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Submitted via SantaClaraDPPComments@BOEM.gov

Re: Comments re BOEM's Decision to Approve, Disapprove, or Require Modifications to DCOR LLC's Updated Development and Production Plan

Dear Ms. Zaleski:

This comment letter is submitted by the Environmental Defense Center (EDC), Center for Biological Diversity (CBD), Santa Barbara Channelkeeper, and Wishtoyo Chumash Foundation (collectively "our organizations") regarding the Bureau of Ocean Energy Management's (BOEM) consideration of DCOR, LLC's (DCOR) Updated Development and Production Plan ("Updated DPP").[1] The Updated DPP involves conducting hydraulic fracturing at wells off Platform Gilda, located in the Santa Clara Unit, offshore Ventura County, California. Our organizations are committed to protecting the California coastline from the harmful effects of offshore oil and gas drilling. We are particularly concerned about the heightened risks that offshore fracking poses to wildlife, public health, cultural resources, coastal economies, and climate goals.

We strongly urge BOEM to disapprove the Updated DPP in its entirety—the only decision that safeguards the health and wellbeing of coastal communities and protects the environment. Critically, BOEM is already subject to the federal-court injunction in *EDC v.*

[1] BOEM's Outer Continental Shelf Lands Act (OCSLA) regulations provide that "[t]he Regional Supervisor will make all comments and recommendations available to the public upon request." 30 C.F.R. § 550.268(c). We hereby request that BOEM make all comments and recommendations it receives regarding BOEM's consideration of the Updated DPP available to the public by posting all received comments and recommendations to BOEM's website and notifying our organizations how to access the comments and recommendations as soon as they are posted.

BOEM which prohibits the agency from approving offshore well-stimulation treatments until all terms of the injunction are satisfied, and they have not been.

The waters off the southern California coast, and the Santa Barbara Channel in particular, are an international ecological treasure. Home to numerous threatened and endangered species, this region is known as the "Galapagos of North America." There are two National Marine Sanctuaries—the Channel Islands National Marine Sanctuary (CINMS), and the recently-designated Chumash Heritage National Marine Sanctuary (CHNMS)—that are rich in natural resources. Native American Indigenous communities use and rely on these vast natural, cultural, and archaeological resources. Offshore oil drilling has been devastating to the region since the 1969 Santa Barbara oil spill, and has continued to have profound adverse impacts, as seen with the 2015 Plains oil spill at Refugio State Beach. More recent unconventional oil drilling practices such as hydraulic fracturing and acidizing (known as well stimulation treatments or "WSTs") have only intensified environmental concerns.

BOEM must disapprove the Updated DPP under the plain language of OCSLA because it meets several of the conditions under which a DPP *cannot* be approved. First, DCOR has not demonstrated that it can comply with OCSLA, its implementing regulations, or other federal laws. Second, the Updated DPP is inconsistent with the Coastal Zone Management Acts's (CZMA) objectives. Third, the Updated DPP will cause prolonged serious harm to the marine, coastal, and human environments that outweighs any potential advantages of approving the Updated DPP. Finally, pursuant to OCSLA, BOEM cannot approve the Updated DPP prior to circulating a draft Environmental Impact Statement (EIS) for public review and comment, and completing a final EIS that fully complies with the National Environmental Policy Act (NEPA).

In addition to the requirements of the current injunction and OCSLA, BOEM must fully comply with all applicable laws, including NEPA, the Endangered Species Act (ESA), CZMA, National Historic Preservation Act (NHPA), and National Marine Sanctuaries Act (NMSA).

I. A Federal Court Injunction Prohibits BOEM from Approving Offshore Fracking.

Beginning in 2012, our organizations began investigating the use of WSTs from platforms offshore California. Through a series of Freedom of Information Act (FOIA) requests to the federal government, we discovered permits that approved WSTs without any environmental review. The use of fracking and acidizing off California's shores was largely unknown to the general public, local elected officials, and cooperating state agencies until that time. This discovery—and the absence of any environmental analysis assessing the impacts of these practices—led to lawsuits filed in 2014 challenging the routine approval of permits (identifying fifty-one permits at the time) authorizing the use of WSTs pursuant to categorical exclusions or no analysis whatsoever, in violation of NEPA.[2] The parties reached a settlement agreement requiring the federal government to withhold approval of drilling permits authorizing

[2] *See, e.g.*, *Environmental Defense Center v. Bureau of Safety and Environmental Enforcement*, No. 2:14-cv-09281 (C.D. Cal. Dec. 3, 2014) (*EDC v. BSEE*).

WSTs and to prepare a Programmatic Environmental Assessment (PEA) addressing potential environmental impacts of WSTs in federal waters offshore California.[3]

After circulating a draft for comment, BOEM released a final PEA and a Finding of No Significant Impact (FONSI), signed May 27, 2016, approving the proposed action, entitled "Allow use of WSTs."[4] Under this action, the agencies "propose[d] to allow the use of selected well stimulation treatments (WSTs) on the 43 active leases and 23 operating platforms" on the Pacific Outer Continental Shelf (POCS).[5]

In November 2016, our organizations filed lawsuits challenging the PEA and FONSI, alleging violations of NEPA and the ESA. The State of California filed a case alleging violations of NEPA and the CZMA, and the cases were consolidated. ExxonMobil, the American Petroleum Institute (API), and DCOR intervened and submitted declarations stressing the importance of WSTs to their offshore oil operations.

In November 2018, the district court issued an order concluding that the federal government had violated the ESA by failing to consult with the Fish and Wildlife Service (FWS) before approving the use of WSTs.[6] The court also found that BOEM had violated the CZMA because the proposed action was a federal agency activity subject to the consistency review process, which it had failed to undertake.[7] In fashioning relief, the district court ordered the federal government "to refrain from approving any plans or permits (DPPs, APDs, or APMs) for the use of WSTs on the POCS unless and until they (1) complete[d] consultation with FWS under the ESA and (2) complete[d] the CZMA process under 16 U.S.C. § 1456(c)(1) for the proposed action described in the Final EA."[8] With respect to the NEPA claims, the district court held that the PEA and FONSI constituted a major federal action triggering the agencies' duties under NEPA, but that the federal government had complied with NEPA in its preparation of the PEA.[9] The parties filed cross appeals in the Ninth Circuit Court of Appeals.

On June 3, 2022, the Ninth Circuit issued its opinion, holding that BOEM was in violation of NEPA, the ESA, and the CZMA with respect to its approval of the PEA and FONSI, authorizing the use of WSTs offshore California.[10] Specifically, the court concluded that the agency's approval of WSTs under the PEA and FONSI was a final agency action and ripe for

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[3] Settlement Agreement, *EDC v. BSEE* (Settlement lodged Jan. 29, 2016, No. 79-1).
[4] *Programmatic Environmental Assessment of the Use of Well Stimulation Treatments on the Southern California Outer Continental Shelf* ("PEA") at ES-3–ES-4.
[5] *Id.*
[6] *Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 2018 WL 5919096, at *18 (C.D. Cal. Nov. 9, 2018), *aff'd in part, rev'd in part and remanded,* 36 F.4th 850 (9th Cir. 2022) ("Because the agencies did not consult with the Services before issuing the Final EA, they violated the ESA.").
[7] *Id.* at *26.
[8] *Id.* at *27; *see also id.* at *23 ("The Court **GRANTS** Plaintiffs' request for a declaration that the agencies violated the ESA and further **GRANTS** their request for an injunction. Defendants are prohibited from approving any plans or permits (APDs, APMs, or DPPs) for the use of WSTs on the POCS unless and until they complete consultation with FWS under the ESA.").
[9] *Id.* at *7-16.
[10] *Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850 (9th Cir. 2022) ("*EDC v. BOEM*").

judicial review.[11] With respect to NEPA, the Ninth Circuit determined that the agency's PEA and FONSI were arbitrary and capricious in several respects. For example, BOEM unlawfully relied on the unfounded assumption that WSTs will only be allowed five times per year in order to justify that impacts will be minimal with respect to, for example, accidents, induced seismicity, air quality, water quality, ecological resources, and fisheries. The appellate court concluded this was a critical error and arbitrary and capricious because the alleged infrequent use, despite evidence to suggest otherwise, was the "driving force" behind their conclusions.[12] The Ninth Circuit also found that the agency unlawfully relied on a Clean Water Act permit that in fact does not cover the water quality impacts of offshore fracking.[13] The court also ruled that the agencies failed to consider a reasonable range of alternatives, namely, that it was "highly arbitrary for the agencies repeatedly to premise their" analysis on the assumption of infrequent use of WSTs without "considering an alternative that imposed such a five-treatment limit."[14] The court determined that there were substantial questions regarding potentially significant impacts warranting an EIS, especially where these unconventional practices and impacts that had not been previously studied.[15]

As for the ESA, the federal government's only argument on appeal was that there was no "agency action." The Ninth Circuit disagreed—concluding that the PEA and FONSI constitute agency action, subject to ESA Section 7's consultation requirement.[16] Accordingly, the district court's conclusion that the agency violated the ESA was left intact. Regarding the CZMA, the appellate court held that the action constitutes a "federal agency activity" subject to consistency review.[17] The Ninth Circuit affirmed and reversed in part and remanded to the district court. On remand, the district court in July 2023 provided:

> The Ninth Circuit in its opinion instructed this Court on remand to "amend its injunction to prohibit the agencies from approving permits for well stimulation treatments until the agencies have issued an EIS and have fully and fairly evaluated all reasonable alternatives." *Env't Def. Ctr.*, 36 F.4th at 882, 891. The Court hereby AMENDS its injunction consistent with those instructions. The agencies are ENJOINED from approving well stimulation treatment permits until the agencies issue a complete EIS.[18]

Collectively, the federal court injunctions that are still in place today (first issued in 2018 and expanded in 2023) prohibit BOEM from approving WSTs (including fracking, and including under any DPPs) until it completes (1) the CZMA consistency review process for the proposed action, (2) a complete EIS under NEPA, and (3) ESA consultation with FWS.

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[11] *Id.* at 868-71.
[12] *Id.* at 874 ("We agree with Plaintiffs that the agencies' excessive reliance on the asserted low usage of well stimulation treatments distorted the agencies' consideration of the significance and severity of potential impacts.").
[13] *Id.* at 874-75.
[14] *Id.* at 878.
[15] *Id.* at 879-82.
[16] *Id.* at 885.
[17] *Id.* at 888-89.
[18] *EDC v. BOEM*, Case 2:16-cv-08418-PSG-FFM, Document No. 223, Order Amending the Court's Injunction (Filed 07/13/23).

Accordingly, any effort to proceed with approving fracking in federal waters offshore California, without first complying with these mandates, is in direct violation of the court's injunction. Further, any reliance on the EA and FONSI is unlawful because the court ruled that the agency's analysis and conclusions were arbitrary and capricious. Accordingly, it is inappropriate for BOEM to include these invalid sources on the agency's website.

Moreover, even though the court already recognized the flawed analysis for relying on the unfounded assumption that WSTs would only be used up to five times per year, it bears noting that this proposal *alone* would far exceed that figure, with up to thirty-eight treatments to occur over a five-year period from just a single platform.

II. Platform Gilda Updated Development and Production Plan

BOEM is considering a proposal by DCOR to conduct well stimulation activities, specifically hydraulic fracturing, from Platform Gilda located in the Santa Clara Unit in federal waters off Ventura County.[19] DCOR has submitted the Updated DPP to BOEM that, under Alternative 1, proposes to conduct fracking at sixteen wells, with "four well stimulation target locations in the Upper Repetto and 12 well stimulation target locations in the Lower Repetto."[20] The action would involve up to thirty-eight treatments over a five-year period, with "up to 6 wells stimulated during one campaign in a single year" and active well stimulation to be performed for "14 days per year."[21]

The proposed WST method "involves frac packing, which combines hydraulic fracturing with gravel packing."[22] According to the Updated DPP, during this process, "the fracking fluid is injected to fracture the formation, while sand control screens are installed across the perforated interval. Proppant is placed both in the fracture and in the annulus between the casing and screen to form a stable gravel pack."[23] Under the proposed action, fracking flowback fluid will be "retained on the Platform" and return fluids "will be re-injected into existing injection wells on the Platform" and "[f]racturing depths would be greater than 4,500 feet below the seafloor surface."[24] The Updated DPP provides two alternatives to the proposed action: "no action" and "development of new production wells."[25]

[19] UPDATE TO DEVELOPMENT AND PRODUCTION PLAN AND ENVIRONMENTAL REPORT, WELL STIMULATION: HYDRAULIC FRACTURING, PLATFORM GILDA OFFSHORE VENTURA COUNTY, Project No. 2502-2681 (January 2026) ("Updated DPP").
[20] *Id.* at 3-1.
[21] *Id.*; *id.* at 4-36.
[22] *Id.* at 1-3.
[23] *Id*.
[24] *Id.* at 3-1.
[25] *Id.* at 3-2.

