

DECLARATION OF WALTER CRUICKSHANK

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN PETROLEUM)	
INSTITUTE, et al.,)	
)	
<i>Petitioners,</i>)	CASE NO. 22-1222
)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
THE INTERIOR, et al.,)	
)	
<i>Respondents.</i>)	

DECLARATION OF WALTER D. CRUICKSHANK

I, Walter D. Cruickshank, declare as follows:

1. I currently serve as the Deputy Director of the Bureau of Ocean Energy Management (BOEM), in the United States Department of the Interior (Interior). I have been employed with BOEM or its predecessor agencies for 34 years. I have served as the Deputy Director of BOEM or its predecessor agencies since 2002; I served as Acting Director of BOEM from January 2017 until February 2021. Since February 2021, I have again served as BOEM Deputy Director. I supervise BOEM offices that are responsible for the development of the

National Outer Continental Shelf (OCS) Oil and Gas Leasing Program¹ (National OCS Program or Program) and the Bureau employees who implement these responsibilities.

2. On August 26, 2022, the American Petroleum Institute (API) filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit resulting in the above-captioned case. Petitioners claim that Interior has failed to prepare and maintain a National OCS Program of lease sales for a five-year period, which they assert is required by OCSLA. Further, Petitioners claim there is no reason Interior cannot promptly finalize a Program, and request that the Court compel Interior to approve a final Program no later than September 30, 2023. I am making this Declaration in support of the Brief of the Respondents. The purpose of this Declaration is to describe: (1) the actions and steps Interior has already taken to prepare the next National OCS Program; (2) intervening events that affected Program development; and (3) the current timeline for Program completion.

3. Since the process began, development of the next National OCS Program has been delayed by shifting priorities of the Trump Administration, the Biden Administration's review of Program options and underlying analyses

¹ In the past, the National OCS Oil and Gas Leasing Program has been referred to as the Five-Year Program. In this declaration it is referred to as either the "National OCS Program," or "Program."

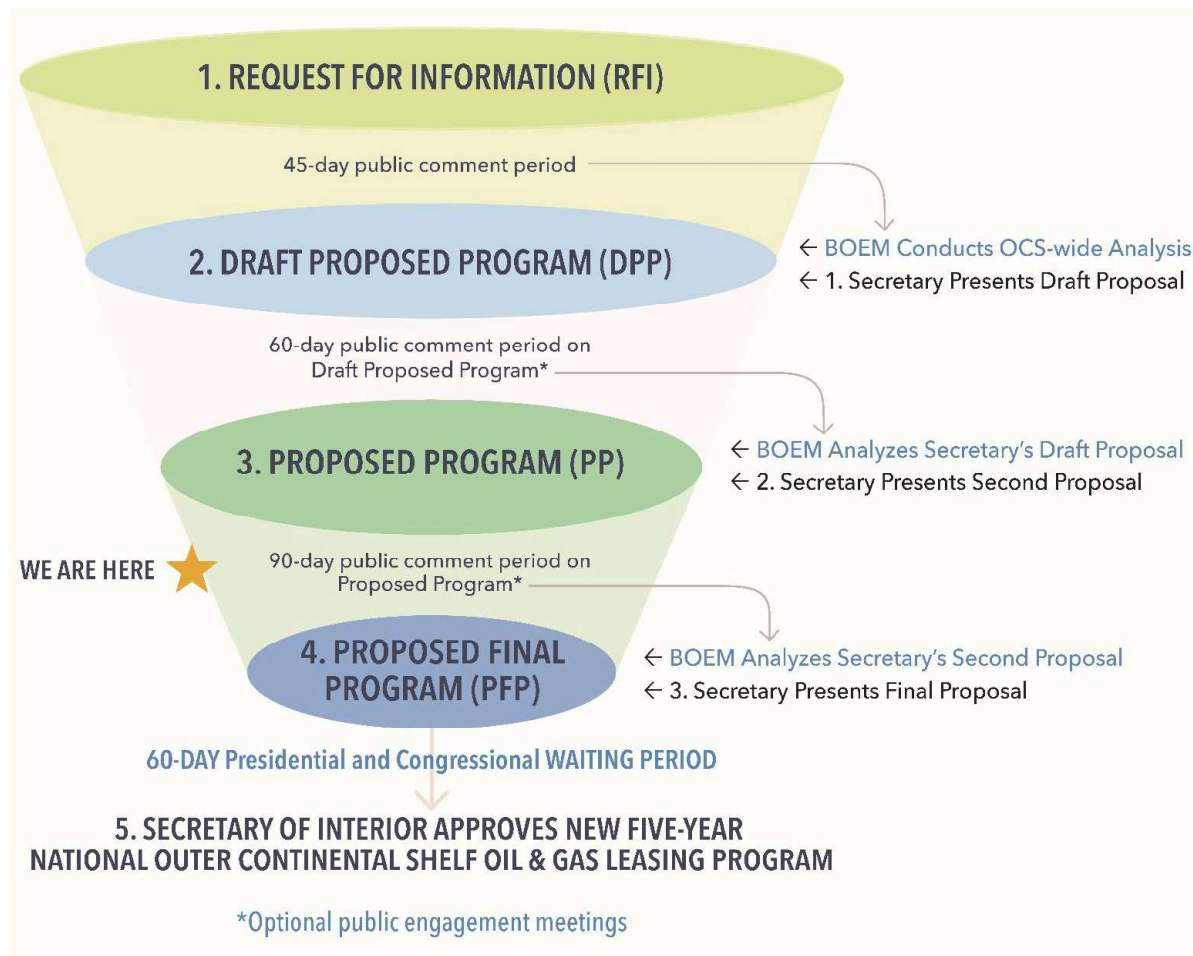
consistent with its priorities, court rulings that affected BOEM's planned approaches for the Program and the Programmatic EIS, and Congress' enactment of the Inflation Reduction Act (IRA) (Pub. L. 117-169 (effective August 16, 2022)). As explained more fully below, to complete all necessary analyses, approvals, and mandatory procedural steps, Interior requires until December 2023 to finish and approve the next Program.

