IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, et al., *Plaintiffs*, v. DEBRA A. HAALAND, et al., *Defendants*, STATE OF LOUISIANA, *Intervenor-Defendant.*	Case No. 1:21-cv-02317-RC

REPLY BRIEF OF INTERVENOR-DEFENDANT THE AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF ITS CROSS-MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION[1]

Relying on the National Environmental Policy Act ("NEPA"), Plaintiffs attempt to thwart Congress's "mandate[]" in the Outer Continental Shelf Lands Act ("OCSLA") that the "Secretary [of Interior], who delegates authority to BOEM, implement Lease Sales of the OCS in 5-year increments." *Oceana v. Bureau of Ocean Energy Mgmt.*, 37 F. Supp. 3d 147, 174 (D.D.C. 2014). But NEPA does not exist in a vacuum, and instead must be applied harmoniously with the statutory enabling authority underlying the agency action that triggers NEPA review – here, OCSLA. *E.g.*, *Oceana*, 37 F. Supp. 3d at 174 (NEPA "no action" alternative must be considered in the light of the "practical reality of the OCSLA statutory scheme"). In adjudicating another climate-based challenge to Interior's administration of the offshore oil and gas leasing program, the D.C. Circuit emphasized Congress's mandate that Interior conduct offshore leasing:

> Petitioners' consumption-related claims appear to stem from the flawed premise that, before Interior approves an offshore oil and gas Leasing Program, it must first consider whether it should extract oil and gas from the OCS at all. But Congress has already decided that the OCS should be used to meet the nation's need for energy. Indeed, OCSLA instructs Interior to ensure that oil and gas are extracted *from the OCS* in an expeditious manner that minimizes the *local* environmental damage to the OCS. *See* 43 U.S.C. § 1344. Interior simply lacks the discretion to consider any global effects that oil and gas consumption may bring about.

Ctr. for Biological Diversity v. Interior, 563 F.3d 466, 485 (D.C. Cir. 2009) [*hereinafter* "*CBD*"]. This same Congressional mandate colors the lens through which Plaintiffs' NEPA claims must be

[1] In this Reply, Intervenor-Defendant the American Petroleum Institute ("API") refers to its Memorandum In Support of its Cross-Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment (ECF Doc. 43-1) as "API Br.," to Plaintiffs' Memorandum in Support of their Motion for Summary Judgment (ECF Doc. 34-1) as "Pl. Br.," to Plaintiffs' Combined Opposition and Reply (ECF Doc. 52) as "Pl. Opp.," to the [Proposed] *Amicus Curiae* Brief of Members of Congress (ECF Doc. 57) as "Amicus Br." Capitalized terms that are not otherwise defined have the meaning ascribed to them in the API Brief.

considered.[2] Indeed, Congress amended OCSLA after NEPA was adopted expressly to overcome "a variety of technological, economic, environmental, administrative, and legal problems which tend to retard the development of the oil and natural gas reserves." 43 U.S.C. § 1801(8). Congress replaced those impediments with "policies and procedures . . . intended to result in expedited exploration and development of the Outer Continental Shelf." OCSLA Amendments of 1978, Pub. L. No. 95-372, § 109, 92 Stat. 629, 631 (1978) (codified at 43 U.S.C. § 1802(1)). "The basic purpose of [the amendments is] 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).

Plaintiffs' NEPA claims not only contradict and impede the clear purposes of OCSLA, they also are not ripe for review. To defeat Intervenor-Defendants' ripeness-based jurisdictional challenge, Plaintiffs must: (i) overcome decisions by the United States Supreme Court, the D.C. Circuit, and this Court, including *Oceana*, *supra*, and *Fisheries Survival Fund v. Jewell*;[3] (ii) turn a blind eye to the obvious parallels between Interior's Offshore Wind Leasing Program and Interior's Offshore Oil and Gas Leasing Program; and (iii) ignore the dozens of statutory and regulatory reviews and approvals that are required before a lease owner is authorized to conduct operations.[4] Plaintiffs cannot overcome these hurdles.

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[2] *Cf. Sierra Club v. FERC*, 827 F.3d 36, 47 (D.C. Cir. 2016) (due to limitations on FERC's authority, FERC's NEPA analysis did not have to address the indirect effects of the anticipated export of natural gas).

[3] No. 16-cv-2409, 2018 U.S. Dist. LEXIS 168532 (D.D.C. Sept. 30, 2018), *aff'd sub nom.*, *Fisheries Survival Fund v. Garden State Seafood Ass'n*, 858 Fed. Appx. 371 (D.C. Cir. 2021).

[4] *See* 43 U.S.C. §§ 1340, 1351 (OCSLA); 30 C.F.R. Parts 250 & 550; 43 C.F.R. Part 46 (DOI NEPA regulations); *N. Slope Borough v. Andrus*, 642 F.2d 589, 593 (D.C. Cir. 1980) ("no drilling — not even of an exploratory nature" is permitted with the purchase of a lease); *Oceana*, 37 F. Supp. 3d at 176 n. 27 (when Interior issues an offshore oil and gas lease, "nothing irreversible

With respect to the merits of Plaintiffs' NEPA arguments, to hold in Plaintiffs' favor this Court will have to contradict its prior rulings that an EIS's "No Action" alternative at the OCSLA Lease Sale stage necessarily lacks an actual, practical, material impact. API Br., pp. 24-30. In *Oceana*, this Court rejected a challenge to the adequacy of Interior's "No Action" alternative analysis in a Lease Sale EIS that was effectively identical to BOEM's analysis in the EISs challenged here. 37 F. Supp. 3d at 174 (upholding EIS underlying Lease Sale 216/222); API Br., pp. 28-29. And, in *Gulf Restoration Network v. Bernhardt*, 456 F. Supp. 3d 81, 95-97 (D.D.C. 2020) (appeal pending, No. 20-05179 (D.C. Cir. *filed* June 18, 2020)), this Court upheld BOEM's "No Action" alternative analysis in the very same EISs at issue here, recognizing the "nearly identical" language between these EISs and the EIS at issue in *Oceana*. Even setting these precedents aside, BOEM's more than 44,000-page administrative record should receive the "extreme degree of deference" owed to an agency's evaluation of scientific data. *Oceana*, 37 F. Supp. 3d at 154. And, Plaintiffs' reliance on the draft Supplemental EIS for Lease Sale 258 is misplaced, given that the quantitative analysis proposed therein is still in progress and, thus, was unavailable to BOEM when it decided (on court order) to move forward with Lease Sale 257.[5]

Finally, Plaintiffs fail to meet their steep burden of establishing that Lease Sale 257 should be vacated based on a single, narrow element of BOEM's multiple extensive EISs. Among other failures, Plaintiffs' plea for vacatur ignores the significant and incurable commercial harm that

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has been done" because Interior "must still review any exploration and development plans to ensure those plans comport with NEPA and the ESA before drilling can be done.").