On February 25, 2026, BOEM posted the Updated DPP on its website for the public to review, triggering a sixty-day public comment period on the Updated DPP[26] as required by BOEM's OCSLA regulations.[27] BOEM states it will consider comments and recommendations from reviewers in its "decision to approve, disapprove, or require modifications to the updated DPP."[28]

On March 18, 2026, BOEM released in the Federal Register a "Notice of Intent To Prepare an Environmental Impact Statement on Platform Gilda Well Stimulation Treatment"[29]—announcing a ten-day deadline to receive public comments and giving six days' notice of a virtual public scoping hearing that occurred on March 24, 2026. The undersigned parties submitted a comment letter ("Scoping Comment Letter") by the March 30, 2026, deadline, urging BOEM to release a draft EIS as required under federal law.[30] Just two weeks following the public comment deadline, BOEM had already prepared and submitted its DCOR, LLC Well Stimulation Treatment Environmental Impact Statement ("Final EIS") to BOEM's Pacific Regional Director Douglas Boren for approval and certification. Regional Director Boren certified the Final EIS on April 13, 2026[31] and BOEM uploaded the Final EIS to its website on April 17, 2026.[32] Five days later, on Apr. 22, 2026, BOEM issued a press release on its website announcing the availability of the Final EIS.[33]

III. BOEM Must Disapprove the Updated DPP Pursuant to OCSLA.

BOEM must disapprove the Updated DPP outright. The plain language of OCSLA and its regulations prescribe conditions under which a DPP cannot be approved, and three of those are clearly met here. First, DCOR has not demonstrated that it can comply with OCSLA, its implementing regulations, or other federal laws, including the CZMA, ESA, NHPA, or the NMSA—nor could it. Second, the Updated DPP is inconsistent with the CZMA's objectives. Third, because of "exceptional resource values in the marine or coastal environment" the Updated DPP will cause prolonged serious harm to the marine, coastal, or human environments that outweighs any potential advantages of approving the Updated DPP. Finally, pursuant to

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[26] Revised Development and Production Plans – Pacific: Santa Clara Unit, BOEM, https://www.boem.gov/regions/pacific-ocs-region/oil-gas/revised-development-and-production-plans-pacific (last viewed April 24, 2026).
[27] *See* 30 C.F.R. § 550.267(b) ("Comments and recommendations must be received by the Regional Supervisor within 60 calendar days after the DPP . . . including its accompanying information is made available.").
[28] *Id.*
[29] 91 Fed. Reg. 13063 (March 18, 2026).
[30] "Scoping Comment Letter" is attached hereto as **Attachment A**.
[31] Bureau of Ocean Energy Management & Bureau of Safety and Environmental Enforcement, Final EIS (April 2026), https://www.boem.gov/sites/default/files/documents/regions/pacific-ocs-region/environmental-analysis/2026_04_DCOR_WST_EIS_508C.pdf?VersionId=bNImNyBwpqLYUDhb8VoVk9TmtzMv8ByK (certified by BOEM Pacific Regional Director Douglas Boren on April 13, 2026).
[32] BOEM, Environmental Impact Statement on Platform Gilda Well Stimulation Treatment, BOEM, https://www.boem.gov/regions/pacific-ocs-region/environmental-impact-statement-platform-gilda-well-stimulation-treatment.
[33] BOEM, Press Release, *BOEM Releases Final Environmental Impact Statement for Platform Gilda Well Stimulation Proposal Offshore California* (April 22, 2026) https://www.boem.gov/newsroom/press-releases/boem-releases-final-environmental-impact-statement-platform-gilda-well.

OCSLA, BOEM cannot approve the Updated DPP prior to circulating a draft EIS for public review and comment, and a final EIS that fully complies with NEPA.

A. OCSLA Legal Framework

OCSLA governs the leasing, exploration, and development of oil and gas deposits in the Outer Continental Shelf (OCS).[34] In 1978, Congress amended OCSLA to provide, in part, for the development of resources on the OCS "subject to environmental safeguards."[35] BOEM's management of the OCS "shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the [OCS]," as well as "the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments."[36]

OCSLA prescribes four stages to allow for the development of offshore oil and gas deposits: "(1) formulation of a five year leasing plan by the Department of the Interior; (2) lease sales; (3) exploration by the lessees; [and] (4) development and production."[37] Environmental review under NEPA is required at each stage.[38] Although BOEM may "tier" a later analysis to earlier reviews to eliminate repetitive discussions and focus on the actual issues ripe for decision, it is still required to consider impacts during the fourth permitting stage.[39] In fact, OCSLA is clear that BOEM has a duty to consider environmental information for all approvals relating to DPPs:

> The Secretary shall consider available relevant environmental information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.[40]

During the development and production stage, a lessee must submit a DPP to the Secretary of the Interior, who must "approve, disapprove, or require modifications" to the submitted DPP.[41]

After a DPP is approved, a lessee wishing to conduct activities that were not proposed and analyzed in the initial DPP may need to supplement or revise their DPP. A DPP must be revised when a lessee proposes to change certain activities in a previously approved DPP that will not require additional licenses or permits.[42] A revised DPP is required, for example, when a lessee proposes to (i)"[c]hange the type of production or significantly increase the volume of production or storage capacity;" (ii) "[i]ncrease the emissions of an criteria air pollutant, VOC,

[34] 43 U.S.C. §§ 1331-1356b.
[35] *Id.* § 1332(3).
[36] *Id*. § 1344(a)(1).
[37] *Secretary of the Interior v. California*, 464 U.S. 312, 337 (1984) (superseded by statute on other grounds).
[38] *See, e.g.,* 43 U.S.C. § 1351(h)(1) (NEPA review for DPPs).
[39] *See* 30 C.F.R. §§ 550.261 (environmental impact analysis for DPPs).
[40] 43 U.S.C. § 1346(d).
[41] 43 U.S.C. § 1351(h)(1).
[42] *See* 30 C.F.R. § 550.283.

or TSP to an amount that exceeds the amount specified in [the] approved . . . DPP;" (iii) "[s]ignificantly increase the amount of solid or liquid wastes to be handled or discharged;" or (iv) "[c]hange any other activity specified by the Regional Supervisor."[43] A DPP must be supplemented when a lessee proposes "to conduct activities on [its] lease(s) or unit that require approval of a license or permit which is not described in [the approved] . . . DPP."[44]

A revised or supplemental DPP must contain "information related to or affected by the proposed changes, including information on changes in expected environmental impacts."[45] When BOEM reviews a supplemental DPP or a revised DPP that BOEM "determines [is] likely to result in a significant change in the impacts previously identified and evaluated," BOEM follows the same OCSLA regulatory procedures that control BOEM's review of a DPP in the first instance (i.e., those outlined in 30 C.F.R. §§ 550.266 through 550.273).[46] These procedures include compliance with NEPA and the CZMA, reviewing the plan for compliance with existing federal law, ensuring the proposed activities will not cause serious harm to the environment, and deciding whether to approve, disapprove, or require modifications to the plan.

After a DPP is deemed submitted, BOEM must "review the development and production activities in [the lessee's] proposed DPP . . . to ensure that they conform to . . . performance standards established by 30 C.F.R. § 550.202,"[47] which require that the DPP:

> demonstrate[s] that [the lessee] ha[s] planned and [is] prepared to conduct the proposed activities in a manner that: (a) [c]onforms to [OCSLA], applicable implementing regulations, lease provisions and stipulations, and other Federal laws; (b) [i]s safe; (c) [c]onforms to sound conservation practices and protects the rights of the lessor; (d) [d]oes not unreasonably interfere with other uses of the OCS, including those involved with National security or defense; and (e) [d]oes not cause undue or serious harm or damage to the human, marine, or coastal environment.[48]

BOEM must "evaluate the environmental impacts of the activities described in [the] proposed DPP . . . and prepare environmental documentation under [NEPA]."[49] Whenever BOEM prepares an EIS for a DPP as part of its NEPA analysis, BOEM must "make copies of the draft EIS available to . . . the public."[50] BOEM must also submit the DPP to the CZMA agency of each affected state, which begins the CZMA consistency review period under the CZMA.[51]

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[43] 30 C.F.R. § 550.283(a).
[44] 30 C.F.R. § 550.283(b).
[45] 30 C.F.R. § 550.285(b).
[46] 30 C.F.R. § 550.285.
[47] 30 C.F.R. § 550.267(c).
[48] 30 C.F.R. § 550.202 (required criteria for a DPP); 30 C.F.R. § 550.267(c) ("The Regional Supervisor will review the development and production activities in your proposed DPP or DOCD to ensure that they conform to the performance standards in § 550.202.").
[49] 30 C.F.R. § 550.269.
[50] 30 C.F.R. § 550.269(c).
[51] 30 C.F.R. § 550.267(a)(1) ("Within 2 working days after the Regional Supervisor deems your DPP . . . submitted under § 550.266, the Regional Supervisor will . . . send a public information copy of the DPP . . . to . . . [t]he CZMA agency of each affected State. The CZMA consistency review period under section 307(c)(3)(B)(ii) of the CZMA

Pursuant to BOEM's OCSLA regulations, BOEM must approve, disapprove, or require modifications to the DPP within a specified timeframe.[52] BOEM's own regulations provide that the DPP can only be approved if it "complies with all applicable requirements."[53] Regarding revised DPPs specifically, the OCSLA statute provides that a revision to a DPP may only be approved "to the extent such revision is consistent with the protection of the human, marine, and coastal environments."[54]

BOEM must require a lessee to modify its DPP if the plan "fails to make adequate provisions for safety, environmental protection, or conservation of natural resources or otherwise does not comply with the lease, [OCSLA], the regulations prescribed under [OCSLA], or other Federal laws."[55] If BOEM requires modifications, it will describe to the lessee "the modifications [the lessee] must make to [the] proposed DPP . . . to ensure it complies with all applicable requirements."[56]

Under OCSLA, there are four reasons that, if any apply, require BOEM to disapprove a DPP.[57] These reasons include, but are not limited to, the following: (1) BOEM determines the lessee has not demonstrated it can comply with OCSLA, its implementing regulations, or other applicable federal laws; (2) the plan is not found to be consistent with the CZMA's objectives; or (3) BOEM determines that:

> because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal or human environments, (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of

(16 U.S.C.1456(c)(3)(B)(ii)) and 15 CFR 930.78 begins when the States CZMA agency receives a copy of your deemed-submitted DPP or DOCD, consistency certification, and required necessary data/information (see 15 CFR 930.77(a)(1)).").

[52] 30 C.F.R. § 550.270(a) (The Regional Supervisor will make a decision within 60 calendar days after the latest of the day that: (i) The comment period provided in § 550.267(a)(1), (a)(2), and (b) closes; (ii) The final EIS for a DPP is released or adopted; or (iii) The last amendment to your proposed DOCD is received by the Regional Supervisor."); *id.* at § 550.270(b).

[53] 30 C.F.R. § 550.270(b)(1).

[54] 43 U.S.C. § 1351(i) ("The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this subchapter, to the extent such revision is consistent with protection of the human, marine, and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (f) of this section.").

[55] 30 C.F.R. § 550.270(b)(2).

[56] 30 C.F.R. § 550.270(b)(2).

[57] 43 U.S.C. § 1351(h)(1); 30 C.F.R. § 550.271; 30 C.F.R. § 550.270(b)(2) (including by reference all reasons articulated in 30 C.F.R. § 550.271).

time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.[58]

B. The Updated DPP Does Not Meet OCSLA's Requirements.

As an initial matter, it is unclear whether BOEM and DCOR intend to characterize the Updated DPP as a revised DPP or a supplemental DPP—however, it in fact qualifies as *supplemental* because DCOR proposed to conduct fracking from Platform Gilda, which requires "approval of a license or permit which is not described in [the] approved . . . DPP."[59] There is no question that DCOR must also obtain additional permit(s) to conduct fracking, in the form of Applications for Permits to Drill (APDs) or Applications for Permits to Modify (APMs).[60] DCOR does not affirm anywhere in the Updated DPP that it must obtain additional licenses or permits for the proposed WST activities (*see*, *generally*, Updated DPP), and DCOR has not already obtained any permits or licenses required under OCSLA to conduct the proposed WST activities. BOEM itself correctly characterizes the Updated DPP as a "supplemental DPP" in its Federal Register Notice regarding its Notice of Intent to prepare an EIS for the Updated DPP.[61] Thus, BOEM must review the Updated DPP pursuant to the standards prescribed under 30 C.F.R. § 550.285(c).[62]

However, the Updated DPP itself cites to and analyzes only the subsections of BOEM's regulatory provisions that govern *revised* DPPs.[63] Even if the Updated DPP is determined to instead be a revised DPP, the same review procedures and standards still apply because the WST activities proposed therein are "likely to result in a significant change in the impacts previously identified and evaluated."[64] Indeed, as our comments describe in detail, the environmental impacts of DCOR's proposed WST activities would be significant, and under no circumstances has DCOR yet identified and evaluated these environmental impacts.

