



October 5, 2022

Ms. Kelly Hammerle
Chief, National OCS Oil and Gas Leasing Program
Development and Coordination Branch
Leasing Division, Office of Strategic Resources,
Bureau of Ocean Energy Management (VAM-LD)
45600 Woodland Road
Sterling, VA 20166-9216

Submitted via regulations.gov

Docket ID: BOEM-2022-0031

Subject: Comments on the 2023-2028 National Outer Continental Shelf Oil and Gas Leasing Proposed Program and Draft Programmatic Environmental Impact Statement

The American Petroleum Institute (“API”) appreciates the opportunity to provide comments on the Bureau of Ocean Energy Management’s (“BOEM”) Proposed Program and Draft Programmatic Environmental Impact Statement (“DPEIS”) for Outer Continental Shelf (“OCS”) oil and natural gas lease sales between 2023 and 2028 published in the Federal Register on July 8, 2022 (87 Fed Reg. 40,859). API members have significant interest in ensuring that there are future meaningful offshore leasing opportunities for offshore oil and natural gas so that the United States (“U.S.”) can continue to capitalize on years of successful and beneficial exploration, development, and production of domestic OCS oil and natural gas resources and meet national energy demand critical to economic growth. The decisions made regarding future leasing will have short and long-term implications for our nation’s energy and national security, prospects for job creation, and government revenue generation.

API is a national trade association representing more than 600 member companies that operate throughout the U.S. and on the OCS, and include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. API members provide most of the nation’s energy and are committed to continued compliance with federal mineral leasing statutes, implementing regulations, and lease terms. For many years, API has worked collaboratively with the Department of the Interior (“DOI”) and its agencies in support of the continued safety of industry workers and protection of the offshore environment. We respectfully submit the below comments on the Proposed Program and DPEIS on behalf of our members.

API has serious concerns with the Proposed Program, particularly the delay in its issuance and its intimations that BOEM ultimately may elect not to adopt a bona fide schedule of lease sales. Congress has repeatedly affirmed its mandate to lease the vast and valuable domestic oil and natural gas resources on the OCS and thereby promote the nation’s economic growth and national security through the Outer Continental Shelf Lands Act (“OCSLA”) of 1953 (43 U.S.C. § 1331 *et seq.*), the amendments to OCSLA in 1978 (Public Law 95-372, 92 Stat. 629), and most recently the Inflation Reduction Act (“IRA”) in August 2022 (Public Law 117-169, passed after BOEM’s issuance of this Proposed Program). OCSLA has

served the national interest for over 50 years. The statute clearly endorses a leasing program that is broad in scope and includes continued leasing in the various OCS planning areas, subject to appropriate environmental safeguards. API and its members feel strongly that a decision to not hold lease sales – or to only nominal hold lease sales – would be directly in violation of OCSLA’s congressional purposes and national policy promoting competitive offshore leasing.

Yet, contrary to the clear Congressional mandate, on July 1, 2022, for the first time in history, BOEM allowed an OCS Five-Year Program to lapse with no subsequent Five-Year Program in place. Consistent with Congressional directives and established agency practice, API urges BOEM to promptly finalize its next OCS Five-Year Program. While API strongly disagrees with BOEM’s stated reasons for deleting all future leasing areas in the previously published 2019-2024 Draft Proposed Program (“DPP”) other than the Western and Central Gulf of Mexico, a small portion of the Eastern Gulf of Mexico, and Cook Inlet in Alaska, API fully supports the schedule of 11 lease sales identified in Table 1 of the Proposed Program¹ encompassing 10 sales in the Gulf of Mexico and one in Cook Inlet of Alaska. Adoption of this schedule in the Proposed Final Plan (“PFP”) will allow the U.S. to realize of the net societal benefits that BOEM has identified in the Proposed Program (at 5-39) and to allow the U.S. to continue producing what BOEM has recognized in the Proposed Program as some of the lowest greenhouse gas (“GHG”) intensive oil and natural gas production in the world (at 5-36).

1. Oil and Natural Gas is Critical to U.S. Energy Needs and Sound Energy Policy.

The U.S. is now a global leader in both emissions reductions and energy production, thanks to the innovation and vitality of the U.S. oil and natural gas industry. We believe it is critically important to bring proper attention to the enormous benefits derived from continued oil and natural gas exploration and development on the OCS. It is just as critical that we highlight that a ban or significant curtailment of new offshore oil and natural gas leasing would effectively reduce our domestic energy supply but would not significantly reduce our demand for energy. To the contrary, as highlighted in the Proposed Program, “[t]his supply reduction (typically beginning 5 to 10 years after lease sales for new leases) would cause only a small increase in hydrocarbon prices, so there would be very little decrease in the quantity of oil and natural gas demanded.” BOEM should ensure that its PFP and Final EIS are consistent on this key point, as BOEM’s other passing references to “reduced demand” are speculative and unsupported, particularly in the immediate five-year period (i.e., 2023-2028) of national energy needs most salient to this Proposed Program. Bans or curtailment of leasing likely will result in the need for more oil and natural gas from countries with less stringent environmental standards and generate more GHG emissions than those associated with Gulf of Mexico deepwater production, precisely the opposite result of the Administration’s stated goals.

The ability of U.S. producers to provide more oil and natural gas supplies to the world market has not only created global environmental benefits, it has also changed geopolitical dynamics for the better, resulting in greater energy security for the U.S. and its allies. Given the current global circumstances, seldom has domestic energy security been more essential. It is beyond time for a comprehensive energy policy that includes a robust offshore leasing program that ensures that essential energy resources are made available; encourages investment opportunities and accelerates infrastructure development; and strengthens energy security, affordability, and reliability. To achieve this, policymakers must put in place policies that support energy investment, create new access, and keep regulation from unnecessarily

¹ [Bureau of Ocean Energy Management. 2022. 2023–2028 National Outer Continental Shelf Oil and Gas Leasing Proposed Program. BOEM 2022-033. July 2022](#)

restricting energy growth. API has developed a 10-point plan² identifying actions the Administration and Congress must undertake to help restore U.S. energy leadership, including holding offshore lease sales. API offers that plan for consideration as part of these comments on the Proposed Program and DPEIS.

The OCS has been the backbone of U.S. energy production for years, providing more than one million barrels of oil equivalent per day for the last 20 years. Companies need regular access to competitive lease sales to make the long-term investments required for offshore development, particularly given the magnitude of the investments required for deepwater projects. As technology improves, additional infrastructure becomes available, and economic conditions change, OCS exploration and development trends will continue, so long as sufficient acreage is made available for lease sales. Because of this evolution, it is important to allow innovative companies the opportunity to pursue new leases to test groundbreaking geologic concepts and to employ advancements in drilling and production technology. A continuous stream of new discoveries is needed to replace depleted reserves and help maintain or increase production levels.

Without the opportunity to obtain substantial acreage through new leases, companies will be enticed to turn their attention and investment dollars to prospects in other parts of the country or the world, where volumes are unlikely to compete with the comparative efficiencies and environmental advantages of U.S. offshore production that should continue to play a large role in meeting future demand. Without the certainty and predictability afforded by a robust OCS Five-Year Leasing Program, the opportunity for a successful national energy policy and the billions of dollars of multi-year investments needed to realize additional offshore production could be in jeopardy.

2. The Proposed Program Must Reflect an Actual Proposal.

API interprets from the Proposed Program that BOEM is proposing a schedule of 11 lease OCS sales between 2023 and 2028. To avoid any doubt, BOEM in its Proposed Final Program should remove equivocal language about a “maximum” number of lease sales and redefine Alternative B(a) in the Final PEIS as including that schedule rather than simply referencing geographic regions where any leasing may occur. Such clarification would comply with OCSLA, 43 U.S.C. § 1344, which as the D.C. Circuit has explained, “requires the Secretary to prepare, maintain, and periodically revise a leasing program consisting of a schedule of proposed lease sales. Under [that Section], the Secretary is to indicate ‘as precisely as possible, the size, timing and location of leasing activity.’” *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 292 (D.C. Cir. 1988). Such a proposal also would be consistent with prior Proposed Programs (e.g., for 2017-2022) that include a Secretarial Proposed Program Decision. To be sure, the DPEIS states that its analysis was “provided to the Secretary to inform her decision on the Second Proposal presented in the Proposed Program,” but it is unclear exactly what that “decision” is if it were anything less than an 11-lease schedule proposal. Conversely, merely expressing a range of possibilities without an actual proposal for a schedule of lease sales defeats the purpose of the Proposed Program step. Moreover, the lack of a concrete proposed lease sale schedule disadvantages would-be bidders from sufficiently planning inherently long lead-time pre-leasing activities to develop bids.

3. BOEM Must Continue to Fulfill Congress’ Mandate to Conduct OCS Oil and Natural Gas Lease Sales.

² <https://www.api.org/news-policy-and-issues/10-in-2022>

For more than 70 years, Congress has declared the OCS to be “a vital national resource reserve held by the Federal Government for the public,” and directed the Secretary of the Interior to make the OCS “available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs.” 43 U.S.C. § 1332(3) (emphasis added); *see also id.* § 1801(8) (Congress responding to various “problems which tend to retard the development of the oil and natural gas reserves of the Outer Continental Shelf”); *Enesco Offshore Co. v. Salazar*, 781 F. Supp. 2d 332, 339 (E.D. La. 2011) (recognizing “OCSLA’s overriding policy of expeditious development”); *State of Cal. By & Through Brown v. Watt*, 668 F.2d 1290, 1316 (D.C. Cir. 1981) (“[T]he Act has an objective—the expeditious development of OCS resources”).

