



***Via Electronic and Certified Mail***

November 2, 2021

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**RE: Review and Revision of Development and Production Plans for the Beta Unit on the Pacific Outer Continental Shelf**

Dear Secretary Haaland, Director Lefton, and Pacific Region Director Boren:

Pursuant to 43 U.S.C. § 1349(a)(2)(A), this letter serves as the Center for Biological Diversity's official notice of intent to sue the Secretary of the Interior and the Bureau of Ocean Energy Management (collectively, "BOEM") for violations of the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1331, *et seq.*, related to oil and gas activity at the Beta Unit on the Pacific Outer Continental Shelf ("OCS").

Offshore oil and gas drilling is inherently dirty and dangerous, as the recent spill from a pipeline connected to Platform Elly highlights all too well. It causes oil spills that kill a wide variety of wildlife, toxic air pollution that harms frontline communities, habitat destruction, and greenhouse gas pollution that exacerbates the climate crisis, among many other problems. And while all offshore oil and gas drilling is treacherous, the age of the infrastructure off California—some of which has been littering the Pacific Ocean for over half-a-century—heightens the numerous inherent risks. As such, BOEM must immediately begin phasing out this treacherous activity on the Pacific OCS and all other regions.

Yet rather than doing so, or—at the very least—ensuring continued offshore oil and gas activity on the Pacific OCS receives proper scrutiny under OCSLA, BOEM is allowing companies to operate under plans approved *four decades ago* despite a host of information demonstrating that those plans are woefully outdated and do not reflect current science, environmental and safety standards, or urgent need to transition off fossil fuel development. BOEM's ongoing failure to review and require revision or supplementation of plans governing the development and

production of offshore oil and gas from platforms at the Beta Unit not only threatens the marine environment and frontline communities with more oil spills, toxic pollution, and climate chaos, it violates BOEM's non-discretionary duty under OCSLA. That is particularly true in light of new information revealing that Beta Operating Company, LLC—one of the oil companies that operates platforms at the Beta Unit—is in line to receive \$11 million in royalty relief from the federal government so that it can drill four new wells off California.<sup>1</sup>

This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of OCSLA to the extent such notice is deemed necessary by a court. *See* 43 U.S.C. § 1349(a)(2)(A). If BOEM does not take action to remedy the violations detailed in this letter, the Center hereby provides notice of its intent to seek a judicial remedy.

## LEGAL BACKGROUND

OCSLA prescribes a framework under which the Secretary of the Interior may lease areas of the OCS for purposes of exploring and developing the oil and gas deposits of the OCS's submerged lands. 43 U.S.C. § 1331, *et seq.* Specifically, there are “four distinct statutory stages to developing an offshore oil well: (1) formulation of a 5- year leasing plan by the Department of the Interior; (2) lease sales; (3) exploration by the lessees; [and] (4) development and production. Each stage involves separate regulatory review that may, but need not, conclude in the transfer to lease purchasers of rights to conduct additional activities on the OCS.” *Sec’y of the Interior v. California*, 464 U.S. 312, 337 (1984). The agency must comply with NEPA and other environmental laws at each stage of the process. *E.g.*, *Village of False Pass v. Clark*, 733 F.2d 605, 609 (9th Cir. 1984).

At the fourth stage of the process, OCSLA requires lessees to submit development and production plans (“DPPs”) to the Secretary. 43 U.S.C. § 1351(a); *Sec’y of the Interior*, 464 U.S. at 337. The DPP must include a description of the specific work to be performed, all facilities and operations located on the OCS, the environmental safeguards that will be implemented and how those safeguards will be implemented, an expected rate of development and production and a time schedule for performance, among other requirements. 43 U.S.C. § 1351(c).

OCSLA's implementing regulations further define the requisite contents of a DPP. In particular, DPPs must also include detailed descriptions of the types, quantity, and composition of wastes that will be generated by development and production activities; how such wastes will be disposed of; the frequency, duration and amount of emissions of VOCs and other pollutants that will be generated by development and production activities; and mitigation measures designed to avoid or minimize the take of protected species if there is reason to believe that protected species may be incidentally taken by planned development and production activities, among other information. 30 C.F.R. §§ 550.241–.262.