BOEM must disapprove the Updated DPP for multiple reasons. First, the Updated DPP does not comply with OCSLA, OCSLA's implementing regulations, the ESA, NHPA, or the NMSA. Second, the Updated DPP is inconsistent with the CZMA's objectives. Third, the proposed activities in the Updated DPP will cause prolonged serious environmental harm that outweighs any potential advantages. Finally, BOEM cannot approve the Updated DPP until it circulates a draft EIS for public review and comment and publishes a final EIS that fully complies with NEPA.

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[58] 43 U.S.C. § 1351(h)(1); *accord* 30 C.F.R. § 550.271(d).
[59] 30 C.F.R. § 550.283(b).
[60] *See* 43 U.S.C. §1351; 30 C.F.R. §§ 250.410–250.418.
[61] Federal Register, "Notice of Intent [t]o Prepare an Environmental Impact Statement on Platform Gilda Well Stimulation Treatment," 91 FR 13063, https://www.federalregister.gov/documents/2026/03/18/2026-05319/notice-of-intent-to-prepare-an-environmental-impact-statement-on-platform-gilda-well-stimulation.
[62] 30 C.F.R. § 550.285(c) provides that "[a]ll supplemental . . . DPPs . . . and those revised . . . DPPs . . . that the Regional Supervisor determines are likely to result in a significant change in the impacts previously identified and evaluated, are subject to all of the procedures under . . . §§ 550.266 through 550.273 for DPPs."
[63] Updated DPP at 1-5–1-6 (listing and analyzing only the requirements for preparing a revised DPP, as outlined in 30 C.F.R. § 550.283(a), while omitting the requirements for preparing a supplemental DPP, as outlined in § 550.283(b)).
[64] 30 C.F.R. § 550.285(c).

1. DCOR Has Not Demonstrated It Can Comply with OCSLA and Other Federal Laws.

BOEM's Regional Supervisor must disapprove the Updated DPP because DCOR has "failed to demonstrate that [it] can comply with the requirements of the Outer Continental Shelf Lands Act, as amended (Act), implementing regulations, or other applicable Federal laws."[65]

DCOR has failed to demonstrate it can comply with OCSLA, which provides that BOEM's management of the OCS "shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the [OCS]," as well as "the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments."[66] As discussed below and in our Scoping Comment Letter, the Updated DPP does not fully consider how the proposed WST activities will impact the OCS's economic, social, environmental values, including the marine, coastal, and human environments. The Updated DPP must therefore be disapproved.

Neither has DCOR demonstrated it can comply with OCSLA-implementing regulations. For example, DCOR has not complied with 30 C.F.R. § 550.202, which requires a DPP to "demonstrate that [the lessee] ha[s] planned and [is] prepared to conduct the proposed activities in a manner that . . . [d]oes not cause undue or serious harm or damage to the human, marine, or coastal environment."[67] DCOR's Updated DPP does not demonstrate that DCOR can conduct the proposed WST activities in a manner that will avoid "undue or serious harm or damage to the human, marine, or coastal environment."[68] Indeed, as discussed below and at length in our Scoping Comment Letter, the proposed WST activities will have serious environmental impacts as a result of both fracking and extending oil production off Platform Gilda.

DCOR has also failed to demonstrate it can comply with other applicable Federal laws, which include, but are not limited to, the ESA, CZMA, NHPA, and NMSA. The Updated DPP's violations of these laws are discussed in sections V.A. through V.D.

DCOR's own track record reveals an inability to comply with OCSLA's decommissioning requirements. BSEE regulations require oil and gas companies to plug wells and remove platforms and pipelines within one year of lease termination.[69] Unused infrastructure on active leases ("idle iron") must be decommissioned when it is "no longer useful for operations" – generally within eight to ten years of the date of last use.[70] At present, DCOR is

[65] 30 C.F.R. § 550.271(a); *see* 43 U.S.C. § 1351(h)(1)(A).
[66] 43 U.S.C. § 1344(a)(1).
[67] 30 C.F.R. § 550.202(e) ("Your . . . DPP . . . must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that: . . . (e) Does not cause undue or serious harm or damage to the human, marine, or coastal environment.").
[68] *Id.*
[69] 30 C.F.R. §§ 250.1710, 250.1725(a); 250.1010(h).
[70] *Id.* § 250.1703; BSEE, Idle Iron Decommissioning Guidance for Wells and Platforms NTL (No. 2018-G03) 2–4 (Dec. 11, 2018) ("BSEE Idle Iron Policy").

responsible for ninety-three percent of all idle wells on the Pacific OCS. According to BSEE data, DCOR owns sixty-nine "temporarily abandoned" or idle wells on the Pacific OCS, out of a total of seventy-four, and forty-four of DCOR's wells have been idle for eight years or longer.[71] DCOR's failure to timely plug and fully decommission these wells reveals a pattern of violating OCSLA and its implementing regulations; as such, BOEM must not approve DCOR's Updated DPP unless and until DCOR demonstrates that it "can comply" with OCLSA's decommissioning requirements.[72]

2. The Updated DPP Is Inconsistent with the CZMA's Objectives.

BOEM must disapprove the Updated DPP because California has not issued a final decision on any coastal zone consistency certification and the Updated DPP is inconsistent with the CZMA's objectives.[73] The CZMA was enacted to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone."[74] The CZMA was also enacted to encourage states, through the development and implementation of coastal management programs, to protect "natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone," and "improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters."[75]

As discussed below and in our Scoping Comment Letter, the Updated DPP's proposed activities present significant environmental threats and are thus incompatible with the CZMA's policies of safeguarding and protecting natural resources, fish and wildlife and their habitat, and coastal waters within the coastal zone. Accordingly, BOEM must disapprove the Updated DPP.

3. Fracking Will Cause Prolonged Serious Environmental Harm That Would Overshadow Any Advantages of Offshore Fracking.

Under OCSLA, a DPP must be disapproved if BOEM determines that:

> because of exceptional geological conditions in the lease areas, *exceptional resource values in the marine or coastal environment*, or other exceptional circumstances, that (i) implementation of the plan would probably cause serious harm or damage to life (*including fish and other aquatic life*), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, *or to the marine, coastal or human environments*, (ii) the threat of harm or damage

[71] BSEE Borehole Data, extracted from BSEE's Borehole Database on 4/23/26, https://www.data.bsee.gov/Well/Borehole/Default.aspx. Spreadsheet attached hereto as **Attachment B**.
[72] 43 U.S.C. § 1351(h)(1)(a); 30 C.F.R. § 550.271(a), 250.1703.
[73] *See* 30 C.F.R. § 550.271(b) ("The Regional Supervisor will disapprove your proposed DPP . . . if . . . : (b) No consistency concurrence. (1) An affected State has not yet issued a final decision on your coastal zone consistency certification . . . ; or (2) An affected state objects to your coastal zone consistency certification, and the Secretary of Commerce, under section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(iii)), has not found that each activity described in the DPP . . . is consistent with the objectives of the CZMA. . . .").
[74] 16 U.S.C. § 1452(1).
[75] 16 U.S.C. § 1452(2)(A), (C).

> will not disappear or decrease to an acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.[76]

As discussed in this letter and at length in our Scoping Comment Letter, the WST activities DCOR proposes in the Updated DPP would have significant environmental impacts, both due to the fracking activities themselves and due to extending the life of Platform Gilda's operations. The surrounding area's aquatic wildlife, air quality, water quality, terrestrial wildlife, and other environmental resources would likely be seriously harmed by fracking and continued oil production at Platform Gilda, and these impacts could continue long after the proposed WST activities end. Disapproving the Updated DPP is the only decision that would safeguard the health and wellbeing of California's coastal communities and protect the environment, which far outweighs any advantages of increased oil production at Platform Gilda.

4. Failure to Circulate a Draft EIS and Prepare an Adequate EIS for the Updated DPP Violates OCSLA.

BOEM's failure to publish a draft EIS not only violates NEPA, as detailed below, but also BOEM's own OCSLA-implementing regulations that apply to BOEM's review of the Updated DPP. BOEM cannot rely on the Department of Interior's ("Department") Emergency Procedures to evade a thorough NEPA review (see section IV.A., below) or its obligations established by the Bureau's own OCSLA regulatory procedures that control BOEM's review of a DPP in the first instance (i.e., those outlined in 30 C.F.R. §§ 550.266 through 550.273).[77] One of BOEM's OCSLA-implementing regulations, 30 C.F.R. § 550.269, specifically provides that BOEM must "evaluate the environmental impacts of the activities described in [a] proposed DPP . . . and prepare environmental documentation under [NEPA]."[78] That regulation further provides that when BOEM prepares an EIS for a DPP, it must "make copies of the draft EIS available to . . . the public."[79] By failing to publish a draft EIS before issuing its Final EIS for the Updated DPP, BOEM has violated its legal obligation to make the draft EIS available to the public. BOEM must therefore rescind its Final EIS and release a draft EIS for the public to review and comment on.

BOEM's failure to prepare an EIS that satisfies NEPA likewise violates OCSLA. Indeed, OCSLA and BOEM's OCSLA-implementing regulations each require BOEM to prepare an EIS pursuant to NEPA.[80] As detailed below, BOEM's Final EIS falls short of NEPA standards and therefore also constitutes a violation of OCSLA.

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[76] 43 U.S.C. § 1351(h)(1) (emphasis added); *accord* 30 C.F.R. § 550.271(d).
[77] 30 C.F.R. § 550.285; *See also* 43 U.S.C. § 1351(h)(1).
[78] 30 C.F.R. § 550.269.
[79] 30 C.F.R. § 550.269(c).
[80] *See* 43 U.S.C. § 1351(h)(1) (noting a final environmental impact statement is prepared pursuant to NEPA before BOEM approves, disapproves, or requires modifications to a plan); 30 C.F.R. § 550.269 (BOEM must "evaluate the environmental impacts of the activities described in [the] proposed DPP . . . and prepare environmental documentation under [NEPA].").

IV. BOEM Must Comply with NEPA.

BOEM's issuance of the Final EIS did not cure its violations of NEPA. Before BOEM can approve the Updated DPP it must fully comply with NEPA. First, the agency's reliance on the Emergency Procedures approach is unlawful. Second, BOEM was required to circulate a draft EIS for public review and comment, and it did not. Finally, the EIS is arbitrary and capricious and fails to constitute a "hard look" at the impacts of fracking from Platform Gilda.

A. BOEM Cannot Rely on Interior's Emergency Procedures to Evade a Thorough NEPA Review.

BOEM cannot rely upon Executive Order 14,156 (in which President Trump declared a purported "energy emergency") and the Department's Alternative Arrangements for NEPA (the Emergency Procedures) to approve this project. The premise that a national energy emergency exists, and that the NEPA analysis for the Platform Gilda Updated DPP must be completed in twenty-eight days, is arbitrary and capricious.

1. There Is No National Emergency.

First, there is no national energy emergency, and the Emergency Procedures are a transparent pretext to exempt fossil fuel development from environmental laws rather than a response to an actual energy emergency. There is no urgent need to immediately increase oil and gas production from the OCS. Oil production is at an all-time high and the United States is a net exporter of petroleum.

The Executive Order raises longstanding energy policy issues like energy prices and security but fails to identify any sudden or unforeseen new circumstances that might require deviation from existing laws and regulations. Instead, the Executive Order borrows talking points that the oil and gas industry has offered for years when seeking to increase drilling and production. These are nothing new. And because these issues involve long-term national energy policy, they cannot be resolved through short term steps expediting approvals of leases, development and production plans, and drilling permits.[81]

The details of the Executive Order also illustrate the pretextual nature of the alleged "emergency." The Executive Order defines "energy" to exclude wind, solar, and many other renewable sources.[82] If there were a genuine energy emergency, the United States would be

[81] For example, the Executive Order points to concerns such as "high energy prices" caused by "inadequate energy supply." Executive Order 14,156 § 1 (January 20, 2025). This ignores the fact that oil production in the United States has hit record levels, and in March 2024 the U.S. Energy Information Agency reported that the "United States produces more crude oil than any country, ever." EIA, *Today in Energy* (March 11, 2024), United States produces more crude oil than any country, ever - U.S. Energy Information Administration (EIA). In addition, the United States already produces more petroleum than it uses, and has been a net exporter of petroleum since 2020, undercutting the argument that national security requires an "affordable and reliable domestic supply of energy." EIA, *U.S. crude oil exports reached a new record in 2024* (April 10, 2025), U.S. crude oil exports reached a new record in 2024 - U.S. Energy Information Administration (EIA).