4. Under the Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. § 1331 *et seq.*), the Secretary of the Interior (Secretary) is responsible for the administration of energy and mineral exploration and development on the OCS. Many of the responsibilities for implementing OCSLA have been delegated to BOEM. These responsibilities include developing a National OCS Program; conducting oil and gas lease sales and issuing leases on the OCS; approving exploration and development plans under those leases; issuing geological and geophysical (G&G) survey permits; overseeing renewable energy activities on the OCS; and managing OCS sand, gravel, and shell resources. For BOEM lessees, lease issuance is just the beginning of a lengthy process of exploration, development, and production on the OCS that can last up to half a century.

5. With regard to the National OCS Program, the Secretary is responsible for establishing a schedule of proposed lease sales for a five-year period. BOEM has dedicated staff who work full time on the technical and scientific analyses

required for the Program. The process for developing the National OCS Program is a years-long process that involves five major steps, three public comment periods, and three analytical phases, which are shown in the graphic below.² The three analytical phases required to develop a new National OCS Program include issuance of the (1) Draft Proposed Program; (2) Proposed Program; and (3) Proposed Final Program. The National OCS Program development process begins with the broadest consideration of the entire OCS (all 26 OCS planning areas), and areas under consideration can be narrowed at each stage through the development process.

² Bureau of Ocean Energy Management, National OCS Program Development Process (July 2022), <https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/National%20OCS%20Program%20Process.PDF>.



6. At each analytical step, BOEM analyzes factors outlined in OCSLA (43 U.S.C. § 1344), including:

- existing information on geographical, geological, and ecological characteristics of regions;
- an equitable sharing of developmental benefits and environmental risks among the various regions;
- the location of regions with respect to, and the relative needs of, regional and national energy markets;

- location of regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the OCS;
- the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;
- laws, goals, and policies of affected States, which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;
- relative environmental sensitivity and marine productivity of different OCS areas; and
- relevant environmental and predictive information for different OCS areas.

7. While some of these factors lend themselves to quantification to facilitate program areas comparison, others cannot readily be quantified, and therefore are qualitatively considered. OCSLA also requires the Secretary, when making decisions on the size, timing, and location of OCS leasing, to strike a balance among the potential for environmental damage, the discovery of oil and gas, and adverse impacts on the coastal zone. 43 U.S.C. § 1344(a)(3). To facilitate the balancing required by OCSLA, BOEM has chosen to employ National Environmental Policy Act (NEPA) procedures, and typically prepares a

Programmatic Environmental Impact Statement (Programmatic EIS) to inform the Program decisions. This Programmatic EIS facilitates and informs decisions on balancing the potential for environmental damage, discovery of oil and gas, and adverse impact on the coastal zone.

