January 03, 2019

Ms. Sharon Randall
Chief of Environmental Analysis Section
Bureau of Ocean Energy Management
Alaska OCS Region
3801 Centerpoint Drive, Suite 500
Anchorage, AK 99503


Dear Ms. Randall,

Thank you for this opportunity to comment on the Notice of Intent to Prepare an Environmental Impact Statement for the Proposed 2019 Beaufort Sea Lease Sale in the Beaufort Sea Planning Area. The Sabin Center for Climate Change Law (Sabin Center) submits the following recommendations in regards to the proposed lease sale:

1. BOEM should not allow leasing in previously protected areas, nor consider Beaufort Sea lease sales before completing their plan and environmental review for the 2019-2024 Outer Continental Shelf (OCS) Oil and Gas Leasing Program.
2. BOEM should consider whether there is a compelling purpose and need for lease sales in the Beaufort Sea Planning Area.
3. As part of its environmental review, BOEM should carefully evaluate potential greenhouse gas emissions generated from the production, transportation, and combustion of oil and gas produced from any leasing activity in the Beaufort Sea Planning Area. BOEM’s analysis of emissions should be thorough and transparent.
4. As part of its environmental review, BOEM should analyze how climate change impacts will affect leasing activities.

1. BOEM Should Not Allow Leasing in Previously Protected Areas, Nor Consider Beaufort Sea Lease Sales Before Completing Their Plan and Environmental Review for the 2019-2024 Outer Continental Shelf (OCS) Oil and Gas Leasing Program.

The 2017-2022 Proposed Final Program determined leasing was not appropriate in the Chukchi and Beaufort Sea regions, finding these environments were highly sensitive and industry had shown little previous interest in leasing these areas.1 As climate change continues it will further

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impact these delicate ecosystems\(^2\) as well as the endangered species\(^3\) and subsistence lifestyles\(^4\) dependent on them. In recognition of the importance of protecting these ecosystems, species, and subsistence practices, President Obama withdrew these areas from future leasing.\(^5\) The Trump Administration lacks the legal authority to lease these areas subsequent to the withdrawals.\(^6\)

Further, it is inappropriate for BOEM to continue planning for a lease sale in the Beaufort Sea when it has not yet completed the programmatic environmental review for or finalized the 2019-2024 Outer Continental Shelf (OCS) Oil and Gas Leasing Program. Conducting assessment for leasing sales in the Beaufort Sea Planning Area prior to completion of the OCS five-year oil and gas leasing program is contrary to the intent of the Outer Continental Shelf Lands Act (OCSLA) which requires the Secretary to “select the timing and location” of leasing for the entire OCS program in light of several factors including potential for environmental damage.\(^7\)

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\(^3\) The Fourth National Climate Assessment Volume II, supra note 2, at 1193 (noting impact of declining sea ice on endangered polar bears and walruses); 2017-2022 Final OCS Leasing Program, supra note 1, at S-8—S-9 (noting presence of endangered species and impacts of climate change on those species in regard to the decision to remove the Arctic OCS lease sales from the Proposed Final Program for 2017-2022). 2017-2022 OCS Leasing Final PEIS, supra note 1, Chapter 4: Affected Environment & Impact Assessment, Appendix C: Supporting Information for Chapter 4: the Affected Environment. Other federal entities already consider the impacts of climate change on endangered species whose habitat overlaps with offshore oil and gas leasing activity. The Supreme Court recently denied certiorari review of the Ninth Circuit’s decisions that the National Marine Fisheries Service acted reasonably to protect two types of seal species under the Endangered Species Act because those species are likely to become endangered by the end of the century due to sea ice loss and other climate change impacts. Alaska Oil & Gas Ass’n v. Pritzker, 840 F.3d 671, 674 (9th Cir. 2016), cert. denied sub nom. Alaska v. Ross, No. 17-118, 2018 WL 491541 (U.S. Jan. 22, 2018), and cert. denied sub nom. Alaska Oil & Gas Ass’n v. Ross, No. 17-133, 2018 WL 491542 (U.S. Jan. 22, 2018).

\(^4\) The Fourth National Climate Assessment Volume II, supra note 2, at 1203-06 (describing effects of climate change on native communities in Alaska); see also 2017-2022 OCS Leasing Final PEIS, supra note 1, at 4-11—4-13, 4-76—478 (describing how climate change and OCS leasing activities affect Alaskan native communities’ subsistence practices and health).