[82] Executive Order 14,156 § 8(a).

expected to take an "all of the above" approach to increasing energy supplies. The Executive Order itself recognizes the importance of a "diversified" energy supply,[83] and all the concerns listed in the Executive Order can be addressed by increasing renewable energy production along with a focus on energy conservation and efficiency.

In addition, the "opt in" structure of the Emergency Procedures—they apply only where the "project applicant . . . want[s] the review of their project to be covered by the alternative arrangements"—undercuts the Department of Interior's claim to be responding to an emergency.[84] If the United States genuinely requires an immediate increase in energy production, expediting that production cannot be left to the business decisions of individual energy companies. The stated goals of the Executive Order are not contingent on whether each operator chooses to seek expedited approvals.

2. The Executive Order Does Not Activate Any Emergency Powers Under NEPA.

President Trump's Executive Order relied on the National Emergencies Act, 50 U.S.C. § 1601 *et seq*. (the NEA), for authority to declare a national energy emergency.[85] The NEA authorizes the President to declare a national emergency, which allows him to exercise "any special or extraordinary power" that is authorized by an Act of Congress "during the period of a national emergency."[86]

The NEA does not give the President free rein to disregard the law, however. Rather, an emergency declaration only applies to statutes "conferring powers and authorities to be exercised during a national emergency."[87] As Congress explained: the "National Emergencies Act is not intended to enlarge or add to Executive power. Rather the statute is an effort by the Congress to establish clear procedures and safeguards for the exercise by the President of emergency powers conferred upon him by other statutes."[88]

The NEA also imposes requirements for reporting to Congress and procedures for terminating emergencies.[89] In particular, the NEA requires the President to "specif[y] the provisions of law under which he proposes that he, or other officers will act" in exercising emergency powers.[90] This specification must be made in the emergency declaration, or in "subsequent Executive orders published in the Federal Register and transmitted to the Congress."[91]

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[83] *Id.* § 1.
[84] Dep't of Interior, Alternative Arrangements for NEPA Compliance (April 23, 2025), available at https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed_1.pdf.
[85] Executive Order 14,156.
[86] 50 U.S.C. § 1621(a).
[87] *Id.* § 1621(b).
[88] Sen. Rep. 94-1168 at *3 (Aug. 26, 1976).
[89] 50 U.S.C. §§ 1621-1631.
[90] *Id.* § 1631.
[91] *Id.*

Unlike some other statutes, NEPA does not give the President any "special or extraordinary power" to waive its requirements during national emergencies.[92] Moreover, President Trump's Executive Order makes no mention of NEPA—much less "specif[ies] the provisions" of that statute under which he wants to act during the emergency.[93]

As a result, the fact that President Trump has declared a purported "emergency" does not give the Department any additional power to disregard the ordinary requirements of NEPA. The Department must look elsewhere for authority to issue the Emergency Procedures.

3. NEPA Regulations Do Not Support Use of the Emergency Procedures.

The Department relies on one of its NEPA regulations, 43 C.F.R. § 46.150, for authority to issue the Emergency Procedures. The Emergency Procedures purport to allow BOEM to forgo the normal NEPA process for non-renewable energy projects, such as publishing a draft EIS and soliciting comment on it. Instead, BOEM provided a limited comment period of only ten days during scoping, and prepared the EIS within twenty-eight days of publishing the notice of intent.[94] While section 46.150 allows emergency actions to be taken under certain circumstances, it does not authorize the Emergency Procedures, nor their application to the authorization of offshore fracking.

The Department's NEPA regulation, 43 C.F.R. § 46.150, applies where an emergency "makes it necessary to take actions to address imminent threats to life, property, or important natural, cultural, or historic resources before preparing an environmental document."

First, the Administration's goal of increasing energy production does not represent an emergency for purposes of NEPA. In issuing the regulation, the Department explained that an "emergency" means "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action," or "an unforeseen combination of circumstances or the resulting state that calls for immediate action."[95] Courts have upheld findings of "emergency circumstances" under NEPA where they serve to "avert imminent crises outside the agency's control."[96] The administration's policy goal of increasing domestic energy production does not qualify as an emergency for NEPA purposes. The concerns described by the Executive Order all involve long-standing policy and market issues that have existed, and which the federal government has engaged with, for years. They do not involve a "sudden, urgent" or "unexpected" event, or "requir[e] immediate action" prior to complying with NEPA.[97]

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[92] *Id.* § 1621(a); *see* 42 U.S.C. § 4321 *et seq*. (NEPA).
[93] 50 U.S.C. § 1631.
[94] The Emergency Procedures also require BOEM to demonstrate how the proposed action addresses the "national energy emergency." BOEM must analyze the extent to which approval of Platform Gilda's DPP will actually increase oil production and how that will affect energy prices, which the Executive Order characterized as an "active threat to the American people."
[95] 73 Fed. Reg. 61292, 61301 (Oct. 15, 2008) (applying dictionary definition of "emergency").
[96] *NRDC v. Winter*, 518 F.3d 658, 683 (9th Cir. 2008) (cleaned up), *reversed on other grounds*, 555 U.S. 7 (2008).
[97] 73 Fed. Reg. at 61301.

But even if the energy policy concerns raised in the Executive Order could qualify as an emergency for NEPA purposes, the regulations do not permit "alternative arrangements" for NEPA compliance in approving the Platform Gilda Updated DPP. "Alternative arrangements" are highly circumscribed, applying only to "the proposed actions necessary to control the immediate actions in response and related to the emergency that are urgently needed to address imminent threats to life, property, or important natural, cultural, or historic events."[98]

Here, in preparing an EIS, BOEM cannot point to those actions necessary to address imminent threats because there is no such imminent threat. Approving offshore fracking in response to an "energy emergency" is much different than containing a wildfire, responding to a toxic spill, or getting supplies to troops during an active military conflict. Offshore fracking has been on hold for almost ten years – since 2018 – because BOEM has failed to conduct an EIS on the practice on the Pacific OCS.[99] BOEM offers no explanation regarding what has changed and why approval of this dangerous practice is suddenly necessary.

In short, BOEM's use of the Emergency Procedures is not "urgently needed to address imminent threats to life, property, or important natural, cultural, or historic resources,"[100] and BOEM's use of those Emergency Procedures in reliance on a nonexistent "energy emergency" is inconsistent with both NEPA and the Department's NEPA implementing regulations. BOEM has failed to provide a rational explanation of how it can invoke alternate procedures for this project when the regulatory conditions for invoking those procedures are not met and BOEM's actions are arbitrary and capricious in violation of the APA.[101]

B. BOEM Must Withdraw Its Final EIS and Circulate a Draft EIS for Public Review.

Public participation in the NEPA process, "in cooperation" with the government, has been central to the execution of NEPA since its inception.[102] By its very text, NEPA requires public participation in the processes it creates.[103] Section 4336a provides that "[e]ach notice of intent to prepare an [EIS] under section 4332 of this title shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action."[104] Moreover, Section 4332(2)(C) states that federal agencies must provide "[c]opies of such [EIS] and the comments and views of the appropriate Federal, State, and local agencies … to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes."[105]

The Supreme Court has long recognized the importance of public participation in NEPA, finding that one of the primary purposes of the statute is to ensure that "relevant information will

[98] *Id.* § 46.150(a).
[99] *See infra* Section I.
[100] 43 C.F.R. § 46.150(a).
[101] 5 U.S.C. § 702(2)(A).
[102] 42 U.S.C. § 4331(a).
[103] *See* 42 U.S.C. §§ 4331(a), 4332(2)(C)(v), 4336a(c).
[104] *Id*. § 4336a(c).
[105] *Id*. § 4332(2)(C)(v).

be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision."[106] Allowing the public to participate addresses NEPA's "manifest concern with preventing uninformed action," because it is through the "broad dissemination of information" that "the public" can "react to the effects of a proposed action at a meaningful time."[107] As the Supreme Court has explained, "[p]ublication of an EIS, both in draft and final form . . . serves a larger informational role."[108] It gives the public "assurance that the agency has indeed considered environmental concerns in its decisionmaking process" and, "more significantly, provides a springboard for public comment."[109]

Moreover, Congress has accepted that the longstanding Council on Environmental Quality (CEQ) regulations reflected the appropriate interpretation of NEPA's public participation requirements. For example, Congress has directly legislated against the backdrop of CEQ's public participation regulations. Through the Fixing America's Surface Transportation Act ("FAST Act"),[110] Congress streamlined the review process for certain federal infrastructure projects and expressly required agencies to establish public comment periods of forty-five to sixty days for all draft EISs, and public comment periods not exceeding forty-five days for all other environmental review and comment periods.[111] But even though streamlining was the goal, these provisions still reaffirmed public comment periods were required under NEPA: a statutory minimum indicates that public comment periods are not optional. By legislating in this way, Congress has confirmed the necessity of public participation in the NEPA process.

Consequently, to comply with NEPA, an agency "must notice its draft environmental impact statement for public comment and respond to comments before it can finalize the statement and move forward with the underlying action."[112]

BOEM must rescind the Final EIS it issued a mere two weeks after receiving public scoping comments and instead release a draft EIS, allow an adequate opportunity for public comment, and properly consider and address any comments received in advance of finalizing its decision on whether to approve hydraulic fracturing.

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[106] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); *see Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168, 177 (2025) ("NEPA requires federal agencies to prepare an environmental impact statement … identifying significant environmental effects of the projects, as well as feasible alternatives" and "ensures that the agency and the public are aware of the environmental consequences of proposed projects"); *State of Cal. v. Block*, 690 F.2d 753, 770 (9th Cir. 1982) ("NEPA's public comment procedures are at the heart of the NEPA review process. NEPA requires responsible opposing viewpoints to be included in the final EIS.") (citing 42 U.S.C. § 4332(2)(C)).
[107] *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989).
[108] *Robertson*, 490 U.S. at 349.
[109] *Id*. (emphasis added) (citations omitted); *see also Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (EIS designed to "provide a springboard for public comment" (citation modified)).
[110] Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015).
[111] 42 U.S.C. § 4370m-4(d)(1)–(2).
[112] *Earth Island Inst. v. Muldoon*, 82 F.4th 624, 632 (9th Cir. 2023); *see also Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1073–74 (1st Cir.1980) (holding that unless a document has been publicly circulated and available for public comment, it does not satisfy NEPA's EIS requirements); *I-291 Why? Ass'n v. Burns*, 517 F.2d 1077, 1081 (2d Cir. 1975) (post-EIS studies "could not cure these particular inadequacies because they were not circulated for review and comment in accordance with procedures established to comply with NEPA").

C. BOEM Must Prepare a Complete EIS and Take a Hard Look at the Impacts of Offshore Fracking Pursuant to NEPA.

NEPA is the "basic national charter for protection of the environment," and "places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action."[113] It was enacted to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation,"[114] and is "intended to ensure 'fully informed and well-considered' decisionmaking."[115] Congress further recognized that "each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment,"[116] and assigned to the federal government the responsibility to "preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice."[117]

NEPA achieves these sweeping policy goals "through a set of action-forcing procedures that require that agencies take a hard look at the environmental consequences of their actions, and provide for broad dissemination of relevant environmental information."[118] To that end, NEPA requires agencies to prepare a detailed statement analyzing the environmental effects of any "major Federal action[] significantly affecting the quality of the human environment."[119] An Updated DPP involving hydraulic fracturing from an oil platform in federal waters qualifies as such a major Federal action.

In its EIS, BOEM must include an adequate purpose and need statement and analyze reasonably foreseeable environmental effects, a reasonable range of alternatives to the action, and any irreversible and irretrievable commitments of resources that would be involved.[120] BOEM must evaluate *all* ecological, aesthetic, historic, cultural, economic, social, "local custom and culture or health effects" that may be caused by approving hydraulic fracturing at Platform Gilda.[121] This includes not only the effects of preliminary activities associated with the approval, but also the longer-term effects of hydraulic fracturing that are reasonably foreseeable.[122]

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[113] *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983) (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council*, 435 U.S. 519, 553 (1978)).
[114] 42 U.S.C. § 4321.
[115] *WildEarth Guardians v. Jewell*, 738 F.3d 298, 302 (D.C. Cir. 2013) (citing *New York v. NRC*, 681 F.3d 471, 476 (D.C. Cir. 2012)).
[116] 42 U.S.C. § 4331(c).
[117] 42 U.S.C. § 4331(b)(4).
[118] *Prutehi Litekyan: Save Ritidian v. United States Dep't of Airforce*, 128 F.4th 1089, 1100 (9th Cir. 2025) (internal quotations omitted).
[119] 42 U.S.C. § 4332(2)(C).
[120] 42 U.S.C. § 4332(2)(C)(i)-(v).
[121] DOI NEPA Handbook 24 (§ 6.1(j) defining "effects or impacts"). Even if BOEM evaluates only the effects of preliminary activities in a NEPA document—which would violate NEPA for being too narrow in scope—it must sufficiently understand the environmental baseline of all resources that may be affected.
[122] *See, e.g.*, *Native Vill. of Point Hope v. Jewell*, 740 F.3d 489, 503 (9th Cir. 2014).

