of BOEM's Eastern Gulf of Mexico Planning Area has been protected from leasing for decades, first by Congress through 2022,[414] and then by President Trump's withdrawal, which expires in 2032. [415] As a result, BOEM should exclude the Gulf Program Area B from consideration in the Proposed Program.

IV. BOEM SHOULD NOT INCREASE OIL AND GAS DEVELOPMENT IN THE GULF OR COOK INLET BEYOND WHAT IS ALREADY MANDATED.

In addition to keeping the Alaska OCS, the Pacific OCS, and the Eastern Gulf off limits to leasing, as described above, BOEM should not add any additional lease sales in the Western and Central Gulf or Cook Inlet beyond the 36 sales in those areas that are already mandated under the Reconciliation Act over the next fifteen years. Additional leasing beyond those mandated sales is entirely unnecessary and will create additional, excessive burdens in regions that are already bearing the brunt of offshore oil and gas development. Despite this, BOEM is proposing five additional sales in the Gulf and five additional sales in Cook Inlet. BOEM should not include any additional lease sales in these areas.

A. BOEM Should Not Expand Offshore Oil and Gas in the Gulf Region Because it is a Sensitive Marine Environment and the Region is Already Overburdened by Oil and Gas Infrastructure.

1. The Gulf is a Sensitive Marine Environment Home to Many Rare Marine Species.

The Gulf of Mexico is a biologically rich space that benefits Gulf communities and provides home to numerous marine and coastal species. It is home to some of the most productive and biodiverse tropical and temperate habitats in the United States, including coral reefs, wetlands, seagrass beds, mangroves, *Sargassum*, and hard- and soft-bottom marine communities. These ecosystems support thousands of species of fish, whales and dolphins, sea turtles, corals, and other animals.

More than two dozen species listed as either threatened or endangered under the ESA inhabit the Gulf. They include the critically imperiled Rice's whale—with less than 50 individuals

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[412] Department of Defense, Preserving Military Readiness in the Eastern Gulf of Mexico 1 (May 2018), https://www militaryfriendlynwf.com/documents/Preserving-Military-Readiness-EGOMEX-report_2018.pdf; *see* Congressional Research Service, Gulf of Mexico Energy Security Act (GOMESA): Background and Current Issues (Dec. 21, 2022), https://www.congress.gov/crs_external_products/R/PDF/R46195/R46195.5.pdf.

[413] Letter from Garry Haase, Colonel USAF, Chairman of the Defense Support Initiatives, to Senator Roger Wicker (October 22, 2025), https://usa.oceana.org/wp-content/uploads/sites/4/2025/12/Defense-Support-Initiatives-committee-letter-FL-1.pdf .

[414] Gulf of Mexico Energy Security Act of 2006, Pub. L. No. 109-432, § 104(a), 120 Stat. 2922, 2934

[415] *Memorandum on the Withdrawal of Certain Areas of the United State Outer Continental Shelf from Leasing Disposition,* THE WHITE HOUSE (Sept. 8, 2020), https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-withdrawal-certain-areas-united-states-outer-continental-shelf-leasing-disposition/.

remaining—and the Kemp's ridley sea turtle—the most endangered sea turtle in the world. Additionally, critical habitat is designated in or along the Gulf for the loggerhead sea turtle, Gulf sturgeon, smalltooth sawfish, Nassau grouper, boulder star coral, lobed star coral, mountain star coral, pilar coral, rough cactus coral, elkhorn coral, and staghorn coral. NMFS has proposed designating critical habitat in the Gulf for the Rice's whale and green sea turtle.

Additionally, the Flower Garden Banks National Marine Sanctuary hosts the northernmost tropical coral reef in the United States and consists of 17 different reefs and banks within 19 separate boundaries.[416] The Flower Garden Banks is home to threatened coral species and attracts many other species, including reef fishes, sharks, marine mammals, sea turtles and other predatory fishes like jack.[417]

2. The Gulf Region is Already Overburdened with Oil and Gas Infrastructure and Production, with Serious Ramification for the Region's Environment and Public Health.

The Gulf region has long been a sacrifice zone for offshore oil and gas development, bearing the brunt of oil and gas pollution and infrastructure, including the majority of the pipelines, refineries, and petrochemical plants necessary to support offshore production and distribution.

Ninety-nine percent of all OCS oil and gas production is generated in the Western and Central Gulf planning areas.[418] The pollution generated by this production disproportionately impacts communities of color and low-income communities in the Gulf region. Both nationwide and in the Gulf, polluting facilities have been and continue to be sited in or near Black communities, with more than one million African Americans living within a half-mile radius of an oil and gas facility.[419]

Continued expansion of offshore oil and gas drilling pursuant to the Draft Proposed Program will further harm these already overburdened communities.

The extensive network of offshore oil and gas operations in the Gulf creates a significant amount of waste that ends up onshore in local communities. Offshore drilling requires new pipelines to transport oil. These pipelines can rupture or spill, destroying sensitive ecosystems and exacerbating other environmental harms to the coast such as erosion and saltwater intrusion into wetland habitats.[420] The existing infrastructure already burdens Gulf states like Louisiana and

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[416] NOAA Flower Garden Banks National Marine Sanctuary, Sanctuary Boundaries, https://flowergarden.noaa.gov/visiting/boundaries.html (visited January 16, 2026).

[417] National Marine Sanctuaries, Flower Garden Banks National Marine Sanctuary Species List, https://flowergarden.noaa.gov/about/specieslist html (visited January 16, 2026); *see also* NOAA Flower Garden Banks National Marine Sanctuary, West Flower Garden Bank, https://flowergarden.noaa.gov/about/westflowergardenbank html (visited January 16, 2026).

[418] Draft Proposed Program, sec. 3.5 at 3-18.

[419] Patrick Mustain et al., *Hindsight 2020: Lessons we Cannot Ignore From the BP Disaster,* OCEANA, (2020) at 47 https://usa.oceana.org/wp-content/uploads/sites/4/drill-19-0004_bp_deepwater_horizon_anniversary_report_m1_finalwdoi_spreads.pdf

[420] Elizabeth Ridlington & Kelsey Lamp, Offshore Drilling, Onshore Damage: Broken Pipelines, Dirty Refineries and the Pollution Impacts of Energy Infrastructure (2019) at 12-13 https://environmentamerica.org/wp-content/uploads/2019/12/VA_Offshore_drilling_scrn.pdf; Bob Marshall, *Losing Ground: Southeast Louisiana is*

Texas, and expanded drilling will only make this worse. Louisiana alone has almost 50,000 miles of pipelines, with the highest concentration of pipelines in the 19 parishes on or near the Gulf of Mexico.[421] There are also approximately 8,600 miles of active pipelines and more than 18,000 miles of decommissioned pipelines on the seafloor in the Gulf of Mexico.[422] Storms put this offshore infrastructure at risk of damage and spills, and climate change will increase this risk. After Hurricane Ida, for example, NOAA reported 55 oil spills, an unprecedented number of spills based on a 10-year record, with "the most significant impact to offshore drilling" since the federal government started using satellite data to track oil spills.[423] Pipelines are also susceptible to corrosion, which can cause pipeline failure and oil and gas to leak from pipelines.[424] Pipelines that have been exposed or moved due to natural processes can become hazards to commercial fishing and navigation and potentially impact other oil and gas infrastructure.[425] After Hurricane Katrina, one report found that nine miles of buried pipeline were dragged 4,000 feet across the seafloor.[426] Existing infrastructure already poses significant risks to the Gulf of Mexico. If more pipelines are needed as a result of expanded offshore oil and gas production, the risk of damage and leaks or spills increases, disproportionately impacting communities on and near the Gulf of Mexico.

Offshore drilling creates waste, including oil, chemical products, and toxic contaminants.[427] il and gas production in the United States produces more than 18 million barrels of waste fluid every year.[428] Some waste from offshore oil and gas production is dumped directly into the ocean, but some is either injected into geologic formations or disposed of onshore.[429] In the Gulf of Mexico, nearly all the waste not disposed of in the ocean is brought onshore for disposal.[430]

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disappearing, quickly, SCI. AM. (Aug. 28, 2014); *see* Section IV.A.4 (discussing how the oil and gas industry has contributed to Louisiana coastal land loss).

[421] Louisiana Department of Natural Resources, Office of Conservation, "Pipeline Operations Program," http://www.dnr.louisiana.gov/index.cfm/page/150.

[422] GAO, Report to Congressional Requesters, *Offshore Oil and Gas: Updated Regulations Needed to Improve Pipeline Oversight and Decommissioning*, GAO 21-293 at Highlights (Mar. 2021), https://www.gao.gov/assets/gao-21-293.pdf.

[423] Blacki Migliozzi & Hiroko Tabuchi, *After Hurricane Ida, Oil Infrastructure Springs Dozens of Leaks*, N.Y. TIMES, Sept. 26, 2021, https://www.nytimes.com/interactive/2021/09/26/climate/ida-oil-spills.html.

[424] GAO, *Offshore Oil and Gas* at 5.

[425] Ella Nilsen & Liz Stark, *America's Offshore Oil Infrastructure is Aging. 'We Don't Know There's a Problem Until There's a Problem.'*, CNN, Oct. 5, 2021, https://www.cnn.com/2021/10/05/us/oil-spill-aging-fossil-fuel-infrastructure-climate/index html; GAO, *Offshore Oil and Gas* at 5.

[426] GAO, *Offshore Oil and Gas* at 7.

[427] BOEM, "Questions, Answers, and Related Resources," https://www.boem.gov/environment/environmental-assessment/questions-answers-and-related-resources.

[428] Sarah Giltz, *Dirty and Dangerous Offshore Drilling Pollutes our Ocean and Coastal Communities*, Oceana (October 6, 2020), https://usa.oceana.org/blog/dirty-and-dangerous-offshore-drilling-pollutes-our-ocean-and-coastal-communities/.

[429] Elizabeth Ridlington & Kelsey Lamp, Offshore Drilling, Onshore Damage, at 14; BOEM, "Questions, Answers, and Related Resources."

[430] Energy Digital, *How to Manage Waste on Offshore Oil Rigs* (May 17, 2020), https://energydigital.com/utilities/how-manage-waste-offshore-oil-rigs.

When waste is improperly disposed of or water percolates through it, leachate and contaminated water can reach the water table, contaminating drinking water and harming nearby residents.[431] In Texas, a 2020 report on groundwater monitoring and contamination found 3,056 cases of groundwater contamination; the most common contaminants in those cases were gasoline, diesel, and other petroleum products.[432] Expansion of offshore oil and gas leasing will expand these facilities, as well as their environmental and public health impacts.

The production of oil and gas also helps drive the production of industrial chemicals and plastics. As of 2018, 14 percent of global oil production and 8 percent of global gas production was used to manufacture petrochemicals and their derivatives.[433] According to the International Energy Agency, petrochemicals such as plastics are projected to account for more than one third of global oil demand by 2030, and oil consumption for plastics production will outpace that of cars by 2050.[434]

As plastics production increases, plastic pollution continues to harm the environment and communities where pollution accumulates. While a significant quantity of plastic pollution is from produced consumer products, the petrochemical industry also produces plastic pollution in the form of nurdles—tiny beads of pure plastic that form the building block of almost all plastic products. Given their small size and weight, nurdles are easily spilled in everyday activities of the petrochemical industry.[435] Nurdles are not currently classified as pollutants or hazardous materials, so there is little oversight of the millions of nurdles that end up on shorelines and in waterways annually.[436]

Microplastics like nurdles cause pernicious health and environmental harms. Microplastics can absorb and subsequently leach toxic chemicals and contaminants into the surrounding environment.[437] Additionally, many plastics contain known endocrine disruptors—chemicals that

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[431] Mustain et al., *Hindsight 2020*, at 48; Mustain et al. *Groundwater Contamination in Texas Aquifers: Volume I*, Texas Water Development Board, at 41 (July 2011).

[432] Tex. Groundwater Prot. Comm., Joint Groundwater Monitoring and Contamination Report, 2020 at 6 (2021).

[433] Araceli Fernandez Pales et al., The future of petrochemicals: Towards more sustainable plastics and fertilisers, at 3 (Robert Priddle & Caren Brown eds., 2018).

[434] *Id.* at 11, 13.

[435] *See* Julissa Treviño & Undark, *The lost nurdles polluting Texas beaches*, THE ATLANTIC (July 5, 2019), https://www.theatlantic.com/science/archive/2019/07/plastic-pellets-nurdles-pollute-oceans/593317/.

[436] Neel Dhanesha, *The massive, unregulated source of plastic pollution you've probably never heard of*, VOX (May 6, 2022), https://www.vox.com/recode/23056251/nurdles-plastic-pollution-ocean-microplastics; Beth Gardiner, *How a dramatic win in plastic waste case may curb ocean pollution*, NAT'L GEOGRAPHIC (Feb. 22, 2022), https://www nationalgeographic.com/environment/article/how-a-dramatic-win-in-plastic-waste-case-may-curb-ocean-pollution.

[437] UNEP, *Plastic planet: How tiny plastic particles are polluting our soil* (Dec. 22, 2021), https://www.unep.org/news-and-stories/story/plastic-planet-how-tiny-plastic-particles-are-polluting-our-soil; Yukie Mato et al., *Plastic resin pellets as a transport medium for toxic chemicals in the marine environment*, 35 ENV'T SCI. TECH. 318, 318 (2001); Therese Karlsson et al., *Plastic pellets found on beaches all over the world contain toxic chemicals* INT'L PELLET WATCH at 4, 6 (2021).

can alter the functioning of the endocrine system.[438] Microplastics are also mistaken for food by fish, seabirds, and other marine organisms, and research has shown that microplastics have been found in human blood, internal organs, and even in the placentas of newborn babies.[439] Although research is limited, there is evidence to suggest that microplastics can cause oxidative stress, inflammation, and severe immune responses in humans.[440]

In 2019, a federal judge approved a settlement in a case alleging that Formosa Plastics had violated its permits by illegally discharging nurdles into the waters of Cox Creek and Lavaca Bay, Texas.[441] The judge found that Formosa had violated its permits on 736 days at one discharge point, and 1,149 days across eight other discharge points.[442] A year later, in August 2020, a shipping container of nurdles fell off a container ship in the Port of New Orleans during a thunderstorm, resulting in the release of an estimated 743 million nurdles into the Mississippi River.[443] Despite the enormity of the spill, no authority began assessing cleanup of the spill until ten days had passed, allowing an estimated 75% of the spilled nurdles to wash downstream.[444] In a map of nurdle pollution, areas with high recorded numbers of nurdles correspond to petrochemical hubs in Texas and Louisiana, areas already impacted by the other forms of pollution from the oil and gas industry.[445] In sum, offshore oil and its attendant infrastructure and industries cause significant harm to communities and environments in the Gulf region.

3. Existing Oil and Gas Infrastructure Disproportionately Harms Minority And Low-Income Communities in the Gulf.

Communities along the Gulf of Mexico are burdened with some of the worst impacts of the offshore oil and gas industry. As BOEM acknowledges, refineries along the Gulf Coast are optimized to process the kinds of crude produced from the OCS, and oil and gas produced offshore is mainly processed in Gulf Coast refineries.[446] The Gulf Coast hosts nearly half of U.S. petroleum refining capacity, mostly concentrated in Louisiana and Texas.[447] In particular, the

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[438] Chelsea M. Rochman et al., *Early warning signs of endocrine disruption in adult fish from the ingestion of polyethylene with and without sorbed chemical pollutants from the marine environment*, 493 SCI. OF THE TOTAL ENV'T 656, 656 (2014); Sara Brosché et al., *Widespread chemical contamination of recycled plastic pellets globally*, INT'L PELLET WATCH 4, 7-8 (2021).

[439] Antonio Ragusa et al., *Plasticenta: First evidence of microplastics in human placenta*, 146 Env't Int'l at 1, 5 (2021); Dhanesha, *The massive, unregulated source of plastic pollution you've probably never heard of*.

[440] Prata et al., *Env't exposure to microplastics: An overview on possible hum. health effects*, 702 SCI. OF THE TOTAL ENV'T 1 (2020).

[441] Dhanesha, *The massive, unregulated source of plastic pollution you've probably never heard of*.

[442] Gardiner, *How a dramatic win in plastic waste case may curb ocean pollution*.

[443] Jacob Wallace, *When plastic pours into the Mississippi, who's responsible?*, E&E NEWS GREENWIRE (Sept. 9, 2021), https://www.eenews net/articles/when-plastic-pours-into-the-mississippi-whos-responsible/.

[444] *Id*.

[445] Dhanesha, *The massive, unregulated source of plastic pollution you've probably never heard of*; NURDLE PATROL, https://nurdlepatrol.org/map at "map" and "table" (last visited. Jan. 16, 2026).

[446] Draft Proposed Program Sec. 7.1.4 at 7-10

[447] EIA, *Number and Capacity of Petroleum Refineries, Atmospheric crude oil distillation operable capacity* (2025), https://www.eia.gov/dnav/pet/pet_pnp_cap1_a_(na)_8D0_BpCD_a htm. (last visited January 15, 2026)

petrochemical industry has disproportionately impacted Black, Indigenous, and communities of color.[448] In Louisiana, industrialized communities that are predominantly Black or impoverished experience higher cancer risk from toxic air pollution.[449] Minority communities face disproportionate burdens from multiple pollution sources, including toxic air pollution, plastic pollution, and groundwater contamination. In a nationwide study mapping the spread of cancer-causing chemicals from sources of hazardous air pollutants, census tracts where a majority of residents were people of color experienced on average about 40 percent more cancer-causing industrial air pollution than primarily white census tracts.[450] In census tracts where the majority of residents were Black, the estimated cancer risk from toxic air pollution was found to be more than twice the risk of majority-white tracts.[451]

Two areas in particular along the Gulf of Mexico have unduly felt the harms of the oil and gas industry: "Cancer Alley," Louisiana and southeastern Texas. These two regions are highlighted to illustrate the severe impact of the offshore oil and gas industry on communities across the Gulf coast.

a) "Cancer Alley," Louisiana

"Cancer Alley," the 85-mile stretch along the Mississippi River between Baton Rouge and New Orleans, gets its name from the high concentration of petrochemical facilities and high cancer risk from toxic pollution.[452] In 2012, the average cumulative cancer risk in Cancer Alley was

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(Of the 59 operable petroleum refineries in PAD District 3 as of 2025, 35 were located in Texas and 15 in Louisiana)

[448] EARTHJUSTICE, *How big oil is using toxic chemicals as a lifeline – and how we can stop it* (July 2, 2020), https://earthjustice.org/features/petrochemicals-explainer.

[449] Kimberly Terrell & Gianna St. Julian, *Air pollution is linked to higher cancer rates among black or impoverished communities in Louisiana*, 17 ENV'T RSCH. LETTERS VOL. 17 NUM. 1 014033 (January 13, 2022) https://iopscience.iop.org/article/10.1088/1748-9326/ac4360; Wesley James et al., *Uneven Magnitude of Disparities in Cancer Risks from Air Toxics*, 9 Int. J. Env't. Rsch. Pub. Health 4365 (December 3, 2012); *see* NAACP & Clean Air Task Force, *Fumes Across the Fence-Line* (November 2017), https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american; Timothy Q. Donaghy et al., *Fossil fuel racism in the United States: How phasing out coal, oil, and gas can protect communities*, Energy Research & Social Science Volume 100 (June 2023), https://www.sciencedirect.com/science/article/pii/S2214629623001640 (providing a comprehensive narrative review of literature on public health harms and disproportionate negative impacts Black, Brown, Indigenous, and poor communities caused by the fossil fuel supply chain).

[450] Lylla Younes et al., *Poison in the air*, ProPublica (Nov. 2, 2021), https://www.propublica.org/article/toxmap-poison-in-the-air.

[451] *Id*.

[452] Kimberly A. Terrell & Gianna St Julien, at 1-2; *see also*, EJScreen, *Environmental Justice Screening and Mapping Tool (Version 2.3)*, Public Environmental Data Partners (last visited Jan. 14, 2025) https://pedp-ejscreen.azurewebsites.net/; Tristan Baurick et al., PROPUBLICA (October 30, 2019), https://www.propublica.org/article/welcome-to-cancer-alley-where-toxic-air-is-about-to-get-worse; Matt Black, *Cancer Alley: Big industry, big problems*, PULITZER CENTER (August 10, 2015), https://pulitzercenter.org/stories/cancer-alley-big-industry-big-problems.

more than 50% higher than the average cumulative risk in the United States.[453] The burden of this toxic air pollution is felt primarily by Black and low-income communities.

Within ten miles of St. Gabriel, Louisiana, a majority-Black community, there are at least thirty large petrochemical facilities.[454] In the census tract in which St. Gabriel sits, the total cancer risk in 2017 (the most recent year on record) was over six times the national average.[455] St. Gabriel is also home to a chemical manufacturing plant that once ranked in the top ten plants in the country in terms of creating high, toxic levels of cancer-causing chemicals in the surrounding air.[456] A plastics facility across the river from St. Gabriel recently announced a $1.3 billion facility expansion.[457] Despite the existing health burdens in the region, many new petrochemical facilities or facility expansions are planned in or near communities that already have some of the most dangerous air in the country.[458]

In St. John the Baptist Parish, the town of Reserve, a small, predominantly Black and low-income community, has a cancer risk rate fifty times the national average.[459] Residents of Reserve and surrounding towns have been concerned about the health effects of high levels of chloroprene emissions from the Denka Performance Elastomer facility, a synthetic rubber plant in the parish.[460] After a 2015 EPA air toxicity report, the Denka plant was determined to be responsible for the greatest risk of cancer of any manufacturing facility in the United States.[461] Air monitoring around the parish has shown quantities of chloroprene, a likely carcinogenic chemical, dozens of times above EPA's guidance.[462] EPA has stated that emissions of chloroprene above its recommended limit (0.2 micrograms per cubic meter) are unsafe for humans to breathe over the course of a lifetime.[463] The air monitoring station at a local

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[453] Julie Schwartzwald Meaders, *Health impacts of petrochemical expansion in Louisiana and realistic options for affected communities*, 34 TULANE ENV'T LAW J. 113, 120 (2021) https://journals.tulane.edu/elj/article/view/3005/2797

[454] Tristan Baurick et al., *Welcome to "Cancer Alley," where toxic air is about to get worse.*

[455] *See* EPA, *AirToxScreen Mapping Tool (based on 2017 emissions)*, Iberville Parish, LA Tract ID: 22047953200 (2017) https://epa maps.arcgis.com/apps/dashboards/fb6e6b70c7e2480c8ef88cc8e9c061ac.

[456] Younes et al., *In a notoriously polluted area of the country, massive new chemical plants are still moving in*, PROPUBLICA (Oct. 30, 2019), https://projects.propublica.org/louisiana-toxic-air/.

[457] STATE OF LOUISIANA OFFICE OF THE GOVERNOR, *Gov. Edwards and Shintech announce $1.3 billion expansion for plastics facility* (Jan. 26, 2021), https://web.archive.org/web/20231210142117/https://gov.louisiana.gov/index.cfm/newsroom/detail/2936.

[458] Tristan Baurick et al., *Welcome to "Cancer Alley," where toxic air is about to get worse.*

[459] Oliver Laughland, *Proposed deal could slash toxic emissions in America's 'Cancer Alley'*, THE GUARDIAN (June 8, 2022), https://www.theguardian.com/environment/2022/jun/08/cancer-alley-louisiana-denka-pollution-consent-decree.

[460] *See Id.*; CONCERNED CITIZENS OF ST. JOHN, *Our Mission and Our Work in Action,* https://www.ccosj.com/ (last visited Jan. 15, 2026).

[461] Jamiles Lartey & Oliver Laughland, *Cancer Town Louisiana: 'Almost every household has someone that died from cancer'*, THE GUARDIAN (May 6, 2019), https://www.theguardian.com/us-news/ng-interactive/2019/may/06/cancertown-louisana-reserve-special-report.

[462] Oliver Laughland, *Proposed deal could slash toxic emissions in America's 'Cancer Alley'*.

[463] Jamiles Lartey & Oliver Laughland *Cancer Town Louisiana: 'Almost every household has someone that died from cancer'.*

elementary school, on the fenceline of the Denka plant, recorded at one point levels of chloroprene 755 times above EPA's guidance.[464] Over 500 children attend the elementary school daily.[465]

One study of cancer risk in residents living near the Denka plant found that cancer prevalence and non-cancer health conditions associated with chloroprene exposure were unusually high and correlated to proximity to the plant.[466] Cancer prevalence for residents who lived within one-and-a-half kilometers of the plant was 44% higher than the national average.[467] Of survey respondents who lived within one-and-a-half kilometers of the plant, over half regularly experienced headaches, dizziness or lightheadedness; almost half regularly experienced eye pain/irritation and/or watery eyes; over 40% experienced coughing, sneezing, and/or a sore/hoarse throat most of the time; more than one third regularly experienced skin rash/irritation and/or itchy skin; nearly 40% experienced chest pain, heart palpitations or both; one third regularly experienced wheezing and/or difficulty breathing; and almost30% experienced fatigue/lethargy most of the time.[468] In surveyed households within one-and-a-half kilometers of the plant, nearly 50% of the children suffered from headaches, nosebleeds, or both.[469] These health effects are consistent with the short- and long-term health effects EPA has found associated with chloroprene exposure.[470] Additional long-term health effects of chloroprene exposure include cancer, rapid heartbeat and reduced blood pressure, and temporary hair loss.[471]

Due to EPA's concern about high levels of chloroprene emissions in St. John the Baptist Parish, EPA, the Louisiana Department of Environmental Quality, and Denka made efforts to reduce chloroprene emissions from the facility.[472] Yet between January 6, 2022 and September 26, 2024, average chloroprene concentrations from the majority of 21 monitoring locations on the fenceline of the Denka facility were still above EPA's recommended level, and four of the EPA's six monitoring sites reported chloroprene concentrations over the recommended level at the most

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[464] *Id*.

[465] Sharon Lerner, *EPA rejects Denka's request to weaken assessment of chloroprene*, THE INTERCEPT (Mar. 17, 2022), https://theintercept.com/2022/03/17/epa-cancer-chloroprene-denka/.

[466] UNIVERSITY NETWORK FOR HUMAN RIGHTS, "Waiting to die:" Toxic emissions and disease near the Louisiana Denka/DuPont Plant, at 6-7 (2019).

[467] *Id*. at 7.

[468] *Id*.

[469] *Id*.

[470] Bao Chuong et al., EPA Office of Inspector General, *Improving air quality: EPA should conduct new residual risk and technology reviews for chloroprene- and ethylene oxide-emitting source categories to protect human health, Report No. 21-P-0129*, at 6 (2021).

[471] *Id*.

[472] LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY, *LDEQ and Denka sign AOC designed to reduce chloroprene emissions at LaPlace facility* (Jan. 10, 2017), https://web.archive.org/web/20240501045242/https://www.deq.louisiana.gov/news/ldeq-and-denka-sign-aoc-designed-to-reduce-chloroprene-emissions-at-laplace-facility; *see also* EPA, EPA in Louisiana, *LaPlace, Louisiana - Background Information*, https://www.epa.gov/la/laplace-louisiana-background-information#about-denka (last visited Jan. 15, 2026).

recently available data collections on March 24 and March 28, 2025.[473] While production at the Denka plant was suspended in May 2025,[474] the health impacts on nearby communities and facilities just like this one along the Gulf Coast are lasting.

There are twelve petrochemical facilities within a ten-mile radius in St. James Parish.[475] Residents of the Parish and Cancer Alley generally have long been aware of the unusually high number of people who fall ill with cancer and other diseases.[476] One resident of Reserve recalled her niece saying, just before passing away from cancer: "We're just sitting here, waiting to die."[477]

b) Southeastern Texas

Like Cancer Alley, southeastern Texas is heavily burdened with the toxic pollution and adverse health impacts of oil refineries and the petrochemical industry. The impacts of the industry are acutely felt in the greater Port Arthur and Houston areas, the areas with the second and third largest hot spots of cancer-causing air pollution in the country, respectively, after Cancer Alley.[478] As BOEM explains, the Houston area is out of compliance with clean air standards and in nonattainment for ozone.[479] BOEM acknowledges that "[o]il and gas operations, combined with other anthropogenic activities, have the potential to degrade air quality along the Gulf Coast," and that, "[h]istorically, air pollution along the Texas and Louisiana coasts has been higher than other coastal areas in the GOA due to oil and gas operations."[480] Despite these acknowledgments, the agency's omission of detailed analysis on the exposure of communities in southeastern Texas to pollutants from oil and gas operations is an oversight that should be corrected for the second analysis.

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[473] EPA, *Coordinates of Denka Method 325 Monitoring sites, and average Chloroprene and average 1, 3-butadiene concentrations reported for those sites for January thru September 26, 2024*, https://www.epa.gov/system/files/documents/2024-10/denka-fenceline-conc-maps-through-9.26.24.pdf (last visited Jan. 15, 2026); EPA, *Map of Denka TO-15 Summa Canister Monitoring sites: Denka has been monitoring for chloroprene using TO-15 Summa Canisters pursuant to a CAA Section 114 request since July 7, 2022*; EPA, *Spreadsheet containing TO-15 monitoring locations and results of ambient sampling for chloroprene for the time period of July 4, 2022 thru March 28, 2025*. https://www.epa.gov/la/denka-air-monitoring-data-summaries (last visited January 16, 2026).

[474] Denka Company Limited, Announcement Concerning the Recording of Extraordinary Losses of a U.S. Subsidiary of the Company and of the Suspension of Chloroprene Rubber Production (May 13, 2025) https://www.denka.co.jp/eng/storage/news/pdf/535/20250513_denka_dpe_en.pdf

[475] Raúl M Grijalva and A. Donald Mceachin, *Letter to President Joseph R. Biden requesting revocation of Army Corps permits for the Formosa Plastics petrochemical complex*, U.S. House of Representatives Committee on Natural Resources, (March 17, 2021).

[476] Jamiles Lartey & Oliver Laughland, *Cancer Town Louisiana: 'Almost every household has someone that died from cancer.'*

[477] UNIVERSITY NETWORK FOR HUMAN RIGHTS, "Waiting to die:" Toxic emissions and disease near the Louisiana Denka/DuPont Plant, at 5.

[478] Lylla Younes et al., *Poison in the air.*

[479] Draft Proposed Program, at 9-31.

[480] Draft Proposed Program, at 9-31.

In the Houston region—where residents are exposed on average to several tons of hazardous pollutants per year per square mile—research showed that people of color were exposed to multiple hazardous air pollutants at rates at least twice as high as white communities, and that the average burden of hazardous air pollution was nine percent to 127 percent greater for people of color, people living in poverty, and limited-English households than their advantaged counterparts.[481] Many Gulf South communities experience increased exposure to cancer-causing chemicals including benzene as a direct result of proximity to oil, gas, and petrochemical infrastructure.[482] While these communities are experiencing the brunt of pollution from the fossil fuel industry, they are systemically excluded from reaping the job opportunities and the economic benefits associated with fossil fuel processing onshore.[483] Production from lease sales scheduled in the Draft Proposed Program will contribute to the continued operation and possible expansion of fossil fuel infrastructure and the disproportionate pollution burden on Gulf South communities. BOEM must carefully consider these impacts in its analysis.

In an assessment of benzene pollution at the fencelines of petroleum refineries, seven refineries and chemical plants currently exceed nine micrograms per cubic meter—the level above which EPA requires a facility to take action to reduce benzene emissions.[484] Most of these refineries are located in Texas or Louisiana.[485] Benzene is a known human carcinogen with harmful health effects from both short- and long-term exposure, including headaches, dizziness, and irritation of the eyes, skin and respiratory tract, as well as harmful effects to bone marrow, excessive bleeding, and damage to the immune system.[486]

In Jefferson County, in which Port Arthur is situated, 92% of sulfur dioxide emissions come from one petroleum coke plant; the plant is one of the largest sources of sulfur dioxide pollution

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[481] Sustainable Systems Research, LLC, *Evaluation of Vulnerability and Stationary Source Pollution in Houston*, at 19, 34 (rev'd Sept. 2020), https://www nrdc.org/sites/default/files/houston-stationary-source-pollution-202009.pdf; *see* Yukyan Lam et al., *Toxic air pollution in the Houston ship channel: Disparities show urgent need for environmental justice*, NRDC & Tex. Env't Justice Advocacy Servs. (Sept. 2021), https://www nrdc.org/sites/default/files/air-pollution-houston-ship-channel-ib.pdf.

[482] Environmental Integrity Project, "*Nearly Half of U.S. Refineries Releasing Benzene at Levels That Could Pose a Long-Term Health Threat*" (May 12, 2022), https://environmentalintegrity.org/news/nearly-half-of-u-s-refineries-releasing-benzene-at-levels-that- could-pose-a-long-term-health-threat/; *See Energy and Environmental Profile of the U.S. Chemical Industry*, U.S. Dep't of Energy Office of Industrial Tech., https://energy.gov/sites/prod/files/2013/11/f4/profile_full.pdf; *How a Petrochemical is Produced*, AFPM, https://www.afpm.org/industries/operations/how-petrochemical-produced. (last visited January 16, 2026)

[483] Kimberly Terrell et al., Pervasive racial and ethnic disparities in the U.S. petrochemical workforce, Ecological Economics Volume 235 (2025), https://doi.org/10.1016/j.ecolecon.2025.108623

[484] ENVIRONMENTAL INTEGRITY PROJECT, *Benzene pollution at petroleum refinery fencelines* https://environmentalintegrity.shinyapps.io/fencelinemonitoring/ (July 10, 2025) (last visited January 16, 2026)

[485] *Id.*, the remaining refinery is located in Kansas

[486] EPA, *Benzene* (Jan. 2012), https://www.epa.gov/sites/default/files/2016-09/documents/benzene.pdf; CENTER FOR DISEASE CONTROL AND PREVENTION, *Facts about Benzene* (April 4, 2018), https://emergency.cdc.gov/agent/benzene/basics/facts.asp.

in Texas.[487] Exposure to sulfur dioxide can also have short-term and chronic effects. Short-term exposure can cause respiratory problems, including shortness of breath and chest tightness, particularly during physical activity.[488] Chronic exposure can increase susceptibility to respiratory infections and reduce the ability of the lungs to function.[489] Additionally, children, older adults, and people with asthma are at increased risk of hospitalization and emergency room visits if exposed to sulfur dioxide.[490] Of the approximately 2,600 residents who live within a three-mile radius of the petroleum coke plant, 98% are people of color and 62% are lower income.[491] The predominantly Black neighborhood of Port Arthur closest to the plant reports a 13.7% asthma rate, above the 10.5% average asthma rate for Port Arthur and the 8% national average.[492] In 2021, EPA recognized the harm that air pollution from the plant was causing the mostly African American community in Port Arthur when it agreed to investigate whether Texas violated the civil rights of residents by allowing the plant to continue emitting harmful air pollution without requiring modern pollution controls.[493]

The greater Houston area is likewise heavily burdened by the oil and gas industry. The area is home to the largest petrochemical manufacturing complex in the western hemisphere as well as 44% of the nation's petrochemical capacity, with 618 chemical manufacturing facilities.[494] Shipping is another major source of pollution for the area: one study found that children living within two miles of the Houston ship channel had a 56% higher risk of developing acute lymphocytic leukemia than children living more than ten miles from the channel.[495] The toxic

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[487] ENVIRONMENTAL INTEGRITY PROJECT, *Environmental groups demand EPA investigate Texas industrial plant for pollution-driven civil rights violations* (Aug. 18, 2021), https://environmentalintegrity.org/news/groups-demand-epa-investigate-texas-industrial-plant-for-civil-rights-violations/.

