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Subject: Request for Comments on the Draft Programmatic Environmental Impact Statement on the Outer Continental Shelf Oil and Gas Leasing Program: 2017 – 2022

The American Petroleum Institute (API), National Ocean Industries Association (NOIA), Independent Petroleum Association of America (IPAA), U.S. Oil and Gas Association (USOGA), International Association Of Geophysical Contractors (IAGC), Alaska Oil and Gas Association (AOGA) (collectively, the Associations) offer the following on the Bureau of Ocean Energy Management's (BOEM's) Draft Programmatic Environmental Impact Statement (DPEIS) on the Outer Continental Shelf (OCS) Oil and Gas Leasing Program: 2017 – 2022 released March 18, 2016.

As a Programmatic National Environmental Policy Act (NEPA) document, it is important that the DPEIS sets a solid framework for future decision-making regarding oil and gas leases in the OCS between 2017 and 2022. This Programmatic EIS should promote flexibility, transparency and robust scientific analysis for future site-specific NEPA documents on lease sales. Findings that flow from the analysis in the DPEIS establish the bounds under which future lease sales will be permitted.

The Associations generally support Alternative A as the Preferred Alternative provided no additional areas are removed for consideration from future leasing. We strongly encourage

BOEM to reconsider the range of alternatives analyzed and the rationale for eliminating certain alternatives from full analysis under NEPA. Specifically, we recommend that a less restrictive alternative be analyzed and that BOEM reconsider its overly-conservative decision regarding potential Atlantic leasing.

I. The Associations

API is a national trade association representing over 650 member companies involved in all aspects of the oil and natural gas industry. Each company is committed to safely and responsibly exploring the OCS for additional oil and natural gas resources to improve our nation's energy security. The scope and magnitude of the economic activity in the OCS are significant and the Associations recognize that BOEM must comply with numerous environmental statutes, regulations, and executive orders to carry out its mission. The oil and natural gas industry has a long history of working with the Department of the Interior (DOI) to develop this country's natural resources.

NOIA is the only national trade association representing all segments of the offshore industry with an interest in the exploration and production of both traditional and renewable energy resources on the U.S. OCS. The NOIA membership comprises more than 300 companies engaged in a variety of business activities, including production, drilling, engineering, marine and air transport, offshore construction, equipment manufacture and supply, telecommunications, finance and insurance, and renewable energy.

IPAA is a national trade association representing the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts. Independent producers drill about 95 percent of American oil and natural gas wells, produce more than 50 percent of American oil, and more than 85 percent of American natural gas. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy.

USOGA is a strong advocate for the petroleum industry and its contribution to our country's economic and strategic stability.

IAGC is the international trade association representing the industry that provides geophysical services (geophysical data acquisition, processing and interpretation, geophysical information ownership and licensing, associated services and product providers) to the oil and natural gas industry. IAGC member companies play an integral role in the successful exploration and development of offshore hydrocarbon resources through the acquisition and processing of geophysical data.

AOGA is a non-profit trade association located in Anchorage, Alaska. AOGA's 15 member companies account for the majority of oil and gas exploration, development, production, transportation, refining, and marketing activities in Alaska. AOGA's members are the principal oil and gas industry stakeholders that operate within the range of marine mammals in Alaskan waters and in the adjacent waters of the OCS. AOGA and its

members are longstanding supporters of wildlife conservation, management, and research in the Arctic, and also support the continued issuance of incidental take authorizations in the Arctic. AOGA has for many years successfully petitioned for, and defended in court, incidental take regulations applicable to offshore oil and gas activities.

II. Background

The Associations support BOEM's development of the 2017-2022 5-year OCS oil and gas leasing program (Program) consistent with Outer Continental Shelf Lands Act (OCSLA). Federal management of the oil and gas resources on the continental shelf of the U.S. is governed by OCSLA, which addresses federal leasing, exploration, development and production of oil and gas on the OCS. Section 18 of OCSLA requires the Secretary of the Interior to prepare, revise and maintain an OCS oil and gas leasing Program. BOEM is currently developing the 2017-2022 5-Year Leasing Program that will establish a schedule of lease sales for oil and gas development for those years. A Draft Proposed Program (DPP) was published on January 29, 2015, and to evaluate potential impacts of the 2017-2022 DPP, BOEM decided to prepare the DPEIS, including an analysis of potential environmental impacts of the activities that may result from the lease sale schedule identified in the DPP.

The DPP and the DPEIS are initial phases in the development of the 2017–2022 Program (DPP, p. s-1). Because the Program development process starts with the broadest consideration of areas available for leasing and is narrowed through a winnowing process pursuant to OCSLA, the DPP and DPEIS contain the broadest possible decisions under consideration and the broadest possible analyses of environmental effects as a result of the leasing program, respectively.

The Associations are longstanding supporters of the NEPA process as an effective means of identifying and analyzing the potential environmental impacts of proposed federal actions and mitigation measures. The Associations have been active participants in BOEM's earlier NEPA scoping and public comment periods on PEISs for prior 5-year leasing programs. The Notice of Intent (NOI) to prepare the DPEIS was published in conjunction with the release of the Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program for 2017–2022 on January 29, 2015. The Associations submitted a letter on March 30, 2015, in response to the request for comments on the DPP and the NOI. The Notice of Availability (NOA) of the DPEIS was published on March 18, 2016, with a request for comments that extended until May 2, 2016. At the same time, the Proposed Program was released with comments due by June 16, 2016.

The intent of our comments is to identify sections of the DPEIS that should be reviewed and possibly bolstered to support the “hard look” required under NEPA and in support of Section 18(a) of OCSLA to consider environmental impacts in a manner consistent with NEPA.

III. Comments

The Associations appreciate BOEM's consideration of the comments provided below to help further bolster the DPEIS. The Associations have been active participants in BOEM's earlier NEPA scoping comment period. Details from earlier industry letters are incorporated here by reference.

A. Relationship of this DPEIS to the DPP, PP and OCSLA

As BOEM acknowledges, the Program by itself does not constitute an “irreversible and irretrievable” commitment of resources to OCS oil and gas leasing, because of the phased OCS leasing and development process.¹ Consequently, the preparation of the DPEIS pursuant to NEPA is discretionary. Nevertheless, because BOEM elected to prepare the DPEIS in this instance, it should comply with NEPA to the maximum extent practicable when preparing and utilizing the DPEIS.