[5] In the draft Supplemental EIS for Lease Sale 258, BOEM explained that the proposed quantitative analysis is "the first of its kind for BOEM and offshore oil and gas leasing" and was clear that "BOEM expects to make refinements to its analysis[.]" BOEM, BOEM 2020-0623, Draft Environmental Impact Statement, Cook Inlet Planning Area, p. 46 (October 2021) [*hereinafter* "Lease Sale 258 Draft EIS"], *available at* https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/LS258-DEIS_0.pdf.

vacatur would cause to each of the 33 bidders at Lease Sale 257, including several API members. API member Chevron U.S.A. Inc.'s ("Chevron") proposed intervention provides a specific example of how just a single bidder would be harmed by vacatur of a Lease Sale at which Chevron publicly disclosed its proprietary valuation of unleased blocks in the Gulf of Mexico. *See* ECF Doc. 55. This same harm would befall each party that submitted bids at Lease Sale 257, which Plaintiffs elected not to seek to enjoin when it filed this lawsuit.

II. ARGUMENT

A. Plaintiffs' Claims Are Not Ripe.

1. Under the Case Law Addressing the Offshore Oil and Gas Leasing Program, Plaintiffs' NEPA Challenge is not Ripe.

a. The Supreme Court and D.C. Circuit Decisions

The statutory foundation for the ripeness analysis is OCSLA's mandatory four-stage framework governing Interior's administration of the offshore oil and gas leasing program, recognized by the United States Supreme Court in *Sec'y of the Interior v. California*,[6] and *Mobil Oil Expl'n & Producing Southeast, Inc. v. United States*, 530 U.S. 604 (2000). *See* API Br., p. 17. The Supreme Court held in these decisions that Interior's issuance of an offshore oil and gas lease only affords a lessee "a priority in submitting plans" to conduct lease activities (*Sec'y of Interior*, 464 U.S. at 339) – *i.e.*, an "*opportunity* to try to obtain" the approvals required for lease activities. *Mobil Oil Expl'n*, 530 U.S. at 620 (emphasis by the Court).

Plaintiffs dismiss these Supreme Court precedents as irrelevant because they were not NEPA cases. But these OCSLA-based decisions directly address the determinative issue in the ripeness analysis of Plaintiffs' NEPA-based lawsuit – *viz.*, the degree to which the challenged

[6] 464 U.S. 312, 337 (1984), *superseded by statute on other grounds*, Coastal Zone Act Reauthorization Amendments of 1990.

agency activity, itself, confers upon the offshore oil and gas lease owner the authority to undertake lease activities.[7] In both *CBD* and *Center for Sustainable Economy v. Jewell*, 779 F.3d 588 (D.C. Cir. 2015), the D.C. Circuit relied on the multiple stages of the offshore leasing program that the Supreme Court identified in the above-cited *non-NEPA* cases to deny *NEPA-based* challenges to Interior's 2012-2017 Five-Year Program.[8] While Plaintiffs attempt to distinguish *CBD* and *Center for Sustainable Economy* as not involving Lease Sales, the analysis and holdings in those cases apply equally to Lease Sales, given the numerous and substantial approvals that Interior must give before a new lease owner can exercise its "opportunity" to conduct lease activities. *See, e.g.*, 30 C.F.R. § 550.281. And, *Fisheries Survival Fund* fills any perceived gap in the case law.[9]

b. *Fisheries Survival Fund v. Jewell* Fills Any Perceived Gap

While prior ripeness challenges focused on the first of OCSLA's four stages (publication of a Five-Year Leasing Program) *Fisheries Survival Fund* directly addressed whether the second stage – an OCSLA-based offshore *Lease Sale* – results in an "irreversible and irretrievable commitment of resources to an action that will affect the environment." 2018 U.S. Dist. LEXIS 168532, at *21 (quoting *CBD*); 858 Fed. Appx. at 372 (quoting *CBD*). Unequivocally resolving

[7] In *dicta*, the Ninth Circuit has recognized (relying on *Sec'y of Interior v. California*) that that "OCSLA leases are necessarily [no surface occupancy] leases," which "do[] not irreversibly and irretrievably commit any resources and therefore do[] not require a site-specific EIS[.]" *N. Alaska Envtl. Ctr. v. U.S.D.O.I.*, 983 F.3d 1077, 1089, n.13, 1086 (9 Cir. 2020).

[8] *See CBD*, 563 F.3d at 473 (OCSLA's "pyramidic" structure was designed to "forestall premature litigation regarding adverse environmental effects that . . . will flow, if at all, only from later stages of OCS exploration and production") (internal quotations omitted).

[9] Plaintiffs note that in both *CBD* and *Center for Sustainable Economy*, the court "indicated that the leasing stage is the point at which irretrievable resources are committed." Pl. Reply, p. 43. But neither case analyzed OCSLA's Lease Sale stage (including the difference between granting a lease and conducting lease operations), and thereafter, in *Fisheries Survival Fund*, this Court and the D.C. Circuit concluded that an OCSLA Lease Sale does not constitute an "irreversible and irretrievable commitment" of resources.

that question in the negative, both this Court and the D.C. Circuit held that the NEPA challenge to the OCSLA Lease Sale at issue in that case was not ripe. Here too, this Court lacks jurisdiction.

Plaintiffs attempt to distinguish *Fisheries Survival Fund* because it concerned a sale of offshore *wind* leases, whereas the instant case arises from a sale of offshore *oil and gas* leases. But this is a distinction without any legal consequence. OCSLA is the enabling statutory authority for both offshore oil and gas leasing and offshore wind leasing.[10] And, in *Fisheries Survival Fund*, the D.C. Circuit cited *CBD* (an *offshore oil and gas* leasing case) as establishing the ripeness standard for a NEPA-based challenge to the *offshore wind lease* at issue, making it clear that the *same NEPA ripeness standard applies to* ***any*** *federal "energy lease"*:

> "[A]n agency's NEPA obligations mature only once it reaches a critical stage of a decision which will result in irreversible and irretrievable commitments of resources to an action that will affect the environment." *Ctr. for Biological Diversity v. United States DOI, 563 F.3d 466, 480, 385 U.S. App. D.C. 257 (D.C. Cir. 2009)* (internal quotation marks omitted). This is a question of "ripeness." *Wyoming Outdoor Council v. United States Forest Service, 165 F.3d 43, 49, 334 U.S. App. D.C. 98 (D.C. Cir. 1999).* In *Sierra Club v. Peterson*, we explained that the issuance of an energy lease triggers NEPA unless the lease "reserves both the authority to preclude all activities pending submission of site-specific proposals and the authority to prevent proposed activities if the environmental consequences are unacceptable." *717 F.2d 1409, 1415, 230 U.S. App. D.C. 352 (D.C. Cir. 1983) (*emphasis omitted*).*
>
> The [energy] lease in this case satisfies both requirements.