[488] AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, *Medical Management Guidelines for Sulfur Dioxide*, https://wwwn.cdc.gov/TSP/MMG/MMGDetails.aspx?mmgid=249&toxid=46 (last visited Jan. 14, 2025); AMERICAN LUNG ASSOCIATION, *Sulfur Dioxide*, https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/sulfur-dioxide (last visited Jan. 14, 2025);

[489] Agency for Toxic Substances and Disease Registry, *Medical Management Guidelines for Sulfur Dioxide*; American Lung Association, *Sulfur Dioxide*.

[490] American Lung Association, *Sulfur Dioxide*.

[491] ENVIRONMENTAL INTEGRITY PROJECT, *Environmental groups demand EPA investigate Texas industrial plant for pollution-driven civil rights violations.*

[492] Savanna Strott & David Leffler, *Small plant, big polluter*, HOUSTON PUBLIC MEDIA (Nov. 2, 2021), https://www houstonpublicmedia.org/articles/news/health-science/2021/11/02/412279/small-plant-big-polluter/.

[493] Clarissa Ayala, *EPA agrees to investigate Texas for alleged civil rights violations caused by air pollution from Port Arthur plant*, LONE STAR LEGAL AID (Oct. 18, 2021), https://www.lonestarlegal.org/news/2021/10/epa-agrees-to-investigate-texas-for-alleged-civil-rights-violations-caused-by-air-pollution-from-port-arthur-plant/.

[494] GREATER HOUSTON PARTNERSHIP, *Chemicals* (May 2021), https://d9.houston.org/sites/default/files/2021-05/16H%20W001%20Chemical%20Industry%20Overview%20.pdf

[495]Younes et al., Lylla Younes et al., *Poison in the air*; Cindy Horswell & Susan Carroll, *Study: Children near ship channel face more risk*, CHRON. (Jan. 19, 2007), https://www.chron.com/news/houston-texas/article/Study-Children-near-Ship-Channel-face-more-risk-1583566.php.

pollution from these facilities disproportionately harms people of color, low-income communities, and limited-English speaking households.[496]

Some pollutants of concern in the region are emissions of fine particulate matter (PM2.5), coarse particulate matter (PM10), and volatile organic compounds. Exposure to each of these pollutants has been linked to cardiovascular disease, premature death, and damage to bodily systems and organs.[497] A study of the Houston region found that the amount of each of these pollutants emitted per square mile per year was roughly 50% higher for people living in poverty compared to wealthier communities.[498] For communities of color, the burden of these pollutants was twice as much compared to white communities.[499]

Within the region, some communities are hit particularly hard—in the Harrisburg/Manchester neighborhood, a predominantly Hispanic/Latino neighborhood, one study found that air pollution exceeded safe levels for twelve air pollutants deemed "definite risks."[500] One study of the Houston area compared exposure to toxic air pollution and health risk in Harrisburg/Manchester as well as Galena Park, also a primarily Hispanic and low-income community, with Bellaire and West Oaks/Eldridge, two more affluent communities.[501] The results found that the toxic concentration of 1,3-butadiene, a chemical known to cause cancer and other adverse neurological effects, was 174 times higher in Harrisburg/Manchester and 228 times higher in Galena Park than in West Oaks/Eldridge.[502] The study also looked at cancer risk in these four communities. Residents in Harrisburg/Manchester have a 24% and 30% higher cancer risk than residents of Bellaire and West Oaks/Eldridge, respectively.[503] Similarly, in Galena Park, residents face cancer risks 30% and 36% higher than in Bellaire and West Oaks/Eldridge, respectively.[504] These studies highlight how, within the same region, communities of color and low-income communities are disproportionately burdened with the harmful impacts of the oil and gas industry.

In addition to the health risks from exposure to air pollution in southeastern Texas, industrial facility accidents in the oil and gas industry also pose significant risks to surrounding communities. In 2017, Hurricane Harvey damaged two ExxonMobil refineries, resulting in a

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[496] Yukyan Lam et al., *Toxic air pollution in the Houston ship channel: Disparities show urgent need for environmental justice.*

[497] *Id.*; EPA, *Health and environmental effects of particulate matter (PM)* (2021), https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm; AMERICAN LUNG ASSOCIATION, *Volatile Organic Compounds* (2020), https://www.lung.org/clean-air/at-home/indoor-air-pollutants/volatile-organic-compounds.

[498] Yukyan Lam et al., *Toxic air pollution in the Houston ship channel: Disparities show urgent need for environmental justice.*

[499] *Id*.

[500] UNION OF CONCERNED SCIENTISTS & TEX. ENV'T JUST. ADVOC. SERIES, *Double jeopardy in Houston: Acute and chronic chemical exposures pose disproportionate risks for marginalized communities*, at 3 (2016) https://www.ucs.org/sites/default/files/attach/2016/10/ucs-double-jeopardy-in-houston-full-report-2016.pdf

[501] Union of Concerned Scientists & Tex. Env't Just. Advoc. Series at 5-6.

[502] *Id.* at 12.

[503] *Id.* at 13.

[504] *Id.* at 14.

release of hazardous pollutants, including volatile organic compounds and sulfur dioxide.[505] EPA estimates that approximately 150 catastrophic accidents occur at regulated industrial facilities every year, and less severe accidents happen regularly.[506] As with air pollution, the risk of a chemical spill is higher in BIPOC and low-income communities near the fenceline of these facilities.[507]

4. Cultural Impacts of Coastal Land Loss.

As BOEM acknowledges, the Gulf Coast has, "an expansive onshore network of coastal infrastructure," to support the oil and gas industry.[508] Indigenous communities along the Gulf of Mexico live and rely on this very same coast for their culture and livelihoods. The intertwined impacts of climate change, oil and gas drilling, and natural and human-caused subsidence—the sinking of land—are resulting in significant loss of community and culture along the Gulf coast.

In the Gulf of Mexico, the oil and gas industry has dug 10,000 miles of canals and navigation channels, cutting through coastal wetlands.[509] Destroying these sensitive ecosystems has allowed for further damage to occur from saltwater intrusion and erosion, while also removing the beneficial storm barrier these environments provide the coast.[510] And oil from the *Deepwater Horizon* disaster accelerated salt marsh erosion even more, leading to large-scale and likely irreversible land loss.[511]

In Louisiana, coastal wetlands are disappearing at a rate of the equivalent of a football field every 100 minutes (or a tennis court every few minutes).[512] Since the 1930s, Louisiana has lost more than two thousand square miles of land.[513] It has been estimated that the oil and gas industry is responsible for 36% of Louisiana's coastal land loss between 1932 and 1990.[514]

The United Houma Nation, a state recognized tribe of approximately 17,000 members that live in the bayous and along the canals of Louisiana's southeastern coast, have suffered disproportionately from oil and gas development. Historically, distinct tribal communities have

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[505] Steven Mufson, *ExxonMobil refineries are damaged in Hurricane Harvey, releasing hazardous pollutants*, THE WASHINGTON POST (Aug. 29, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/08/29/exxonmobil-refineries-damaged-in-hurricane-harvey-releasing-hazardous-pollutants/.

[506] Union of Concerned Scientists & Tex. Env't Just. Advoc. Series, at 2-3.

[507] *Id.* at 3.

[508] Draft Proposed Program, at 3-18.

[509] Bob Marshall, *Losing Ground: Southeast Louisiana is disappearing, quickly.*

[510] *Id.*; Coastal Protection and Restoration Authority, "A Changing Landscape," https://coastal.la.gov/whats-at-stake/a-changing-landscape/ (last visited January 16, 2026)

[511] Brian R. Silliman et al., *Thresholds in Marsh Resilience to the* Deepwater Horizon *Oil Spill*, 6 SCI. REPS. at 7-8 (2016) https://www nature.com/articles/srep32520

[512] RESTORE THE MISSISSIPPI RIVER DELTA, "Land Loss," https://mississippiriverdelta.org/our-coastal-crisis/land-loss/; Elizabeth Kolbert, *Louisiana's Disappearing Coast*, THE NEW YORKER, (March 25, 2019) https://www.newyorker.com/magazine/2019/04/01/louisianas-disappearing-coast.

[513] Restore the Mississippi River Delta, "Land Loss."

[514] Shea Penland et al., *Process Classification of Coastal Land Loss Between 1932 and 1990 in the Mississippi River Delta Plain, Southeastern Louisiana*, US DOI, USGS, Louisiana Marine Coastal Geology Program https://pubs.usgs.gov/of/2000/of00-418/ofr00-418.pdf.

travelled by boat, but due to erosion altering the coastline, historic waterways are now nonexistent or impassable.[515] Additionally, as some waterways are turning into open water, they require larger vessels to travel safely.[516] Because the landscape is changing so rapidly, tribal fishermen can no longer rely on sight to navigate and instead must rely on GPS and radar systems.[517]

In Texas, the cultural heritage of coastal indigenous communities is threatened by the expansion of Enbridge Energy's crude export terminal. In late 2021, Enbridge acquired North America's largest crude oil storage and export terminal, located in the Corpus Christi area.[518] Enbridge is also looking at the possibility of building a pipeline to connect the export hub to Houston.[519] Indigenous communities, including the Karankawa Kadla Tribe, challenged these developments, alleging the U.S. Army Corps of Engineers improperly approved a permit to allow the crude export terminal to expand operations onto land sacred to the area's native people.[520] Archaeologists have found tens of thousands of Karankawa artifacts on the land near where the expansion is expected and one archaeologist once recommended that the site be listed on the National Register of Historic Places because it contained so many important artifacts.[521]

In Louisiana, the *Deepwater Horizon* spill destroyed coastal tribes' fishing and shrimping livelihoods and vast tracts of marshland and their wildlife.[522] Harm from the oil and gas industry has continued to accrue, including the inexorable degradation of the lands tribal members live and work on, pollution in sensitive ecosystems they rely on, and the literal addition of fuel to the climate crisis that threatens the future existence of communities.

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[515] UNITED HOUMA NATION, "About Houma Nation," https://unitedhoumanation.org/about/ (last visited January 16, 2026)

[516] *Id.*; *see also* S. Jeffress Williams, *Louisiana Coastal Wetlands: A Resource at Risk*, U.S. Geological Survey (describing how coastal erosion and human infrastructure impact sediment transport and exposure of previously protected lands to the effects of open water wave action, storm surge, tidal current, and saltwater intrusion).

[517] *Impact of Climate Change on Louisiana's Houma Tribe,* UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN, NEWS BUREAU, Sept. 27, 2019. https://www.sciencedaily.com/releases/2019/09/190927122529.htm

[518] Rithika Krishna & Rod Nickel, *Enbridge Buys N. America's Biggest Oil Export Hub in $3-bln Moda Deal*, REUTERS, (September 7, 2021) https://www reuters.com/business/energy/enbridge-buy-moda-midstream-operating-3-billion-2021-09-07/; Enbridge, *Enbridge Advances U.S. Gulf Coast Strategy with Acquisition of North America's Premier Crude Export Facility*, (September 7, 2021), https://www.enbridge.com/media-center/news/details?id=123689&lang=en.

[519] Candice Bernd, *Gulf Coast Tribe Vows to Resist Enbridge's New Pipeline Expansion Plans*, TRUTHOUT, (November 18, 2021) https://truthout.org/articles/gulf-coast-tribe-vows-to-resist-enbridges-new-pipeline-expansion-plans/.

[520] *Id.*; Erin Douglas, *The Karankawa were Said to be Extinct. Now They're Reviving their Culture – and Fighting to Protect their Ancestor's Land*, THE TEX. TRIBUNE, (October 4, 2021) https://www.texastribune.org/2021/10/04/karankawa-corpus-christi-texas-artifacts/.

[521] Erin Douglas, *The Karankawa were Said to be Extinct. Now They're Reviving their Culture – and Fighting to Protect their Ancestor's Land*.

[522] Northern Arizona University, Gulf Coast, *Vulnerability of Tribal Coastal Louisiana Tribes in a Climate Change Context* (September 2012), https://itep.nau.edu/wp-content/uploads/2024/07/tribes_gcCoastalLA.pdf.

B. BOEM Should Not Expand Leasing in Cook Inlet Due to Ecologically Sensitivity and a Lack of Industry Interest

Despite dwindling industry interest and the significant risks associated with increased drilling in Cook Inlet, the area has been relentlessly politically targeted for leasing in recent years. There has been drilling in the state waters of Cook Inlet for decades, but there has been no oil and gas development in the federal waters of Cook Inlet to date.[523] Since 2000, industry interest in developing oil and gas in federal waters in Cook Inlet has dramatically declined. No bids were received in a 2004 lease sale, and sales in 2009 and 2011 were canceled due to lack of industry interest.[524] However, the Reconciliation Act schedules *six* Cook Inlet lease sales, most of them during the Draft Proposed Program.[525] If it persists in scheduling the sales in the Program, BOEM must explain why holding multiple additional, overlapping sales in an area with this lackluster leasing history is not an egregious waste of agency resources. It must also explain why it is warranted in aggressively selling off waters that the agency considers some of the most ecologically sensitive in the nation, home to the critically endangered Cook Inlet beluga whale.[526] If BOEM is using the local natural gas shortage as justification for these additional sales, it must explain specifically how the sales could be expected to make a difference, given the long lead times for production, the lack of capable producers, the extreme expense and risk of drilling, and various other challenges.[527]

V. BOEM HAS FAILED TO ADDRESS CRITICALLY IMPORTANT IMPACTS THAT MUST BE CONSIDERED UNDER OCLSA

BOEM omits important considerations from its analysis, including any discussion of climate change, an accurate and complete portrayal of the risk from oil spills and the long-lasting effects of the Deepwater Horizon disaster, impacts of oil and gas development on vulnerable communities, and the imperiled status of the endangered Rice's whale and the Cook Inlet Beluga.

A. BOEM Must Consider Climate Change.

The primary purpose of the national program is to facilitate the process of extracting offshore oil and gas so it can be consumed. The production, transportation, and consumption of oil and gas emits greenhouse gases into the environment. A major, if not the major, environmental impact of the program will therefore be its significant contribution to climate change. In addition, climate change is already a major environmental pressure that is affecting every OCS region, and these effects will only intensify as the globe continues to warm. OCSLA requires Interior to conduct multiple analyses with environmental components when creating the national program. Many of

[523] Draft Proposed Program, at 3-13.

[524] *Oil and Gas – Alaska*, BOEM, https://www.boem.gov/regions/alaska-ocs-region/oil-and-gas-alaska (last visited Dec. 13, 2025).

[525] Pub. L. 119-21 § 50102(a)(2)(B). Whether the 2026 sale overlaps with the five-year offshore leasing program depends upon when such program is finalized.

[526] Draft Proposed Program at 8-11, 10-6.

[527] *See* Draft Proposed Program at 7-17 to 7-18.

these analyses necessarily include a consideration of climate change. And yet, the Draft Proposed Program contains no consideration, or even any mention, of climate change.

1. Climate Change Is An Existential Threat to Human Society and Must Be Addressed Immediately.

International scientific evidence has unequivocally established that human-caused climate change is a severe and pervasive threat to all aspects of society. The climate crisis is largely driven by the burning of fossil fuels, and the impacts of climate change are projected to worsen without a significant and rapid reduction in global reliance on fossil fuels. Scientific consensus makes clear that "we are on a fast track to climate disaster," rapidly approaching "tipping points that could lead to cascading and irreversible climate impacts."[528]

Scientists have concluded that in order to avoid severe consequences of climate change, society must keep warming below 1.5 degrees Celsius.[529] Unless there are immediate and rapid reductions, limiting warming to this level will be beyond reach.[530] Indeed, the most recent IPCC report indicates that even if emissions stay at recent levels for the rest of the decade, "the resulting cumulative emissions would almost exhaust the remaining carbon budget for 1.5°C (50%), and deplete more than a third of the remaining carbon budget for 2°C (67%)."[531] To avoid this, the transition away from fossil fuels must take place immediately, prior to 2030.[532]

If society does not transition immediately to reach the 1.5 degree Celsius target, ecosystems and communities will suffer more, with some of the impacts being irreversible.[533] In addition, to re-establish a livable climate, society will not only have to achieve net-zero emissions but net *negative* emissions, an even harder goal to reach.[534]

For the U.S, nearly 20% of greenhouse gas emissions come from federal lands, with federal lands producing more than a gigaton of greenhouse gas emissions every year, since at least 2005.[535] A significant portion of this comes from offshore federal waters.[536] And absent concerted effort to change the status quo, emissions from federal lands are projected to remain a large share of total U.S. GHG emissions, with the portion from offshore sources projected to

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[528] António Guterres, United Nations Secretary-General, *Secretary-General's video message on the launch of the third IPCC report* (Apr. 4, 2022), https://www.un.org/sg/en/content/sg/statement/2022-04-04/secretary-generals-video-message-the-launch-of-the-third-ipcc-report-scroll-down-for-languages.

[529] IPCC, *2018: Summary for Policymakers*, *In* Global Warming of 1.5°C, An IPCC Special Report [V. Masson-Delmotte et al. (eds.)] (1.5°C Report) at 9.

[530] IPCC, 2023: Summary for Policymakers. 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 (eds.)]. IPCC, Geneva, Switzerland at 22-23, doi: 10.59327/IPCC/AR6-9789291691647.001

[531] *Id*. at 20.

[532] *Id*.

[533] *Id*. at 23.

[534] *Id*.

[535] USGS, *Federal Lands Greenhouse Gas Emissions and Sequestration in the United States—Estimates for 2005–2022,* SCIENTIFIC INVESTIGATIONS REPORT 2024-5103 (2024) 9-10, https://doi.org/10.3133/sir20245103.

[536] *Id*.

increase significantly.[537] Reversing this damaging trend by ending or decreasing new fossil fuel development in federal waters is therefore a critical component in achieving the rapid reduction in GHG emissions needed to preserve a livable climate.

In short, the National Leasing Program has the potential to either exacerbate or mitigate the climate crisis, depending on the scope of proposed leasing. The Draft Proposed Program's current proposal to vastly expand offshore oil and gas development will exacerbate the climate crisis, bringing society closer to climate disaster.

2. Climate Change is Already Having Negative Effects on Ocean and Coastal Environments, Including in Every OCS Region Proposed for Leasing in the Draft Proposed Program.

Climate change results in numerous negative impacts to society. It harms human health by increasing extreme heat,[538] degrading air[539] and water quality,[540] and by facilitating the spread of vector-borne diseases.[541] Climate change also increases the frequency and intensity of weather-driven disasters like extreme storms and wildfires,[542] and results in sea level rise,[543] putting communities and infrastructure at risk of flooding and destruction. And climate change causes changes in species and abundance[544] and distribution,[545] with serious implications for industries and communities that rely on those species.

Climate change is having a severe impact on coastal and marine environments. It has already raised the temperature of ocean waters compared to 1950; this warming is projected to increase

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[537] Nathan Ratledge, Laura Zachary, and Chase Huntley, Emissions from Fossil Fuels Produced on U.S. Federal Lands and Waters Present Opportunities for Climate Mitigation, 171(11) CLIMATE CHANGE 5 (2022).

[538] Lingzhi Chu et al., *Heat- and Cold-Related Mortality Burden in the US From 2000 to 2020*, 8(11) JAMA NETWORK OPEN, doi:10.1001/jamanetworkopen.2025.42269.

[539] U.S. EPA, *Climate Change Impacts on Air Quality*, https://www.epa.gov/climateimpacts/climate-change-impacts-air-quality (last visited Dec. 16, 2025).

[540] Jeffrey A. Hicke et al., Intergovernmental Panel on Climate Change, Chapter 14: North America, in Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group III contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, at 1946, 1949, 1952-53 (Margot Hurlbert & Linda Means eds., 2021) [hereinafter IPCC North America].

[541] *Id*. at 1969-70.

[542] U.S. Global Change Research Program, *Fifth National Climate Assessment* at 1-16 (A.R. Crimmins et al. eds., 2023), https://doi.org/10.7930/NCA5.2023 [hereinafter Fifth National Climate Assessment].

[543] W.V. Sweet et al., Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines, NOAA Technical Report NOS 01 at xii (2022), https://earth.gov/sealevel/us/internal_resources/756/noaa-nos-techrpt01-global-regional-SLR-scenarios-US.pdf.

[544] For example, during a 2013-2016 heatwave, the Pacific cod population dramatically declined, dropping nearly 80% from 2013 levels. In 2020, due to the continued low cod population, fishery managers closed the federal Pacific cod fishery, citing climate change as the reason for closure. NOAA Fisheries, *Alaska cod populations plummeted during the blob heatwave – new study aims to find out why* (Nov. 8, 2019), https://www.fisheries.noaa.gov/feature-story/alaska-cod-populations-plummeted-during-blob-heatwave-new-study-aims-find-out-why.

[545] IPCC North America, at 1961.

by up to another 2 degrees Celsius by the end of the century.[546] The warming of ocean waters leads to other problematic changes, "induc[ing] the expansion of the ocean, alter[ing] its stratification and currents, diminish[ing] oxygen availability, elevat[ing] sea levels, and intensif[ying] hurricanes and storms."[547]

The ocean is also absorbing much of the carbon emitted into the atmosphere, causing ocean waters to acidify. The acidity of the ocean has increased about 25 percent since before the 1700s,[548] and this trend will continue with increased GHG emissions. The number of marine organisms negatively affected by increasing ocean acidity is vast and includes phytoplankton and zooplankton,[549] the base of the ocean food web. Acidity is also negatively affecting reef-building coral, pteropods, and shellfish[550] as well as important commercial fish species such as northern rock sole, walleye pollock, Pacific cod, and salmon.[551]

These changes to ocean temperature and chemistry are directly affecting the productivity of the ocean. "Climate change impacts are already seen in the deterioration of ecosystem functions, as well as in changes in marine and terrestrial primary productivity."[552] Scientists have documented a measurable decline in ocean productivity since 1998, and have directly linked decreases in ocean productivity to warming water temperatures.[553]

Climate change is also increasing the sensitivity of multiple vulnerable marine species to other stressors. For example, climate change frustrates conservation efforts for sea turtles because rising temperatures skew sex ratios, rising sea levels reduce suitable nesting grounds, and temperature changes shift distribution into areas with increased traffic and maritime activity.[554] For other critically endangered species like the Cook Inlet beluga and Rice's whale, climate change reduces availability of prey species, adding another stressor to already struggling populations.[555]

Although climate change occurs everywhere, it affects regions differently, with the type and intensity of the impact dependent on a wide range of factors including the local or regional environment at issue, as well as the human infrastructure and communities present in those regions. Because of this, climate change, while a global phenomenon, has local impacts and

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[546] Roberto M. Venegas et al. *Three decades of ocean warming impacts on marine ecosystems: A review and perspective,* 212 Deep-Sea Research II 105138 (2023), https://doi.org/10.1016/j.dsr2.2023.105318.
[547] *Id*.
[548] U.S. EPA, Effects of Ocean and Coastal Acidification on Marine Life, https://www.epa.gov/ocean-acidification/effects-ocean-and-coastal-acidification-marine-life (last visited Dec. 16, 2025).
[549] Fifth National Climate Assessment at 28-15.
[550] *Id*.
[551] Fifth National Assessment at 29-28.
[552] *Id*. at 8-7.
[553] Thomas J. Ryan-Keogh et al., Global Decline in Net Primary Production Underestimated by Climate Models, 6 Communications Earth & Environment 75 (2025), https://doi.org/10.1038/s43247-025-02051-4.
[554] Edouard Duquesne and Denis Fournier, *Climate Change Redefines Sea Turtle Hotspots: Vessel Strike Risks and Gaps in Protected Areas*, 11 SCI. ADV. 26 (2025), https://pmc.ncbi nlm nih.gov/articles/PMC12189953/ .
[555] NOAA Fisheries, *Climate Change Escalates Threats to Species in the Spotlight* (Aug 29, 2024), https://www fisheries noaa.gov/feature-story/climate-change-escalates-threats-species-spotlight .

implications. The impacts of climate change and the intensity of those impacts therefore vary between OCS regions, as explained further below.

a) The Gulf Region

The southeast and Gulf coast of the United States are already experiencing the consequences of climate change, and these impacts are only expected to worsen in the future.

Climate-driven sea level rise is and will continue to be more severe in the Gulf coast than any other region of the country,[556] with waters rising 16-18 inches by 2050 in the Western Gulf.[557] As a result, high tide flooding events in the Southeast may increase by a factor of up to 10 by 2050.[558] Flooding will also increase due to more frequent and extreme weather events in the Southeast, which is already a disaster prone region, with a higher frequency of billion dollar weather disasters compared to any other region in the country. [559]

Heatwaves in the Southeast are becoming more common, and heat seasons are lengthening. This trend is expected to worsen as the climate continues to warm.[560] Extreme heat leads to a variety of human health impacts such as heat-related morbidity and incidence of asthma.[561] Extreme heat events can also have negative impacts on infrastructure, including the vast amount of fossil fuel infrastructure located on the Gulf coast. [562]

Indeed, climate change poses a risk to this infrastructure in multiple ways.[563] Heavy rain and high humidity can contribute to the weakening of structures like pipelines and cause electrical damage. [564] Flooding caused by heavy rain and extreme storms can damage oil refineries and storage tanks, which can trigger the release of hazardous substances. [565] Offshore infrastructure is at risk of more frequent and intense tropical cyclones and extreme wave heights.[566] Sea level rise puts coastal refineries and gas processing plants at risk of shoreline erosion and seawater inundation.[567] These types of impacts are already occurring. In 2017, for example, "over 200 contaminant releases were reported in the Texas Gulf Coast after flooding resulting from Hurricane Harvey. Over 10 million pounds of regulated air pollutants were released from refineries, petrochemical, and other industrial facilities, and the catastrophic explosion of a chemical plant due to the loss of power for refrigeration necessitated the evacuation of 40,000

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[556] W.V. Sweet et al., W.V. Sweet et al., Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines, at 15-16.

[557] Rebecca Lindsey, *Climate Change: Global Sea Level* (Aug. 22, 2023), https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level.

[558] Fifth National Climate Assessment at 22-12.

[559] Fifth National Climate Assessment at 22-8.

[560] Fifth National Climate Assessment at 22-20.

[561] IPCC North America, at 1968.

[562] Fifth National Climate Assessment at 22-29.

[563] Fifth National Climate Assessment at 22-28.

[564] Jinxin Dong et al., *Climate Change Impacts on Coastal and Offshore Petroleum Infrastructure and the Associated Oil Spill Risk: A Review*, 10(7) J. OF MARINE SCI 849, ihttps://www mdpi.com/2077-1312/10/7/849.

[565] *Id*.

[566] *Id*.

[567] *Id*.

people"[568] A recent analysis shows that by 2050, over 1,000 toxic facilities in Louisiana alone will be at risk of climate-exacerbated flooding under a high-emissions scenario.[569] These toxic facilities disproportionately threaten marginalized communities.[570]

Climate change is also expanding the geographic distribution of disease carrying insects, particularly in the Southeast, for diseases such as Lyme disease, West Nile virus and Zika virus.[571]

b) Alaska

"Alaska is warming two to three times faster than the global average."[572] As a result, Alaska is experiencing rapid, widespread and extreme climate related changes including ocean warming, record low sea ice, the world's highest rate of ocean acidification, increasing frequency of extreme weather events such as marine heatwaves, and extreme snow and rain storms, warming air temperatures, record-breaking droughts, record numbers of pollen outbreaks, increasingly destructive wildfires, and changing patterns of windstorms.[573]

Climate change is also expanding the geographic range of vector-borne disease. For example, Alaska experienced a widespread rabies outbreak in red and Arctic foxes during the winter of 2020-2021.[574] The extent of the outbreak was linked to climate-driven changes in sea ice and prey availability, which expanded the reach of the outbreak.[575]

Climate change is affecting Alaska's ecosystems and species, which many communities rely on for livelihoods, subsistence, and culture. For example, fish populations are collapsing, including Pacific cod, whose biomass dropped by nearly 80 percent from 2013 to 2017 in the Gulf of Alaska, coinciding with a period of warm water.[576] In response to this climate-induced catastrophe, fisheries managers took the unprecedented step of closing the federal Pacific cod fishery in Lower Cook Inlet/Gulf of Alaska in 2020[577] Impacts to fisheries and ecosystems could worsen: the largest accumulation of resting cysts of harmful algal blooms has been discovered in

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[568] Lara J. Cushing et al., *Sea Level Rise and Flooding of Hazardous Sites in Marginalized Communities Across the United States*, 16(9711) NATURE COMMUNICATIONS (2025), https://www nature.com/articles/s41467-025-65168-2.

[569] *Id*.

[570] *Id*.

[571] Fifth National Climate Assessment at 22-38.

[572] *Id*. at 29-5.

[573] *Id*. at 29-6.

[574] *Id*. at 29-13.

[575] *Id*. at 29-13.

[576] NOAA Fisheries, *Alaska Cod Populations Plummeted During The Blob Heatwave— New Study Aims to Find Out Why*, Nov. 8, 2019, https://www fisheries noaa.gov/feature-story/alaska-cod-populations-plummeted-during-blob-heatwave-new-study-aims-find-out-why.

[577] Temporary Rule; Closure, Fisheries of the Exclusive Economic Zone Off Alaska, 84 Fed. Reg. 70438 (Dec. 23, 2019); *see also* Barbeaux, Steven, et al., Assessment of the Pacific Cod Stock in the Gulf of Alaska, Nov. 2019, https://apps-afsc fisheries noaa.gov/refm/docs/2019/GOApcod.pdf; Kavitha George, Alaska Cod Fishery Closes And Industry Braces For Ripple Effect, NPR, Dec. 8, 2019, https://www npr.org/2019/12/08/785634169/alaska-cod-fishery-closes-and-industry-braces-for-ripple-effect.

the Chukchi sea.[578] Warming sea temperatures make those cysts more likely to hatch into massive and recurring toxic algal blooms, which would seriously affect fish populations.[579] Harmful algal blooms produce a toxin that can cause severe illness or death when consumed.[580]

Additionally, in a study of 15 sites across Cook Inlet, scientists have predicted that water temperatures could rise by more than 3°C over the next 100 years.[581] Such drastic changes to water temperature may significantly increase incidence of disease in fish prey populations and generally reduce prey availability or distribution.[582] This can have ripple effects up the food chain, including potentially harming the health and reproduction of critically endangered Cook Inlet beluga whales due to decreased energy intake and increased energy expenditure to find suitable prey; related loss of sea ice can exacerbate this trend.[583]

Climate change will also affect oil and gas infrastructure in Alaska. Thawing permafrost can undermine the integrity of oil and gas infrastructure by destabilizing buildings laid upon permafrost and changing the load capacity of structures.[584] By 2050, 70% of infrastructure located in permafrost regions will be at high risk due to thaw-related ground instability.[585] The Trans-Alaska Pipeline System, which transports oil produced in the Arctic, has already been damaged by permafrost thaw.[586] A large spill could be devastating, as the pipeline spans 800 miles "in a delicate and remote landscape where it would be extremely difficult to clean up."[587]

c) California

Climate change degrades air quality, which is particularly concerning in a place like California that already suffers from poor air quality in multiple regions. High ozone days are now becoming more common as air temperatures increase. By the 2050s, increased air temperatures are expected to double severe ozone episodes in California, compared to 2000.[588] This has serious health implications as high ozone days cause illness and premature death. Air quality degradation is also exacerbated by climate-driven wildfire.

In addition to degrading air quality, wildfires themselves also cause immense destruction in California. Over the past 20 years, the area burned by wildfire in California has increased

[578] Fifth National Climate Assessment at 29-13.
[579] *Id*. at 29-13.
[580] *Id*. at 29-13.
[581] Norman et al. 2015, *Potential Natural and Anthropogenic Impediments to the Conservation and Recovery of Cook Inlet Beluga Whales,* Delphinapterus leucas, 94 Marine Fisheries Review 77(2), 94 https://spo nmfs.noaa.gov/sites/default/files/pdf-content/mfr7725.pdf.
[582] *Id*.
[583] *Id*.
[584] Jinxin Dong et al., *Climate Change Impacts on Coastal and Offshore Petroleum Infrastructure and the Associated Oil Spill Risk: A Review*, 10(7) J. OF MARINE SCI 849, i, 5, https://www mdpi.com/2077-1312/10/7/849.
[585] *Id*.
[586] D. Hasemyer, Thawing Permafrost has Damaged the Trans-Alaska Pipeline and Poses an Ongoing Threat, INSIDE CLIMATE NEWS (July 11, 2021).
[587] *Id.*
[588] Fifth National Climate Assessment at 14-6.

dramatically.[589] In 2018, the Camp Fire nearly destroyed the entire town of Paradise; tens of thousands of residents left and many have never returned.[590] "In 2020, 4.2 million acres burned, more than double the area burned in any other year on record.[591] The 2020 August Complex burned over one million acres across seven counties, making it the state's first "gigafire."[592] And in 2025, two destructive fires in Los Angeles County, the Eaton Fire and the Palisades Fire, killed hundreds of people[593] and destroyed over 16,000 structures.[594]

Climate change has increased wildfire susceptibility in California by driving aridity and changing precipitation patterns, increasing extreme changes from wet to dry conditions.[595] This pattern likely contributed to the Los Angeles County fires.[596] This pattern can also intensify flooding when heavy rain falls on a fire burned landscape.[597]

Climate change has raised sea surface temperatures and caused more frequent marine heatwaves off the California coast, including in 2014-2016, in 2018, and in 2019-2020.[598] These heatwaves can lead to a host of other problems.[599] The 2014-2016 marine heatwave, for example, led to severe drought, harmful algal blooms, reduced salmon size and survival, seabird die-offs, massive bull kelp decline, starving sea lions, and multiple fishery closures or delays in crab, sardine, salmon, red abalone, and sea urchin fisheries.[600]

In addition, sea level rise is increasing flooding, storm surges, and loss of beaches, and is threatening the vast amount of infrastructure along the California coast.[601] This infrastructure includes hazardous facilities like natural gas pipelines, refineries, and oil and gas wells, which are disproportionately located in marginalized communities.[602]

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[589] Office of Environmental Health Hazard Assessment*., Indicators of Climate Change in California Fourth Edition* at i-10 (Nov. 2022), https://oehha.ca.gov/sites/default/files/media/downloads/climate-change/document/2022caindicatorsreport.pdf (last visited on Jan. 21, 2026).

[590] Fifth National Climate Assessment at F2-5.

[591] Office of Environmental Health Hazard Assessment., *Indicators of Climate Change in California Fourth Edition* at i-10 (Nov. 2022),

[592] *Id* https://oehha.ca.gov/sites/default/files/media/downloads/climate-change/document/2022caindicatorsreport.pdf (last visited on Jan. 21, 2026).