8. Following the OCSLA amendments in 1978, which added the requirement for a National OCS Program, nine programs have been approved and implemented, starting in 1980 (see Table 1).

Table 1: History of National OCS Programs

	Approved Programs
1.	1980-1985
2.	1982-1987
3.	1987-1992
4.	1992-1997
5.	1997-2002
6.	2002-2007
7.	2007-2012
8.	2012-2017
9.	2017-2022

9. On January 17, 2017, the 2017–2022 National OCS Program was approved by Secretary Sally Jewell, covering the five-year period from July 1,

2017, to June 30, 2022. The 2017–2022 Program scheduled 11 potential oil and gas lease sales; one in the Cook Inlet Program Area and 10 in the Gulf of Mexico Program Area. Gaps between National OCS Programs are not unprecedented. The 2007-2012 Program expired on July 1, 2012, and the 2012–2017 Program was not approved until August 27, 2012, which caused a 57-day gap between Programs.

Development of the Next National OCS Program

10. Changes in national and Departmental policy between 2017-2021 required Interior, including BOEM, to extensively re-evaluate various aspects of the Program, resulting in delays. On April 28, 2017, President Trump issued Executive Order 13795, which encouraged BOEM to increase energy exploration and production on the OCS. Secretarial Order 3350 (May 1, 2017), issued to implement portions of Executive Order 13795, directed BOEM to begin work on a new Program to replace the 2017–2022 Program, which had been approved five months prior. On July 3, 2017, BOEM published a Request for Information, the first public development step for a new Program. On January 4, 2018, BOEM released a Draft Proposed Program, subsequently held 23 public meetings, and solicited, analyzed, and responded to more than 2 million public comments and hundreds of direct public inquiries. The Draft Proposed Program was far more expansive than any in history, considering leasing in 98 percent of the OCS and proposing 47 lease sales in all four OCS regions, and in 25 of the 26 planning areas. Following publication

of the Draft Proposed Program, BOEM began preparing an expansive Proposed Program and Draft Programmatic EIS.

11. A March 29, 2019, District Court ruling in *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013 (D. Alaska 2019) (vacated and remanded), 843 F. App'x 937 (9th Cir. 2021), vacated parts of the Trump-era Executive Order 13795 revoking an oil and gas leasing ban in the Arctic. This district court order caused delays in the finalization of the Proposed Program: the order had the effect of withdrawing certain areas from consideration for leasing. Consistent with a public statement from Secretary Bernhardt,³ the Department paused plans to finalize the Proposed Program while the appeal was pending in the Ninth Circuit. On January 9, 2020, Interior instructed BOEM to restart work on the required Proposed Program analyses, and during that time, BOEM completed necessary analyses and updated the Proposed Program, but did not publish the Proposed Program prior to the end of the Trump Administration's term.

12. The Biden Administration took office on January 20, 2021, and immediately issued policy directives that required the Department and BOEM to

³ In April 2019, Secretary Bernhardt explained to the *Wall Street Journal* that Interior would postpone work on the Program until the court ruled on the appeal, because any Program that Interior would have prepared at that stage would depend on the Ninth Circuit Court of Appeals ruling (<https://www.wsj.com/articles/trumps-offshore-oil-drilling-plan-sidelined-indefinitely-11556208950>).

devote substantial time to evaluate and assess the implications for the next Program. On his first day in office, President Biden issued Executive Order 13990 “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” instructing agencies including Interior to review all existing regulations, orders, guidance documents, and policies issued during the Trump Administration that were inconsistent with stated environmental protection, conservation, and public health commitments. Executive Order 13990 also revoked Executive Order 13795, “Implementing an America-First Offshore Energy Strategy,” (April 28, 2017) issued by President Trump.

13. Then, on January 27, 2021, President Biden issued Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” which directs Federal agencies, including BOEM, to take certain actions to address climate change. In response to Executive Order 14008, in February 2021, BOEM focused on work to review the Federal Oil and Gas Leasing Program. BOEM and the Bureau of Safety and Environmental Enforcement formed a multi-disciplinary team to consider a range of potential reforms and recommended improvements to better align the OCS leasing process with the Biden Administration’s goals and priorities. BOEM’s work informed the broader Interior comprehensive review for both onshore and offshore

oil and gas leasing practices, which was publicly released in November 2021.⁴ The review encompassed several topics related to oil and gas leasing on the OCS, including royalties and royalty relief, financial assurance, “fitness to operate” standards, and leasing practices.