858 Fed. Appx. at 372.[11]

[10] *See* 43 U.S.C. §§ 1337(a) (oil and gas leases) & 1337(p)(1)(c) ("energy from sources other than oil and gas").

[11] Thus, Plaintiffs are patently incorrect in arguing that "[t]he question of when [Interior] is obligated to comply with NEPA is not a question of ripeness." Pl. Opp. pp. 37-38.

Moreover, as with the offshore wind lease at issue in *Fisheries Survival Fund*, the granting of an offshore oil and gas lease does not immediately authorize the lease owner to conduct lease activities.[12] In both contexts, additional notices, approvals, and permits are required before a lessee may undertake lease activities. For instance, for both a wind lessee's Site Assessment Plan and an oil and gas lessee's Exploration Plan, Interior reviews the submitted plan for completeness, prepares appropriate NEPA analyses, coordinates with Federal and State agencies, and ultimately either approves or disapproves of the plan.[13] Further, both a wind lease and an oil and gas lease require "BOEM approval" before beginning activities proposed in a Plan.[14] Notably, *even after* approval of an Exploration or Development Plan, an offshore oil and gas lease owner may begin operations only after obtaining dozens of *additional* "approvals and or permits" required under the regulations. *See* 30 C.F.R. § 585.281 (listing numerous required approvals, *e.g.*, approval of an application for permits to drill, approval of production safety systems, approval of installation of platforms and other structures, *etc*.).

[12] Plaintiffs' attempt to distinguish the oil and gas lease form from the wind lease form (Pl. Reply, p. 45) fails. The oil and gas lease form plainly prohibits exploration and development operations absent an approved plan. Form BOEM-2005, Sec. 9, *available at* https://www.boem.gov/sites/default/files/about-boem/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-2005.pdf. And, that form also plainly subjects lessees to OCSLA and its implementing regulations, which require numerous notices, approvals, and permits before operations can begin. *Id.* at Sec. 1. *See infra* Sec. II.A.2.

[13] *Compare* 30 C.F.R. § 585.613 (processing of wind lease Site Assessment Plan) *with* 30 C.F.R. § 550.232 (processing of oil and gas lease Exploration Plan). *See also* 30 C.F.R. § 585.628 (Construction and Operations Plan) & 30 C.F.R. § 550.266 (Development Plan).

[14] *See* 30 C.F.R. §§ 585.600, 585.614 (activities under a proposed Site Assessment Plan may begin only "following BOEM approval" of the plan), 585.631 (operations under a proposed Construction and Operations Plan cannot begin until after BOEM approval of the plan); § 550.201(a) (mandating BOEM approval "before" lessee may conduct operations).

Thus, as the Supreme Court observed in *Mobil Oil Exploration*, because the rights conveyed by an offshore oil and gas lease are heavily "qualified" by the extensive regulatory framework, the lease itself "amount[s] primarily to an opportunity to try to obtain" the approvals required for lease activities. 530 U.S. at 620. As with an offshore wind lease, granting an offshore oil and gas lease does not deprive Interior of the authority to prevent lease activities; to the contrary, the lease owner cannot undertake any activity that might impact the environment without first satisfying Interior. Accordingly, the ripeness ruling in *Fisheries Survival Fund* applies to offshore oil and gas leases just as it applies to offshore wind leases. Here, all of Plaintiffs' NEPA challenges relate to effects of oil and gas exploration and production, none of which can occur until later stages of the OCSLA framework.

2. After Granting an Offshore Oil and Gas Lease, Interior's Environmental Reviews are Far from Over.

Based on the foregoing case law, the Court should dismiss Plaintiffs' action for lack of ripeness. For completeness, API further responds to Plaintiffs' ripeness arguments by demonstrating Interior's ongoing, authoritative consideration of environmental impacts after granting an offshore lease.

a. OCSLA-Based Environmental Reviews

Implementing Congress' statutory imperative that offshore oil and gas exploration, development, and production be conducted pursuant to agency-approved Plans, Interior regulations mandate that proposed Exploration Plans and proposed Development Plans include extensive information regarding potential environmental impacts. Thus, for example, Exploration and Development Plans submitted to BOEM must each include (*inter alia*) "biological, physical, and socioeconomic information," "solid and liquid wastes and discharges information[,]" "air

emissions information[,]" "oil and hazardous substance spills information[,]" "mitigation measures[,]" and "environmental impact analysis information[.]"[15]

In response to a proposed Exploration or Development Plan, BOEM may approve the plan, require the lessee to modify the plan, or disapprove the plan, depending on a variety of factors, including whether the proposed activities adequately protect the environment.[16] And, BSEE's regulations require additional approvals. For instance, in addition to Exploration Plans and Development Plans submitted to BOEM, lessees must submit a Deepwater Operations Plan to BSEE, which BSEE uses to evaluate whether a proposed deepwater development project "will be developed in an acceptable manner, particularly with respect to operational safety and environmental protection[.]" 30 C.F.R. § 250.286. Additionally, before any drilling activity can begin, a lessee must apply for and BSEE must approve a Permit to Drill. *See* 30 C.F.R. § 250.410. And, before installing a platform or commencing production, a lessee must satisfy BSEE's highly detailed reviews of the design, fabrication, and installation of structures and the relevant "production safety system." *See* 30 C.F.R. §§ 250.800(a)(1) (production safety system approval); 250.900(a) (imposing lengthy standards and requirements concerning platforms).

Moreover, Plaintiffs erroneously assert that the offshore lease form – Form BOEM-2005 – "permit[s] the lessee to immediately begin 'ancillary' activities without further approvals." Pl. Opp. 42. To the contrary, the plain language of the lease form makes it clear that the "ancillary" rights that Plaintiffs target – to conduct geological and geophysical explorations, drill water wells,

[15] 30 C.F.R. §§ 550.212 (Exploration Plans), 550.242 (Development Plans).

