**TESTIMONY OF ERIK MILITO**
**PRESIDENT, NATIONAL OCEAN INDUSTRIES ASSOCIATION**
**U.S. HOUSE OF REPRESENTATIVES**
**COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY**
**HEARING TO "EXPLORE HOW IMPROPER INFLUENCE FUELS UNNECESSARY LITIGATION AND THE CONSEQUENCES OF A WEAPONIZED LEGAL SYSTEM"**
**SEPTEMBER 13, 2023**

Chairman Comer, Ranking Member Raskin, and members of the committee, thank you for inviting me to testify today. My name is Erik Milito, and I am President of the National Ocean Industries Association, or NOIA. For more than 50 years, NOIA has represented the interests of all segments of the offshore energy industry, including offshore oil and gas, offshore wind, offshore minerals, and offshore carbon sequestration. Our membership includes energy project leaseholders and developers and the entire supply chain of companies that make up an innovative energy system contributing to the safe and responsible exploration, development, and production of energy for the American people.

The offshore energy sector is a proven leader in solving energy challenges and delivering diverse sources of energy to the global economy. The Gulf of Mexico in particular is globally recognized as a premier energy hub, bringing together the companies that produce foundational energy sources such as oil and gas, while leading innovation and investment in energy sources and technologies that will drive decarbonization efforts well into the future. Companies throughout the offshore oil and gas supply chain continue to lead the way in innovating low emission solutions that include offshore wind, carbon capture and storage, hydrogen, and geothermal.

Since its inception, offshore oil and gas production has created hundreds of thousands of jobs and generated billions in royalties for the U.S. Treasury, boosting our nation's energy independence and national security – all while yielding approximately half of the carbon intensity per barrel of other producers worldwide. The offshore industry has worked with the federal government and conservation partners, such as the Coastal Conservation Association (CCA), to collaborate on innovative efforts like the Rigs-to-Reef program, which repurposes obsolete platforms into habitats for marine life and further helps create a national recreational fishing economy. Additionally, legislation and programs like the Great American Outdoors Act, the Gulf of Mexico Energy Security Act (GOMESA), and the Land and Water Conservation Fund (LWCF) ensure that billions of more dollars from federal offshore oil and gas leasing is dedicated to long-term coastal conservation and restoration, environmental protection, and urban recreation efforts. Without continued and predictable leasing this funding is at risk. The U.S. offshore competes with other offshore regions throughout the world and historically has been able to compete effectively under the current leasing and regulatory system. With more than $120 billion flowing to the federal treasury since 2000 to support the LWCF, urban parks, and national parks, and with more than 300,000 jobs supported annually, the U. S. Gulf of Mexico

positively contributes to communities while at the same time producing among the lowest carbon barrels in the world. Unfortunately, litigation and "sue and settle" arrangements continue to hamper our ability to provide the energy and jobs that Americans rely upon to maintain a high quality of life. Opponents of American energy projects have been able to circumvent both Congress and the public regulatory process through what has effectively become "regulation through litigation."

Litigation can serve as an important tool to hold federal agencies accountable to their statutory obligations, but the continued abuse of litigation to disrupt federal energy leasing ultimately penalizes the American consumer more than anyone. Obstruction of federal offshore oil and gas leasing jeopardizes the tremendous positive benefits provided by offshore production and results in a shift in production to other regions of the world to the detriment of our economic, energy, national and environmental security. The numerous adverse consequences of eliminating or scaling back offshore oil and gas leasing negatively impact all Americans, most particularly those struggling to cope with increased energy costs, which have risen dramatically over the past year. Offshore leasing is requisite to replenishing and building new supplies of oil and gas for Americans. It is only the first step in the process, but, without it, our nation will be left without the energy that is vital for our everyday lives, including transportation, manufacturing, agriculture, groceries, education, and healthcare. Energy affordability is fundamentally and directly tied to the supply and demand of energy sources, and energy supplies are assured through continued leasing and permitting. Whether it is in Kentucky, Maryland, or the U.S. Gulf of Mexico, our future economic and energy security depends upon a legal and regulatory system that encourages investment through certainty and predictability.

**The Recent Rice's Whale Example of "Regulation Through Litigation"**

The United States has always been a nation fueled by innovation, resilience, and the pursuit of progress. No area epitomizes these traits more than the Gulf of Mexico, yet recent "regulation by litigation" actions could significantly impact the trajectory of our energy future. The focal point of the litigation is the protection of the Rice's whale, a species already protected under the Endangered Species Act and the Marine Mammal Protection Act. In July 2023, the Biden administration reached a voluntary settlement agreement with activist organizations over an expanded Rice's whale protected habitat area that is poised to reshape the future of energy production in the Gulf of Mexico and disrupt the flow of commerce throughout the region.

The agreement does two things. First, it removes millions of acres from the upcoming September 2023 offshore lease sale in the Gulf of Mexico and places new unwarranted restrictions on oil and gas activities within this expansive region. Second, the federal government issued new "recommendations" on mitigation measures which targets things like vessel speed and night travel throughout the Gulf of Mexico through a new Notice to Lessees (NTL).