Reviewing courts look at whether the federal agency took a "hard look" at the effects of the action.[123] Under NEPA's hard look requirement, the agency must ensure that "the adverse environmental effects of the proposed action are adequately identified and evaluated."[124] Additionally, the EIS and the environmental analyses within must be clear and supported by reliable evidence.[125]

BOEM must consider "a reasonable range of alternatives to the proposed agency action," including the "no action alternative."[126] Failure to do so would prevent a reasoned assessment of environmental impacts in the OCS, thereby prohibiting BOEM from making an informed decision and denying affected communities crucial information. BOEM also must provide a detailed explanation of "any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed action should it be implemented,"[127] including "[a]ny means identified to mitigate adverse environmental effects of the proposed action."[128]

The Final EIS that BOEM has published is fundamentally flawed. Our organizations identified numerous requirements of an EIS for the Updated DPP in our Scoping Comment Letter. BOEM has failed to address all these issues in issuing the Final EIS. The following provides a few of the reasons that the Final EIS is unlawful, arbitrary and capricious, and cannot be relied upon to approve the Updated DPP.

1. <u>The Purpose and Need Statement Is Inadequate.</u>

BOEM's Final EIS states that "the purpose of the Proposed Action is to consider [DCOR's] update to the [Updated DPP] to include WST of 16 wells on Platform Gilda."[129] BOEM writes that the action is needed "to increase and extend production of OCS oil and gas materials as feedstocks for domestic use in a variety of industries and for end-use petroleum products (e.g., refined gasoline and other fuels), as established by BOEM's mandate under OCSLA (43 U.S.C. 1331 et seq.) to further the orderly development of OCS oil and gas resources, subject to environmental safeguards."[130]

Notably, this statement of purpose and need is significantly different from the statement in the Updated DPP, but has its own considerable flaws.[131] This statement of purpose and need is

[123] *Fund for Animals v. Norton*, 281 F. Supp 2d 209, 224 (D.D.C. 2003); *see Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 196 (D.C. Cir. 2017).
[124] *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 255 F. Supp. 3d 101, 123 (D.D.C. 2017) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)).
[125] *See* 42 U.S.C. § 4332(2)(E).
[126] 42 U.S.C. § 4332(2)(C)(iii).
[127] *Id.* § 4332(2)(C)(v).
[128] DOI NEPA Handbook 15 (§ 2.3(a)(5), (6)).
[129] Final EIS at 1-2.
[130] Final EIS at 1-2.
[131] The Updated DPP states that implementing fracking is necessary to "maintain Platform Gilda's offshore production levels to support the national interest in reducing dependence on foreign energy sources, efficiently increasing domestic production and conserving resources in accordance with Executive Orders (EO) 14154 and EO 14156." Padre Associates, *Update to Development and Production Plan and Environmental Report – Well Stimulation: Hydraulic Fracturing* 1-1 (Jan. 2026). Like with the statement of purpose and intent in the NOI, this

too narrow, incorrectly describes the project's purpose, and suggests that it is necessary to increase the production of oil and gas materials when the United States has an abundance of such resources.

a. The Statement of Purpose in the EIS Is Too Narrow.

The first of several flaws in the Final EIS's statement of purpose is that it is too specific, thus foreclosing consideration of meaningful alternatives. Purpose and need statements allow agencies, the public, and courts to "judge whether the agency has fully analyzed the possible impacts of the action and reviewed a reasonable range of alternatives to that action."[132] An action's purpose cannot be so narrow as to require the action itself. Indeed, under NEPA, a purpose and need statement must not be so narrowly drawn that it constrains the consideration of a reasonable range of alternatives.[133]

In the Final EIS, the Proposed Action is the well stimulation of sixteen wells at Platform Gilda.[134] BOEM states, however, that the *purpose* of the Proposed Action is to consider the "WST of 16 wells on Platform Gilda."[135] BOEM thereby effectively frames the Proposed Action's purpose as the consideration of the Proposed Action itself. By framing the statement of purpose in this narrow manner, BOEM immediately eliminates even the consideration of alternative strategies.

b. The Project's Stated Purpose Is Illogical.

The statement of purpose and need in an EIS guides the agency in identifying and evaluating alternatives, including the proposed action, to achieve the underlying goals of the agency's action. As a practical matter, the statement of purpose and need must reflect the project's actual purpose; otherwise, it becomes meaningless, and the value of the environmental review is significantly diminished.

The statement of purpose provided in the EIS does not reflect the project's actual purpose and puts the cart before the horse. The statement is devoid of any clear legitimate purpose; rather, it appears that offshore fracking itself *is* the purpose. Accordingly, the statement doesn't accomplish its primary objective of providing a reason for why the Proposed Action or the other alternatives are being considered. The statement also highlights a broader underlying problem with this EIS, which is that the decision to implement the Proposed Action appears to have been made before the EIS was prepared or considered. Accordingly, the statement of purpose is inadequate.

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statement is flawed because it is narrowly drawn to exclude reasonable, environmentally friendly alternatives, ignores BOEM's environmental obligations under OCSLA, and incorrectly implies that fracking at Platform Gilda will meaningfully help achieve national energy independence.

[132] *Soda Mountain Wilderness Council v. Norton*, 424 F. Supp. 2d 1241, 1261 (E.D. Cal. 2006); *see also Nat'l Parks Conserv. Ass'n v. Bureau of Land Mgmt.*, 606 F. 3d 1058, 1070 (9th Cir. 2010).

[133] *Nat'l Parks Conserv. Ass'n*, 606 F. 3d at 1070.

[134] Final EIS at 1-6

[135] Final EIS at 1-2.

c. It Is Not Necessary to Increase the Production of Oil and Gas from the Outer Continental Shelf.

BOEM's purpose and need statement incorrectly suggests that it is necessary to increase and extend the production of OCS petroleum and gas beyond its existing levels as a part of the orderly development of OCS oil and gas resources.[136] Recent trends in energy production, the federal government's own energy analysis, and market factors clearly demonstrate that the United States does not need increased oil and gas development to meet energy needs. Increasing "production of OCS oil and gas materials"[137] is neither needed nor preferred over renewable energy sources.[138] Renewables are increasingly meeting U.S. needs,[139] and wind and solar provide cost-effective sources of electricity.[140] These renewables offset the need for oil and gas to be used for energy and allow those resources to be redirected for use in other industries.

Despite President Trump's unsubstantiated declaration of a national energy emergency,[141] the United States already produces immense quantities of fossil fuels. We are the world's leading producer of oil and gas.[142] The United States has been a net exporter of petroleum since 2020,[143] producing more petroleum than required to meet national energy needs. Meanwhile, U.S. gasoline consumption has declined by five percent since 2018.[144] Critically, transitioning from fossil fuels to renewables is essential to avoiding the worst impacts of the climate crisis, which threatens the U.S. economy, infrastructure, and environment. Indeed, climate change is already putting existing fossil fuel infrastructure at risk with increased storms and rising sea levels, with serious implications for neighboring communities at risk of toxic exposures.[145]

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[136] *See* Final EIS at 1-2.
[137] Final EIS at 1-2; see also Final EIS at 4-53 (noting the "purpose of this action . . . is to increase OCS oil and gas materials for domestic use.")
[138] UN Environment Programme, *Is Natural Gas Really the Bridge Fuel the World Needs?* (Jan. 12, 2023), https://www.unep.org/news-and-stories/story/natural-gas-really-bridge-fuel-world-needs.
[139] Climate Central, *A Decade of Growth for U.S. Solar and Wind* (Mar. 12, 2025), https://www.climatecentral.org/climate-matters/solar-and-wind-2025 (compiling U.S. Energy Information Administration data).
[140] *See* Lazard, *Levelized Cost of Energy* 8 (June 2025), https://www.lazard.com/media/5tlbhyla/lazards-lcoeplus-june-2025-_vf.pdf.
[141] Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 29, 2025).
[142] U.S. Energy Information Administration (EIA), *U.S. Energy Production Has Increased Faster than Energy Consumption Over the Past 50 Years* (Oct. 29, 2024), https://www.eia.gov/todayinenergy/detail.php?id=63544.
[143] EIA, *Oil and Petroleum Products Explained: Oil Imports and Exports* (last updated Jan. 19, 2024), https://www.eia.gov/energyexplained/oil-and-petroleum-products/imports-and-exports.php.
[144] Lucas David, *Is U.S. Gasoline Consumption Declining?*, ENERGY INSTITUTE BLOG (May 12, 2025), https://energyathaas.wordpress.com/2025/05/12/is-u-s-gasoline-consumption-declining/; *see* EIA, *Transportation Fuel Demand Remains Below Pre-Pandemic Levels* (Aug. 27, 2025), https://www.eia.gov/todayinenergy/detail.php?id=66005.
[145] Lara J. Cushing et al., *Sea Level Rise and Flooding of Hazardous Sites in Marginalized Communities Across the United States*, 16NATURE COMMUNICATIONS (2025), https://www.nature.com/articles/s41467-025-65168-2; Jinxin Dong et al., *Climate Change Impacts on Coastal and Offshore Petroleum Infrastructure and the Associated Oil Spill Risk: A Review*, 10J. OF MARINE SCI 849 (2022), https://www.mdpi.com/2077-1312/10/7/849.

2. BOEM Must Analyze a Reasonable Range of Alternatives.

There are key elements of the alternatives analysis that have been omitted and prevent decision-makers and the public from being appropriately informed.

The discussion in the EIS of the no action alternative mentions that it would avoid the risks associated with the proposed action, but it doesn't explain the environmental benefits that would come with the decline and eventual cessation of production.[146] For example, environmental benefits, including eliminating the possibility of an oil spill and oil development-related impacts to wildlife after production ceases are not discussed.

The EIS presents another alternative which would entail the development of new production wells (Alternative 3). Like with the no action alternative, Alternative 3 is initially presented in a cursory fashion in the alternatives section and later expanded upon in the environmental consequences section. Rather than conducting its own analysis, BOEM's EIS states the impacts would be "similar" to those described in a 2018 Programmatic EA.[147] The EIS fails to provide details about the proposed locations of additional wells specific to *this* project and the associated environmental impacts.[148] Such information is necessary to enable decision-makers and the public to meaningfully compare this alternative with the proposed action. Providing a link to a document that discusses a similar issue is insufficient.

Further, BOEM failed to consider alternatives that could have reduced the risk of environmental consequences. For example, BOEM didn't consider an alternative of less frequent use and duration of offshore fracking treatments, prohibition or limits on produced water discharges, restrictions that would help protect imperiled species, and alternatives involving renewable energy production to offset existing energy needs and allow oil and gas in the market to be directed to other industries.

3. The "Affected Area" Described in the EIS Is Ambiguous and Arbitrary.

In the EIS, BOEM uses the term "Affected Environment," which it adopts from the Updated DPP, to refer to the geographical area that could be affected by the Updated DPP's proposed activities.[149] "Affected Environment," however, is not defined, nor are its geographical boundaries provided, anywhere in the EIS or the Updated DPP.[150]

BOEM nevertheless limits its consideration and analysis of potential environmental impacts in the EIS by only discussing how the proposed activities may impact the "Affected Environment," just as DCOR does in the Updated DPP. For example, BOEM only analyzes whether the Updated DPP's proposed activities might impact certain species if it first determines

[146] EIS at 4-53.
[147] *Id.* at 4-54.
[148] *Id.*
[149] *See*, *e.g.,* Final EIS at 4-23 ("Marine Mammal Populations with Potential to Occur within the Affected Environment - Mysticetes"), 4-24 ("Marine Mammal Populations with Potential to Occur within the Affected Environment – Pinnipeds"); Updated DPP at 4-1–4-43.
[150] *See generally* Final EIS; *see generally* Updated DPP.

that those species occur within the "Affected Environment."[151] Without the EIS disclosing the geographical area that is the "Affected Environment" and providing an adequate reason for using that area to analyze impacts, it is impossible for the public to follow or assess BOEM's reasoning or ultimate conclusions. This lack of clarity throughout the EIS renders the EIS and BOEM's environmental analysis unclear and unsupported by reliable evidence. To the extent that BOEM's conclusions regarding environmental impacts are determined by this "Affected Environment," they are likewise unsupported and arbitrary.