[16] 30 C.F.R. §§ 550.233 (Exploration Plans), 550.270 (Development Plans). *See* also 30 C.F.R. § 550.271 (Interior may disapprove a Development Plan to prevent "serious harm or damage to … the marine, coastal, or human environment" or because "[t]he advantages of disapproving [a Development Plan] outweigh the advantages of development and production").

and erect installations – are encompassed within the lessee's larger "right and privilege to drill for, develop, and produce oil and gas" (Form BOEM-2005 Sec. 2), all of which is subject to the numerous regulatory approvals described herein. And, in any case, the lease form explicitly makes each of these specific "ancillary" rights subject to "applicable regulations" or agency-"approved" "procedures."[17] Thus, for example, agency regulations require a lessee to submit a notice to Interior prior to conducting any geological or geophysical operations, which notice must (*inter alia*) identify "potential adverse environmental effects of the proposed activity and any mitigation to eliminate or minimize these effects[.]" 30 C.F.R. § 550.208(a). *See also* 43 U.S.C. § 1340(g) (conditions that must be satisfied before Interior will permit geological explorations).[18] If the proposed ancillary activity does not comply with the regulatory "performance standards" applicable to an Exploration or Development Plan (including that the proposed activity must not "cause undue or serious harm or damage to the human, marine, or coastal environment" (30 C.F.R. § 550.202(e)), then the lessee may not undertake the ancillary activity until after BOEM approves an Exploration or Development Plan. 30 C.F.R. § 550.209. Additional approvals are required for drilling "any" wells and making installations. *See* 30 C.F.R. §§ 250.410 (permit required before

[17] *See* Form BOEM-2005, Sec. 2(a)-(c); *see also* BOEM NTL No. 2009-G34, Ancillary Activities (Dec. 1, 2009) (providing information about the approvals that are required before a lessee may undertake ancillary activities and stating when such activities will require submission of an Exploration Plan or Development Plan for ancillary activities), *available at* https://www.boem.gov/sites/default/files/documents/oil-gas-energy/BOEM-NTL-No-2009-G34.pdf.

[18] BOEM has undertaken programmatic NEPA analyses that specifically address the environmental impacts of geological and geophysical activities. *See* Gulf of Mexico OCS Proposed Geological and Geophysical Activities; Western, Central, and Eastern Planning Areas; Final Programmatic Environmental Impact Statement OCS EIS/EA BOEM 2017-051 (August 2017) & Record of Decision, Gulf of Mexico OCS Proposed Geological and Geophysical Activities: Western, Central, and Eastern Planning Areas; Final Programmatic Environmental Impact Statement (December 2020), *available at* https://www.boem.gov/environment/environmental-assessment/nepa-activities-gulf-mexico.

drilling of "any" well); 250.900 (approval required "before" installation of any platform). Finally, BOEM's regulations contain a catch-all reservation of the agency's authority to subject a lease owner to additional notice requirements concerning any "ancillary activity." 30 C.F.R. § 550.208(b). Thus, for several reasons, Plaintiffs err in asserting that a lease permits a lessee to "immediately begin 'ancillary activities' without further approvals." Pl. Opp., p. 42.

Notably, in *CBD*, the D.C. Circuit rejected a similar argument. *CBD*, 563 F.3d at 481, n.1. The plaintiffs there asserted that their challenge to Interior's adoption of a Five-Year Leasing Program was ripe because that program "could result in further exploration and seismic testing" in the program areas. *Id.* In rejecting that argument, the D.C. Circuit pointed to regulations that (like those identified above) would preclude such operations without Interior's authorization. *Id.* Here, too, Plaintiffs fail in their attempt to portray Interior's granting of a lease as depriving Interior of the authority "to preclude all activities pending submission of site-specific proposals and the authority to prevent proposed activities if the environmental consequences are unacceptable." *Fisheries Survival Fund*, 858 Fed. Appx. at 372 (quoting *Sierra Club*, 717 F.2d at 1415).

b. Ongoing NEPA-Based Environmental Reviews

Plaintiffs also err in arguing that Interior "has categorically excluded exploration and development and production plan approvals in the Gulf from NEPA review." Pl. Opp., p. 39. To the contrary, recognizing its continuing obligations to comply with NEPA at each of the four OCSLA stages,[19] BOEM does not automatically apply "categorical exclusions" to proposed

[19] *See Ctr. for Biological Diversity*, 260 F. Supp. 3d 11, 18 (D.D.C. 2017); *Vill. Of False Pass v. Clark*, 733 F.2d 605, 609 (9th Cir. 1984); *Oceana*, 37 F. Supp. 3d at 154-74.

Exploration Plans or Development Plans.[20] Rather, pursuant to applicable regulations[21] and a Memorandum of Agreement between BOEM and BSEE on "NEPA and Environmental Compliance,"[22] BOEM employs a detailed process for evaluating *whether* to apply a categorical exclusion. Thus, upon receiving a proposed Plan, BOEM must:

> Conduct the site-specific environmental analyses and prepare the appropriate NEPA document (i.e., categorical exclusion review (CER), site-specific environmental assessment (SEA), or environmental impact statement (EIS)) for the respective plan submittal.

BOEM & BSEE MOA, Appendix I.

Consistent with this policy of conducting ongoing NEPA reviews, BOEM regulations require offshore lease owners to include a detailed Environmental Impact Analysis ("EIA") in their proposed Exploration Plans and Development Plans, which must include extensive information about potential environmental impacts. Significantly, a lessee must ensure that its EIA is "as detailed as necessary to assist the Regional Supervisor in complying with [NEPA] and other

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[20] Further, after Deepwater Horizon, Interior launched a review of the use of categorical exclusions; during that review, which is ongoing, categorical exclusions "are not being used to approve proposed deepwater drilling projects." AR0009822.

[21] *See* 40 C.F.R. § 1501.4(b) (applicable to NEPA processes begun after Sept. 14, 2020, but "agencies have the discretion to apply them to ongoing NEPA processes" (85 Fed. Reg. 43304 (2020)) (before applying categorical exclusion, BOEM must evaluate whether "extraordinary circumstances" exist and, if so, BOEM must prepare an EA or an EIS). And, Categorical Exclusions do not apply: "(1) [i]n areas of high seismic risk or seismicity, relatively untested deep water, or remote areas, or (2) within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or areas of high biological sensitivity; or (3) in areas of hazardous natural bottom conditions; or (4) utilizing new or unusual technology." DOI, Departmental Manual, Chapter 15, Sec. 15.4(C)(10), *available at* https://www.doi.gov/sites/doi.gov/files/elips/documents/516-dm-15.pdf.