To begin with, the areas removed for consideration for the next lease sale are highly prospective areas across some of the most resource-attractive areas in the Gulf of Mexico. This area holds immense potential for responsible domestic energy development yet is now inaccessible due to the settlement's restrictions. Taking millions of acres of attractive oil and gas lease areas off the table will have strategic repercussions to say the least. Based upon numerous

empirical studies, the U.S. Gulf of Mexico is recognized for its low carbon intensity barrels. By hampering production in this region, we needlessly risk importing higher carbon intensity alternatives from abroad, undermining both environmental progress and domestic energy security.

In addition, the settlement's inclusion of stipulations like vessel speed restrictions and limitations on night travel and times of low visibility will further disproportionately affect the offshore oil and gas industry, imposing unwarranted constraints. These measures target normal and proven operations and processes and will hinder our ability to create jobs, stimulate economic growth, and maintain our energy independence, all while lacking scientific evidence to justify such extensive bans. There is also a plethora of unanswered questions regarding the feasibility of complying with these mitigations in a manner that is conducive to vessel and mariner safety. Many operations that are critical to rig and platform safety, like well rebalancing, must happen on short notice including at night. It is unclear how the vast range of spur of the moment operations requiring vessel transit, from materials management to catering, would be interpreted under these restrictive mitigations.

Importantly, the new Notice to Lessees (NTL) opens a pandora's box of questions. The NTL includes "recommendations" like the upcoming lease sale stipulations that place 10-knot vessel speed restrictions, new vessel strike avoidance protocols, new multi-year record keeping requirements, limitations on night travel, and more. The NTL directs companies to include these mitigation measures in plans for future offshore operations in the region, but how the federal government will interpret the recommendations in the NTL is uncertain at best. The NTL circumvents the normal regulatory process and injects ambiguity into the system for energy producers and vessel operators in the region.

The settlement agreement results in significant adverse consequences that could result to offshore safety, emissions, energy security, energy affordability, and national security. Among other things, making areas off-limits, imposing speed restrictions, and limiting transit at night and in times of low visibility significantly impacts the ability of the industry to explore, construct, and develop energy projects in the Gulf of Mexico. The development of offshore energy projects depends upon a diverse ecosystem of companies providing support, supplies, and services. This work further relies upon a vast network of vessels for the construction, servicing, and maintenance of projects and facilities. In addition to putting energy projects and production at risk, the restrictions imposed by the lease stipulations and NTL will likely lead to an increase in the number of vessels required to support offshore projects as operators try to mitigate impacts from this drastic shift in how vessels operate in support of oil and gas activities. Limiting transit at night and in periods of low visibility will idle vessels offshore and increase traffic in daylight and high visibility periods. If vessel traffic does increase as a result of implementation of the NTL, the associated increase in the vessel miles traveled will correspondingly serve to increase the safety risk associated with offshore operations. A basic risk assessment will demonstrate that more activity carries greater risk than less activity. Moreover, an increase in the number of vessels and the associated increase in vessel miles traveled will also lead to an increase in overall emissions – at a time when the industry has continued to successfully improve safety and decrease emissions through continued enhancements in efficiency and applications of new technology. And this is before accounting for potential emissions from vessels idling outside the

restricted zone for hours to wait for daylight or changes in weather conditions. Furthermore, to help maximize logistical efficiency and safety of operations, vessels often transit at night so that support activities can occur during the day. The proposed restrictions would flip this option on its head and potentially eliminate or hamper an efficient approach for safely conducting support operations at offshore facilities. Importantly, these adverse consequences are likely to accrue without any appreciable benefit to the conservation of the Rice's Whale, which is already afforded protections under the Endangered Species Act and the Marine Mammal Protection Act – specifically in the core habitat area where there is evidence that the species inhabits the area.

Furthermore, the government is also moving forward to expand these protections to other ocean users through the proposed designation of critical habitat for the Rice's Whale, greatly expanding the adverse impacts that will ripple throughout our entire economy. Everything from cruise ships to cargo vessels to fishing boats that are working in the Gulf of Mexico could be impacted. The National Oceanic and Atmospheric Administration (NOAA) recently closed the comment period on a petition to establish a 10-knot mandatory speed limit, banning night travel, and other mitigation measures which would apply to all vessels in the Rice's whale core habitat[1]. Simultaneously, NOAA is accepting comments through September 22nd on its proposed expansion of the Rice's whale critical habitat in the waters from the 100-meter isobath to the 400-meter isobath in the Gulf of Mexico, which are the areas which bisect the Western and Central Gulf of Mexico[2]. The government is thus erecting an arbitrary barrier between vessel transit and the shoreline that runs the full length of the U.S. Gulf of Mexico from the Mexico border all the way through the Florida coast.

The Gulf of Mexico is home to vital American port infrastructure, with shipments transversing the area that flow throughout the entire U.S. economy. The imposition of a restricted zone that runs throughout the entirety of a critical zone of commerce in the Gulf has the potential to further inflationary impacts and drive up the cost of goods for all Americans. As vessels queue and all wait for the same transit windows through the protected areas, it is safe to assume that if these vessels all transit the protected areas at the same time, they will likely reach port near the same time. Bottlenecks and delays will continue as vessels try to unload cargo onto trucks and trains all at the same time. The result will surely be cascading delays impacting the flow of critical goods and commerce at the start of the onshore supply chain at a time when American families are already besieged by inflation.