Further, this flaw permeates the analysis. In some instances, BOEM indicates certain resources and species are not in the Affected Environment, even though they clearly are close enough to Platform Gilda to be affected in reasonably foreseeable manners. For example, the EIS states there are no marine protected areas (MPAs) or federal sanctuaries in the area that are vulnerable to impacts[152] when in fact there are—including the CINMS. BOEM must clarify the geographic scope of its Affected Area with respect to the various impacts of offshore fracking.

4. BOEM Must Analyze the Many Impacts of Offshore Fracking.

Offshore fracking causes environmental damage by producing water and air pollution, increasing the risk of earthquakes and oil spills, and prolonging the life of aging infrastructure and our use of dirty fossil fuels. And yet, the waters offshore California, including around Platform Gilda, are some of the most ecologically productive in the world. The Final EIS fails to meaningfully analyze the risks of offshore fracking in this sensitive region—BOEM must go back to the drawing board and circulate a draft EIS that includes sufficient analysis of the many potential impacts of offshore fracking, with respect to, for example, water quality, the use of toxic chemicals, human health, air quality, cultural and Tribal resources, and wildlife and their habitats.

BOEM needs to thoroughly examine the environmental and public health risks associated with offshore fracking before authorizing any operations at Platform Gilda. Here, DCOR plans to use 1,300 bbls (or 54,600 gallons) of well treatment chemicals per frack and up to 100,000 bbls (4.2 million gallons) over a five-year period. Fracking chemicals are toxic to marine life and people, and they need to be disclosed, quantified, and analyzed. The proposed project acknowledges it will discharge additional wastewater into California's marine environment, and there are multiple chemical exposure pathways—spills during handling, residual contaminants in produced water, and cumulative discharge volumes—that pose significant threats to marine ecosystems. Even with the proposed so-called closed system, BOEM must disclose the risks to the environment from spills and remaining produced water discharges.

[151] *See*, *e.g.,* Final EIS at 4-23 ("Marine Mammal Populations with Potential to Occur within the Affected Environment – Mysticetes"), 4-24 ("Marine Mammal Populations with Potential to Occur within the Affected Environment – Pinnipeds"); *see also* Updated DPP at 4-22–4-24.
[152] Final EIS at 4-22.

Fracking chemicals pose a significant danger to human health. In addition to posing a significant health and safety risk to humans, fracking chemicals can kill or harm a wide variety of marine life.[153]

Because allowing offshore fracking from Platform Gilda will extend offshore drilling activities and the lifespan of aging infrastructure, BOEM must examine and disclose these impacts in the EIS, including increased greenhouse gas emissions and the higher potential for a devastating oil spill.[154,155] DCOR intends to use offshore fracking in order to recover oil that would be unrecoverable using conventional methods. As acknowledged in the Updated DPP, "[w]ithout the Program, production at Gilda is expected to cease sooner than under the proposed action, as production continues to naturally decline."[156] It is thus reasonably foreseeable that offshore fracking at Platform Gilda will extend its lifetime and delay decommissioning.

BOEM must quantify and analyze the increase in air pollution from the proposed action. Fracking causes air pollution from the operations that create the pressure needed to crack the rock below the seabed. Fracking also increases onshore truck traffic, oil production and ship traffic, all of which lead to increases in air pollution.

BOEM must also quantify and analyze how the well stimulation activities proposed on the Updated DPP will impact cultural and Tribal resources—which are abundant in the Santa Barbara Channel Region.

As DCOR observes in the Updated DPP and the Biological Assessment (Appendix D to the Updated DPP), the Santa Barbara Channel and adjacent coastline are home to numerous species that are listed as threatened or endangered under the ESA.[157] Such species include, but are not limited to: marine mammals, like the Guadalupe fur seal, the sei whale, the sperm whale, the North Pacific right whale, the gray whale, and the blue whale; birds, such as the marbled murrelet, the short-tailed albatross, and the Hawaiian petrel; invertebrates, like the black abalone and the white abalone; fish, including the southern California steelhead, the southern DPS green sturgeon, and the scalloped hammerhead shark; and sea turtles—the loggerhead turtle, leatherback turtle, green turtle, and olive ridley turtle.[158] The ocean and coastline near the project area also include critical habitat for many listed species. In addition, the Santa Barbara Channel is home to marine species that the National Oceanic and Atmospheric Administration (NOAA) has proposed to be listed due to their rapidly declining populations in the Pacific, including the

[153] *See generally* Scoping Comment Letter (Attachment A).
[154] 40 C.F.R. § 1508.1(i) (defining effects of the action to all reasonably foreseeable direct, indirect, and cumulative effects).
[155] The Scoping Comment Letter (Attachment A) discusses potential environmental impacts BOEM must consider in the EIS.
[156] Updated DPP at 3-2.
[157] *See, e.g.,* Updated DPP & ER at 4-17, 4-19, 4-28; Appendix D to Updated DPP & ER (Biological Assessment) at 4-6–4-9.
[158] Appendix D to Updated DPP & ER (Biological Assessment) at 4-6–4-9.

Sunflower Sea Star (*Pycnopodia helianthoides*).[159] Hundreds of other marine and coastal species inhabit the region that are not listed under the ESA, including shorebirds and seabirds like the Black Oystercatcher and California Brown Pelican, and mammals such as the California sea lion, Harbor seal, and Bottlenose dolphin, which are protected by the Marine Mammal Protection Act.[160] BOEM's EIS must adequately analyze how the Updated DPP's proposed activities would affect all federally listed species that could be impacted by well stimulation at Platform Gilda.

5. The EIS Does Not Provide a Cumulative Impacts Analysis.

BOEM's EIS fails to consider the cumulative impacts of the proposed hydraulic fracturing from Platform Gilda in combination with other actions on the resources, ecosystems, and communities in the affected area.[161] Some of the actions that are likely to contribute to cumulative impacts in combination with the proposed hydraulic fracturing from Platform Gilda include: (1) the existing oil and gas extraction activities occurring in the Pacific OCS; (2) historic sources of pollution from oil and gas activities; (3) any reasonably foreseeable future oil and gas extraction activities in the Pacific OCS.

In passing NEPA, Congress directed federal agencies to capture all "undesirable and unintended consequences" that flow from a project,[162] and to consider problems that are more global and "long-range" in scope.[163] To that end, agencies act as "trustee of the environment for succeeding generations,"[164] and so should explore the "relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity."[165] Consideration of cumulative impacts is necessary to ensure that an agency is acting on complete information to fulfill these mandates. The Supreme Court has long confirmed the need for agencies to consider and evaluate cumulative impacts.[166]

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[159] NOAA Fisheries, *NOAA Fisheries Proposes Listing Sunflower Sea Star as Threatened under Endangered Species Act*, (March 15, 2023), https://www.fisheries.noaa.gov/feature-story/noaa-fisheries-proposes-listing-sunflower-sea-star-threatened-under-endangered-species;
Endangered and Threatened Wildlife and Plants; Threatened Listing Determination for the Sunflower Sea Star Under the Endangered Species Act; Public Hearings, 88 Fed. Reg. 21600 (April 11, 2023).
[160] Channel Islands: Marine Animals, National Park Service (June 21, 2022), https://www.nps.gov/chis/learn/nature/marine-animals.htm; Channel Islands: Seabirds & Shorebirds, National Park Service (June 25, 2016), https://www.nps.gov/chis/learn/nature/seabirds.htm; *see* Marine Mammal Protection Act, 16 U.S.C. §§ 1361–1423h.
[161] *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 769 (2004) (quoting 40 C.F.R. § 1508.7).
[162] 42 U.S.C. § 4331(b)(3).
[163] 42 U.S.C. § 4332(I).
[164] 42 U.S.C. § 4331(b)(1).
[165] 42 U.S.C. § 4332(C)(iv).
[166] *See, e.g., Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) (holding that "when several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending before an agency, their environmental consequences must be considered together."); *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 106-07 (1983) ("[W]e agree with the Court of Appeals that NEPA requires an EIS to disclose the significant health, socioeconomic and cumulative consequences of the environmental impact of a proposed action.").

Even with recent decisions and changes to the NEPA regulations, cumulative impacts must still be considered. In the February 2026 amendments to its own implementing regulations, the Department of the Interior acknowledged the continuing need to consider such impacts:

> In reorienting the focus of its procedures, DOI does not change or purport to change the scope of effects that DOI bureaus are required by statute to consider. Both before and after the updates to DOI's NEPA procedures, DOI bureaus were and are required to consider effects that are both reasonably foreseeable and have a reasonably close causal relationship to their proposed actions, each including a reasonable range of action alternatives, consistent with the statute, as clarified by the Supreme Court in *Public Citizen* and *Seven County Infrastructure Coalition*….The focus, even of the 'cumulative impact analysis' should always have been on change wrought by the effects of the proposed action, and *Seven County Infrastructure Coalition* merely refines that focus."[167]

Consequently, BOEM's failure to include cumulative impacts in its EIS for this project means it cannot reach a reasonably informed decision.

One important issue that the EIS failed to address in a cumulative impacts analysis involves the toxic debris mounds located offshore California within the Santa Barbara Channel. In 1994, the California State Lands Commission (CSLC) approved an abandonment plan by Chevron U.S.A. Inc. to decommission four of its offshore oil platforms (Hazel, Heidi, Hilda, and Hope, known as the "4H Platforms") in the Santa Barbara Channel. Chevron removed the platforms by 1997 but left four massive "shell mounds" on the seafloor. The shell mounds are accumulations of contaminated drill cuttings and drilling muds overlaid by sediment and biological material.[168] Recently, Chevron applied to CSLC to terminate its leases from CSLC but without removing the four shell mounds. CSLC determined in its 2025 Analysis of Impacts to Public Trust Resources and Values that a nearby seismic event/ground shaking has the potential to threaten the integrity of the mounds, including potential slumping, sloughing, settlement, and rupture, and result in a release of toxic materials.[169] CSLC concluded in its analysis that a contaminant release from the mound(s) could, in turn, cause adverse impacts to marine water quality and biota.

BOEM's EIS also doesn't assess cumulative impacts in light of potential new lease sales proposed offshore California under any new Five-Year Leasing Program,[170] and the operation of Sable Offshore Corporation's corroded pipeline system servicing the Santa Ynez Unit platforms off the Gaviota Coast.[171]

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[167] 91 Fed. Reg. 8738, 8753-54 (Feb. 24, 2026).
[168] California State Lands Commission, *Shell Mounds Environmental Review* (2001).
[169] Dudek, *Review of Lease Obligations and Assessment of Impacts to Public Trust Resources and Values State Oil and Gas Leases PRC 1824 and PRC 3150 Terminations and 4H Shell Mounds Disposition* (Jan. 2025).
[170] BOEM, *National OCS Oil and Gas Leasing Program, Development of the 11th National Program* https://www.boem.gov/oil-gas-energy/national-program/national-ocs-oil-and-gas-leasing-program.
[171] Sable Offshore, *Sable Resumes Oil Flow as Ordered by the Federal DPA with Expected Gross Oil Rate of 50,000 Bbls/d and Expects First Sales by April 1, 2026*, (Mar. 16, 2026), https://sableoffshore.com/news/news-

6. BOEM Must Discuss and Analyze Mitigation Measures.

NEPA requires an EIS to include a detailed discussion of possible mitigation measures for the proposed action.[172] The Supreme Court has explained that this requirement comes not only from the CEQ regulations, but also from the language of NEPA.[173] "Implicit in NEPA's demand that an agency prepare a detailed statement on 'any adverse environmental effects which cannot be avoided should the proposal be implemented' is an understanding that the EIS will discuss the extent to which adverse effects can be avoided."[174] Failing to conduct a "reasonably complete" discussion of possible mitigation measures "would undermine the 'action-forcing' function of NEPA" and would prevent BOEM and other interested parties from "properly evaluat[ing] the severity of the adverse effects."[175] A reasonably complete discussion must extend beyond a "perfunctory description" or "mere listing" of mitigation measures and include supporting analytical data.[176]

Hydraulic fracturing off the California coast will likely impact various species and habitats because of the associated risk of an oil spill, water quality impacts, unintended fracture propagation, sound pollution, and induced seismic activity. Despite this, BOEM's EIS failed to meaningfully discuss methods to mitigate these harms and consequently prevents BOEM from taking a "hard look" at the environmental consequences posed by fracking.[177]

The Updated DPP recognizes that Program activities have the potential to impact species within the Program area.[178] As a result, it identifies seven mitigation measures that have been incorporated into the Program design and will be implemented in the project, along with a perfunctory description of each measure's purpose.[179] These same mitigation measures have been copied over into the EIS.[180] This is not a comprehensive list of all reasonably available mitigation measures for the project and does not constitute a reasonably complete discussion. The descriptions of the mitigation measures are almost all limited to one and two sentences each, and some are not even complete sentences or use terms that are not defined, which makes it difficult to understand how the mitigation measures would function or what they are intended to achieve.

