Via Electronic and First Class Mail

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RE: Supplemental Environmental Impact Statement Required for Lease Sale 257

Dear Secretary Haaland, Director Lefton, Mr. Anderson, and Mr. Annatoyn:

The Center for Biological Diversity, Earthjustice, Healthy Gulf, and the Sierra Club hereby submit the following comments to the Bureau of Ocean Energy Management ("BOEM") on Oil and Gas Lease Sale 257 for the Gulf of Mexico.

As you are well aware, President Biden has acknowledged that we are facing a "profound climate crisis" and have only a little time to pursue bold actions to avoid the most catastrophic impacts of climate change.[1] As such, his administration has prioritized tackling the climate crisis head on through the actions and decision of all federal agencies.[2] Holding Lease Sale 257 in the Gulf of Mexico—under which BOEM would offer up *79.7 million acres* of federal waters to oil companies which are expected to produce up to 1.12 billion barrels of oil and 4.2 trillion cubic feet of natural gas over the next 50 years on those new leases[3]—would be fundamentally inconsistent with these goals. It would also undermine President Biden's goals to protect public health and advance environmental justice[4] by forcing frontline communities that have long

[1] Exec. Order 14008, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7619 (Feb. 1, 2021).

[2] *See id.*; Exec. Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).

[3] 86 Fed. Reg. 6365 (Jan. 21, 2021).

[4] Exec. Order 13990, 86 Fed. Reg. at 7037.

served as the sacrifice zone for the fossil fuel industry to suffer yet more harmful impacts. BOEM should therefore not move forward with this lease sale.

As explained in the attached amicus brief we and our partners filed in the Louisiana lease pause case, the Outer Continental Shelf Lands Act ("OCSLA") provides BOEM broad authority to forego, delay, or limit offerings in Lease Sale 257, even if the leasing pause in Executive Order 14008 is enjoined.[5] Indeed, the preliminary injunction in that case does not compel BOEM to hold Lease Sale 257. It only enjoins Interior from implementing the "pause" of leasing "as set forth in Section 208, Executive Order 14008."[6] BOEM should use its inherent authority under OCSLA to not hold the sale.

At the very least, before holding the lease sale, BOEM must conduct a new, comprehensive review of the environmental impacts of the lease sale under the National Environmental Policy ("NEPA"). The agency cannot continue to rely on the existing environmental impact statements ("EIS") completed in 2016 and 2017.[7] A recent decision from the U.S. Court of Appeals for the Ninth Circuit demonstrates that BOEM's prior analyses on the impacts of Gulf leasing failed to take the legally required hard look at the climate impacts from the lease sale. Moreover, a slew of new information has triggered BOEM's obligation to prepare a supplemental EIS.

BOEM has repeatedly stated in its prior EISs that it would supplement those analyses "as necessary for decisions on future Gulf of Mexico proposed regionwide lease sales;"[8] and that "[s]upplemental NEPA reviews, including opportunities for public involvement, are currently planned to be conducted annually for the remaining proposed lease sales."[9] And in 2018, BOEM

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[5] *State of Louisiana, et al. v. Biden*, *et al*. Case No. 2:21-cv-00778-TAD-KK (W.D. La), Br. of Amici Curiae Healthy Gulf, et al. at 4–11 (ECF No. 123).

[6] *See Louisiana v. Biden*, Case No. 2:21-cv-00778-TAD-KK, 2021 U.S. Dist. LEXIS 112316, at *64 (W.D. La June 15, 2021)

[7] BOEM, *Gulf of Mexico OCS Lease Sale Final Supplemental Environmental Impact Statement 2018* (Dec. 2017); BOEM, *Gulf of Mexico OCS Oil and Gas Lease Sales: 2017-2022; Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, 256, 257, 259, and 261-Final Multisale Environmental Impact Statement* (Mar. 2017); BOEM, *Outer Continental Shelf Oil and Gas Leasing Program: 2017-2022; Final Programmatic Environmental Impact Statement* (Nov. 2016); *see also, e.g.*, BOEM, *Record of Decision for Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 256* (November 2020) (relying on those EISs).

[8] Supplemental EIS at iii, v, vii, 1-4.

[9] *Id.* at iii; *see also* Multisale EIS at 1-11 & Fig. 1-6 ("BOEM plans to supplement this Multisale EIS on a regular basis to provide for more consistency and for planning purposes. Unless circumstances or information warrants an earlier Supplemental EIS, BOEM expects to issue a Supplemental EIS once a calendar year. . . . BOEM plans to prepare supplemental EISs on a calendar year basis as illustrate in Figure 1-6."); Supplemental EIS at iii. ("A decision on the remaining proposed GOM lease sales in the 2017-2022 Five-Year Program will be made based on additional National Environmental Policy Act (NEPA) reviews that may update this NEPA analysis, as necessary"); *id.* at ix, 1-6 ("[d]ecisions on the remaining proposed GOM lease sales in the 2017-2022 Five-Year Program will be made based on additional NEPA reviews that may update this Supplemental EIS as necessary"); *id.* at 2-4 ("The planned supplemental approach for regionwide lease sales is intended to focus the NEPA/EIS process on updating subsequent lease sale NEPA reviews as necessary to address any relevant significant new information and/or issues since publication of the previous lease sale NEPA documents from which it tiers"); *id.* at 4-3 ("the analyses may be applied and supplemented as necessary to inform decisions for each of the remaining proposed lease sales scheduled in the 2017-2022 Five-Year Program."); *id.* at 5-8 (same).

issued a "Notice of Intent to Prepare a Supplemental Environmental Impact Statement" which the agency "expected to . . . use[ ] to inform the decisions for each of the two proposed lease sales scheduled in 2020 and the subsequent lease sales through 2022."[10]