While environmental preservation is a shared goal of Gulf Coast residents and businesses, the approach chosen to safeguard this species bypasses the appropriate channels for public and congressional engagement. The "sue and settle" method employed in this case sidesteps the vital input of experts and stakeholders, leading to decisions that could have far-reaching consequences. Expanding the Rice's whale critical habitat to include areas where there is only a negligible or no presence at all will dilute conservation resources that should be going towards protecting actual core habitat areas. As the National Marine Fisheries Service has noted, only a single Rice's whale has been observed in the western Gulf of Mexico off the coast of Texas. This is not enough evidence to warrant a massive expansion of critical habitat areas without the chance for experts and the local Gulf Coast maritime sector to offer input.

[1] https://www.fisheries.noaa.gov/s3/2023-03/Rices-Whale-Petition.pdf
[2] https://www.govinfo.gov/content/pkg/FR-2023-07-24/pdf/2023-15187.pdf

The agreement reached between the Biden Administration and activists does an end-around legal requirements and the public process, imposing unwarranted restrictions on U.S. energy production at a time of continued inflation with prices rising at the pump for consumers. The agreement poses a barrier to America's energy production capabilities within a region that not only sustains hundreds of thousands of high-paying jobs but also yields some of the world's least carbon-intensive barrels, all the while the efficacy of the agreement in actually protecting a valued and endangered whale species is highly doubtful.

**Energy Realities**

For the foreseeable future, the offshore industry will play an integral role in shaping an energy system that promotes the production of affordable and reliable energy while continuing to reduce environmental impacts, including emissions. Importantly, for the coming decades, oil and gas supplies will remain a vital energy source for Americans and our allies around the globe, while we simultaneously integrate and add low carbon sources into the mix.

A system of reliable, abundant, and affordable energy is essential for meeting basic societal needs, including healthy living conditions, health care, education, and mobility, economic or otherwise. Oil and gas fill the fuel tanks of passenger vehicles and airplanes. Petroleum hydrocarbons are transformed into the essential building blocks of smartphones, clothing, and medical equipment. They are in so many products we use every day that they underpin the conveniences of modern life.

Natural gas is recognized as a key energy source for providing electricity, heating, cooling, and clean cooking. More than 750 million people around the globe do not have access to electricity, which leaves entire communities at a severe and fundamental disadvantage. According to the World Health Organization (WHO), "Access to energy is critical when it comes to the functionality of health-care facilities and the quality, accessibility and reliability of health services delivered. Electricity is necessary for the operation of critically needed medical devices such as vaccine refrigeration, surgical emergency, laboratory, and diagnostic equipment, as well as for the operation of basic amenities such as lighting, cooling, ventilation, and communications."[3]

Globally, 2.6 billion people do not have the means for clean cooking and must use solid fuels such as wood, crop wastes, charcoal, and dung in open fires and inefficient stoves. The WHO attributes 3.8 million premature deaths each year to indoor air pollution caused by the fumes and soot generated by inefficient and dirty cooking.

The tragic impacts of energy insecurity are not only experienced abroad; 44 percent of low-income American households experience energy insecurity, spending 10 percent to 20 percent of their income on energy expenses[4]. Energy insecurity has adverse consequences on

[3] https://www.who.int/activities/accelerating-access-to-electricy-in-health-care-facilities
[4] http://large.stanford.edu/courses/2020/ph240/radzyminski2/

both physical and mental health. Millions of Americans are faced with the "heat or eat" dilemma, regularly having to choose between paying utility bills and paying for food[5].

Energy production in the U.S. Gulf of Mexico demonstrates that it is possible to develop offshore resources while adhering to the highest safety and environmental standards. A multitude of companies involved in offshore energy development are working collaboratively to shrink an already small carbon footprint. From electrifying operations to deploying innovative solutions that reduce the size, weight, and part count of offshore infrastructure – thus increasing safety and decreasing emissions – the U.S. Gulf of Mexico hosts a high-tech revolution.

Currently, global oil consumption is approximately 100 million barrels per day. Various scenarios forecast global oil consumption volumes through 2050 and beyond, and nearly all of them predict substantial oil production will be necessary through at least 2050. The facts, data, and our experience make clear that we should focus on the U.S. offshore region, and the Gulf of Mexico in particular, for securing those vital resources.

Oil produced from the U.S. Gulf of Mexico has a carbon intensity about one-half that of other producing regions.[6] The technologies used in deepwater production – which represents 92 percent of the oil produced in the U.S. Gulf of Mexico – place this region among the lowest carbon intensity oil-producing regions in the world[7]. A recent study by ICF International, and commissioned by NOIA, found that the U.S. Gulf of Mexico has a carbon intensity 46% lower than the global average outside of the U.S. and Canada, outperforming other nations like Russia, China, Brazil, Iran, Iraq, and Nigeria[8].