\(^7\) 43 U.S.C. § 1344(a).
2. **BOEM Should Consider Whether There is a Compelling Purpose and Need for the Project**

Given the unique resource values in the Beaufort Sea ecosystem, the area should only be opened for oil and gas leasing if there is a compelling need for additional oil and gas resources from federal waters. Oil spills pose an extreme threat to marine life in this ecosystem especially because of the extreme difficulties associated with cleaning up an oil spill in the Arctic. Mechanical recovery of oil has not been suitable for a spill in the Beaufort Sea during 98% of the winter (from November to June). The Minerals Management Service reported that oil spill recovery rates drop dramatically in broken ice conditions to between 1-20%. Based on the most recent offshore spill exercises in the Beaufort Sea in 2000, analysis found that while “the limit to mechanical recovery with containment booms and skimmers in ice-infested waters is generally considered to be 20-30% ice coverage,” in the Alaska Beaufort Sea operating limits were closer to 10%.

Current energy market forecasts do not show a compelling reason for this added oil and gas development, especially given the added hazards posed by oil spills in the Arctic. The U.S. Energy Information Agency (EIA) found that in nearly every scenario it examined, U.S. production of oil and gas will considerably outpace domestic demand for and consumption of oil and gas products. For example, under the reference case, EIA predicts that U.S. natural gas production will be approximately 10 quadrillion Btu higher than consumption by 2050. Notably, these projections do not account for the effect of federal policies aimed at mitigating climate change, such as the Clean Power Plan, which will further reduce the demand for fossil fuels if they are reinstated.

It is also irrational to assume that global demand for fossil fuels will continue to increase in the coming decades when the nations of the world have committed to rapidly reducing greenhouse gas emissions to mitigate global climate change. The United States and 175 other countries have ratified the Paris Agreement’s commitment to a climate target “well below 2 °C” above

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8 Nuka Research and Planning Group, LLC, Estimating an Oil Spill Response Gap for the U.S. Arctic Ocean (Revised) at 30, 53 Tbl. 18 (June 2016).
11 Nuka Research & Planning Group, LLC, Oil Spill Response Mechanical Response Recovery Systems for Ice-Infested Waters: Examinations of Technologies for the Alaskan Beaufort Sea at 58 (June 2007).
13 Id. at 62.
14 While the Clean Power Plan may not be reinstated in its original form, there is a very high likelihood that subsequent administrations will introduce policies aimed at reducing fossil fuel use, as this is a necessary policy response to the threat of climate change.
pre-industrial levels and to pursue efforts to limit warming to 1.5°C. The majority of countries, as well as many sub-national governments and private actors, remain committed to the Paris Agreement’s targets. Scientists estimate that 68-80% of global fossil fuel reserves must remain in the ground to limit temperature rise to 2 °C (as based on a 1,000 GtCO2 carbon budget). Given the high risks and high investment costs of Arctic drilling, it is logical that Arctic resources should be selected for non-extraction.

In this context, the demand for fossil fuels will most likely decline – potentially quite sharply – in the decades ahead. This is not merely speculation on the part of environmental advocates or policymakers: even fossil fuel companies have recognized that demand for fossil fuels will sharply decline due to policies aimed at mitigating greenhouse gas emissions. Despite these market projections, the federal government is pursuing a broader pattern of opening up an unprecedented amount of federal lands and waters for fossil fuel development.

In sum: energy market forecasts all indicate that there is not a compelling need for drilling in the Beaufort Sea. BOEM should therefore reconsider this proposal as well as other proposals to expand oil and gas offshore leasing.

3. **BOEM Should Carefully Evaluate Potential Greenhouse Gas Emission Impacts in the Programmatic EIS for this Action, Including Indirect (Downstream) Emissions from the Transportation and Combustion of the Produced Oil and Gas.**

The magnitude and scope of the climate change problem, the degree of public controversy surrounding fossil fuel production and its contribution to climate change, and the level of uncertainty about the extent to which fossil fuel production drives consumption all point towards the conclusion that this is a significant issue warranting in-depth consideration by federal policy-

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makers in NEPA reviews. The federal government has recently recognized the significant role fossil fuel production on federal lands plays in the nation’s overall contribution to climate change. According to the U.S. Geological Survey, 24 percent of the country’s emissions come from oil, gas and coal produced on federal lands. Considerations pertaining to GHG emissions and climate change should therefore feature prominently in the NEPA documentation for federal proposals involving fossil fuel production.

As part of its environmental review, BOEM should thoroughly evaluate the direct and indirect greenhouse gas emissions that will be generated as a result drilling in the Beaufort Sea Planning Area. BOEM’s emissions inventory should include direct emissions from drilling as well as downstream emissions from the transportation and combustion of produced oil and gas. Such analysis is required for NEPA proposals that involve fossil fuel extraction. It is also consistent with BOEM’s past NEPA analyses for the entire OCS leasing program.

BOEM’s emissions analysis should be transparent and accessible to decision-makers and the public. For example, BOEM should provide readers with a table which compares the direct, indirect, and total emissions from the proposed action and reasonable alternatives, including the no action alternative. The analysis should be located in a single section of the EIS. If BOEM relies on supplemental reports to inform its emissions analysis, the key findings from those supplemental reports should be fully incorporated into and summarized in the EIS.