The DPEIS is also used by BOEM as a vehicle to assist the Secretary in making her decision on the final Program. The DPP states that “*preparation of the PP will be based on additional analyses of required Section 18 factors [OCSLA] and comments received by BOEM on the DPP and NOI to prepare the Draft PEIS*” (Chap. 1.2.3 PP and DPEIS). BOEM is, among other things, using the DPEIS to comply with the mandate in section 18(a) of OCSLA to consider “environmental values” of the OCS and “the potential impact of oil and gas exploration on other resource values of the [OCS] and the marine, coastal, and human environments” when formulating the Program.² This OCSLA mandate is consistent with the core purpose of NEPA, which is to inform agency decision-making.³ However, based on the content of the DPEIS, it is unclear whether BOEM is using the DPEIS to inform its Program-related decision-making, or is using it simply to disclose the impacts associated with Program decisions the agency already made. In the Associations’ view, the NEPA analysis does not support the decisions made by the Secretary.

For example, BOEM based the DPEIS proposed action alternative on the contents of its March 2016 Proposed Program, which the Agency formulated *prior* to engaging in the NEPA analysis of that Program’s impacts. *See* DPEIS at 2-5. If so, this would have the NEPA process backwards – BOEM’s NEPA analysis, including the identification of a reasonable range of alternatives, should *predate* program proposals, and indeed should help form the basis of its proposals, not the other way around. To the extent BOEM is using the DPEIS simply to report the environmental consequences associated with a Program it has already decided to pursue, BOEM has failed to use the DPEIS for its intended purpose under NEPA and OCSLA. In so doing, BOEM risks considering a range of Program alternatives that is too narrow, and risks producing environmental impact analyses that are merely confirmatory of the decisions the agency has already made. BOEM should explain how the analysis that appears in the DPEIS was actually used to formulate BOEM’s March 2016 Proposed Program.

¹ *Ctr. for Biological Diversity v. DOI*, 563 F.3d 466, 480-481 (D.C. Cir. 2009); *see Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588, 599-600 (D.C. Cir. 2015).

² 43 U.S.C. § 1344(a).

³ 40 C.F.R. § 1500.1(c); *Pacific Legal Found. v. Andrus*, 657 F.2d 829, 837-38 (6th Cir. 1981) (although compliance with NEPA serves to inform policymakers and the public, “[t]his [] does not exist independent of the primary purpose to insure an informed decision by the agency contemplating federal action...[informing policymakers and the public] is an added benefit derivative of the primary [decision making] purpose”); *see Ctr. for Biological Diversity v. DOI*, 563 F.3d 466, 480-481 (D.C. Cir. 2009).

The Associations request that BOEM consider the comments on the DPEIS as part of the OCSLA decision-making process. Specifically, the Associations ask BOEM to reconsider the decisions made prior to the release of the DPEIS, including decisions to remove the Atlantic OCS Program Area from consideration in the 2017-2022 leasing program, eliminate the possibility that the eastern Gulf of Mexico (GOM) could be re-opened, and delay the Alaska lease sales until later in the 5-year schedule. This would require that BOEM revisit the PP to consider comments from the public process on this DPEIS. At a minimum, the Record of Decision BOEM will produce when it finalizes the 2017-2022 Program, and which must both identify the alternative the agency ultimately selects and provide appropriate rationale for, should reflect BOEM's consideration of the information presented in the DPEIS.

Also, as stated in our March 30, 2015 letter to BOEM on the DPP, “...we need to maintain our activity in existing areas of operation and consider expanding access to unexplored and undeveloped OCS areas that have been off limits for decades....The DPP recognizes this by proposing to make some areas available for future leasing in the Atlantic, but does not fully capitalize on the opportunities available in other OCS areas, particularly the eastern GOM where extensive seismic surveys have already been performed and infrastructure is readily available.” The Associations believe that eliminating this eastern GOM option from consideration in the DPEIS creates a disconnect in the justification of Program decisions, offers little flexibility for decision-makers and narrows potential alternatives over the 5-year period without providing adequate rationale. We find that this request to include the eastern GOM in the alternatives was both reasonable and prudent pursuant to NEPA, and should have been fully analyzed in the DPEIS.

B. The DPEIS Must Reflect Programmatic Needs and Goals

Congress was explicit in its programmatic goals under OCSLA. The organizing principle of OCSLA is the “*expedited exploration* and development of the OCS 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.”⁴ Congress mandated these programmatic goals when it substantially amended OCSLA in 1978 for the express purpose of “[promoting] the *swift, orderly and efficient* exploitation of our almost untapped domestic oil and gas resources in the Outer Continental Shelf.”⁵ As the D.C. Circuit observed soon thereafter, “the Act has an objective — the expeditious development of OCS resources.”⁶

Despite these clear statements of Congressional intent and programmatic goals, the Associations question whether the range of alternatives evaluated in the DPEIS represents a framework for accomplishing the goals under OCSLA. The alternatives go from restrictive to even more restrictive based on time-area closures and exclusion zones that would make prudent oil and gas development nearly impossible. This approach is overly restrictive not only under NEPA but also under the balanced approach that Section 18 of OCSLA mandates. For

⁴ 43 U.S.C. § 1802(1) (emphasis added); see also 43 U.S.C. § 1332(3) (the OCS “should be made available for *expeditious and orderly development*, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs” (emphasis added)).

⁵ H.R. Rep. No. 95-590, at 8 (1977), *reprinted in* 1978 U.S.C.C.A.N. 1450, 1460

⁶ *California v. Watt*, 668 F.2d 1290, 1316 (D.C. Cir. 1981).

example, BOEM directly states in the DPEIS (p. 2-10) that the temporal closures proposed under Alternative B for the Alaska OCS would make development in the region extremely difficult. This is a fundamental flaw in both the DPEIS and the BOEM analytical process that goes against the guidance from CEQ for a programmatic assessment that evaluates a “reasonable range of alternatives” that go from broad-based programs to more site-specific, regional actions. Instead, BOEM’s proposed alternatives include very specific, regional actions supported by a very general analysis that lacks sufficient rationale.

C. Scope of the Programmatic Alternatives

The DPEIS (Section 1.2) states that the purpose of the Proposed Action is to implement the requirements of Section 18 for OCSLA for the Secretary of the Interior to schedule the size, timing and location of the 2017-2022 oil and gas lease sales that will best meet the national energy needs while balancing environmental and coastal zone protection with potential oil and gas development.

Alternatives A and B are nearly identical with the exception of excluding areas from development and Alternative C is no action. The Associations believe this does not represent a reasonable range of alternatives under NEPA due to the inability to substantially differentiate between Alternatives A and B and their associated environmental and socioeconomic effects presented in the DPEIS.

The notion that the scope of the alternatives identified in the DPEIS will cover only those areas included in the DPP is fundamentally flawed. The Associations would like to note that offshore and marine resources do not stop at arbitrarily created buffer zones. The Associations believe that BOEM has unnecessarily narrowed the scope of the DPEIS by deciding not to include any additional areas of the Eastern GOM Planning Area in the analysis of the Preferred Alternative in the 2017-2022 program. We recognize that the DPP did not include this planning area due to the existing congressional moratorium; however, excluding the Eastern GOM Planning Area in the first stage of the multi-stage leasing program does not align with the intent of the long-term leasing process that is designed to take multiple factors into account and not pre-determine the outcome. Inclusion of this planning area in the 2017-2022 NEPA analyses does not require a subsequent decision by BOEM to hold a lease sale in the area.