Yet BOEM never issued such supplemental analysis or even put a draft supplemental EIS out for public notice and comment. The agency's failure to do so before holding Lease Sale 257 would represent a gross dereliction of its duties and further threaten our climate, our ocean, and frontline communities with the numerous harms inherent in offshore oil and gas drilling. If action on the lease sale is imminent, we ask that the Interior Department take immediate action to supplement NEPA analysis. In any event, we ask that you respond to this request **no later than August 19, 2021.**

BOEM Has an Ongoing Obligation to Comply with NEPA

NEPA is America's "basic national charter for protection of the environment."[11] NEPA requires federal agencies to take a "hard look" at the environmental consequences of their actions before taking action.[12] In this way, NEPA ensures that federal agencies "will have available, and will carefully consider, detailed information concerning significant environmental impacts" and that such information "will be made available to the larger [public] audience that may play a role in both the decisionmaking process and the implementation of the decision."[13]

To this end, NEPA requires federal agencies to prepare a detailed environmental impact statement ("EIS") for any "major federal action significantly affecting the quality of the human environment."[14] Under NEPA, a "major federal action" is "an activity or decision subject to Federal control and responsibility," including "new and continuing activities" such as "projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies."[15] Holding Lease Sale 257 is clearly a major federal action subject to NEPA. BOEM must therefore ensure that it has taken a hard look at the myriad environmental impacts from the lease sale before holding it.

The agency's NEPA obligations do not end with the preparation of an initial EIS. In particular, NEPA requires agencies to prepare a supplemental analysis if a major Federal action remains to occur,[16] and "(i) the agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."[17] An agency may

[10] *See* 83 Fed. Reg. 66,302 (Dec. 26, 2018).

[11] *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020) (citation omitted).

[12] *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n. 21 (1976); 40 C.F.R. § 1500.1(a).

[13] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

[14] 42 U.S.C. § 4332(2)(C).

[15] 40 C.F.R. §§ 1508.1(q).

[16] *Id*. § 1502.9(d).

[17] *Id*. § 1502.9(c)(1).

also prepare "supplements when [it] determines that the purposes of [NEPA] will be furthered by doing so."[18] An agency must prepare, circulate, and file a supplemental EIS "in the same fashion (exclusive of scoping) as a draft and final statement."[19] Since BOEM completed its most recent EIS on Gulf oil and gas leasing, a slew of significant new information relevant to the environmental consequences of a Gulf lease sale has emerged, triggering BOEM's obligation to conduct a supplemental EIS.

BOEM's Prior NEPA Analyses Failed to Properly Consider the Climate Impacts of Gulf Lease Sales

None of the prior NEPA analyses BOEM has conducted on oil and gas leasing in the Gulf of Mexico have properly examined the climate impacts of those lease sales. In particular, BOEM has not properly estimated the global greenhouse gas ("GHG") emissions potentially associated with Lease Sale 257. This is a serious error. As the Ninth Circuit recently recognized in rejecting BOEM's similarly flawed approach in approving an offshore oil development project in Alaska's Arctic, "[i]f [BOEM] concludes that such emissions will be significant, it may well approve another alternative included in the EIS or deny the lease altogether."[20]

The NEPA analyses conducted to date that purport to analyze the impacts of Gulf lease sales rely on the lifecycle GHG analysis conducted as part of the 2017–2022 Outer Continental Shelf ("OCS") Oil and Gas Leasing Program.[21] This analysis concludes that adding 3.7 billion barrels of oil to the world[22] would make no difference for GHG emissions and in fact would *reduce* GHG emissions compared to the No Action alternative of no new leasing: "America's GHG emissions will be little affected by leasing decisions under BOEM's 2017–2022 OCS Oil and Gas Leasing Program . . . and could, in fact, increase slightly in the absence of new OCS leasing."[23] BOEM based this irrational conclusion on its assumption that "foreign sources of oil will substitute for reduced OCS supply, and the production and transport of that foreign oil would emit more GHGs."[24]

[18] *Id.* § 1502.9(c)(2).

[19] *Id.* § 1502.9(c)(4).

[20] *See Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 740 (9th Cir. 2020).

[21] Gulf of Mexico Multisale EIS at 4-50 (stating the EIS tiers to the climate analysis conducted in the EIS for the Five-Year Program, including its analysis of lifecycle GHG emissions).

[22] E. Wolvovsky and W. and Anderson, *OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon, OCS Report BOEM 2016-065* at 17, Tbl. 6-2 (2016) (Wolvovsky & Anderson). Table 6-2 estimates production from the Final Proposed Program with a range of 2.2 billion barrels for the low price scenario, 3.7 billion barrels for the mid-price scenario and 5.9 billion barrels for the high price scenario.

[23] *Id.* at Foreword; *see also* Gulf of Mexico Multisale EIS at 4-26 (stating "that the likely overseas reduction in consumption under the No Action Alternative is not calculated" in BOEM's lifecycle GHG analysis and noting that the GHGs "from the activities associated with the proposed action would be similar to but slightly lower than the No Action alternative in both low- and high price scenarios").

[24] Wolvovsky & Anderson at Foreword.