[593] Hannah Fry, *Hundreds of Deaths May Be Linked to the Easton and Palisades Fires*, *New Study Suggests,* LA TIMES (Aug 6, 2025), https://www.latimes.com/california/story/2025-08-06/deaths-from-eaton-and-palisades-fires-could-top-400 (last visited on Jan. 21, 2026).

[594] Daniel L. Swain et al., *Increasing Hydroclimatic Whiplash Can Amplify Wildfire Risk in a Warming Climate*, 31(2) GLOBAL CHANGE BIOLOGY (2025),https://escholarship.org/uc/item/9t78v9sr(last visited on Jan. 21, 2026).

[595] *Id*.

[596] *Id*. *See also* Fifth National Climate Assessment at 3-33.

[597] Fifth National Climate Assessment at F1-3.

[598] *Id*. at 28-13.

[599] *Id*. at 28-13.

[600] *Id*. at 28-14.

[601] *Id*. at 28-15.

[602] Lara J. Cushing et al., *Sea Level Rise and Flooding of Hazardous Sites in Marginalized Communities Across the United States*, 16(9711) NATURE COMMUNICATIONS (2025), https://www nature.com/articles/s41467-025-65168-2 (last visited on Jan. 21, 2026).

Cases of West Nile virus have already increased in California; this is expected to continue to increase as the climate warms.[603]

3. Interior's Failure to Consider Climate Change Renders its Discussion and Analysis of Environmental Conditions Inaccurate and Incomplete.

Interior failed to consider how climate change is affecting the environments of various OCS regions, or how climate change affects other impacts of the program. This failure seems to be less of an oversight and more of an attempt to censor any discussion of climate change. Indeed, the text of the Draft Proposed Program never references the phrase "climate change" except in its summary of public comments. And the Draft Proposed Program refuses to attribute certain changing environmental conditions to climate change, even when the studies the program relies on explicitly make that link and scientific consensus is that those effects are driven by anthropogenic greenhouse gas emissions that warm the globe.[604] This makes the program's discussion of environmental conditions in each region inaccurate and incomplete.

When discussing Alaska's environment, for example, the program acknowledges the region is experiencing sea ice melt, increased water temperatures, increased coastal erosion, and increased open water wave activity, but fails to attribute these changes to climate change or explain that they are expected to worsen with additional warming.[605] The program omits this relationship even though the underlying studies the program relies on directly and prominently make this link.[606]

For the Gulf environment, the program explains that hurricanes can intensify when interacting with warm waters but omits the fact that climate change increases water temperatures and increases the intensity and frequency of storms.[607] The main finding of the underlying study cited by the program for this information centered around climate change: "As marine heatwaves are on the increase due to climate change…. more frequent rapid intensification events can be expected in the warming climate,"[608] yet this finding was omitted from the program. Likewise, the Draft Proposed Program explains that the Gulf coast of Louisiana "has lost nearly 1,900 mi^2 of coastal land, primarily due to the combined impacts of leveeing of the Mississippi River—

[603] Fifth National Climate Assessment at 28-24.

[604] *See* Program, Appendix F. Many of the studies the program relies on to describe the existing environments of various OCS regions either make explicit conclusions about climate change or explicitly investigate how climate change alters existing environments.

[605] Program at 9-4, 9-13.

[606] *See e.g.* Henke et al, Increasing Coastal Exposure to Extreme Wave Events in the Alaskan Arctic as the Open Water Season Expands, 5(165) COMMUNICATIONS EARTH & ENVIRONMENT (2024); L.M. Farquharson et al., Temporal and spatial variability in coastline response to declining sea-ice in northwest Alaska, 404 MARINE GEOLOGY 71 (2018); Xuanji Wang et al., A New Perspective on Four Decades of Changes in Arctic Sea Ice from Satellite Observations, 14(8) REMOTE SENS 1846 (2022).

[607] Program at 9-31

[608] See Soheil Radfar et al., *Rapid intensification of tropical cyclones in the Gulf of Mexico is more likely during marine heatwaves*, 5(421) COMMUNICATIONS EARTH & ENVIRONMENT (2024) (concluding that "As marine heatwaves are on the increase due to climate change, our findings indicate that more frequent rapid intensification events can be expected in the warming climate.").

which has starved the delta of crucial, land-building sediment—combined with subsidence and sea level rise. This loss continues at an alarming rate, fundamentally altering the coastal landscape and reducing its capacity to buffer inland communities from storm surge."[609] But the program omits the fact that climate change is driving the sea level rise, or that the landscape's capacity to buffer inland communities from storm surge is even more important in a context of climate change projections, which predict more numerous and intense storms and flooding.[610] The program also discusses bad air quality on the Gulf coast but fails to explain how warming temperatures will further degrade air quality and worsen this problem.[611] The program discusses red-tide algal blooms in the Gulf and Atlantic but omits the fact that climate change has contributed to these blooms even though the underlying study cited by the program explains this relationship multiple times.[612] The program discusses sea turtle populations and threats, stating that numbers are increasing for certain species but failing to mention that climate change may be a future existential threat to sea turtles due to warming temperatures changing sex-ratios.[613]

For the Atlantic region, the program states that the Atlantic coastal environment suffers from increasing sea level rise but fails to mention that the cause of sea level rise is anthropogenic climate change, and it will accelerate with a warming climate.[614]

For California, the program states that California has experienced several marine heatwaves in the last decade but fails to explain how climate change contributed to this and will exacerbate this problem in the future;[615] the program repeats this mistake when discussing the temperatures of the California ocean current, increases in ocean acidity, and the relationship between pelagic fish abundance and ocean temperatures.[616]

4. Interior Must Also Consider How the Program Affects the Climate.

Multiple OCSLA provisions require Interior to consider the program's direct and indirect impacts on the environment, including impacts on the atmosphere.[617] A major impact of the program on the environment is the additional greenhouse gas emissions that expanded offshore leasing will cause. These greenhouse gas emissions will exacerbate the myriad of impacts described above and tip human society closer to climate disaster. Interior must consider this impact but fails to do so in the draft program. Instead, Interior claims that the court in *Center for Biological Diversity v. Department of Interior ("CBD")* "determined that the OCS Lands Act does not require the agency to consider the impacts from consuming OCS oil and gas as part of

[609] Program at 9-38.
[610] *See* Section I above.
[611] *Id*.
[612] Draft Proposed Program at 9-33 and 9-46. *See also* Judith M. O'Neil et al., *Plankton Community Changes and Nutrient Dynamics Associated with Blooms of the Pelagic Cyanobacterium Trichodesmium in the Gulf of Mexico and the Great Barrier Reef*, 16(12) WATER (2024).
[613] Draft Proposed Program at 9-34 and 9-49.
[614] *Id*.at 9-52.
[615] *Id*. at 9-19.
[616] *Id*.; also *id*. at 9-21.
[617] *See e.g.* 43 U.S.C. § 1344(a)(1).

its National OCS Program decision."[618] However, *CBD* is not controlling on this issue for multiple reasons.

First, *CBD* stated that Interior did not need to consider consumption impacts of fossil fuels based on the premise that the statute only authorizes consideration of local environmental impact, and climate change is a globalized phenomenon rather than a local one. [619] However, *CBD* was decided more than fifteen years ago and the local effects of climate change are becoming increasingly clear and indisputable now as the impacts of climate change intensify in each region. As discussed above, climate change has localized impacts in addition to global ones and these affect OCS regions differently. Interior is therefore required to consider the program's climate change impacts even under *CBD's* interpretation that OCSLA only requires consideration of local environmental impacts.

Second, *CBD* held that OCLSA does not require consideration of the climate impacts of the program in part by concluding "that Interior's decisions about the size and location of leasing areas or the timing of oil and gas extraction do not affect the impact that *consuming* oil and gas may have on climate change."[620] This conclusion assumes that all OCS oil and gas will be substituted with fossil fuel from elsewhere. But this is no longer true. First, renewable energy is increasingly powering energy grids around the world and is becoming an increasingly affordable alternative to fossil fuels.[621] Second, many states and nations have pledged to reduce reliance on fossil fuels either completely or partially in the foreseeable future, and have enacted laws to that effect.[622] It is no longer a foregone conclusion that fossil fuel from elsewhere will replace OCS fossil fuel: that energy could be replaced by renewables. Indeed, when Interior conducted its GHG analysis for the last national OCS program, it found that increased offshore drilling will result in a net increase of greenhouse gas emissions.[623]

Third, OCSLA requires consideration of relevant environmental and community factors when designing the program and does not prohibit consideration of the effects of fossil fuel combustion. The *CBD* court stated that "the text of OCSLA does not require Interior to consider the impact of *consuming* oil and gas extracted under an offshore Leasing Program." 563 F. 3d at 484 (emphasis in original). However, the court did not find that OCSLA prohibits consideration of the impacts of consumption. *Id.* Moreover, *CBD's* interpretation of OCSLA as only requiring consideration of localized environmental impacts contradicts OCSLA's plain language. OCSLA requires Interior to consider environmental effects broadly, including indirect effects, and contains no explicit or implicit limitation restricting analysis to local impacts.

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[618] Draft Proposed Program at 2-11.

[619] *Ctr. for Biological Diversity v. Dep't of the Interior* ("*CBD*"), 563 F.3d 466, 485 (D.C. Cir. 2009).

[620] *Id*.

[621] International Energy Agency, *Renewable Electricity*, https://www.iea.org/reports/renewables-2025/renewable-electricity (last visited Dec. 16, 2025).

[622] Columbia Law School Sabin Center for Climate Change Law, *Climate Change Laws of the World*, https://climate.law.columbia.edu/content/climate-change-laws-world (last visited Dec. 16, 2025).

[623] BOEM, 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program (Sept. 2023) at 5-32; https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029_NationalOCSProgram_PFP_Sept_2023.pdf (last visited on Jan. 21, 2026).

Interior must consider climate change impacts going forward.

B. Oil Spills Are One of the Most Significant and Devastating Potential Impacts of Offshore Oil and Gas Development and BOEM Must Fully and Accurately Consider Oil Spill Risk in the Program.

Oil spills are a serious environmental risk of the program and also are one of the key adverse impacts of oil and gas development on the environment and the coastal zone, as demonstrated by past catastrophes such as the Deepwater Horizon blowout. Interior is thus required to consider oil spills under OCSLA when drafting the national program,[624] and that analysis must be accurate and rational, and based on current information.[625]

1. Oil Spills Are One of the Largest and Most Devastating Impacts of the Program as Demonstrated by the Deepwater Horizon Spill.

Oil spills from offshore oil and gas development can cause immense damage, devastating coastal economies and marine wildlife populations, and harming human health. This fact was demonstrated starkly on April 20, 2010, when BP's *Deepwater Horizon* drilling rig exploded in the Gulf of Mexico, killing 11 workers, injuring 17 others, and creating the biggest oil spill in United States history.[626] The blowout caused over 200 million gallons of oil to spill into the Gulf, killing, harming, and stranding countless marine species who were exposed to the oil and toxins.[627] The spill contaminated more than 1,300 miles of coastline, at least 3,200 square miles of the deep ocean floor, and thousands of square miles of surface water.[628] Some of the Gulf's most critical habitats were severely impacted, including up to 721 miles of salt marsh, 320 acres of globally significant seagrass beds, 600 miles of sand and dune habitats, and 4,300 square miles of open ocean *Sargassum* habitats that are essential for sea turtles and seabirds.[629]

Spill cleanup operations are rarely capable of recovering or treating more than a small portion of the oil spilled, resulting in decades- or centuries-long impacts from a single event.[630] This has

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[624] 43 U.S.C. §§ 1344(a)(1), a(2)(B), a(3).

[625] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). See also *Lands Council v. McNair*, 537 F.3d 981, 998 (9th Cir. 2008) (EIS arbitrary and capricious if it bases its "calculations on outdated or inaccurate information").

[626] Deepwater Horizon Natural Resource Damage Assessment Trustees, Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement, NOAA (2016), 2-4 https://www.gulfspillrestoration noaa.gov/restoration-planning/gulf-plan [hereinafter "NRDA" followed by the relevant page number].

[627] Smithsonian, Ocean Portal Team, Gulf Oil Spill (July 2012) https://ocean.si.edu/conservation/pollution/gulf-oil-spill (last visited on Jan. 21, 2026); *see also* Julia Lingelbach, *Oysters & the BP Drilling Disaster*, Healthy Gulf (Sept. 2, 2020), https://healthygulf.org/2020/09/02/oysters-the-bp-drilling-disaster/ (last visited on Jan. 21, 2026).

[628] NRDA 1-14; *see also* Laura Geggel, "Missing Oil" From 2010 BP Spill Found on Gulf Seafloor, LIVE SCIENCE (Feb. 2, 2015), https://www.livescience.com/49664-deepwater-horizon-missing-oil.html; Ian R. MacDonald et al., Natural and Unnatural Oil Slicks in the Gulf of Mexico, J. OF GEOPHYSICAL RESEARCH: OCEANS 8364 (2015); https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2015JC011062 (last visited on Jan. 21, 2026).

[629] NRDA, at 4-197; *id.* at 4-329; *id*. at 4-337; *id.* at 4-396; *id.* at 4-420; *id.* at 4-429; *id.* at 4-430.

[630] Andrew Nikiforuk, *Why We Pretend to Clean Up Oil Spills*, SMITHSONIAN MAGAZINE (July 12, 2016), https://www.smithsonianmag.com/science-nature/oil-spillcleanup-illusion-180959783 (last visited on Jan. 21, 2026);

been the case with the *Deepwater Horizon* blowout, with recent and ongoing research continuing to reveal the full extent of short and long-term impacts.[631] The information has only confirmed how devastating the spill was and continues to be.[632] For example, a 2020 study revealed that the footprint of the oil spill spread roughly 30 percent wider than originally estimated, contaminating many more areas than were originally known.[633]

The *Deepwater Horizon* blowout has been particularly pernicious because the vast majority of the oil and toxins could not be cleaned up and remain in the water, seabed, and marine life to this day. After the spill, oil continued to sink to the ocean floor for more than a year, changing the area's sediment chemistry and reducing oxygen.[634] Roughly 22,000 tons of oil washed up on the shores of the Gulf Coast and mixed with the sand to create clumps that will take at least thirty years to degrade.[635] Eight years after the disaster, oil concentrations along the coastlines were measured at levels ten times higher than before the spill.[636]

In addition to the harm caused by the spilled oil itself, the chemical dispersants used to clean up the spill exacted their own costs. Within a three month period after the spill, at least 1.84 million gallons of dispersants were poured into the Gulf.[637] These dispersants increased the toxicity of

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see also Wendi Lane, *10 Years Later: Scientists Learn Long-Term Impact of Deepwater Horizon Spill*, ABC ACTION NEWS (Sept. 2, 2021) https://www.abcactionnews.com/news/full-circle/10-years-later-scientists-learn-long-term-impact-of-deepwater-horizon-spill (last visited on Jan. 21, 2026) (quoting Steven Murawski, a Marine Science professor with the University of South Florida, who said, "The oil that's stranded in the deep bottom of the gulf will not be landfilled by sediment deposition for another 100 years.").

[631] Megan Woodyard et al., *A comprehensive petrochemical vulnerability index for marine fishes in the Gulf of Mexico*, SCI. OF THE TOTAL ENVIRONMENT 1, 2 (2022), https://pubmed.ncbi.nlm.nih.gov/35051468/ (last visited on Jan. 21, 2026).

[632] *See, e.g.*, Tracey T. Sutton et al., *The Open-Ocean Gulf of Mexico After* Deepwater Horizon*: Synthesis of a Decade of Research*, 9 FRONTIERS IN MARINE SCIENCE 1, 2 (2022) (stating "We conclude that, for the intermediate and higher trophic levels of the open-ocean [Gulf of Mexico], even a decade after the event we have no evidence to suggest that impacts from DWH are 'over.'"), https://www frontiersin.org/articles/10.3389/fmars.2022.753391/full (last visited on Jan. 21, 2026).

[633] Igal Berenshtein et al., *Invisible Oil Beyond the Deepwater Horizon Satellite Footprint*, 6 SCI. ADV. 1, 1 (2020), https://www.science.org/doi/10.1126/sciadv.aaw8863 (last visited on Jan. 21, 2026).

[634] Uta Passow & Scott A. Stout, *Character and Sedimentation of "Lingering" Macondo Oil to the Deep-Sea after the Deepwater Horizon Oil Spill*, 218 MARINE CHEMISTRY 1, 2 (2020), https://www.sciencedirect.com/science/article/pii/S0304420319302403 (last visited on Jan. 21, 2026).

[635] Michel Boufadel et al., *Simulation of the Landfall of the Deepwater Horizon Oil on the Shorelines of the Gulf of Mexico*, 48 ENV'T SCI. & TECHNOLOGY 9496, 9496-9505 (2014), https://pubmed ncbi.nlm.nih.gov/25068902/ (last visited on Jan. 21, 2026); Ioana Bociu et al. *Decomposition of Sediment-Oil-Agglomerates in a Gulf of Mexico Sandy Beach*, 9 SCI REP 1 (2019), https://www nature.com/articles/s41598-019-46301-w. (last visited on Jan. 21, 2026)

[636] R. Eugene Turner, Nancy N. Rabalais, et al., *Oiling of the Continental Shelf and Coastal Marshes Over Eight Years after the 2010 Deepwater Horizon Oil Spill*, 252 ENVIRONMENTAL POLLUTION 1367, 1374 (2019), https://www.sciencedirect.com/science/article/pii/S0269749119304841 (last visited on Jan. 21, 2026).

[637] NRDA, at 4-38; *see also* Tracey T. Sutton, Rosanna J. Milligan, et al., *The Open-Ocean Gulf of Mexico After* Deepwater Horizon*: Synthesis of a Decade of Research*, *in* FRONTIERS IN MARINE SCIENCE 1, 3 (2022) (stating that

the oil to the marine organisms in the water column and significantly increased the level of contamination sustained in the Gulf.[638] This contamination traveled with the ocean currents and oil slicks, depositing on to the ocean floor and integrating into deep-sea plumes.[639] More than two months after dispersants were injected at the wellhead, chemicals were found in deep-sea plumes 185 miles away from the well.[640] More than six months after the spill, these chemicals were found on deep-sea corals, and, up to three years after the spill, traces were found on beaches.[641]

The Gulf of Mexico has been identified as one of the most diverse mesopelagic ecosystems in the world,[642] and the *Deepwater Horizon* oil spill profoundly affected its many marine plants and organisms, ranging from bacteria to deep sea corals to arthropods.[643] These organisms absorbed significant amounts of oil and contaminants from the spill, and recent studies show that, for some of these species and ecosystems, recovery will take decades or longer.[644] Coral reefs were particularly impacted. Coral reefs create important habitat for many species; a single 12-inch coral can host up to 2,000 animals, including small fish, crabs, shrimp, and mollusks—many of which are food for higher trophic levels.[645] The *Deepwater Horizon* blowout injured about half of the coral colonies living near the wellhead, which were thriving before the spill.[646] Coral colonies are extremely slow growing and could take decades or longer to recover, meaning that the loss of this habitat will continue to have untold impacts for the entire marine ecosystem.[647]

Studies show that the impact of the oil spill on marine animals was and continues to be devastating. Large-scale oil spills, as well as smaller oil releases, can expose marine species to crude oil, which has been shown to "damage marine species' embryonic development, inhibit species' cellular and immune systems, swimming performance, cognition, cardiac function, and lead[s] to development of edema, cataracts, lesions, tumors, and narcosis, all of which have the

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the Deepwater Horizon spill introduced ~2.1 million gallons of dispersants into the water), https://www frontiersin.org/articles/10.3389/fmars.2022.753391/full (last visited on Jan. 21, 2026).

[638] NRDA, 4-33, 4-39.

[639] *Id*. 4-38-4-39.

[640] *Id*..

[641] *Id*.

[642] Tracey T. Sutton, Rosanna J. Milligan, et al., *The Open-Ocean Gulf of Mexico After* Deepwater Horizon*: Synthesis of a Decade of Research*, *in* FRONTIERS IN MARINE SCIENCE 1, 3 (2022), https://www frontiersin.org/articles/10.3389/fmars.2022.753391/full (last visited on Jan. 21, 2026).

[643] *Id*. at 4 (stating "Abundance declines in the open-ocean [Gulf of Mexico] biota after DWH ranged from imperceptible (mesozooplankton) to ephemeral (phytoplankton) to extensive (deep-pelagic fishes, macrocrustaceans).").

[644] P. Montagna et al., *Deep-Sea Benthic Footprint of the Deepwater Horizon Blowout*, PLOS ONE 1, 1 (2013), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0070540 (last visited on Jan. 21, 2026).

[645] J.K. Reed et al., Community Composition, Structure, Aereal and Trophic Relationships of Decapods Associated with Shallow- and Deep-Water Oculina Varicosa Coral Reefs, 32 BULLETIN OF MARINE SCI. 761, 761-86 (1982), https://repository.si.edu/handle/10088/9680 (last visited on Jan. 21, 2026).

[646] Peter J. Etnoyer et al., Decline in Condition of Gorgonian Octocorals on Mesophotic Reefs in the Northern Gulf of Mexico: Before and After the Deepwater Horizon Oil Spill, 35 CORAL REEFS 78, 78 (2015), https://link.springer.com/article/10.1007/s00338-015-1363-2 (last visited on Jan. 21, 2026).

[647] *See* NOAA, *Coral Facts*, https://coralreef noaa.gov/education/coralfacts.html (last visited Oct. 6, 2022).

potential of early onset mortality for various species."[648] Tens of thousands of whales, for example, were exposed to oil from the *Deepwater Horizon* spill, after which the endangered sperm whales suffered a seven percent decline in population, and the Rice's whale, a critically endangered species, was diminished by more than twenty percent.[649] The Rice's whale population now consists of around 50 individuals, and its recovery is highly uncertain.[650] The harms to oceanic cetaceans (such as whales and dolphins) are further exacerbated by other stressors in the marine environment, including "excessive anthropogenic noise, fisheries bycatch and entanglement, prey pressure related to climate change and fishing, ship strikes, ocean plastics, and [other] environmental pollutants[.]"[651]

Bottlenose dolphins have also sustained significant impacts from the *Deepwater Horizon* spill. In the months following the disaster, about a thousand dolphins died from exposure to the oil and toxins. Many of the dead dolphins were calves, who died in utero during late pregnancy or soon after their birth.[652] In Barataria Bay and the Mississippi Delta, two heavily oiled areas, bottlenose dolphins have declined by more than half and will require fifty years to rebound to pre-spill levels.[653] More broadly, oil exposure has led to the largest die-off of bottlenose dolphins in the Gulf's history.[654] Sub-lethal impacts have led to poor reproductive health, with more than seventy five percent of pregnant dolphins observed within the oil footprint giving birth to dead or non-viable dolphin calves between 2010 and 2015.[655] More recent studies show that these numbers remain largely unchanged, with "only about 20 percent of pregnancies among the

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[648] Megan Woodyard et al., *A Comprehensive Petrochemical Vulnerability Index for Marine Fishes in the Gulf of Mexico*, SCIENCE OF THE TOTAL ENV'T 1, 2 (2022), https://pubmed.ncbi.nlm.nih.gov/35051468/ (last visited on Jan. 21, 2026).

[649] *See* National Oceanic and Atmospheric Administration, National Marine Fisheries Service, *Biological and Conference Opinion on Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement's Oil and Gas Program Activities in the Gulf of America* (May 20, 2025) at 165, 548 https://www fisheries noaa.gov/s3//2025-05/BOEM-BSEE-Gulf-of-America-Oil-and-Gas-Program-BiOp-5.20.25.pdf (last visited on Jan. 21, 2026); *see also,* NRDA, at 4-599; *id.* at 4-623; *id.* at 4-624; *id.* at 4-631.

[650] *Id*.

[651] Tracey T. Sutton, Rosanna J. Milligan, et al., *The Open-Ocean Gulf of Mexico After* Deepwater Horizon*: Synthesis of a Decade of Research*, *in* FRONTIERS IN MARINE SCIENCE 1, 14 (2022), https://www frontiersin.org/articles/10.3389/fmars.2022.753391/full (last visited on Jan. 21, 2026).

[652] NOAA, *In the Wake of the Deepwater Horizon Oil Spill, Gulf Dolphins Found Sick and Dying in Larger Numbers Than Ever Before* (Apr. 3, 2015) https://response restoration noaa.gov/about/media/wake-deepwater-horizon-oil-spill-gulf-dolphins-found-sick-and-dying-larger-numbers-ever. (last visited on Jan. 21, 2026).

[653] NRDA, at 4-623; *id.* at 4-631; *id.* at 4-633; *id.* at 4-584; *see also* Tracey T. Sutton, Rosanna J. Milligan, et al., *The Open-Ocean Gulf of Mexico After* Deepwater Horizon*: Synthesis of a Decade of Research*, *in* FRONTIERS IN MARINE SCIENCE 1, 13 (2022), https://www.frontiersin.org/articles/10.3389/fmars.2022.753391/full (last visited on Jan. 21, 2026).

[654] NRDA, at 4-623; *id.* at 4-631; *id.* at 4-633; *id.* at 4-584.

[655] *Id*.

dolphins in Louisiana's heavily oiled Barataria Bay [being] successful, compared with 83 percent in unoiled regions."[656]

Fish communities and sea turtles have also faced significant harms due to the spill, including consistently low population densities. As long as seven years after the spill, many fish species continued to show "little indication of recovery" due to disruptions in the marine community directly and indirectly caused by the *Deepwater Horizon* oil spill.[657] Many fish were highly impacted due to dermal contact with the toxins, consumption of contaminated food, disruptions to the food chain, harm to their habitats and spawning areas, and the low resilience attributes of many fish to begin with.[658] Trillions of larval fish and invertebrates were killed in estuarine, offshore surface, and deep oceanic waters. These larval deaths resulted in the loss of millions to billions of fish that would have otherwise reached at least a year old.[659] These disruptions to native species changed the marine environment, creating new challenges for the recovering Gulf ecosystem, such as the arrival of the now-widespread invasive lionfish.[660] Recent research shows

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[656] *See* National Marine Mammal Foundation, *New Study Predicts Catastrophic Decline Of Dolphins In Barataria Bay, LA* (Apr. 20, 2022), https://www.nmmf.org/new-study-predicts-catastrophic-decline-ofdolphins-in-northern-gulf-of-mexico/ (last visited on Jan. 21, 2026).

[657] Justin P. Lewis et al., *Changes in Reef Fish Community Structure Following the Deepwater Horizon Oil Spill*, 10 SCI. REP. 1, 1 (2020) (stating "We observed significant changes in community structure immediately following the DWH, with a 38% decline in species richness and 26% decline in Shannon-Weiner diversity. Initial shifts were driven by widespread declines across a range of trophic guilds, with subsequent recovery unevenly distributed among guilds and taxa. For example, densities of small demersal invertivores, small demersal browsers, generalist carnivores, and piscivores remained persistently low with little indication of recovery seven years after the DWH. Initial declines among these guilds occurred prior to the arrival of the now-widespread, invasive lionfish …, but their lack of recovery suggests lionfish predation may be affecting recovery. Factors affecting persistently low densities of generalist carnivores and piscivores are not well understood but warrant further study given the myriad ecosystem services provided by [northern Gulf of Mexico] reef fishes."), https://www.nature.com/articles/s41598-020-62574-y (last visited on Jan. 21, 2026).

[658] Tracey T. Sutton, Rosanna J. Milligan, et al., *The Open-Ocean Gulf of Mexico After* Deepwater Horizon*: Synthesis of a Decade of Research*, *in* FRONTIERS IN MARINE SCIENCE 1, 6, 9-10 (2022), https://www frontiersin.org/articles/10.3389/fmars.2022.753391/full (last visited on Jan. 21, 2026).

[659] NRDA, at 4–197.

[660]Lewis, J.P., Tarnecki, J.H., Garner, S.B. et al., *Changes in Reef Fish Community Structure Following the Deepwater Horizon Oil Spill*, *in* SCI REP 1, 1 (2020) (stating "We observed significant changes in community structure immediately following the DWH, with a 38% decline in species richness and 26% decline in Shannon-Weiner diversity. Initial shifts were driven by widespread declines across a range of trophic guilds, with subsequent recovery unevenly distributed among guilds and taxa. For example, densities of small demersal invertivores, small demersal browsers, generalist carnivores, and piscivores remained persistently low with little indication of recovery seven years after the DWH. Initial declines among these guilds occurred prior to the arrival of the now-widespread, invasive lionfish …, but their lack of recovery suggests lionfish predation may be affecting recovery. Factors affecting persistently low densities of generalist carnivores and piscivores are not well understood but warrant further study given the myriad ecosystem services provided by [northern Gulf of Mexico] reef fishes.").
Justin P. Lewis et al., *Changes in Reef Fish Community Structure Following the Deepwater Horizon Oil Spill*, 10 SCI. REP. 1, 1 (2020), https://www nature.com/articles/s41598-020-62574-y.

that fish across the Gulf still display evidence of oil exposure,[661] and, even years after the spill, the marine environment remained toxic to fish larvae.[662] Turtles have suffered similarly from the spill. In the Gulf, there are five species of sea turtle, and all of them are listed as either threatened or endangered under the Endangered Species Act.[663] The *Deepwater Horizon* blowout killed or injured as many as 202,600 sea turtles as a result of contamination or spill response activities, and this number does not include the many turtles lost due to foregone reproduction nor other unquantified injuries.[664]

Oysters are another species that have suffered greatly due to the spill. Oysters are a keystone species and contribute significantly to all aspects of the Gulf ecosystem. For example, "oyster populations that are large and healthy will create reefs that not only act as a safe space for their young, but also provide habitat for a number of small creatures, clean water and recycle nutrients through filtration processes, and even protect the Gulf by ensuring structural integrity for the coast."[665] The spill and the subsequent cleanup efforts, however, killed up to 8.3 billion oysters, and, still today, 5.7 million oysters per year are unable to settle because of lost habitat.[666] Low oyster densities and the loss of oyster habitat have jeopardized the Gulf oyster population, which is not expected to recover without substantial restoration.[667] Significant resources, including over $300 million, have been put towards oyster restoration in the Gulf since the spill, but recovery continues to be slow, as hurricanes raze the marine areas each year, disturbing the oyster populations and damaging their habitats.[668] Unfortunately, hurricanes are only expected to increase in intensity due to the climate crisis, meaning future restoration efforts will be even more difficult.[669]

The long-term human health impacts of the *Deepwater Horizon* spill have also been significant. Following the BP *Deepwater Horizon* oil spill, numerous studies were conducted on the adverse

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[661] Univ. South Florida, *USF Marine Scientists Conclude 10 Years of Unprecedented Studies on the Impacts of the Deepwater Horizon Oil Spill*, NEWSROOM (Apr. 13, 2020), https://www.usf.edu/news/2020/10-year-deepwater-horizon-oil-spill-research-concludes.aspx (last visited on Jan. 21, 2026).

[662] Matthew Alloy et al., Co-exposure to Sunlight Enhances the Toxicity of Naturally Weathered Deepwater Horizon Oil to Early Lifestage Red Drum and Speckled Seatrout, 36 ENVIRONMENTAL TOXICOLOGY & CHEMISTRY 780, 780 (2016), https://setac.onlinelibrary.wiley.com/doi/epdf/10.1002/etc.3640.

[663] NOAA, *Frequent Questions: Northern Gulf of Mexico Sea Turtle Strandings*, https://www fisheries noaa.gov/southeast/marine-life-distress/frequent-questions-northern-gulf-mexico-sea-turtle-strandings (last visited on Jan. 21, 2026) (stating "Five of the world's seven species of sea turtle are found within the Gulf of Mexico, including the Kemp's ridley, green turtle, loggerhead, hawksbill, and leatherback. All are threatened or endangered under the Endangered Species Act.")

[664] NRDA, at 4-561, 4-565, 4-570, 4-518, and 4-569 (summarizing data presented).

[665] Julia Lingelbach, *Oysters & the BP Drilling Disaster*, HEALTHY GULF (Sept. 2, 2020), https://healthygulf.org/oysters-the-bp-drilling-disaster//(last visited on Jan. 21, 2026).

[666] *Id*.; *see also* NRDA, at 5-54.

[667] NRDA, at 5–54.

[668] Julia Lingelbach, *Oysters & the BP Drilling Disaster*, HEALTHY GULF (Sept. 2, 2020), https://healthygulf.org/oysters-the-bp-drilling-disaster/.

[669] *See* Angela Colbert, *A Force of Nature: Hurricanes in a Changing Climate*, NASA (Jun. 1, 2022), https://climate.nasa.gov/news/3184/a-force-of-nature-hurricanes-in-a-changing-climate/, (last visited on Jan. 21, 2026).

human health impacts of exposure to an oil spill and to the dispersants used to clean up the oil. One study of U.S. Coast Guard *Deepwater Horizon* oil spill responders found statistically significant positive associations between crude oil exposure and coughing, shortness of breath, wheezing, headaches, light-headedness/dizziness, diarrhea, stomach pain, nausea/vomiting, and painful/burning urination.[670] The study also found that responders had higher relative risks for dermal conditions, asthma, and chronic respiratory conditions.[671] Another study found that *Deepwater Horizon* response workers experienced prolonged or worsening health problems seven years after their exposure to the spill, including blood disorders and respiratory and cardiac problems.[672] A study of the health impacts of exposure to oil dispersants used in the *Deepwater Horizon* spill response cleanup found that exposure to the dispersants was associated with burning in the nose, throat, eyes and lungs as well as tightness in the chest, both at the time of exposure and years later.[673]

A longitudinal study on workers who participated in cleanup of the *Deepwater Horizon* oil spill along the Gulf coast found that all participants experienced adverse health impacts in the immediate aftermath of oil spill exposure.[674] In five-year and seven-year follow-ups, most participants experienced persistent, worsened, or new symptoms. For example, 91 percent of oil spill cleanup workers reported experiencing chronic rhinosinusitis and 45 percent reported experiencing reactive airway dysfunction syndrome five years after the cleanup.[675] No participants reported either of these symptoms during the initial assessment. During the initial assessment, 84 percent of participants had normal pulmonary function, but seven years later just 48 percent had normal pulmonary function. Nine percent of the workers whose pulmonary function declined developed severe pulmonary function abnormalities 7 years after participating in oil spill cleanup work.[676] Although these studies looked at the human health impacts of oil

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[670] Jennifer Rusiecki et al., *The* Deepwater Horizon *Oil Spill Coast Guard Cohort Study*, 75 OCCUPATIONAL ENV'T MED. 165, 165 (2017) https://pubmed ncbi.nlm nih.gov/28899964/ (last visited on Jan. 21, 2026).

[671] *Id*.

[672] Mark A. D'Andrea & G. Kesava Reddy, The Development of Long-term Adverse Health Effects in Oil Spill Cleanup Workers of the Deepwater Horizon Offshore Drilling Rig Disaster, 6 FRONTIERS IN PUB. HEALTH 1, 1 (2018), https://pmc ncbi.nlm.nih.gov/articles/PMC5932154/ (last visited on Jan. 21, 2026).