Emissions reduction is a global challenge. As analysts at Wood Mackenzie explain, "Removing or handicapping a low emitter [i.e., the U.S. offshore sector] hurts the collective global average."[9] Removing a proven, stable supplier such as the U.S. Gulf of Mexico would be a poor choice with devasting consequences. The better choice is to institute government policies that promote cleaner and safer domestic production, less reliance on higher-emitting foreign suppliers like Russia and China, and the preservation of hundreds of thousands of American jobs.

Efforts to restrict U.S. energy development could eventually lead to Americans of every walk of life having to contend with the issues Europe has been experiencing as a result of disrupted supply from Russia, including potential industrial curtailment and families having to make difficult choices between heat and food. Our energy reality makes it clear that U.S. energy policy should support U.S. energy production of all types, including offshore oil and gas and wind. Government policies play a substantial role in the ability to develop energy in the U.S., whether onshore or offshore, and whether the energy source is oil and gas, wind, hydrogen, or

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[5] S. Jessel, S. Sawyer, and D. Hernández, "Energy, Poverty, and Health in Climate Change: A Comprehensive Review of an Emerging Literature," Front. Public Health 7, 357 (2019).
[6] Motiwala, and Ismail, "Statistical Study of Carbon Intensities in the GOM and PB," ChemRxiv, April 13, 2020.
[7] https://www.woodmac.com/news/the-challenge-of-negative-emissions/
[8] https://www.noia.org/new-report-u-s-gulf-of-mexico-oil-gas-production-leads-with-lower-emissions-including-methane/
[9] https://www.woodmac.com/news/opinion/could-restricting-oil-production-in-the-us-gulf-of-mexico-lead-to-carbon-leakage/

another resource. Obstructive government policies inevitably lead to adverse consequences for our energy security, national security, economic security, and decarbonization efforts.

Oil and natural gas touch every part of our daily lives. Fundamentally, "Everything that is fabricated, grown, operated or moved is made possible by hydrocarbons."[10] The U.S. Department of Energy states:

> Oil and natural gas play an essential role in powering America's vibrant economy and fueling a remarkable quality of life in the United States. Together, oil and natural gas provide more than two-thirds of the energy Americans consume daily, and we will continue to rely on them in the future. In addition to meeting our energy needs, oil and natural gas are integral to our standard of living in ways that are often not apparent. Several key advances in technology enabled a dramatic increase in domestic oil and natural gas production over the past 20 years. This increased production provides energy security and economic benefits to the entire country, and ongoing technology advances will help us to enjoy those benefits into the future.
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> Oil and natural gas are used in many ways that are familiar to consumers. Petroleum products power transportation, providing fuel for cars, trucks, marine vessels, locomotives, and airplanes. Natural gas generates more than one-third of the electricity needed for dependable heating, air conditioning, lighting, industrial production, refrigeration, and other essential services, and tens of millions of Americans rely on oil and natural gas to heat their homes directly and on clean burning natural gas to cook their food. But petroleum products do so much more than fuel our cars and power our homes and businesses.
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> While perhaps less recognized, oil and natural gas also play critical roles in supplying essential products and materials, increasing agricultural productivity, and supporting the expansion of new energy sources.
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> Oil, natural gas, and natural gas liquids are building blocks for a range of modern materials used to produce life-changing prosthetics, energy-efficient homes, safer cars that go farther on a gallon of gasoline, and hundreds more consumer products that Americans use every day. Plastics and chemicals derived from oil and natural gas make our food safer, our clothing more comfortable, our homes easier to care for, and our daily lives more convenient.
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> Natural gas is also a key ingredient for chemical fertilizers, helping increase crop production and yield per acre planted, and powering many important operations on the farm like crop drying.[11]

According to the United Nations, access to affordable, reliable, and sustainable energy is critical to achieving many international development goals, specifically, the eradication of

[10] Mark Mills, Wall Street Journal, January 8, 2019

[11] *U.S. OIL AND NATURAL GAS: Providing Energy Security and Supporting Our Quality of Life*, U.S. Department of Energy, September 2020, p. 4.

poverty through continued improvements in education, health, and access to water.[12] Oil and natural gas play a central role in eliminating poverty and raising the standard of living for millions by serving as a key form of abundant and affordable energy.

The cost of energy is fundamentally driven by supply and demand and, recently, global markets have been disrupted by a supply crunch in both the oil and natural gas markets. The energy paradigm has shifted over the past decade, with the United States rising to a position of energy power and emerging as the leading producer of both oil and natural gas in the world.

Vice Chairman of IHS Markit Daniel Yergin explains how things have changed:

> According to the old script, United States oil production was too marginal to affect world oil prices. But the gap today between demand and available supply on the world market is narrow. The additional oil Saudi Arabia is putting into the market will help replace Iranian exports as they are increasingly squeezed out of the market by sanctions…. But if America's increase . . . [in oil production] . . . had not occurred, then the world oil market would be even tighter. We would be looking at much higher prices – and voters would be even angrier.[13]

Mr. Yergin made this point in 2012 at the outset of the shale revolution, but the significance of U.S. production for global energy markets is as important as ever today. In fact, Mr. Yergin reiterated this very point in February 2022 in the aptly title op-ed in the *Wall Street Journal*, "America Takes Pole Position on Oil and Gas."