Indeed, Congress amended OCSLA in 1978 to facilitate leasing and development activities amid a major energy crisis that threatened national security. Congress acted for the express purpose of “expedit[ing] exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade.” OCSLA Amendments of 1978, Pub. L. No. 95-372, § 109, 92 Stat. 629, 631 (1978) (codified at 43 U.S.C. § 1802(1)). In short, Congress amended OCSLA “to promote the swift, orderly and efficient exploitation of our almost untapped domestic oil and gas resources in the Outer Continental Shelf.” H.R. Rep. No. 95–590, at 53 (1977).

To that end, since 1978, OCSLA has specifically compelled BOEM to “prepare” *and* “maintain” an “oil and gas leasing program.” 43 U.S.C. § 1344(a). The Proposed Program (Part I at 8) acknowledges that it is the “policy of the OCS Lands Act to make OCS oil and gas resources available for expeditious and orderly development while considering safeguards for the human, marine, and coastal environments.” It also recognizes (Part II at 1-1) that “section 18 of the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. § 1344) requires the Secretary of the Interior (Secretary) to prepare and maintain a schedule of proposed OCS oil and gas lease sales.” Proposed Program at 1-1. The DPEIS similarly concedes that “[t]he National Outer Continental Shelf (OCS) Oil and Gas Leasing Program (National OCS Program) is mandated by Section 18 of the OCS Lands Act (43 U.S.C. §§ 1331 et seq.).”

Moreover, OCSLA specifies that the program must consist of “a schedule of proposed lease sales indicating, *as precisely as possible* the size, timing, and location of leasing activity” that will “best meet national energy needs.” 43 U.S.C. § 1344(a) (emphasis added). “The purpose of the precision requirement is to notify interested parties of the areas on which leasing activity will occur.” *Watt*, 712 F.2d at 592. Precision gives clarity to interested bidders that are determining whether, when, and where to bid. Previous 5-year leasing programs (e.g., the 2017-2022 Proposed Program) have complied with this precision mandate and provided a concrete proposed final lease sale schedule instead of merely providing a series of options with no reasonable certainty that the Secretary will grant any of them.

Simply put, these statutory provisions require not merely a piece of paper, but rather a bona fide OCS Program for actual lease sales. As noted, there is a current lapse in the Five-Year Program, which is at odds with the statutory requirement that BOEM “*shall* prepare and periodically revise, and *maintain* an oil and gas leasing program.” 43 U.S.C. § 1344(a) (emphasis added); *see also American Heritage Dictionary of the English Language* (5th ed. 2022) (defining “maintain” as “[t]o keep up or carry on” or “[t]o keep in an existing state; preserve or retain”). Yet BOEM unlawfully allowed the 2017-2022 Program to expire without having a new program in place. It cannot compound that error by belatedly adopting a program that is illusory or purposefully imprecise.

However, in several places the Proposed Program suggests that BOEM may ultimately issue a Five-Year Program with *no* lease sales. *E.g.*, Proposed Program at 4 (“[T]his Proposed Program retains the Secretary’s discretion at the PFP stage to determine that no OCS oil and gas lease sales in any planning area should be scheduled during the 2023–2028 period.”). That is legally impermissible, and the Secretary has no such discretion to promulgate an empty Program.

A proposed program that would provide for zero lease sales, or a small number of minor sales, would be unprecedented in the history of proposed programs under OCSLA and would contravene the statute. Under this approach, interested bidders are left without a precise schedule and without any information regarding the number, size, and timing of lease sales under consideration. *See Watt*, 712 F.2d at 592 (“[The Secretary] must inform interested parties of the areas which he is genuinely considering for leasing activity”). Unless rectified in the final Five-Year Program, this uncertainty will dissuade interested bidders from investing in the long-term pre-leasing activities and prevent BOEM from meeting its statutory obligation to achieve “expeditious and orderly development” of the Outer Continental Shelf. 43 U.S.C. § 1332(3).

Tellingly, there is no precedent for a zero-sales approach in the several decades since OCSLA’s implementation. BOEM has never previously even suggested that a Five-Year Program could involve zero sales, much less in a Record of Decision (“ROD”) adopting a final Program. And for good reason: BOEM cannot comply with OCSLA’s directive to prepare and maintain a five-year schedule of lease sales if it schedules zero sales, or if it nominally schedules but then routinely cancels sales. That is, issuing a Five-Year Program with no real intention to hold lease sales renders the Proposed Program illusory and statutorily deficient. Consistently, the Interior Solicitor published a detailed M-Opinion reaching the same legal conclusion under OCSLA. M-37062 (*Secretarial Discretion in Promulgating a National Outer Continental Shelf Oil and Gas Leasing Program*). While the current Administration summarily withdrew that M-Opinion, it did not rebut its cogent legal analysis. M-37068 (*Withdrawal of M-37062*).

Were there any doubt regarding Congress’ statutory mandate for federal OCS oil and natural gas leasing—which there is not—it has been dispelled with Congress’ passage and President Biden’s signing of the IRA. Consistent with OCSLA, as amended, the IRA unambiguously directs reinstatement of OCS Lease Sale 257 and no fewer than three more OCS lease sales by September 2023, notwithstanding BOEM’s failure to timely promulgate a new Five-Year Program before the prior Program expired on June 30, 2022. The IRA also makes clear that BOEM must pursue a truly all-of-the-above energy strategy on the OCS in lieu of its repeated cancellations of oil and natural gas lease sales since early 2021. Notably, Congress introduced and enacted the IRA *after* BOEM’s issuance of the Proposed Program. Congress was fully aware of that backdrop in again compelling OCS lease sales going forward.

Recent court rulings additionally refute any notion that BOEM may adopt a Five-Year Program without lease sales. The Western District of Louisiana in May 2021 first preliminarily, and then in August 2022 permanently, enjoined a nationwide moratorium on federal oil and gas leasing, including on the OCS. The court found that OCSLA “requires [BOEM] to sell oil and gas leases.” *Louisiana v. Biden*, No. 2:21-CV-00778, 2022 WL 3570933 (W.D. La. Aug. 18, 2022) (final merits ruling on summary judgment). The court continued: “Neither the OCSLA nor the [Mineral Leasing Act] gives the Government Defendants’ agencies the authority to implement a Stop of lease sales. Those statutes require eligible oil and natural gas leases to continue to be sold in accordance with the statutes. The Court finds that the stopping of leasing of eligible lands and waters is contrary to law.” *Id.* at *16. The court similarly held:

The discretion to stop the lease process for eligible lands is not within the discretion of the agencies by law under either the OCSLA or the MLA. The OCSLA directs the Secretary of the DOI to make the OSC [sic] available for expeditious development. *EnSCO Offshore Co.*, 781 F. Supp. 2d at 339. The OCSLA also directs the Secretary of the DOI to administer a leasing program to sell exploration interests in portions of the OSC [sic] to the highest bidder. 43 U.S.C. §§ 1334(a) and 1337(a)(1).

Id. at *15. While BOEM at any given time might disagree with Congress or the courts, it is not free to ignore or displace them.

To be clear, API recognizes that BOEM presently must consider a “no action alternative” for purposes of the Proposed Program’s DPEIS analysis under the National Environmental Policy Act (“NEPA”). That does not mean, however, that no action (Alternative A in the DPEIS) is a feasible alternative in the proposed program that BOEM has the discretion to select in a ROD. The opposite is true, because the no action alternative (Alternative A) does not meet the stated purpose and need for the Proposed Program. As BOEM correctly concluded in its 2017-2022 Program ROD issued during the Obama Administration: “Alternative D [No-Action] does not meet the purpose and need for action as stated in the Final Programmatic EIS as it leaves a void in planning for national energy needs.”³ The operative stated purpose and need in the current DPEIS is substantially similar to that of the prior Program—unsurprisingly, since the pertinent OCSLA provisions had not changed in the interim—and yields the same conclusion today. The Proposed Program fails to justify a reversal in position.

Additionally, many of the undiscovered resources are smaller geologic plays in deepwater that are only economic if infrastructure exists into which those discoveries can be tied. Infrastructure has a design life that may not be sufficient if there is a gap in leasing. In fact, there is available capacity on many current deepwater facilities that will allow tie-in of discoveries on new leases. If new discoveries are not connected to these multi-billion-dollar facilities, it could result in producing reservoirs becoming uneconomic earlier in life resulting in stranded and wasted resources.

Therefore, notwithstanding certain statements in its Proposed Program, it would be a violation of its statutory obligations for BOEM to refuse to schedule oil and natural gas lease sales in its Proposed Final Program. BOEM should proceed to adopt, at a minimum, the 11-sale schedule set forth in its Proposed Program.

4. BOEM Must Promptly Finalize and Adopt Its 2023-2028 Program.

BOEM states that “[t]he 2023-2028 Program, once approved, will follow the 2017–2022 Program.” 87 Fed. Reg. at 40,860. But BOEM nowhere discusses its OCSLA duty to *maintain* a Five-Year-Program, the unprecedented gap in coverage that BOEM has created, and the interim effective decision BOEM thereby has made not to hold any lease sales indefinitely. The Proposed Program (at 1-1) acknowledges the legal obligation to “prepare and maintain a schedule of proposed OCS oil and gas lease sales,” but does not reconcile that obligation with DOI’s actual conduct. The DPEIS in a footnote (at 1 n.1) simply says: “However, the Secretary adjusted the timing of the first sale.” But BOEM legally cannot keep deferring the first sale indefinitely. For the “2023” date in the Proposed Program to mean anything, BOEM now must proceed quickly to complete the next Five-Year Program.

³ <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-Record-of-Decision.pdf>, at 2.