In addition, OCSLA vests the Secretary with the authority to require oil and gas companies to obtain a permit prior to engaging in drilling activities under an approved DPP. OCSLA's

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<sup>1</sup> *See, e.g.*, Paul Rosenberg, OC Oil Spill Opens Window On Systemic Failures, Oct. 28, 2021, <https://www.randomlengthsnews.com/archives/2021/10/28/oc-oil-spill-opens-window-on-systemic-failures/36462?v=7516fd43adaa>.

implementing regulations require an oil company to obtain approval of an application for permit to drill (“APDs”) prior to conducting any drilling activities under an approved DPP. 30 C.F.R. § 550.281(a). The regulations specify that the activities proposed in an APD “must conform to the activities described in detail” in an approved DPP. *Id.* § 550.281(b). The regulations also provide for approval of drilling activities via approval of an application for permit to modify (“APM”) when a company intends to revise its drilling plan. *Id.* § 250.465(a).

OCSLA also mandates that the Secretary review DPPs. 43 U.S.C. § 1351(h)(3). The reviews “shall be based on changes in available information and other onshore or offshore conditions” that impact development and production. *Id.* OCSLA regulations also require the review of DPPs and state that “[t]he frequency and extent of [such] review[s] will be based on the significance of any changes in available information and onshore or offshore conditions affecting, or affected by, the activities in [an] approved . . . DPP.” 30 C.F.R. § 550.284(a). If such review indicates that the DPP should be revised to ensure the plan complies with OCSLA, the Secretary must require such revision. 43 U.S.C. § 1351(h)(3).

OCSLA regulations specifically require revision of DPPs when a company proposes to, *inter alia*, change the type of production or significantly increase the volume of production; increase the emissions of an air pollutant to a degree that exceeds the amount specified in the approved plan; or significantly increase the amount of solid or liquid wastes to be handled or discharged. *Id.* § 550.283(a). The regulations also require a company to supplement a DPP when it proposes to conduct activities that require approval of a license or permit which is not described in the approved DPP. *Id.* § 550.283(b).

Finally, OCSLA gives the Secretary the authority to order the suspension of all development and production activities “if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life) . . . or to the marine, coastal, or human environment” among other reasons. 43 U.S.C. § 1334(a)(1); *see also* 30 C.F.R. § 250.172 (OCSLA regulations authorizing suspensions of operations for the same reason).

Each of these statutory provisions and requirements helps to ensure Congress’s goal in OCSLA that, *inter alia*, “environmental safeguards” are in place and helps to “balance orderly energy resource development with protection of the human, marine, and coastal environments.” 43 U.S.C. §§ 1332(3), 1802(2)(B).

The Secretary of the Interior has delegated its authority under OCSLA to BOEM and the Bureau of Safety and Environmental Enforcement (“BSEE”). BOEM is responsible for managing and approving DPPs. BSEE is responsible for enforcing safety and environmental regulations, and reviewing, approving, and compiling conditions for APDs and APMs.

## **FACTUAL BACKGROUND**

On October 2, 2021, Beta Offshore reported to the National Response Center that its pipeline from Platform Elly to shore had spilled oil. COA 10-04-21. Current estimates are that the spill

dumped between 25,000 and 132,000 gallons of oil into the ocean.<sup>2</sup> The pipeline serviced offshore oil and gas drilling and processing platforms authorized by BOEM and the rupture occurred in federal waters off Huntington Beach.<sup>3</sup> The oil slick spread over an area greater than 25 square miles of ocean, many miles of beach in Orange County have been oiled; and the state closed numerous beaches and fisheries in the area.<sup>4</sup> Although it will be many months and years before the true wildlife toll is known, there have already been significant impacts to wildlife and sensitive marine and coastal habitat. For example, seven threatened western snowy plovers have been rescued by wildlife experts, endangered whales have been observed swimming through the slick, and over 100 other birds and mammals have been found killed or oiled.<sup>5</sup>

The spill is a horrific reminder of the harms that offshore oil and gas drilling can cause—and has been causing for far too long. Indeed, drilling off California has been wreaking havoc on our environment for decades.