BOEM's EIS does not consider methods to minimize project impacts to wildlife, such as monitoring requirements, seasonal limitations, imposing various buffer zone mandates on project

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details/2026/Sable-Resumes-Oil-Flow-as-Ordered-by-the-Federal-DPA-with-Expected-Gross-Oil-Rate-of-50000-Bblsd-and-Expects-First-Sales-by-April-1-2026/default.aspx.

[172] *See, Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52 (1989); *S. Fork Band Council of W. Shoshone of Nevada v. U.S. Dep't of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).

[173] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989).

[174] *Id.* at 351-52.

[175] *Id.* at 352.

[176] *Okanogan Highlands All. v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000) (citation omitted).

[177] *See id.*

[178] Updated DPP at 5-1.

[179] *Id.*

[180] EIS at 2-14, 2-15.

activities, and implementing protocols for responding to wildlife entanglements. During the life of the program, vessels should have protected species observers (PSOs) on board and maintain a 500-meter Vessel Strike Avoidance Zone for ESA-listed whales and other unidentified marine mammals. Fracking activities should also be limited during periods of increased wildlife presence and activity, such as during seasonal whale migrations. In addition, BOEM should require vessels to make a full stop, if safety permits, any time a large whale species is within 200 meters of an underway vessel, or the vessel encounters a feeding aggregation of large whales. After stopping, vessels should remain stationary until large whales have moved at least 200 meters away from the vessel, after which point the separation distance should again be maintained.

The EIS did not include our mitigation recommendations that PSOs monitor for, and that vessels maintain appropriate distance from, other marine mammals and sea turtles of at least 100 meters. We recommend that all vessels responsible for crew transport should use thermal detection systems to supplement visual monitoring of marine mammals.[181] Vessels transiting to the platform should maintain a functioning Automatic Identification System (AIS) and operate this system at all times.

BOEM's EIS did not consider the following protocols for responding to wildlife entanglements: (1) Project personnel should report ensnared marine debris to the NMFS, FWS, the U.S. Coast Guard, and the California Department of Fish and Game (CDFW) within twenty-four hours of detection. They should also remove the marine debris as soon as possible; (2) Project personnel should report entanglement or injury of marine mammals, sea turtles, sharks, and seabirds to the same agencies, according to the relevant reporting protocols[182], and remove the marine debris as soon as possible; and (3) Operations and maintenance vessels should be outfitted with equipment capable of locating and removing entanglement hazards.

Accordingly, BOEM's EIS did not consider all reasonably available mitigation options or provide a more thorough discussion of how those measures would work and what they are intended to mitigate. As a result, interested parties are unlikely to understand the project's potential effects.

V. BOEM Must Comply with Other Applicable Laws.

In addition to fully complying with the injunction, OCSLA and NEPA, BOEM must not approve the Updated DPP until BOEM has complied with all other laws implicated by the Updated DPP. The below discussion is non-exhaustive, but highlights some of the important requirements with respect to the ESA, CZMA, NHPA and NMSA.

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[181] *See* Heather R. Smith et al., *A field comparison of marine mammal detection via visual, acoustic, and infrared (IR) imaging methods offshore Atlantic Canada*, Marine Pollution Bulletin, 154 (2020) (discussing thermal imaging and other detection systems).

[182] *See* NOAA, *Large Whale Entanglement Response Program*, https://www.fisheries.noaa.gov/national/marine-life-distress/large-whale-entanglement-response; *see* NOAA, *Sea Turtle Disentanglement Network*, https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/sea-turtle-disentanglement-network.

A. BOEM Must Comply with the ESA.

As the federal court made clear in *EDC v. BOEM*, BOEM cannot proceed with approving any DPPs, APDs or APMs until and unless it completes consultation with FWS under the ESA.[183] Accordingly, proceeding with the Updated DPP violates that injunction.

Under Section 7 of the ESA, federal agencies must "insure" that any action it authorizes "is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of [the species' critical] habitat."[184] Because approval the Santa Clara Unit DPP allowing offshore fracking from Platform Gilda "may affect" a number of ESA-listed species by increasing the risk of oil spills, impairing water quality, and increasing vessel traffic and noise pollution, among other impacts, BOEM must consult with the NMFS and the FWS over those effects.[185]

Congress enacted the ESA, in part, "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved . . . [and] to provide a program for the conservation of such endangered species and threatened species . . . ."[186] Actions subject to Section 7 consultation are broadly defined to include "all activities or programs of any kind authorized, funded, or carried out, in whole or in part" by federal agencies and include granting permits and licenses, as well as actions that may directly or indirectly cause modifications to the land, water, or air.[187] An agency is required to review its actions "at the earliest possible time" to determine whether the action may affect listed species or critical habitat.[188]

If BOEM determines that a proposed action may affect any listed species or critical habitat, the agency must engage in formal consultation with the Services, unless the biological assessment or informal consultation concludes that the action is not likely to adversely affect any listed species or critical habitat and the Services concur with that finding.[189] The "may affect" standard broadly includes "[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character."[190]

Platform Gilda is located in one of the most significant and diverse seascapes in the world that supports a vast array of habitats and coastal and marine species. A number of ESA-listed species inhabit this area and may be affected by offshore fracking. These include invertebrates and reptiles such as white and black abalone and leatherback sea turtles, fish

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[183] *Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 2018 WL 5919096, at *27 (C.D. Cal. Nov. 9, 2018); *see also id.* at *23 ("The Court **GRANTS** Plaintiffs' request for a declaration that the agencies violated the ESA and further **GRANTS** their request for an injunction. Defendants are prohibited from approving any plans or permits (APDs, APMs, or DPPs) for the use of WSTs on the POCS unless and until they complete consultation with FWS under the ESA.").
[184] 16 U.S.C. § 1536(a)(2).
[185] 50 C.F.R. § 402.14(a).
[186] 16 U.S.C. § 1531(b).
[187] 50 C.F.R. § 402.02.
[188] *Id*. § 402.14(a).
[189] 50 C.F.R. § 402.14(a), (b).
[190] 51 Fed. Reg. 19,926 (June 3, 1986).

including Southern California steelhead, scalloped hammerhead sharks, tidewater goby, and green sturgeon, and marine mammals including blue whales, humpback whales, sei whales, fin whales, Guadalupe fur seals, and southern sea otters. ESA-listed birds in the region that might be affected by this proposal include ESA-listed western snowy plovers, marbled murrelets, and California least terns.[191]

The previous Section 7 consultations for offshore oil and gas operations on the Pacific OCS do not cover the scope of activities for this project and are insufficient to meet the requirements of the ESA. For example, in BSEE's concurrence with FWS's Biological Assessment, the activities cover "up to five well stimulation treatments per year in the Southern California Planning Area," and therefore the consultation only considers impacts, including water discharges containing fracking fluid chemicals and produced water, from five well stimulation treatments per year. In contrast, DCOR is planning on "up to 38 treatment stages distributed across 16 wells" over a 5 year period.[192] The NOI states that "up to 6 wells could be stimulated per year," with some wells requiring 2 treatment stages, and others requiring 2.5 treatment stages on average.[193] In other words, DCOR is proposing as many as fifteen well stimulation treatment per year, a three-fold increase over the number examined in prior ESA consultations. BOEM cannot rely on those outdated consultations to satisfy its obligations under the ESA.

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[191] The endangered and threatened species at issue, their listing status, and the dates when they were listed under the ESA are as follows: blue whale -- endangered, 35 Fed. Reg. 18,319 (Dec. 2, 1970); fin whale -- endangered, id.; sei whale -- endangered, id; North Pacific right whale -- endangered, id., 73 Fed. Reg. 12,024 (Mar. 6, 2008); humpback whale -- originally listed as endangered in 1970, 35 Fed. Reg. 18,319 (Dec. 2, 1970), global population recently reclassified and Central America DPS listed as endangered and Mexico DPS listed as threatened, 81 Fed. Reg. 62,260 (Sept. 8, 2016); sperm whale -- endangered, 35 Fed. Reg. 18,319 (Dec. 2, 1970); Western North Pacific gray whale -- endangered, id.; Guadalupe fur seal -- threatened, 50 Fed. Reg. 51,252 (Dec. 16, 1985); Southern sea otter -- threatened, 42 Fed. Reg. 2,965 (Jan. 14, 1977); loggerhead turtle, North Pacific DPS -- endangered, 76 Fed. Reg. 58,868 (Sept. 22, 2011); leatherback turtle -- endangered, 35 Fed. Reg. 8,491 (June 2, 1970); green turtle, East Pacific DPS -- threatened, 81 Fed. Reg. 20,058 (Apr. 6, 2016); olive ridley turtle -- threatened, 43 Fed. Reg. 32,800 (July 28, 1978); black abalone -- endangered, 74 Fed. Reg. 1,937 (Jan. 14, 2009); white abalone -- endangered in Pacific Coast range, 66 Fed. Reg. 29,046 (May 29, 2001); sunflower sea Star -- proposed threatened, 88 Fed. Reg. 16212 (March 16,2023); Southern California steelhead -- endangered, 71 Fed. Reg. 834 (Jan. 5, 2006); scalloped hammerhead shark, Eastern Pacific DPS -- endangered, 79 Fed. Reg. 38,214 (July 3, 2014); green sturgeon, Southern DPS -- threatened, 71 Fed. Reg. 17,757 (Apr. 7, 2005); tidewater goby -- endangered, 59 Fed. Reg. 5,494 (Feb. 4, 1994); Hawaiian petrel -- endangered, 32 Fed. Reg. 4,001 (Mar. 11, 1967); California Ridgway's rail -- endangered, 35 Fed. Reg. 16,047 (Oct. 13, 1970); Short-tailed albatross -- endangered, 65 Fed. Reg. 46,643 (July 31, 2000); California least tern -- endangered, 35 Fed. Reg. 8,491 (June 2, 1970); Light-footed Ridgway's rail -- endangered, 35 Fed. Reg. 16,047 (Oct. 13, 1970); western snowy plover, Pacific DPS -- threatened, 58 Fed. Reg. 12,864 (Mar. 5, 1993); marbled murrelet -- threatened, 57 Fed. Reg. 45,328 (Oct. 1, 1992). The critical habitats at issue in this case, and the dates they were designated by the federal government are as follows: black abalone critical habitat, 76 Fed. Reg. 66,805 (Oct. 27, 2011); leatherback sea turtle critical habitat, 77 Fed. Reg. 4,170 (Jan. 26, 2012); western snowy plover, Pacific DPS critical habitat, 77 Fed. Reg. 36,728 (June 19, 2012); tidewater goby critical habitat, 78 Fed. Reg. 8,746 (Feb. 6, 2013); Southern California steelhead critical habitat, 70 Fed. Reg. 52,488 (Sept. 2, 2005).

[192] 91 Fed. Reg. 13063, 13064 (March 18, 2026); Update to Platform Gilda DPP, 4-36 (2026).

[193] *Id.*

B. BOEM Must Comply with the CZMA.

The federal court in *EDC v. BOEM* also enjoined BOEM from proceeding with the approval of any DPPs, APDs or APMs until and unless BOEM complies with CZMA consistency review with respect to the proposed action at issue in that case.[194] Proceeding with the Updated DPP also violates that aspect of the court's injunction.