[22]BOEM and BSEE Memorandum of Agreement, NEPA and Environmental Compliance, Appendix I (Oct. 1, 2018) [*hereinafter* "BOEM & BSEE MOA"], *available at* https://www.boem.gov/sites/default/files/documents//Updated%202018%20BOEM%20BSEE%20MOA%20NEPA.pdf.

relevant Federal laws."[23] BOEM uses the EIA submitted by the lessee during BOEM's own "environmental review of the proposed activities" and supplements the EIA "as needed[] to fulfill the requirements of [NEPA.]" NTL No. 2008-G04.

BOEM's ongoing post-Lease Sale NEPA reviews are not merely a theoretical possibility referenced in BOEM regulations and policy statements, as BOEM's frequent practice is to prepare an Environmental Assessment prior to approving an Exploration or Development Plan. For instance, publicly-available BOEM records reflect multiple NEPA-related analyses for operations on Lease OCS-G31534, located at Mississippi Canyon ("MC") Block 940. Prior to authorizing operations on that lease, BOEM prepared separate Site-Specific Environmental Assessments ("SEA") and issued Findings of No Significant Impact ("FONSI") in response to: (i) the lessee's proposed Exploration Plan No. S-7858 in 2017;[24] (ii) the lessee's proposal to conduct "ancillary" geological and geophysical survey activities (in Plan No. R-6770) in 2018;[25] and (iii) the lessee's proposed Development and Coordination Document No. S-8053 in 2021.[26, 27] BOEM's NEPA review at each stage of operations under the MC Block 940 lease is not unique. BOEM regularly conducts NEPA analyses for Gulf of Mexico leases during the OCSLA stages that follow lease

[23] 30 C.F.R. §§ 550.227 (Exploration Plans), 550.261 (Development Plans).

[24] SEA of EP No. S-7858 (Aug. 11, 2017).

[25] SEA of EP No. R-6770 (Oct. 26, 2018) (explaining: "The purpose of this [SEA] is to assess the specific impacts associated with [the] proposed ancillary geological and geophysical [] survey activities").

[26] SEA of DOCD No. S-8053 (Oct. 27, 2021).

[27] Each of the referenced documents is available at the following BOEM website: https://www.data.bsee.gov/Other/DiscMediaStore/ScanPlans.aspx. The information at that website can be culled to access the NEPA documents relating specifically to Lease No. OCS-G31534 by entering "G31534" into the "Lease Number" filter.

issuance. For instance: (1) on July 15, 2021, BOEM published SEA and FONSI in response to proposed Exploration Plan No. N-10099;[28] (2) on February 19, 2020, BOEM published a SEA and FONSI in response to proposed Exploration Plan No. N-10092;[29] and (3) on January 9, 2020, BOEM published a SEA and FONSI in response to proposed DOCD No. R-6818.[30] Hundreds of other examples can be found in BOEM's records.[31]

In short, rather than "minimiz[ing] opportunities for additional NEPA compliance" after the Lease Sale stage (Pl. Opp., p. 40), BOEM's practices and regulatory framework ensure that BOEM continuously applies NEPA at every stage of OCSLA's "pyramidic" structure. *See CBD*, 563 F.3d at 473.[32]

B. Interior's EISs for Lease Sale 257 are Not Arbitrary and Capricious

Because Plaintiffs' NEPA claims are not ripe, the Court need not reach the merits of those claims. In any case, API's original Memorandum established that, given Interior's extensive consideration of the potential climate impacts of Lease Sale 257, the Court should give Interior the "extreme degree of deference" owed to an agency's consideration of scientific data. *Oceana*, 37 F. Supp. 3d at 154; API Br., pp. 20-23 (and cited sources). Plaintiffs' Opposition does not effectively rebut API's demonstration that deference is owed to Interior and, on that basis alone,

[28] SEA of EP No. N-10099 (July 15, 2021).

[29] SEA of EP No. N-10092 (Feb. 19, 2020).

[30] SEA of DOCD No. R-6818 (January 9, 2020).

[31] Each of these additional documents (among thousands of others) are available at the following BOEM website: https://www.data.bsee.gov/Other/DiscMediaStore/ScanPlans.aspx. The information at that website can be culled to access the NEPA documents referenced above by using the "Control Number" filter.

[32] The Amici's argument that "little to no additional environmental review will occur following the lease sale" (Amicus Br., p. 7) is patently incorrect.

Plaintiffs' claims should be rejected. API does not repeat that argument here, but instead addresses a series of additional deficiencies in Plaintiffs' response.

1. Plaintiffs Continue to Fail to Harmonize OCSLA and NEPA.

a. Plaintiffs Ignore Congress's Leasing Mandate.

As in their Complaint and their opening brief, Plaintiffs continue to ignore Congress's statutory ***mandate*** that Interior make the OCS available for oil and gas leasing. This is fatal to Plaintiffs' climate-focused arguments for two reasons.

First, Plaintiffs are explicit that their objective is to curtail oil and gas development on the OCS in order to "slow global warming and avert drastic changes to the world's climate system." *See* Pl. Opp., p. 1 (arguing that holding Lease Sale 257 "is incompatible with the urgent need to slow global warming and avert drastic changes to the world's climate system").[33, 34] But because ***OCSLA mandates*** that Interior make the OCS available for leasing, Interior simply does not enjoy the authority to address this concern by curtailing leasing on the OCS. *See* API Br., pp. 26-27, 36-38. This limitation on Interior's authority is significant to the Court's resolution of Plaintiffs' claims because NEPA does not require BOEM to gather or consider environmental information if it has no statutory authority to act on that information.[35] Because BOEM lacks the discretion to stop leasing the OCS based on Plaintiffs' climate concerns, BOEM's alleged omission of the detailed climate information sought by Plaintiffs cannot have violated NEPA. *See Sierra Club v.*

[33] *See also* Pl. Br., p. 1; Pl. Opp., pp. 5, 6, 15, 18, 19, 36.

[34] The Amicus Brief similarly seeks to curb climate change by curtailing offshore leasing. *See* Amicus Br., pp. 5, 8, 19. The Amicus Brief likewise fails.