There are currently 23 platforms on the Pacific Outer Continental Shelf from which oil drilling and extraction activities occur at 14 oil and gas fields. Twenty-two of the platforms are production platforms while one of them is a processing platform. Oil companies installed the platforms between 1967 and 1989, and the first production began in 1969. While some of these platforms are on leases that have expired and cannot be renewed, and the platforms will soon enter the decommissioning phase, the platforms drilling from the Beta Unit are not among them.<sup>6</sup>

There are three offshore production platforms from which drilling at the Beta Unit occurs: Platforms Ellen, Edith, and Eureka. Platform Ellen was installed in January 1980, Platform Edith was installed in January 1983, and Platform Eureka installed in July 1984.<sup>7</sup> Production began from each of these platforms between January 1981 and March 1985. BSEE's database lists dozens of instances of non-compliance with environmental and safety regulations at these platforms since 2010 alone.<sup>8</sup>

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<sup>2</sup> See, e.g., Associated Press, Coast Guard: California oil spill likely 25,000 gallons, Oct. 14, 2021, <https://abcnews.go.com/US/wireStory/coast-guard-california-oil-spill-25000-gallons-80585324>.

<sup>3</sup> *Id.*

<sup>4</sup> See, e.g., Associated Press, Beaches reopening after massive oil spill in Southern California, Oct. 11, 2021, <https://www.nbcnews.com/news/us-news/beaches-reopening-after-massive-oil-spill-southern-california-n1281220>.

<sup>5</sup> Oiled Wildlife Care Network, Pipeline P00547 Incident, <https://owcn.vetmed.ucdavis.edu/pipeline-p00547-incident> (updated Nov. 1, 2021).

<sup>6</sup> See, e.g., A Study for the Bureau of Safety and Environmental Enforcement (BSEE): Decommissioning Cost Update for Pacific Outer Continental Shelf Region (POCSR) Facilities Volume 1, Sept. 2020 at ES-i, <https://www.bsee.gov/sites/bsee.gov/files/vol-1-a-study-for-the-bureau-of-safety-and-environmental-enforcement-bsee-final-9-10-2020.pdf>; 86 Fed. Reg. 39,055 (July 23, 2021).

<sup>7</sup> E.g., BOEM, Pacific OCS Region Map, <https://www.boem.gov/sites/default/files/documents/newsroom/POCSR-Map.pdf> (updated May 2021).

<sup>8</sup> BSEE, Beta INC History Since 2010, Oct. 13, 2021, <https://www.bsee.gov/sites/bsee.gov/files/notification-of-incidents-of-non-compliance-incs/beta-inc-data-10-13-21.pdf>.

BOEM's predecessor agency originally approved the DPP for drilling from the Beta Unit from Platform Ellen (and processing at Platform Elly) in 1980 based on a plan submitted in 1977.<sup>9</sup> It subsequently approved another DPP for drilling from Platform Edith in 1982;<sup>10</sup> an amendment to the original DPP for the Beta Unit to allow for the installation of Platform Eureka in 1984;<sup>11</sup> and subsequently approved another amendment to allow the drilling of an exploratory well from Platform Eureka in 1985.<sup>12</sup>

A slew of new information indicates that those plans are woefully out of date, increasing the numerous harms inherent in offshore drilling activities. For example, the DPPs and associated environmental analysis estimated production from some of these platforms would cease in 2007 and the wells and platforms would be abandoned in 2008.<sup>13</sup> Yet, more than a decade later, the platforms are still active and have not been abandoned. This means that the overall level of production—and associated volume of air and water pollution—may be significantly larger and more harmful than provided for in the DPPs.