For the sake of transparency, BOEM should disclose its estimates of total direct and downstream emissions in addition to any estimates of incremental emissions (that is, the emissions from the production, transportation, and combustion of oil and gas from the Beaufort Sea Planning Area, minus the emissions from the production, transportation, and combustion of substitute energy sources). BOEM should also be transparent about exactly how it estimated those incremental emissions. This will allow readers to evaluate BOEM’s methodology and confirm the accuracy of BOEM’s findings.

In addition, when analyzing incremental emission impacts (e.g., impacts from Beaufort oil and gas minus impacts from substitute energy sources), BOEM should consider: (i) the most current market forecasts from the U.S. Energy Information Administration (EIA) and other authoritative sources.

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21 40 C.F.R. § 1508.27 (“Significantly”).
24 BOEM, Final Programmatic EIS for the 2017-2022 OCS Oil and Gas Leasing Program (2017).
sources, (ii) the effect of climate change policies, including greenhouse gas regulations in other countries, decarbonization policies, and mid-century strategies, on fossil fuel demand, and (iii) the possibility that renewable energy sources would serve as a substitute for Beaufort oil and gas if the proposed expansion is not approved.

Finally, in order to better understand the significance of the emission impacts, BOEM should use the Social Cost of Carbon, Methane and Nitrous Oxide, as calculated by the Interagency Working Group on the Social Greenhouse Gases, to estimate and disclose the potential costs associated with the emission impacts, both on an annual basis and over the lifetime of the project. Where there is uncertainty about the precise nature of a project’s environmental effects (which is the case when evaluating the effects of a large quantity of greenhouse gas emissions released over many years), NEPA requires federal agencies to provide a “summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.” In this case, the Social Cost of Carbon, Methane, and Nitrous Oxide, despite being officially “rescinded” by President Trump, are scientifically credible estimates of the societal costs of greenhouse gas emissions, developed through a lengthy process of interagency consultation and peer review, and that cost is absolutely relevant to assessing the nature and significance of the proposed program’s environmental consequences. By contrast, the estimate utilized by the U.S. Environmental Protection Agency in its Regulatory Impact Analysis for the Repeal of the Clean Power Plan is highly susceptible to legal challenge because it inflates compliance costs, confines the Social Cost of Carbon to a “domestic” boundary without legal authorization, and deflates the public health benefits from reductions in co-pollutants. The emissions analysis conducted by BOEM in the EIS should inform BOEM’s analysis of the proposed project’s social and environmental costs.

4. BOEM’s Environmental Assessment Should Analyze the Environmental Effects of Climate Change Impacts on Lease Program Activities and the Potential for Adaptation Measures to Mitigate those Effects

25 40 C.F.R. § 1502.22(b)(1).
Pursuant to its obligations under NEPA, BOEM must consider the potential for significant adverse environmental effects of sea level rise, storm surge, and changing Arctic conditions—including thawing permafrost, increased coastal erosion, and increased frequency and intensity of fall and autumn storms—on oil and gas activities resulting from BOEM’s lease sales. These climate-related impacts will result in direct, indirect, and cumulative environmental effects and affect baseline conditions.\(^3\) NEPA’s implementing regulations provide that agencies must consider significant and reasonably foreseeable indirect and cumulative environmental impacts.\(^3\) Agencies must define an appropriate baseline for considering projected environmental impacts; such a baseline should incorporate anticipated environmental conditions.\(^3\) Several federal courts have confirmed that NEPA regulations require federal agencies to evaluate the impacts of a changing climate on their actions.\(^3\) Consideration of climate change impacts has accordingly become an integral part of the NEPA process.\(^4\) Furthermore, the withdrawal of the CEQ guidelines does not affect judicially upheld obligations as was explicitly noted in the withdrawal notice.\(^5\)

Other federal agencies have already begun to incorporate climate change adaptation concerns into their environmental review process. For instance, FERC required consideration of climate change impacts in connection with a proposed LNG export facility in flood-prone coastal Louisiana (the “Mississippi River LNG Project”).\(^6\) After the applicant for the Mississippi River LNG Project submitted draft resource reports to the Commission, FERC directed the applicant to supplement the reports with information regarding potential impacts of sea level rise and storm impacts for the design life of the facility.\(^7\) Similarly, FERC’s Environmental Assessments for

\(^{30}\) See e.g., infra Parts 3.A-3.B.

\(^{31}\) See 40 C.F.R. §§ 1508.7 (defining “cumulative impact”), 1508.8 (defining “effects” as including direct and reasonably foreseeable indirect effects), 1508.25(c) (providing that EISs must consider direct, indirect, and cumulative impacts); see also CEQ, Considering Cumulative Effects under the National Environmental Policy Act (1997) [hereinafter “Considering Cumulative Effects under NEPA”], available at http://1.usa.gov/JLkM2I.