Analysts recognize that the downturn in the oil and natural gas industry from 2014-2020, combined with ill-conceived policies and investment approaches, led to significant underinvestment in oil and natural gas exploration and infrastructure. According to Simon Flower, Chairman, Chief Analyst at Wood Mackenzie and author of a weekly column called The Edge, in 2021, "Underinvestment in oil supply will lead to a tight oil market later this decade. It's a narrative that's gained increasing traction as capital expenditure on upstream oil and gas has shrunk. Spend in 2021 is half the peak of 2014 after slumping to new depths in [2021's] crisis."[14]

Mr. Flowers poses the question, "How much ***new*** oil supply does the world need?" His answer is, "A lot - we reckon about 20 million b/d from 2022 to 2030." According to Flowers, "This is the 'supply gap', the difference between our estimate of demand in 2030 and the volumes we forecast existing fields already onstream or under development can deliver."[15] If his numbers are correct, a huge amount of new oil is needed to close the expected gap between supply and demand and help bring stability and affordability to oil and petroleum product prices.

Rystad Energy echoes the concern about the supply gap and the huge amount of investment needed to close it. According to Rystad, more exploration for oil and gas is needed to

[12] https://unstats.un.org/sdgs/report/2016/goal-07/
[13] Daniel Yergin, "America's New Energy Reality," *The New York Times*, June 9, 2012
[14] https://www.woodmac.com/news/the-edge/is-the-world-sleepwalking-into-an-oil-supply-crunch/
[15] https://www.woodmac.com/news/the-edge/is-the-world-sleepwalking-into-an-oil-supply-crunch/

supply the volumes needed worldwide by 2050.[16] In fact, it will take massive investment just to keep pace with growing demand. Rystad suggests capital expenditures of at least $3 trillion will be required to replenish declining production from currently producing assets around the world to meet expected global demand in 2050.

We are fortunate in the United States that our Gulf of Mexico region is up to the task of delivering the oil and gas the economy needs. Production numbers from the U.S. Gulf of Mexico place it in the company of some of the largest oil producing countries. If the Gulf of Mexico were its own country, it would be one of the top eleven oil producing countries:


Source: U.S. Energy Information Administration.

Offshore energy is truly a story of accomplishing more with less – creating more energy with less environmental impact. Offshore production platforms are incredible edifices of continuously evolving technology that allow enormous amounts of energy to be produced through a relatively small footprint. Incredibly, 18 deepwater facilities, which equate to about the size of only nine city blocks, produce about the same amount of oil as the entire state of North Dakota.[17]

[16] https://www.offshore-mag.com/drilling-completion/article/14188804/exploration-overdrive-urgently-required-rystad-energy-report-claims

[17]Director Scott Angelle, BSEE Director, BSEE Presentation to the Deepwater Technical Symposium, November 13, 2020.

In short, the U.S. and world depend upon reliable supplies of oil and natural gas for a high quality of life and to lift people out of poverty, and U.S. offshore production should be the basin of choice for producing that energy because of demonstrably lower GHG emissions and environmental impacts for an energy source we will continue to need for years to come.

In the report titled "How the Gulf of Mexico can further the energy transition," McKinsey describes four key factors that give the deepwater Gulf of Mexico a "low carbon advantage":

> First, in contrast to other regions where flaring natural gas without a market is more commonplace, most of the natural gas produced in the Gulf of Mexico is sold to local markets, which results in minimal routine flaring and, consequently, less GHG emissions. Second, the facilities have efficient, modern designs that minimize methane leakage. Third, wells and production facilities have a high throughput, minimizing the number of energy-intensive processes required to bring on new supply, such as drilling. And fourth, operators have made active decarbonization efforts to stay in line with environmental sustainability goals and in compliance with regulations.[18]

McKinsey estimates production from the U.S. Gulf of Mexico could decrease by about 800,000 barrels per day by 2040 without additional projects beyond those that have already been sanctioned. In that situation, McKinsey expects lost production would be made up by substitutions from other parts of the world without much oil demand destruction. Our country would be able to import sufficient oil, but it would come from higher-emitting basins, resulting in an increase in greenhouse gas emissions globally:

> This supply reduction would have to be offset by alternative sources to meet global demand, which could hinder net-zero goals significantly. Because many other oil producing regions globally have total unit costs similar to those in the Gulf of Mexico, global oil price increases or substitution with other energy sources wouldn't be expected, and global demand for oil would remain unchanged. Instead, the reduced Gulf supply would be offset by production increases from other sources, such as other deepwater basins, shale, and OPEC. Based on the higher emissions per barrel of this new supply, global emissions would increase by 50 million to 100 million metric tons of $CO_2e$ through 2040.[19]

The offshore energy sector is also playing a central role in the build-out of vast amounts of wind power generation capacity. As a leading advocate for offshore wind, NOIA continues to promote policies to enable the build-out of new offshore wind resources in federal waters. That support extends to efforts to pursue offshore wind leasing and development on the Outer Continental Shelf ("OCS") in the Gulf of Mexico and along the Atlantic and Pacific coasts. Offshore wind projects are vital to the economic growth of this country and efforts to meet climate goals for the 21st century and beyond. According to a recent report by the American

[18] Brown, Di Fiori, Smith, and Yanosek, "Deepwater Gulf of Mexico's role during the energy transition," McKinsey, September 2022, at pages 3-4.
[19] Brown, Di Fiori, Smith, and Yanosek, "Deepwater Gulf of Mexico's role during the energy transition," McKinsey, September 2022, at page 6.