Under OCSLA, absent an approved Five-Year Leasing Program or other Congressional approval, Defendants cannot hold lease sales.⁴ See 43 U.S.C. § 1344(d)(3). BOEM issued a Draft Proposed Program on January 9, 2018. Yet BOEM took no further public action on the Program until it issued its Proposed Program over four years later on June 30, 2022, the day after the existing 2017-2022 Program expired. BOEM nowhere explains this significant and unprecedented delay, particularly given that the current Administration had already been in office for 18 months before issuing even a Proposed Program, and that BOEM utilized the existing DPP. To be sure, the Proposed Program does not so much as mention Executive Order 14008 or the “comprehensive review” thereunder as affecting the timing or contents of the Proposed Program. BOEM violated OCSLA in running out the clock on the 2017-2022 Program while failing to timely issue a successor Five-Year Program.

Yet, troublingly, the Proposed Program sets forth no schedule or timeline for publication of a Proposed Final Program and ROD. This silence, coupled with the severe delays to date, raises substantial concern about BOEM’s commitment to fulfilling its obligation under 43 U.S.C. § 1344(a), as it faithfully had done in the past. Congress via the IRA has created a bridge period in the absence of a new Five-Year Program, but that period extends only until September 2023 when BOEM must hold prescheduled Lease Sale 261. At the latest, BOEM thus must ensure a new Five-Year Program is effective by September 2023.

5. The Proposed Program Does Not Have Significant Environmental Impacts.

A. General Considerations

As the DPEIS correctly points out (at i n.2), NEPA review is not even legally necessary for a Five-Year Program under OCSLA. That is consistent with the reality that a Five-Year Program is not a major federal action that may significantly affect the environment under NEPA because, as BOEM acknowledges, “approval of a National OCS Program does not constitute final approval of the lease sales scheduled in that Program. Each potential lease sale scheduled in the 2023–2028 Program will be subject to separate established pre-lease sale decision processes, including environmental review and analysis.” Proposed Program at 1-22. On this point, the Proposed Program (at xiv, 2-9 to 2-11) provides “a summary of the judicial guidance from court decisions regarding the National OCS Program.” While BOEM nonetheless has proceeded to prepare a DPEIS to “inform” the Program, BOEM should not further delay final action on the Program based on any perceived need to perform even more NEPA review at the Program stage or out of fear of NEPA-based claims against an adopted Five-Year Program by litigious opponents of federal oil and natural gas. Rather, BOEM should complete NEPA analyses commensurate with commitments of resources at subsequent stages under OCSLA.⁵

We support DOI’s assertion that the 11 lease sales presented in the Proposed Program (Alternative B(a)) “have the greatest resource potential and net benefits with the least potential significant impacts and costs to society to meet national energy needs under existing laws and policies . . .” (Part I at 9). Yet, the Proposed Program incorrectly equates more lease sales with more environmental impacts. For example, the DPEIS states (at v): “The potential for OCS impacts increases with increasing number of planning

⁴As noted above, in the recently promulgated IRA, Congress required the Secretary to complete lease sales that were included in the 2017-2022 Program but which Interior failed to conduct within the five-year window. See Pub. L. No. 117-169, Sec. 50264.

⁵ Consistent with the above comments, however, this proper phased approach does not mean that DOI may simply treat the adopted Five-Year Program as a dead letter and refuse seriatim to hold scheduled lease sales.

areas and lease sales.” In reality, more lease sales alone do not mean more successful exploration or development, and in turn, more exploration or development does not translate into more environmental impacts. Operations on issued leases are contingent on compliance with strict regulatory protections and further NEPA review. Moreover, continued OCS leasing allows for efficient planning and use of shared infrastructure that serve to minimize environmental impacts. For example, use of subsea tie-backs to joint host facilities serving multiple leases or even projects enables installation, and decommissioning, of fewer platforms on the OCS.

Beyond the NEPA context, the Proposed Program’s discussion of relevant “judicial guidance” is incomplete and fails to consider relevant binding precedent. Most importantly, and most recently, the Western District of Louisiana has reconfirmed BOEM’s duty to hold OCS lease sales, and that reasoning has not been questioned by the Fifth Circuit. That decision is also consistent with case law finding agency refusal to conduct onshore federal oil and natural gas leasing unlawful. *Mountain States Legal Found. v. Andrus*, 499 F. Supp. 383, 395 (D. Wyo. 1980); *Mountain States Legal Found. v. Hodel*, 668 F. Supp. 1466, 1473, 1475 (D. Wyo. 1987).

B. Safety and Environmental Protections

In attributing greater impacts to holding more lease sales, the Proposed Program and DPEIS inexplicably omit the comprehensive and dedicated safeguards to avoid, minimize, and mitigate any environmental impacts from OCS oil and gas activities. The oil and natural gas industry continuously strives to enhance the safety of offshore operations, including focusing on its ability to: prevent spills from occurring; intervene to halt any spill that does occur; and respond to spills with the most effective mitigation measures possible.⁶ There are extensive environmental safeguards in place for offshore operations in the form of regulations and regulatory oversight of safety and spill prevention equipment, systems, programs, operational practices, and a highly trained and skilled workforce. This overall comprehensive system of regulations, federal oversight, equipment, programs, best practices, and trained staff underpins safe and environmentally protective operations and promotes the safe and responsible development of energy sources that help fuel the American economy and meet domestic energy needs.

Additionally, in partnership with federal, state and local governments, academic institutions and communities, the industry dedicates significant time and resources to preparing and planning for the unlikely case of an oil spill. This exhaustive preparation enables the industry to respond appropriately to a spill of any magnitude to minimize its impact on people and the environment. Oil spill response organizations have significantly increased their capabilities over the past decade by increasing training and maintaining an increased inventory of equipment that is fit for specific purposes such as in-situ burning. The industry has also invested in international oil spill preparedness and response programs focused on improving industry operational capabilities in all parts of the world and continues to advance oil spill response research and development programs.⁷

For example, the Marine Well Containment Company⁸ and the HWCG⁹ were created in response to the Deepwater Horizon oil spill, and currently provide offshore member companies with advanced containment technology and response capabilities for the unique challenges of stopping the flow of oil

⁶ <https://www.api.org/oil-and-natural-gas/health-and-safety/exploration-and-production-safety/offshore-safety>

⁷ <http://www.oilspillprevention.org/>

⁸ <https://marinewellcontainment.com/>

⁹ <https://www.hwcg.org/>

thousands of feet below the water's surface. In the unlikely event that these services will be needed, these companies maintain quickly deployable systems that are designed to stem the flow of hydrocarbons from wellbores located on the seafloor either by sealing the well or directing the fluids into storage vessels located on the surface of the water.

6. DPEIS Comments.

While we generally concur that the analyses performed for the DPEIS are sufficient, we offer the following comments on specific items that would benefit from additional clarification or correction in the Final EIS. Notably, our comments below highlight how this additional information would only underscore the need and many benefits of a robust offshore leasing program.

A. General Comments

As noted above, API concurs with DOI that review under the National Environmental Policy Act (NEPA) is not required at this stage of OCSLA. (DPEIS at i n.2.) However, API supports DOI's effort to inform the public and undertake transparent decision-making by preparing a concise assessment of the environmental impacts associated with all alternatives. In general, the draft discussion provides the reader with a reasonable understanding of the anticipated impacts. Nevertheless, as DOI moves forward with this review process, the simplified treatment of areas of significant uncertainty may create the impression of greater certainty regarding impacts (or lack thereof) than is possible and risks an uneven presentation of impacts. The following are areas where API believes additional attention and reconsideration would only enhance the information-gathering purpose of the DPEIS:

1) No Action Alternative. The DPEIS treats the impacts of the no-action alternative differently than the impacts from the leasing alternatives. Whereas DOI includes a chart assigning "significance" to numerous impacts associated with each of the leasing alternatives, the DPEIS does not include such a chart for the no-action alternative. This may lead some readers to conclude that the no-action alternative does not have significant impacts. API understands that there is uncertainty regarding future emissions regulations and how energy substitution may proceed, but other impacts, such as the severe economic and social consequences of forgoing leasing should be recognized and disclosed to the public. The statements in the DPEIS that the "[e]ffects related to employment and income *may* affect the tax base for vulnerable coastal communities," and that "there *may* be a noticeable impact on employment, income, and revenue for the Western and Central GOM Planning Areas" (DPEIS at p. 215 (emphasis added)) mask the plainly foreseeable adverse economic and social impacts of the no action alternative. Even where there is uncertainty, such as for substitutions, the DPEIS is inconsistent because it treats vessel traffic as a "significant" factor for the leasing alternatives (see, e.g., Fig. 4-11 at pg. 218), but does not acknowledge that vessel traffic – which it notes would likely increase "substantially" under the no-action alternative (p, 212-13) – would also be significant under the no action alternative. This inconsistent presentation of impacts could preclude the decision-maker and the public from making an informed comparison of the alternatives. API urges DOI to carefully evaluate its presentation of the no-action alternative to ensure that the final PEIS gives the public and the decision-maker the appropriate information to make an informed comparison of the alternatives.

2) Cost-Benefit. The DPEIS purports to incorporate by reference a cost-benefit analysis in the Proposed Program. Beyond the issues noted above, DOI's summary of "unquantified costs and benefits" (DPEIS at 22-23) may be incomplete. DOI does not appear to acknowledge unquantifiable benefits related to oil and gas leasing, nor does it appear to have included

unquantifiable costs resulting from the no-action alternative. Courts have repeatedly cautioned agencies against presenting unbalanced quantifications of impacts. *See, e.g., Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (an agency that “trumpet[s]” and actions benefits has a duty to disclose its costs); *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014) (holding that an agency was “arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the *costs* was impossible”). API urges DOI to consider whether revisions can be made to the cost-benefit discussion to provide the public a complete understanding of the costs and benefits of all alternatives, or, if such a discussion is not possible, to omit the cost-benefit discussion to avoid presenting unbalanced information.