As stated in our March 30, 2015 letter to BOEM, the 2017-2022 OCS PEIS must offer a range of alternatives that represent alternative strategies for conducting oil and gas lease sales in the OCS as well as the No Action alternative. The alternatives should provide options for an overarching framework to allow oil and gas exploration commensurate with the OCSLA. BOEM’s approach to designing these programmatic alternatives should set a distinct course for decision-making whereby future NEPA compliance can effectively tier from the PEIS as more site-specific actions are considered.

Specifically, the Associations request that BOEM include a chapter in the PEIS that describes:

- Better documentation of the alternative screening process applied to a much broader range of alternatives, providing clear rationale for why certain options were eliminated or carried forward under an alternative;

- Detailed procedures for future NEPA compliance on oil and gas lease sale activities in terms of the level of detail expected in future NEPA documents (i.e., local scale or regional scale) and addition opportunity for stakeholder engagement, etc.;
- Actions planned or underway to address concerns raised during the PEIS such as closure areas, stakeholder coordination, etc.; and
- Provide an overview of additional activities related to evaluation of mitigation measures and monitoring to support successful management to “...ensure a proper balance between oil and gas production, environmental protection, and impacts to the coastal zone” consistent with the OCSLA.

D. Specific Comments on Alternatives

The DPEIS evaluates three alternatives (Chapter 2). The Proposed Action (Alternative A) is a schedule of 14 possible lease sales in five of the 26 OCS Planning Areas (Section 2.1-2.3.3). This schedule for the Proposed Action (Alternative A) was first announced in the 2017-2022 DPP (January 2015). Table 2.1-1 of the DPEIS shows the lease sale schedule selected by the Secretary in the 2017–2022 DPP. The 14 potential leases would include: 10 lease sales in the Gulf of Mexico (GOM); one lease sale each in the Beaufort Sea, Chukchi Sea, and Cook Inlet Program Areas, offshore Alaska; and one lease sale in the Atlantic Program Area.

The DPEIS also evaluates two additional alternatives, one that is more restrictive and one of no action (Section 2.4-2.4.5). Alternative B (Reduced Proposed Program) analyzes reductions in leasing through two approaches: 1) the exclusion of selected program areas; and 2) the exclusion of program areas, or programmatic mitigation of environmentally important areas (EIAs) within these program areas that could affect the size or location of leasing. Alternative C (No Action) would not schedule any new lease sales during the 5-year program 2017-2022. The alternatives should provide options for an overarching framework to allow oil and gas exploration commensurate with OCSLA. BOEM's approach to designing these programmatic alternatives should set a distinct course for decision-making whereby future NEPA compliance can effectively tier from the PEIS as more site-specific actions are considered.

1. Alternative A (Proposed Action)

GOM

The Associations are pleased that BOEM is analyzing the environmental consequences of maintaining regular and predictable lease sales in the Western and Central GOM Planning Areas in the DPEIS. Traditionally, including in the 2012–2017 Program, BOEM has scheduled separate, generally alternating, annual sales in the Western and Central GOM Planning Areas. The DPEIS analyzes a 2017-2022 Program option consisting of region-wide sales in a combined program area of Western, Central, and Eastern GOM unleased acreage not subject to the moratorium or otherwise restricted. An analysis of a modified version of the traditional approach was included in the DPP to facilitate the Secretary's determination of the approach that best considers the factors laid out in Section 18 of OCSLA.

Alaska

The Associations are pleased that BOEM recognizes the importance of continued exploration and development in the Alaska OCS and includes potential lease sales in the Chukchi and Beaufort seas and Cook Inlet in the DPEIS. However, the Associations are disappointed in the reduction of areas (as compared to previous Five-year Programs) available for lease, the limited number of lease sales proposed, and the delayed schedule for sales instead of a robust plan for development in a region that holds immense resource potential similar to the approach taken for the GOM.

The rationale provided in the DPEIS for delaying the Alaska lease sale “*to provide additional opportunity to evaluate and obtain information regarding environmental issues, subsistence use needs, infrastructure capabilities, and results from any exploration activity associated with existing leases*” (DPEIS pp. 2-7) ignores the sheer volume of scientific research that has been undertaken in this region and perpetuates a significant misunderstanding about the state of our understanding about oil and gas exploration and development in Alaska’s Arctic.

In 2006, the Chukchi Sea Environmental Studies Program, an industry-supported integrated ecosystem study, investigated a wide range of physical and biological components of Arctic marine systems. Other recent studies supported by local, state, and federal government agencies on important subsistence resources including bowhead whale, seal, and walrus tagging studies, as well as the Chukchi Offshore Monitoring in the Drilling Area program, are evidence of the technological advances and sophistication of supporting research in Alaska. Collectively, these studies are providing a comprehensive and detailed understanding of various physical and biological processes and components.⁷

BOEM’s approach seems to disregard the significant amount of scientific research and well documented Traditional Knowledge about this resource-rich region. Contrary to BOEM’s intent to allow sufficient time to conduct additional studies and industry planning, postponing the lease sales off Alaska’s coast as proposed in the DPEIS makes development in Alaska more difficult and more susceptible to failure. As stated in 2015 National Petroleum Council (NPC) Report (*Arctic Potential*) to the U.S. Secretary of Energy, “...*holding more frequent and predictable lease sales would also improve the ability to plan and execute exploration programs, particularly important in an area with a short working season. The inherent uncertainty in prospective frontier areas such as the Alaska OCS means that the subsurface knowledge gained from seismic surveys and the geological information from each drilled well significantly impacts on future drilling decisions. In the Alaska OCS, exploration and appraisal activities will proceed serially because the results of the first well in each area will determine where and how the next well should be drilled.*”

BOEM has stated that it will continue its well-established efforts to work with North Slope communities to de-conflict oil and gas activities from traditional and subsistence activities on the Arctic OCS. During the DPEIS scoping process, several North Slope organizations, including the North Slope Borough, the Northwest Arctic Borough, and the Alaska Eskimo

⁷ 2015 National Petroleum Council Report to the Secretary of Energy. Arctic Potential: Realizing the Promise of U.S. Arctic Oil and Gas Resources.

Whaling Commission, acknowledged that there can be benefits from oil and gas activity if it is done safely and provided it does not conflict with the traditional and subsistence activities upon which those communities rely.