And numerous changes have been made on the platforms, including for example the installation of “eight 200-kW Capstone microturbine generators and associated electrical and process support equipment” at Platform Edith.<sup>14</sup> And operators at the Beta Unit are now flaring—emitting 95,226 million cubic feet of gas from January 2015 to August 2018 alone.<sup>15</sup>

The DPP for the Beta Unit stated that project pipelines would be designed to withstand 100-year storm to prevent movement, designed to prevent corrosion, and that these and other measures make an oil spill unlikely.<sup>16</sup> The recent oil spill highlights how this assumption is wrong. Other new information also demonstrates how this assumption is incorrect and must be reexamined. For example, according to scientists, aging poses risks of corrosion, erosion and fatigue stress to

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<sup>9</sup> Shell Oil, Plan of Development of the Beta Unit, Oct. 1977, <https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/1977-DPP.pdf>; MMS, Plan of Development OCS-P 0300 & P 0301, Jan. 3, 1980, [https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP\\_1980-DPP-POD.pdf](https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP_1980-DPP-POD.pdf).

<sup>10</sup> MMS, Development and Production Plan – OCS-P 0296, Platform Edith; Chevron USA, Inc., Operator, July 12, 1982, <https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/1982-07-Supplemental-DPP-Approval.pdf>; MMS, OCS Environmental Assessment, Platform Edith, July 8, 1982, [https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP\\_1981-04-15-EA-Plan-of-Development-Production.pdf](https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP_1981-04-15-EA-Plan-of-Development-Production.pdf).

<sup>11</sup> MMS, Beta Unit, Platform Eureka, June 4, 1984, [https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP\\_1984-Amendment-of-Beta-POD-Approval.pdf](https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP_1984-Amendment-of-Beta-POD-Approval.pdf).

<sup>12</sup> MMS, Amendment of Beta Plan of Development, June 14, 1985, [boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP\\_1985-Amendment-POD-Approval.pdf](https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP_1985-Amendment-POD-Approval.pdf).

<sup>13</sup> *E.g.*, MMS, OCS Environmental Assessment, Platform Edith, July 8, 1982, at 3, [https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP\\_1981-04-15-EA-Plan-of-Development-Production.pdf](https://www.boem.gov/sites/default/files/about-boem/BOEM-Regions/Pacific-Region/DPPs/DPP_1981-04-15-EA-Plan-of-Development-Production.pdf).

<sup>14</sup> BSEE Letter to DCOR, LLC Re: 2018 Surface Commingling and Measurement Application, Sept. 20, 2018.

<sup>15</sup> FOIA Response; see attached spreadsheet.

<sup>16</sup> Beta Unit Plan of Development at 7-4; OCS EA Platform Edith at 44 – 45.

subsea pipelines.<sup>17</sup> Subsea pipeline corrosion appears to accelerate over time,<sup>18</sup> and can act synergistically with fatigue stress to increase the rate of crack propagation.<sup>19</sup> Marine environments are especially known to produce significant corrosion on steel surfaces, and when a steel structure is at or beyond its elastic limit, the rate of corrosion increases 10 to 15 percent.<sup>20</sup> One offshore pipeline study found that after 20 years the annual probability of pipeline failure increases rapidly, with values in the range of 0.1 to 1.0, which equates to a probability of failure of 10 to 100 percent per year.<sup>21</sup>

Moreover, shipping navigation, traffic, and hazards have changed significantly rendering the DPP woefully outdated. The DPP for the Beta Unit notes that “[w]hile the proposed platform development plan is within the Gulf of Santa Catalina Traffic Separation Scheme, it is clear of both traffic lanes and their buffer zones.”<sup>22</sup> The DPP for Platform Edith also acknowledges that it “is located in the center of the maritime Traffic Separation Scheme”—the shipping lane for Long Beach.<sup>23</sup> One theory of the source of the pipeline rupture is that a ship’s anchor may have moved the pipeline.<sup>24</sup> Shipping traffic has increased substantially since the platforms were built in shipping lanes.<sup>25</sup> Another significant change is that ships waiting to call on Long Beach Port anchor for extended periods of time and the area around the platforms has become congested.<sup>26</sup> Additionally, ships are much larger requiring heavier anchors and different navigation safety.<sup>27</sup> Accordingly, shipping traffic poses a risk to oil and gas infrastructure.