Clean Power Association, expanded offshore wind development could spark $120 billion[20] in investments.

NOIA and several other allied organizations commissioned a study that examined the net economic benefits of future offshore wind opportunities. That study by Wood Mackenzie found that by leasing areas in places like offshore New York, New Jersey, the Carolinas, the Northeast, and California, offshore wind development could support 80,000 jobs per year through 2035, in addition to bringing in billions of dollars to the Treasury in the form revenue generated from new lease sales.[21]

Clearly, we have tremendous opportunities to produce the energy required for the American economy here at home. By harnessing these opportunities, investment will flow to the U.S. economy, supporting high-paying jobs and generating major revenues for the U.S. Treasury and important conservation programs, while also advancing key economic, environmental, and national security interests. Yet, excessive litigation continues to obstruct investment in domestic projects and our nation's progress toward these important objectives.

**Debunking the Myth of Idle Leases**

The myth of idle leases has become a red herring in the public debate over federal oil and gas leasing. Assertions about the "stockpiling" of leases represents a fundamental misunderstanding of how the oil and gas industry operates under the offshore leasing program. Oil and gas companies often must bid on leases around which there is significant uncertainty. In other words, companies must cast a wide net when acquiring lease blocks, then winnow through prospective blocks by means of additional exploration and study – a process that can take years – before they can identify a commercially viable discovery.

Legally competing at auction for rights to explore and develop offshore federal lands and paying a bonus to acquire a federal offshore oil and gas mineral lease can be a risky proposition. There is no guarantee that oil and gas resources are present in the subsurface. Even with incredible advances in technology, there is an element of energy production that is still speculative. Due to this risk, some leases are studied for quite some time to determine if energy reserves exist or if they exist in sufficient quantities to be produced economically and in compliance with regulatory standards. In other cases, sites being considered for exploratory wells are going through a thorough and lengthy regulatory approval process.

Given that a production well in the Gulf of Mexico can cost hundreds of millions of dollars to develop, decision-makers must be judicious in deciding to develop a lease. This means some leases expire and are returned to the federal government for future consideration when technology improves enough to make resources accessible.

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[20] *See* American Clean Power Association, et al., *Federal Revenue and Economic Impacts from BOEM Offshore Wind Leasing* (December 2021), https://cleanpower.org/resources/federal-revenue-and-economic-impacts-from-boem-offshore-wind-leasing/.

[21] https://www.noia.org/noia-reports/#flipbook-df_217504/7/

As the non-partisan federal Congressional Research Service concluded during the Obama Administration:

> Many leases expire before exploration or production occurs…Generally, a number of concerns arise in the oil and gas leasing process that delay or prevent oil and gas development from taking place, or might account for the large number of leases held in non-producing status. There could be a lack of drilling rigs or other equipment availability, and financing and/or skilled labor shortages. Legal challenges might delay or prevent development. There are typically also many leases in the development cycle (e.g., conducting environmental reviews, permitting, or exploring) but not producing commercial quantities.

Oil and natural gas companies have every incentive to produce as much oil and gas as possible as rapidly as they can. The decision about which blocks to develop is predicated on a number of considerations.

- Finding oil and gas is a prospective business, and not all leases contain commercially viable amounts of hydrocarbons. In fact, most leased areas do not contain oil and gas in commercial quantities. Companies need to invest in multiple lease blocks and methodically assess them to identify and develop the blocks where commercially viable finds are most likely.
- A lease is only a rental agreement. When a company buys a lease, it's tying up significant (and finite) capital in the search for oil and natural gas. There is a significant financial incentive for a company to recover its initial investment by developing oil and gas resources in a timely manner, in other words, to initiate production.
- In addition to bidding potentially millions of dollars for each lease block, companies pay rent to the federal government on non-producing leases. Annual rental rates can cost hundreds of thousands of dollars per lease block.
- Companies are required under government leasing regulations to develop a lease expeditiously or return it to the federal government. Rental terms are established in the Final Notice of Sale and typically range from 5 to 10 years, depending on water depth. In general, leases that are not producing by the end of their term are relinquished to the government, which can then re-lease them. The resources invested by the company to acquire and keep the lease are lost if a lease is returned to the government.

It takes time and significant investments to explore and develop an offshore lease block. Capital costs for offshore exploration and development are significant, with total costs for projects regularly going into the billions of dollars.

- Offshore seismic exploration can cost upwards of $200,000 per day.
- Offshore exploratory wells can cost anywhere from $25 million to more than $100 million for some deepwater prospects. It is not unusual for a company to spend more than $100 million on an exploratory well only to come up empty with a "dry hole."
- If a company does end up identifying commercial quantities of oil or natural gas, the subsequent design and installation of deepwater production facilities regularly exceeds $1 billion.