The Associations believes that the local uses of the OCS can co-exist with the stipulations and mitigations that are already in place. Therefore, we recommend that the DPEIS include a discussion of the proposed oil and gas development activities in this region and the mitigation that has been developed to avoid or minimize potential adverse effects in an attempt to bridge the conflicting user-groups.

The Associations support the three proposed Arctic lease sales without further access restrictions that might hinder development of available leases.

Atlantic

The Associations supported the inclusion of the mid- and south- Atlantic (Sale Number 260) in the 2017-2022 DPP. This inclusion was the result of a region-specific strategy to address conducting offshore oil and gas lease sales in the Mid- and South Atlantic Program Area. During the 2012-2017 Program, and over the course of the last several years, BOEM has undertaken several steps to gather data throughout this program area which has resulted in a clear path for geological and geophysical (G&G) permitting in the Atlantic (BOEM 2014⁸). On July 11, 2014, BOEM issued a Record of Decision (ROD) for the *Atlantic OCS G&G Activities, Mid-Atlantic and South Atlantic Planning Areas, Final Programmatic Environmental Impact Statement* establishing the “highest practicable level of mitigation measures and safeguards to reduce or eliminate impacts to marine life” and laid the groundwork for G&G survey activities off the Mid- and South Atlantic coast for the 2017-2022 program.

Again, on March 30, 2015, the Associations requested “*that the program areas shown in the DPP be maintained in their entirety and with no further restriction placed on them during the development of the 5-year plan. Any fine-tuning of the program areas offered for leasing needed as a result of subsequent analyses by BOEM and other agencies can be done as part of the lease sale planning process.*” The Associations were in complete support of including this 2021 lease sale as part of the analysis of the 2017-2022 program in the DPEIS. Now, after this considerable effort, including a majority of public comments in favor of Atlantic leasing, and support from governors, senators, representatives and other state elected officials, the Mid- and South Atlantic Program Area lease sale proposed in the DPP and considered in the environmental effects analyses of the DPEIS is no longer being included in the 2017-2022 Proposed Program.

The rationale for removing this lease sale area from analysis under NEPA is unsupported considering that nearly a decade of scientific research related to potential oil and gas development has taken place. Further the timing of the decision just prior to the beginning of the comment period on the DPEIS seems to indicate that the DPEIS is a formality to document decisions already made by BOEM.

⁸ *Atlantic OCS Geological and Geophysical (G&G) Activities, Mid-Atlantic and South Atlantic Planning Areas, Final Programmatic Environmental Impact Statement*, Bureau of Ocean Energy Management.

Based on the analyses of impacts in the DPEIS there is no reasonable or clear justification for removing the Atlantic lease sale from the 2017-2022 program. In fact, there is no discussion of the removal of this program area in the DPEIS at all, which is especially troublesome. NEPA requires that alternatives eliminated or modified must be briefly described along with a discussion on the reasons for doing so.⁹

The Final PEIS for the *Atlantic OCS Geological and Geophysical (G&G) Activities, Mid-Atlantic and South Atlantic Planning Areas* incorporated several mitigation measures as standard operating procedures that, according to the Final PEIS, would for the most part result in inconsequential (negligible to minor) impacts on the environment. This makes the elimination of the Atlantic Lease Area from the 2017-2022 DPEIS even more confusing.

BOEM should consider the comments on the DPEIS as part of the OCSLA decision-making process and reconsider the decision made prior to the release of the DPEIS regarding the removal of the Atlantic OCS Program Area from consideration in the 2017-2022 leasing program. BOEM now has the opportunity to revisit the range of alternatives, incorporating more discussion on alternatives eliminated versus carried forward for full analysis.

The Associations generally support Alternative A as the Preferred Alternative provided no additional areas are removed for consideration from future leasing. We strongly encourage BOEM to reconsider the range of alternatives analyzed and the rationale for eliminating certain alternatives from full analysis under NEPA. Specifically, we recommend that a less restrictive alternative be analyzed and that BOEM reconsider its overly-conservative decision regarding potential Atlantic leasing. Any fine-tuning of the program areas offered for leasing needed as a result of subsequent analyses by BOEM and other agencies can be done as part of the lease sale planning process (DPP p. 8-2).

2. Alternatives B (Reduced Proposed Action) and C (No Action)

Considerable acreage has already been excluded from the 2017-2022 program especially in the Atlantic, eastern Gulf of Mexico, and the Alaska OCS. Chapter 2.4 of the DPEIS describes the reduction in potential leasing from the Proposed Action under Alternative B. Alternative B reduces the area available for leasing using two approaches: 1) the exclusion of program areas due to potential conflicts with environmental resources and oil and gas activities follow a potential lease, or between other OCS activities and oil and gas activities; and 2) the exclusion or programmatic mitigation for EIAs, within these program areas that would affect size or location of leasing under the Proposed Alternative. As discussed in Section 1.4.5, during scoping BOEM identified several EIAs that represent regions of important environmental value where there is potential for conflict between ecologically important or sensitive habitats; maintenance of social, cultural, and economic resources; and possible oil and gas development.

The Associations have serious concerns about the criteria used to identify EIAs (see Section D.3 below) as well as the mitigations proposed to protect them. BOEM is also incorporating certain very site-specific mitigations that are typically determined in a tiered NEPA analysis rather than at this programmatic level DPEIS. For example, stipulations for the Flower Garden

⁹ Bass, R.E., A.I. Herson and K.M. Bogdan. 2001. *The NEPA Book, a step-by-step guide on how to comply with the National Environmental Policy Act.* 475 pp., Solano Press, Point Arena, CA 95468, at www.solano.com.

Banks are analyzed as presented on pages 4-152 and 4-153, indicating the potential for very specific mitigations in that area. Similarly, specific temporal closures are suggested for the four Alaska OCS EIAs. Furthermore, there is no practical difference between Alternative B and C for the Alaska OCS if temporal closures are implemented for the four EIAs identified because doing so would effectively mean no exploration or development activities could occur due to the overly-restrictive closure.

Section 2.7 and Table 2.7-1 compare potential impacts to resources across alternatives and program areas. Most analyses indicate the potential for negligible to minor (most common) impact with moderate to major impacts potentially occurring in coastal areas and communities of Alaska (Table 2.7-1). Therefore, reducing areas available to potential oil and gas activities as described in Alternative B would, based on the DPEIS analysis, result in negligible environmental benefit.

The Associations do not support Alternative C No Action for the obvious reasons that it does not meet the stated purpose and need of the action to “*best meet national energy needs for the 5-year period following its approval or re-approval*” in a manner consistent with the principles specified in Section 18 of the OCSLA. We recognize the requirement for this alternative under 40 C.F.R. § 1502.14(d) and the limited value it may provide for comparing other alternatives .