[673] Craig J. McGowan et al., Respiratory, Dermal, and Eye Irritation Symptoms Association with Corexit™ EC9527A/EC9500A Following the Deepwater Horizon Oil Spill: Findings from the GuLF STUDY, 125 ENV'T HEALTH PERSP. 9 at 1 (2017), https://ehp niehs.nih.gov/doi/10.1289/ehp1677 (last visited on Jan. 21, 2026).

[674] *See* Mark A D'Andrea & G Kesava Reddy, The development of long-term adverse health effects in oil spill cleanup workers of the Deepwater Horizon Offshore Drilling Rig Disaster Frontiers in Public Health (2018), https://www frontiersin.org/journals/public-health/articles/10.3389/fpubh.2018.00117/full (last visited Aug 26, 2025).

[675] Mark A D'Andrea & G Kesava Reddy, The development of long-term adverse health effects in oil spill cleanup workers of the Deepwater Horizon Offshore Drilling Rig Disaster Frontiers in Public Health (2018), https://www frontiersin.org/journals/public-health/articles/10.3389/fpubh.2018.00117/full (last visited Aug 26, 2025).

[676] Mark A D'Andrea & G Kesava Reddy, The development of long-term adverse health effects in oil spill cleanup workers of the Deepwater Horizon Offshore Drilling Rig Disaster Frontiers in Public Health (2018), https://www frontiersin.org/journals/public-health/articles/10.3389/fpubh.2018.00117/full (last visited Aug 26, 2025).

spills on responders, the same oil washes up on shores, pollutes local beaches, and ends up contaminating areas where local residents live and recreate.

Exposure to oil spills has been additionally linked to considerable adverse mental health effects.[677] High rates of depression and severe mental distress were found among women living in the southern coastal Louisiana parishes affected by the *Deepwater Horizon* oil spill, as well as increased domestic conflict.[678] People with significant community attachment to an area impacted by the spill or who were more economically impacted were also more negatively affected and experienced higher levels of stress.[679] Studies have also found that children exposed to the Deepwater Horizon oil spill were twice as likely to have mental and physical health issues as children who were not exposed, and children from African American and low-income households had a higher prevalence of health effects from exposure.[680]

Finally, the economic impact of the *Deepwater Horizon* spill was significant and long lasting. The commercial fishing industry in the Gulf of Mexico was estimated to have lost $247 million as a result of fishery closures after the spill due to contamination.[681] The oil spill killed up to 8.3 billion oysters, representing 508 million pounds of fresh oyster meat.[682] Losing this population to the spill's contamination contributed to a 50 percent drop in Louisiana's oyster harvest in the following two years.[683] The spill also caused the public to lose almost 17 million user days for outdoor recreation such as boating, recreational fishing, and beach-going.[684] Total recreational use damages due to the spill are estimated at $693.2 million.[685]

In sum, the *Deepwater Horizon* spill caused both catastrophic immediate effects and long lasting harms, with many of the latter continuing to this day and expected to last for decades to come. From contaminated water, seabeds, and beaches to diseased marine organisms that struggle to repopulate to human beings suffering long-term health impacts, the spill has proved to be a multigenerational catastrophe, the likes of which the Gulf of Mexico cannot afford again. If oil and gas drilling continues long term in the Gulf, however, the question of another oil spill of significant magnitude is not if, but when.

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[677] Ariane Rung et al., Depression, Mental Distress, and Domestic Conflict Among Louisiana Women Exposed to the Deepwater Horizon oil spill in the WaTCH Study, 124 ENV'T HEALTH PERSP. 1429, 1430 (2016).
[678] *Id.* at 1433-34.
[679] Nathan Andrews et al., *Oil, Fisheries and Coastal Communities: A Review of Impacts on the Environment, Livelihoods, Space and Governance*, 75 ENERGY RSCH. & SOC. SCI. 1, 8 (2021), https://www.sciencedirect.com/science/article/pii/S221462962100102X (last visited on Jan. 21, 2026).
[680] Paul A. Sandifer et al., Human Health and Socioeconomic Effects of the Deepwater Horizon Oil Spill in the Gulf of Mexico, 34 OCEANOGRAPHY 174, 179 (2021), https://tos.org/oceanography/article/human-health-and-socioeconomic-effects-of-the-deepwater-horizon-oil-spill-in-the-gulf-of-mexico-1 (last visited on Jan. 21, 2026).
[681] A. McCrea-Strub et al., *Potential Impact of the Deepwater Horizon Oil Spill on Commercial Fisheries in the Gulf of Mexico*, 36 FISHERIES 332, 332–336 (2011), https://afspubs.onlinelibrary.wiley.com/doi/abs/10.1080/03632415.2011.589334 (last visited on Jan. 21, 2026).
[682] NOAA Fisheries, "Landings," analysis of data for 2010–2012/Louisiana/Eastern Oyster, https://foss nmfs.noaa.gov/apexfoss/f?p=215:200:::NO:::, (last visitedOct. 6, 2022).
[683] *Id*.
[684] NRDA, at 4-649.
[685] *Id*.

2. The Draft Proposed Program Erroneously Underestimates and Minimizes Risks from Spills.

Rather than learning from the tragic lessons of the Deepwater Horizon catastrophe, the Draft Proposed Program instead erroneously underestimates and minimizes the risk of spills in multiple ways. First, the program erroneously claims that catastrophic spill events are outside the normal range of probability. Second, the program erroneously claims that oil spills have been decreasing in the United States, but this is not true according to recent data. Third, the program erroneously claims that spills from tankers and barges are not a consequence of the program and so does not include any analysis of these spill sources. Finally, the program does not factor into its analysis that spill risk is higher for this program than past programs because new leases are more likely to be in ultra-deep waters.

The Draft Proposed Program erroneously asserts that "[a] catastrophic spill is not expected and would be considered well outside the normal range of probability, despite the inherent risks of oil exploration, development, and production-related activities expected from the 11th Program."[686] But this misrepresents the risks from a catastrophic spill.

The current Draft Proposed Program contains no calculated estimates of spill risk for the 34 lease sales proposed. But for the proposed 2023-2028 program, which proposed only 11 lease sales, Interior estimated a 5.7% chance of an oil spill over 150,000 bbl in the Gulf of Mexico and a 0.8% chance of such a spill in Cook Inlet under a mid-level activity scenario.[687] The joint probability of having a catastrophic spill in any OCS region under the mid-level activity scenario for the 2023-2028 Proposed Program was 15% for a 150,000-bbl spill and 6% for a 10 million-bbl spill.[688] And based on Interior's data and methodology, there was a 13% chance of a catastrophic spill >150,000 bbl under the 2023-2028 Proposed Program, and a 4.9% chance of a spill over 10 million bbl in Cook Inlet and the Gulf of Mexico.[689] A 13% chance is by no means "outside the normal range of probability." And here, the current Draft Proposed Program proposes 34 lease sales--more than triple the number analyzed in the 2023-2028 proposed program--so the probability of a catastrophic spill is even greater. Interior must rationally and accurately describe risks of catastrophic spills in subsequent iterations of the program.

The Draft Proposed Program states, "Oil spills are accidental and unauthorized events, and there has been a consistent downward trend in their occurrence in U.S. waters," citing to a study from

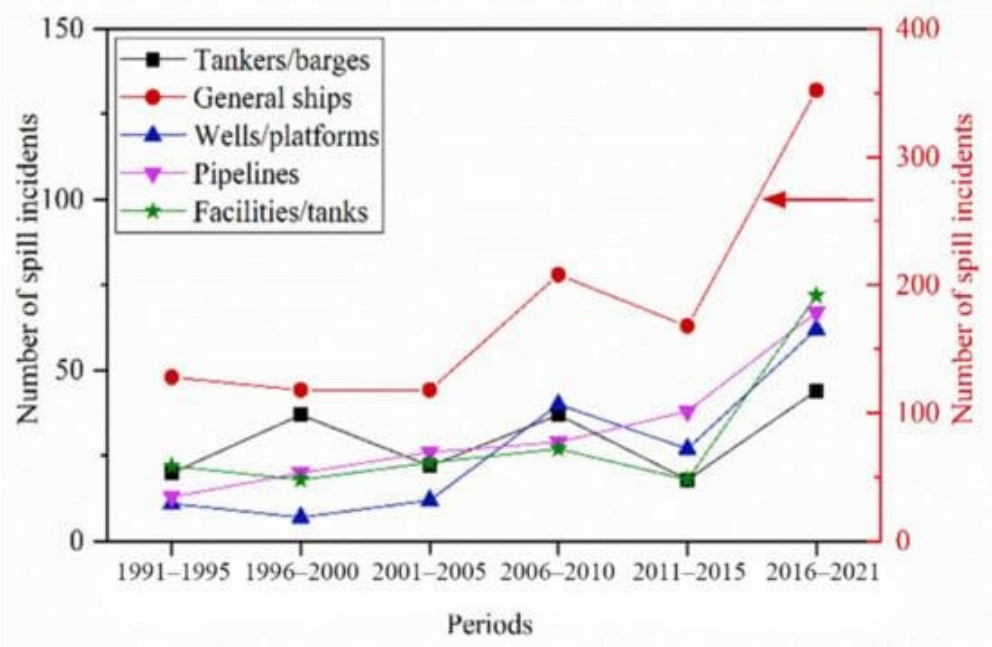
[686] Draft Proposed Program at 9-61

[687] BOEM, Draft Economic Analysis Methodology for the 2023-2028 OCS Oil and Gas Leasing Program at 3-8 (July 2022).

[688] Peter Howard, Max Sarinsky, and Minhong Xu, *The Real Costs of Offshore Leasing: A Review of BOEM's Economic Analysis for Its Proposed Five-Year Program*, Institute for Policy Integrity 33–34, tbl.10 (Sept. 2022).

[689] Susan Lubetkin, *Technical Review of Section 4.6: Environmental Consequences: Potential Impacts of Oil Spills and Appendix G: Oil Spill Estimates from the 2023-2028 National OCS Oil and Gas Leasing Program Draft Proposed Programmatic Environmental Impact Statement (BOEM, July 2022) and OECM Oil Spill Model (Section 1.2.4.2) and Statistical Frequency of Catastrophic Oil Spill (Section 3.3.3) from the Draft Economic Analysis Methodology for the 2023–2028 National Outer Continental Shelf Oil and Gas Leasing Program (BOEM, July 2022)* 44–45 & 47 tbl.26 (2022) [hereinafter *Lubetkin Report*].

2014.[690] However, this is old information and no longer accurate. While there was a downward trend from 2010 to 2015, that trend has since reversed, at least for several significant sources of spills, as depicted in the graph below.[691] And this increasing trend is expected to continue, in part due to climate change, which puts additional stressors on existing fossil fuel infrastructure.[692] The next iteration of the program must rely on current, up-to-date information when discussing the oil spill risks of the program.



The Draft Proposed Program claims that "transport of oil by tankers or barges is not a direct outcome of BOEM decisions and therefore is not included" in the program's oil spill analyses.[693] However, just because oil spills from barges are not a "direct" impact of the program does not relieve Interior of its duty to consider spill impacts from barges and tankers. OCSLA explicitly requires Interior to consider indirect effects of the program on the environment.[694] Increased OCS leasing leads to increased offshore production, which leads to more transportation of oil and gas. Spills from barges and tankers are therefore an impact of the program and Interior must include these types of spills in its analysis.

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[690] Draft Proposed Program at 9-60.

[691] Jinxin Dong et al, *Climate Change Impacts on Coastal and Offshore Petroleum Infrastructure and the Associated Oil Spill Risk: A Review*, 10(7) J. Mar. Sci. Eng. 849 (2022), https://www mdpi.com/2077-1312/10/7/849.

[692] *Id*.

[693] Draft Proposed Program at 9-61

[694] *See* 43 U.S.C. 1344(a)(1) and 1331(i), requiring Interior to consider "the potential impact of oil and gas exploration … on the human environment" which OCSLA defines as "the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the [OCS]."

Finally, offshore oil and gas development is increasingly occurring in deep waters.[695] And this trend is expected to continue.[696] This means that most oil and gas produced pursuant to the program will be from deep waters. Deepwater drilling magnifies spill risk: the likelihood of well blowouts and uncontrolled oil spills increases significantly with depth, making deepwater and ultra-deepwater drilling particularly risky.

Researchers have found that "deep water platforms have a much higher probability of an incident (such as a spill, accident, or injury) reported."[697] In fact, "company-reported incidents (such as blowouts, fires, injuries, and pollution) increase with water depth. … Controlling for these and other characteristics, for an average platform, each 100 feet of added depth increases the probability of a company-reported incident by 8.5%."[698] Various factors—including increased reservoir pressure and temperature when drilling in deeper water, unstable rock and sediment, and increased stresses on pipeline infrastructure when drilling in deeper water—can increase the risk of blowouts.[699]

This risk is not hypothetical. In October 2020, as hurricane Zeta approached Transocean's Deepwater Asgard, the well experienced a "kick"—an eruption of oil, gas, or other fluids from deep underground that can lead to a blowout.[700] Company officials directed the Deepwater Asgard to remain attached to the well, resulting in damage to the rig, a BSEE safety alert, and a lawsuit by workers on the platform.[701] The mile-deep well that the Deepwater Asgard was drilling was capable of spilling 313,100 bbls per day for up to three months, and according to Rick Steiner, a marine conservationist and former professor at the University of Alaska, it could "easily" have become another BP spill.[702] In 2021, an accident involving the Transocean

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[695] For example, during the latest lease sale held in the Gulf, the vast majority of sales were in deep or ultradeep water. *See e.g.* BOEM, BIDS – Oil and Gas Lease Sale BBGI (Dec. 2025), https://experience.arcgis.com/experience/52b6f40f61ca493e993f785519e8a733 (last visited on Jan. 21, 2026).

[696] David Brown, *Chevron's Ultra-High-Pressure Tech Pushes Gulf of Mexico Production to New Levels*, AAPG (Oct. 1, 2024), https://www.aapg.org/news-and-media/details/explorer/articleid/67800?srsltid=AfmBOooVC_Mp2zc_JD7pr1oaVbD7q_p4b6B2SlZ3hhZqBP-0jfydS2M1 (last visited on Jan. 21, 2026).

[697] Lucija Muehlenbachs et al., The Impact of Water Depth on Safety and Environmental Performance in Offshore Oil and Gas Production, 55 Energy Policy 699, 700 (2013).

[698] *Id*. at 704.

[699] Emily Chancellor et al., Ch. 26 - Comparative Environmental Sensitivity of Offshore Gulf Of Mexico Waters Potentially Impacted by Ultra-Deep Oil Well Blowouts, in Steven A. Murawski et al., Scenarios and Responses to Future Deep Oil Spills: Fighting The Next War 518-19 (Springer ed., 2020).

[700] Sharon Kelly, *Exclusive: 2020's Hurricane Zeta Nearly Caused 'Another Deepwater Horizon Catastrophe' in Gulf of Mexico*, DeSmog (April 5, 2021), https://www.desmog.com/2021/04/05/hurricane-zeta-deepwater-horizon-asgard-transocean/ (last visited on Jan. 21, 2026).

[701] BSEE, *Inadequate Preparations in Advance of Inclement Weather Results in Excessive Rig Damage and Risk to Personnel* (March 8, 2021), https://www.bsee.gov/sites/bsee.gov/files/safety-alerts/bsee-safety-alert-415-inadequate-preparations-in-advance-of-inclement-weather-results-in-excessive.pdf (last visited on Jan. 21, 2026); Mike Shuler, *Lawsuit Sheds Light on Serious Drillship Incident in Gulf of Mexico During 2020's Hurricane Zeta*, gCaptain (April 13, 2021), https://gcaptain.com/deepwater-asgard-incident-gulf-of-mexico-hurricane-zeta/ (last visited on Jan. 21, 2026).

[702] Kelly, Exclusive: 2020's Hurricane Zeta Nearly Caused 'Another Deepwater Horizon Catastrophe'.

Deepwater Pontus drillship, which involved a blowout preventer falling onto the wellhead during a routine operation, highlighted the potential for a serious accident during deepwater drilling.[703]

Moreover, in ultra-deep waters, operators are often drilling not only deep below the surface of the ocean but also deep below the surface of the earth – in high-pressure (greater than 15,000 psi), high-temperature (greater than 350 degrees Fahrenheit) conditions. Such extreme conditions create the greatest risk of a blowout or catastrophic spill. And those conditions make well kicks (the start of a blowout) much more likely. Data shows that high-pressure, high-temperature wells suffer one well kick per well compared to a wildcat exploration well, which only averages one kick per ten wells.[704]

Interior must incorporate this increased risk factor when analyzing impacts of spills from the program.

C. Interior Must Consider Impacts to Vulnerable Coastal Communities.

OCS leasing and development has placed and will continue to place massive health and environmental burdens on vulnerable low-income and minority communities, both on the coast and inland near oil and gas facilities and infrastructure, as explained in Section IV.A.3.

OCSLA "imposes binding obligations on the Secretary to consider vulnerable communities."[705] Yet the Draft Proposed Program omits any kind of analysis on vulnerable communities. It fails to identify which vulnerable communities may be at risk due to the program. It also fails to evaluate how proposed leasing could cause disproportionate impacts on minority and low-income communities. While an appendix to the program acknowledges that offshore oil and gas infrastructure can disproportionately affect vulnerable communities,[706] the list of impacts mentioned is cursory and omits many of the types of harms vulnerable communities experience from fossil fuel-related infrastructure. And nowhere does the program engage in a comparative analysis of whether risks to vulnerable communities are equitably shared between regions. This failure to consider vulnerable communities violates OCSLA.

D. Interior Must Consider Fully Consider Impacts to Vulnerable Species.

BOEM must consider the program's impacts on imperiled marine wildlife that inhabit the regions proposed for leasing.[707]

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[703] Sharon Kelly, *Footage of Offshore Oil Accident Highlights Risks of Deepwater Drilling*, DeSmog (Feb. 8, 2022), https://www.desmog.com/2022/02/08/deepwater-drilling-accident-bop-gulf-of-mexico/ (last visited on Jan. 21, 2026).

[704] Per Holand, Loss of Well Control Occurrence and Size Estimators, Phase I and II, ExproSoft, prepared for USDOI, BSEE, May 2017, 164, https://www.bsee.gov/sites/bsee.gov/files/tap-technical-assessment-program/765aa.pdf (last visited on Jan. 21, 2026).

[705] *Healthy Gulf v. U.S. Dep't of the Interior*, 152 F.4th 180, 193 (D.C. Cir. 2025).

[706] Draft Proposed Program at B-1-3.

[707] OCSLA requires BOEM to consider "other resource values of the outer Continental Shelf and the marine, coastal, and human environments," See 43 U.S.C. § 1344(a)(1). Further, BOEM must base the timing and location of offshore oil and gas leases on a consideration that includes "the relative environmental sensitivity" and "relevant environmental and predictive information for different areas of the outer Continental Shelf." *Id.* at § 1344(a)(2)(G), (H).

1. The Critically Endangered Rice's Whale Will Be Harmed By Continued Oil and Gas Development.

The Rice's whale (*Balaenoptera ricei*), is the only baleen whale species whose entire known range is limited to the Gulf. It is also generally recognized by the National Marine Fisheries Service (NMFS) and others to be one of the most endangered marine mammals in existence.[708] Approximately 50 individuals remain, according to NMFS' best estimates.[709] The whale is listed as endangered under the Endangered Species Act (ESA) and as "critically endangered"—the most severe rating short of extinction—on the International Union for Conservation of Nature (IUCN) Red List.[710]

NMFS had previously found that the species can only afford to lose one animal about every fifteen years as a result of human impacts if it is to achieve its optimum sustainable population consistent with federal law.[711] As NMFS concluded in its endangered species listing, the population faces myriad threats to its survival and recovery. Such threats include the curtailment of habitat due to oil and gas development, oil spills and oil spill response, anthropogenic noise, vessel collisions, ingestion of marine debris, and potential fisheries interactions, as well as the deleterious genetic effects associated with limited abundance.[712] In the most recent Biological

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[708] *E.g.*, NMFS, "Rice's whale," https://www fisheries.noaa.gov/species/rices-whale (last visited on Jan. 21, 2026) ("With likely fewer than 100 individuals remaining, Rice's whales are one of the most endangered whales in the world. Recovery of the species depends upon the protection of each remaining whale.").

[709] National Oceanic and Atmospheric Administration, National Marine Fisheries Service, *Biological and Conference Opinion on Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement's Oil and Gas Program Activities in the Gulf of America* (May 20, 2025) at 165, 548 https://www fisheries noaa.gov/s3//2025-05/BOEM-BSEE-Gulf-of-America-Oil-and-Gas-Program-BiOp-5.20.25.pdf. (last visited on Jan. 21, 2026).

[710] 50 C.F.R. §§ 17.11(h), 224.101(h) (ESA listing); P. Rosel, P. Corkeron & M. Soldevilla, *Balaenoptera ricei*, *in The IUCN Red List of Threatened Species*, e.T215823373A208496244 (2022) (IUCN listing), iucnredlist.org/species/215823373/208496244 (last visited on Jan. 21, 2026).

[711]Sean A. Hayes, Elizabeth Josephson, Katherine Maze-Foley, Patricia E. Rosel, and Jennifer Turek, eds., *U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2020*, at 160-67 (2022) (NOAA Tech. Memo. NMFS-NE-271), https://media fisheries.noaa.gov/2021-07/Atlantic%202020%20SARs%20Final.pdf?null%09. Under the Marine Mammal Protection Act, annual sustainable loss of marine mammals, known as Potential Biological Removal (PBR), is quantified as the product of the species' minimum population size, one-half of its maximum net productivity rate, and a recovery factor. 16 U.S.C. § 1362. According to NMFS' most recent Stock Assessment Report for the Rice's whale (2020), the minimum population size for the species is 34, the maximum productivity rate is 0.04 (the default value for cetaceans), and the recovery factor is 0.1 because the stock is listed as endangered. We therefore calculate PBR for the Rice's whale as 0.068, or about one whale lost to human impacts every fifteen years. (In our view, PBR should not be rounded up to 0.1, as is done in the Stock Assessment Reports.)

[712] Patricia E. Rosel, Lynsey A. Wilcox, Tadasu K. Yamada & Keith D. Mullin, *A new species of baleen whale (*Balaenoptera*) from the Gulf of Mexico, with a review of its geographic distribution*, 37 Marine Mammal Sci. 577 (2021); Patricia E. Rosel et al., *Status review of Bryde's whales (*Balaenoptera edeni*) in the Gulf of Mexico under the Endangered Species Act* (2016) (NOAA Tech. Memo. NMFS-SEFSC-692), https://repository.library.noaa.gov/view/noaa/14180 (last visited on Jan. 21, 2026); M.S. Soldevilla et al., *Spatial distribution and dive behavior of Gulf of Mexico Bryde's whales: Potential risk of vessel strikes and fisheries*

Opinion covering oil and gas activities in the Gulf, NMFS found that oil and gas activities are likely to jeopardize the continued existence of Rice's whale.[713]

In its Draft Proposed Program, BOEM notes that while sightings and acoustic detections of Rice's whales occur almost exclusively in the DeSoto Canyon area, recent evidence shows that Rice's whales could be present in the area between the 100 meter and 400 meter isobaths in the northern Gulf.[714]

BOEM should ensure that it considers the best available science on the distribution of the Rice's whale in its Draft Proposed Program analysis. This includes:

- NMFS' proposed critical habitat designation for Rice's whale.[715]
- NMFS' recent spatial estimates of Rice's whale distribution and density across the Gulf.[716] These estimates indicate that at least one third (n=33.3 to 38.8%) of the population occurs in the Central and Western Planning Areas in each season of the year.[717]
- Recent habitat suitability analyses, showing that the shelf-break waters across the northern Gulf between the 100-and 400-meter isobaths are suitable habitat for the whale. The first analysis identified habitat in the northwestern Gulf based on three largely independent lines of information: sightings data from the government's large-vessel surveys (described above), acoustic data from NMFS' multi-year monitoring effort (described above), and a habitat suitability model rooted in salient oceanographic features, including water depth, bottom temperature, and primary productivity.[718] The second NOAA analysis developed a model of the whale's distribution based on

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interactions, 32 Endangered Species Research 533 (2017), https://www.fisheries noaa.gov/resource/peer-reviewed-research/spatial-distribution-and-dive-behavior-gulf-mexico-brydes-whales (last visited on Jan. 21, 2026).

[713] National Oceanic and Atmospheric Administration, National Marine Fisheries Service, *Biological and Conference Opinion on Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement's Oil and Gas Program Activities in the Gulf of America* (May 20, 2025) at 548 https://www fisheries noaa.gov/s3//2025-05/BOEM-BSEE-Gulf-of-America-Oil-and-Gas-Program-BiOp-5.20.25.pdf;

[714] Draft Proposed Program at 9-35.

[715] NMFS, "Endangered and Threatened Species; Designation of Critical Habitat for the Rice's Whale," 88 Fed. Reg. 47,453 (July 24, 2023).

[716] Southeast Fisheries Science Center, Density of Cetaceans and Turtles in the Gulf of Mexico (2025), available at https://www fisheries noaa.gov/inport/item/70316 (last visited on Jan. 21, 2026).

[717] *See* L.P. Garrison et al., Gulf of Mexico Marine Assessment Program for Protected Species (GoMMAPPS): Marine Mammals, Volume 2: Appendix C: Gulf of Mexico Marine Mammal Spatial Density Models, OCS Study BOEM 2023-042, at 154 tbl. C.2-6 (2023). These percentages were calculated from the seasonal abundance estimates reported in id. tbl C.2-6 and equal the seasonal abundance of Rice's whales in the Central Planning Area plus Western Planning Area as a percentage of the total seasonal abundance of Rice's whales for each season. (Winter = 33%, spring = 39%, summer = 34%, fall = 34%).

[718] Farmer et al. (2022). The suitability model took account of the sightings, but not the acoustic data. Although this paper was not undertaken as part of the five-year study, it made use of some of the data acquired during the study.

bathymetric and oceanographic features and predicted suitable habitat for the whale throughout the Gulf in areas between 100 and 400 meters depth.[719]

- A recently completed, five-year, multivalent study of the whales' habitat, led by NOAA and funded through the RESTORE Act. This NOAA-led study, "Trophic Interactions and Habitat Requirements of Gulf of Mexico Rice's Whales," represents the best available scientific information for defining the species' habitat.[720] It was designed to develop "a comprehensive ecological understanding" of the species by integrating research along multiple lines: photo-identification and mark-recapture analyses to help determine the size and site-fidelity of the population, tagging of individual whales to understand their foraging behavior, sampling of both the whales' fecal matter and the prey composition of the area they forage, monitoring of potential habitat with passive acoustics, mapping of the distribution of the whales' prey, and determination of the oceanographic features associated with their habitat.[721]

Taken individually and together, these multiple lines of evidence support the identification of habitat extending from an area in the upper depths of the De Soto Canyon, in the eastern Gulf, along the continental shelf break between the 100 meter and 400 meter isobaths, through waters off Louisiana and Texas.[722] Notably, acoustic detections along the same bathymetric contours confirm that some Rice's whales "persistently occur" in the northwestern Gulf.[723] Thus, the

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[719] L.P. Garrison, M.S. Soldevilla, A. Martinez & K.D. Mullin, A density surface model describing the habitat of the Critically Endangered Rice's whale Balaenoptera ricei in the Gulf of Mexico, 54 ENDANGERED SPECIES RES. 41-57 (2024), https://www fisheries.noaa.gov/resource/peer-reviewed-research/density-surface-model-describing-habitat-critically-endangered (last visited on Jan. 21, 2026).

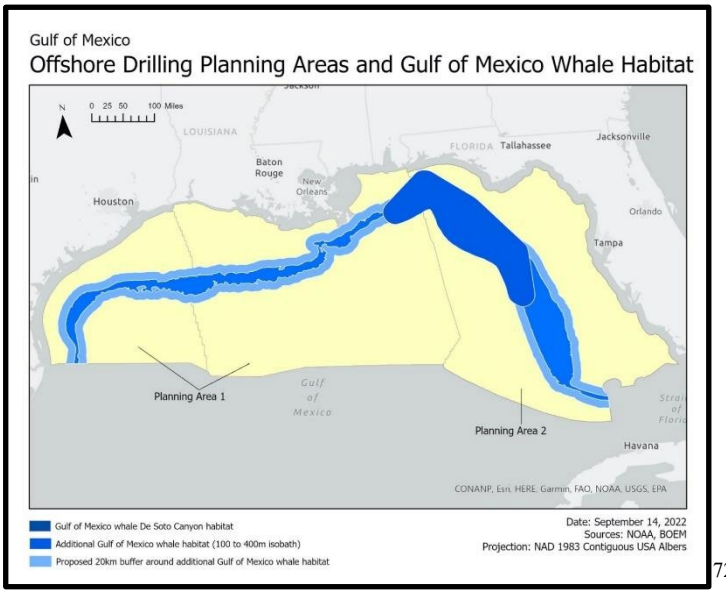
[720] NOAA provides a detailed overview of the study on its website. *See* NOAA RESTORE Science Program, *Trophic Interactions and Habitat Requirements of Gulf of Mexico Rice's Whales*, restoreactscienceprogram.noaa.gov/projects/rices-whales (last visited Jan. 14, 2026); NOAA Fisheries, *Trophic Interactions and Habitat Requirements of Gulf of Mexico Rice's Whales*, https://www fisheries noaa.gov/southeast/endangered-species-conservation/trophic-interactions-and-habitat-requirements-gulf-mexico (last visitedJan. 14, 2026).

[721] *Id.;* Some of the study's components have already been published and others are pending publication. In all cases, final reports have been received by NMFS. In fall 2021, BOEM environmental compliance staff participated in a five-day Recovery Workshop, convened by NMFS, in which the findings of the study were presented. *See* NOAA Fisheries, *Rice's Whale Recovery Planning Workshop: Workshop Summary*, (Oct-Nov. 2021), https://media.fisheries noaa.gov/2022-04/RIWH_WorkshopSummary_Oct-Nov2021_FinalDraft_Public-Version_508%20Compliant.pdf.

[722] *See* Figure *Offshore Drilling Planning Areas and Rice's Whale Habitat* below.

[723] Melissa .S. Soldevilla, Amanda J. Debich, Lance P. Garrison, John A. Hildebrand, Sean M. Wiggins, *Rice's whale in the northwestern Gulf of Mexico: Call variation and occurrence beyond the known core habitat*, 48 Endangered Species Res. 155 (2022). As the authors note, this distribution "will be important to consider when designating critical habitat for this endangered species." *Id.* at 172; *see also,* M.S. Soldevilla et al., *Rice's whale occurrence in the western Gulf of Mexico from passive acoustic recordings,* MARINE MAMMAL SCI. 1-8 (2024); Jeremy J. Kiszka et al., *Critically endangered Rice's whale (Balaenoptera ricei) selectively feed on high-quality prey in the Gulf of Mexico,* 13 SCI. REPS. 6710, 6710 (2023); *see* N*icholas* A. Farmer et al., *Modeling protected species distributions and habitats to inform siting and management of pioneering ocean industries: A case study for*

whale is highly likely to occur regularly in areas slated for development under the Draft Proposed Program.



[724]

BOEM must advance a Proposed Program that fully considers the potential impacts of further oil and gas development in the Gulf on this exceedingly vulnerable species.

Rice's whales are particularly vulnerable to acoustic disturbance from seismic testing.[725] In baleen whales, the airgun arrays used in high-energy seismic exploration have repeatedly been shown to disrupt whale vocalizations over large areas of the ocean (greater than 10,000 km^2 in some cases) and across a wide range of important behavioral contexts: foraging, breeding, and migrating.[726] Under NMFS' current standard, disruption amounting to species take begins, for

Gulf of Mexico aquaculture, 17 PLoS ONE 1, 7, 12 (2022) (using data from the five-year study to conduct a habitat suitability analysis).

[724] The polygon "Gulf of Mexico whale De Soto Canyon habitat" is taken from NMFS' 2019 Biological Opinion on oil and gas activities in the Gulf of Mexico, which is based in turn on the agency's 2016 Status Review. The proposed 20km buffer mapped around the 100-400m isobath reflects the methodology used by NMFS to define the species' habitat in the De Soto Canyon, where the agency added a buffer of 20km to account for whale movement. (NMFS added an additional 10km in that instance to account for uncertainties in sighting locations, which is not a relevant consideration outside the De Soto Canyon area.)

[725] The following discussion on particular threats from offshore oil and gas development focuses on seismic survey noise, oil spills, and vessel collisions and vessel noise. It should be noted that other industry activities, such as infrastructure placement, can also affect the species and its habitat and thus require analysis.

[726] *See e.g.*, M. Castellote, C.W. Clark, and M.O. Lammers, *Acoustic and Behavioural Changes by Fin Whales (Balaenoptera physalus) in Response to Shipping and Airgun Noise*, 147 BIOLOGICAL CONSERVATION 115 (2012), https://www.sciencedirect.com/science/article/abs/pii/S0006320711004848; S. Cerchio, S. Strindberg, T. Collins, C. Bennett, and H. Rosenbaum, *Seismic Surveys Negatively Affect Humpback Whale Singing Activity off Northern*

Rice's whales, at 140 dB re 1 µPa (RMS); and while that threshold is plainly not conservative given a scientific record showing impacts to baleen whales at much lower exposure levels, the standard is such that Rice's whale may be taken at distances of more than 30km, based on BOEM's 2017 modeling.[727]

Furthermore, seismic surveys have repeatedly been demonstrated to elevate background levels of noise over even larger areas, masking conspecific calls and other biologically important signals and thereby compromising the ability of marine wildlife to communicate, feed, find mates, and engage in other vital behavior.[728] The intermittency of airgun pulses hardly mitigates this effect since their acoustic energy spreads over time and sounds virtually continuous at tens of kilometers and further distances from the array.[729] Unfortunately, the Rice's whale is particularly vulnerable to masking effects since its call repertoire coincides with the low frequencies occupied by seismic survey noise.[730] And they may regularly be exposed: in the Gulf of Mexico, seismic surveys occur frequently and at all stages of oil and gas development.[731] A three-year study of the Gulf region, undertaken by Cornell, showed that industry airguns "dominated the noise environment and chronically elevated noise levels across several paramount marine

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Angola, 9(3): e86464 PLoS ONE (2014), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0086464; S.B. Blackwell, C.S. Nations, T.L. McDonald, A.M. Thode, D. Mathias, K.H. Kim, C.R. Greene, Jr., and M. Macrander, *Effects of Airgun Sounds on Bowhead Whale Calling Rates: Evidence for Two Behavioral Thresholds*, 10(6): e0125720 PLoS ONE (2015), https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0125720&type=printable (last visited on Jan. 21, 2026).

[727] *See* BOEM, Gulf of Mexico OCS Proposed Geological and Geophysical Activities: Western, Central, and Eastern Planning Areas Final Programmatic Environmental Impact Statement at D-220 to D-226 (2017) (BOEM 2017-051), https://www.boem.gov/sites/default/files/environmental-stewardship/Environmental-Assessment/NEPA/BOEM-EIS-2017-051_v2.pdf (last visited on Jan. 21, 2026).