BOEM's "counterintuitive" conclusion that the No Action alternative will lead to higher, rather than lower, GHGs compared to the leasing scenario contradicts its own global market model and is otherwise unfounded.[25] BOEM reached this conclusion by failing to conduct a full accounting of the GHG emissions that would result from not holding lease sales. BOEM acknowledged that its GHG analysis is limited in "not fully capturing global market and GHG implications."[26] In a section on "critical assumptions" that affect its GHG estimates, BOEM stated that foreign consumption of oil and gas will be significantly reduced under the No Action alternative of the 2017–2022 OCS leasing program, but that the GHG savings from this reduction "is not taken into account" in its GHG accounting.[27]

BOEM attempted to justify its decision not to include the significant GHG savings from reduction in foreign oil consumption by stating that "[o]il consumption in each country is different, and BOEM does not have information related to which countries would consume less oil."[28]

The Ninth Circuit recently rejected this cursory dismissal as "insufficient to satisfy NEPA's requirements."[29] This is because available information "belies BOEM's contention that it could not have summarized or estimated foreign emissions with accurate or credible scientific evidence."[30] For example, energy experts at the Stockholm Environment Institute ("SEI") "us[ed] standard energy contents (from the US Department of Energy) and carbon contents (from the US Environmental Protection Agency), and discount[ed] the oil used in products and not combusted (International Energy Agency)," to estimate that the reduction in global oil consumption would result in a savings of 2.3 billion metric tons of CO_2 in high-price scenarios for oil, 1.6 billion in mid-price scenarios, and 0.4 billion in the low-price scenarios.[31]

As the SEI analysis points out, the decrease in global GHG emissions under the No Action Alternative of the 2017–2022 OCS leasing program is enormous:

> These *decreases* in rest-of-world emissions dwarf the official estimated *increases* in US emissions that BOEM's official Programmatic Environmental Impact Statement reports for its No Action Alternative (relative to the Proposed Program), which instead amount to just 0.13 billion, 0.12 billion and 0.013 billion tonnes CO_2 for the high, mid, and

[25] *See Ctr. for Biological Diversity*, 982 at 736.

[26] Wolvovsky & Anderson at Foreword.

[27] *Id.*

[28] *Id.* at 23.

[29] *Ctr. for Biological Diversity*, 982 F.3d at 738.

[30] *Id.*

[31] P. Erickson, *Final Obama administration analysis shows expanding oil supply increases CO2*, Stockholm Environment Institute (Jan. 30, 2017) (Erickson 2017); *see also* See P. Erickson, *U.S. Again Overlooks Top CO2 Impact of Expanding Oil Supply . . . But That Might Change*, Stockholm Environment Institute (Apr. 30, 2016).

low-price scenarios, respectively. Those calculations *exclude* the far larger emissions attributable to the global market effect.[32]

In short, if BOEM had accounted for the effects of reducing U.S. oil production on worldwide oil consumption, the global GHG impact of the No Action alternative over the life of the 2017–2022 OCS leasing program would be a decrease of up to 2.3 billion tons of CO_2—greater than a year's worth of emissions from the entire U.S. transportation sector (i.e., 1.7 billion tons CO_2).[33]

BOEM's Gulf of Mexico EISs also base their conclusion on the unfounded assumption of perfect substitution—that emission reductions gained by not allowing oil and gas production will be offset by oil and gas production elsewhere.[34]

However, numerous analyses show that perfect substitution for oil and gas production simply does not occur in the real world and is not a reasonable assumption. Oil and gas production operates in a global market where changes in U.S. production translate into shifts in global prices, global consumption, and associated greenhouse gas pollution. All other things being equal, analyses show that increasing U.S. oil and gas production lowers oil prices and increases global consumption, while leaving U.S. oil and gas undeveloped increases oil prices and decreases global consumption. In short, every barrel of oil and unit of gas that is left undeveloped results in a reduction in global oil and gas consumption with associated decreases in greenhouse gas pollution.

A comprehensive analysis of the GHG consequences of ending new oil leasing on U.S. federal lands and waters, and avoiding renewal of existing leases for resources that are not yet producing, found that ceasing new oil leasing would result in a large GHG and climate benefit.[35] Like BOEM's analysis, this study accounted for the effects of substitution by other fuels for the oil that would be forgone by ending new leasing. The study estimated that for each unit (QBtu) of federal oil production cut, other oil supplies would substitute for about half a unit (0.56 QBtu) and net oil consumption would drop by nearly half a unit (0.44 QBtu).[36] In short, every barrel of federal oil left undeveloped would result in nearly half a barrel reduction in net oil consumption, with associated reductions in GHG emissions. The analysis estimated that ending new federal oil leasing would reduce 2030 global CO_2 emissions from oil consumption by 54 million metric tons of CO_2, with an increase in CO_2 emissions from other fuels of 23 million metric tons of CO_2, for a net emissions benefit of 31 million metric tons of CO_2.[37] The analysis recommended that

[32] Erickson 2017.

[33] *Id.*

[34] *See, e.g.*, Gulf of Mexico Multisale EIS at 4-26 (concluding that the GHGs associated with the lease sale would be similar but slightly lower than not holding a lease sale "due to the economic substitution effects from onshore and overseas sources expected under the No Action Alternative.").

[35] P. Erickson and M. Lazarus, *How would phasing out US federal leases for fossil fuel extraction affect CO2 emissions and 2°C goals?*, Stockholm Environment Institute, Working Paper No. 2016-2 (2016).

[36] *Id*. at 24.

[37] *Id.* at 25.

"policy-makers should give greater attention to measures that slow the expansion of fossil fuel supplies."[38] Other studies have reached similar conclusions.[39]

New Information Triggers BOEM's Duty to Issue a Supplemental Environmental Impact Statement Prior to Holding Lease Sale 257

A variety of new information demonstrates new oil and gas leasing will exacerbate the climate crisis to an extent not previously considered in BOEM's existing EISs. New information also demonstrates companies are increasingly drilling in deeper water, undermining one of the key assumptions in the prior EISs that exploration and production would be concentrated in shallow water. New information also reveals the scale of the threat that Gulf drilling poses to endangered species, including one of the most imperiled marine mammals on Earth; the increasing dangers from offshore well stimulation practices; that pipelines are not adequately inspected or decommissioned; a substantial interest in leasing the Gulf OCS for wind energy projects; and that frontline communities are being increasingly harmed by the fossil fuel industry. Thus, BOEM must issue a supplemental EIS prior to holding Lease Sale 257.