3. Environmentally Important Areas (EIAs)

As described above, Alternative B (Reduced Proposed Action) analyzes reductions in available leasing acreage through exclusion zones or adoption of mitigation measures to minimize impacts for specified EIAs within the Beaufort Sea, Chukchi Sea, Cook Inlet, and Atlantic Planning Areas. These EIAs were chosen through a process of stakeholder engagement. BOEM analyzed and grouped EIAs into categories as to whether they could be geographically defined, and could affect the size and location of leasing (Figure 1.4.5-1 and related text in the DPEIS). Those areas that could be geographically defined and would affect the size or location of potential leasing were analyzed and programmatic mitigation and incorporated into Alternative B (described in Sections 2.4 to 2.4.5). Those EIAs that could be geographically defined but would not affect the size or location of potential leasing are considered programmatic mitigation but not included as part of a specific alternative. These programmatic mitigation measures can be used at any time throughout the 5-year Program. EIAs that were not spatially discrete and were unlikely to coincide with potential leasing under the Proposed Action were not considered further. The Associations believe that it is inappropriate to use the NEPA analysis to identify such areas without going through an iterative analytical review. And in this case, such a process does not fit into the OCSLA Section 18 framework, since program areas cannot be adjusted at later stages.

The DPEIS provides the Secretary with initial information to determine, at her discretion, how to carry out any further analysis and related decisions under the OCSLA for these EIAs that may affect the size, timing, or location of lease sales in the 2017–2022 Program. Although the DPEIS explains why these areas are either ecologically important or important for subsistence and traditional purposes, it does not explain why excluding these areas from the Program is necessary. The potential environmental consequences of oil and gas activities in these areas are considered negligible, minor or moderate. BOEM does not assert that oil and gas leasing in

these areas would have unacceptable impacts, nor does it even consider what impacts leasing in these areas might have. The DPEIS fails to consider the extent to which oil and gas activities might impact, if at all, subsistence hunting or traditional uses of these areas, although it obliquely suggests that impacts to subsistence fishing are at least partially why BOEM would exclude these areas from leasing consideration. *See* DPEIS at pp. 3-42 – 3-43.¹⁰ Instead the DPEIS identifies the important ecological and sociocultural resources contained in these EIAs and, without further discussion, simply proposes to exclude them from potential leasing through at least 2022. Therefore, the Associations believe that conclusions from the analyses of potential effects from oil and gas activities indicated in the DPEIS for these EIAs do not justify closures as appropriate mitigation.

Proposing to remove EIAs from the Program also appears to be internally inconsistent. For example, where BOEM proposes to simply remove EIAs from the Program without any consideration of environmental or sociocultural impacts, it simultaneously proposes to *include* “potential areas of special concern” in the Program, recognizing that review of environmental and other impacts will occur at the leasing stage and any areas unsuitable for leasing can be removed from future sales. Such unjustified disparate treatment could be construed as arbitrary and capricious decision-making prohibited by the Administrative Procedure Act (“APA”).¹¹

Although decisions to include areas in the Program do not constitute the “irreversible and irretrievable” commitment of resources to actually leasing or developing those areas, *eliminating* areas from the Program virtually *guarantees* that they will *not* be leased or developed in the foreseeable future. BOEM has presented no information justifying removal of these areas from the Program, and doing so at this early stage without any justification stage risks violating the APA.¹² Accordingly, both types of areas (EIAs and “potential areas of special concern”) should be included in the Program, and should not be removed from future lease sales until BOEM determines, based on an analysis of the reasonably foreseeable environmental and sociocultural impacts of leasing in those areas, that leasing there would be inappropriate.

In addition, the categorization and application of EIAs as a form of mitigation is not clear in the DPEIS. This results in confusion as to whether industry should consider purchasing leases adjacent to EIAs or whether, given the likelihood that these areas will be closed as mitigation, there would be another buffer placed around EIAs that would result in reducing the size of those potential adjacent lease areas. BOEM assumes that where multiple uses or users overlap spatially, there may be a need to restrict one or more activity to minimize potential conflict. This view is largely unsupported by the evidence. An overlap of different user-groups does not mean that one or more activities using the same physical space are mutually exclusive. Alternatives and mitigation measures cannot be imposed to counteract “purported effects” for which there exists no credible scientific proof. The DPEIS violates these precepts throughout

¹⁰ For example, BOEM provides no rationale at all for the potential elimination of Barrow Canyon from the Program. *See* DPEIS at 4-116.

¹¹ 5 U.S.C. § 706

¹² *See also Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 104-05 (1983) (agencies must provide “a rational connection between the facts found and the choice made”); *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, at n. 65, 420-21 (1971).

the document.

In light of the conclusions presented in the DPEIS environmental effects analyses, and the already considerable mitigation measures required for several EIAs, the Associations find that BOEM should state in the Final PEIS and Final PP that those spatially defined EIAs identified in Alternative B as potential areas of programmatic mitigation will not be considered for further mitigation in the Final PP.

E. Mitigation Measures and Associated Hierarchy for the Implementation of the 5-year Program

The Associations are concerned that the “mitigation hierarchy” used in this process largely focused on areas considered “unsuitable” for oil and gas development and is based on the same overly-conservative, fundamentally-flawed precautionary mitigation measures and unsupported assumptions discussed in previous paragraphs of this review that have been carried over directly into the DPP, the PP, and the PDEIS without further review or discussion. Therefore, we believe that the planning process has been undermined as it is dependent upon ineffective, largely overly precautionary, previously developed mitigation measures that lead to the unsupported elimination of planning areas from potential leasing to minimize potential effects of oil and gas activities that are largely contrived and unsupported by data. As this process emphasizes avoidance of areas, the DPP, unnecessarily and without support of scientific rigor eliminated numerous planning areas from potential leasing.

The Associations do not support the decisions made by BOEM in the development and implementation of the overly precautionary mitigation measures incorporated into this DPEIS. They are unrealistic and ineffective, and therefore unfair to industry, because they overstate the potential for impact in some cases by several orders of magnitude. Again, mixing programmatic with specific measures does not align with a NEPA process for establishing a broad framework at the programmatic level, then determining more specific measures and actions through planning area-specific, tiered analyses.

Given that the mitigation measures described in the DPEIS for the 2017-2022 Program continue to stretch the use of the term “best available” data, the Associations do not concur that the mitigation measures and conservation requirements adopted in the DPEIS are reasonable or have been fairly assessed. The Associations recommend strongly that the decisions used to develop the extent and breadth of these measures be re-considered prior to the completion of the Final PEIS and Final PP.