Should BOEM proceed with the Updated DPP, any efforts to approve fracking under the Updated DPP must comply with the CZMA's consistency review requirements. The CZMA was enacted to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone."[195] Accordingly, applicants for federal permits that are required to conduct activity "in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state" must provide to the relevant agency, here BOEM, "a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program."[196] The CZMA provides that "[a]t the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification."[197]

In California, the relevant state policies exist in the California Coastal Management Program (CCMP). The CCMP notes the national importance of the California coast, especially for its historic, cultural, aesthetic, and conservation values.[198] The California Coastal Act ("Coastal Act") is the "foundation" of the CCMP and constitutes the state's CCMP for purposes of the CZMA.[199] The Coastal Act "was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California."[200] Under the Coastal Act, the protection of the state's "natural and scenic resources is a paramount concern" and these resources must be protected to prevent further deterioration or destruction.[201] The Chapter 3 policies of the Coastal Act include, *inter alia*, protections for marine resources, biological productivity, water quality, environmentally sensitive habitat areas, archaeological and paleontological resources, commercial and recreational fishing, and scenic and visual qualities.[202]

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[194] *Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 2018 WL 5919096, at *27 (C.D. Cal. Nov. 9, 2018); *see also id.* at *23 ("The Court **GRANTS** Plaintiffs' request for a declaration that the agencies violated the ESA and further **GRANTS** their request for an injunction. Defendants are prohibited from approving any plans or permits (APDs, APMs, or DPPs) for the use of WSTs on the POCS unless and until they complete consultation with FWS under the ESA.").
[195] 16 U.S.C. § 1452(1).
[196] 16 U.S.C. § 1456(c)(3)(A).
[197] 16 U.S.C. § 1456(c)(3)(A).
[198] *See* Final Environmental Impact Statement for the California Coastal Management Plan, Chapter 11 at 83 (1977), available at https://www.coastal.ca.gov/fedcd/ccmp-ch11.pdf.
[199] *Id*. at 82; Cal. Pub. Res. Code § 30008.
[200] *Pacific Palisades Bowl Mobile Estates, LLC v. Los Angeles,* 55 Cal. 4th 783, 793 (2012) (internal quotations omitted); *see* Cal. Pub. Res. Code, § 30000 *et seq*.
[201] Cal. Pub. Res. Code § 30001(b), (c).
[202] *Id*. §§ 30230, 30231, 30234, 30240, 30244, and 30251; *see also id*. § 30260(b)(4) (eliminating oil and gas development from the override provision for coastal-dependent industrial facilities).

The Updated DPP constitutes a "required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state."[203] Accordingly, DCOR is required to provide a consistency certification to BOEM, regarding whether the Updated DPP complies with the CCMP and will be conducted consistently with it.[204] BOEM must also ensure compliance with the federal regulations concerning the consistency review process for OCS development activities.[205]

The CZMA document provided to the CCC (the "Consistency Analysis") contains numerous deficiencies, and overlooks likely policy inconsistencies.[206] Indeed, offshore fracking cannot be conducted in a manner that is consistent with the CCMP. For example, the Consistency Analysis fails to consider mapped environmentally sensitive habitat areas (ESHA) around Platform Gilda's onshore infrastructure and fails to consider how prolonging the life of Platform Gilda and associated onshore infrastructure may necessitate maintenance, repairs, and replacement of project-related infrastructure in or adjacent to ESHA.

The Platform Gilda oil and gas pipelines make landfall within coastal dune and beach habitats near the Onshore Treater Facility and the Southern California Edison McGrath Generating Station. This area contains beach and dune scrub ESHAs that would be impacted by offshore and land-based oil spills, oil spill cleanups, and activities associated with repairing, replacing, or maintaining the pipeline landfall, Onshore Treater Facility and components, and associated infrastructure. The beach and dunes surrounding the Platform Gilda pipeline landfall location and Onshore Treater Facility also include habitats of special-status wildlife species. Special-status species habitats are ESHA pursuant to the Coastal Act.[207] According to the California Energy Commission (CEC), these dunes support a number of special-status species, including federally threatened western snowy plovers (*Charadrius nivosus nivosus*) and California Species of Special Concern globose dune beetle (*Coleus globosus*) and silvery legless lizard (*Anniella pulchra*).[208] Other rare species documented in the dune habitats near the landfall are listed in CEC's Biological Resources Supplemental Testimony of Carol Watson and John Hilliard TN# 220168.[209]

The Consistency Analysis improperly excludes land-based ESHAs by claiming that, "Platform Gilda is not located within an ESHA or ESHA buffer and the DPP update does not involve the land resources these policies address."[210] However, the CZMA Analysis fails to consider how the proposed action would extend the life of Platform Gilda, thereby extending the life of the aging onshore infrastructure which would require repair, replacement, and

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[203] 16 U.S.C. § 1456(c)(3)(A).
[204] *Id.*
[205] 15 C.F.R. §§ 930.70–930.85.
[206] Padre Associates, Prepared for DCOR, COASTAL ZONE MANAGEMENT ACT CONSISTENCY ANALYSIS & FINDINGS, PLATFORM GILDA WELL STIMULATION PROGRAM OFFSHORE VENTURA COUNTY, CA. Project No. 2502-2681 ("Consistency Analysis") (January 2026).
[207] California Coastal Act Section 30107.5.
[208] California Energy Commission, Biological Resources Supplemental Testimony of Carol Watson and John Hilliard TN# 220168 (July 2017) ("CEC (2017)").
[209] *Id*.
[210] Consistency Analysis at 2-14.

maintenance. In fact, a 1980 analysis prepared for these facilities notes: "Should portions of the pipeline require replacement during the life of the project, the associated impacts in the area affected would be similar to those discussed for pipeline construction."[211] The expected life of the project was only twenty years when the Environmental Impact Report was drafted forty-six years ago.[212]

Repair and maintenance of the onshore infrastructure within ESHA would be inconsistent with Coastal Act Section 30240(a) because activities such as excavating and repairing the pipeline would not be compatible with protecting the ESHA from "significant disruption of habitat values" and are not dependent on the ESHA resources.[213] These activities would also be inconsistent with Section 30240(b), which provides that development in areas adjacent to ESHA, parks and recreation areas (such as Mandalay County Park) must be sited to "prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas."[214] Further, the proposed action would also increase the likelihood of oil spills and spill cleanup activities within the ESHA, including dunes, beaches, and wetlands along the coastline east of Platform Gilda. The CZMA Analysis fails to identify any impact to these ESHAs or related inconsistencies with Coastal Act Section 30240.

Offshore fracking also raises potential inconsistencies with many of the other Chapter 3 policies of the Coastal Act, such as: protections for marine resources, biological productivity, water quality, archaeological and paleontological resources, commercial and recreational fishing, and scenic and visual qualities.[215]

C. BOEM Must Comply with the NHPA.

Section 106 of NHPA requires federal agencies to identify and assess the effects of their undertakings on historic properties and to consult with affected Tribal Nations, state historic preservation offices, and other stakeholders before approving projects that may harm cultural resources.[216] This consultation duty is substantive and procedural: agencies must make a reasonable, good-faith effort to identify cultural resources, evaluate potential impacts, and engage in meaningful, government-to-government dialogue with Tribes throughout the decision-making process. The statute and its implementing regulations mandate early, transparent, and continuous consultation.

BOEM's truncated process and timeframe are unlawful and frustrate the purpose of the NHPA. BOEM may not use emergency procedures or shortcut meaningful tribal engagement on

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[211] City of Oxnard, *Environmental Impact Report / Environmental Assessment ("EIR/EA") Union Oil Company Platform Gilda and Platform Gina Project, Leases OCS P-0202 and P-0216 Offshore Ventura County, California,* Volume I, at 4.5-5 (May, 1980) ("City of Oxnard (1980)").
[212] *Id*. at 4.5-6.
[213] Cal. Pub. Res. Code § 30240(a) ("Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.").
[214] Cal. Pub. Res. Code § 30240(b).
[215] *See id*. §§ 30230, 30231, 30234, 30240, 30244, and 30251; *see also id*. § 30260(b)(4) (eliminating oil and gas development from the override provision for coastal-dependent industrial facilities).
[216] *See* 54 U.S.C. § 306108; 36 C.F.R. §§ 800.3–800.13.

cultural resources that may be affected by the proposed action. The emergency regulations provide for an expedited process when responding to "a disaster or emergency declared by the President, a tribal government, or the Governor of a State *or another immediate threat to life or property*."[217] The emergency regulations are inapplicable to the so-called energy emergency declaration, because the declared "emergency" does not involve any immediate threat to life or property. The only provision in the NHPA that clearly contemplates waiver of section 106 for emergencies, is section 110, which requires the "Secretary" to promulgate regulations under which requirements "*except* section [106]" may be waived in the event of a "major natural disaster or an imminent threat to national security."[218]

Moreover, NHPA's emergency procedures cannot be invoked to justify shortcutting consultation when an "emergency" persists over an extended period, because the structure and history of the regulations show they are intended only for true, immediate threats requiring rapid action. The regulations expressly apply only for thirty days after a declared emergency, and extensions may only be used in rare circumstances because "the longer an implementation time is extended, the lesser justification for emergency, abbreviated procedures."[219] This regulatory design reflects the premise that if federal agencies have enough time to plan, coordinate, or carry out actions over weeks or months, they likewise have adequate time to conduct the normal Section 106 consultation process rather than rely on emergency exceptions.

D. BOEM Must Comply with the NMSA.

The NMSA, 16 U.S.C. § 1431 *et seq.*, authorizes the Secretary of Commerce to identify and designate certain areas of the marine environment with special national significance as national marine sanctuaries.[220] Designation as a national marine sanctuary enables the Secretary to develop a system to conserve and manage the sanctuaries, including regulating activities which may affect them.[221] The NMSA was designed to "maintain the natural biological communities" and to protect "natural habitats, populations, and ecological processes."[222] As such, under Section 306 of the NMSA it is unlawful to "destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary."[223] A "sanctuary resource" is "any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archaeological, scientific, or aesthetic value of the sanctuary."[224]

The waters near Platform Gilda are home to the CINMS. One of the key motivations behind the sanctuary designation was to protect the Channel Islands from oil spills associated with oil and gas extraction.[225] The CINMS was designated for the primary purpose of protecting

[217] 36 C.F.R. § 800.12(a) (emphasis added).
[218] 54 U.S.C. §306112 (emphasis added).
[219] 65 Fed. Reg., 77698, 77710 (Dec. 12, 2000).
[220] 16 U.S.C. § 1431(b)(1).
[221] *Id.* § 1431(b)(2).
[222] *Id.* § 1431(b)(3).
[223] *Id.* § 1436(1).
[224] *Id.* § 1432(8).
[225] The Channel Islands National Marine Sanctuary, 45 Fed. Reg. 65198, 65199 (Oct. 2, 1980).

and preserving "marine birds and mammals, their habitats and other natural resources from those activities which pose significant threats" including "discharges incidental to allowed hydrocarbon operations."[226] The sanctuary designation specifically prohibited hydrocarbon exploration and exploitation under future leases and emphasized that operators "must maintain adequate oil spill contingency equipment on site" for hydrocarbon operations under existing leases to minimize impacts from oil and gas extraction.[227]

Offshore fracking near sanctuaries threatens to destroy or injure sanctuary resources. For example, past oil spills in the now-designated CHNMS threatened the area with significant harm,[228] and sanctuaries face harm due to the potential for "long-term adverse impacts from chronic pollution by hydrocarbons and drill muds and other disturbance of sensitive habitat."[229] Likewise, regulations specific to sanctuaries prohibit certain harmful discharges that would injure a sanctuary.[230] Further, consultation with the Secretary is required for activities such as the Updated DPP that are "likely to destroy, cause the loss of, or injure any sanctuary resource."[231] Should BOEM refuse to adopt alternatives suggested by NOAA that limit the risk to sanctuaries, and such sanctuaries are harmed as a result, BOEM faces liability and must "prevent and mitigate" additional damage and "restore or replace" sanctuary resources.[232]
Given the large spatial extent of the CINMS, it is reasonably foreseeable that fracking off Platform Gilda would threaten the sanctuary and its resources.[233]

VI. Conclusion

Offshore fracking from Platform Gilda should be a non-starter. It would violate a federal-court injunction, threaten the environment and local communities, and contribute to the climate crisis. Approval of the Updated DPP would directly violate OCSLA. Should BOEM proceed with considering the Updated DPP, it must fully comply with NEPA and circulate a draft EIS and issue an EIS that meaningfully evaluates the many impacts of offshore fracking, and comply with other applicable laws designed to protect imperiled wildlife, Tribal communities, and the unique characteristics of the California coastline.

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[226] *Id.*
[227] *Id.*
[228] 89 Fed. Reg. at 83554–55.
[229] CINMS, 45 Fed. Reg. 65198, 65200–01 (Oct. 2, 1980) (Final Rule).
[230] 15 C.F.R. §§ 922.72(a)(3)(ii) (CINMS), 922.232(a)(2)(iii) (CHNMS).
[231] 16 U.S.C. § 1434(d)(1)(A).
[232] *Id.* § 1434(d)(4).
[233] Randall D. Clark, *A Biogeographic Assessment of the Channel Islands National Marine Sanctuary: A Review of Boundary Expansion Concepts for NOAA's National Marine Sanctuary Program*, NOAA Technical Memorandum NOS NCCOS 21, at 2 (November 2005), available at: https://repository.library.noaa.gov/view/noaa/2161.

Sincerely,

Maggie Hall

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Attachments:
A: Scoping Comment Letter with Attachments
B: BSEE Borehole Data Spreadsheet