New Information Demonstrates the Urgent Need to End Fossil Fuel Leasing to Avert the Worst Impacts of Climate Change and Meet International Goals

Since BOEM completed its supplemental EIS on Gulf leasing in 2017, new information reveals that avoiding the worst impacts of climate change requires ending new leasing and abandoning large fossil fuel expansion or development altogether. For example, in 2018, the Intergovernmental Panel on Climate Change ("IPCC") issued a Special Report on Global Warming of 1.5°C that quantified the devastating harms that would occur at 2°C warming, highlighting the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth.[40] The report provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoiding the most devastating climate change harms. The IPCC report concludes that pathways to limit warming to 1.5°C with little or no overshoot require "a rapid phase out of CO_2 emissions and deep emissions reductions in other GHGs and climate forcers."[41] In pathways consistent with limiting warming to 1.5°C, global net

[38] *Id.* at 1.

[39] P. Erickson and M. Lazarus, *Impact of the Keystone XL Pipeline on Global Oil Markets and Greenhouse Gas Emissions*, 4 Nature Climate Change 778 (2016); *see also* P. Erickson, *Rebuttal: Oil Subsidies—More Material for Climate Change Than You Might Think* (Nov. 2, 2017); United Nations Environment Programme, Emissions Gap Report 2019, UNEP, Nairobi (2019), at 25, 26, https://wedocs.unep.org/bitstream/handle/20.500.11822/30797/EGR2019.pdf?sequence=1&isAllowed=y; United Nations Environment Programme, et al., *The Production Gap: The discrepancy between countries' planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (2019), at 4, 14, http://productiongap.org/; Jason Bordoff and Trevor Houser, *Navigating the U.S. Oil Export Debate*, Columbia SIPA Center on Global Energy Policy, Jan. 2015.

[40] Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C, An IPCC special report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (Oct. 6, 2018), http://www.ipcc.ch/report/sr15/.

[41] *Id.* at 2-28.

anthropogenic CO_2 emissions must decline by about 45 percent from 2010 levels by 2030, reaching net zero around 2050; for a two-thirds chance for limiting warming to 1.5°C, CO_2 emissions must reach net zero in 25 years.[42]

And a 2018 report from the U.S. Geological Survey estimated that carbon emissions released from extraction and end-use combustion of fossil fuels produced on federal lands alone—not including non-federal lands—accounted for approximately one quarter of total U.S. carbon emissions during 2005 to 2014.[43] This research further establishes that the United States must halt new fossil fuel projects and close existing fields and mines before their reserves are fully extracted to achieve the Paris climate targets and avoid the worst damages from climate change.

A 2019 study also highlighted the importance of immediately halting all new fossil fuel infrastructure projects to preserve a livable planet.[44] The study found that every year of delay in phasing out fossil fuel infrastructure makes carbon "lock-in" more difficult to escape and the possibility of keeping global temperature rise below 1.5°C less likely. The study concluded that although difficult, "1.5 °C remains possible and is attainable with ambitious and immediate emission reduction across all sectors."[45] Another 2019 analysis also underscored that the United States must halt new fossil fuel extraction and rapidly phase out existing production to avoid jeopardizing our ability to meet the Paris climate targets and avoid the worst dangers of climate change.[46]

The United Nations' November 2019 "Emissions Gap" report reiterated the need for urgent action to cut fossil fuel emissions. According to the report, if the world is to limit global warming to 1.5°C, countries must cut emissions by at least 7.6 percent per year over the next decade, for a total emissions reduction of 55 percent between 2020 and 2030.[47] The United Nations' November 2019 "Production Gap" report shows that countries like the United States are on course to extract vastly more fossil fuels than what is allowed to meet a 1.5°C or even 2°C target. Countries' current fossil fuel production plans would lead to 120 percent more fossil fuel emissions by 2030 than would be consistent with a 1.5°C pathway, and 210 percent more by 2040.[48] The United States is a primary contributor to this dangerous over-production of fossil fuels as the world's largest oil and gas producer and second largest coal producer, with current

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[42] *Id.* at SPM-15.

[43] Merrill, Matthew D. et al., Federal lands greenhouse gas emissions and sequestration in the United States—Estimates for 2005–14: U.S. Geological Survey Scientific Investigations Report 2018–5131 (2018) at 8.

[44] Smith, Christopher J. et al., *Current fossil fuel infrastructure does not yet commit us to 1.5°C warming*. Nature Communications (2019), doi.org/10.1038/s41467-018-07999-w; *see also* Green, Fergus and Richard Denniss, Cutting with both arms of the scissors: the economic and political case for restrictive supply-side climate policies, 150 Climatic Change 73 (2018) (describing carbon lock-in).

[45] Smith 2019.

[46] Oil Change International, *Drilling Toward Disaster: Why U.S. Oil and Gas Expansion Is Incompatible with Climate Limits* (Jan. 2019), http://priceofoil.org/drilling-towards-disaster.

[47] Emissions Gap Report 2019 at 25, 26.

[48] Production Gap Report 2019 at 4, 14.

policies projected to lead to a 30 percent increase in oil and gas production by 2030.[49]

And the International Energy Agency ("IEA") recently issued a report concluding that "hav[ing] a fighting chance of . . . limiting the rise in global temperatures to 1.5°C. . . requires nothing short of a total transformation of the energy systems that underpin our economies."[50] The study articulates a pathway for the global energy sector to reach net zero emissions by 2050. Even with reliance on unproven future emissions reduction technologies, it cites the incompatibility of new fossil fuel supply projects with the goal of limiting warming to 1.5 Celsius. Specifically, it notes that:

> Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required.[51]

In short, the IEA's report shows—like the earlier analyses and reports referenced above—that there is simply no room left in the global carbon budget for new federal fossil fuel leasing.