14. On April 16, 2021, Secretary Haaland issued Secretarial Order 3399, which built upon President Biden’s direction in Executive Orders 13990 and 14008 (among others) and established a Departmental Climate Task Force tasked with, among other things, “implementing the review and reconsideration of Federal oil and gas leasing and permitting practices in light of the Department’s broad stewardship responsibilities over the public lands and in offshore waters.” This order also provided further instruction on Interior NEPA processes, with the asserted purpose of restoring transparency and integrity to the decision-making process and ensuring agency decisions appropriately consider greenhouse gas emissions and climate change impacts, including in particular the consideration of the social cost of greenhouse gases (SC-GHG) in agency analyses. In response, BOEM developed new Program analyses considering updated SC-GHG information.

⁴ Interior published a “Report on the Federal Oil and Gas Leasing Program” on its website on November 26, 2021. (<https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf>).

15. In September 2021, BOEM began preparing and updating the Proposed Program and Draft Programmatic EIS analyses. In January 2022, the analytical results of BOEM's work on the Proposed Program were presented to the BOEM Director, Principal Deputy Assistant Secretary for Land and Minerals Management, and the Secretary. At that time, Interior instructed BOEM to conduct further analytical refinements, prior to proceeding with publishing the Proposed Program and Draft Programmatic EIS.

16. On February 11, 2022, in *Louisiana v. Biden*, 585 F. Supp. 3d 840 (W.D. La. 2022), a federal district court issued a preliminary injunction barring Federal agencies from “adopting, employing, treating as binding, or relying upon” the work product of the Interagency Working Group (IWG) on SC-GHG and from using any SC-GHG estimates based on the global effects of greenhouse gases. On March 16, 2022, the Fifth Circuit Court of Appeals stayed the injunction pending an appeal. Prior to the stay being granted, BOEM was unable to advance its analysis of greenhouse gas emissions in the development of the National OCS Program, because it included the IWG's report on the SC-GHG emissions.

17. Following the March 16, 2022, stay in *Louisiana v. Biden*, BOEM completed analytical refinements requested by Interior regarding net-zero pathways and climate change policies. In June 2022, the Secretary was briefed on the analytical results of the Proposed Program and Draft Programmatic EIS documents.

On June 28, 2022, the Secretary provided BOEM with her Proposed Program decision. On July 1, 2022, the 2023–2028 Proposed Program was published, along with a Draft Programmatic EIS. The publication of the Proposed Program initiated a 90-day public comment period. In August 2022, BOEM held four virtual open-house style public meetings and, in September, one oral comment public meeting to engage with stakeholders, answer questions, and hear concerns. BOEM also received more than 760,000 public comment letters during the comment period that ended on October 6, 2022. This includes detailed comments from API. BOEM has since categorized, organized, and summarized the comments it received. BOEM is still in the process of analyzing the substantive comments and must respond and address the substantive comments as it prepares the Proposed Final Program and Final Programmatic EIS.

BOEM is Holding Lease Sales under the IRA

18. Although there is not currently a Program in place, BOEM is conducting lease sales and issuing leases pursuant to the IRA. Prior to the passage of the IRA, pursuant to OCSLA, leases could only be issued “for an area included in the approved leasing program” 43 U.S.C. § 1344(d)(3). The IRA, however, requires BOEM to conduct certain lease sales included in the 2017–2022 Program despite the expiration of that Program. BOEM originally conducted Gulf of Mexico Lease Sale 257 in November 2021 during the 2017–2022 Program, but the U.S. District