3) Eastern GOM. One overarching item of note is that the areas in the Eastern GOM Planning Area not covered under the Moratorium that are available for potential sale are all located along the western edge of the planning area in close proximity to existing oil and gas activities in the Central Planning Area. As such, oil and gas development of the available areas in the Eastern GOM Planning Area would likely be supported from existing infrastructure (port areas, waste disposal, etc.) and will not require infrastructure to be built in Florida. Potential impacts from these areas should be assessed as if they are part of the Central Planning Area to reflect the likelihood that no new infrastructure is likely to be required in Florida, such as Tampa Bay, Panama City Beach, and Pensacola, to support oil and gas activities in these westwardly areas of the Eastern GOM Planning Area.

4) GHG Emissions Considerations. The DPEIS should be reviewed to ensure consistency in the assumptions related to present and future climate change policies adopted as the U.S. transitions to a net-zero energy economy. For example, the DPEIS appears to assume that these policies may have a greater impact under Alternative A. *See* DPEIS at p. 228 (“Under different future climate policies as the U.S. makes the transition to a net-zero energy economy, . . . there could be a larger reduction in energy demand or renewable energy production under Alternative A.”); *see also* DPEIS at p. 16 (discussing climate change policies in the context of Alternative A only). But there is no support for the assumption that selection of the No Action alternative would contribute more to energy substitutions driven by climate change policies. This baseless assumption is exacerbated by the conflicting assumptions elsewhere in the DPEIS, employed when evaluating the potential impacts of the action alternatives, that energy production will occur at “the high activity level unless otherwise noted.” DPEIS at p. 14. BOEM should ensure that the assumptions concerning both energy production levels, energy demand, and renewable energy production resulting from current and future climate change policies are applied equally in evaluating each alternative.

Under OCSLA and NEPA, Interior is neither required nor permitted to consider downstream climate effects in implementing leasing programs for the Outer Continental Shelf. *See Center for Biological Diversity v. U.S. Department of Interior*, 563 F.3d 466, 485 (D.C. Cir. 2009) (OCSLA does not authorize consideration of downstream climate effects); *see Sierra Club v. FERC*, 867 F.3d 1357, 1372 (D.C. Cir. 2019) (NEPA does not require agencies to evaluate environmental effects that they lack authority to consider). Nevertheless, because the DPEIS addresses climate effects through GHG estimates, API notes that a fair and accurate assessment of those effects supports the most robust leasing program among the considered options.

If BOEM does choose to retain GHG estimates in the Final PEIS, it is important that it does so in a way that presents the most reasonable and accurate picture possible. The DPEIS mainly discusses the high activity case, which it treats as a default assumption. It also includes GHG estimates under other activity cases which is better than omitting them. But if BOEM is going to include GHG estimates in the final PEIS, it should focus primarily on the estimates under the mid-activity case as opposed to the high activity case or provide the public with evidence, based on retrospective analysis, that justifies that the high activity case is a more appropriate default. Given that BOEM does “not assign a given likelihood to a particular outcome,” focusing on the high activity case, which assumes the most favorable conditions for the oil and gas industry, does not seem to provide the public with the most accurate overview of incremental life cycle emissions and seems to suggest BOEM finds that high activity case is more likely than the mid-activity case. And if BOEM is going to retain GHG aggregate estimates in the Final PEIS, API would ask that BOEM supplement them by providing links to their annual estimates.

API agrees with BOEM that lease sales’ impact on foreign oil consumption (which BOEM has included in a separate appendix) should not be included in a combined domestic and foreign GHG estimates. As noted, those are not considerations that Interior is authorized to consider under OCSLA nor ones that it is required to analyze under NEPA. But to the extent that BOEM chooses to address foreign consumption in the final PEIS—for instance, to preempt NEPA challenges like the one brought against Lease Sale 257—it should be addressed separately. BOEM offers several sensible justifications for why these estimates should be treated separately. For example, BOEM addresses the methodological issues that stem from not including “upstream and midstream GHG emissions resulting from higher foreign oil production with new leasing...due to lack of sufficient data regarding where the production would occur and appropriate emissions factors to apply to an upstream analysis.” In future analyses, if BOEM is going to continue to present domestic lifecycle and foreign GHG emission estimates, API suggests that BOEM capture upstream and midstream foreign GHG emissions as well. BOEM currently finds that reduced OCS production decreases foreign oil consumption via higher prices and assumes that foreign oil consumption is not replaced by other types of energy consumption. But a more complete analysis would account for foreign energy substitutions as opposed to just foreign oil consumption. The current approach likely inappropriately increases foreign GHG emissions reductions under the no lease sale option.

A fair assessment of effects on foreign consumption would also include a robust discussion—including sensitivity analysis—regarding the long run supply and demand elasticities that BOEM uses to determine the impact of OCS production on foreign oil consumption as BOEM’s MarketSim model appears sensitive to these elasticities. While BOEM currently relies on Brown et al. (2014) for their long run global oil supply elasticity. Brown et al. consider their 0.4 oil supply elasticity an assumption and does not reference or include empirical data to justify it. Given the lack of empirical estimates regarding long run oil supply and demand elasticities, BOEM would need to provide a more extensive rationale for the elasticities that it chooses and include a sensitivity analysis using different combinations of long run demand and supply elasticities. Including this sensitivity analysis would provide a more comprehensive picture for policymakers (where authorized by Congress) and the public regarding the likely impact on foreign oil consumption and foreign GHG emission reductions.

5) Social Cost of GHG. Additionally, the use of the Social Cost of GHG (“SC-GHG”) in the draft PEIS is misguided and inappropriate. The SC-GHG was developed to monetize the social

value of reduced GHG emissions for use in regulatory cost-benefit analysis as part of the Regulatory Impact Analysis (“RIA”) associated with economically significant regulations under Executive Order 12866. But SC-GHG was never designed for use in environmental reviews under NEPA, and it is ill-suited to that purpose. NEPA does not require the monetization of costs and benefits, and thus there is no cause to include it in the PEIS. BOEM has not only overstepped the requirements under the proposed program and applicable law but has also improperly assumed that future NEPA analysis will require the use of the SC-GHG estimates.

The federal government’s Interagency Working Group on Social Cost of Greenhouse Gases (“IWG”) was charged with developing and publishing updates to SC-GHG figures by Executive Order 13,990, yet to date has not issued guidance regarding the appropriate usage of SC-GHG estimates. Given the complexity and uncertainty associated with the development of SC-GHG estimates, it requires careful usage. Because the IWG has so far not provided recommendations for use of the SC-GHG estimates, its application should be limited to the regulatory cost-benefit analysis for which it was designed.

Given that BOEM is nevertheless reporting monetized impacts using the SC-GHG estimates, it is important to consider whether this application supports or impedes decision-making. Although BOEM claims that the monetized estimates are not being used for decision-making, the inclusion of such estimates can affect the perceptions and consequently the public comments about the importance of some projected impacts relative to others and could indirectly affect decision-making. This is particularly true if only a small subset of projected impacts is monetized. Such estimates are of little value if they cannot be compared to other projected impacts or potential benefits. An asymmetrical treatment of project impacts may skew decision-making in ways that are unintended. Additionally, BOEM’s reference to “pending litigation on the social cost of carbon”¹⁰ as the rationale for how the SC-GHG estimates have been included in the DPEIS is insufficient. For these reasons, we urge BOEM to reconsider its discussion of the SC-GHG estimates in the DPEIS. These issues—as well as the other issues identified above on this topic—also underscore the need for a thoughtful discussion about proper application of the SC-GHG estimates.

Moreover, the draft PEIS misuses the SC-GHG even on its own terms because it selectively includes only a 3% discount rate and it excludes essential caveats about the SC-GHG’s limitations. The IWG is clear in its most recent technical support document that “it is appropriate for agencies to revert to the same set of four values drawn from the SC-GHG distributions based on three discount rates (2.5 percent, 3 percent, and 5 percent) as were used in regulatory analyses between 2010 and 2016 and subject to public comment.” Nonetheless, BOEM only used a 3% discount rate across the analysis and entirely fails to use the set of four values recommended by the IWG. Further, in the National Academies of Science 2017 review, it was clearly recommended that any agency or other usage of the SC-GHG should also include a robust discussion of the uncertainties inherent in the SC-GHG figures. There is no such discussion included in the PEIS. Therefore, even if it were otherwise appropriate to use the SC-GHG in the PEIS, the draft would still suffer from problematic omissions.

¹⁰ BOEM, “2023-2028 National Outer Continental Shelf Oil and Gas Leasing Program, Draft Programmatic Environmental Impact Statement,” July 2022. <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/2023-2028-NationalOCSSoilGasLeasingDraftPEISVol1.pdf>

B. Air Quality

In DPEIS Section 2.6, the last sentence of paragraph one states, “[n]ew development along the coast, however, may degrade air quality locally.” Other factors may affect air quality, and API supports BOEM’s acknowledgement of such.

C. Water Quality

The DPEIS overstates impacts from the leasing alternatives by disregarding the role of existing regulatory programs governing discharges in three ways:

1) First, BOEM asserts on page 195 of Section 4.1.8 that routine discharges are expected to have significant impacts on water quality despite compliance with National Pollution Discharge Elimination System (“NPDES”) permit and other regulatory requirements. The Clean Water Act requires EPA to ensure that the NPDES permits it authorizes limit water discharges from point sources and include monitoring and reporting requirements and other provisions to ensure that point source discharges do not degrade water quality. BOEM’s conclusion that routine water discharges from offshore oil and gas activities are still expected to have a significant impact on water quality is not aligned with the stated purpose of the NPDES program. Routine discharges from OCS oil and gas activities in Western and Central Planning Areas and Eastern Planning Areas are covered under NPDES General Permit GMG290000 and GEG460000, respectively, and have additional requirements for discharges in Areas of Biological Concern and Marine Sanctuaries. Therefore, existing NPDES permits provide adequate measures to avoid the significant impacts asserted by DOI in the DPEIS.