F. Programmatic Assessment and Satisfying NEPA’s “Hard Look” Requirement

The Associations recognize that a programmatic EIS takes a broader approach to environmental assessment than subsequent EISs or EAs that tier from this PDEIS. However, the levels of analyses in sections of this DPEIS are a result of “averaging” a predicted level of effect from the proposed action on each resource across program areas (Section 2.7). As such, the absolute minimum amount of relevant information on potential effects of the action is presented OCS-wide while individual leases are confined to a specific OCS area. In so doing, the analysis gives the impression that the environmental conditions in each lease sale area are similar and can be compared OCS-wide, which is not the case. Lacking more specific information and supporting

rationale behind the effects criteria and the associated conclusions, the DPEIS becomes an ineffective tool for informing or guiding agency managers on how to differentiate between activities that have no effect, a minor or major effect to a few animals, or major effects to an entire population.

In the Final DPEIS, we encourage BOEM to incorporate more detailed information to support the effects determinations based on the best available scientific research from each lease sale area. We encourage BOEM to consider presenting the analysis at the Program area level of detail, rather than the broad-brushed OCS-wide level of review.

G. BOEM's Application of the “Best Available Science”

This DPEIS is being developed in support of the 2017-2022 DPP. The scientific analysis set forth in the DPEIS, and upon which alternatives and recommendations set forth in the DPEIS are developed, must be based upon the best available science. This obligation stems from the following two separate legal mandates:

- NEPA itself requires that an agency “utilize ‘high quality’ science in preparing EISs”¹³; and
- the use of the best available science is mandated by Presidential Executive Order 13563 (Jan. 18, 2011). Section 1(a) of that Order provides that “[o]ur regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science.”

The DPEIS acknowledges the requirement to utilize best available science and assert the agencies have met this requirement. Industry does not share that assessment. The Associations continue to be concerned that, while BOEM may continue to have access to the best available information and scientific results, these data and data results continue to be mis-applied or ignored in the decision making process. This is most evident in the decision to withdraw the Atlantic OCS planning areas from the 2017-2022 Program for potential leasing. We continue to be disappointed that BOEM has not relied on the best available science and analyses of effects in the DPEIS, including the results of over a decade of studies that were funded, for the most part by BOEM as part of its Environmental Studies Program specifically for their decision-making process. Instead, BOEM has become more and more reliant on “public opinion” and short-term political decisions, which seems to be the case for removing the Atlantic from the proposed lease sale program for 2017-2022.

H. Impact Assessment and Impact Producing Factors

BOEM’s analysis of environmental consequences emphasize that the DPEIS is a programmatic-level assessment discussed in support of OCSLA to balance oil and gas development with social, environmental, and economic concerns. Section 4.4 Impact

¹³*Sierra Club v. Marita*, 46 F.3d 606, 621 (7th Cir. 1995) (citing 40 C.F.R. § 1500.1(b)). “Accurate scientific analysis [is] essential to implementing NEPA.” *Environmental Defense v. U.S. Army Corps of Engineers*, 515 F. Supp. 2d 69, 78 (D.D.C. 2007).

Assessment begins by stating: “Fully predicting the degree of effect is impossible at the programmatic scale being considered here. It is, therefore, imperative that any subsequent approvals or more regional or site-specific analyses consider the most recent science available at the time of the decision” (DPEIS pp. 4-81). This raises serious questions about the overall value of the impact assessment and more importantly, how the conclusions from the evaluation have been applied to a very narrow set of alternatives with overly-conservative mitigation measures.

In recognition of the fact that the environment, ecology, economy, and attributes of the Gulf of Mexico, the Atlantic, and the Arctic are distinct from one another, the DPEIS generally treats the environmental analysis for each Planning Region separately. However, in a number of instances, BOEM inexplicably abandons this approach, opting instead to discuss certain types of Program impacts generically, without regard to region or the unique conditions presented by those regions. For example, the DPEIS discusses air impacts generically, and fails to consider that the impacts of air emissions might vary depending on whether the leasing and development at issue takes place offshore Alaska, the Atlantic, or the Gulf Coast. *See* DPEIS at pp. 4-81 – 4-83. Similarly, BOEM analyzes “unavoidable adverse impacts” generically, as though these impacts would be the same across all regions, although, as the agency itself points out, this is clearly not the case. DPEIS at p. 5-1. This same problem is presented with respect to the discussion of water quality (DPEIS at pp. 4-83 – 4-87 (which only cursorily addresses Alaska separately)), and vessel traffic impacts or use conflicts, which likely vary greatly among the Gulf, Alaska, and the military-active Atlantic, and none of which is considered in the DPEIS analysis. DPEIS at 4-92 and 4-113. To the extent that BOEM abandons its regionally-based assessment of impacts, it unnecessarily invites would-be challengers to dispute the adequacy of its analysis. Therefore, BOEM should ensure that all its impact assessments are tailored to the relevant regions, and if BOEM anticipates that a suite of impacts will be identical across regions, it should say so and explain why.

Also, the Associations recognize that the CEQ has directed federal agencies to focus environmental analysis on what is significant and de-emphasize what is not.¹⁴ However, the organization of the DPEIS impact assessment is hard to follow given that the detailed discussion of moderate to major effects is placed in Chapter 4, while impacts that are expected to be negligible to minor are identified and summarized for each resource area in the tables in Appendix D only.

Further, the “averaging” of potential impacts of the alternatives across OCS program areas goes against CEQ guidance to describe both the context and intensity¹⁵ of a potential impact. Further, since the DPEIS assesses impacts across the full range of potential effects in each of the five program areas, most conclusions on direct and indirect impacts involve considerations that are common throughout the program area, and some conclusions on impacts cross all program areas. For these reasons BOEM further states that “the discussion of impacts for Alternative A in Section 4.4.1 [in the DPEIS] is not structured by area and does not address

¹⁴ 40 C.F.R. § 1502.2(b).

¹⁵ Such a determination requires consideration of both the context and intensity of project effects. “Intensity” refers to the severity of the impact. 40 C.F.R. § 1508.

specific OCS planning areas” and “the exact context and intensity of impacts from further OCS and gas activities cannot be identified without knowing specific location and design details.” As stated earlier, despite this conclusion, very specific mitigation measures are being introduced to address impacts that have been assessed on a very broad scale.

In the DPEIS (Sections 1.4.2 and 3.5), BOEM describes an impact producing factor (IPF) as an activity or process that causes impacts to the environmental or socioeconomic setting. Based on scoping for this DPEIS, as well as a review of previous environmental documents, BOEM has identified resources that may be impacted by activities associated with the 2017-2022 Program, and the most likely IPFs (Section 3.5) through either direct or indirect effects, or cumulative effects. BOEM identified the following IPFs for consideration across the resource categories evaluated in this DPEIS: noise; vessel traffic; discharges; drilling; mud cuttings; bottom disturbances; air emissions; lighting; visible offshore facilities; space-use conflicts; accidental oil spills; and others. Table 3.5-1 of the DPEIS provides a summary of IPFs associated with OCS oil and gas activities, and Table 3.5-2 provides a general description of those factors. Table 3.5-3 describes those resources potentially affected by impact producing factors.