BOEM must conduct a supplemental EIS to reevaluate the purpose and need for Lease Sale 257 and ensure it takes a hard look at the true climate impacts from yet another oil and gas lease sale in the Gulf of Mexico.

Recent studies have also shown that existing operations in the Gulf of Mexico emit substantial amounts of methane, more than double EPA's previous estimates—amounts twice those from onshore operations in the Bakken comparable to those from the San Juan basin—far more methane than previously thought.[52] Methane is a powerful contributor to climate warming. Studies also show that many abandoned wells continue to leak oil as well as harmful gases, including methane, benzene, nitrogen oxides, and carbon dioxide.[53] These recent studies highlight the need to reexamine the significant greenhouse gas emissions from offshore facilities.

New Information Demonstrates Companies Are Increasingly Drilling in Deeper Water

One of the key assumptions underlying BOEM's existing EISs was that oil companies will most frequently drill in shallow waters. BOEM assumed, for example, that "[w]hen analyzing both the low and high production scenarios for all the alternatives, most exploration drilling activity is

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[49] *Id.* at 31.

[50] International Energy Agency, *Net Zero by 2050: A roadmap for the global energy system* (2021), available at: https://www.iea.org/reports/net-zero-by-2050.

[51] *Id.* at 21.

[52] Alan M. 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, 5118 (Apr. 13, 2020), https://pubs.acs.org/doi/10.1021/acs.est.0c00179.

[53] Torbjørn Vrålstad et al., *Plug & abandonment of offshore wells: Ensuring long-term integrity and cost-efficiency*, 173 J. PET. SCI. & ENG'G 478 (Feb. 2019), sciencedirect.com/science/article/pii/S0920410518309173; Hannah Seo, *Unplugged: Abandoned oil and gas wells leave the ocean floor spewing methane*, ENV'T HEALTH NEWS (Dec. 8, 2020), https://www.ehn.org/oil-and-gas-wells-methane-oceans-2649126354 html.

expected to occur on the continental shelf (0- to 200-m [0- to 656 ft] water depth)."[54] While BOEM also assumed that development and production would be evenly spread across water depth, this was only under the low production scenario, and they predicted that "[r]elatively more exploration and development drilling and structure installation would occur on the shelf (in depths <200m [660 ft.]) than in deep water, regardless of the production case scenario."[55]

New information demonstrates this is not the case, rendering BOEM's entire analysis outdated and insufficient. For example, new information reveals that the Bureau of Safety and Environmental Enforcement ("BSEE") has approved significantly more permits for drilling in deeper water over the last few years.

So far in 2021, for example, BSEE has approved 16 new well permits and 17 revised new well permits in shallow water (less than 500 ft deep) compared to 21 new well permits and *219* revised new well permits in deep water (more than 500 ft deep); in 2020 BSEE approved 10 new well permits in shallow water and 25 revised new well permits compared to 54 new well permits and *410* revised new well permits; and in 2019 it approved 25 new well permits in shallow water and 77 revised new well permits compared to *416* new well permits and 35 revised new well permits.[56] This is true even as production has generally increased. Indeed, data from BSEE demonstrate that through 2019, oil production in deep water has increased on average of 12.23 percent per year and gas production has increased an average of 10.97 percent.[57]

Drilling in deeper water increases the numerous inherent harms in offshore oil and gas drilling. Studies have shown, for example, that the probability of a serious accident, fatality, injury, explosion, or fire being reported increases by 8.5 percent with each additional 100 feet of depth at which an offshore platform operates.[58] This is true regardless of the platforms age or the quantity of oil or gas produced—the increased risk comes from working under greater pressure, both from the weight of water and the greater pressure within the oil and gas pockets.[59] And the further offshore oil and gas activities occur, the more difficult oil spill or other responses are, as the Deepwater Horizon disaster highlights all too well.

Increasing activity in deeper water comes with other harms as well. For instance, it also means

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[54] Supplemental EIS at 3-15; *see also id.* at Fig. 3-16.

[55] *See id.* at 3-19, Figs. 3-4, 3-5.

[56] BSEE, Status of Gulf of Mexico Well Permits, https://www.bsee.gov/stats-facts/offshore-information/status-of-gulf-of-mexico-well-permits (updated July 1, 2021).

[57] BSEE, Deepwater Production Summary by Year https://www.data.bsee.gov/Production/ProductionData/Summary.aspx (accessed July 23, 2021); *see also* S. Murawski, et al., *Deepwater Oil and Gas Production in the Gulf of Mexico and Related Global Trends* in Scenarios and Responses to Future Deep Oil Spills: Fighting the Next War, Springer International Publishing, 542 p. (2020) (describing increase in deepwater production, and noting that in 2017, 52 percent of US oil production was from ultra-deep wells).

[58] Muehlenbachs, L., et al., *The impact of water depth on safety and environmental performance in offshore oil and gas production*¸ 55 Energy Policy 699–705 (2013).

[59] *See id.*

that oil- and gas-related vessel traffic will increase as vessels will need to travel farther, increasing the risk of vessel strikes and noise pollution.[60] BOEM must adequately consider, analyze, and disclose these added impacts in a supplemental EIS.