Court for the District of Columbia vacated the sale in January 2022 (see *Friends of the Earth v. Haaland*, 583 F. Supp. 3d 113, 162 (D.D.C. 2022)). The IRA, however, directed the Secretary to accept the highest valid bids for Lease Sale 257 and to issue leases to the highest bidders by September 15, 2022. In compliance with the IRA, on September 14, 2022, BOEM accepted 307 valid bids from Lease Sale 257, resulting in 306 leases and \$189,888,271 in bonuses. The IRA also directed the Secretary to conduct Cook Inlet Lease Sale 258 by December 31, 2022, Gulf of Mexico Lease Sale 259 by March 31, 2023, and Gulf of Mexico Lease Sale 261 by September 30, 2023. In compliance with the IRA, BOEM held Cook Inlet Lease Sale 258 on December 30, 2022, receiving one bid, totaling \$63,983. Additionally, on February 27, 2023, BOEM published a Final Notice of Sale for Gulf of Mexico Lease Sale 259, scheduling the sale for March 29, 2023. On January 9, 2023, BOEM also finalized a Final Supplemental EIS covering Gulf of Mexico Lease Sales 259 and 261, which will inform the decisionmaker on the anticipated environmental impacts, mitigation measures, and action alternatives for each of these planned lease sales. Therefore, Interior is continuing to hold lease sales through 2023, and industry has the opportunity to bid on OCS lease blocks while the new Program is being prepared.

Finalizing the Program: Scheduling Considerations

19. Based on the best available data before the agency, BOEM anticipates

that it must, at a minimum, complete the following steps prior to issuing the next National OCS Program to ensure the Program is analytically and legally sound:

- Review more than 760,000 comments received on the Proposed Program and determine if any changes or updates to BOEM's analytical approach or discussions should be undertaken in response to the comments. While some of the comments are relatively straightforward (sometimes via form letters), BOEM also received thousands of substantive and unique comments, some of which contain complex scientific information, references to scientific studies, and critiques of, and suggestions for, BOEM's analysis and approach, which BOEM must consider. Additionally, with contractor support, BOEM will prepare summaries of comments for publication in the Proposed Final Program and Final Programmatic EIS, and responses to all substantive comments for publication in the Final Programmatic EIS.

- Incorporate information regarding impacts of the IRA into Proposed Final Program and Programmatic Environmental Impact Statement analyses related to national energy needs, energy markets, net benefits, and greenhouse gas emissions. To complete several of these analyses, BOEM must incorporate critical modeling information from the Energy Information Administration, including the Annual Energy Outlook for 2023. The 2023 Annual Energy Outlook is due to be published in March 2023.

- Update models necessary for BOEM to calculate offshore oil and gas leasing net benefits, greenhouse gas emissions, and impacts on air quality analyses in the Programmatic EIS.

- Consider net-zero emissions pathways. BOEM requested public comments and available datasets on this issue and received comments which are currently under review.

20. Once the Secretary makes a preliminary decision on the size, timing, and location of potential lease sales to be included in the Proposed Final Program, BOEM will prepare a summary of the preliminary decision, including an explanation of the Secretary's consideration of OCSLA factors (43 U.S.C. § 1344(a)(2)), and how she balanced the potential for environmental damage, discovery of oil and gas, and adverse impact on the coastal zone (43 U.S.C. § 1344(a)(3)).

21. Following the Secretary's preliminary decision, BOEM will begin the departmental review process for the Proposed Final Program. Due to the national level scope of National OCS Programs, analytical complexity, variety of stakeholders, and the high probability of a legal challenge, Program documents—including the upcoming Proposed Final Program—go through extensive review prior to publication. The Proposed Final Program will be reviewed consecutively by a range of BOEM experts, BOEM's Regional Directors, Interior's Solicitor's

Office, the Chief of BOEM's Office of Strategic Resources, BOEM's Chief Environmental Officer, BOEM's Directorate, the Assistant Secretary for Land and Minerals Management, the Deputy Secretary of the Interior, and finally the Secretary.

22. Once the approval process is complete, the Department will prepare and publish a Notice of Availability of the Proposed Final Program and Final Programmatic EIS in the *Federal Register*. BOEM expects to complete and publish the Proposed Final Program in September 2023. After a mandatory 60-day waiting period, 43 U.S.C. § 1344(d)(2), the Secretary may approve the new Program.

23. Due to additional, necessary work on the Proposed Final Program, including incorporation of critical information from the Energy Information Administration and completion of necessary analyses, a final Interior Department review, and the statutory 60-day waiting period following submission of the Proposed Final Program to the President and Congress, Interior needs until December 2023 to approve the next Program. Interior expects that the Secretary will approve the next Program in December 2023.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 6th day of March 2023, in Washington, D.C.

WALTER
CRUICKSHANK

Digitally signed by WALTER
CRUICKSHANK
Date: 2023.03.06 14:43:04 -05'00'

WALTER D. CRUICKSHANK
Deputy Director
Bureau of Ocean Energy Management
U.S. Department of the Interior