[35] *See Dep't of Transportation v. Public Citizen*, 541 U.S. 752, 770 (2004) ("It would not, therefore, satisfy NEPA's 'rule of reason' to require an agency to prepare a full EIS due to the environmental impact of an action it could not refuse to perform.").

FERC, 827 F.3d at 48 (NEPA does not require an agency to consider a matter that it "could not act on").

To be clear, API has never argued that OCSLA "overruled" NEPA or that the multi-stage OCSLA process dampens NEPA's "hard look" requirement. *See* Amicus Br., p. 6. Instead, API asserts that OCSLA and NEPA must be applied in a harmonious manner that accounts for Interior's limited authority under OCSLA, a basic principle that several courts have recognized. *See* API Br., p. 7 and cited sources. In asserting that BOEM must "ensure the sale … avoids environmental harms" (Pl. Opp., p. 9 n.4), Plaintiffs misconstrue OCSLA. Because the "first stated purpose" of OCSLA is development of the OCS, "some degree of adverse impact is inevitable"; thus, OCSLA requires *mitigation* (not avoidance) of those impacts. *California v. Watt*, 668 F.2d 1290, 1316 (D.C. Cir. 1981). Unless and until *Congress decides* that there is a "need to halt additional oil and gas leasing" (Pl. Br., pp. 36-37) on the OCS and amends OCSLA accordingly, Interior *must* comply with the statutory mandate that the OCS be developed to meet the nation's energy needs.

Second, given OCSLA's mandate, Interior's decision to hold – or not to hold – Lease Sale 257 does "not significantly change the environmental impacts of overall OCS oil-and gas-related activity." AR_008228 (Multisale EIS). Thus, as this Court held in *Gulf Restoration Network* (applying *Oceana*), Interior's analysis of the "No Action" alternative in the EISs arising from the 2017-2022 Program was adequate. *Gulf Restoration Network*, 456 F. Supp. 3d at 95-97. *See also Oceana*, 37 F. Supp. 3d at 174 (upholding an effectively identical "No Action" alternative because "regardless of this particular Lease Sale going forward, … another one eventually will."). In 100 pages of briefing, Plaintiffs fail to acknowledge that this Court has upheld "No Action" analyses that were either effectively identical (in *Oceana*) or literally identical (in *Gulf Restoration Network*) to those that are at issue here. Because OCSLA mandates that Interior make the OCS

available for leasing, the quantitative "foreign consumption" data that Plaintiffs seek is not "essential" to Interior's "reasoned choice" among alternatives. *Oceana*, 37 F. Supp. 3d at 159-60. And, because the impact to the overall greenhouse gas emissions arising from development of the OCS would not substantially differ if Interior did not hold Lease Sale 257, the "brief discussion" of those impacts was appropriate under NEPA. *See* API Br., p. 30.[36]

b. Plaintiffs Contradict OCSLA's Tiered Leasing Process.

Plaintiffs also continue to ignore the importance of OCSLA's tiered leasing process. This is significant for two reasons. ***First***, Plaintiffs assume that Lease Sale 257 is itself the "legally relevant cause" of the climate impacts about which they are concerned.[37] But, as API has established, Interior's issuance of an offshore oil and gas lease does not (without additional approvals) authorize the lessee to perform activities that would cause the climate impacts about which Plaintiffs are concerned. Instead, lease operations under OCSLA are heavily regulated, and before a lessee could take any action that could possibly cause climate impacts alleged by Plaintiffs, the lessee would need to obtain numerous approvals from both BOEM and BSEE. These subsequent required approvals within the tiered OCSLA framework "break[] the NEPA causal chain[,]" rendering the detailed analysis that Plaintiffs seek at the Lease Sale stage unnecessary (because the Lease Sale itself is not the "legally relevant cause" of the impacts of concern). *See*

[36] *See also Wilderness Soc'y v. Salazar*, 603 F. Supp. 2d 52 (D.D.C. 2009) (applying 40 C.F.R. § 1502.2(b) in upholding BLM EIS that did not include site-specific analysis of localized emissions because the agency determined that the localized impacts would not be significant).

[37] The Amicus Brief repeats this flawed assumption. *See* Amicus Br., pp. 1 ("The potential of such a large lease sale to have significant environmental impacts on climate change, as well as impacts on marine life and ecosystems, seems self-evident."), 7 (improperly conflating the "environmental consequences" of the Lease Sale, itself, and subsequent approvals for conducting operations on a lease).

Sierra Club v. FERC, 827 F.3d at 47. In short, and as Plaintiffs themselves state: "future events and decisions" after leases are issued "have no bearing . . . at this stage." Pl. Reply, p. 54.

Second, each of the issues raised by Plaintiffs concern "postlease operational issues" (climate impacts, drilling activities, fracking discharges, decommissioning, effects of post-lease operations on wildlife and on offshore wind leasing), the impacts of which "cannot be reasonably predicted at the lease sale stage[.]" *Oceana*, 37 F. Supp. 3d at 167. Because the impacts of any post-lease operations (which require numerous approvals) remain highly speculative, BOEM's treatment of those impacts was adequate and there was no need for BOEM to supplement the EIS. In *Gulf Restoration Network*, this Court found that the same NEPA analyses at issue here (the EISs relating to the 2017-2022 Program) were reasonable given the extensive uncertainties regarding post-lease operations. 456 F. Supp. 3d at 98. *See also Oceana*, 37 F. Supp. 3d at 167.

2. Neither *Willow* nor *Liberty* is Dispositive.

Regarding the *Willow* and *Liberty* cases, Plaintiffs merely repeat arguments raised in their opening brief, without addressing API's numerous points showing that those cases are immaterial. Thus, Plaintiffs failed to recognize that those cases are categorically distinguishable because they address Interior's NEPA review relating to proposed *development* projects that may actually cause the climate impacts about which plaintiffs are concerned, rather than Interior's NEPA review relating to a Lease Sale that will not itself cause any impact to the environment. Significantly, the *Willow* decision acknowledges the critical distinction between the "leasing" stage and subsequent stages that implicate actual operations and development, explaining that "for the Willow Project, the leasing stage … is long past." *Willow*, 2021 U.S. Dist. LEXIS 155471, at *15, n. 73.