The Associations are concerned with the statement by BOEM that “at the 5-year Program stage it is not possible to perfectly identify the nature and scope of IPFs of future activities.” This statement undermines the value of the DPEIS. We recognize that each phase of activity (geophysical, exploration, development, production) will have a set of IPFs that may affect physical or environmental conditions and may affect one or more resources. At each phase of the methodology, the DPEIS continually states that the effects cannot be accurately or adequately discerned due to one or more factors. This statement raises concerns as to whether the results in the DPEIS provide a reasonable assessment of future, foreseeable impacts of the three alternatives.

I. Affected Environment

BOEM has amassed a considerable amount of information in the DPEIS description of the “affected environment” that details the various environmental receptors in each relevant region that may be affected by implementation of the Program. In a number of instances, however, the information on the affected environment is not utilized to assess the environmental impacts of Program implementation. Failure to “connect the dots” between the affected environment and the proposed action’s effects on that environment is a potential NEPA deficiency.¹⁶ Accordingly, BOEM should ensure that the DPEIS fully accounts for all of the reasonably foreseeable effects of its proposal *on the affected environment* described in the DPEIS.

For example, the description of marine mammals and birds in each region is not utilized in any discussion of the ways in which, or the degree to which, oil and gas activities may impact those species in the various regions. See DPEIS at 4-38 – 4-39 (marine mammals), and at pp. 4-45 –

¹⁶ See *Ctr. for Biological Diversity v. NHTSA*, 538 F.3d 1172 (9th Cir. 2008) (EA invalidated due to agency failure to analyze significance of disclosed climate-related emissions despite broader discussion of climate change phenomenon); *Border Power Plant Working Group v. DOE*, 260 F. Supp. 2d 997, 1028-29 (S.D. Cal. 2003) (EA containing discussion of climate change phenomenon invalidated due to, *inter alia*, failure to fully disclose associated emissions and discuss effect on climate change).

4-46 (birds). The same is true for cultural and historical resources, which are discussed at length in the affected environment section, but are barely considered when BOEM discusses the potential impacts of the proposed Program. See DPEIS at pp.4-54 – 4-55. Because BOEM’s failure to consider the impacts of the proposed Program on these and other aspects of the affected environment presents a potential NEPA vulnerability, BOEM should ensure that the final PEIS adequately “connects the dots” between the described affected environment and the impacts of the proposed action and alternatives, and takes a “hard look” at all the reasonably foreseeable impacts of the Program.

J. Indirect Effects Analysis

CEQ’s NEPA implementing regulations indicate that an agency must evaluate environmental impacts that are “caused” by its actions and are “reasonably foreseeable.”¹⁷ To “cause” impacts under NEPA, there must be “a ‘reasonably close causal relationship’ akin to proximate cause in tort law.”¹⁸ The agency must only engage in “[r]easonable forecasting,”¹⁹ but not “a ‘crystal ball’ inquiry”²⁰ when considering indirect effects. Furthermore, agencies need not consider environmental effects in a NEPA analysis when the agency has “no ability to prevent [the] effect due to its limited statutory authority over the relevant actions.”²¹

The DPEIS properly omits consideration of downstream use of crude oil and natural gas production from the OCS, including greenhouse gas emissions, because any environmental impacts that may result from the downstream use of those products are neither caused by BOEM’s actions nor reasonably foreseeable. Production from the leases that may be ultimately issued pursuant to the 5-year program would be distributed widely to an unknown array of locations for an unknown array of uses: crude oil may be processed, refined into dozens of products, or stored, and natural gas may be used as a feedstock for chemical or fertilizer manufacturing, or combusted for power generation. Critically, unlike under previous 5-year programs, many of these locations and uses are likely to be outside of the United States, as industry builds out export capacity for liquefied natural gas, and significant crude oil exports are now permitted under federal law for the first time in over four decades. Evaluation of the potential environmental impacts of worldwide distribution of oil and gas that may be produced for myriad purposes is well beyond what is reasonably foreseeable for purposes of a NEPA indirect effects analysis. Otherwise, BOEM would have to model and analyze, at a minimum, greenhouse gas emissions and other impacts associated with virtually the entire global refinery, petrochemical, and natural gas-fired power generation fleets, a task that seems as daunting as it would be expensive. Furthermore, BOEM has no authority to prevent or regulate the downstream use of crude oil or natural gas, and therefore BOEM need not consider that activity under U.S. Supreme Court precedent.

¹⁷ 40 C.F.R. § 1508.8.

¹⁸ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004); (citing *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

¹⁹ *Scientists’ Inst. for Pub. Info., Inc. v. Atomic Energy Comm’n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

²⁰ *Suffolk County v. Secretary of Interior*, 562 F.2d 1368, 1378 (2d Cir. 1977) (citation omitted)

²¹ *Pub. Citizen*, 541 U.S. at 767.

K. Cumulative Effects Analysis

Analysis of cumulative effects is a required aspect of environmental impact analysis under NEPA²² and requires federal agencies to look beyond the incremental impacts of a single decision, which may be individually insignificant but may cumulatively contribute to significant environmental change. A cumulative impact “*results from the incremental impact of an action when added to other past, present and reasonable foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions.*”²³ Section 3.6 of the DPEIS presents the cumulative activities scenarios stating that “*it is important to consider the lease sales that might be held under the Program in a broader context that accounts for the full range of actions and associated impacts taking place within each of the five Program Areas, currently and into the foreseeable future. Repeated actions, even minor ones, may produce significant impacts over time.*”

Although the DPEIS attempts to account for some other present actions affecting the resources that would also be affected by implementation of the Program, and considers other *future* oil and gas and “similar” activities that would also have impacts cumulative with the impacts of the proposed Program (see pp.3-38 and 4-156), with perhaps the exception of the future impacts of stricter EPA marine fuel standards, the DPEIS completely fails to consider *other reasonably foreseeable future non-oil and gas related* activities that would have cumulative effects with the proposed Program.

The same generic impact criteria used to determine the level of direct and indirect effects are also applied to the cumulative impacts analysis. As stated previously, the criteria are so broad they do not facilitate any meaningful analysis of direct, indirect *or* cumulative effects. The Associations are concerned that the largely qualitative cumulative effects analysis fails to conduct a “hard look” despite the “broad-scope” of the programmatic assessment. The narrative in Section 4.5 of the DPEIS is meant to place the range of impacts discussed in a broader context and builds upon previous effects discussions in Sections 3.1 and 3.6, and 4. Yet, the criteria used to determine the level of cumulative impacts are ineffective in providing a meaningful analysis of direct and indirect impacts.