[728] *See e.g.*, A.C.M. Kok, M.J. Hildebrand, M. MacArdle et al., Kinematics and Energetics of Foraging Behavior in Rice's Whales of the Gulf of Mexico, 13 SCI. REP. 8996 (2023); M. Guerra, A.M. Thode, S.B. Blackwell, and A.M. Macrander, *Quantifying Seismic Survey Reverberation off the Alaskan North Slope*, 130 J. OF THE ACOUSTICAL SOCIETY OF AMERICA 3046 (2011); S.L. Nieukirk, D.K. Mellinger, S.E. Moore, K. Klinck, R.P. Dziak, and J. Goslin, *Sounds from Airguns and Fin Whales Recorded in the Mid-Atlantic Ocean, 1999-2009*, 131 J. OF THE ACOUSTICAL SOCIETY OF AMERICA 1102 (2012); B.J. Estabrook, D.W. Ponirakis, C.W. Clark, and A.N. Rice, *Widespread Spatial and Temporal Extent of Anthropogenic Noise Across the Northeastern Gulf of Mexico Shelf Ecosystem*, 30 ENDANGERED SPECIES RES. 267 (2016).

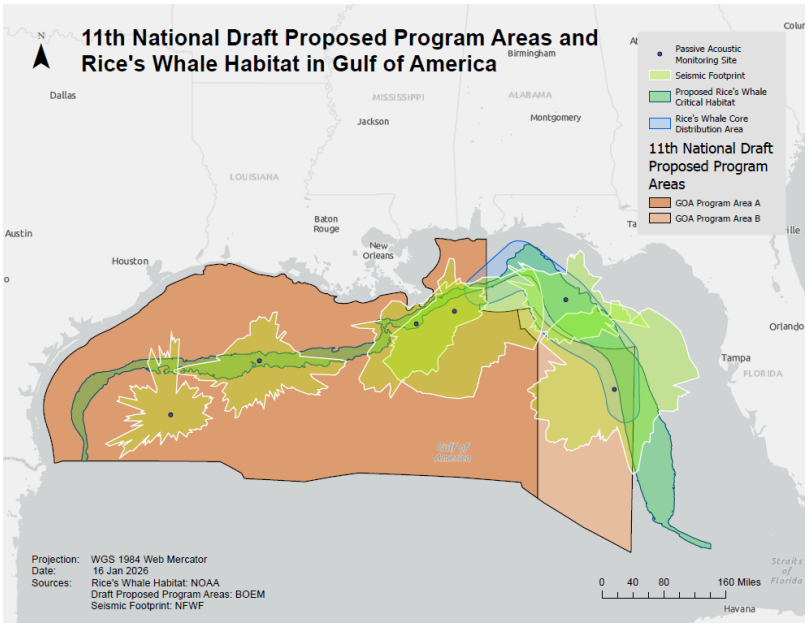
[729] This property of seismic noise derives from basic physics (reverberation and multi-path propagation) and has been demonstrated repeatedly and in a range of environments, including the Gulf of Mexico. *Id.*

[730] *See* M.S. Soldevilla, K. Ternus, A. Cook, J.A. Hildebrand, K.E. Frasier, A. Martinez, and L.P. Garrison, *Acoustic Localization, Validation, and Characterization of Rice's Whale Calls*, 151 J. OF THE ACOUSTICAL SOCIETY OF AMERICA 4264 (2022) (describing low-frequency call repertoire of the Rice's whale).

[731] The sheer intensity of activity is a hallmark of seismic surveys, particularly in the Gulf of Mexico. Some individual seismic surveys in the Gulf of Mexico persist for months at a time, operating day and night, and the frequency of activity makes seismic noise a chronic stressor in many parts of the Gulf. Estabrook, et al., *Widespread Spatial and Temporal Extent of Anthropogenic Noise Across the Northeastern Gulf of Mexico Shelf Ecosystem*, at 279, https://www.int-res.com/articles/esr2016/30/n030p267.pdf (last visited on Jan. 21, 2026).

habitats."[732] Noise from single surveys was found to propagate over spatial scales of several hundred kilometers, "exposing a wide range of species and habitats to chronically elevated noise levels."[733]

There are already significant levels of background noise in the Gulf, permeating Rice's whale habitat. In mapping that our groups conducted of the Gulf soundscape, we found that when using existing hydrophone points, that there were significant areas of the Gulf where background noise levels exceed 135 dB.[734] Additional seismic surveys from oil and gas exploration and development will only worsen an already noisy and disruptive soundscape.



To make matters worse, it is well established that vessel noise can disrupt baleen whale behavior, mask their communications, and induce chronic stress.[735] As one example, a study that combined long-term acoustic monitoring data with AIS vessel-tracking data and acoustic propagation modelling found that routine vessel passages in the Huruki Gulf of New Zealand constricted

[732] *Id.* at 267.

[733] *Id.* at 279.

[734] *See* https://gulfspillrestoration.noaa.gov/media/document/2024-05-oo-marine-mammal-noise-project; *https://sr-analytics.shinyapps.io/shinyApp/*

[735] *See*, *e.g.*, L.T. Hatch, C.W. Clark, S.M. van Parijs, A.S. Frankel, and D.W. Ponirakis, *Quantifying loss of acoustic communication space for right whales in and around a U.S. National Marine Sanctuary*, 26 CONSERVATION BIOLOGY 983 (2012); R.M. Rolland, S.E. Parks, K.E. Hunt, M. Castellote, P.J. Corkeron, D.P. Nowacek, S.K. Wasser, and S.D. Kraus, *Evidence that Ship Noise Increases Stress in Right Whales*, PROCEEDINGS OF THE ROYAL SOCIETY B 2012: doi:10.1098/rspb.2011.2429 (2012); C. Gomez, J.W. Lawson, A.J. Wright, A.D. Buren, D. Tollit, and V. Lesage, *A systematic review on the behavioural responses of wild marine mammals to noise: The disparity between science and policy*, 94 CANADIAN J. OF ZOOLOGY 801 (2016); C.M. Duarte, L. Chapuis, S.P. Collin, D.P. Costa, R.P. Devassy, V.M. Eguiluz, C. Erbe, T.A. Gordon, B.S. Halpern, H.R. Harding, and M.N. Havlik, *The Soundscape of the Anthropocene Ocean*, SCIENCE 371: art. eaba4658 (2021).

communication space of Bryde's whales, a related complex of species, by up to 87.4%.[736] This level suggests that vessel noise reduces communication ability well beyond the evolutionary context of the species and may lead to chronic effects.[737] Notably, researchers participating in the five-year NOAA study found that Rice's whales responded strongly to the approach of their survey vessel, going silent—and therefore ceasing to engage in biologically relevant vocalizations—for 30-60 minutes or more.[738]

As numerous commentators have observed, impacts from acoustic masking and chronic stress, experienced repeatedly and at the geographic scale of populations, can accumulate to impacts on vital rates and to population-level harm.[739]

Oil spills also represent a significant threat to the population, as demonstrated by the fallout from the *Deepwater Horizon* disaster.[740] In the Final Programmatic Damage Assessment and Restoration Plan published by the *Deepwater Horizon* Trustees, NMFS estimated that Rice's whales were the most impacted shelf / oceanic species, with 17% (95%CI=7-24%) expected excess mortality, 22% (95%CI=10-31%) excess failed pregnancies, and 18% (95%CI=7-28%) adverse health effects.[741] The one individual sampled during a post-spill biopsy study showed levels of nickel and chromium—two genotoxic metals found in Macondo oil—consistent with those seen in Gulf sperm whales, some of which were sampled closer to the spill site; these levels were two to five times higher than the global mean for sperm whales.[742] Baleen whale

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[736] R.L. Putland, N.D. Merchant, A. Farcas, and C.A. Radford, *Vessel Noise Cuts Down Communication Space for Vocalizing Fish and Marine Mammals*, 24 GLOBAL CHANGE BIOLOGY 1708 (2018).

[737] *Id*.

[738] Soldevilla et al., Acoustic Localization, Validation, and Characterization of Rice's Whale Calls at 4275, https://pubs.aip.org/asa/jasa/article/151/6/4264/2839426/Acoustic-localization-validation-and (last visited on Jan. 21, 2026).

[739] *E.g.*, C.W. Clark, and G.C. Gagnon, Considering the temporal and spatial scales of noise exposures from seismic surveys on baleen whales (2006) (IWC Sci. Comm. Doc. IWC/SC/58/E9); E.C.M. Parsons, S.J. Dolman, M. Jasny, N.A. Rose, M.P. Simmonds, and A.J. Wright, *A Critique of the UK's JNCC Seismic Survey Guidelines for Minimising Acoustic Disturbance to Marine Mammals: Best Practice?*, 58 MARINE POLLUTION BULLETIN 643 (2009); D.P. Nowacek, C.W. Clark, D. Mann, P.J. Miller, H.C. Rosenbaum, J.S. Golden, M. Jasny, J. Kraska, and B.L. Southall, *Marine Seismic Surveys and Ocean Noise: Time for Coordinated and Prudent Planning*, 13(7) FRONTIERS IN ECOLOGY AND THE ENVIRONMENT 378 (2015)*; See also,* Hayes et al., eds., U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2020 at 160-67 (finding that the species can only afford to lose one animal about every fifteen years as a result of human impacts if it is to achieve its optimum sustainable population consistent with federal law); Comments of A.J. Strelcheck, NMFS Regional Administrator for the Southeast Regional Office, to Tershara Matthews, Chief of Emerging Programs, BOEM, at 6 (Feb. 9, 2022) ("the loss of even a single reproductive female could lead [the Rice's whale] to extinction").

[740] Rosel et al., *Status Review* (2016) at 30-31; *see also id.* at 95, 131.

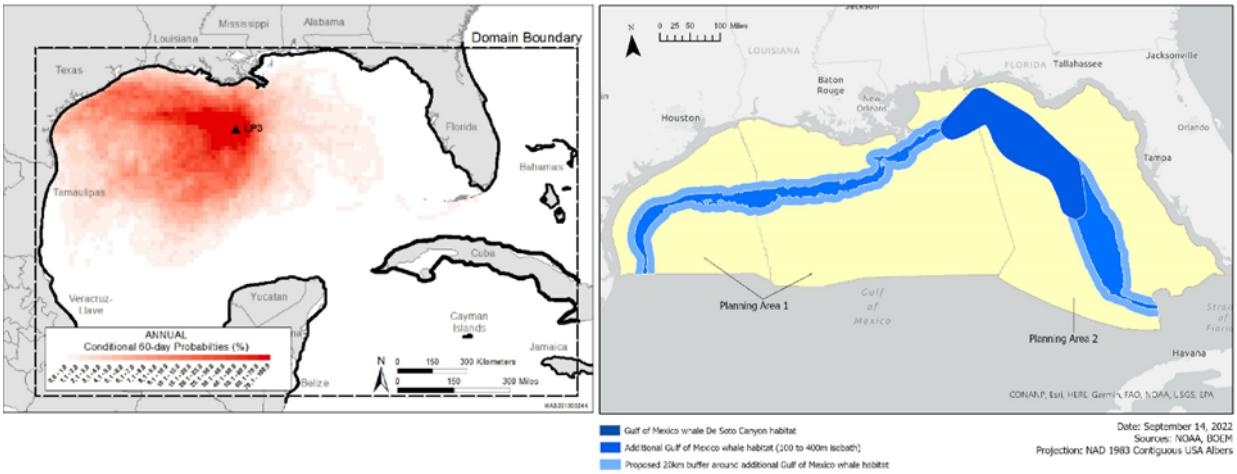
[741] DWH NRDA Trustees (Deepwater Horizon Natural Resource Damage Assessment Trustees), Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (2016). See also R. Takeshita, L. Sullivan, C. Smith, T. Collier, A. Hall, T. Brosnan, T. Rowles, and L. Schwacke, L., The Deepwater Horizon Oil Spill Marine Mammal Injury Assessment, 33 ENDANGERED SPECIES RES. 95 (2017).

[742] J.P. Wise, Jr., J.T.F. Wise, C.F. Wise, S.S. Wise, C. Gianios,, Jr., H. Xie, W.D. Thompson, C. Perkins, C. Falank, and J.P. Wise, Sr., *Concentrations of the Genotoxic Metals, Chromium and Nickel, in Whales, Tar Balls, Oil Slicks,*

calves appear particularly vulnerable to contaminant effects given efficient transplacental and lactational transfer from their mothers.[743] Considering the population's small abundance, these lingering effects of the *Deepwater Horizon* are already driving the whales to the brink of extinction, as defined by the conventional metrics employed by NMFS in its species Status Review, apart from any other anthropogenic or environmental stressors.[744]

Notably, the whales' regular occurrence west of the De Soto Canyon puts them at greater risk of exposure to a large oil spill. Each one of the blowout scenarios modeled by BOEM in an analysis of catastrophic spill events in the Central and Western Gulf—whether they occurred in shallow or deep water, whether near the shelf break or hundreds of kilometers away—would result in contamination of Rice's whale habitat, as illustrated in the figure below.[745]

Modeled Trajectory of an Oil Spill at CPA Launch Point and Gulf of Mexico Whale Habitat



The figure on the left is taken from BOEM's revised model of oil spill trajectories from a catastrophic spill in the northern Gulf of Mexico, where the triangle marked "LP3" denotes the launch point of the modeled spill. When compared to the figure on the right, from earlier in this section, a broad overlap between the projected oil exposure area and Gulf of Mexico whale habitat can be seen.

In our mapping of potential oil spills, we found that another similarly-sized spill in the area where the *Deepwater Horizon* disaster occurred would extend through a significant portion of

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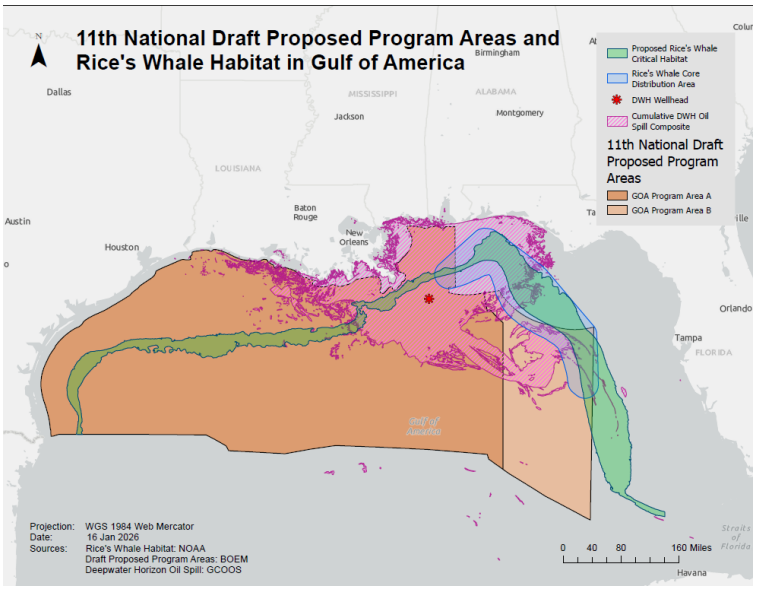
and Released Oil From the Gulf of Mexico in the Immediate Aftermath of the Deepwater Horizon *Oil Crisis: Is Genotoxic Metal Exposure Part of the* Deepwater Horizon *Legacy?,* 48 ENV'T SCI. & TECH. 2997 (2014).

[743] C. Metcalfe, B. Koenig, T. Metcalfe, G. Paterson, and R. Sears, Intra- and Inter-species Differences in Persistent Organic Contaminants in the Blubber of Blue Whales and Humpback Whales From the Gulf of St. Lawrence, Canada, 57 MARINE ENV'T RES. 245 (2004), https://pubmed ncbi nlm nih.gov/14749058/ (last visited on Jan. 21, 2026).

[744] *See* Rosel et al., *Status Review* (2016).

[745] Compare Fig. (Gulf of Mexico whale habitat) with BOEM, Gulf of Mexico Catastrophic Spill Event Analysis: High-Volume, Extended-Duration Oil Spill Resulting from Loss of Well Control on the Gulf of Mexico Outer Continental Shelf, 2nd Revision, at 192-205 (2021) (OCS Report BOEM 2021-007) (oil trajectory and probability for each of seven modeled spill sites).

Rice's whale habitat, affect large portions of the Gulf planning areas, and impact coastal zones throughout the Gulf.[746]



Finally, BOEM must fully consider the threat represented by ship-strikes with industry vessels. In general, vessel collisions have been identified as one of the top human threats to large whale populations globally,[747] coinciding with a four-fold increase in marine vessel density from the early 1990s through 2012.[748] While larger ships have long been associated with severe strike-related injury, there is increasing recognition that smaller vessels can also cause mortality, particularly when traveling at faster speeds.[749] Here, too, the biology of Rice's whale leaves it particularly vulnerable to harm. Alarmingly, the whale spends a considerable amount of time at night within the upper 15 meters of the water column, within the draft depths of most commercial vessels. Such behavior significantly raises the risk of vessel collision.[750]

Two Rice's whales have shown direct evidence of strikes. In 2009, an adult, lactating female was stranded in Tampa Bay, Florida, with injuries consistent with blunt force trauma; and, in 2019, a free-swimming whale was observed in the northeastern Gulf of Mexico with a severely deformed

[746] *See* https://boem.maps.arcgis.com/home/item.html?id=ed65f4351e494ff3a3c5589bb1960bae ; https://services1.arcgis.com/qr14biwnHA6Vis6l/arcgis/rest/services/Deepwaterhorizon_Oilspill_WM/FeatureServer

[747] R.P. Schoeman, C, Patterson-Abrolat, and S. Plön, *A global review of vessel collisions with marine animals*, 7 FRONTIERS IN MARINE SCI. 292 (2020).

[748] J. Tournadre, Anthropogenic Pressure on the Open Ocean: The Growth of Ship Traffic Revealed by Altimeter Data Analysis, 41 GEOPHYSICAL RES. LETTERS 7924 (2014).

[749] *E.g.*, D.E. Kelley, J.P. Vlasic, and S.W. Brillant, *Assessing the lethality of ship strikes on whales using simple biophysical models*, 37 MARINE MAMMAL SCI. 251-67 (2021).

[750] M.S. Soldevilla, J.A. Hildebrand, K.E. Fraser, L.A. Dias, A. Martinez, K.D. Mullin, P.E. Rosel, and L.P. Garrison, Spatial Distribution and Dive Behavior of Gulf of Mexico Bryde's Whales: Potential Risk of Vessel Strikes and Fisheries Interactions, 32 ENDANGERED SPECIES RES. 533 (2017).

spine posterior to the dorsal fin consistent with a vessel strike.[751] But the majority of incidents may well have gone undetected: as a comparative example, only 36 percent of North Atlantic right whale carcasses were detected from 1990 to 2017.[752] In its Biological Opinion, NMFS estimated that Rice's whales would be struck 23 times, seventeen times fatally, over the next fifty years of offshore oil and gas development in the region.[753] On its own, that incidence vastly exceeds the human-caused mortality rate—approximately one death in fifteen years, as noted above—that cannot be surpassed if the population is to become sustainable. As NMFS has stated, the loss of even a single whale could jeopardize the continued existence of the species.[754]

Given the extremity of the Rice's whale's endangerment and the probability of significant harm from oil and gas development, a reasonable balance cannot support additional offshore leasing in the Gulf, including within Gulf Planning Area A.

2. BOEM Must Fully Consider the Impacts of Leasing on Protected Species in Cook Inlet.

Cook Inlet provides habitat for species listed as threatened or endangered under the Endangered Species Act, including the Cook Inlet beluga whale, the Steller's eider, and the Southcentral Alaska stock of sea otters. The Draft Proposed Program provides only a cursory overview of the presence of these species, noting their presence but failing to analyze how oil and gas activities would impact them or the human communities who value them.[755] BOEM must fully consider how oil and gas leasing in Cook Inlet will impact protected species.

Among the most significant and vulnerable of these species is the small population of endangered Cook Inlet beluga whales (*Delphinapterus leucas*). Known for its wide range of vocalizations and white color,[756] the whale is beloved by Alaskans in the Cook Inlet region and throughout the state.[757] Cook Inlet belugas have high cultural importance to Alaska Native peoples, who traditionally harvested belugas for many purposes including food, clothing and

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[751] Rosel et al., A New Species of Baleen Whale (Balaenoptera) from the Gulf of Mexico, with a Review of its Geographic Distribution.

[752] R.M. Pace III, R. Williams, S.D. Kraus, A.R. Knowlton, and H.M. Pettis, *Cryptic Mortality of North Atlantic Right Whales*, CONSERVATION SCI. & PRACTICE 2021: e346 (2021).

[753] NMFS, *Biological Opinion* at 551. Of relevance here, BOEM discounted most (though not all) of these collisions from its estimate, on the grounds that "many of the estimated strike events" would occur outside the De Soto Canyon, where the whales are typically found. Of course, the new scientific information on the whales' central and western Gulf habitat suggests the agency's original estimate should be revisited.

[754] Comments of A.J. Strelcheck, NMFS Regional Administrator at 6.

[755] Draft Proposed Program, at 9-8 to 9-13.

[756] *Beluga Whale*, NOAA FISHERIES , https://www fisheries.noaa.gov/species/beluga-whale/overview (last visited on Jan. 21, 2026).

[757] *Beluga Whale*, NOAA FISHERIES; *Belugas Count!*, NOAA FISHERIES (last updated Sept. 4, 2025), https://www fisheries noaa.gov/alaska/endangered-species-conservation/belugas-count. A 2023 survey of 1,747 Alaska households that revealed an aggregate willingness to pay $99 million for beluga recovery. NOAA Fisheries, *Public Benefits of Recovering Endangered Beluga Whale Outweigh Costs* (June 28, 2023), https://www.fisheries noaa.gov/feature-story/public-benefits-recovering-endangered-beluga-whale-outweigh-costs (last visited on Jan. 21, 2026).

crafts.[758] Because of the drastic decline in the beluga population, however, Alaska Natives have not been able to practice subsistence hunting for twenty years.[759] The Cook Inlet Beluga Whale Recovery Plan notes a "significant desire to rebuild a beluga population capable of again supporting subsistence use."[760] Additional leasing in Cook Inlet, with the potential major impact on the Cook Inlet beluga population, could further delay or entirely remove the possibility of ever seeing a healthy population that could sustain traditional harvest in Cook Inlet.

The Cook Inlet beluga population has fallen precipitously over the past four decades from around 1,300 whales in 1979 to approximately 331 in the most recent surveys conducted in 2021 and 2022.[761] Modeling suggests that the whale's population is likely to continue declining, and the species has a 17 to 32 percent probability of going extinct in 150 years.[762] In 2011, NMFS designated two critical habitat areas for the population, consisting of over 3,000 square miles "essential to the conservation" of the whale.[763]

Oil and gas activities in Cook Inlet generate increased noise, degrade beluga habitat, and introduce pollution from spills and discharges, representing a serious threat to Cook Inlet beluga whales.[764] According to NOAA, a catastrophic oil spill in Cook Inlet could push the species to extinction within 50 years.[765] Anthropogenic noise, including from oil and gas activities, figures among the most serious threats faced by Cook Inlet beluga whales.[766] A landmark study released in 2023 documented the complex communication system of Cook Inlet belugas, which consists of at least forty-one different call types.[767] Like all cetaceans, Cook Inlet beluga whales depend on sound for vital life functions, such as to navigate, find food, locate mates, avoid predators,

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[758] Chantal Shaffer, *Why We Must Protect Beluga Whales*, Earthjustice (May 17, 2022) https://earthjustice.org/article/why-we-must-protect-beluga-whales (last visited on Jan. 21, 2026); *see also,* NOAA FISHERIES, *Beluga Whale*,.

[759] *See* NOAA FISHERIES, *Beluga Whale*.

[760] NMFS, *Recovery Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*)*, at I-1 (Dec. 2016), https://www.circac.org/wp-content/uploads/cib_recovery_plan_final.pdf (last visited on Jan. 21, 2026).

[761] NOAA Fisheries, *Beluga Whale - Cook Inlet DPS (*Delphinapterus leucas*), 5-Year Review*, at 36 (Aug. 12, 2022), https://media.fisheries noaa.gov/2022-09/cibw-5-year-review-2022.pdf (last visited on Jan. 21, 2026); K.T. Goetz et al., *Abundance and Trend of Belugas (Delphinapterus leucas) in Cook Inlet, Alaska, June 2021 and June 2022*, NOAA FISHERIES (May 2023), https://www fisheries noaa.gov/s3//2023-06/PR2023-03.pdf (last visited on Jan. 21, 2026).

[762] A.J. Warlick et al., Identifying demographic and environmental drivers of population dynamics and viability in an endangered top predator using an integrated model, 27 ANIMAL CONSERVATION (2023), https://doi.org/10.1111/acv.12905 (last visited on Jan. 21, 2026).

[763] 76 Fed. Reg. 20,180, 20,182 (April 11, 2011).

[764] NOAA Fisheries, *Beluga Whale - Cook Inlet DPS (*Delphinapterus leucas*), 5-Year Review* at 7-8, tbl. 2 (Aug. 12, 2022); *id.* at 33, 35.

[765] *Id.* (*Beluga Whale - Cook Inlet DPS (*Delphinapterus leucas*), 5-Year Review*) at 40-41 ("Almost all model scenarios that included mass mortality events had probabilities of extinction within 50 years, ranging from 2-18%).

[766] NOAA Fisheries, *Beluga Whale - Cook Inlet DPS (*Delphinapterus leucas*), 5-Year Review*, at 8, 42.

[767] Arial M. Brewer et al., Communication in Cook Inlet beluga whales: Describing the vocal repertoire and masking of calls by commercial ship noise, 154 J. ACOUST. SOC'Y AM. 3487 (2023); NOAA Fisheries, Vocal Repertoire of Cook Inlet Beluga Whales Documented for the First Time (Dec. 11, 2023), https://www.fisheries noaa.gov/feature-story/vocal-repertoire-cook-inlet-beluga-whales-documented-first-time (last visited on Jan. 21, 2026).

and maintain social cohesion. Artificial man-made noise introduced into their environment can disturb beluga whales and interfere with these and other behaviors.[768] In its Recovery Plan for the species, NOAA Fisheries acknowledged that the long-term effects of anthropogenic noise may impact the health of individual Cook Inlet belugas and lead to "decreased survival and reproduction," with population-level consequences.[769] In addition to significant biological costs, noise over time is also likely to lead to chronic stress in marine mammals.[770] The condition is associated across mammalian species with higher mortality and morbidity and reduced reproductive success, and with a variety of pathologies including immuno-suppression, heart disease, and physical malformations and other defects in the young.[771] Notably, noise has already been demonstrated to stimulate production of stress hormones in belugas, the amount increasing with the level of exposure.[772] Cook Inlet belugas are at risk of chronic stress from increased ensonification of their habitat.[773]

Cumulative effects are a top concern for Cook Inlet beluga whales, and exposure to pollution and spills is an additive stressor of cumulative effects. For example, the synergistic effect between certain chemical pollutants and noise is of increasing concern in the marine environment, especially in coastal areas where chemical pollutants are concentrated. Well-known chemicals that, when combined with excessive noise exposure, can have synergistic effects on hearing in humans include organic solvents, some insecticides, and heavy metals like lead and mercury. The fact that CIBW habitat is both noisy and surrounded by many human activities that generate chemicals known to impact hearing (e.g., jet fuel from the airplane activity around the Inlet) raises the concern of potential synergistic effects on CIBW from chemicals in the water and noise.[774] Oil and gas activities have cumulative adverse impacts on the species in combination

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[768] NMFS, *Recovery Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*)*, at IX-27 to IX-31 (Dec. 2016), https://www.circac.org/wp-content/uploads/cib_recovery_plan_final.pdf (last visited on Jan. 21, 2026) (summarizing scientific literature on the effects of anthropogenic noise on beluga hearing and behavior); Brewer et al., (shipping noise masks beluga communication); *see* James J. Finneran, *Noise-induced hearing loss in marine mammals: A review of temporary threshold shift studies from 1996 to 2015*, 138 J. ACOUST. SOC'Y AM. 1702 (2015) (collecting studies demonstrating temporary threshold shift (TTS) in beluga whales from intense noise exposure).

[769] NMFS, Recovery Plan for the Cook Inlet Beluga Whale (Delphinapterus leucas), at III-13.

[770] *See* Andrew J. Wright et al., *Do marine mammals experience stress related to anthropogenic noise?* 20 INTERN'TL J. COMPARATIVE PSYCHOLOGY 274 (2007), http://whitelab.biology.dal.ca/lw/publications/4.%20Wright%20et%20al.,%202007.%20Do%20marine%20mammal%20esperience%20stress..pdf (last visited on Jan. 21, 2026).

[771] *Id.*; *See also* R.M. Rolland, et al. *Evidence that ship noise increases stress in right whales*, ROYAL SOC'Y PUBLISHING (2012), 10.1098/rspb.2011.2429 (finding that a decrease in ship noise following September 11th resulted in lower levels of stress-related fecal hormone metabolites (glucocorticoids) in North Atlantic right whales: "a large body of literature has demonstrated that chronic stress, assessed by persistently elevated GCs, can lead to detrimental effects on health and reproduction across a variety of vertebrate taxa").

[772] T.A. Romano et al., Anthropogenic sound and marine mammal health: measures of the nervous and immune systems before and after intense sound exposure, 61 CAN. J. FISHERIES & AQUATIC SCI. 1124 (2004). The production of stress hormones is one (but not the only) measure of a stress response.

[773] Wright *et al*.

[774] NMFS, Recovery Plan for the Cook Inlet Beluga Whale (Delphinapterus leucas), at III-8-9

with myriad other industrial uses of Cook Inlet including gold mining,[775] energy pipelines,[776] and port expansion and operations,[777] as well as other threats to belugas from disease,[778] entanglement from marine debris,[779] and vessel collision.[780]

Cook Inlet also provides important habitat to Steller's eiders, which were listed as threatened on June 11, 1997 due, in part, to habitat loss from development.[781] Oil and gas activities may have numerous impacts on vulnerable and declining bird populations, including habitat alterations that displace birds and interfere with foraging, collision risks from vessel and platform activity, and oil spill risks. The Alaska-breeding population of Steller's eiders may be particularly vulnerable to risks from development, given its limited population. A significant part of the total Steller's eider population winters in nearshore waters from lower Cook Inlet to the eastern Aleutian Islands, where they are at risk of exposure to petroleum and other contaminants.[782]

Sea otters are a keystone predator that is essential for nearshore marine environments. Aerial surveys demonstrate that Southcentral Alaska stock sea otters are year-round residents of Cook Inlet, including nearshore areas in parts of western and eastern lower Cook Inlet and associated bays, and nearby waters.[783] During a seismic survey conducted by Hilcorp in 2019, an estimated 60 individual sea otters were recorded in Lower Cook Inlet by the vessel-based observers, including one dead sea otter.[784] An additional 5,856 estimated individual sea otters were counted during the aerial surveys, many of which were recorded in the central waters of Lower Cook Inlet.[785] Oil spills pose a particular risk to sea otters in Cook Inlet. Oil contamination of sea otter

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[775] Draft Proposed Program, at 8-15.

[776] Draft Proposed Program, at 8-15.

[777] NOAA Fisheries, *Beluga Whale - Cook Inlet DPS (*Delphinapterus leucas*), 5-Year Review* at 35.

[778] Mary Van Beusekom, *Scientists report first known cases of tularemia in beluga whales*, CTR. FOR INFECTIOUS DISEASE RSCH. & POL'Y (May 23, 2025), https://www.cidrap.umn.edu/tularemia/scientists-report-first-known-cases-tularemia-beluga-whales (last visited on Jan. 21, 2026).

[779] NOAA Fisheries, *Responders Prepare to Help Entangled Cook Inlet Beluga Whale* (Oct. 24, 2024), https://www fisheries noaa.gov/feature-story/responders-prepare-help-entangled-cook-inlet-beluga-whale (last visited on Jan. 21, 2026); NOAA Fisheries, *Beluga Whale - Cook Inlet DPS (*Delphinapterus leucas*), 5-Year Review*, at 35.

[780] NOAA Fisheries, *Beluga Whale - Cook Inlet DPS (*Delphinapterus leucas*), 5-Year Review* at 35.

[781] Fish and Wildlife Service, Threatened Status for the Alaska Breeding Population of the Steller's Eider, 62 Fed. Reg. 31,748 (June 11, 1997).

[782] USFWS, *Biological Opinion for Oil and Gas Activities associated with Lease Sale 258 in Lower Cook Inlet, Alaska*, at 41-42 (Aug. 10, 2023), https://www.boem.gov/sites/default/files/documents/regions/alaska-ocs-region/USFWS%20Final%20BBO.pdf (last visited on Jan. 21, 2026).

[783] See J. Gerlach-Miller, G.G. Esslinger & B. Weitzman, *Aerial Surveys of Sea Otters (*Enhydra lutris*) in Lower Cook Inlet, Alaska, May, 2017*, U.S. Fish & Wildlife Serv. (2018); George G. Esslinger et al., *Abundance and Distribution of Sea Otters (Enhydra lutris) in the Southcentral Alaska Stock, 2014, 2017, and 2019*, Open-File Report 2021–1122, U.S. Geological Serv. & U.S. Fish & Wildlife Serv (2021) Open-File Report 2021–1122, https://pubs.usgs.gov/of/2021/1122/ofr20211122.pdf (last visited on Jan. 21, 2026).

[784] Fairweather Science LLC, *2019 Hilcorp Alaska Lower Cook Inlet Seismic Survey*, tbl. 1, fig. 11 (Jan. 2020), https://media.fisheries noaa.gov/2021-12/Hilcorp_2019LOA_MonReport_OPR1.pdf (last visited on Jan. 21, 2026).

[785] *Id.*, tbl. 2.

fur can hinder the species' ability to maintain warmth and cause injury or death, making them "among the marine mammals most vulnerable to the direct effects of contact with oil."[786]

E. BOEM Must Consider the Issue of Decommissioning Delays in All Regions.

BOEM's analysis underpinning the Draft Proposed Program is insufficient because BOEM neglected to take the decommissioning crisis into account and failed to consider how the additional wells, platforms, and pipelines that result from the Program and the Reconciliation Act will contribute to this issue.

1. BOEM Failed to Carefully Consider the Environmental Impacts of Decommissioning Failure.

The widespread failure to decommission offshore oil and gas infrastructure results in significant environmental harms, which will inevitably worsen with the deployment of new infrastructure and the drilling of new wells in leased tracts. And OCSLA requires BOEM to carefully examine these harms when formulating a leasing program.[787]

However, BOEM neglected to address the issue of decommissioning failure when preparing the Draft Proposed Program. For instance, BOEM omitted this consideration when preparing its analysis on environmental sensitivity.[788] Likewise, in its chapter on equitable sharing, BOEM neglected to address the environmental harms of decommissioning failure while going out of its way to discuss the perceived *benefits* of delaying decommissioning–even expressing concern that decommissioning could occur too quickly.[789] As explained below, BOEM's omissions regarding decommissioning failure and its environmental effects are significant and must be redressed.

The rapid proliferation of idle infrastructure in federal waters

Recent federal oversight reports reveal that BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) have allowed idle infrastructure to proliferate, including through issuing extensions, departing from decommissioning requirements, and allowing pipelines and umbilical lines to remain permanently in place. As explained below, the federal government's practice of not requiring facilities to be fully decommissioned in a timely manner results in oil spills, methane leaks, leached toxins, and the spread of invasive species.