\(^{32}\) See Considering Cumulative Effects under NEPA, supra note 31, at 41; 40 C.F.R. 1502.15 (defining “affected environment”)


\(^{34}\) See e.g., AquaAlliance2018 WL 903746 at *38-*39 (“Nonetheless, the FEIS/R fails to address or otherwise explain how this information about the potential impacts of climate change can be reconciled with the ultimate conclusion that climate change impacts to the Project will be less than significant . . . [T]his amounts to a ‘failure to consider an important aspect of the problem’. . . .” (internal citation omitted).


\(^{36}\) Louisiana LNG Energy, LLC, Proposed Mississippi River LNG Project (PF14-17-000).

\(^{37}\) Letter to Louisiana LNG Energy, LLC providing comments on Draft Resource Reports 2 through 9 re the Mississippi River LNG Project under PF14-17 (Nov. 24, 2014).
the Dominion Cove Point LNG export facility on the Chesapeake Bay and the Cameron LNG facility in coastal Louisiana both consider several implications of climate change for their respective facilities.\(^{38}\)

BOEM should analyze climate change impacts to oil and gas infrastructure during environmental review. Below is a summary of several climate change impacts and the risk that they pose to oil and gas infrastructure.

### A. Impacts of Climate Change

As anthropogenic greenhouse gas emissions warm the planet, causing glaciers and ice sheets to melt and oceans to absorb increasing volumes of heat, global sea levels will continue to rise, and will do so at increasing rates.\(^{39}\) In the next several decades, storm surges and high tides will combine with sea level rise to increase flooding, threatening coastal communities and industries.\(^{40}\) The effects of oil and gas activities on species in conjunction with climate change impacts; such as ocean acidification, decline of sea-ice ecosystems, and various resulting species responses should also be considered as part of environmental review.

Many sources provide current and credible data regarding sea level rise, storm surge, and Arctic changes. As relevant examples, the Sabin Center points the BOEM’s attention to:

- Intergovernmental Panel on Climate Change (“IPCC”), Chapter 2.2.3 Ocean, cryosphere and sea level. In Climate Change 2014 Synthesis Report, Fifth Assessment Report, at 65,
• IPCC, Chapters 5.3.3.1 Severe Storms and 5.3.3.2 Extreme Sea Levels. In Climate Change 2014: Impacts, Adaptation, and Vulnerability, available at http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_LONGERREPORT_Corr2.pdf.\textsuperscript{41}


\textsuperscript{41} J. A. Church et al., Sea Level Change, in CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GROUP I TO THE FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [T.F. Stocker et al., eds., Cambridge University Press 2013].


\textsuperscript{44} Taylor, P.C., W. Maslowski, J. Perlwitz, and D.J. Wuebbles, Arctic Changes and their Effects on Alaska and the Rest of the United States in 2017: Climate Science Special Report: Fourth National Climate Assessment, Volume I 303-332 (Wuebbles et al. eds.).


B. Risks to Oil & Gas Infrastructure

There is little question that climate change presents significant risks to infrastructure associated with oil and gas exploration and production activities in the OCS and the transport of extracted resources to coastal communities. In the Beaufort and Chukchi Seas in Alaska, artificial islands and causeways built for offshore energy development are expected to become increasingly vulnerable to inundation from sea level rise and damage from storm surges. BOEM should assess the projected range of sea level rise and storm surge, and the projected likelihood of severe storms, throughout the life of the oil and gas infrastructure that will be built as a result of new lease sales, assess the costs of those risks, and identify ways to prepare for climate change-related risks.

BOEM has not analyzed the potential impacts of climate change on oil and gas infrastructure and the potential environmental effects that could result as part of its Programmatic Environmental Impact Statement (PEIS) for the OCS 5-year leasing program. As part of environmental review for the Beaufort Sea Planning Area, BOEM should specifically discuss potential adverse impacts on the oil and gas activities likely to be performed under new leases issued by BOEM. For example, it should address whether sea level rise and severe storms will damage platforms or disrupt transportation networks.

In sum, sea level rise, increased storm surge, and severe storm events due to climate change pose foreseeable risks to the oil and gas infrastructure that will be built as a result of BOEM’s lease sales. BOEM must consider such impacts to adequately protect the infrastructure built as a result of oil and gas lease sales from future climate change impacts and to fulfill its obligations under NEPA.

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47 Kate Gordon et al., The Risky Business Project, Risky Business: The Economic Risks of Climate Change in the United States at 20 (2014).
50 See Burkett, supra note 48.
Thank you for the opportunity to submit these comments. Please feel free to contact the Sabin Center with any questions.

Sincerely,

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