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<sup>17</sup> Petroleum Safety Authority Norway. 2006. Material Risk – Ageing offshore installations. Prepared by Det Norske Veritas on request from Petroleum Safety Authority Norway. Available at <http://www.psa.no/report-archive/category1033.html>.

<sup>18</sup> Mohd, M.H. and J.K. Paik, Investigation of the corrosion progress characteristics offshore oil well tubes, 67 Corrosion Science 130-141 (2013).

<sup>19</sup> PSA Norway 2006.

<sup>20</sup> Mohd and J.K. Paik 2013; A. Igor, R.E. Melchers, Pitting corrosion in pipeline steel weld zones, 53:12 Corros. Sci. 4026–4032 (2011); R.E. Melchers, M. Ahammed, R. Jeffrey, G. Simundic, Statistical characterization of surfaces of corroded, 23 Mar. Struct. 274–287 (2010).

<sup>21</sup> Bea, R., C. Smith, B. Smith, J. Rosenmoeller, T. Beuker, and B. Brown. 2002. Real-time Reliability Assessment & Management of Marine Pipelines. 21st International Conference on Offshore Mechanics & Arctic Engineering. ASME.

<sup>22</sup> Beta Unit Plan of Development at 4-6.

<sup>23</sup> Platform Edith Development and Production Plan at IV-13.

<sup>24</sup> *Supra*, note 2.

<sup>25</sup> *See, e.g.*, Tournadre, J., Anthropogenic pressure on the open ocean: The growth of ship traffic revealed by altimeter data analysis 41 Geo-phys. Res. Lett. 7924–7932 (2014) (noting worldwide ship traffic has increased by 300 percent since 1992).

<sup>26</sup> Dani Anguiano, Backlog of cargo ships at southern California ports reaches an all-time high, The Guardian, Oct. 20, 2021, <https://www.theguardian.com/business/2021/oct/20/supply-chain-crisis-california-ports-cargo-ships>.

<sup>27</sup> *See, e.g.*, Niraj Chokshi, Why the World’s Container Ships Grew So Big, New York Times, Mar. 31, 2021, <https://www.nytimes.com/2021/03/30/business/economy/container-ships-suez-canal.html>.

The DPP for the Beta Unit also stated that the platforms would be designed to withstand a particular wave height and frequency based on historical information regarding storms.<sup>28</sup> However, new information indicates that climate change and ocean warming is increasing the frequency of extreme weather events and is increasing wave power as well. For example, one study determined that ocean warming has caused an increased in wave power by 2.3 percent per year since 1994.<sup>29</sup> Another study found climate change is causing faster winds, leading to larger wind-driven waves.<sup>30</sup>

Indeed, a myriad of other new information relevant to the climate emergency and continued offshore oil development has come to light. For instance, the Fourth National Climate Assessment issued in 2018 reported that “fossil fuel combustion accounts for approximately 85% of total U.S. greenhouse gas emissions,”<sup>31</sup> which is “driving an increase in global surface temperatures and other widespread changes in Earth’s climate that are unprecedented in the history of modern civilization.”<sup>32</sup>

Also in 2018, the Intergovernmental Panel on Climate Change (“IPCC”) issued a *Special Report on Global Warming of 1.5°C* that quantified the devastating harms that would occur at 2°C temperature rise versus 1.5°C, highlighting the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth.<sup>33</sup> The report concludes that pathways to limit warming to 1.5°C with little or no overshoot require “a rapid phase out of CO<sub>2</sub> emissions and deep emissions reductions in other GHGs and climate forcers.”<sup>34</sup> In pathways consistent with limiting warming to 1.5°C, global anthropogenic CO<sub>2</sub> emissions must decline by about 45 percent below 2010 levels by 2030 and reach near zero around 2050.<sup>35</sup>

Similarly, the IPCC *Climate Change 2021* report concludes that global warming will exceed 1.5°C and 2°C by 2100 unless we make immediate, deep reductions in CO<sub>2</sub> and other greenhouse

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<sup>28</sup> Beta Unit Plan of Development at 4-4.

