

value of future GOM leasing to be as high as \$197 billion.⁴ As described in detail below, G&G activities are crucial to the discovery, development, and valuation of OCS resources that lead to such production.

The Outer Continental Shelf Lands Act (“OCSLA”) calls for the “expeditious and orderly development” of the OCS “subject to environmental safeguards.” 43 U.S.C. § 1332(3). However, in many ways, the DPEIS undermines OCSLA’s mandate and is legally and technically flawed. In general, a fundamental flaw with the DPEIS is its establishment of an unrealistic scenario in which G&G activities are projected to result in supposed effects to marine mammals that BOEM admits are unrealistic overestimates of impact. The supposed adverse effects of this worst case hypothetical scenario are then addressed in the DPEIS with burdensome and unsupported mitigation measures. This approach is contrary to both the best available scientific information and applicable law.

For over 40 years, the federal government and academic scientists have studied the potential impacts of G&G activities on marine mammals, and have concluded that any such potential impacts are insignificant. Indeed, this conclusion has been publicly reaffirmed by BOEM (*see* Section III.B.3 *infra*) and the DPEIS fails to present any evidence to counter this well-supported and longstanding conclusion. The DPEIS’s suggestion that such impacts are “moderate” (as opposed to insignificant) is not supported by the best available science and is made possible only by application of overly conservative estimates that BOEM admits do not accurately reflect the actual anticipated impacts.

In addition, many of the mitigation measures recommended in certain alternatives presented in the DPEIS are economically and operationally infeasible, will impose serious burdens on industry, and are highly unlikely to result in benefits to protected species. The Associations can and will support mitigation measures that are grounded in the best available science and consistent with existing practices that are proven to be effective and operationally feasible. However, we cannot support mitigation measures with no basis in fact or science, which are intended to address presumed adverse effects that will not occur, and which will result in less exploration of the OCS, contrary to OCSLA.

We also wish to clarify at the outset the relevance of the settlement agreement and subsequent stipulation that were entered into by the parties in *NRDC et al. v. Jewell et al.*, No. 2:10-cv-01882 (E.D. La.) (“*NRDC v. Jewell*”). *See id.* at Dkt. 118-2 (“Settlement Agreement”); *id.* at Dkt. 127-2 (“Stipulation to Amend”). The Settlement Agreement and the Stipulation to Amend were expressly agreed to for the sole purpose of settling litigation. The mitigation measures currently implemented through the terms of those agreements are not representative of

⁴ *See* BOEM, *2017-2022 OCS Oil and Gas Leasing Proposed Final Program*, at Table 5-8 (BOEM, Nov. 2016), <https://www.boem.gov/2017-2022-OCS-Oil-and-Gas-Leasing-PFP> (last visited Nov. 27, 2016).

measures that have been traditionally employed in the GOM. Moreover, the parties to the Settlement Agreement and the Stipulation to Amend did not agree, and there has otherwise been no subsequent demonstration, that the mitigation measures imposed through those documents are feasible, appropriate, or supported by the best available science.⁵

Lastly, the economic analysis included in the DPEIS is inadequate, particularly regarding the assumptions made about activity levels in the face of overly restrictive mitigation measures. The analysis appears to completely ignore the potential of reduced future drilling and production resulting from the generation of less G&G data. In addition, although the DPEIS describes the potential economic impacts of the various alternatives, it provides no cost estimates for direct, indirect, and induced economic impacts over the 10-year time period covered by the DPEIS. Nor does it adequately account for the variability inherent in offshore oil and natural gas exploration and development. In short, BOEM has failed to provide an economic impact analysis that allows stakeholders to meaningfully assess the practicability or feasibility of the proposed alternatives.

Our detailed comments on the DPEIS are set forth in Section III below. As to the alternatives presented in the DPEIS, the Associations find Alternative A to be the most reasonable because it presents the option that is most consistent with the best available science, operational feasibility, and applicable law. We strongly object to Alternatives B-G, for the reasons stated below. We look forward to working with BOEM as it proceeds with this National Environmental Policy Act (“NEPA”) review and selects the preferred alternative for the final PEIS. Although we encourage BOEM to issue the final PEIS on a schedule that is compliant with court-ordered deadlines, it must do so in a manner that produces a final PEIS that does not contain the inadequacies described in the following comments.

III. COMMENTS

A. **The DPEIS Must Address OCSLA’s Mandates and Take Account of the Environmental Benefits of the Proposed Action**

Congress enacted OCSLA to promote and ensure the “expedited exploration and development of the [OCS] in order to achieve national economic and energy policy goals, assure

⁵ See *NRDC v. Jewel*, Dkt. 118-2, Section IX (“Intervenor-Defendants do not agree that all of the measures described in paragraph IX.A and IX.B are feasible or appropriate. Intervenor-Defendants shall be free to challenge any such measures should one or more of the Federal Defendants develop and implement them.”); *id.* at Dkt. 127-2, Section G (“The terms of this Stipulation have been agreed to for purposes of compromise. No party concedes by entering into this Stipulation that any of the permit requirements described above are warranted by scientific evidence or should be imposed after the Stay expires, or that these requirements are sufficient to achieve legal compliance or reduce biological risk over the long term.”).