For example, Section 4.5.1 described the level to which the proposed action could impact air quality. The DPEIS states that “*the proposed action could impact air quality when added to other impacts from similar and unrelated past, present and foreseeable future actions over the next 40 years.*” Following a brief discussion of the present activities that may affect the resource quality, the DPEIS concludes with a general statement that “*cumulative impacts to air quality in the OCS associated with the proposed action, ongoing and future OCS oil and gas programs, as well as unrelated activities are expected to be moderate.*” Therefore, for the most part the discussion of cumulative impacts focused on a qualitative statement that there were cumulative impacts affecting all resources, but the contribution of the activities in the proposed 2017-2022 program was either [negligible, minor or moderate] when compared to all other activities affecting that resource. Again, the DPEIS is lacking detail but generally states that

²² 40 C.F.R. §§ 1508.25(c)(3), 1508.27(b)(7).

²³ 40 C.F.R. § 1508.7.

there will be an incremental cumulative impact from all IPFs on all resources resulting from the implementation of the 2017-2022 Program.

The Associations are concerned that as a whole, the cumulative effects analysis lacks any quantified or detailed information, without which we cannot determine or be assured that the CEA is considered adequate under NEPA. The Associations encourage BOEM to reconsider its approach to analyzing impacts across all program areas and consider conducting the direct, indirect *and* cumulative impact analysis on an area-by-area basis. At a minimum this would recognize distinctions between levels of effect by planning area.

L. Implementation of Adaptive Management through NEPA

The concept of adaptive management is not new to BOEM and was in fact emphasized as an approach to be embraced by the agency in the 2014 Atlantic G&G PEIS, Appendix C Section 7 which states: *“Once a better understanding of the effectiveness of assigned mitigations is achieved, BOEM, as the decision maker, will be able to better assess and adjust future management decisions and design more effective mitigations if warranted. This adaptation will take place by using this Programmatic EIS as a baseline; an ongoing process of BSEE examining monitoring data and periodic assessments performed on it in BOEM’s Environmental Studies Program; and using models to predict outcomes with the comparative results of these analyses feeding back into the decision-making process to produce more effective future decisions. BOEM also understands that successful adaptive management of a program and active ties within that program requires stakeholder participation.”*

The Associations generally agree with BOEM that adaptive management could provide the built in flexibility necessary for successfully balancing ecosystem management principles with prudent oil and gas exploration and development. However, this DPEIS does not provide a better understanding of the systematic process BOEM will use to implement adaptive management concepts. The Associations believe this is needed to ensure that this approach is not used to create more uncertainty from a regulatory perspective. A true adaptive management program should adjust requirements to be either less restrictive or more restrictive based on project-specific information, the assessment of relevant risks, and the best available scientific information. If the program is not based on the best new science and relies instead on increasingly conservative assumptions, regulatory uncertainty will only increase.

The Associations support use of the best available science in all situations and, generally, adaptive management allows for using best available information at any time throughout a process. However, by BOEM’s own admission, adaptive management has largely been a one-way process used only to apply more stringent mitigation measures on top of those already being applied. This DPEIS is not different as use of the term adaptive management is proposed only as a means to further restrict activities with no option to lessen restrictions based on site-specific assessments or new data. As previously stated by the Associations, this is not adaptive but more prescriptive. Rarely has BOEM applied adaptive management based on the project specific information, the species present in a project area, the assessment of relevant risks, and the best available information.

The Associations support using adaptive management to help manage potential effects on important resources, but it is equally important to revisit conclusions about effects and the design of the adaptive management program after implementation to assess how effective the program is at mitigating impacts. Adaptive management is a useful tool for addressing uncertainty associated with a large-scale program such as the OCS lease sales but must be applied in a manner that truly informs the process rather than dictate a monitoring framework that only results in further constraints on activities. If monitoring shows undetectable or limited impacts, an adaptive management strategy should allow for less onerous restrictions on oil and gas exploration.

The Associations questions whether it is possible for adaptive management to fit into a NEPA context and that the two processes should be separated. We request that BOEM hold a workshop or provide additional opportunities for future dialogue on adaptive management.

M. Air Quality Analysis Considerations

The Associations are concerned with BOEM's analysis regarding air quality in the Gulf of Mexico Region. The DPEIS conclusion (moderate air quality impacts for the Gulf of Mexico Program Area, page xiii) is not consistent with others in the record, made by the same agency, and BOEM provided no information to substantiate the change, specifically:

- BOEM's most recent Programmatic Environmental Impact Statement (BOEM 2012-030) addresses the 2012-2017 OCS oil and gas leasing program. It includes photochemical modeling studies indicating maximum contributions of 0.2-1.0 ppb to ozone concentrations at onshore areas exceeding the 75 ppb NAAQS.
- Three recent EISs [the 2012-2017 Western and Central Planning Area EIS (BOEM 2012-019), the 2014-2016 Western Planning Area EIS (BOEM 2014-009), and the 2015-2017 Central Planning Area EIA (BOEM 2014-655)] for the current (2012-2017) leasing program specifically conclude that onshore air quality impacts will be minimal or insignificant.
- In addition to the NEPA documents for the current OCS leasing program discussed above, the Associations reviewed twenty-four additional EISs and Environmental Assessments published by BOEM and the Minerals Management Service between 2002 and 2015 addressing oil and gas lease sales in the Gulf of Mexico region. None of these documents conclude that oil and gas activities have the potential to endanger onshore air quality.
- Finally, the 2012-2017 Gulf of Mexico multi-lease sale EIS (OCS EIS/EA 2012-019) specifically states that existing regulations are sufficient to prevent adverse onshore air quality impacts: "*Regulations, activity data reporting via the [Gulfwide Offshore Activity Data System] reporting requirement, and mitigation, such as monitoring the performance of the catalytic converter, would ensure [pollutant concentrations] stay within the NAAQS.*" (section 4.1.1.1.2)

Given BOEM's recent proposal to fundamentally alter the current Air Quality Regulatory Program (AQR) when the agency itself, including neighboring states, have repeatedly concluded that offshore emission sources do *not* contribute significantly to onshore air quality,

the Associations question if this change in the perceived air quality environmental impacts in the Gulf of Mexico is an attempt to wrongfully justify the need for new regulations.

We appreciate the opportunity to provide these comments and would be pleased to discuss them further as appropriate. Should you have any questions, please contact me at (202) 682-8584 or radforda@api.org.

Sincerely,



Andy Radford, American Petroleum Institute



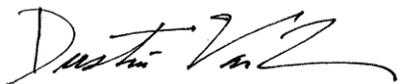
Jeff Vorberger, National Ocean Industries Association



Dan Naatz, Independent Petroleum Association of America



Alby Modiano, U.S. Oil and Gas Association



Dustin Van Liew, International Association of Geophysical Contractors



Joshua Kindred, Alaska Oil and Gas Association