Similarly, Plaintiffs fail to acknowledge that *Willow* and *Liberty* – which are not binding on this Court – failed to address numerous arguments made by the defendants in this case, including the significance of OCSLA's express directive that Interior make the OCS available for

leasing and OCSLA's tiered leasing program. *See* API Br., pp. 7-9, 24-30, 31. Further, Plaintiffs fail to reconcile the *Willow* and *Liberty* decisions with the deference that the Supreme Court and this Court have held are owed to an agency's evaluation of scientific data.[38] Plaintiffs cannot overcome arguments that they do not address.[39]

3. BOEM's Lease Sale 258 Draft EIS Does Not Undermine BOEM's EISs For Lease Sale 257.

Plaintiffs' reliance on BOEM's recent publication of the Lease Sale 258 Draft EIS is unavailing. Pl. Opp., pp. 1, 2, 9-12. As an initial matter, Plaintiffs ignore BOEM's explanation that the Lease Sale 258 Draft EIS is BOEM's "first GHG analysis to include a quantification of GHG emissions from foreign consumption[,]" that BOEM's quantification of GHG emissions from foreign consumption remains a "new and evolving process[,]" and that BOEM is continuing to evaluate quantification methods. Lease Sale 258 Draft EIS p. 42. Contrary to Plaintiffs' suggestion that BOEM has "conceded" that it had an established method to quantify the emissions, in fact the Draft EIS reflects only that BOEM recently proposed a quantification methodology for which it "seeks comments and feedback[.]" *Id.*[40] That analysis, which is still in progress, was clearly unavailable when BOEM moved forward with Lease Sale 257 (in accordance with the Western District of Louisiana's directive).

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[38] *See Kleppe v. Sierra Club*, 427 U.S. 390, 413-414 (1976) (determining "the extent and effect of" "cumulative environmental impacts" "is a task assigned to the special competency of the appropriate agency"); *Oceana*, 37 F. Supp. 3d at 154 ("extreme degree of deference" is owed to BOEM's evaluation of scientific data). *See also* API Br., pp. 20-23, 32.

[39] The Amici's reliance on *Willow* and *Liberty* (Amicus Br., p. 13) fails for the same reasons.

[40] *See also* Lease Sale 258 Draft EIS p. 46 (BOEM "is attempting to quantify the change in foreign emissions resulting from a Lease Sale" and BOEM "expects to make refinements to its analysis for the Final EIS for LS 258 based on comments received" on the draft EIS).

Additionally, Plaintiffs are patently wrong in repeatedly suggesting that the Lease Sale 258 Draft EIS reflects that BOEM had quantitative data all along but failed to evaluate it. BOEM's Lease Sale 258 Draft EIS clearly explains that there continues to be a dearth of information about foreign consumption of petroleum products. Rather than establishing that actual foreign consumption information exists, the Draft EIS applies a "single generic emissions factor for the different types of petroleum products consumed" due to the *lack* of more precise information.[41]

BOEM's attempt to expand the scope of its analysis of emissions from foreign consumption to include quantitative estimates does not compel the conclusion that BOEM's more narrow discussion of those impacts in the EISs underlying Lease Sale 257 was not sufficient. On the contrary, when considered in the light of OCSLA's leasing framework, it becomes clear that BOEM's evaluation of the climate impacts of GHG emissions was more than adequate. Because the potential impacts about which Plaintiffs are concerned remain highly speculative (and contingent on a series of post-lease notices, approvals, and permits), BOEM's omission of a quantitative analysis of foreign emissions is not material at this stage of OCSLA's overall process. *See* API Br., p. 23 (and cited sources).

Finally, BOEM's proposed model for quantifying foreign consumption estimates is oversimplified and suffers from several shortfalls. For instance, the foreign consumption and supply elasticities used in BOEM's proposed analysis assume that foreign markets only respond to price. But, this method is overly simplistic and ignores that suppliers may respond to metrics other than price (*e.g.*, market share) and the potential imperfect competitive actions from foreign suppliers that have excess capacity. BOEM's proposed model also fails to appropriately account

[41] *See id.* at p. 45 ("BOEM has applied a single emissions factor to all combusted oil, due to a lack of information about the end petroleum products consumed in foreign markets.").

for scale, unrealistically assuming that the economic model can accurately forecast minute changes over an extended period of time (*e.g.*, a change of $0.01 per barrel of oil over a 32-year period).

In sum, BOEM's model is preliminary, incomplete, and unreliable for numerous reasons, making it incapable of impacting the adequacy of BOEM's NEPA analysis for Lease Sale 257.

4. Plaintiffs Misconstrue BOEM's Use of the Adequacy Determination.

Plaintiffs likewise fail in asserting that BOEM improperly relied on the Adequacy Determination to "remedy the EIS's shortcomings." Pl. Opp., p. 10. The plain purpose of the Adequacy Determination was to determine whether "significant new information or circumstances" necessitated a supplemental EIS. AR_0029803. Because "no new information or circumstances were identified … that could change the conclusions" of the Multisale EIS and the Supplemental EIS, BOEM determined that those two EISs "remain[ed] valid and [could] be used to support the ROD" for Lease Sale 257 "without further supplementation." AR_0029804. This is the *exact* procedure contemplated by 43 C.F.R. § 46.120(c).[42] Although Plaintiffs assert that BOEM acted unlawfully by not giving the "public an opportunity to review or comment on" the Adequacy Determination, Plaintiffs have not pointed to any authority requiring notice and comment before BOEM concludes that an existing EIS is adequate.[43] Instead, the regulations

[42] This regulatory procedure protects against "immobilizing" agency decisionmaking by requiring full new analyses for every bit of new information. *See Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989) (requiring agencies to fully reassess their decisions in response to constantly evolving new information "would render agency decisionmaking intractable."); *Friends of River v. Federal Energy Regulatory Com.*, 720 F.2d 93, 109 (D.C. Cir. 1983) (reassessing decisions based on periodically published "new forecasts" was not required because it would "risk immobilizing the agency").

[43] Plaintiffs' reliance on *Friends of Animals v. U.S. BLM*, 232 F. Supp. 3d 53 (D.D.C. 2017) (Pl. Opp., p. 15) is misplaced because there a BLM handbook (concerning wild horse removal) required that adequacy determinations be subjected to public notice and comment. No similar requirement applies here.

clearly leave this determination to the agency's discretion. *See* 43 C.F.R. § 46.120(c) (reliance on former NEPA analyses is appropriate where "the Responsible Official determines" that the former analyses are adequate and documents that determination).[44] Thus, rather than being "procedurally improper" as Plaintiffs assert, BOEM followed the *exact* procedure that the regulations encourage to "avoid redundancy and unnecessary paperwork."[45, 46] Notably, the analysis proposed in the Draft EIS for Lease Sale 258 (and any variations of that analysis that are currently in progress) will be available to the agencies during later-stage environmental reviews of proposed activities on leases issued under Lease Sale 257.