Decommissioning obligations accrue from the moment a company drills a well or installs a platform, pipeline, or other facility.[790] BSEE regulations require oil and gas companies to plug wells and remove platforms and pipelines within one year of lease termination.[791]

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[786] USFWS, *Northern Sea Otter* (Enhydra lutris kenyoni)*: Southwest Alaska Stock* (stock assessment report) at 11 (rev'd July 2023), https://www fws.gov/sites/default/files/documents/Northern-Sea-Otter-Stock-Assessment-Report-Southwest-Alaska-2023.pdf (last visited on Jan. 21, 2026).

[787] 43 U.S.C. § 1344(a)(1); *id*., § 1344(a)(2)(B); *id*., § 1344(a)(2)(G); *id*., § 1344(a)(2)(H); *id*., § 1344(a)(3).

[788] *See* Draft Proposed Program Chapter 10.

[789] Draft Proposed Program at 11-10

[790] 30 C.F.R. § 250.1702.

[791] *Id*. §§ 250.1710, 250.1725(a); 250.1010(h).

Companies must also decommission idle infrastructure on active leases when they are "no longer useful for operations" and in accordance with BSEE's Idle Iron decommissioning guidance.[792] Because decommissioning is expensive, fossil fuel companies use various strategies to delay and ultimately avoid fulfilling their decommissioning obligations.[793] For instance, BSEE noted that operators may employ "intentional delay tactics—such as by proposing an alternative use of platforms to BSEE but never submitting the plans to do so."[794] Operators may also allow infrastructure on active leases to sit idle for years and avoid decommissioning by claiming that the site in question is capable of producing hydrocarbons "in paying quantities" or otherwise still useful for operations.[795] In reality, these wells seldom resume production. A BOEM-commissioned report acknowledges that "the [b]enefits of maintaining infrastructure beyond its useful life are always speculative," and the longer a structure is idle, the less likely it is to produce oil and gas in the future.[796] Indeed, in the Gulf, "after five years of no reported production, a well has less than a 4% chance of producing oil and/or gas in the future."[797] Moreover, even though a well is capable of producing oil "in paying quantities," it may still be uneconomic when decommissioning costs are factored in.[798]

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[792] *Id*. § 250.1703.

[793] Mark Olade & Peter Arkle, *The American Oil Industry's Playbook Illustrated: How Oil Companies Offload Costly Cleanup Onto the Public,* ProPublica (Dec. 30, 2024), https://www.propublica.org/article/oil-orphan-wells-cleanup-playbook-siana-tom-ragsdale (last visited on Jan. 21, 2026).

[794] Gov't Accountability Off., GAO-24-106229, Offshore Oil and Gas: Interior Needs to Improve Decommissioning *Enforcement and Mitigate Related Risks,* 17 (Jan. 2024), [hereinafter "GAO 2024"], https://www.gao.gov/assets/gao-24-106229.pdf (last visited on Jan. 21, 2026).

[795] *See* BSEE, Idle Iron Guidance, NTL No. 2018-G03 (Dec. 11, 2018), at 2, 4 (requiring decommissioning of idle wells that are both "no longer useful for operations . . . and no longer capable of producing oil, gas, or sulphur in paying quantities" (emphasis in original)).

[796] Mark Kaiser & Siddhartha Narra, *Gulf of Mexico Decommissioning Trends and Operating Cost Estimation* (BOEM 2019-023) 1, 53 (2018) ("Most majors do not operate properties once they reach a certain minimum level and divest or decommission assets low on their decline curves (referred to as portfolio rebalancing)."); Mark Agerton et al., *Financial liabilities and environmental implications of unplugged wells for the Gulf of Mexico and coastal waters*, 8 Nature Energy 536, 545 (2023), https://www.nature.com/articles/s41560-023-01248-1 ("[M]ost wells that restart production do so within the first couple of years. After three years of no reported production, a well has a 5.8% chance of reporting production in the following 17 years. After five years of no reported production, a well has a 3.3% chance of reporting production in the following 17 years. These results suggest that after five years of no reported production, a well has less than a 4% chance of producing oil and/or gas in the future."); *see also* Mark Olade & Ryan Menzes, *California's multibillion-dollar problem: the toxic legacy of old oil wells*, Ctr. for Pub. Integrity/L.A. Times, Feb. 6, 2020, https://publicintegrity.org/environment/wells-rundry/californias-multibillion-dollar-problem-the-toxic-legacy-of-old-oil-wells/ ("[O]nce a well has been dormant for just 10 months, there's a 50-50 chance it will never produce again, a Times/Public Integrity analysis of 40 years of [California] state data found. By the time federal regulators begin raising concern — at five years of inactivity — the chance that a well is ever active again falls to 1 in 4.").

[797] Agerton, et al. 2023 at 545.

[798] Dwayne Purvis, *Decommissioning Costs Make Producing Projects Uneconomic*, J. of Petroleum Tech. (2024), https://jpt.spe.org/decommissioning-costs-make-producing-projects-uneconomic.

Operators also transfer low-producing properties to smaller companies that lack the resources to pay for decommissioning.[799] These small companies may then declare bankruptcy when it is time to clean up the site.

The U.S. now faces an ongoing decommissioning crisis. The Gulf of Mexico's historic role in offshore oil and gas production means that it is now home to a rapidly accumulating population of idle infrastructure and unplugged wells—all of which present serious environmental concerns not adequately addressed in the Draft Proposed Program.

As of 2020, there were a total of 10,783 unplugged wells in federal Gulf waters, the majority of which (7,302, or 67.7%) were candidates for decommissioning because they were inactive, temporarily abandoned, or located on an inactive lease.[800] According to a 2024 GAO report, over 75% of end-of-lease and idle infrastructure in the Gulf was overdue for decommissioning as of 2023, representing over 2,700 wells and 500 platforms.[801] Within that backlog, operators had not even temporarily plugged about 1,300 wells, "meaning they had not taken interim steps to install long-term barriers to prevent leaks before decommissioning."[802] Moreover, a significant number of overdue idle wells had not been used for extended periods of time—more than 800 of them had not produced in more than 10 years.[803]

Since then, the problem has persisted. A review of recent federal data by the Center for Biological Diversity found that 558 platforms in federal waters in the Gulf of Mexico sit on inactive leases.[804]

Idle wells and platforms are also an issue in the Pacific and waters off the coast of Alaska. In federal waters off the coast of California, BSEE has identified at least eight idle offshore platforms that are due for decommissioning.[805] BSEE's data center reveals that, in the same waters, there are dozens of idle wells that are only temporarily plugged and many other inactive wells that have not even been temporarily plugged.[806] Despite its relatively small size, Alaska's

[799] Olade & Arkle 2024; *see also* Robert Schuwerk, et al., *Double or Nothing: How regulators are gambling on the future self-interest of large oil and gas companies to decommission the Gulf of Mexico's aging infrastructure*, Carbon Tracker Initiative, 1, 7 (2022), https://carbontracker.org/reports/double-or-nothing ("Meanwhile, aging wells and platforms closer to shore — many of which are now owned by smaller operators — are increasingly marginal in value, raising the risk that they will be abandoned by their current operators.").

[800] Agerton, et al. 2023 at 540, tbl. 3.

[801] GAO 2024 at 12.

[802] *Id.* at 14, 19 (noting failure to plug more than 700 end-of-lease wells and nearly 600 delinquent idle wells).

[803] *Id.* at 19.

[804] Center for Biological Diversity, *Gulf of Mexico Offshore Platforms on Inactive Leases* (updated Updated July 7, 2025) https://www.biologicaldiversity.org/campaigns/offshore-oil-cleanup-tracker/pdfs/Gulf-of-Mexico-platforms.pdf (last visited on Jan. 21, 2026).

[805] BSEE, Pacific Region Federal OCS Decommissioning, https://www.bsee.gov/stats-facts/ocs-regions/pacific/pacific-region-federal-ocs-decommissioning (last visited on Jan. 21, 2026)

[806] BSEE Data Center, https://www.data.bsee.gov/Main/Default.aspx

Cook Inlet already features a surprising concentration of idle oil and gas facilities in state waters.[807]

Troublingly, the total number of overdue wells from existing leases in federal waters could nearly double by 2030.[808] According to the 2024 GAO report, "[n]early half of the approximately 8,000 wells and 1,600 platforms remaining offshore are approaching or past the end of their useful life[.]"[809] And as BOEM recently acknowledged, "[a]s more facilities reach the end of their useful life, . . . decommissioning will be required on a larger scale."[810]

The issue is not confined to wells and platforms. A 2021 GAO report also found that 97% of "decommissioned" pipelines in the Gulf—a staggering 18,000 miles—remain on the seafloor.[811] BSEE has also authorized decommissioning-in-place of almost 250 umbilical lines, which provide electrical and hydraulic power to subsea infrastructure.[812] Many more of these lines are likely associated with idle infrastructure. Though BSEE's regulations mandate removal of retired pipelines unless it waives the requirement,[813] the widespread granting of waivers demonstrates that the exception has swallowed the rule.

The Draft Proposed Program will contribute to this existing problem by dramatically increasing the total quantity of infrastructure in federal waters that must be decommissioned. In its August 2025 Final Programmatic EIS for Gulf leasing, BOEM estimated that each new oil and gas lease sale in the Gulf results in up to 250 new wells; 60 new production structures; and 1,032 km of new pipelines in federal waters.[814] Using BOEM's own figures from the Final Programmatic EIS, the total Gulf lease sales scheduled in the Draft Proposed Program and mandated by the Reconciliation Act will result in the deployment of up to 9,250 wells, 2,220 production structures, and 38,184 km of pipeline in the Gulf. If we use BOEM's Gulf numbers as a proxy, lease sales in other areas of the OCS will result in the addition of 1,500 wells, 360 production

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[807] Nathaniel Herz, *This oil platform stopped pumping 30 years ago. Alaska still won't make the owner tear it down*, APM Reports (May 6, 2024), https://www.apmreports.org/story/2024/05/06/cook-inlet-alaska-oil-platforms (last visited on Jan. 21, 2026).

[808] Andrew Hartsig, Protecting the Ocean and Taxpayers by Strengthening Standards for Offshore Oil and Gas *Decommissioning*, Ocean Conservancy, 5 (Sept. 2024), https://oceanconservancy.org/wp-content/uploads/2024/09/Decommissioning-Report-Final.pdf; Risk Management and Financial Assurance for OCS Lease and Grant Obligations, 89 Fed. Reg. 31544, 31548 (Apr. 24, 2024) ("As more facilities reach the end of their useful life, . . . decommissioning will be required on a larger scale."); *see also* Kaiser & Narra 2018 at 81–82 ("Record levels of shallow water decommissioning in recent years is the result of the maturity of field production, sustained low oil and gas prices, and tougher regulatory conditions and oversight. Higher levels of deepwater decommissioning are expected in the years ahead unless alternative uses for structures are found.").

[809] GAO 2024 at 12.

[810] Financial Assurances Final Rule, 89 Fed. Reg., 31544, 31548 (Apr. 24, 2024); GAO 2024

[811] Gov't Accountability Off., GAO-21-293, Offshore Oil and Gas: Updated Regulation Needed to Improve Pipeline *Oversight and Decommissioning*, 12 (2021) [Hereinafter "GAO 2021"], https://www.gao.gov/assets/d21293.pdf.

[812] *Id*. at 17–18.

[813] 30 C.F.R. §§ 250.1703(d), 250.1750, 250.1010(h)

[814] BOEM, Gulf of American Regional OCS Oil and Gas Lease Sales and Post-Lease Activities Final Programmatic Environmental Impact Statement, Aug. 2025 at 3-19.

structures, and 6,192 km of pipeline in the Pacific and 6,750 wells, 1,620 production structures, and 27,864 km of pipeline off the coast of Alaska.

The massive, and growing, number of unplugged wells and idle infrastructure left on the seafloor has an array of environmental impacts that BOEM must analyze before formulating a proposal for additional leasing.[815]

Decommissioning failure causes oil spills

Offshore infrastructure readily corrodes due to constant exposure to saltwater and the elements, which can cause equipment failure and pollution.[816] Old wells are particularly susceptible to oil spills or other accidents, and BSEE has warned that "[w]ells that have not been properly maintained create a higher risk of uncontrolled flow of reservoir fluids (potentially leading to pollution, fires, and explosions, among other dangers) based on the increased probability of failure of primary critical barriers such as safety valves, tubing, and plugs, due to a lack of proper maintenance."[817] Studies have shown that 30% of offshore oil wells in the Gulf experienced well casing damage in the first five years after drilling, and damage increased over time to 50% after 20 years.[818] Researchers have also reported that 43% of producing, shut-in, and temporarily abandoned wells in the Gulf have sustained casing pressure, which can indicate well barrier or well integrity failure.[819] Another study covering 1996 to 2010 found that the likelihood of a reported incident, including a spill, increases with the age of the infrastructure and with the depth of water.[820] Moreover, while pipelines are supposed to be cleaned before they are abandoned in place, BSEE does not typically inspect the cleaning activities to ensure that all the internal oil has been removed.[821] This raises the concern that pipelines that have been abandoned in place, but not adequately cleaned, can serve as a source of oil pollution.[822]

A series of spills from idle infrastructure in recent years has illustrated the hazards posed by these sites. For example, in 2014, a pipeline on an inactive platform off Bolivar Point, Texas, leaked oil, causing a three- to four-mile-long sheen.[823] In 2020, an inactive wellhead sprung a steady leak of oil, which the state of Louisiana was required to clean because the operator was in

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[815] 43 U.S.C. § 1344(a)(1),(2)(B),(2)(G),(2)(H),(3)

[816] Jake Nelson et al., *Evaluating Offshore Infrastructure Integrity* (DOE/NETL-2021/2643) 4–6 (2021)

[817] Declaration of Anthony Pizza, BSEE Production Operations Section Chief at ¶ 15, *In re: MLCJR LLC*, No. 4:23-BK-90324 (Bankr. S.D. Tex. Aug. 21, 2023).

[818] Avner Vengosh et al., A *critical review of the risks to water resources from unconventional shale gas development and hydraulic fracturing in the United States*, 48 Environmental Science & Technology 8334, 8337 (2014).

[819] Richard J. Davies et al., *Oil and gas wells and their integrity: Implications for shale and unconventional resource exploitation*, 56 Marine and Petroleum Geology 239, 243–44 (2014)

[820] Lucija Muehlenbachs et al., *The impact of water depth on safety and environmental performance in offshore oil and gas production*, 55 Energy Policy 699, 704 (2013)

[821] Gov't Accountability Off., *Oil Spills in The Wake of Hurricane Ida Highlight Need for Better Federal Oversight of Offshore Oil and Gas Pipelines* (Sept. 14, 2021) https://www.gao.gov/blog/oil-spills-wake-hurricane-ida-highlight-need-better-federal-oversight-offshore-oil-and-gas-pipelines

[822] *Id*.

[823] NOAA Incident News, *Leaking 1 inch Pipeline; High Island Block 98L, TX* (Feb. 21, 2014), https://incidentnews noaa.gov/incident/8727

bankruptcy.[824] In 2023, an inactive oil platform off Jefferson County, Texas leaked an oil sheen into the ocean, which officials believe could have come from the connected well or an adjacent pipeline.[825] In 2024, the National Environmental Satellite, Data, and Information Service reported a sheen potentially coming from an unmanned oil platform off the Texas coast.[826] Two additional sheens were previously reported at the same approximate site.[827] And in April 2025, a long-inactive well blew out in Louisiana state waters, spewing oil into sensitive marine ecosystems.[828] Nearly172,000 gallons of oily water mixture were recovered from this spill.[829]

The damaging effects of oil spills are described in more detail in section V.B of this letter. Because there is a clear connection between idle, aging infrastructure and increased oil spills—and a wealth of scientific research illustrating the devastating impacts that these oil spills can have on marine life—BOEM's analysis must account for both existing and projected impacts of oil spills resulting from idle infrastructure.

Decommissioning failure causes methane leaks

Leaks from idle sites can endanger wildlife and water quality.[830] Indeed, leaked methane, the primary component of natural gas, can have serious ecological and fisheries consequences.[831] During underwater gas leakages, a portion of the methane release bubbles up to the surface and evaporates. However, a significant portion dissolves in the water and is highly toxic to marine life.[832] Gas trapped under ice will also be exposed to the water column for longer periods. Methane molecules can rapidly penetrate the bodies of fish, causing direct damage to gills, skin, and eyes, and filling up the gas bladder, which compromises the capacity of fish to control buoyancy, impacting fitness and survival.[833]

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[824] NOAA Incident News, *Yuma Energy Main Pass Block 4 Wellhead; Breton Sound, LA,* USA (Dec. 21, 2020), https://incidentnews noaa.gov/incident/10212.

[825] NOAA Incident News, Sheen Discharging Near Abandoned Platform in High Island Block 24, Jefferson County, TX (June 9, 2023), https://incidentnews noaa.gov/incident/10619

[826] NOAA Incident News, *Platform Sheen; offshore Bolivar Peninsula, TX*, (July 17, 2024), https://incidentnews noaa.gov/incident/10816.

[827] *Id*.

[828] David J. Mitchell, *Decades-old well that spewed oil into Louisiana marsh will be permanently shut*, The Times-Picayune/The New Orleans Advocate Online (May 26, 2025)

[829] *Id*.

[830] Mary Kang, et al., *Environmental Risks and Opportunities of Orphaned Oil and Gas Wells in the United States*, 18 Env't Rsch. Lett. 074012 (2023); Alana Ayasse, et al., *Methane Remote Sensing and Emission Quantification of Offshore Shallow Water Oil and Gas Platforms in the Gulf of Mexico*, 17 Env't Rsch. Lett. (2022); Alan Gorchov Negron et al., *Airborne Assessment of Methane Emissions from Offshore Platforms in the U.S. Gulf of Mexico*, 54 Env't Sci. & Tech. 5112 (2020); Tara Yacovitch et al., *Methane Emissions from Offshore Oil and Gas Platforms in the Gulf of Mexico*, 54 Env't Sci. & Tech. 3530 (2020)

[831] S. A. Patin, Environmental Impact of the Offshore Oil and Gas Industry (1999)

[832] Irene Novaczek, *Impact of Natural Gas in the Marine Environment*, Watershed Sentinel (Oct. 9, 2012).

[833] *Id*.

In addition, high concentrations of methane in water create dead zones by promoting localized hypoxia (low oxygen) around the release site, affecting the survival of marine species.[834] High concentrations of methane can trigger the growth of microbes (methanotrophs) that break up methane molecules and also consume large amounts of oxygen.[835] For example, there is scientific evidence of localized dead zones created by high concentrations of methane leaked from the BP oil well blowout in the Gulf of Mexico.[836]

Methane's potency as a greenhouse gas pollutant means that the molecules that escape into the atmosphere are also highly problematic.[837] Methane is approximately 84 times more powerful than carbon dioxide at warming the atmosphere over a 20-year period.[838] While Chapter B-1 of the Draft Proposed Program's Appendix B indicates that methane was included in its greenhouse gas emission estimates, BOEM did not appear to account for either the escape of methane from idle wells into the atmosphere or the corresponding environmental harms of these leaks. Researchers estimate that, in 2022 alone, a whopping 400,000 *tons* of methane escaped from inactive wells worldwide, with 70% of the global total coming from wells in the U.S.[839] The vast majority of methane emissions from inactive wells come from unplugged wells, which feature much greater methane leakage rates.[840] A 2022 study found that some shallow water Gulf platforms are methane super-emitters, with persistence and loss rates that tend to be much higher than rates associated with typical onshore production.[841] Moreover, lower-producing wells (which are likely to be older) had higher methane loss rates.[842] A 2020 aerial survey measuring methane emissions from Gulf platforms also found that the largest multiplatform shallow water facilities, including some with older platforms, had disproportionately high methane emissions, and noted that in the onshore context, infrastructure age combined with poor maintenance is linked to high emission rates.[843]

Defunct offshore oil and gas infrastructure consequently has the potential to directly cause significant climate impacts from methane emissions. Because methane is also a precursor to

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[834] Samantha B. Joye et al., *Magnitude and oxidation potential of hydrocarbon gases released from the BP oil well blowout*, 4 Nature Geoscience, 160, 163 (2011).

[835] John Kessler et al., *A Persistent Oxygen Anomaly Reveals the Fate of Spilled Methane in the Deep Gulf of Mexico.* 331 Science, 312 (2011).

[836] Joye et al. 2011 at 160, 163

[837] Intergovernmental Panel on Climate Change (IPCC), Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, 677, Table 8.7.

[838] Tianyang Lei et al., *A global inventory of methane emissions from abandoned oil and gas wells and possible mitigation pathways*, 12 Nat'l Science Rev. 184, 2 (May 19, 2025)

[839] *Id.*

[840] *Id*. at 1–3.

[841] Ayasse et al. 2022 at 1, 5, 9.

[842] *Id*. at 8–9.

[843] Negron et al 2020 at 5114–15.

ground-level ozone,[844] offshore methane leaks are also a cause of concern for coastal communities.

Consequently, the next analysis in the proposed program must be supplemented to thoughtfully address both the climate impacts and the localized underwater effects of methane leaks from idle infrastructure.

Decommissioning delays cause the leaching of toxins into marine ecosystems

Toxins released from idle infrastructure cause substantial harm.[845] As BOEM's Gulf of Mexico OCS Oil and Gas Lease Sales: 2012-2017 Final Environmental Impact Statement (2012 Gulf Lease Sale FEIS) noted, corroding infrastructure can leach toxic metals and organic compounds.[846] These pollutants can accumulate in the surrounding environment, causing both lethal and sublethal impacts on nearby organisms.[847] For instance, the 2012 Gulf Lease Sale FEIS highlighted research finding that "amphipods and foraminiferans, which are more sensitive to contamination, decreased near platforms" and that "reduced crustacean populations [on artificial reefs] are likely the result of elevated metal concentrations near platforms resulting from well drilling, produced waters, *and corrosion of the structure*."[848]

Pipelines left in place also degrade the surrounding environment. For example, mercury—"one of the most toxic metals in the environment"—is a serious concern associated with pipelines abandoned in place because it can accumulate within them and pollute the environment if they are damaged.[849] In situ decommissioning of pipelines is likely to increase concentrations of mercury in the muscle tissue of animals within the marine food web—including fish, eels, crustaceans, and krill—and long term exposure to sublethal concentrations of mercury can negatively impact the health of these animals over time.[850]

Additionally, umbilical lines connected to offshore infrastructure "often contain hazardous chemicals, and it is not feasible to properly clean them."[851] In fact, the Environmental Protection Agency officials advised BSEE in 2018 that release of hazardous materials from these lines as they corrode over time "would be environmentally harmful[.]"[852]

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[844] Genevieve Plant et al., *Large Fugitive Methane Emissions From Urban Centers Along the U.S. East Coast*, 46 Geophys Res. Lett., 1 (2019)

[845] Fenny Kho et al., *Current Understanding of the Ecological Risk of Mercury from Subsea Oil and Gas Infrastructure to Marine Ecosystems*, 438 J. Hazardous Materials (2022)

[846] BOEM, BOEM 2012-019, *Gulf of Mexico OCS Oil and Gas Lease Sales: 2012-2017 FEIS*, 4-167 (Jul. 2012) https://www.boem.gov/sites/default/files/environmental-stewardship/Environmental-Assessment/NEPA/BOEM-2012-019_v1.pdf

[847] *Id*.

[848] *Id.* at 4-168.

[849] Kho, et al., 2022 at 11.

[850] Rebecca von Hellfeld & Astley Hastings, *An Approach to Assessing Subsea Pipeline-Associated Mercury Release into the North Sea and Its Potential Environmental and Human Health Impact*, 11 R. Soc. Open Sci., 8–9 (2024).

[851] GAO 2021 at 18.

[852] *Id*.

As the existing offshore facilities continue to degrade, and BOEM contemplates lease sales that would augment the number of offshore facilities, BOEM must incorporate leached toxins into its analysis.

Hurricanes exacerbate the environmental harms of decommissioning failure

As increasingly powerful and frequent hurricanes[853] batter offshore facilities in the Gulf, oil spills, methane leaks, and toxic leaching will grow in magnitude and frequency. Hurricanes are known to topple platforms, drag pipelines, and destroy oil storage tanks, all of which may trigger oil spills or create navigational obstructions. In 2004, for example, a mudslide triggered by Hurricane Ivan destroyed an oil platform and damaged accompanying wells, causing the longest-running oil spill in U.S. history and requiring BOEM to plug damaged offshore wells following protracted legal proceedings.[854] Likewise, in 2005, hurricanes Katrina and Rita destroyed 113 offshore platforms, damaged 457 pipelines, and led to six oil spills of 1,000 barrels or more.[855] Katrina's destructive force was so powerful that it dragged nine miles of a 22-mile pipeline as far as 4,000 feet out of place.[856] Many of the facilities destroyed in these powerful Gulf hurricanes were idle, meaning they were sitting unused but hadn't been decommissioned. For example, 2008's Hurricanes Gustav and Ike destroyed 60 offshore oil and gas structures; one-third of them were idle and had been out of use for nearly eight years on average.[857] In addition to immediate damage caused by hurricanes acting on idle infrastructure, the damage wrought by the storms can make decommissioning significantly more costly and dangerous.[858] Thus, increasing hurricane activity has the potential to deepen the decommissioning crisis by damaging infrastructure, driving up removal costs, and delaying cleanup.

Idle infrastructure facilitates the spread of invasive species

While the Draft Proposed Program enthusiastically trumpets the artificial reefs created by offshore platforms, BOEM failed to consider the types of organisms found on the sites—and the research demonstrating that leaving infrastructure in place facilitates the spread of invasive species.[859]

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[853] Karthik Balaguru, et al., *Increased U.S. Coastal Hurricane Risk Under Climate Change*, 9 Sci. Advances, 6 (2023)

[854] U.S. Dep't of Interior, *Settlement Reached on Taylor Energy Oil Spill - the Largest Oil Spill You Never Heard of* (Apr. 26, 2022), https://www.doi.gov/restoration/settlement-reached-taylor-energy-oil-spill-largest-oil-spill-you-never-heard.

[855] Press Release, U.S. Dep't of Interior, *MMS Updates Hurricanes Katrina and Rita Damag*e (May 1, 2006), https://www.boem.gov/sites/default/files/boem-newsroom/Press-Releases/2006/press0501.pdf.

[856] GAO 2021 at 7.

[857] Mark Kaiser & Yunke Yu, *The Impact of Hurricanes Gustav and Ike on Offshore Oil and Gas Production in the Gulf of Mexico*, 87 Applied Energy 284, 289 (2010)

[858] Gov't Accountability Off., GAO-16-40, Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities, 11 (Dec. 2015) [hereinafter "GAO 2015"], https://www.gao.gov/assets/gao-16-40.pdf.

[859] DeeVon Quirolo & Richard Charter, *Bring Back the Gulf: A better plan than dumping abandoned oil rigs into the Gulf of Mexico* (2014) at 67; https://bringbackthegulf.org/

Scientific research indicates that offshore platforms enable the proliferation and spread of invasive species.[860] Indeed, researchers have found that many offshore platforms disproportionately host invasive species. For example, in the Gulf, highly invasive lionfish "densities on artificial reefs were two orders of magnitude higher" than on natural reefs.[861] Similarly, a study of an offshore platform in the Gulf found that "*Tubastraea sp*., an invasive ahermatypic cup coral native to the Indo Pacific, was the most abundant coral species …[and that] [v]ery few native coral species… were detected on the structure[.]"[862] This invasive coral species is "uncommon on healthy reefs in the Atlantic and Caribbean" but "typically inhabits…artificial reefs."[863] In fact, hundreds of thousands of colonies [of *Tubastraea*] can be found on a single platform."[864] Troublingly, "[o]nce colonised by non-native species, platforms can act as a source of non-native larvae, often to colonise wide geographic areas[.]"[865]

In sum, systemic decommissioning failure causes a number of significant environmental harms that BOEM must thoughtfully evaluate before formulating the final program.

F. Interior Must Consider the Cumulative Impacts of Oil and Gas Leasing Proposed Under the Program in Conjunction with the Impacts of Mandated Leasing Under the Reconciliation Act.

As stated above, the 34 lease sales proposed in this Draft Proposed Program would be *in addition* to the 14 sales mandated by the Reconciliation Act over the same five year period. These mandated sales will cause the same environmental harms and risks as the Programmatic sales, including greenhouse gases emissions, increased oil spill risk, the construction and expanded use of support infrastructure that affects vulnerable communities, harms to imperiled marine species, and decommissioning delays. In short, the Reconciliation Act's mandated offshore leasing will directly affect resources in the OCS and the environments of OCS regions, and will exacerbate the harms described above. Interior is therefore required to consider these harms under OCSLA,[866] and must include an analysis of these cumulative harms in future iterations of the Program.

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[860] Anja Schulze et al, *Artificial Reefs in the Northern Gulf: Community Ecology Amidst the Ocean Sprawl*, 7 Frontiers in Marine Science 1, 1 (2020); Mclean et al., *Influence of Offshore Oil and Gas Structures on Seascape Ecological Connectivity*, 28 Global change Biology 3515, 3526 (2022).

[861] Schulze et al 2020, at 5.

[862] NOAA, Baseline Ecological Assessment of Artificial Reef, High Island A-389-A: Pre- and Post-partial Structural Removal, 1, 45, 109, 113 (Aug. 2020)

[863] *Id*.

[864] *Id*.

[865] Mclean et al 2022, at 3526.

[866] *See eg.* 43 U.S.C. § 1344(a)(1), (a)(2)(A), a(2)(B), a(2)(H), (a)(3).

VI. BOEM'S ENVIRONMENTAL SENSITIVITY ANALYSIS IS FLAWED.

OCSLA requires BOEM to consider "the relative environmental sensitivity and marine productivity of different areas of the outer continental shelf."[867]

BOEM has changed its methodology for analyzing environmental sensitivity, moving away from the Relative Environmental Sensitivity Analysis (RESA) to the Marine Sensitivity Toolkit.[868] BOEM provides little explanation for its change in methodology and must explain the reasons for its change in position. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016).

Additionally, there appear to be several flaws in BOEM's analysis, which must be corrected in the next version of its analysis.

A. BOEM Must Better Define the Concepts Used in its Analysis.

BOEM states that an area's "vulnerability" is a function of its "exposure," "sensitivity," and "adaptive capacity."[869] However, it does not define these terms or the factors that are used in assigning values to these terms. BOEM must define these terms and provide information about the factors that are used to assign values to these terms.

B. BOEM Must Include Certain Inputs and Ensure that Its Inputs are Accurate.

BOEM's Marine Sensitivity Toolkit appears to only evaluate the sensitivity of federal waters an.d does not include evaluation of state waters or the coastal zone.[870] This arbitrary limitation is contrary to OCSLA's requirement to develop a leasing program that considers "the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments."[871]

Separately, in evaluating extinction risk, BOEM uses the IUCN Red List to assign a numerical value to extinction risk – critically endangered (1.0), endangered (0.8), vulnerable (0.6), near-threatened (0.4), and least concern (0.2).[872] BOEM must double-check its extinction risk inputs and make sure they have been accurately assigned. For example, the IUCN Red List states that Rice's whale is critically endangered, while BOEM's Marine Sensitivity Toolkit lists it as endangered and incorrectly assigns it a lower extinction risk score.[873] Likewise, the IUCN lists Cook Inlet beluga whales as critically endangered, while BOEM lists the population as endangered.[874] This error understates the vulnerability of different program areas, particularly

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[867] 43 U.S.C. § 1344(a)(2)(G); *see also Ctr. for Biological Diversity v. Dept. of Interior,* 563 F. 3d 466, 488 (D.C. Cir. 2009) (finding evaluation of only shoreline areas inadequate); *State of Cal. v. Watt,* 668 F. 2d 1290, 1313 (D.C. Cir. 1981) (finding environmental sensitivity analysis inadequate).

[868] Draft Proposed Program at 10-1; *compare*, Proposed Final Program 2024-2029 at 8-1 to 8-8-13.

[869] Draft Proposed Program at 10-2.

[870] Bureau of Ocean Energy Management; Marine Sensitivity Toolkit, https://shiny marinesensitivity.org/mapgl/

[871] 43 U.S.C. § 1344(1); *see also, Center for Biological Diversity v. Interior*, 563 F. 3d 466, 488 (D.C. Cir. 2009)(finding limiting of environmental sensitivity analysis to coastal impacts was irrational).

[872] Draft Proposed Program at 10-3.

[873] Bureau of Ocean Energy Management; Marine Sensitivity Toolkit, https://shiny marinesensitivity.org/mapgl/; *c.f.*, IUCN Red List, Rice's Whale, https://www.iucnredlist.org/species/215823373/208496244

[874] IUCN Red List, Beluga Whale, https://www.iucnredlist.org/species/61442/50384653

those slated for heavy development (the Gulf and Cook Inlet) and BOEM should correct this and similar errors.

BOEM must also double-check that the listed species present in U.S. waters are all included in the Marine Sensitivity Toolkit. For example, green, leatherback, hawksbill, and Kemp's ridley sea turtles are included; but loggerhead and olive ridley sea turtles are not included.[875] These and similar errors should be corrected. BOEM must also ensure that if different distinct population segments have different listing statuses, that those are accurately represented in the toolkit.

C. BOEM Must Incorporate Analysis of the Impacts from Oil and Gas Activity.

As part of its vulnerability assessment, BOEM examines the likelihood a species is present in an area and weights that according to the risk that species will go extinct.[876] Thus, if an area has many species present that have a high rate of extinction, it will have a higher sensitivity score.[877]

However, unlike RESA, which examined various impact producing factors from oil and gas development as part of its environmental sensitivity analysis – such as oil spills, artificial light, collisions with above-surface structures, habitat disturbance, sound, noise and accidental spills, and vessel strikes – BOEM does not appear to examine any of the expected effects from oil and gas development as part of its environmental sensitivity analysis.[878] BOEM should do so and there are already existing methods that would allow BOEM to track the effects of different factors on different habitats – such as nutrient pollution in nearshore and offshore environments or fishing pressure in different marine environments – and map the intensity of those effects.[879]

As it updates its analysis, BOEM should make sure to include several key factors that will be at play in its proposed leasing program.

- ***The factors used in its prior analysis***. BOEM should include the factors used to evaluate impacts in RESA – oil spills; artificial light; collisions; habitat disturbance; sound, noise, and accidental spills; and vessel strikes. BOEM should already have data on these factors and be able to translate that data to be reflected in the Marine Sensitivity Toolkit.
- ***Factors commonly used in other effects analyses***. Other effects analyses examine risks such as sea level rise, reduced oxygen, fisheries biomass loss, nutrient pollution, and coastal disturbance to evaluate impacts and vulnerability to ongoing industrial activities.[880] Because these background risks also contribute to the sensitivity of different regions to oil and gas activity, BOEM should include them in its analysis.

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[875] Marine Sensitivity Toolkit, https://shiny marinesensitivity.org/mapgl/; *c.f.,* NOAA Fisheries, https://www fisheries noaa.gov/national/outreach-and-education/fun-facts-about-terrific-sea-turtles

[876] Draft Proposed Program at 10-2.