<sup>29</sup> Borja G. Reguero, A recent increase in global wave power as a consequence of oceanic warming, 10 Nat. Commun. 205 (2019).

<sup>30</sup> Ian Young, et al., Multiplatform evaluation of global trends in wind speed and wave height, Science, Vol 364, Issue 6440, pp. 548-552 (2019).

<sup>31</sup> U.S. Global Change Research Program, Impacts, Risks, and Adaptation in the United States, Fourth National Climate Assessment, Vol. II (2018), <https://nca2018.globalchange.gov/> at 60.

<sup>32</sup> *Id.* at 39.

<sup>33</sup> Intergovernmental Panel on Climate Change, Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (2018) [Masson-Delmotte, V. et al. (eds.)], <https://www.ipcc.ch/sr15/>.

<sup>34</sup> Rogelj, Joeri et al., Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development. In: Global Warming of 1.5°C, An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (2018), <https://www.ipcc.ch/sr15/> at 112.

<sup>35</sup> *Id.* at 95, Figure 2.5, Figure 2.6; also at Summary for Policymakers at 12-14.

gas emissions.<sup>36</sup> Only the most stringent emissions reduction scenario—SSP1-1.9 in which global emissions fall steeply in the near-term, reach net zero in 2050, and become net negative afterward—is consistent with a 1.5°C climate limit. In this low-emissions SSP1-1.9 scenario, global average surface temperature is projected to reach 1.5°C above pre-industrial in the near-term (2021-2040), overshoot and peak at 1.6°C in the mid-term (2041-2060), and drop down to 1.4°C in the long-term (2081-2100).<sup>37</sup>

Indeed, an overwhelming scientific consensus has concluded that new fossil fuel production and infrastructure must be halted and much existing production must be phased out to limit global temperature rise to 1.5°C and avoid catastrophic damage throughout the country and the world.<sup>38</sup> The oil and gas fields and coal mines *already in development* contain enough carbon to exceed a 1.5°C limit.<sup>39</sup> The United Nations *Production Gap Report* found that fossil fuel producers are planning to produce more than double the coal, oil and gas by 2030 than is consistent with limiting warming to 1.5°C.<sup>40</sup> U.S. oil and gas production is poised to undergo the largest absolute increase globally by 2030, totaling more than twice as much as any other country.<sup>41</sup> In fact, the U.S. fossil fuel industry is on track to account for 60 percent of the world’s projected growth in oil and gas production by 2030, which would exhaust nearly half of the world’s total allowance for oil and gas production consistent with a 1.5°C limit.<sup>42</sup>

Governments must make steep reductions of roughly 6 percent per year in fossil fuel production between 2020 and 2030 to limit warming to 1.5°C,<sup>43</sup> including average global declines of 9.5

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<sup>36</sup> Intergovernmental Panel on Climate Change, Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2021)*, <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/> at SPM-17.

<sup>37</sup> IPCC 2021 at Table SPM.1.

<sup>38</sup> Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, (V. Masson-Delmotte, et al. eds., 2018), <https://www.ipcc.ch/sr15/>.

<sup>39</sup> Oil Change International, *The Sky’s Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production* (September 2016), <http://priceofoil.org/2016/09/22/the-skys-limit-report/> at Table 3; Oil Change International, *Drilling Toward Disaster: Why U.S. Oil and Gas Expansion Is Incompatible with Climate Limits* (2019), <http://priceofoil.org/drilling-towards-disaster>.