2) Second, the Water Quality discussions in Sections 2.5.1 and 2.5.2 do not consider how water quality is regulated and protected by US EPA. Water quality is regulated through the provision of US EPA standards for protection of designated uses (i.e., fish, shellfish and wildlife, recreation, drinking water supply or agricultural, industrial, navigational or other purposes). There are set criteria for contaminants and stresses and antidegradation requirements to protect the designated uses and antidegradation to maintain water quality values.

3) Third, although presented in the context of “stressors” not related to the Proposed 2023-2028 Program in Section 2.4.2, it is important to note that while vessels do periodically release “sewage, wastewater, and bilge water,” such vessels in both international and domestic waters are regulated under the International Convention for the Prevention of Pollution from Ships (“MARPOL”) and the Act to Prevent Pollution from Ships (“APPS”). The MARPOL Convention addresses pollution from ships by oil; by noxious liquid substances carried in bulk; harmful substances carried by sea in packaged form; sewage, garbage; and the prevention of air pollution from ships. According to the International Maritime Organization, MARPOL has greatly contributed to a significant decrease in pollution from international shipping and applies to 99% of the world’s merchant tonnage.¹¹

Additionally, the DPEIS in Section 2.4 on page 43 states, “[t]oxins directly harm the organisms that ingest them and impact the food chain through biomagnification.” In fact, not all toxins bioaccumulate but have direct or indirect impacts via other mechanisms. Contaminants in the environment can have short

¹¹ International Maritime Organization, Pollution Prevention, [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)

term (acute) impacts or long term (chronic), depending on the concentration and duration of exposure. Some contaminants, including hydrocarbons and metals can bioaccumulate.

Also, the DPEIS in Section 2.5 on page 55 states, “[t]he primary factors that influence R.2 WATER QUALITY are temperature, salinity, dissolved oxygen, chlorophyll content, nutrients, pH (acidity or alkalinity), pathogens, transparency (e.g., turbidity), and contaminant concentrations (e.g., heavy metals and hydrocarbons).” This sentence should be reworded as follows to provide clarification of water quality constituents versus factors that influence water quality. API suggests the following revision: “The primary constituents of R.2 WATER QUALITY are temperature, salinity, dissolved oxygen, chlorophyll content, nutrients, pH (acidity or alkalinity), pathogens, clarity (e.g., turbidity), and contaminant concentrations (e.g., heavy metals and hydrocarbons). The primary factors that influence water quality are point and non-point discharges and sources of pollution, anthropogenic activities and development (US EPA 2021).¹²”

Finally, in Appendix G, Table G-1, the last two columns on the right side of the table are in the wrong order. The table (from left to right) shows decreasing release volumes with increasing probability of occurrence. However, the last two columns are in the wrong order and can be misinterpreted.

D. Coastal and Estuarine Habitats

The DPEIS in Section 2.8 on page 110 states “SAV is a vital component of coastal aquatic ecosystems, with at least 26 species of sea grasses . . .” BOEM should define “SAV” as submerged aquatic vegetation.

E. Birds

The DPEIS in Section 2.4, on page 36 states, “[b]irds that spend at least part of their lives at sea, migrate over parts of the sea or live in coastal areas.” The statement should be expanded to read, “[b]irds that spend at least part of their lives at sea migrate over parts of the sea or utilize coastal habitats for migration, foraging, staging, overwintering or breeding.”

Additionally, in Section 2.8 on page 103, the abbreviation “HAB” is used. This should be defined.

F. Marine Species

Similar to the water quality discussion above regarding required mitigations per EPA NPDES permits, it is important to note that the offshore oil and natural gas industry routinely complies with various regulations and requirements related to the protection of marine species. For example, geophysical surveys related to GOM oil and gas activities are required to comply with the provisions of 50 CFR Part 217 for Incidental Takes of Marine Mammals. The oil and gas industry also must comply with the Conditions of Approval included in BOEM and BSEE approvals (permits, plans, etc.) implementing the recommendations included in the National Marine Fisheries Service (“NMFS”) Endangered Species Act (“ESA”) Section 7 Biological Opinion on the Federally Regulated Oil and Gas Program Activities in GOM dated March 13, 2020. BOEM should not discount these protective measures in the course of adopting its Five-Year Program.

¹² US EPA (2021) (online) Trends in the extent and condition of coastal waters and their effects on human health and the environment. Available from: [Coastal Waters | US EPA](#).

Additionally, DPEIS Section 2.8.4 includes an assertion that “the coastline of the Eastern GOM Planning Area represents 90% of the nesting habitat for the Northwest Atlantic subpopulation of loggerhead turtles (Ceriani and Meylan 2017).” This is incorrect and overestimates the percentage of loggerhead turtles nesting in the Eastern GOM Planning Area. The cited document states, “[t]he Peninsular Florida Recovery Unit and the Northern Recovery Unit represent ~87% and ~10%, respectively, of all nesting effort in the Northwest Atlantic Loggerhead subpopulation (Ehrhart et al. 2003, NMFS and USFWS 2008).” It further explains that the Peninsular Florida boundaries extend from the Florida/Georgia border south and then north through Pinellas County on the west coast, excluding the islands west of Key West, Florida. Thus the 87% figure includes the loggerhead turtles nesting on the east coast of Florida, outside of the GOM and the Eastern GOM Planning Area. BOEM should correct these figures in its Final PEIS.

Finally, DPEIS section 4.1.8 includes an insert box at the bottom of page 193 that states, “[s]everal species of baleen and toothed whales in all GOM planning areas may experience physical or behavioral disturbance.” API questions the purpose/need of this text box. Physical disturbance is too vague a descriptor and there is no empirical evidence showing injury from airgun surveys on mysticetes.

7. BOEM Cannot Base Its Five-Year Program on Speculation or Hypothetical Scenarios Regarding National Energy Needs.

A. General Comments

OCSLA directs a schedule of lease sales that “will best meet national energy needs for the five-year period following its approval.” 43 U.S.C. § 1344(a). The Proposed Program, however, shifts “national energy needs” beyond OCSLA’s relevant five-year period, and instead forecasts and places heavier weight on a 40- to 70-year horizon. More problematically, the Proposed Program heavily relies on a notional “energy transition” including energy demand destruction. Specifically, the Proposed Program’s “net-zero hypothetical,” driven by BOEM’s forecast of various laws and policies that have not even been enacted yet, is wholly speculative.

NEPA does not endorse speculating that information might become available in the future or analysis “based on pure conjecture.” 40 C.F.R. § 1502.21; *see also Wild Virginia v. Council on Env’t Quality*, 544 F. Supp. 3d 620, 639 (W.D. Va. 2021) (“The plaintiffs anticipate that agencies conducting NEPA reviews in the future will deem certain effects to be cumulative or indirect and will not consider them, but that is pure speculation, and speculation cannot carry the day.”). While production from OCS leases is often not realized within five years, BOEM cannot abandon statutory constraints for a Five-Year Program and base it off speculation (e.g., at 1-16) across “many decades” of needs. Such novel overreach beyond OCSLA would implicate major questions doctrine concerns recently highlighted by the Supreme Court in *West Virginia v. EPA* 142 S.Ct. 2587 (June 30, 2022).

Indeed, BOEM’s speculative focus on events that *may* occur, if at all, beyond the five-year period outlined in § 1344(a) is beyond the agency’s authority to consider. Congress was undoubtedly aware of the long-term nature of oil and gas development, and directed the agency to focus on the five-year period following the approval of any leasing activity. *See Maine v. Thiboutot*, 448 U.S. 1, 8 (1980) (rejecting interpretation contrary to the plain language of the statute because “Congress was aware of what it was doing, and the legislative history does not demonstrate that the plain language was not intended”). To allow the agency to impose its own timeline for the leasing program violates the statute and raises significant concerns. *See Hoctor v. U.S. Dep’t of Agric.*, 82 F.3d 165, 170–71 (7th Cir. 1996) (explaining that setting numerical requirements is a “legislative function”). And as noted, it also raises

concerns under the major questions doctrine. See *Util. Air Regul. Grp. (UARG) v. EPA*, 573 U.S. 302, 324 (2014) (agency must identify “clear congressional authorization” for claimed authority). By basing its methodology on a 40+-year timeline—instead of 5-year timeline—BOEM would substantially transform the power Congress delegated to it and effectively rewrite the statute. See *W. Virginia v. EPA*, 142 S. Ct. 2587, 2610 (2022) (rejecting an agency interpretation of a statute that would allow it to “substantially restructure the American energy market,” “representing a transformative expansion of its regulatory authority” (cleaned up)). Such an approach would allow BOEM to use speculative forecasts to make decisions about lease sales beyond the 5-year period specified by OCSLA. Expanding that timeline to span *decades* stretches these uncertainties beyond reason and the statute’s explicit authority.

Consistent with OCSLA, BOEM must acknowledge the prominent role of OCS oil and gas in meeting national energy needs Congress was explicit about expedited development of the covered areas and further directed Interior to renew these efforts with a new Program every five years. While actual production efforts under the Program may extend longer than the timeframe provided to actually hold lease sales, Congress mandated consideration of the near-term horizon of meeting the country’s energy needs. Acting directly contrary to the mandate for expeditious development and doing so based on speculative long-term projections that extend for many decades beyond the five-year period directed by Congress, would exceed DOI’s authority under OCSLA.