Developing a lease block does not occur overnight. The timeline from lease sale to first oil can take up to ten years. A typical project progression includes:

- One year for preliminary geological investigation and selection of areas of interest for seismic data acquisition.
- One year to two years to acquire and process seismic data and identify drillable prospects.
- A year or more to contract and schedule a drilling rig to carry out a drilling program.
- Six to 10 months to drill and complete an exploratory well.
- Six months to a year for follow-up evaluation of drilling results, which can include drilling a sidetrack well.
- Another two to three years for additional delineation drilling and formulating a reservoir development plan if the exploratory well proves successful. During this time, the company also is working on pre-permit studies, permitting, and design and procurement for production facilities, including surface and subsurface equipment and systems,
- One year or more is needed for facilities installation, followed by development drilling, which can take one to two additional years. During this period, the company is involved in design, permitting, engineering, procurement and installation of a pipeline or offshore system to bring production to market.

As with many other forms of energy development, oil and gas production is contingent upon having acreage that can be explored and produced. Leasing is requisite to securing the acreage to develop and produce supplies of oil and gas for the country. Continued lease sales at regular intervals will enable declining production to be replenished and production levels to be increased when there are spikes in demand. Simply put, the more acreage that is available, the greater the potential for well-managed energy production.

**National Environmental Policy Act (NEPA) Litigation**

From a regulatory standpoint, federal government policy must serve to eliminate potential roadblocks to investment in energy projects. The recent debt ceiling agreement included important changes that will hopefully help streamline the permitting process. The National Environmental Policy Act (NEPA) is a bedrock law for guiding the federal decision-making process with due consideration of the potential environmental impacts. However, as with any rule or regulation, it is important that we take the time to review and improve rules and regulations as necessary to promote efficiency and effectiveness in regulation. The inclusion of various provisions in the debt ceiling agreement to enhance NEPA was a positive step toward streamlining the permitting process. We remain hopeful that Congress will continue to work together to refine and improve all aspects of permitting.

Lack of clarity in the NEPA process not only impacts the time it takes a federal agency to act, but also increases litigation risk. Because of its broad applicability across sectors and agencies, NEPA is often at the center of project opponents' litigation strategy in seeking to delay and block energy and infrastructure projects. In response to the threat of litigation, agencies prepare NEPA analyses in defense of potential litigation, attempting to anticipate every possible

objection that could be raised in court, however insignificant and however detached from the intent of NEPA. The result is that over time NEPA has become less about informing agencies and the public of environmental impacts of significance, and more about agencies attempting to avoid lengthy and costly litigation. Several NEPA-related legal challenges have already been filed over the approvals of the construction and operation plans for the early-mover offshore wind projects. Congress should continue to consider permitting legislation to streamline the NEPA process and reduce investment and litigation uncertainty.

Litigation related to NEPA and various other federal statutes could also disrupt future efforts to capture and store emissions. Carbon capture and storage (CCS) is an innovative approach to mitigating greenhouse gas emissions, and it will be critical for achieving the climate change ambitions and goals that have been established by diverse stakeholders around the world. U.S leadership in CCS will help ensure the availability of abundant, reliable, and affordable domestic energy, while continuously driving down emissions.

According to the International Energy Agency:

*Carbon capture, utilisation and storage (CCUS) technologies offer an important opportunity to achieve deep carbon dioxide ($CO_2$) emissions reductions in key industrial processes and in the use of fossil fuels in the power sector. CCUS can also enable new clean energy pathways, including low-carbon hydrogen production, while providing a foundation for many carbon dioxide removal (CDR) technologies.*[22]

As it relates specifically to the offshore, the National Petroleum Council concluded that "One of the largest opportunities for saline formation storage in the United States can be found in federal waters, particularly in the Gulf of Mexico." *Meeting the Dual Challenge*, p. 27. This is also true as it pertains to state waters along the Gulf Coast. The U.S. Gulf of Mexico offshore region provides tremendous advantages for an emerging U.S. CCS sector. The Gulf of Mexico is characterized by vast geologic prospects for CO2 storage, extensive and established energy infrastructure along the Gulf Coast and throughout the outer continental shelf, a proximity to industrial centers for capturing emissions, and an assessable engineering and energy knowledge base and workforce, along with associated RD&D capabilities. The U.S. Gulf of Mexico could very well soon be the leader in CCS. Early projections show that 50 million tons of CO2 annually could be stored beneath the Gulf of Mexico by 2030, more than all the CCS currently operating globally. The Gulf's storage capacity could double by 2040.

It is also important to note that EPA's proposed power plant rule presumably would seek emissions reductions through the installation of carbon capture technologies at facilities and through the associated storage of the emissions in underground geologic formations. However, from a practical standpoint, for such a rule to be implemented, there will need to be a substantial increase in the capacity to store carbon dioxide in underground storage reservoirs and in the offshore region in particular. The federal government, and the U.S. Department of the Interior more specifically, will need to move forward with greater speed to develop regulations and leasing opportunities for offshore sequestration for the rule to be workable and to accommodate the potential storage of carbon dioxide to be captured under EPA's proposal. However, every

[22] https://www.iea.org/reports/the-role-of-co2-storage

such opportunity in the land of the federal bureaucracy is often accompanied by the threat of litigation. The build-out of the U.S. offshore carbon storage industry will depend upon certainty and predictability in the U.S. laws and regulations, as well as confidence that the courts will not step in and arbitrarily prevent projects from moving forward in a timely manner.