<sup>40</sup> SEI, IISD, ODI, E3G, and UNEP, *The Production Gap: The discrepancy between countries’ planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (2020), <http://productiongap.org/>; SEI, et al., *The Production Gap Report 2021* (2021), <http://productiongap.org/2021report>.

<sup>41</sup> Achakulwisut, Ploy & Peter Erickson, *Trends in fossil fuel extraction: Implications for a shared effort to align global fossil fuel production with climate limits*, Stockholm Environment Institute Working Paper (April 2021), [www.sei.org/publications/trends-in-fossil-fuel-extraction/](http://www.sei.org/publications/trends-in-fossil-fuel-extraction/) at Figure 3.

<sup>42</sup> Oil Change International, *Drilling Toward Disaster: Why U.S. Oil and Gas Expansion Is Incompatible with Climate Limits* (2019), <http://priceofoil.org/drilling-towards-disaster>.

<sup>43</sup> SEI, IISD, ODI, E3G, and UNEP, *The Production Gap: The discrepancy between countries’ planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (2020), <http://productiongap.org/>.



percent per year for coal, 8.5 percent for oil, and 3.5 percent for gas.<sup>44</sup> Globally at least 58 percent of oil reserves and 59 percent of gas reserves must be kept in the ground in order to even have a 50-50 chance of meeting a 1.5°C limit.<sup>45</sup> In short, to limit warming to 1.5°C, governments must immediately begin a managed decline that halts the approval of new fossil fuel production and infrastructure<sup>46</sup> and phases out production in many existing fields and mines before their reserves are fully depleted. The United States has a responsibility to undertake a more rapid and aggressive managed decline than globally because of our country's dominant role in driving the climate crisis and its harms, combined with its greater financial resources and technical capabilities to implement a just fossil fuel phase out and rapid transition to clean, renewable energy.<sup>47</sup>

In short, the IPCC Assessment Reports, U.S. National Climate Assessments, and tens of thousands of studies make clear that fossil-fuel driven climate change is a “code red for humanity,” and that every additional ton of CO<sub>2</sub> and fraction of a degree of temperature rise matters.<sup>48</sup>

And production off California from the Beta Unit matters too. Studies have demonstrated, for example, that every barrel of federal oil left undeveloped would result in nearly half a barrel reduction in net oil consumption, with associated reductions in greenhouse gas emissions.<sup>49</sup>

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<sup>44</sup> Teske, Sven & Sarah Niklas, Fossil Fuel Exit Strategy: An orderly wind down of coal, oil and gas to meet the Paris Agreement (June 2021), <https://fossilfuel treaty.org/exit-strategy>

<sup>45</sup> Welsby, Dan et al., Unextractable fossil fuels in a 1.5 °C world, 597 *Nature* 230 (2021), <https://doi.org/10.1038/s41586-021-03821-8>.

<sup>46</sup> Tong, Dan et al., Committed emissions from existing energy infrastructure jeopardize 1.5°C climate target, 572 *Nature* 373 (2019); Pfeiffer, Alexander et al., Committed emissions from existing and planned power plants and asset stranding required to meet the Paris Agreement, 13 *Environmental Research Letters* 054019 (2018).

<sup>47</sup> Muttitt, Greg & Sivan Kartha, Equity, climate justice and fossil fuel extraction: principles for a managed phase out, 20 *Climate Policy* 1024 (2020); U.S. Climate Action Network, *The U.S. Climate Fair Share* (2020), <https://usfairshare.org/background/>.

<sup>48</sup> United Nations, Secretary-General's statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment, Aug. 2, 2021, <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>; see also Harvey, Fiona, *No new oil, gas or coal development if world is to reach net zero by 2050, says world energy body*, *Guardian*, May 18, 2021, <https://www.theguardian.com/environment/2021/may/18/no-new-investment-in-fossil-fuels-demands-top-energy-economist> (“If governments are serious about the climate crisis, there can be no new investments in oil, gas and coal, from now – from this year.”).