New Information Demonstrates Significant Impacts on Vulnerable Species to an Extent Not Previously Considered

Since BOEM completed its supplemental EIS on Gulf leasing in 2017, new information reveals that Gulf leasing will have an even more harmful effect on certain imperiled marine life than previously considered: the Gulf of Mexico Bryde's whale; giant manta ray; oceanic whitetip shark; and the eastern black rail.

The National Marine Fisheries Service ("NMFS") listed the Gulf of Mexico Bryde's whale as endangered under the Endangered Species Act in 2019.[61] With only about 44 individuals remaining, it is one of the most endangered whales on Earth.[62]

Careful examination of the impacts of the lease sale on this animal is especially important given the whale's highly imperiled status. One recent study, for example, concluded that given the heavily industrialized nature of Gulf waters and the already restricted habitat for Gulf of Mexico Bryde's whales, it is essential to accurately identify and remove anthropogenic threats through protective measures (*e.g.*, marine protected area establishment); and that to effect recovery, such protections must extend beyond currently occupied, remnant habitat.[63] The study also found that the whale's behavior—including their dive behaviors and tendency to spend a considerable amount of time at night within the upper 15 meters of the water column, which is within the draft depths of most commercial vessels—significantly raises the risk of vessel strikes.[64]

Further, NMFS recently determined that existing and planned activities related to the exploration and development of oil and gas on the Gulf of Mexico outer continental shelf will likely jeopardize the continued existence of Gulf of Mexico Bryde's whales. In its analysis, NMFS found that the species is threatened by oil spills, noise pollution, and vessel strikes (among other stressors) which can cause mortality, chronic stress, behavioral disruption, significant masking, and hearing loss, "all of which are expected to reduce the fitness of individuals."[65] NMFS concluded that given the "precarious status [of the species], any effects that are expected to

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[60] *See, e.g.*, Kaplan and Solomon, *A coming boom in commercial shipping? The potential for rapid growth of noise from commercial ships by 2030*, 73 Marine Policy 119-121 (2016); Duarte, C.M., et al., *The soundscape of the Anthropocene ocean*, Science, vol. 371, art. eaba4658 (2021); Putland, R.L., et al., *Vessel noise cuts down communication space for vocalizing fish and marine mammals*, 24 Global Change Biology 1708–1721 (2018).

[61] 84 Fed. Reg. 15,446 (Apr. 15, 2019).

[62] National Marine Fisheries Service, *Biological Opinion on the Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico*, FPR-2017-9234, at 554 (Mar. 13, 2020) [hereinafter "Gulf Oil and Gas BiOp"].

[63] Soldevilla, Melissa S. et al., *Spatial distribution and dive behavior of Gulf of Mexico Bryde's whales: potential risk of vessel strikes and fisheries interactions*, 32 Endangered Species Research 533 (2017).

[64] *Id.*

[65] *Id.* at 553.

reduce the fitness of individuals or result in mortality are of great concern."[66] A Gulf lease sale will increase the risk of oil spills, increase vessel traffic, and increase noise pollution, thereby exacerbating the stressors that are already threatening the whale with extinction.

That NMFS has completed Section 7 consultation under the Endangered Species Act does not absolve BOEM from taking a hard look at the impacts of the lease sale on the species under NEPA for two primary reasons. First, the ESA and NEPA are different statutes with different standards and public participation requirements. Courts have held, for example, that an agency cannot rely on its compliance with section 7 of the ESA to also satisfy its duties under NEPA because "the ESA's Section 7 consultation process differs from the cumulative impacts analysis required by NEPA in a number of important ways" and because "the ESA's Section 7 consultation process fails to provide for public comment in the same way that NEPA does."[67]

Second, NMFS issued the biological opinion before the new information regarding the species' delineation. In 2021, based on new genetic evidence, scientists determined that the Gulf of Mexico Bryde's whale, previously considered one of two subspecies of the Bryde's whale that exists around the world,[68] is in fact a unique baleen whale species. The newly discovered species, referred to as the Rice's whale (*Balaenoptera ricei*),[69] is the only large whale species that resides exclusively in the northern Gulf of Mexico. Moreover, new information indicates that the biologically important area for the whale is larger than what BOEM considered in its EISs.[70]

New information about other species also triggers BOEM's obligation to issue a supplemental EIS. NMFS listed the giant manta ray as threatened in 2018.[71] NMFS noted that the ray has declined significantly throughout a significant portion of its range—by 95 percent in some regions.[72] NMFS also listed the oceanic whitetip shark as threatened in 2018.[73] In listing the

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[66] *Id*.

[67] *Fund for Animals v. Hall*, 448 F. Supp. 2d 127, 136 (D.D.C. 2006) (cleaned up); *see also See Makua v. Rumsfeld*, 163 F. Supp. 2d 1202, 1218 (D. Haw. 2001) ("Clearly, there can be a significant impact on a species even if its existence is not jeopardized."); *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 650 (9th Cir. 2014) ("We cannot say that Section 7 of the ESA renders NEPA 'superfluous' when the statutes evaluate different types of environmental impacts through processes that involve varying degrees of public participation.").

[68] Bryde's Whale, NOAA Fisheries, https://www.fisheries noaa.gov/species/brydes-whale

[69] *New Species of Baleen Whale in the Gulf of Mexico*, NOAA Fisheries (Jan. 22, 2021), https://www.fisheries noaa.gov/feature-story/new-species-baleen-whale-gulf-mexico; Rosel, P.E., et al., *A new species of baleen whale (Balaenoptera) from the Gulf of Mexico, with a review of its geographic distribution*, Marine Mammal Science (2021).