[877] *Id.*

[878] *C.f.,* Proposed Final Program 2024-2029 at 8-5 to 8-6.

[879] *See e.g.,* Benjamin Halpern, *et al*, *Cumulative Impacts to Global Marine Ecosystems Projected to More Than Double by Mid-Century*, Science (Sep. 4, 2025), https://www.science.org/doi/10.1126/science.adv2906; Benjamin Halpern, *et al*, *Supplementary Materials for Cumulative Impacts to Global Marine Ecosystems Projected to More Than Double by Mid-Century*, Science (Sep. 4, 2025).

[880] Benjamin Halpern, *et al*, *Cumulative Impacts to Global Marine Ecosystems.*

- ***The ecological importance of deep offshore areas***. The deep waters of the Chukchi Sea, for example, may be an important spawning area for Arctic cod and are designated as meeting the IMO PSSA designation criteria of critical habitat, dependency, spawning grounds, fragility, and bio-geographic importance.[881] In the deep waters of the Beaufort Sea, the offshore pack ice supports the migrations of beluga and bowhead whales, and are designated as meeting the IMO PSSA designation criteria of critical habitat, dependency, spawning/breeding grounds, and fragility.[882]
- ***The risks of deepwater development.*** Researchers have found that with increasing development in ultra-deep water – waters deeper than 1500 meters – that the deep-pelagic domain would be the largest ecosystem component affected in any ultra-deep oil spill scenario.[883] Deep-sea ecosystems provide many valuable services, including nutrient cycling, carbon storage and sequestration, waste absorption, and habitat and foraging grounds for various species.[884] A large fraction of the 1500+ known fish species in the Gulf of Mexico exist only in bathypelagic environments.[885] Oil-weathering rates in deep sea environments are much lower than those in warmer, surface waters, creating the potential that deep sea species will be exposed to oil spills for an extended amount of time.[886] Following *Deepwater Horizon*, hydrocarbon compounds, including polycyclic aromatic hydrocarbons (PAHs)—compounds that have lethal and sublethal effects on marine fishes—were found at lethal concentrations throughout the water column a year after the spill.[887] They persisted at least four years after the spill[888], and researchers posit that PAHs from deepwater oil spills could linger for decades following an accidental spill.[889]
- ***The risks from seismic exploration***. Sound is widely recognized as an fundamental component of wildlife habitat, often playing a significant role in both marine and terrestrial ecology. This component of habitat can be measured and managed, and, indeed, NOAA, in 2016, identified acoustic habitat as a conservation priority and the

[881] Arctic Council, *Identification of Arctic marine areas of heightened ecological and cultural significance: Arctic Marine Shipping Assessment (AMSA) IIc (2013)* at 48 [AMSA IIC Report]; https://oaarchive.arctic-council.org/items/1d567c4b-723b-48fa-8510-828edede09a7

[882] *Id.* at 59.

[883] Tracey Sutton, et. al., As Gulf Oil Extraction Goes Deeper, Who is at Risk? Community Structure, Distribution, and Connectivity of the Deep-Pelagic Fauna (2020); *reprinted in* Steven A. Murawski, et. al., Scenarios and Responses to Future Deep Oil Spills: Fighting the Next War 404 (Springer ed., 2020).

[884] *Id.*at 404-05.

[885] Steven A. Murawski, Perspectives on Research, Technology, Policy, and Human Resources for Improved Management of Ultra-Deep Oil and Gas Resources and Responses to Oil Spills (2020); *reprinted in* Steven A. Murawski, et. al., Scenarios and Responses to Future Deep Oil Spills: Fighting the Next War 513, 519 (Springer ed., 2020).

[886] *Id.*

[887] Sutton, As Gulf Oil Extraction Goes Deeper at 412.

[888] *Id.*

[889] *Id.*

focus of a new management effort.[890] As NOAA and the scientific community have repeatedly observed, the degradation of acoustic habitat over large areas can have population-level impacts on marine mammals.[891]

The sound produced by airgun shots, while distinctly impulsive within some kilometers or tens of kilometers of the source, can sound virtually continuous at greater distances due to the effects of reverberation and multi-path propagation, with little diminution of the acoustic signal within the inter-pulse interval.[892] The potentially enormous scale of this acoustic footprint has been confirmed by studies in many regions of the globe, including the Arctic, Australia, the Gulf of Mexico, the northeast Atlantic, and Greenland, where it has been shown to raise ambient noise levels and mask whale calls from distances of thousands of kilometers.[893]

VII. BOEM FAILS TO CONDUCT THE PROPER BALANCING OF COSTS AND BENEFITS AND SIGNIFICANTLY UNDERESTIMATES THE COSTS OF LEASING.

BOEM's calculation of the environmental and social costs of oil and gas activities improperly minimizes the risks and harms of offshore drilling.

A. BOEM Has Changed Its Methodology for Calculating Net Benefits and Has Failed to Provide a Reasoned Explanation for Doing So.

In its Draft Proposed Program, BOEM calculates net benefits by: first, evaluating the gross revenue that could be generated by leasing in different program areas; second, calculating the net economic value by subtracting the costs of exploration, production, and transportation from gross revenue; and third, calculating net benefits by subtracting environmental and social costs from net economic value.[894]

This deviates from how BOEM calculated net benefits in its most recent national OCS program, and BOEM has failed to provide a reasoned explanation for why it has made such a change. Notably, BOEM has omitted the social costs of greenhouse gases from upstream actions (such as

[890] National Oceanic and Atmospheric Administration, Jason Gedamke, et. al., *Ocean Noise Strategy Roadmap* (2016) at 7, https://oceannoise.noaa.gov/sites/default/files/2021-02/ONS_Roadmap_Final_Complete.pdf; Leila Hatch., et al., *Can you hear me here?* (May 31, 2016); https://repository.library.noaa.gov/view/noaa/13755

[891] UNEP, Scientific synthesis on the impacts of underwater noise on marine and coastal biodiversity and habitats. Meeting report: Montreal 30 April – 6 May 2012 at 3; Gedamke, Ocean Noise Strategy Roadmap (2016).

[892] Melania Guerra, et al., *Quantifying seismic survey reverberation off the Alaskan North Slope,* J. Acoust. Soc. Am. (Nov. 2011); https://pubmed.ncbi nlm nih.gov/22087932/; *see also* Sharon L. Nieukirk, et al., *Sounds from airguns and fin whales recorded in the mid-Atlantic Ocean, 1999-2009*, J. Acoust. Soc. Am. (Feb. 2012); https://pubmed.ncbi nlm nih.gov/22352485/.

[893] *See, e.g.*, Sharon Nieukirk et al., *Sounds from airguns and fin whales recorded in the mid-Atlantic Ocean, 1999-2009*, J. Acoust. Soc. Am. 131(2) (Feb. 2012); Sharon Neukirk, et. al., *Low frequency whale and seismic airgun sounds recorded in the mid-Atlantic Ocean, Acoustical Society of America*, J. Acoust. Soc. Am. 115(4) (April 2004); Ethan Roth., et al., *Underwater ambient noise on the Chukchi Sea continental slope from 2006-2009*, Journal of Acoustical Soc. Of Am. 131, 104 (2012); https://asa.scitation.org/doi/10.1121/1.3664096.

[894] Draft Proposed Program at 6-1 to 10.

production and transportation) and the change in consumer surplus.[895] And in its current proposal, BOEM also fails to compare the net benefits from a leasing scenario against an alternative leasing scenario, such as a reduced leasing or no leasing scenario.[896]

BOEM's current net benefits analysis appears to overstate the net economic value while understating the environmental and social costs. Further, it omits key considerations from both of these calculations.

B. BOEM Appears to Overstate the Net Economic Value of Different Program Areas.

1. Developing New Regions Will Require Significant Amounts of New and Costly Infrastructure.

BOEM must ensure that its Draft Proposed Program accurately accounts for the costs of developing different frontier regions or regions where there is little development. BOEM has proposed leasing in a number of new program areas, many of which have never been leased. Of the areas that have a handful of offshore oil and gas leases, a number of these leases have never achieved commercial production. As discussed above, BOEM should abandon its proposal to lease in these areas entirely. Should BOEM move forward with leasing in these frontier areas, however, it must account for the costs of significant amounts of new infrastructure and the additional logistical difficulties in its proposed program analysis.

High Arctic

The High Arctic is a new program area that has never been included in a prior leasing program. BOEM acknowledges that there is limited data on the hydrocarbon resources in the region and has characterized it as having "negligible resource potential."[897]

BOEM's analysis should account for the many challenges and costs associated with oil and gas development in the High Arctic.

Exploration, Development and Production

In the High Arctic OCS Planning Area, a Polar Class rig would be required for exploration drilling.[898] There are few Polar Class rigs available worldwide, and at least two would be needed to ensure adequate capability.[899]

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[895] *Compare* Bureau of Ocean Energy Management, 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program (Sep. 2023) at 5-18; https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029_NationalOCSProgram_PFP_Sept_2023_Compliant.pdf

[896] *Compare* 2024-2029 Proposed Final Program at 5-19, noting that BOEM will compare net benefits from lease sale scenario against a "no sale" option.

[897] Draft Proposed Program at 6-2.

[898] Memorandum from Harvey Consulting, LLC to Irene Gutierrez (January 6, 2026) at 10 [hereinafter *Harvey Memorandum*]. Arctic drilling rigs have a Polar Class rating based on hull strength and ability to operate in ice and require icebreaker support for ice management. Polar Class designations range from Polar Class 1, the strongest vessel that is capable of year-round operation in all polar waters in thick ice, to Polar Class 7, the lowest-strength vessel capable of operating in summer and autumn's new, thinner ice.

[899] *Id.* at 11.

The United States has very few Arctic-class icebreaking vessels for industrial use, and currently only has three polar-grade icebreakers.[900] Ice breakers used in the past been hired from international contractors and brought into U.S. waters for temporary use, but availability is limited.[901]

There are Arctic offshore drilling rigs such as the Stena IceMax, a Polar Class 4, double-hull, ice-class drillship capable of drilling to depths of up to 10,000 feet.[902] However, the Stena Ice Max drilling rig has not been used to drill any United States Arctic wells to date, and more work will be needed in the High Arctic OCS Planning Area to ensure ice conditions are safe for a PC4 drilling rig, supported by a fleet of icebreakers.[903].Several other Arctic exploration drilling rig concepts have been considered for deeper United States Arctic OCS drilling, but have not yet been built. For example, GustoMSC proposed the NanuQ5000 Arctic drillship for year-round Arctic drilling in Alaska, Canada, Greenland, and Russia, but this rig has not yet been built.[904] Inocean proposed building a Polar Class 4 drillship called the IN-ICE, but the rig has not been built.

Building a suitable exploration drilling rig for the High Arctic and accompanying Polar Class ice breakers, would take many years to complete, and exploratory drilling once started would likely take a decade or more, followed by seismic surveys.[905] No Arctic hydrocarbon production facility has been constructed in the United States OCS at depths greater than 40 feet.[906] In the past four decades of Chukchi Sea and Beaufort Sea leasing, exploration wells have historically been drilled in water depths of 167 feet or less.[907] The High Arctic planning area may have water depths of up to 2500 meters.[908]

Oil and gas production from a facility in the High Arctic, even if technically feasible, would not occur for many decades. The only OCS production facility built in the Beaufort – Northstar – took about 18 years from the first discovery wells in 1983-1984 to first oil in 2001.[909] Northstar,

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[900] Harvey Memorandum at 11; Paula Dobbyn, *Business leaders eye effect of future icebreakers on Arctic,* Alaska Beacon (Aug. 4, 2025), https://www ktoo.org/2025/08/04/business-leaders-eye-effect-of-future-icebreakers-on-arctic/

[901] *Id.*

[902] Harvey Memorandum at 11; Stena IceMax; Stena IceMax Technical Specification Sheet. Technical Specification Sheet - Stena IceMAX Rev 5Dec24; https://www.stena-drilling.com/our-fleet/stena-icemax/.

[903] *Id.*

[904] *Id.*, Jeremy Beckman, *Drillship adapted for year-round arctic region service,* OFFSHORE (Nov. 1, 2011); https://www.offshore-mag.com/drilling-completion/article/16755016/drillship-adapted-for-year-round-arctic-region-service .

[905] *Id.*

[906] Harvey Memorandum at 8.

[907] *Id.*; 85 Fed. Reg. 79266 (Dec. 9, 2020).

[908] U.S. Geological Survey, *Circum-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas North of the Arctic Circle* (2008), https://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf; U.S. State Department, *Map of Outer Limits of U.S. Continental Shelf in Arctic Region*, https://www.state.gov/wp-content/uploads/2023/12/USA_ExecutiveSummary_ARC_LF_MAP_2023.pdf.

[909] Harvey Memorandum at 9.

has considerably more baseline information than is available for the High Arctic.[910] No exploration wells have been drilled in the High Arctic, and the periodfrom initial exploration to first production would likely be much longer due to greater technical challenges, the distance from shore, and other regulatory and legal obstacles.[911]

Crude Transportation.

No High Arctic OCS Planning Area pipeline exists today and there are significant challenges that would accompany building such a pipeline.[912]

Offshore Arctic OCS pipelines must be buried at a sufficient depth to avoid damage. Damage may occur from ice gouging by icebergs and ice-pressure ridging (two floes of ice coming together) and strudel scour (whirlpools that wash away the seabed).[913] Pipelines buried in permafrost must also be designed to minimize heat transfer to soil that can cause the frozen soil to melt and the pipeline to be subjected to bending stresses as it sags.[914] Arctic OCS pipelines may operate year-round, buried below the seabed. Response to an oil spill maybe delayed up to six months for a pipeline leak under solid or broken ice.[915] Sinceburied subsea Arctic pipelines are inaccessible for external monitoring, maintenance, and repair, they require a stronger design and additional oil-spill prevention systems to be included during initial installation.[916]

BOEM must also consider the risk that any oil or gas produced in the High Arctic would remain stranded, with the Trans-Alaska Pipeline system (TAPS) nearing the end of its useful life[917] and no economically feasible plan to build a gas pipeline.[918] Even if TAPS remained operational beyond its estimated lifespan, transporting oil from the High Arctic OCS Planning Area to the TAPS connection point (near Deadhorse, Alaska) would require an offshore pipeline of 200-350 miles (to the east) and 200-680 miles (to the west).[919]

The longest offshore oil pipeline built in the Arctic today is about12 miles to Endicott Island, and was constructed between 1985 and 1987.[920] The Endicott pipeline was laid on top of a gravel causeway, not as a buried subsea pipeline, which would be needed for the High Arctic.[921] The longest buried subsea pipeline in the Arctic today is about six miles long (Northstar). Building a

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[910] *Id.*

[911] *Id.*

[912] Harvey Memorandum at 12.

[913] *Id.*

[914] *Id.*

[915] *Id.* at 12-13.

[916] *Id.* at 13.

[917] *See, e.g.* H. Richards*, Greens petition Interior to shut down trans-Alaska pipeline,* E&E News (June 12, 2024), https://www.eenews.net/articles/greens-petition-interior-to-shut-down-trans-alaska-pipeline/.

[918] *See* Pacific Environment, *Alaska's pipe dream: The economic folly of the North Slope gasline* (Jan. 23, 2025), https://www.pacificenvironment.org/press-releases/alaskas-pipe-dream-the-economic-folly-of-the-north-slope-gasline/.

[919] Harvey Memorandum at 9.

[920] *Id.*

[921] *Id.*

subsea pipeline that extends hundreds of miles has not yet been achieved and would require extensive environmental assessments, technical work, and numerous approvals.[922]

Alternatively, shipping oil and gas by vessel would likely be technically and economically infeasible due to ice conditions in the High Arctic and would pose significant safety challenges.[923]

Beaufort and Chukchi Planning Areas

ost of the Beaufort Sea leasing and development interest has been close to shore in state waters. Several near shore developments have been producing oil since the late 1980s, such as Endicott, Nikaitachuq, and Oooguruk; these facilities have been built in state waters from man-made gravel islands connected to shore by pipeline.[924]. Endicott is the only Beaufort Sea facility that is linked to shore by a gravel causeway.[925]

The only production in the Alaska OCS comes from a single offshore development in the Beaufort Sea called Northstar, located about six miles offshore on a man-made gravel island in roughly 40 feet of water, connected to shore by a subsea pipeline.[926] Seven federal OCS production wells are located on Northstar Island.[927] Northstar is connected to shore by a six-mile-long buried subsea pipeline and Northstar oil is transported from the North Slope to Valdez via the Trans-Alaska Pipeline System (TAPS).[928]

There are no active production wells, facilities, or pipelines in the Chukchi Sea OCS Planning Area. Since 1988, only three lease sales have taken place in this area.[929] Most leasing interest has focused on the central part of the planning area, roughly 60-150 miles offshore in waters 100-200 feet deep.[930] Very little exploration drilling has taken place.

In summary, over more than four decades, only a few dozen exploration wells have been drilled in the Beaufort Sea and Chukchi Sea OCS Planning Areas.[931] Only one joint state and nearshore development project reaching OCS oil has been built (Northstar) near the coast in state waters.[932] Exploration and development in these areas remain economically and ecologically risky compared to other international and national OCS drilling opportunities, and these areas should be removed from consideration.[933]

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[922] *Id.*
[923] *Id.*
[924] Harvey Memorandum at 6.
[925] *Id.*
[926] Harvey Memorandum at 2.
[927] Harvey Memorandum at 6.
[928] *Id.*
[929] Harvey Memorandum at 6-7.
[930] *Id.* at 7.
[931] *Id.*
[932] *Id.*
[933] *Id.*

Other Alaska Planning Areas

No lease sales have been held in the Aleutian Arc, Aleutian Basin, Bowers Basin, Hope Basin, Kodiak, Shumagin, or St. Matthew-Hall planning areas.[934] Lease sales were held in 1983 for the Norton, Navarin, and St. George basins, and exploratory wells were drilled in those regions, but there were no commercial discoveries.[935] Several lease sales have been held in the Gulf of Alaska, and similarly, while exploratory wells were drilled in that area, no commercial discoveries have been found.[936]

In past Draft Proposed Programs, BOEM has acknowledged that while these areas may have resource potential, more exploration is required, as well as "[h]eavy investments in new infrastructure," in order for these areas to produce oil and gas.[937]

Pacific Planning Areas

Outside of the Central and Southern California planning areas, there is little existing offshore oil and gas infrastructure in the Pacific and the costs of adding this infrastructure should be factored into evaluating the economic value of these regions. There were lease sales in the Northern California and Central California planning regions in 1963 and exploratory wells were drilled as a result of those sales, but yielded no commercial discoveries.[938]

C. BOEM Understates the Environmental and Social Costs and Omits Key Factors in Calculating Those Costs.

BOEM omitted key costs of decommissioning and climate change from its calculations.

1. BOEM Failed to Carefully Consider the Economic Costs Associated with Decommissioning Failure.

BOEM's analysis also fails to properly analyze the full costs associated with the Draft Proposed Program because it omits key economic considerations concerning decommissioning. When preparing a leasing plan, BOEM must factor in the economic and social values of OCS resources and the potential impact of oil and gas activities on these resources, consider predictive information, balance the costs and benefits of offshore drilling, and ensure that the federal government receives a fair market value for the leased lands.[939] The Draft Proposed Program falls short of these requirements for two reasons. First, the analysis fails to adequately incorporate decommissioning costs. Second, the Draft Proposed Program did not acknowledge that these costs are increasingly being borne by the American public or attempt to quantify how much decommissioning liability the federal government will end up taking on as a result of the planned lease sales.

[934] Draft Proposed Program at 3-14.
[935] *Id.* at 3-13
[936] *Id.* at 3-14.
[937] BOEM, *2017-2022 Outer Continental Shelf Oil and Gas Lease Draft Proposed Program* (Jan. 2015) at 4-22.
[938] *Id*. at 3-6.
[939] 43 U.S.C. § 1344(a)(1),(2)(H),(3),(4).

BOEM failed to adequately account for decommissioning costs

BOEM did not adequately estimate decommissioning costs in connection with its proposed lease sales.[940] Decommissioning costs are major considerations that cannot be left out of decision-making equations. According to the GAO's conservative estimates, total decommissioning costs for existing active and inactive wells and platforms in the Gulf federal waters alone range from $40 billion to $70 billion.[941] Experts place the decommissioning cost for wells in Gulf federal waters alone at $42 billion.[942] Meanwhile, BSEE has estimated that decommissioning the considerably smaller inventory of wells and platforms in the Pacific OCS will cost a further $1.6 billion.[943]

Moreover, as offshore facilities continue to degrade—a process expedited by harsh marine conditions and storm activity—these decommissioning costs will increase. As the GAO explained in 2015, "postponing decommissioning can be costly because the longer a structure is present in the Gulf the greater the likelihood it will be damaged by a hurricane."[944] And "decommissioning a storm-damaged structure may cost 15 times or more the cost of decommissioning an undamaged structure," as the salvage work involved is dangerous, difficult, and time-consuming.[945] Thus, as these idle facilities remain in the water, decommissioning liability will grow.

BOEM did not account for the increased public economic burden of decommissioning failure

BOEM's analysis is also deficient because it neglected to address both the increased socialized cost associated with decommissioning and the costs that taxpayers will have to shoulder to decommission the infrastructure deployed as a result of the Draft Proposed Program.[946]

The problem of offshore decommissioning costs will be increasingly borne by taxpayers. The fact that the Draft Proposed Program will increase this liability substantially by augmenting the population of offshore infrastructure that must eventually be decommissioned is highly relevant to several of OCSLA's mandatory considerations. First, because BOEM is required to assess economic and social values of OCS resources and the potential impacts of oil and gas activities,[947] BOEM should have included the socialized costs of decommissioning—including

[940] Draft Proposed Program at 6-4 (describing NEV as including private expenditures on exploration, development, production and transportation costs—but not decommissioning costs). The NEV also expressly leaves out onshore infrastructure that will be constructed in connection with developing and operating the leased tracts—and must also be decommissioned. *Id*. at 6-7.

[941] GAO 2024 at 26

[942] Agerton, et al. 2023 at 540.

[943] BSEE, *Decommissioning Cost Update for Pacific Outer Continental Shelf Region (POCSR) Facilities*, ii–iii (Sept. 2020) https://www.bsee.gov/sites/bsee.gov/files/vol-1-a-study-for-the-bureau-of-safety-and-environmental-enforcement-bsee-final-9-10-2020.pdf

[944] GAO 2015 at 11.

[945] *Id*.

[946] *Id*. § 1344(a)(3),(4)

[947] *Id*. § 1344(a)(1); Draft Proposed Program at 6-1.

the below-described administrative burdens associated with bankrupt operators—in its NEV analysis. Doing so is essential to determining whether additional leasing is actually a net positive for the American people. For the same reason, OCSLA requires BOEM to ensure that the federal government is fairly compensated for leasing.[948] The American public's increasing exposure to enormous cleanup liability for these leased lands must be factored into BOEM's analysis.

Because decommissioning liability can fall to taxpayers as a result of operator bankruptcies,[949] BOEM and BSEE regulations attempt to mitigate the risk in two ways: (1) by requiring some operators to provide supplemental financial assurances—such as a surety bond guaranteeing performance of decommissioning obligations—that the government may collect in case of default,[950] and (2) by relying on joint and several liability among all lessees, operators, and their predecessors on a given lease.[951] However, as federal oversight bodies and the bureaus alike have long recognized, these measures fall far short.[952] For instance, companies often vigorously contest efforts to collect decommissioning costs for facilities they no longer operate—which ties up the decommissioning process for years in expensive litigation. Moreover, for many years, OCSLA's financial assurance regulations allowed BOEM to waive the requirement that offshore operators post a supplemental bond for a given lease if at least one operator on the lease passed a financial strength test.[953] As a result of the limited supplemental financial assurances demanded by BOEM over the years, the federal government is currently exposed to *billions* of dollars in decommissioning liability:

> As of June 2023, BOEM had collected supplemental bonds for less than 9 percent of estimated decommissioning costs. Specifically, BOEM held about $3.5 billion in supplemental bonds as of June 2023 to cover between $40 billion and $70 billion in total estimated decommissioning costs for all the wells and platforms remaining in federal offshore waters, according to BOEM data. As a result, the federal government faces at least $36.5 billion in uncovered decommissioning liabilities if operators fail to meet their decommissioning obligations.[954]

As BOEM admits, because it has "at times, been unable to forecast financial distress of these lessees," it has "not had sufficient time to require and receive supplemental financial assurance

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[948] *Id*. § 1344(a)(4)

[949] BSEE, Budget Justifications & Performance Information for Fiscal Year 2025, 6 (2024) ("When responsible parties for offshore infrastructure go bankrupt, decommissioning obligations may fall to American taxpayers."); https://www.bsee.gov/sites/bsee.gov/files/2024-03/FY2025_BSEE_Greenbook-508.pdf

[950] *See* 30 C.F.R. §§ 556.900-556.907.

[951] *See id.* § 250.1701

[952] Indeed, over three decades ago, the Minerals Management Service (MMS) noted that "[r]ecent bankruptcies of small-business OCS oil and gas lessees/operators created circumstances in which the government could be liable for abandonment and removal costs," and flagged the problem of "two trends converging": (1) "Increasingly low-production OCS oil and gas leases—so-called *sunset* operations—are being assigned by major producers to small independent operators"; and (2) Abandonment and removal costs have increased while MMS's minimum bonding requirements remain unchanged and have become grossly inadequate." Memorandum from Hank Bartholomew, Chief of Staff, MMS at 1 (Dec. 14, 1990).

[953] GAO 2015 at 25; GAO 2024 at 26.

[954] GAO 2024 at 26.

prior to a declaration of bankruptcy" for companies such as ATP Oil & Gas, which "was a midsized company with a supplemental financial assurance waiver when it filed for bankruptcy in 2012," Bennu Oil & Gas LLC, which "had a waiver at the time of its bankruptcy filing," Energy XXI, Ltd., and Stone Energy Corporation, which "obtained waivers less than a year before filing for bankruptcy."[955]

Indeed, newly public BOEM data reveals the deeply precarious position that the bureau now is in because of its longstanding failure to require sufficient financial assurances from oil and gas operators. BOEM's orphaned liability list shows that following just ten operator bankruptcies, the federal government is responsible for decommissioning 119 wells, 18 structures, 98 pipelines, and 18 site clearances—representing $196,144,872 in total orphan liability.[956] Approximately 68 percent of that liability ($132,742,305) is not covered by bonds or other supplemental financial assurances.[957] It is unsurprising, therefore, that BSEE recently concluded that "[o]perator bankruptcies are a continuing concern for both the Bureau and taxpayers."[958]

Moreover, as noted above, the longer offshore facilities remain in place and are subject to both steady degradation and harsh storm activity, the higher the eventual decommissioning costs will be.[959] As decommissioning costs go up, so does the likelihood that the operator will be unable to pay for cleanup.

Since 2009, 37 offshore oil and gas operators have filed for bankruptcy, and BOEM and BSEE "expect offshore bankruptcies will continue to increase."[960] These bankruptcies create "substantial uncertainty, and potentially enormous financial risks to the federal government from decommissioning liabilities."[961] Alarmingly, the risk of bankruptcy is so serious that BSEE is reluctant to issue decommissioning orders for fear that these orders will drive operators into default.[962] This conscious decision to not enforce decommissioning requirements heightens the above-described environmental and economic risks of delayed decommissioning.

Federal involvement in bankruptcy proceedings also comes with a heavy administrative burden that should be contemplated in advance of leasing. When companies petition for bankruptcy, BSEE must file proofs of claims in the proceeding to assert the bureaus' right to receive a

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[955] Financial Assurances Final Rule, 89 Fed. Reg., 31,544, 31,548 (Apr. 24, 2024).

[956] BOEM Orphaned Liability Spreadsheet (last modified Dec. 23, 2025), *available at* https://www.boem.gov/oil-gas-energy/risk-management/property-list-and-orphaned-liability.

[957] *Id*.

[958] BSEE, Budget Justifications & Performance Information for Fiscal Year 2025 (2024) at 6; https://www.bsee.gov/sites/bsee.gov/files/2024-03/FY2025_BSEE_Greenbook-508.pdf (last visited Jan. 21, 2026).

[959] GAO 2015 at 11.

[960] GAO 2024 at 2.

[961] *Id*.

[962] GAO 2024 at 18; U.S. Dep't of the Interior, *Closeout Memorandum, The Bureau of Safety and Environmental Enforcement's Decommissioning Program*, Assignment No. 2016-EAU-063 (Mar. 26, 2019), https://www.oversight.gov/sites/default/files/documents/reports/201903/CloseoutMemo_BSEEDecomissioning_032619.pdf (concluding that BSEE's policies on reviewing idle infrastructure in the Gulf "have not been implemented because there are concerns that requiring operators to decommission infrastructure will force many into bankruptcy.")

distribution from the bankruptcy estate for current and future decommissioning requirements.[963] This requires coordination between BOEM, BSEE, the Office of Natural Resources Revenue, the Office of the Solicitor, and the bureaus' regional offices.[964] It also requires BOEM and BSEE to maintain complete, current, and accurate information about operator bankruptcies, including case status, every company involved, proof of claim amounts, obligations remaining after the bankruptcy has closed, and mitigation amounts collected through bonds—several of which the bureaus have failed to adequately track.[965]

BOEM and BSEE are currently exposed to *billions* of dollars in potential decommissioning liability, which will only increase if BOEM allows drilling to expand, particularly into ever-deeper waters. BOEM must consider federal decommissioning liability resulting from operator bankruptcies and the administrative burdens placed on the DOI in pursuing decommissioning performance through the bankruptcy process and joint and several liability. Moreover, the Trump administration's announced withdrawal of the 2024 Risk Management and Financial Assurance for OCS Lease and Grant Obligations Rule[966] will exacerbate this problem by removing a key tool that would have required companies more likely to go bankrupt to get supplemental bonds covering decommissioning expenses.[967]

Ultimately, BOEM's economic analysis is incomplete and insufficient because BOEM neglected to adequately incorporate the costs of decommissioning, account for these costs being inflicted upon the public, or consider how the lease sales proposed under the Draft Proposed Program and Reconciliation Act will contribute to the issue. These omissions will only exacerbate decommissioning delays and lead to further environmental harm.

2. BOEM Omitted the Costs of Greenhouse Gas Emissions.

BOEM completely omits the cost of greenhouse gas emissions from its net benefits analysis, and has failed to provide an explanation as to its change in position.[968] Previously, BOEM had included the upstream greenhouse gas emissions costs and found that under a mid-activity scenario, the GHG costs of developing in the Gulf would be approximately half a billion

[963] U.S. Dep't of the Interior, Office of Inspector General, U.S. Department of the Interior Bureaus Must Improve Federal Oil and Gas Internal Controls to Ensure Oversight of Financial Risks to the Government From Bankruptcies, Report No. 2023-CR-003, 6 (Dec. 16, 2024), https://www.doioig.gov/sites/default/files/2021migration/FinalAuditReport_DOIMineralBankruptcies.pdf.

[964] *Id.* at 5, fig. 1.

[965] *Id.* at 11–12. The OIG found that BOEM and BSEE did not track post-bankruptcy amounts or mitigation amounts or proof of claim amounts. *Id.* They also did not consistently identify all entities involved with a bankruptcy case. *Id.* For example, in a bankruptcy case involving six entities and six corresponding proofs of claims asserting decommissioning obligations totaling more than $8 billion in liabilities, only one entity was listed in the bureaus' bankruptcy tracking tool, and no proof of claim amounts were listed. *Id.*

[966] Press Release, Dep't of Int., *Interior Department to Update Offshore Financial Assurance Rule to Support Future Energy Development* (May 2, 2025) https://www.doi.gov/pressreleases/interior-department-update-offshore-financial-assurance-rule-support-future-energy#:~:text=WASHINGTON%20%E2%80%94%20The%20U.S.%20Department%20of,invest%20in%20energy%20development%20projects.

[967] 89 Fed. Reg. 31,544–31,599 (Apr. 24, 2024).

[968] Draft Proposed Program at 6-1 to 6-3.

dollars.[969] While our organizations take the position that BOEM should have found additional GHG costs and included downstream and midstream emissions costs, even by omitting upstream costs, BOEM overstates the net benefits of its Draft Proposed Program.

D. BOEM Makes Other Errors in Evaluating the Environmental and Social Costs of Its Program.

1. BOEM Erroneously Omits the Cost of Catastrophic Oil Spills.

BOEM does not consider the cost of catastrophic oil spills in its net benefits analysis, stating that its economic costs model (OECM) was not designed to represent impacts from catastrophic oil spills and noting the difficulty in calculating risks and costs.[970]

However, this is an erroneous omission, since BOEM should account for the real-world costs of oil and gas development, which include that catastrophic spills are responsible for most of the damage from offshore development, and that deepwater development comes with increased risk.[971]

2. BOEM Underestimates Other Costs.

BOEM does not quantitatively value certain environmental and social costs – like loss of a species or irreversible degradation of an ecosystem.[972] This understates the costs of continued leasing, and skews BOEM's cost-benefit analysis to make continued leasing appear more beneficial. It is erroneous for BOEM to claim that these costs cannot be quantitatively valued. As the Institute for Policy Integrity – a respected legal and economic think tank – has explained in publications evaluating BOEM's national OCS program, various methodologies have been used to value such costs.[973] Without such accounting, BOEM's cost-benefit analysis is inaccurate.

3. BOEM Should Ensure That Later Analyses Use the Most Accurate Economic Models.

BOEM states that it will use its Market Simulation model (MarketSim) at the 2nd and 3rd analysis stages to evaluate substitute energy sources to fulfill energy demand based on different OCS production scenarios.[974]

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[969] *See* Proposed Final Program 2024-2029 at 5-25.

[970] Draft Proposed Program at 6-7.

[971] Peter Howard, Max Sarinsky, Minhong Xu, *The Real Costs of Offshore Oil and Gas Leasing: A Review of BOEM's Economic Analysis for Its Proposed Five-Year Program* at 38, Institute for Policy Integrity, New York University School of Law (September 2022)(IPI); https://policyintegrity.org/files/publications/The_True_Costs_of_Offshore_Leasing.pdf; Lucija Muehlenbachs, et. al., *The impact of water depth on safety and environmental performance in offshore oil and gas production*, 55 Energy Policy 699 (Apr. 2013); https://www.sciencedirect.com/science/article/abs/pii/S030142151201141X; *see also,* Mark Cohen, *Deepwater Drilling: Recommendations for a Safer Future,* Resources for the Future (Apr. 20, 2011); https://www.resources.org/common-resources/deepwater-drilling-recommendations-for-a-safer-future/

[972] Draft Proposed Program at 6-6 to 6-10.

[973] IPI at 43-50.

[974] Draft Proposed Program at 7-20.

Our organizations have previously criticized the accuracy of MarketSim and courts have criticized and invalidated the use of the model on a number of occasions. *See Ctr. for Biological Diversity v. Bernhardt*, 982 F. 3d 723, 738 (9th Cir. 2020); *Sovereign Iñupiat for a Living Arctic v. BLM*, 555 F. Supp. 3d 739, 765 (D. Ala. 2021).