Relatedly, BOEM’s request for comments on “modeling” adjustments to support projections of meeting future energy needs without OCS oil and natural gas leasing appear to be outcome-driven. BOEM should be particularly careful in its assumptions regarding “substitution” of traditional energy sources, given recent litigation challenging such assumptions. Economic data and BOEM’s net benefits analysis plainly support continued robust OCS leasing in the next Five-Year Program, and the data should not be manipulated to reach a different conclusion.

The Proposed Program spends considerable time discussing the potential for a net-zero scenario with respect to GHG emissions. API acknowledges that the 2023-2028 Program and future Five-Year Programs should be evaluated under a variety of scenarios. However, API believes that significantly more weight should be placed on current law and policies as opposed to hypothetical policies that could be adopted in the future. Given the high degree of uncertainty around the data needed to conduct a quantitative net benefits analysis, API questions the utility of presenting a net-zero scenario for this specific analysis. For example, the Proposed Program (Part I at 8) states that the proposed 11-lease sale schedule will “meet national needs under existing laws and policies, while acknowledging that progress along a net-zero emissions pathway is likely to change future energy markets and national energy needs.” But that statement (and similar assertions) overlooks the immediate five-year period of national energy needs most pertinent under OCSLA, does not define what, when, or where (including internationally) such “progress” to net-zero emissions will occur, and contradicts BOEM’s other acknowledgments that national energy needs will not materially change regardless of the lease sale schedule in the 2023-2028 Program.

B. BOEM’s Net-Zero Analysis is Flawed

Although API agrees with parts of BOEM’s characterization of a net-zero scenario, API has concerns about aspects of BOEM’s net-zero analysis and methodology. As shown below, under many net-zero projections the market share of oil and natural gas in both the global and U.S. energy mix is significant for decades into the future. API agrees with certain BOEM statements that characterize a potential net-zero scenario:

- “As the U.S. transitions to meet its net-zero goals and demand for oil and gas declines, the anticipated production would likely be very different from what is included in Table 5-2.” Proposed Program at 5-52; and,
- “In the transition to a net-zero emissions future, consumption of natural gas and oil would not entirely disappear. . . . [E]ven under a net-zero emissions pathway, there could still be a role for oil and gas into the net-zero emissions future and for the OCS in particular.” Proposed Program at 5-53.

The United States Energy Information Administration’s (“EIA”) 2022 Annual Energy Outlook¹³ shows that US crude oil and natural gas production grows in absolute amounts between 2021-2025 (crude oil from 11.13 to 12.96 million barrels per day and natural gas from 34.40 to 42.58 trillion cubic feet). This is despite the natural decline and inherently requires new leasing and investment. API understands that under many net-zero projections, the market share of oil and natural gas in both the global and U.S. energy mix is significant for decades into the future. Further, EIA projections show that the transportation sector fuel consumption in 2050 will be approximately 56% motor gasoline, 22% distillate fuel oil, 14% jet fuel, 3% electricity, and 5% other, thereby demonstrating strong demand in the transportation sector in 2050 for oil and gas. Additionally, by 2040 under the International Energy Association’s (“IEA”) World Energy Outlook 2021, oil and natural gas will account for a 29% share of the global energy supply.¹⁴ This represents a decrease from the 2020 value of 53%, but it is still significantly sizable. In all five of Princeton’s *Net-Zero America’s* scenarios to 2050, even in the scenario where U.S. oil and natural gas consumption goes to 0% by 2050, both projected cumulative U.S. oil production and U.S. natural gas production (2020 to 2050) are at or more than double current (2020) reserves, indicating the projected need for future oil and gas development under net-zero policies.¹⁵

The net benefit calculations in the Proposed Program are done on an incremental basis. This is illustrated in Figure 5-12 reproduced below, Proposed Program at 5-24. Both the “Lease Sale Option” and the “No Sale Option” are estimated under the same scenario “assuming current laws and policies remain in place and long-term demand remains strong (i.e., the 2020 AEO).” Net benefits are calculated by subtracting the two options, under the same assumptions for market conditions.

Figure 5-12: Traditional Incremental Net Benefits Analysis Calculation



API agrees with BOEM’s statement in the Proposed Program (Part I at 3) that in “a hypothetical net-zero emissions pathway over baseline analyses, whereby, in the case of reduced OCS oil and gas

¹³ [U.S. Energy Information Administration - EIA - Independent Statistics and Analysis](https://www.eia.gov/analysis/studies/energy-outlook/)

¹⁴ IEA’s WEO 2021, p. 195.

¹⁵ <https://www.dropbox.com/s/ptp92f65lgds5n2/Princeton%20NZA%20FINAL%20REPORT%20%2829Oct2021%29.pdf?dl=0>, pp. 269, 272.

development, [there would be] an increase in renewable energy production, electrification, [and] energy efficiency.” However, API disagrees with the remainder of that statement (*id.*) outlining the basis of BOEM’s net-zero emissions approach, which presumes “reduced consumption” of energy and “assumes less reliance on imports and domestic onshore oil and gas production as energy substitutions.” Moreover, the permutations outlined in Table 5-17 are incomplete and distort the analysis. BOEM therein projects that the incremental energy substitutions under a net-zero pathway relative to energy substitutions under a current policies pathway would likely generate greater renewable domestic energy substitution and greater response in oil and natural gas demand.

Table 5-17: Permutations for Hypothetical Net-Zero Emissions Net Benefits Analysis

Permutation	Change in Energy Substitutes		
Permutation 1:	Increased Domestic Renewable Energy Substitution Rate	and	Decreased Oil and Gas Imports Substitution Rate
Permutation 2:	Increased Domestic Renewable Energy Substitution Rate	and	Decreased Onshore Oil and Gas Substitution Rate
Permutation 3:	Increased 'Reduced Demand' Rate	and	Decreased Oil and Gas Imports Substitution Rate
Permutation 4:	Increased 'Reduced Demand' Rate	and	Decreased Onshore Oil and Gas Substitution Rate

But BOEM’s assumptions are inconsistent with IEA’s observations. As the IEA states: “Net zero by 2050 hinges on an unprecedented clean technology push to 2030. The path to net-zero emissions is narrow: staying on it requires immediate and massive deployment of all available clean and efficient energy technologies.”¹⁶ Under this IEA scenario, it is unlikely that additional or incremental investment in renewables above current and planned levels would be available to achieve the net zero outcome. So, when comparing a “Lease” and “No Lease” options, the Domestic Renewable Energy substitution rate should be at or near zero since there is little spare investment capacity to realize IEA’s net-zero path.

Oil and natural gas consumption is less, both in the U.S. and globally, under a net-zero scenario when compared to other pathways. In addition, there would be a higher market share of harder to switch demand such as non-energy goods including plastics, heavy industry, and long-distance transport. Therefore, the “Reduced Demand” rate should be lower when compared to other scenarios, not higher. Also, the availability of incremental production, whether domestic onshore or foreign in the way of imports will be greater due to the greater availability of resources. Therefore, a more likely Net-Zero scenario Net-Benefits Analysis should include changes to energy substitution rates as summarized in the table below.

Permutations for a Hypothetical Net-Zero Emissions Net Benefits Analysis

Permutation	Change in Energy Substitutes		
Suggested Permutation 1:	No Increase in Domestic Renewable Energy Substitution	and	Increased Oil and Gas Imports Substitution Rate
Suggested Permutation 2:	Decreased "Reduced Demand" Rate	and	Increased Onshore Oil and Gas Substitution Rate

¹⁶ IEA (2021), Net Zero by 2050, IEA, https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf, p. 14

Given the change in the substitution rates, under a Net-Zero Net Benefits analysis, the Net Economic Benefits of a Lease Option would likely be greater than compared to an evaluation under current policies. That conclusion would also accord with the findings of prior Five-Year Programs.

More broadly, API is concerned over BOEM's narrow view of potential future outcomes to achieve net zero emissions. While we recognize that some outcomes may be more likely than others, BOEM has not presented the breadth of potential scenarios/pathways which could achieve net zero emissions. BOEM could have chosen to include other permutations including those which focus less on decreasing production and more on reducing emissions from oil and natural gas operations and mitigating the remaining emissions with negative emissions technologies or carbon dioxide removal, trends which are already evident in the industry. Instead, BOEM's analysis appears calculated to reach, and to solicit additional external support for, a preordained policy preference limiting OCS oil and gas leasing, notwithstanding that the best available actual information yields different analytical conclusions in favor of continued robust OCS oil and gas leasing.

8. The Social Cost of Greenhouse Gases Is Not Appropriate for Use by BOEM.

A. The Net Benefits Analysis of the Proposed Program Is Not an Appropriate Use of the Social Cost of Greenhouse Gases Tool

The SC-GHG estimates should not be used in the BOEM Proposed Program Net Benefit Analysis of the proposed program. SC-GHG estimates were developed for the evaluation of economically significant regulatory rulemakings that are intended to reduce greenhouse gas emissions that include full monetization of costs and benefits as part of a regulatory impact analysis where permissible under an agency's statutory authority. As noted above, use of SC-GHG estimates by BOEM is not appropriate and should be limited only to the evaluation of such actions that require full monetization of all costs and benefits and include review by the Office of Management and Budget (OMB) according to E.O. 12866.¹⁷

Even in the appropriate contexts, SC-GHG estimates are the output of a complex tool, requiring careful and consistent application across the federal government. The reintroduction of the SC-GHG estimates, under E.O. 13990, also included direction to the Interagency Working Group ("IWG") to "provide recommendations to the President, by no later than September 1, 2021, regarding areas of decision-making, budgeting, and procurement by the Federal Government where the SCC, SCN, and SCM should be applied."¹⁸ To date, no such recommendation has been made. Even if it could properly consider SC-GHG, BOEM should not be determining the appropriate use or recommended use of the SC-GHG estimates until the IWG has completed the task of providing such recommendations to the White House, from which they can flow in a consistent manner to the agencies of the Executive branch. Given the IWG's failure to provide recommendations for use of the SC-GHG estimates, any use of the estimates should be limited only to those economically significant regulatory rulemakings that are reviewed by OMB to ensure only appropriate and consistent applications occur.