[70] *See* Rosel, P.E., et al., *Status review of Bryde's whales (Balaenoptera edeni) in the Gulf of Mexico under the Endangered Species Act*, NOAA Technical Memorandum NMFS-SEFSC-692, U.S. Department of Commerce (2016) at 13–14 (noting that NMFS has expanded the biologically important area for Gulf of Mexico Bryde's whales out to the 400m depth contour "to provide some buffer around the deeper water sightings and to include all sighting locations in the northeastern GOMx"); Gulf of Mexico Multisale EIS at 4-275 (describing the whale as being cited almost exclusively along a narrow corridor near the 100m isobath); 2017-2022 OCS Programmatic EIS at 2-26 (describing the biologically important area for the whale).

[71] 83 Fed. Reg. 2916 (Jan. 22, 2018).

[72] *Id.* at 2918.

shark, NMFS explained that the species has "experienced significant historical and ongoing abundance declines in all three ocean basins (i.e., globally)" and may have declined as much as 88 percent in the Atlantic, including the Gulf of Mexico.[74] NMFS has determined that "[s]uch extensive declines in the species' global abundance and the ongoing threat of overutilization, the species' slow growth and relatively low productivity, makes them generally vulnerable to depletion and potentially slow to recover from overexploitation."[75]

NMFS considers vessel strikes and marine pollution a threat to giant manta rays; and marine pollution can also harm sharks.[76] Gulf leasing will increase these threats to the species by increasing vessel traffic and the risk of ship strikes and increasing marine pollution within the known range of these species. Indeed, scientists recently discovered the world's first known manta ray nursery in the Gulf.[77] Yet BOEM's analysis does not consider this new information.

Additionally, the Fish and Wildlife Service listed the eastern black rail as threatened in 2020.[78] While the eastern black rail once occurred across much of the eastern United States, the population has dramatically declined over the last century. The greatest threat to the species' continued existence is the loss, degradation, and fragmentation of wetland habitat. Over 100 million acres—or approximately 50 percent—of the wetlands in the conterminous United States have been lost over the past two centuries, primarily due to the conversion of wetlands to agricultural lands or urban areas.[79] Several states that comprise a substantial portion of the eastern black rail's historical range, including Louisiana, have lost 70 percent or more of their wetlands, and there are no indications that loss of habitat for the eastern black rail has ceased or that extensive areas have been restored.[80] The species is also threatened by sea level rise, and climate change will exacerbate the effects of past and ongoing habitat loss.[81] Lease Sale 257 will contribute to habitat destruction and climate change that imperils the species. Indeed, onshore activity associated with offshore drilling will occur within the known range of the species.[82]

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[73] 83 Fed. Reg. 4153 (Jan. 30, 2018).

[74] *Id.* at 4162.

[75] *See* Gulf OCS Oil and Gas BiOp at 242.

[76] *See, e.g.*, Giant Manta Ray, NMFS, https://www fisheries.noaa.gov/species/giant-manta-ray#overview; Gulf OCS Oil and Gas BiOp at 491.

[77] *See, e.g.*, University of California – San Diego, *World's first known manta ray nursery discovered*, June 19, 2018, https://phys.org/news/2018-06-world-manta-ray-nursery html; Jason Daley, *Teeming Manta Ray Nursery Discovered in the Gulf of Mexico*, Smithsonian Magazine, June 19, 2018, https://www.smithsonianmag.com/smart-news/first-manta-ray-nursery-discovered-gulf-mexico-180969410/.

[78] 85 Fed. Reg. 63,764 (Oct. 8, 2020).

[79] Species Status Assessment Report for the Eastern Black Rail (Laterallus jamaicensis jamaicensis), U.S. Fish & Wildlife Serve, (Aug. 2019), 36, https://ecos.fws.gov/ServCat/DownloadFile/186791.

[80] *Id.*

[81] *Id.* at 63, 65.

[82] *See, e.g.*, Environmental Conservation Online System: Eastern Black rail (Laterallus jamaicensis ssp. jamaicensis), U.S. Fish &Wildlife Serv., https://ecos fws.gov/ecp/species/10477.

None of BOEM's existing EISs carefully examine the impacts of Gulf leasing on this newly listed species.

Other New Information Triggers BOEM's Duty to Prepare a Supplemental EIS

Other new information also triggers BOEM's duty to prepare a supplemental EIS. This includes new information regarding the extent of, and harms from, extreme forms of oil extraction being used in the Gulf; a report regarding woefully inadequate pipeline inspection and decommissioning practices; increased interest in offshore wind; and new information regarding the disproportionate harms faced by environmental justice communities in the Gulf region.

New information demonstrates that there have been at least 3,039 instances of offshore hydraulic fracturing ("fracking") and at least 760 instances of acidizing from 2010 through 2020 in the Gulf.[83] These techniques lead to dangerous pollution. A 2021 preliminary report provided to the Environmental Protection Agency by the oil industry analyzed fracking waste in concentrations likely to occur around offshore drilling platforms. The report found that fracking effluent kills species in laboratory tests.[84] The report indicated that 520 barrels, or 21,840 gallons, of well treatment, completion, and workover fluids (collectively called "TCW" fluids) with industrial chemicals like biocides, polymers and solvents were discharged with every frack. From 2010 through 2020, the oil industry discharged an estimated 66.3 million gallons of TCW fluids chemicals into the Gulf.[85] (The actual amount discharged is likely higher as the industry is not required to report or track the amount of fracking chemicals discharged along with produced wastewater). Toxicity data indicate that fracking fluid discharges from offshore platforms in the Gulf may cause acute toxicity to marine organisms such as fish and mysids in concentrations that are likely to occur near offshore wells.[86]

New information also indicates that BOEMs' assumptions in the existing EISs regarding the safety of current operations due to pipeline inspections and the ability of companies to decommission infrastructure in the future are incorrect.[87] A 2021 report from the Government Accountability Office concluded that BSEE does not have a strong inspection program for ensuring the integrity or the roughly 8,600 miles of active offshore oil and gas pipelines in the Gulf of Mexico and does not adequately make sure companies clean and bury pipelines no longer in use.[88]

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[83] Center for Biological Diversity, *Toxic Waters: How Offshore Fracking Pollutes the Gulf of Mexico* (July 2021) at 1 (citing FOIA data provide by BSEE (2010-2019): https://www.data.bsee.gov/Well/eWellAPM/Default.aspx (2020)).