**NEPA Litigation and Lease Sale 257**

The litigation over Gulf of Mexico Lease Sale 257 is a prime example of the weaponization of NEPA and subsequent judicial overreach by the court. Lease Sale 257 was held November 17, 2021, with bids on 308 blocks for a high bid total of about $191 million. On January 27, 2022, Judge Rudolph Contreras, United States District Court for the District of Columbia, vacated the Record of Decision for Gulf of Mexico Lease Sale 257 and remanded the decision to the Bureau of Ocean Energy Management (BOEM) for further proceedings, to be determined at the discretion of the agency. Judge Rudolph Contreras faulted BOEM for not adequately considering additional greenhouse gases foreign countries would emit because of the lease sale, even as the agency had already considered and calculated the emissions that would result from fuel consumed downstream. Judge Contreras wrote that because Interior never formally awarded the leases to the companies that won the bids, there would be little hardship or confusion if the lease sale was invalidated. This reasoning is flawed because the government can easily redo its analysis consistent with the judge's findings. In fact, courts have routinely remanded such cases back to the government for additional work, rather than vacate the agency action altogether. It is also flawed because there is hardship and confusion resulting from the vacatur. A lease sale includes the release of confidential, proprietary business information that is released upon the conclusion of the sale. Companies cannot simply put this information back into the bottle. Furthermore, the invalidation of this lease sale creates a substantial gap in leasing opportunities for the United States to enhance its domestic energy security. The finding itself is specious because estimating future emissions from downstream activities is highly speculative and variable, and it is dependent upon various assumptions and modeling that is highly susceptive to manipulation. The courts – and the judge in this case – have gone from requiring NEPA analysis for impacts that occur far upstream or downstream from the approved federal activity to determining how the analysis should be conducted. This is well beyond the Congressional intent and scope of NEPA and constructively places the courts in a role that has been statutorily designated for federal agencies.

In moving forward with and holding Lease Sale 257, the Biden Administration affirmatively made the decision that the lease sale was in the national interest. In the Record of Decision signed by Principal Deputy Assistant Secretary Laura Daniel-Davis, the Administration determined "I have [] concluded that GOM Lease Sale 257, as described in this ROD and in the forthcoming Final Notice of Sale, is subject to adequate environmental safeguards and is consistent with the maintenance of competition and the meeting of national energy needs." The document further states "The decision to hold Lease Sale 257 recognizes the role that GOM oil and gas resources play in addressing the Nation's demand for domestic energy sources and fosters economic benefits, including employment, labor income, and tax revenues, which are highest in Gulf Coast States and also distributed widely across the United States." Yet, despite these clear, affirmative, and positive findings, the Administration made the decision to ***not*** appeal the decision of Judge Contreras, conceding that no plans were in place for future oil and

gas lease sales in the Gulf of Mexico. Lease Sale 257 was ultimately restored with the passage of the Inflation Reduction Act.

Among other things, Congressional action is warranted to make clear that there are limits to the scope of review under NEPA, to restrict the remedy to no more than remand, and to mandate deadlines for filing suit and for agencies to complete reconsideration. This will inject much greater certainty for investment in the wide swath of infrastructure and energy projects that will benefit the country.

**Conclusion**

The combination of government bureaucracy and ensuing litigation hampers our nation's ability to make the investments and build the projects for supplying the energy Americans rely upon to maintain a high quality of life. Companies must maneuver a web of federal agencies, statutes, and regulations every step of the way towards attempting to complete a project, only to end up in court where the project may be arbitrarily delayed or even canceled. Companies need certainty and predictability in the regulatory and legal system in order to commit the funding and resources to projects that often cost billions of dollars to construct. Some progress has been made through the passage of the debt ceiling bill, but further efforts at litigation reform are required to inject greater certainty into the federal process.

The U.S. economy relies upon affordable and reliable supplies of all forms of energy, including continued supplies of oil and natural gas. Continued U.S. offshore oil and gas development provides vast benefits and a sensible pathway for energy security for the next several decades. At the same time, the U.S. offshore sector is contributing to the development of low and zero carbon energy options, including offshore wind, hydrogen, and carbon removal technologies. The pathway toward investment in American energy projects must be streamlined so that we can truly harness the energy and innovation potential that lies before us in all of these activities. Unfortunately, even in a streamlined process, the pathway for investment continues to be riddled with the threat of litigation. In the federal system, no matter the project, companies must factor in the possibility that it could become mired in the muddy spokes of the court system. Whether it is roads and bridges, oil and gas, or wind and solar, excessive litigation serves to sideline investment and jobs and exacerbate inflationary impacts.

Thank you for the opportunity to testify on behalf of the offshore energy industry. NOIA and our members stand ready to work with the committee and all policy makers to ensure that Americans can rely upon an affordable and reliable energy system built upon strong pillars of energy, economic, national, and environmental security.

Very respectfully,

Erik Milito
President, National Ocean Industries Association