As noted above, the IWG is clear in its most recent technical support document that "it is appropriate for agencies to revert to the same set of four values drawn from the SC-GHG distributions based on three discount rates (2.5 percent, 3 percent, and 5 percent) as were used in regulatory analyses

¹⁷ E.O. 12866, Regulatory Planning and Review <https://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>

¹⁸ E.O. 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." January 20, 2021. Section 5(b)(ii)(C). <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01765.pdf>

between 2010 and 2016 and subject to public comment.” The IWG emphasized “the importance and value of including all four SC-GHG values” for the purpose of “capturing the uncertainties involved in analyses.”¹⁹ Nonetheless, BOEM only used a 3% discount rate across the analysis and entirely fails to use the set of four values recommended by the IWG. A focus solely on this rate ignores other SC-GHG estimates and diminishes the level of uncertainty that exists in the development and use of these estimates. Review by OMB would likely have led to the recognition that the BOEM did not follow the recommendation of the IWG.

Further, in the National Academies of Sciences, Engineering and Medicine’s (‘NASEM’) 2017 review, it was clearly recommended that any agency or other usage of the SC-GHG should also include a robust discussion of the uncertainties inherent in the SC-GHG figures. There is no such discussion included in the DPEIS. Therefore, even if it were otherwise appropriate to use SC-GHG in the Net Benefits Analysis, the draft would still suffer from problematic omissions.

B. Adjustment of Royalty Is Not an Appropriate Use of the Social Cost of Greenhouse Gases Tool

The Proposed Program states (at 9-25 to 9-26) that “USDOE is evaluating an approach to incorporate a royalty surcharge for upstream GHG emissions. The surcharge could provide a mechanism that allows the social value of GHG emissions to factor into operators’ decision-making process.” Yet with the recent passage of the *Inflation Reduction Act of 2022* (IRA), BOEM’s proposal to incorporate a royalty surcharge for upstream GHG emissions is now moot. Section 50261 of the IRA (Pub. L. No. 117-169) amends 43 U.S.C. 1337(a)(1) to mandate that offshore royalties on the value of production saved, removed, or sold are “not less than 16 2/3 percent, but not more than 18¾ percent, during the 10-year period beginning on August 16, 2022, and not less than 16 2/3 percent thereafter” Accordingly, the Secretary no longer has the ability to set royalty rates for lease sales within this Proposed Program outside the limited range established by the IRA.

As a matter of policy, API and its members support significant actions to address climate change, and its above-discussed Framework calls for specific industry and government actions to further reduce emissions, including the endorsement of an economy-wide carbon pricing policy, while meeting the world’s long-term energy needs. However, royalty is not a permissible, appropriate, or transparent mechanism to address the costs associated with climate change. Climate change policy decisions are already adequately addressed by multiple department bureaus and offices with the specific legal mandate to evaluate environmental impacts and conduct the appropriate NEPA analysis. These policy decisions are also addressed within the statutory authority of other agencies like EPA having primary authority and responsibility to regulate GHG emissions. A royalty surcharge for climate costs will not provide a transparent incentive to reduce GHG emissions efficiently since it would not tie directly to the emission sources and the operations responsible for those emissions. Inflating royalty for the purpose of economically disincentivizing production would be both unlawful and unwise.

Nothing in OCSLA instructs or even allows DOI to consider the SC-GHG for royalty purposes. See *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 (2001) (in the nondelegation context, explaining that respondents “must show a textual commitment of authority to EPA to consider costs in

¹⁹ Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, “Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990.” February 2021. https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.

setting” national ambient air quality standards). Rather, royalty should be based on fair market value as statutorily mandated by OCSLA. OCSLA authorizes the Secretary to issue leases requiring payment of a royalty based on the “amount or value of production saved, removed, or sold.” 43 U.S.C. § 1337(a)(1). The value of the oil and natural gas commodity is set by the markets for that commodity and is principally related to the variability of supply and demand. Royalty and revenue management policies adopted under the leasing statutes must focus on the proper and accurate valuation of federal lease production. Potential environmental impacts of energy development do not influence the accounting methods needed to ensure accurate and certain reporting and payment of royalties.

Notably, BOEM’s sister agency, the Office of Natural Resources Revenue, declined such considerations in promulgating its most recent federal oil and gas royalty valuation regulations. 86 Fed. Reg. 54,045, 54,059 (Sept. 30, 2021) (“ONRR’s statutory directives pertain to the collection of royalties based on the fair market value. ONRR has no statutory framework within which to consider climate change as part of its rulemakings.”). BOEM should do the same here regarding its Five-Year Program.

API further notes that the Proposed Program mischaracterizes the direction provided in EO 14008²⁰ when it states that “[s]ection 208 of E.O. 14008 directs USDOT to incorporate the social cost of GHG emissions into royalty rates.” Proposed Program at 9-25. Rather, EO 14008 directs Interior to “consider whether to adjust royalties . . . to account for corresponding climate costs.” Contrary to the Proposed Program’s characterization, EO 14008 by its plain terms does *not direct* DOI to adjust royalty rates. In addition, EO 14008 makes no mention of the social cost of greenhouse gases nor sets forth an explicit direction to use it or any other metric. These considerations have no place in the Five-Year Program. Moreover, BOEM lacks authority to “incorporate the social cost of GHG emissions into royalty rates.” An agency’s actions must be within the agency’s specific legal mandate and cannot extend beyond the intended reach of the agency’s statutory and delegated authority.

Royalty is only one of many benefits the U.S. realizes through federal energy development. OCS oil and natural gas development also provides revenue directly to the U.S. Treasury in the form of rental payments, bonuses, and taxes, often collectively referred to as “government take.” Contemplation of policy changes should include a robust and holistic consideration of the fiscal system impacts since increased royalties may reduce these other forms of revenue or potentially drive away investment and its associated royalties or revenue. As recognized in the BOEM-funded IHS CERA Study²¹ *Comparative Assessment of the Federal Oil and Gas Fiscal System*, bonus bid payments to secure leases through competitive tender also constitute an important component of the income accruing to governments under such a system. The IHS CERA study noted that relative to other fiscal systems, the current federal oil and natural gas system relies more heavily on front-ended bonus bids which “provide no guarantee that the lessee will be able to discover oil and gas in paying quantities effectively shifting the risk of exploration onto the oil companies.” Bonuses create a self-correcting mechanism within the overall fiscal system — lease and project economics are evaluated based on the combination of the upfront bonus cost and the royalty rate. An increase in royalties on top of the bonus structure could reduce bonus payments or potentially drive away investment from federal lands and waters. As the IHS CERA Study found, government take should not be the only measure to determine attractiveness of a fiscal system:

²⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-theclimate-crisis-at-home-and-abroad>

²¹ <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Energy-Economics/Fair-Market-Value/CERA-Final-Report-November-2011.pdf>

If [government take] is used at all, it should be combined with other measures of profitability, fiscal system flexibility, revenue risk, and fiscal stability in order to properly assess petroleum fiscal systems. Such analysis should be combined with a proper understanding of the resource potential and the relative prospectivity of the federal lands. Fiscal design should be a reflection of the jurisdiction's relative prospectivity, economic development needs, dependence on hydrocarbon revenues, and environmental protection policies.²²

Government policies underpinning the fiscal system must ensure they are aimed at attracting new investment and remain competitive with opportunities in other countries as well as on state, private and Indian lands, which geologically may have more attractive development targets and flexible contract terms. This is particularly true for the OCS.

9. A Robust Schedule of OCS Lease Sales Serves the Public Interest.

The Biden Administration inherited a strong American energy outlook, reflected in low household energy costs,²³ record GHG emissions reductions²⁴ and reduced reliance on foreign energy.²⁵ Oil and natural gas development on the OCS provides affordable and reliable energy and remains essential to America's long-term economic growth. As the Proposed Program's Net Benefits Analysis found (at 5-38 to 5-39), offshore oil and natural gas production provides a broad range of net benefits to the American people and should not be summarily dismissed or minimized.

Notwithstanding the inappropriate use of SC-GHG, API supports BOEM's conclusion that the Gulf of Mexico Program Area 1 and Cook Inlet leasing option (Alternative B(a)) will generate incremental economic benefits and reduce environmental and social costs relative to the no leasing option. BOEM's discounted incremental net benefits estimates, which range from \$1.41 billion to \$244 billion, appear to adopt an apples-to-apples approach that focuses on the domestic upstream costs and benefits associated with the lease sale option. In future net benefit analyses, we hope that BOEM considers developing net economic value ("NEV") and environmental and social costs ("ESC"s) for other energy sources—such as renewables and nuclear—that BOEM believes will replace foregone OCS production in their no lease sale option instead of assuming that other energy sources have the same NEV as offshore production and generate no ESCs. Given that BOEM predicts that other energy sources only replace roughly nine percent of foregone U.S. OCS oil and natural gas production, BOEM's simplifying assumptions may have a bigger impact in the future if other energy sources make up a larger share of foregone OCS production.

²² <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Energy-Economics/Fair-Market-Value/CERA-Final-Report-November-2011.pdf>, p. 28.

²³ "Consumer Expenditures--2019." U.S. Bureau of Labor Statistics, September 9, 2020. <https://www.bls.gov/news.release/cesan.nr0.htm>.

²⁴ U.S. Environmental Protection Agency, "Inventory of U.S. Greenhouse Gas Emissions and Sinks 2019" <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks>

²⁵ U.S. Energy Information Administration, "U.S. Energy Facts Explained" <https://www.eia.gov/energyexplained/us-energy-facts/>.