As it prepares its 2nd and 3rd analyses, BOEM should ensure that it uses the most accurate economic models to evaluate substitution effects.

As we have previously commented, other published, peer-reviewed models find that renewables will play a more significant role in the energy mix over time, compared to BOEM's model.[975] For example, in a recent peer-reviewed article in the Journal of the Association of Environmental and Resource Economists, Ph.D. economist Brian C. Prest built his own energy model and estimated how changes in federal resource management affect supply, demand, consumption, and emissions.[976] Prest found a "leakage rate"—meaning the percentage of total emissions from OCS development that merely displace other sources and do not reflect gross emission reductions—of between 52% and 72%.[977] This is substantially lower than BOEM's leakage rate of approximately 77%.[978]

Prest's model—unlike BOEM's—is dynamic, has been subject to peer-review, and is published in the economics literature. BOEM should compare elasticities between the two models and consider updating its reference case elasticities to more closely reflect the parameters in Prest's model. IPI has found that reducing oil and gas supply elasticities and increasing renewable supply elasticities lowers the substitution rates and results in a higher estimate of net emissions from OCS leasing.[979]

The National Energy Modeling System (NEMS) would also serve as a more accurate modeling system and could be readily adapted to provide the modeling for the national OCS program. NEMS is a more rigorous model than MarketSim and more widely relied upon in the academic community.[980]

IPI has previously identified various ways in which BOEM's substitution analysis should be improved.[981] BOEM's sensitivity analysis underrepresents uncertainties related to quantities, elasticities, and prices – and IPI explains how existing information and modeling tools would more fully account for these uncertainties.[982] It is also recommended that BOEM recalibrate MarketSim to better model various decarbonization pathways.[983]

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[975] IPI at 4.

[976] Brian C. Prest, Supply-Side Reforms to Oil and Gas Production on Federal Lands: Modeling the Implications forCO2Emissions, Federal Revenues, and Leakage, 9 J. Assoc. of Env't & Res. Economists 681 (2022).

[977] *Id.* at 688; IPI at 4.

[978] IPI at 4.

[979] IPI at 4.

[980] IPI at 22-23.

[981] IPI at 6-23.

[982] *Id.*

[983] *Id.*

VIII. ADDITIONAL LEASING WILL NOT ASSURE RECEIPT OF FAIR MARKET VALUE.

OCSLA requires BOEM to design an offshore leasing program under which leasing activities will be "conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government."[984] Yet, offshore lease sales are not particularly competitive. In Gulf of Mexico lease sales held over the past ten years, only 1.15 bids were received per block on average[985]—meaning that, among blocks receiving any bids, the vast majority received just a single bid. Most of the time, companies acquired leases without competition. For the two Cook Inlet lease sales held over the past ten years, just one company bid on any block, indicating a total lack of competition.[986]

The Draft Proposed Program lease sales are scheduled in the context of unprecedented levels of mandated leasing. During the period of the Draft Proposed Program, [the Reconciliation Act] requires BOEM to offer two region-wide Gulf lease sales every year plus four or five Cook Inlet lease sales.[987] By adding 7 additional sales in the Gulf, 21 sales offshore Alaska (including 5 in Cook Inlet), and 6 sales offshore California, the Draft Proposed Program will provide industry with numerous additional opportunities to bid, likely depressing competition even further, and potentially allowing companies to acquire leases at even lower prices. While the Draft Proposed Program briefly discusses the role of sale frequency in determining fair market value,[988] it entirely fails to consider the impact that frequent mandated lease sales will have on leasing competition and fair market value for Draft Proposed Program sales. Never before has BOEM prepared an offshore oil and gas leasing program against a backdrop of mandated sales that themselves will offer more acreage than offered by any previous offshore leasing program.[989] BOEM must consider the effect of the Reconciliation Act sales when assessing fair market value in the Proposed Program.

Ultimately, drilling and exploration impose immense costs on the public, from driving the climate crisis, to harming wildlife and commercial fisheries, to polluting our water and air.[990] The Draft Proposed Program would provide industry with even more access to public lands with minimal competition, allowing companies to impose ever greater costs on the public while

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[984] 43 U.S.C. § 1344(a)(4).

[985] This average was calculated using BOEM's final bid recap reports for lease sales 226, 241, 247, 248, 249, 250, 251, 252, 253, 254, 256, 257, 259, and 261, which are available at BOEM.gov. This average includes all blocks that received at least 1 bid.

[986] BOEM, *Lease Sale 258*, https://www.boem.gov/oil-gas-energy/leasing/lease-sale-258 (last visited Nov. 13, 2025); BOEM, *Cook Inlet Federal Lease Sale Yields More Than $3 Million In High Bids*, https://www.boem.gov/newsroom/press-releases/cook-inlet-federal-lease-sale-yields-more-3-million-high-bids (last visited Nov. 13, 2025).

[987] Reconciliation Act, § 50102(a)(1)(B); *id.* § 50102(a)(2)(B).

[988] Draft Proposed Program, at 12-17 to 12-18.

[989] *See* Reconciliation Act, § 50102(b)(3) ; *see also,* Section II (discussion nation's energy needs).

[990] *See infra* sections II-III.

reaping immense profits.[991] Consistent with OCSLA's requirement that BOEM maintain competition and "assure receipt of fair market value" in exchange for leasing public lands,[992] BOEM should not offer new lease sales.

IX. BOEM CANNOT LEASE IN AREAS PROTECTED UNDER 12(A).

OCSLA Section 12(a) provides that "[t]he President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf."[993]

Previous Presidents used their authority under Section 12(a) to withdraw the entire eastern U.S. Atlantic coast, the Eastern Gulf of Mexico, the entire U.S. Pacific coast, certain portions of the Bering Sea in Alaska,[994] most of the Beaufort and Chukchi seas in the Arctic ocean,[995] as well as all national marine sanctuaries designated prior to 2008.[996] These areas are therefore not available for leasing and must be excluded from the Program. Yet the Draft Proposed Program schedules multiple leases in previously withdrawn areas including off the California coast, in withdrawn Alaskan waters, and in the Eastern Gulf of Mexico.[997] The program offers no explanation for how such leasing could comply with the law.

To the extent President Trump has purported to revoke previous Presidents' withdrawals via executive order,[998] he has no authority to do so. OCSLA delegates only the authority to withdraw, not the authority to revoke, and therefore only Congress has authority to revoke Section 12(a) withdrawals.[999] Indeed, when President Trump attempted to revoke President Obama's 12(a) withdrawal during his first term, a court held this revocation unlawful.[1000]

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[991] *See* Alex Kimani, "Why Big Oil Is Still Gushing Profits Despite Low Oil Prices," OilPrice.com (Nov. 12, 2025), https://oilprice.com/Energy/Crude-Oil/Why-Big-Oil-Is-Still-Gushing-Profits-Despite-Low-Oil-Prices.html (last visited Jan. 21, 2026).

[992] 43 U.S.C. § 1344(a)(4).

[993] 43 U.S.C. § 1341(a).

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

[995] *Presidential Memorandum–Withdrawal of Certain Portions of the United States Arctic Outer Continental Shelf from Mineral Leasing* (Dec. 20, 2016) THE WHITE HOUSE, https://obamawhitehouse.archives.gov/the-press-office/2016/12/20/presidential-memorandum-withdrawal-certain-portions-united-states-arctic.

[996] *Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf rom Leasing Disposition* (July 14, 2008) Government Publishing Office, https://www.govinfo.gov/content/pkg/WCPD-2008-07-21/pdf/WCPD-2008-07-21-Pg985.pdf.

[997] Draft Proposed Program at 6.

[998] Exec. Order No. 14148, *Initial Rescissions of Harmful Executive Orders and Actions* (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions//

[999] *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 585 (1952) (*stating* "The President's power … must stem either from an act of Congress or from the Constitution itself.")

[1000] *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).

President Trump's second attempt to revoke previous Presidents' withdrawals is likewise the subject of a legal challenge pending in federal court in the District of Alaska.

Confusingly, the Draft Proposed Program acknowledges that areas in the Eastern Gulf are withdrawn from leasing through June 2032.[1001] And Congress has not revoked this withdrawal. But BOEM is still proposing lease sales in that area, again with no explanation about how such sales could be lawful.[1002]

Interior must remove all withdrawn areas in the next iteration of the program to ensure legal compliance and prevent stakeholders from wasting resources by developing interest in areas that are not available.

X. ENVIRONMENTALLY SENSITIVE AREAS THAT SHOULD BE EXCLUDED FROM LEASING.

In announcing the availability of the Draft Proposed Program, BOEM specifically requested nominations for environmentally sensitive areas that may be considered for exclusion from leasing.[1003] Should BOEM decide to proceed with the Program, it must exclude all national marine sanctuaries as well as proposed critical habitat for the Rice's whale in the Gulf of Mexico

A. National Marine Sanctuaries Should be Off-Limits from Development.

As BOEM recognized in the Draft Proposed Program, any sanctuary area designated prior to July 14, 2008, has been withdrawn from leasing disposition, and even later-designated sanctuaries, while not specifically withdrawn, are subject to sanctuary-specific rules and regulations that "may restrict or prohibit certain activities within the sanctuary, such as leasing, exploration, and/or production of oil and gas resources."[1004] Indeed, such prohibitive and restrictive regulations—including bans on new oil and gas leasing—exist for *every* sanctuary in a Draft Proposed Program Planning Area, as do a host of other statutory and regulatory protections that limit oil and gas activities within and near sanctuaries. Despite these clear restrictions, BOEM has not expressly excluded five national marine sanctuary areas in the Draft Proposed Program: the Chumash Heritage National Marine Sanctuary ("NMS"),[1005] and the expanded areas of Monterey Bay NMS,[1006] Greater Farallones NMS, Cordell Bank NMS,[1007] and Flower Garden Banks NMS.[1008]

Given the multitude of protections in place for national marine sanctuaries, BOEM must remove all sanctuary areas from consideration in the 11th National Program regardless of their year of designation and should impose a sufficiently protective buffer zone around sanctuaries to minimize disturbances to sanctuary resources.

[1001] Draft Proposed Program at 13.

[1002] *Id.* at 6.

[1003] 90 Fed. Reg. 52,996 (Nov. 24, 2025).

[1004] Draft Proposed Program at 3-4.

[1005] 89 Fed. Reg. 83,554 (Oct. 16, 2024).

[1006] 73 Fed. Reg. 70,488 (Nov. 20, 2008).

[1007] 80 Fed. Reg. 13,078 (Mar. 12, 2015).

[1008] 86 Fed. Reg. 4937 (Jan. 19, 2021).

Protecting our oceans from the risks posed from fossil fuel development was among the principal drivers for enacting the National Marine Sanctuaries Act (NMSA), the statute authorizing the creation of national marine sanctuaries, more than fifty years ago.[1009] Consistent with this purpose, the NMSA directs that national marine sanctuaries be managed with the "primary objective of resource protection,"[1010] rendering harmful activities—like oil and gas exploration, development, and extraction—which threaten those significant ecological, cultural, or historical resources fundamentally incompatible with the purpose of national marine sanctuaries themselves.

1. Oil and Gas Activities Are Prohibited Within National Marine Sanctuaries.

A variety of statutes and regulations prohibit oil and gas exploration, development, and production within national marine sanctuaries because of the risk of harm to sanctuary resources. Oil and gas activities are inherently harmful to sanctuary resources, which is why they are forbidden by the statutory text and implementing regulations of the NMSA—a statute designed specifically to protect marine areas of national significance.[1011]

Under section 306 of the NMSA, it is illegal to "destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary."[1012] NOAA has repeatedly recognized that this provision "imposes a strict liability standard."[1013]

Prohibited injury to sanctuary resources would almost certainly occur if BOEM were to lease within national marine sanctuaries, including those areas added after the 2008 withdrawal. The sanctuary resources of each post-withdrawal area—*i.e.*, Chumash Heritage NMS and the Monterey Bay NMS, Greater Farallones NMS, Cordell Bank NMS, and Flower Garden Banks NMS expansion areas—clearly include wildlife and the marine environment,[1014] given that each sanctuary was designated to advance the conservation of biodiversity. And, as NOAA has repeatedly recognized, oil and gas leasing within, or even near, sanctuaries risks the injury, loss, and destruction of these nationally significant resources. Sanctuary designations and expansions in the OCS issued after the July 2008 withdrawal illustrate this clearly:

[1009] *Id.* at 17.

[1010] 16 U.S.C. § 1431(b)(6); *see also id.* § 1431(a)(4) (stating the policy of Congress to establish national marine sanctuaries to "improve the conservation, understanding, management, and wise and sustainable use of marine resources; enhance public awareness, understanding, and appreciation of the marine environment; and maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit" designated areas).

[1011] *See id.* §§ 1431(b)(1), 1433(a)(2).

[1012] 16 U.S.C. § 1436(1).

[1013] *In the Matter of: Patrick Roy Harper*, 2021 WL 5865676, at *7 (NOAA 2021) (quoting *Mattson*, 4 O.R.W. 202, 212 (NOAA 1985)); *see also Midgett*, 7 O.R.W. 148, 151-52 (NOAA 1993); *Armstrong*, 7 O.R.W. 274, 278 (NOAA 1993).

[1014] *See, e.g.*, *Harper*, 2021 WL 5865676, at *8 (recognizing that eelgrass is a sanctuary resource of Greater Farallones NMS).

- **Monterey Bay NMS** was expanded in November 2008 to include the Davidson Seamount, which is home to a diverse community of deep-water organisms including large forests of fragile long-lived corals, vast sponge fields, and deep-sea fishes, crabs, and shrimp.[1015] At the ocean's surface, the Davidson Seamount area provides habitat for a variety of sea birds, marine mammals, and pelagic fishes.[1016] Oil and gas exploitation threaten the quality of these habitats.[1017]
- NOAA doubled the size of the **Greater Farallones NMS** in 2015 to better protect "the globally significant coastal upwelling center originating off of Point Arena, which is the source of nutrient-rich upwelled waters that flow into [the sanctuary] … via wind-driven currents."[1018] This area supports a "rich marine food web" made up of many species of algae, invertebrates, fish, birds, and marine mammals, including endangered blue whales, salmon, harbor seals, and the largest assemblage of breeding seabirds in the contiguous United States.[1019] NOAA has taken care to provide "additional protection" to the valuable natural resources of the upwelling zone by banning oil and gas exploration, discharges of harmful matter, and alteration of the submerged lands sanctuary-wide.[1020] Oil and gas activities, including pipelines, were explicitly prohibited due to the "significant risks" that oil and gas development have historically posed to marine resources, including the risk of offshore oil spills.[1021]
- **Flower Garden Banks NMS** was expanded in 2021 to allow for additional protection and management of "sensitive underwater features and marine habitats."[1022] The additions to Flower Garden Banks are "hotspots of marine biodiversity that provide vital habitat for many important species in the Gulf of Mexico region," such as mobula rays, sea turtles, whale sharks, and numerous fishes of commercial and recreational importance.[1023] They also contain "the most significant examples of mesophotic coral communities in the United States, including some of the highest known densities (colonies per square meter) and species richness of mesophotic corals."[1024] These "ecologically significant" habitats are "vulnerable to . . . certain oil and gas exploration and development activities."[1025]

[1015] Monterey Bay NMS Expansion, 73 Fed. Reg. at 70,492–94.
[1016] *Id.* at 70,494.
[1017] *Monterey Bay 2015 Condition Report Partial Update - State of Sanctuary Resources: Seamount Environment*, NAT'L OCEANIC & ATMOSPHERIC ADMIN. (2015), https://sanctuaries noaa.gov/science/condition/monterey-bay-2015/davidson-seamount html ("Various existing and potential threats to Davidson Seamount's habitat quality include: . . . oil and gas exploitation.").
[1018] Greater Farallones and Cordell Bank NMS Expansion, 80 Fed. Reg. at 13,079.
[1019] *Id.*
[1020] *Id.* at 13,090.
[1021] *Id.* at 13,101.
[1022] Flower Garden Banks NMS Expansion, 86 Fed. Reg. at 4937.
[1023] *Id.* at 4938.
[1024] *Id.*
[1025] *Id.*

- **Chumash Heritage NMS** was designated in 2024 to protect, among other things, the area's unique environment that hosts significant biodiversity in sea birds, marine mammals, invertebrates, and fishes—including threatened or endangered species like blue whales, snowy plovers, black abalone, and leatherback sea turtles.[1026] Prior offshore spills in the designated area have caused "significant environmental harm."[1027] Any future oil and gas development not only poses the risk of future harmful spills but would also disturb the seafloor and benthic species.[1028]

Any harm to these resources from oil and gas exploration, development, or production would constitute a violation of NMSA section 306(1), subjecting the lessee at fault to potential liability for damages.

Moreover, because oil and gas exploration, production, and development is inherently harmful to a wide variety of resources it is, oil and gas leasing and support activities are prohibited throughout the entirety of all national marine sanctuaries in California, as well as most of Flower Garden Banks NMS.

Each of the five Californian sanctuaries expressly prohibits new oil and gas exploration, development, and production throughout the entirety of their designated areas.[1029] These prohibitions reflect NOAA and Congress's determination that "[o]il and gas development in the marine environment has historically posed *significant* risks to marine resources, as evidenced by the magnitude of the impacts of some offshore oil spills"[1030] and the potential for "long-term adverse impacts from chronic pollution by hydrocarbons and drill muds and other disturbance of sensitive habitat."[1031] In Cordell Bank NMS and Monterey Bay NMS, oil and gas exploration, development, and production are prohibited by statute, in addition to their sanctuary-specific regulations.[1032]

The Californian sanctuaries also prohibit several activities incidental to oil and gas exploration, production, and/or development within sanctuaries, including drilling into, dredging, or otherwise altering the submerged lands of a sanctuary, or constructing or placing any structure, material, or other matter on or in the submerged lands of a Sanctuary for new oil and gas leases.[1033]

[1026] Chumash Heritage NMS, 89 Fed. Reg. at 83,554–55.

[1027] *Id.* at 83,565.

[1028] *See id.*

[1029] 15 C.F.R. §§ 922.72(a)(1) (Channel Islands NMS), 922.232(a)(1) (Chumash Heritage NMS), 922.132 (Monterey Bay NMS), 922.112(a)(1) (Cordell Bank NMS), 922.82(a)(1) (Greater Farallones NMS).

[1030] Expansion of Gulf of the Farallones and Cordell Bank NMS, 80 Fed. Reg. at 13,101 (emphasis added).

[1031] 45 Fed. Reg. 65,198, 65,200–01 (Oct. 2, 1980).

[1032] Pub. L. 101-74 (Aug. 9, 1989) (prohibiting "the exploration for, or the development or production of, oil, gas, or minerals in any area of the" Cordell Bank NMS); Pub. L. 102-587 section 2203 (Nov. 4, 1992) (prohibiting "any leasing, exploration, development, or production of oil or gas" within the Monterey Bay NMS).

[1033] 15 C.F.R. §§ 922.72(a)(4) (Channel Islands NMS – exception for laying pipeline pursuant to exploring for, developing, or producing hydrocarbons for any lease), 922.232(a)(3) (Chumash Heritage NMS), 922.132(a)(4) (Monterey Bay NMS), 922.112(a)(4) (Cordell Bank NMS), 922.82(a)(5) (Greater Farallones NMS).

Flower Garden Banks NMS in the Gulf imposes similar restrictions that are limited to BOEM's no-activity zones,[1034] which have prohibitions on oil and gas exploration and development but allow other bottom-disturbing activities with potentially severe negative impacts on benthic areas.[1035] These no-activity zones are largely congruent with sanctuary boundaries.[1036]

Unlike many other prohibited activities, these restrictions on oil and gas cannot be skirted through the issuance of a special use permit. The NMSA allows for the issuance of special use permits for a national marine sanctuary "only if [the permitted] activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources."[1037] Oil and gas leasing clearly would not meet either standard. Valid sanctuary purposes must, at minimum, include protecting the special qualities, living marine resources, or resource or human use values that make a sanctuary nationally significant and thus worthy of designation. Offshore drilling does nothing to advance their conservation and instead only threatens these resources, rendering oil and gas leasing fundamentally compatible with both sanctuary purposes and the protection of sanctuary resources.

2. Oil and Gas Activities Should Also Be Prohibited Within the Vicinity of Sanctuaries.

Simply prohibiting oil and gas leasing within a sanctuary is not enough to protect its resources, as impacts from oil and gas exploration, production, and development can quickly and easily spread far beyond individual lease sites and related activities, like the transport of oil, can also cause widespread harm. Protecting sanctuary resources requires carving out a restricted "buffer zone" around sanctuaries that is sufficiently wide enough to eliminate the risk of foreseeable harm to sanctuary resources from any new oil or gas leases.

Individual sanctuary regulations supplement the NMSA section 306 prohibition on injuring sanctuary resources[1038] by prohibiting the discharge of oil, gas, and other materials that enter a sanctuary and injure a sanctuary resource or quality, even if the source of the pollution is not located within the sanctuary itself.[1039] Individual oil and gas leases risk certain harm from the construction and operation of a well and create the possibility of catastrophic spills, chronic pollution, or the disturbance of important habitat. Removing OCS areas within the vicinity of national marine sanctuaries would not only protect sanctuary resources from these harmful discharges but also help to ensure lessee's compliance with (and thus avoidance of liability for violating) these harmful discharge prohibitions.

[1034] 15 C.F.R. § 922.122(a)(1), (4).

[1035] 86 Fed. Reg. 4938, 4941 (Jan. 19, 2021).

[1036] *See, e.g.*, *id.* ("The new [2021] boundaries closely follow the BOEM No Activity Zones[.]").

[1037] 16 U.S.C. § 1441(c)(1).

[1038] 16 U.S.C. § 1436(1).

[1039] 15 C.F.R. §§ 922.72(a)(3)(ii) (Channel Islands NMS), 922.232(a)(2)(iii) (Chumash Heritage NMS), 922.132(a)(2)(iii) (Monterey Bay NMS), 15 CFR 922.112(a)(2)(iii) (Cordell Bank NMS), 922.82(a)(4) (Greater Farallones NMS), 922.122(a)(3)(ii) (Flower Garden Banks NMS).

While BOEM may issue leases, easements, and rights-of-way for oil and gas support activities under OCSLA section 8(p), it may not do so within national marine sanctuaries.[1040] And even where leases, easements, or rights-of-way would not bisect national marine sanctuaries, those activities must still be carried out in a manner that provides for the protection of the environment, safety, and consideration of fisheries.[1041] Oil and gas leases located too close to a NMS may accordingly face additional regulatory obstacles that inhibit critical support activities, making oil and gas exploration, production, and development more costly, time-consuming, and resource-intensive.

If these restrictions were not enough of a deterrent, BOEM may also find itself liable for the costly mitigation of damage to sanctuary resources from offshore oil and gas leases if the agency does not adopt *all* alternative means of limiting risk to sanctuary resources suggested by NOAA, including alternative siting of leases. Any leasing close enough to a sanctuary that it is "likely to destroy, cause the loss of, or injure any sanctuary resource" is subject to consultation with NOAA, regardless of whether the lease is internal or external to the sanctuary itself.[1042] If even a single reasonable and prudent alternative proffered by NOAA were not implemented and that failure led to harm to sanctuary resources, BOEM would be required to "promptly prevent and mitigate further damage and restore or replace the sanctuary resource" in a manner approved by NOAA.[1043] Impacts to sanctuary resources—and thus NMSA consultation requirements and subsequent potential agency liability for failing to adopt alternatives—can be limited by excluding all national marine sanctuaries from inclusion in the 11th National Program as well as delineating a sufficiently wide restricted "buffer zone" around sanctuary limits.

B. Rice's Whale Habitat Should Be Off Limits to Oil and Gas Development.

Consistent with NMFS's proposed critical habitat designation for the Rice's whale, BOEM should exclude blocks between the 100- and 400-m isobath in the western and central Gulf from oil and gas leasing. This is necessary to protect the highly vulnerable Rice's whale. BOEM previously stated that NMFS's critical habitat designation will be considered "in the analyses and preparation leading to individual lease sale decisions" for the 10th National Offshore Leasing Program.[1044] BOEM also noted that it will "exclude acreage from the sale area[s] to protect . . . the Rice's whale."[1045] BOEM should do the same here and at least exclude the proposed critical habitat for Rice's whale in the new program.

Exclusion of this area is necessary because the Rice's whale is at significant risk from oil and gas activity in the western and central Gulf of Mexico. As discussed above, the Rice's whale is

[1040] *See* 43 U.S.C. § 1337(p)(1), (10) ("This subsection does not apply to any area on the outer Continental Shelf within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or *National Marine Sanctuary System*, or any National Monument." (emphasis added)). Transportation excludes shipping. *Id.* at § 1337(p)(1).
[1041] *Id.* § 1337(p)(4)(A), (B), (J).
[1042] 16 U.S.C. § 1434(d)(1)(A).
[1043] *Id.* § 1434(d)(4).
[1044] BOEM, *2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program Final Programmatic EIS* 111, (Sept. 2023).
[1045] *Id.*

particularly susceptible to human-caused mortality, particularly from oil and gas activity, such as vessel strikes. The expanded habitat area has more human activity than the De Soto Canyon region, so the risk of vessel strike is significantly higher in this region.[1046] This is particularly true for oil and gas vessels: research shows that oil and gas vessel traffic accounts for an average of 40 percent of traffic throughout the northern Gulf of Mexico, including the whale's expanded habitat.[1047]

The Rice's whale is incredibly vulnerable to harm from oil and gas activities, including development, spills, and vessel collisions. The loss of even a single reproductive female from vessel strikes or other harms caused by oil and gas activity could lead to this species' extinction. Exclusion of the whale's critical habitat from oil and gas leasing is necessary to preserve and prevent the extinction of the only great whale known to solely inhabit the waters of the Gulf of Mexico.

XI. BOEM HAS FAILED TO COMPLY WITH NEPA.

As explained above, OCSLA requires Interior to consider a wide range of environmental effects when determining whether and where to lease in its National Program. For forty-five years, Interior has recognized that these National Program decisions about oil and gas exploration, leasing, and development can lead to significant effects for coastal communities, economies, and wildlife. Since the first National Program was adopted in 1980,[1048] Interior has always prepared an Environmental Impact Statement ("EIS") to both inform the public and its own decision-making about the significant environmental effects of offering areas for offshore leasing and to consider alternatives (including scheduling fewer lease sales in fewer areas or other mitigation) to address those effects.

Despite the essential nature of NEPA to this process – and the Department's longstanding practice and interpretation that an EIS is required at the Program stage – Interior does not plan to prepare a NEPA document for the National Program. Instead, the Draft Proposed Program states

[1046] Benjamin D. Best, *Spatial analysis of ship-strike risk for Rice's whale in the Gulf of Mexico* 11–12 tbl.3 (Aug. 23, 2023) ("Best Report"); NOAA Fisheries, *Biological Opinion on the Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico* (Mar. 13, 2020) at 356, 357, 360 (figures showing highest relative vessel strike risk for Rice's whale in the central and western Gulf).

[1047] Best Report 10–11, tbl.2.

[1048] BOEM, *5-Year OCS Program* 217 (Mar. 6, 1980) (discussing final EIS); BOEM, *Tentative Proposed Final 5-Year OCS Leasing Program 1982-1987* (Mar. 1, 1982) (discussing EIS at 2); BOEM, *5-Year Leasing Program Mid-1987 to Mid-1992* (April 1987) (discussing EIS at 1); BOEM, *Outer Continental Shelf Natural Gas and Oil Resource Management Comprehensive Program 1992-1997* (April 1992) (discussing EIS at v); BOEM, *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 1997-2002* (August, 1996) (discussing EIS at 2); BOEM, *Outer Continental Shelf Oil & Gas Leasing Program: 2002-2007 Final Environmental Impact Statement* (April 2002); BOEM, *Proposed Final Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007-2012* (April 2007) (discussing EIS at 10); BOEM, *Outer Continental Shelf Oil & Gas Leasing Program: 2017-2022 Final Programmatic Environmental Impact Statement* (Nov. 2016); BOEM, *2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program Final Programmatic Impact Statement* (Sept. 2023).

that Interior will "prepar[e] an environmental analysis outside of the NEPA framework to provide relevant environmental and predictive information for different areas of the OCS."[1049]

To justify this position, Interior claims that its past decision to prepare an EIS accompanying the program "was discretionary" because two D.C. Circuit cases have stated that the agency's obligation to fully comply with NEPA does not mature until the lease sale stage.[1050]

But Interior is wrong that those decisions apply here, and this assertion is not a rational basis to depart from the agency's longstanding interpretation and practice. First, NEPA has been subsequently amended, and these amendments undermine the basis for those prior decisions. Second, even if those cases do apply, they are wrong to the extent that they claim the National Program does not constitute an irretrievable and irreversible commitment of resources.

A. Recent NEPA Amendments Demonstrate the National Program Constitutes a Major Federal Action and Therefore is Subject to NEPA.

NEPA applies to all major federal actions.[1051] In 2023, Congress amended NEPA to further clarify the definition of a "major federal action" to include "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility." [1052] The National Program is subject to both Interior's substantial control and discretion and the Department is primarily responsible for its development, adoption, and implementation (i.e., not any other government or private actor's responsibility). Nothing in the Draft Proposed Program explains how it no longer falls under this definition. The 2023 Amendments also list seven specific exclusions to this definition, but none of them apply here.[1053]

The 2023 Amendments further clarify that agencies must prepare an "environmental document" for proposed agency actions unless they fall under one of four categories:

> (1) the proposed action is not a final agency action;
>
> (2) the action is excluded pursuant to a NEPA categorical exclusion;
>
> (3) "the preparation of such document would clearly fundamentally conflict with the requirements of another provision of law.";
>
> (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."[1054]

[1049] Draft Proposed Program at 1-7.

[1050] Draft Proposed Program at 1-7.

[1051] 42 U.S.C. § 4332(2)(C).

[1052] Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat., https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf. Codified at 42 U.S.C. § 4336e(10)(A).

[1053] *See* 42 U.S.C. § 4336e(10)(B), excluding non-Federal actions with no or minimal funding or involvement, actions involving funding only in the form of revenue sharing, loans and financial assistance, judicial or administrative civil or criminal enforcements, extraterritorial activities or decisions, and non-discretionary actions.

[1054] 42 U.S.C. § 4336(a).

None of these exemptions apply to the National Program. The Program is indisputably a final agency action. It is not subject to a categorical exclusion.[1055] Nor does Interior identify (let alone explain) any provision of law whose requirements fundamentally conflict with the preparation of an environmental document for the National Program. To the contrary, OCSLA explicitly requires Interior "to take environmental factors into consideration" in developing the program[1056] – and the agency has prepared EISs for every Program it has previously developed. Finally, OCSLA provides Interior with wide discretion to develop the Program – and specifically requires it to rationally exercise that discretion in evaluating and balancing a broad list of factors to arrive at a leasing schedule that protects the environment while meeting any national energy needs.[1057] Because the National Program does not fall into any of these statutory exceptions, the agency must comply with NEPA.

In short, the 2023 amendments to NEPA clarify what constitutes a major federal action both by updating the definition and by listing exceptions to when a NEPA document is required. The National Program falls squarely within the definitions and falls into none of the exceptions; NEPA is therefore required for the National Program notwithstanding previous case law interpreting a now-outdated version of the statute.

B. The National Program Involves an Irreversible and Irrevocable Commitment of Resources.

To the extent those older cases do apply here, their assertions that the National Program does not constitute an irretrievable and irrevocable commitment of resources is wrong. The Program determines when, where, and how much leasing occurs in federal ocean waters. Leasing leads both to seismic surveys and additional oil and gas exploration and production, which have significant environmental impacts.[1058] While not every scheduled sale is held, the vast majority are.[1059] And any region not included in the program sees no federal leasing or oil and gas

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[1055] *See* 516 Dep't Manual: DOI Handbook of NEPA Procedures, Appx. 2, 15.4 (listing CEs).

[1056] 43 U.S.C. § 1344(a).

[1057] *See generally* 43 U.S.C. § 1344.

[1058] Even before the agency holds lease sales, for example, geophysical survey companies conduct pre-lease surveys to collect and sell information about the availability of hydrocarbon resources to oil and gas companies. See e.g. BOEM, *2022 Geological & Geophysical Data Inventory*, CS Report BOEM 2023-032 at 2, https://www.boem.gov/sites/default/files/documents/oil-gas-energy/resource-evaluation/RED%20Bluebook_2022.pdf. These surveys are presumably at least partially incentivized by the fact that a particular sale is scheduled in the Program.

[1059] Amy M. Edwards & Marc Humphries, Congr. Research Service No. R44504, *Five-Year Offshore Oil and Gas Leasing Program: History and Background* at 10 (Jan. 9, 2024), https://www.congress.gov/crs-product/R44504, demonstrating that since the 1992-1997 program, Interior has held at least two-thirds of proposed lease sales. This is even more true for the Gulf region, where over the past six programs, Interior has held 62 out of 65 proposed lease sales. *See* BOEM, *Lease Sales*, https://www.boem.gov/oil-gas-energy/lease-sales (last visited June 4, 2025). Moreover, the Department of Interior has published a Solicitor's Opinion stating that the best interpretation of OCSLA is "the Secretary may not cancel so many sales as to diminish the Program's schedule of lease sales to fewer than two lease sales." Memorandum from the U.S. Department of Interior Office of the Solicitor on Secretarial Discretion in Promulgating a National Outer Continental Shelf Oil and Gas Leasing Program to the Secretary of the Interior (Jan. 13, 2021), https://www.doi.gov/sites/default/files/m-37062.pdf. We strongly disagree

development at all, which is also a decision with environmental consequences (both generally beneficial for the excluded areas and generally detrimental for the areas included), deserving of the careful environmental analysis that NEPA requires.

While decisions to lease in a region may not be completely final because some of the individual lease sales may be canceled, the decision not to lease in a particular region is final at the program stage of OCSLA.[1060] Once a region is excluded from the Program, no leasing can occur there. In other words, the consideration and balancing that Interior must do in the program irreversibly commits Interior to likely leasing in certain areas and definitively not in others. The purpose of asking whether a particular federal action involves an irreversible commitment of resources is to ensure that an EIS is prepared after the point in an action's development that there is enough concrete information to draft a useful document but prior to the point where "activities have reached a stage of investment or commitment to implementation **likely to restrict later alternatives.**"[1061] The National Program indisputably restricts later alternatives by setting the maximum number and location of offshore oil and gas lease sales. An EIS evaluating the consequences of those decisions is therefore required.

XII. CONCLUSION.

For all the foregoing reasons, BOEM should refrain from offering new leases in the next national program; and should exclude environmentally sensitive areas from consideration in future programs, including most regions of Alaska, the Eastern Gulf, and the Pacific. There is no need for new leasing to meet the nation's energy needs and unchecked development creates unacceptable risks for ocean and coastal ecosystems and onshore communities.

Sincerely,

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with that interpretation of OCSLA, but if it becomes the agency's binding interpretation, then the Program irretrievably commits the agency to both a maximum and a minimum number of sales.

[1060] See 43 U.S.C.A. § 1344(d)(3), stating "no lease shall be issued unless it is for an area included in the approved leasing program."

[1061] *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1090 (D.C. Cir. 1973).

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