C. Vacatur is Not Appropriate.

Contrary to Plaintiffs' argument, vacatur in the event of a NEPA violation (which API does not concede) is not a "default" or mandatory remedy in this case. As the D.C. Circuit has repeatedly recognized, in evaluating whether vacatur is appropriate, the Court must consider both (1) the "seriousness of the action's deficiencies," and (2) the "likely disruptive consequences of

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[44] *See also N. Alaska Envtl. Ctr. v. U.S.D.O.I., Bureau of Land Mgmt.*, 983 F.3d 1077, 1082 n.3 (9th Cir. 2020) ("A DNA is not itself a NEPA document; it is not subject to public comment or consultation with other federal agencies.").

[45] 43 C.F.R. § 46.120(d). The Lease Sale 258 Draft EIS does not "evidence" any new information that would materially change BOEM's analysis or conclusions (Pl. Opp., p. 16). Instead, like the EISs underlying Lease Sale 257, the Lease Sale 258 Draft EIS recognizes that under OCSLA's framework the "No Action" alternative would "postpone[]" impacts "to a future Lease Sale" (rather than avoid impacts altogether). Lease Sale 258 Draft EIS, p. 5. And, given that BOEM's "propos[al]" in the Lease Sale 258 Draft EIS is to "conduct an oil and gas lease sale" (after considering the quantitative analysis) (Lease Sale 258 Draft EIS, p. 1), the draft EIS reaffirms that the particular quantitative analysis sought by Plaintiffs is "not essential for a choice among alternatives[.]" AR_0029966-0029967.

[46] *Great Basin Resource Watch v. Bureau of Land Management* is not informative here because there the agency used a post-EIS publication to advance a baseline environmental study that was absent from the original EIS. 844 F. 3d 1095, 1104 (9th Cir. 2016). Here, on the contrary, BOEM used the Adequacy Determination to document its conclusion that supplementation was not required. AR_0029804.

vacatur."[47] Plaintiffs assert that the alleged deficiencies in BOEM's NEPA analysis are "serious" because those deficiencies frustrated BOEM's "opportunity to choose among policy alternatives" and preclude "orderly offshore development subject to environmental safeguards." Pl. Opp, p. 50. But Plaintiffs ignore that OCSLA explicitly limits BOEM's choice "among policy alternatives" by *mandating* the availability of the OCS for oil and gas leasing. Congress "already decided" this policy choice when it enacted OCSLA. *CBD*, 563 F.3d at 485. Plaintiffs ignore that numerous notices, approvals, and permits are required before a lessee may engage in activities that could give rise to the environmental impacts about which Plaintiffs are concerned. And, Plaintiffs ignore the extensive regulatory framework that applies after lease issuance to ensure "orderly offshore development" and appropriate environmental safeguards. *See supra* II.A.2. When Plaintiffs' claims are considered in context of the applicable statutory and regulatory framework, it is clear that the asserted NEPA deficiencies are not "significant."

On the other hand, the commercially "disruptive consequences" of vacatur in this case cannot be overstated. Federal Defendants have devoted substantial resources to Lease Sale 257. The State of Louisiana relies heavily on both direct revenues from offshore leasing and numerous additional economic benefits (*e.g.*, increased employment and taxes). Further, 33 companies (including several API members) submitted bids at Lease Sale 257 totaling more than $198 million, thereby publicly disclosing highly valuable proprietary commercial data that, prior to the Lease Sale, was confidential.[48] The proposed brief recently filed by Chevron, an API member,

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[47] *Am. Great Lakes Ports Ass'n v. Schultz*, 962 F.3d 510, 519 (D.C. Cir. 2010) (quoting *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1110 (D.C. Cir. 2014) (internal quotations and alterations omitted)).

[48] *See* https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/sale-257-stats.pdf.

highlights the extent of "disruptive consequences" of vacatur. The publication of highly proprietary data (*e.g.*, the value placed on particular lease blocks and geographic areas) when bids were opened at Lease Sale 257 on November 17, 2021, makes it impossible to re-conduct Lease Sale 257 in the fair and competitive manner required by OCSLA.[49] Competitors now know which lease blocks bidders have determined to have the greatest potential for development and the precise amount of each high bid. Further, high bidders "have already paid substantial sums toward the leases" for which they bid.[50] And, given that the 2017-2022 Leasing Program is set to expire on July 1, 2022, and that BOEM has not adopted a subsequent Five-Year Lease Program, API's members are faced with unprecedented uncertainty concerning the next opportunity to acquire new Gulf of Mexico leases.

Finally, API established in its opening brief that Plaintiffs failed to meet their burden to establish that injunctive relief is warranted and that the "balance of hardships" weighs against injunctive relief in this case. API Br., p. 43-44; *see also* ECF Doc. 55-1, pp. 5-7. Although Plaintiffs' Complaint asks the Court to "enjoin leases executed pursuant to Lease Sale 257" (ECF Doc. 1), Plaintiff's Reply clarifies that "Plaintiffs do not request any freestanding relief beyond vacatur" of Lease Sale 257.[51] Therefore, Plaintiffs apparently concede that injunctive relief is not warranted and, accordingly, no longer seek that relief.

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[49] *See* Doc. 55-2 (Declaration of Kyle L. Gallman) at ¶ 9 ("If … the lease awards were vacated and [BOEM] were required to auction the same leases at a later date, Chevron's competitors would have the unfair advantage of knowing Chevron's interest in specific parcels, as well as Chevron's previously confidential bid amounts for each lease.").

[50] *See id.*; *see also id.* at ¶ 7 ("Chevron has already paid the United States government one-fifth of the bonus bids [] for these tracts, amounting to $9,425,602.20.").

[51] Pl. Reply, p. 54 ("Even if final leases are issued before a decision from this Court, how or on what terms the Bureau will enforce its rights over those leases is a matter for it to decide in the first instance. . . . those future events and decisions have no bearing on vacatur at this stage.").

III. CONCLUSION

For the foregoing reasons (and those asserted by Federal Defendants, Intervenor-Defendant State of Louisiana, and Proposed Intervenor-Defendant Chevron), API respectfully requests that Plaintiffs' Motion for Summary Judgment be denied and API's Cross-Motion for Summary Judgment be granted.

December 16, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December 2021, I caused a true and correct copy of the foregoing Memorandum to be filed with the Court electronically and served by the Court's CM/ECF System upon all attorneys of record.

/s/ Jonathan A. Hunter