[84] AECOM, Year *1 Interim Report: Joint Industry Project Study of Well Treatment, Completion, and Workover Effluents* (2021).

[85] *Id.*

[86] *Id.*

[87] *See, e.g.*, Gulf of Mexico Multisale EIS at 4-85 (noting "improved safety, more regulatory checks, and inspections" make catastrophic oil spill less likely).

[88] Government Accountability Office, *Updated Regulations Needed to Improve Pipeline Oversight and Decommissioning*, Report No. GAO-21-293 (Mar. 2021), https://www.gao.gov/assets/720/713144.pdf.

Specifically, the report finds that BSEE does not generally conduct or require any subsea inspections of active pipelines. Instead, BSEE relies on monthly surface observations and pressure sensors to detect leaks, despite recognizing that these methods and technologies are not always reliable for detecting ruptures. The report also finds that while cleaning and pulling up unused pipelines is supposed to be the rule, BSEE has allowed the offshore oil and gas industry to leave 97 percent of pipelines (totaling 18,000 miles) on the seafloor when no longer in use. It also notes that although pipelines can contain oil or gas if not properly cleaned in decommissioning, BSEE does not ensure that relevant standards, such as cleaning and burial, are met. Indeed, the report found that BSEE does not have a robust process to address the environmental and safety risks posed by leaving decommissioned pipelines in place on the seafloor due to the cumulative effects of oversight gaps before, during, and after the decommissioning process.[89]

Moreover, BOEM recently issued a "Request for Interest in Commercial Leasing for Wind Power Development on the Gulf of Mexico Outer Continental Shelf,"[90] recently approved an offshore wind project in the Atlantic; and is otherwise actively promoting offshore wind projects.[91] BOEM's existing EISs did not adequately consider how new oil and gas leasing would preclude the ability to construct offshore wind facilities in federal Gulf waters. Such an analysis is particularly important given BOEM's obligation under OCSLA to manage the OCS "in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the [OCS] and the potential impact of oil and gas exploration on other resource values of the [OCS] and the marine, coastal, and human environments" as well as Congress' instruction that, in evaluating whether, where, and when to allow oil and gas leasing, BOEM must consider the location of the area "with respect to other uses of the sea and seabed."[92]

Finally, new information both demonstrates the importance of taking a hard look at the impacts of Gulf oil and gas activities on the wellbeing of communities most severely harmed by the nation's dependence on offshore oil and the urgent need to dismantle the systemic racism that has harmed these communities and ensure restitution. New studies have found, for example, that refineries and petrochemical plants are more likely to be in low-income and communities of color.[93] African Americans are 75 percent more likely to live near toxic pollution than the rest of Americans and are exposed to 38 percent more air pollution than white people.[94]

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[89] *Id.*

[90] 86 Fed. Reg. 31,339 (June 11, 2021).

[91] *See, e.g.*, White House, *Fact Sheet: Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs*, Mar. 29, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/

[92] 43 U.S.C. § 1344(a)(1), (a)(2)(D).

[93] Johnston, J., & Cushing, L, *Chemical Exposures, Health, and Environmental Justice in Communities Living on the Fenceline of Industry*, 7 Current Environmental Health Reports 48 (2020).

[94] Fleischman, L. et al. *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil and Gas Facilities on African American Communities* (2017).

The coastal areas affected by drilling include some of the most important cultural resources for Indigenous nations. Tribal lands in coastal Louisiana are suffering severe land loss from pipeline canals displacing people from their ancestral lands.[95] Moreover, hurricane disasters have highlighted the vulnerabilities of communities of color to the oil industry. Severe storms—exacerbated by climate change and land loss from offshore oil activities—have destroyed homes, displaced families, and triggered toxic spills.[96]

Carefully analyzing the impacts on affected communities is particularly important considering President Biden's Executive Order Advancing Racial Equity mandating that "agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs"[97] and earlier directives that requires "[t]o the greatest extent practicable and permitted by law," that the Department of the Interior "make achieving environmental justice part of its mission by identifying and addressing . . . disproportionately high and adverse human health or environmental effects of [its] activities on minority populations and low-income populations."[98]

Conclusion

Given the numerous harms from continued offshore oil and gas leasing, BOEM should not hold Lease Sale 257. At the very least, prior to holding the lease sale, BOEM must issue a supplemental EIS, including distributing a draft supplement EIS for public notice and comment. Failure to do so would violate the agency's clear NEPA obligations, leaving our climate, marine environment, imperiled wildlife, and frontline communities to suffer the consequences. We ask that you respond to this request by August 19, 2021.

Sincerely,

/s/ *Kristen Monsell*

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[95] Palinkas, Lawrence A., *Fleeing Coastal Erosion: Kivalina and Isle de Jean Charles*, Global Climate Change, Population Displacement, and Public Health 127 (2020).

[96] Flores, Aaron, et al., *Petrochemical releases disproportionately affected socially vulnerable populations along the Texas Gulf Coast after Hurricane Harvey*, Population and Environment (2020); Day, J. W., et al., *Restoration of the Mississippi Delta: Lessons from Hurricanes Katrina and Rita,* 315 Science 1679–1684 (2007).

[97] Exec. Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (Jan. 2021)

[98] Exec. Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1994)

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