The U.S. oil and natural gas industry as a whole directly and indirectly supports more than 11 million U.S. jobs and makes up nearly 8 percent of the U.S. economy.²⁶ Analysis prepared by OnLocation, an energy analytics firm, finds that a ban on new Federal leasing for eight years would result in a decline of 1.7 MMBOE/D of oil and natural gas production, eliminate nearly 340,000 American jobs by 2030, and reduce the cumulative U.S. Gross Domestic Product by \$400 billion in 2018 dollars.²⁷

Oil and natural gas exploration and production activities on federal lands and waters support hundreds of thousands of good paying jobs²⁸ and local economies,²⁹ and are conducted under some of the most stringent safety and environmental regulations in the world. These activities also contribute billions of dollars to federal and state governments every year, which support important programs like education, infrastructure, and conservation efforts. In 2019 alone, DOI disbursed nearly \$12 billion generated from energy production on federal lands and waters to the U.S. Treasury and state governments.³⁰ In Fiscal Year 2020, even amid the pandemic, the industry paid more than \$450 million in bonus bids and lease rentals, and more than \$6.7 billion in total revenue,³¹ and the Land and Water Conservation Fund, which is funded almost entirely by offshore oil and natural gas revenues, distributed over \$227 million across the country for outdoor recreation and conservation efforts.³² And in 2021, DOI announced that \$1.6 billion in funding would be used to address critical deferred maintenance projects and improve transportation and recreation infrastructure in national parks, national wildlife refuges and recreation areas, and Bureau of Indian Education schools. This funding, including through the Great American Outdoors Act,³³ would not exist but for energy development on the OCS.

Policies aimed at slowing or stopping oil and natural gas production on the OCS will ultimately prove harmful to our national security, environmental progress, and economic strength. National energy demand will continue to rise³⁴ and it is imperative that, as much as possible, the energy we use comes from right here in the U.S. Attempts to ban leasing and development on the OCS, or greatly hinder the ability to lease, permit, or develop these areas causing a de facto ban, would threaten decades of American energy and climate progress and return us to greater reliance on foreign energy with lower environmental standards. Perhaps most pointedly, consistent with BOEM's previous findings, any forced decrease in domestic production of oil and natural gas will likely lead to higher GHG emissions—*precisely the opposite effect of the Administration's intended goal.* See Proposed Program at 5-44.

²⁶ PricewaterhouseCoopers LLP, "Impacts of the Oil and Natural Gas Industry on the US Economy in 2019," <https://www.api.org/-/media/Files/Policy/American-Energy/PwC/API-PWC-Economic-Impact-Report.pdf>.

²⁷ OnLocation Inc., "The Consequences of a New Leasing Ban on Federal Lands and Waters," <https://www.api.org/-/media/Files/Policy/Exploration/2021/OnLocation-updated-federal-leasing-and-development-ban-study.pdf>.

²⁸ National Ocean Industries Association. "The Economic Impacts of the Gulf of Mexico Oil and Natural Gas Industry" <https://www.noia.org/gulfimpact2020/> 2020.

²⁹ Considine, Timothy J, "The Fiscal and Economic Impacts of Federal Onshore Oil & Gas Lease Moratorium and Drilling Ban Policies" <https://www.wyoenergy.org/wp-content/uploads/2020/12/Final-Report-Federal-Leasing-Drilling-Ban-Policies-121420.pdf> December 14, 2020.

³⁰ U.S. Department of the Interior, "Natural Resources Revenue Data" <https://revenue.data.doi.gov/query-data/?dataType=Disbursements>.

³¹ ONRR, Royalty Revenue Data, <https://revenue.data.doi.gov/query-data/>

³² U.S. Department of the Interior, "Secretary Bernhardt Announces \$227 Million for State Outdoor Recreation and Conservation Projects" March 31, 2020.

³³ <https://www.doi.gov/gaoa>.

³⁴ U.S. Energy Information Administration, "Annual Energy Outlook 2021" https://www.eia.gov/pressroom/presentations/AEO2021_Release_Presentation.pdf February 3, 2021.

API's members have invested hundreds of billions of dollars to develop oil and gas resources on the OCS in reliance on a legally sound and stable leasing and lease management regime. These companies have expended these considerable financial and time resources at substantial economic risk posed by high capital costs and leases' uncertain production potential. Any extended leasing ban (or significant curtailment of leasing) would threaten that stability and industry's confidence in DOI's management of federal mineral resources. Any ban on statutorily required lease sales in the interim is not legally permissible and upends the decades of stability and industry confidence in the DOI leasing program that has warranted the oil and gas industry's significant financial investment in that process.

The anticipated costs of further delays in the timely promulgation of a new Five-Year Program with scheduled OCS lease sales are similarly expected to be significant. A separate third-party expert analysis prepared for API estimates that such delays in OCS leasing alone could reduce the annual U.S. Gross Domestic Product by nearly \$10 billion and result in 116,000 fewer jobs at its peak impact.³⁵ Failure to conduct OCS leasing also puts at risk revenues distributed to the U.S. Treasury, the Land and Water Conservation Fund, and states, counties, and parish governments located along the U.S. Gulf Coast—all of which depend upon those revenues as well as the revenues from the future production from those leases. In short, delays on the Five-Year Program and lease sales thereunder are expected to have significant economic impacts and “lead to reduced industry spending, supported employment and GDP, government revenues, and oil and natural gas production.”³⁶

BOEM should carefully consider this information when preparing the Proposed Final Program and Final PEIS, and correspondingly include a schedule for at least semi-annual lease sales between 2023 and 2028 as outlined in Alternative B(a).

10. Areas Offered in Lease Sales Should Not Be Unnecessarily Truncated.

The Proposed Program (at 1-22) suggests that area-wide leasing (or more recently region-wide leasing) in the Gulf of Mexico might continue. However, it also suggests that the BOEM might conduct “targeted” leasing that removes large areas from lease sales. BOEM should adhere to its rationale in its 2017-2022 Program ROD (and Proposed Program) that region/area-wide leasing is preferable and offers “greater flexibility.”³⁷ BOEM should also offer all available unleased acreage in the Western and Central Planning Areas and ensure that it offers sufficient areas to comport with the directives in the IRA (namely, at least 60 million acres offered within one year prior to issuing a wind lease, not all of which will actually receive bids). A targeted approach wherein BOEM identifies narrow areas for leasing also incorrectly assumes that BOEM holds pre-leasing information that is confidential to bidders.

API fully supports continued use of the current region/area-wide leasing program in all OCS areas. It is important to not mistake the meaning of “region-wide leasing,” which is simply a single lease sale that combines more than one Planning Area; it does not in fact avail 100% of the acreage within those respective areas and should not be construed to somehow expand available acreage (e.g., limitations still exist, such as the Flower Garden Banks National Marine Sanctuary).

³⁵ “The Economic Impacts of a 5-Year Leasing Program Delay for the Gulf of Mexico Oil and Natural Gas Industry” (March 2022) <https://www.noia.org/wpcontent/uploads/2022/03/EIAP-5-year-Program-Leasing-Delay-Report-03-24-22.pdf>.

³⁶ *Id.*

³⁷ <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/2017-2022-Record-of-Decision.pdf>.

Furthermore, as discussed above, BOEM should ensure that it does not overstate potential impacts from leasing in presently eligible acreage in the Eastern GOM Planning Area. Rather, BOEM should expressly recognize that any development in such areas likely would not require additional infrastructure due to proximity to operations in the Central Planning Area.

11. Environmental Justice Considerations

API also commends BOEM for including discussions of cultural resources and coastal communities in its DPEIS, which subsume environmental justice considerations. API fully supports environmental justice goals, and it and its members are actively engaged in the communities where they operate and in related national initiatives. The oil and natural gas industry is essential to supporting a modern standard of living for all by ensuring that communities have access to affordable, reliable, and cleaner energy. One of API's top priorities is public health and safety, and our member companies have well-established policies and processes in place for proactive community engagement³⁸ and feedback aimed at fostering a culture of trust, inclusivity, and transparency. We believe that all people should be treated fairly, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Several federal agencies and departments have initiatives to address environmental justice; DOI should collaborate within the federal family as it addresses this issue. In the meantime, API supports the following environmental justice principles, which it and its members have affirmatively put into practice:

- Increased racial, national origin, and socioeconomic diversity of all stakeholders involved in the environmental policy development process.
- Development of enhanced risk communication tools and increased usage of those tools to inform businesses and communities on how to manage or reduce risks in operation areas.
- Development and application of the best and publicly available scientific methods to define the relationship between chemical stressors, non-chemical stressors, and social determinants of health.
- Use of community monitoring as a tool to better understand sources of emissions and potential impacts and mitigation measures.
- The development of improved decision-making tools.

Finally, BOEM should recognize that the sheer distances of OCS leasing and production from where people live and work largely avoids or minimizes environmental justice conflicts. This aspect further supports a robust lease sale schedule in the Final Proposed Program.

12. Conclusion

Thank you for the opportunity to provide these comments. API members remain committed and look forward to working with BOEM on federal OCS oil and natural gas leasing. Please do not hesitate to contact me if you have any questions.

³⁸ ANSI/API BUL 100-3 1ST ED (2014) Community Engagement Guidelines;
<https://www.apiwebstore.org/publications/item.cgi?08980f40-f946-4322-a98f-37976a9cd841>

Sincerely,

A handwritten signature in black ink, appearing to read "Cole Ramsey". The signature is written in a cursive style with a large, stylized initial "C".

Cole Ramsey, Vice-President, Upstream Policy

American Petroleum Institute

ramseyc@api.org

202.682.8050