<sup>49</sup> See, e.g., P. Erickson and M. Lazarus, *How would phasing out US federal leases for fossil fuel extraction affect CO<sub>2</sub> emissions and 2°C goals?*, Stockholm Environment Institute, Working Paper No. 2016-2 (2016); P. Erickson and M. Lazarus, *Impact of the Keystone XL Pipeline on Global Oil Markets and Greenhouse Gas Emissions*, 4 *Nature Climate Change* 778 (2016); see also P. Erickson, *Rebuttal: Oil Subsidies—More Material for Climate Change Than You Might Think* (Nov. 2, 2017); United Nations Environment Programme, *Emissions Gap Report 2019*, at 25, 26; United Nations Environment Programme, et al., *The Production Gap: The discrepancy between countries' planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C* (2019), at 4, 14; Jason Bordoff and Trevor Houser, *Navigating the U.S. Oil Export Debate*, Columbia SIPA Center on Global Energy Policy, Jan. 2015.

## LEGAL VIOLATIONS: BOEM MUST REVIEW AND REQUIRE REVISION OR SUPPLEMENTATION OF THE DPPS FOR THE BETA UNIT

OCSLA expressly requires the Secretary of the Interior to periodically review approved DPPs, and to require revision of such plans if its review determines revision is necessary. 43 U.S.C. § 1351(h)(3). Similarly, OCSLA's implementing regulations also require "periodic[] review" of DPPs and state that such review may lead to a requirement to revise or supplement a DPP. 30 C.F.R. § 550.284(a), (b). The regulations state that the frequency of such reviews will depend "on the significance of any changes in available information and onshore or offshore conditions" affecting activities approved under a DPP. *Id.* § 550.284(a).

The circumstances triggering the requirement to revise such plans include a change in the type of production or a significant increase in the volume of production; an increase in the emissions of an air pollutant to a quantity that exceeds the amount specified in the approved plan; or a significant increase in the amount of solid or liquid wastes to be handled or discharged, among others. *Id.* § 550.283(a). The regulations also require a company to supplement a DPP when it proposes to conduct activities that require approval of a license or permit which is not described in the approved DPP. *Id.* § 550.283(b).

The Secretary of the Interior has delegated this particular duty to BOEM. *See id.* § 550.284. But, on information and belief, BOEM has not reviewed, nor required revision or supplementation of, the DPPs for the platforms at the Beta Unit. This is despite the fact that the approved DPPs *are four decades old*, and a host of highly relevant new information impacting development and production exists.

For example, BOEM's duty to review the DPPs for oil and gas leases at the Beta Unit—from which drilling at Platforms Edith, Ellen, and Eureka occurs<sup>50</sup>—is triggered by new information regarding the threat of oil spills and other accidents from these platforms and their associated pipelines from corrosion and increased wave action; and new information regarding the climate crisis and urgent need to stop approving new oil drilling permits and phase out oil production. BOEM must also review the DPPs considering the platforms, pipelines, and wells have outlived their expected lifespan.

BOEM's duty to require revision of the DPPs is also triggered because ongoing drilling at a field and from platforms that have outlived their expected lifespans significantly increases the degree and composition of air emissions, significantly increases the amount and composition of wastewater, and significantly increases the volume of production. BOEM's failure to review and require revision or supplementation of the DPPs for the Beta Unit therefore violates its nondiscretionary duties under OCSLA. 43 U.S.C. § 1351(h)(3).

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<sup>50</sup> The leases include Lease OCS-P 0296 operated by DCOR, LLC and Leases OCS-P 0300 and OCS-P 0301 operated by Beta Operating Company, LLC. *See, e.g.*, BOEM, Development and Production Plans – Pacific, <https://www.boem.gov/regions/pacific-ocs-region/oil-gas/development-and-production-plans-pacific>.

## CONCLUSION

For the foregoing reasons, BOEM must review and require revision of the DPPs for the Beta Unit. If BOEM fails to do so, the Center will be forced to take judicial action to force compliance.

Please contact us if you have any questions or would like to discuss this matter.

Sincerely,

/s/ Kristen Monsell

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