No.

In the Supreme Court of the United States

AMERICAN PETROLEUM INSTITUTE, ET AL., PETITIONERS

v.

ENVIRONMENTAL DEFENSE CENTER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

STEVEN J. ROSENBAUM
BRADLEY K. ERVIN
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001

M. RANDALL OPPENHEIMER
DAWN SESTITO
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071

JONATHAN A. HUNTER
JONES WALKER LLP
201 St. Charles Avenue,
Suite 5100
New Orleans, LA 70170

STEPHEN W. WIEGAND
LISKOW & LEWIS, APLC
701 Poydras Street,
Suite 5000
New Orleans, LA 70139

KANNON K. SHANMUGAM
Counsel of Record
BRIAN M. LIPSHUTZ
YISHAI SCHWARTZ
MATTHEW J. DISLER
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

ANDREW M. GROSSMAN
KRISTIN A. SHAPIRO
BAKER & HOSTETLER LLP
1050 Connecticut
Avenue, N.W.
Washington, DC 20036

L. POE LEGGETTE
BAKER & HOSTETLER LLP
811 Main Street, Suite 1100
Houston, TX 77002

QUESTIONS PRESENTED

1. Whether a programmatic environmental assessment and finding of no significant impact regarding the hypothetical future approval of permits for oil and gas well-stimulation treatments constitute "final agency action" for purposes of the Administrative Procedure Act, 5 U.S.C. 704.

2. Whether the Coastal Zone Management Act, 16 U.S.C. 1456, requires the Department of Interior separately to review oil and gas well-stimulation treatments for consistency with California's coastal zone management program, where private parties applying to conduct those treatments must already certify that consistency.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners American Petroleum Institute, Exxon Mobil Corporation, and DCOR, LLC, were intervenors-defendants in the district court and appellants-cross-appellees in the court of appeals. Petitioner American Petroleum Institute has no parent corporation, and no publicly held company owns 10% or more of its stock. Petitioner Exxon Mobil Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock. Petitioner DCOR, LLC, has no parent corporation, and no publicly held company owns 10% or more of its stock.

Respondents Environmental Defense Center; Santa Barbara Channelkeeper; People of the State of California ex rel. Rob Bonta, Attorney General of California; California Coastal Commission; Center for Biological Diversity; and Wishtoyo Foundation were plaintiffs in the district court and appellees-cross-appellants in the court of appeals.

Respondents Department of the Interior; Deb Haaland, Secretary of the Interior; Bureau of Ocean Energy Management; Elizabeth Klein, Director, Bureau of Ocean Energy Management; Richard Yarde, Regional Supervisor, Office of the Environment, Bureau of Ocean Energy Management; Douglas Boren, Pacific Regional Director, Bureau of Ocean Energy Management; Bureau of Safety and Environmental Enforcement; Kevin M. Sligh, Sr., Director, Bureau of Safety and Environmental Enforcement; David Fish, Chief, Environmental Compliance Division, Bureau of Safety and Environmental Enforcement; and Bruce Hesson, Director, Pacific OCS Region, Bureau of Safety and Environmental Enforcement, were defendants in the district court and appellants-cross-appellees in the court of appeals.

RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

Environmental Defense Center, et al. v. *Bureau of Ocean Energy Management, et al.*, Civ. No. 16-8418 (July 14, 2017) (order on motion to dismiss)

Environmental Defense Center, et al. v. *Bureau of Ocean Energy Management, et al.*, Civ. No. 16-8418 (Nov. 9, 2018) (order on cross-motions for summary judgment)

United States Court of Appeals (9th Cir.):

Environmental Defense Center, et al. v. *Bureau of Ocean Energy Management, et al.*, Nos. 19-55526, 19-55707, 19-55708, 19-55718, 19-55725, 19-55727 & 19-55728 (June 3, 2022)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Page

Cases—continued:

Page

Statutes and regulations:

Page

Miscellaneous—continued:

In the Supreme Court of the United States

No.

AMERICAN PETROLEUM INSTITUTE, ET AL., PETITIONERS

v.

ENVIRONMENTAL DEFENSE CENTER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The American Petroleum Institute; Exxon Mobil Corporation; and DCOR, LLC, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-67a) is reported at 36 F.4th 850. The opinion of the district court denying the motions to dismiss (App., *infra*, 68a-91a) is not reported but is available at 2017 WL 10607254. The opinion of the district court granting in part and denying in part the cross-motions for summary judgment (App., *infra*, 92a-157a) is not reported but is available at 2018 WL 5919096.

JURISDICTION

The judgment of the court of appeals was entered on June 3, 2022. The petitions for rehearing were denied on September 26, 2022 (App., *infra*, 158a-167a). On December 15, 2022, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including January 25, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of the Administrative Procedure Act, 5 U.S.C. 704, and the Coastal Zone Management Act, 16 U.S.C. 1456, are reproduced in the appendix to this petition (App., *infra*, 168a-170a).

STATEMENT

This case presents two questions of exceptional legal and practical importance concerning the Outer Continental Shelf and the interpretation of the Administrative Procedure Act (APA) and the Coastal Zone Management Act (CZMA). Congress has declared a national policy of "expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade." 43 U.S.C. 1802(1).

For almost a decade, environmental groups and the State of California have sought to thwart that policy through premature litigation. They here seek to challenge the Department of the Interior's programmatic environmental assessment (EA) and finding of no significant impact (FONSI) regarding hypothetical future approvals of permits to conduct well-stimulation treatments on the Pacific Outer Continental Shelf. No one is currently au-

thorized to perform well-stimulation treatments; no permit applications are currently pending; and no agency has taken any action based on the EA and FONSI.

In the decision below, however, the Ninth Circuit green-lit challenges to potential agency actions long before those actions were ripe for consideration. The Ninth Circuit also interpreted the CZMA in a way that imposes redundant obligations on federal agencies and private permittees. As the federal government has argued, those two holdings, which threaten to saddle the courts with premature challenges to agency policymaking and stall vital energy projects, are plainly wrong, and they cry out for this Court's review.

First, the Ninth Circuit erroneously held that a programmatic EA and FONSI constitute final agency action. Under the APA, only final agency action is subject to judicial review. See 5 U.S.C. 704. The Court has identified a two-part test for determining whether an agency action is final: first, "the action must mark the consummation of the agency's decisionmaking process," and second, "the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett* v. *Spear*, 520 U.S. 154, 177-178 (1997) (internal quotation marks and citations omitted). Here, the mere study of the environmental effects of hypothetical future permit approvals for drilling does not mark the consummation of the Department's decisionmaking or create any legal consequences, rights, or obligations.

Second, the Ninth Circuit applied the wrong provision of the CZMA. That statute encourages States to develop coastal zone management programs for the waters between their coasts and the Outer Continental Shelf. The CZMA contains a residual requirement that, when a "Federal agency activity" "affects any land or water use or natural resource of the coastal zone," the federal

agency undertaking that action must provide the State with a "determination" that it is consistent with the State's program. 16 U.S.C. 1456(c)(1)(A), (C). In paragraph (3) of the same subsection, however, the CZMA specifically provides that, when a federal agency grants a "license or permit" for oil and gas exploration, development, or production that affects the coastal zone, the applicant—not the agency—must prepare a certification of consistency with the State's program. 16 U.S.C. 1456 (c)(3). The CZMA makes clear that federal agency activity is "subject to [the residual requirement] unless it is subject to paragraph (2) or (3)." 16 U.S.C. 1456(c)(1)(C). The Ninth Circuit nonetheless held that the Department was required to prepare a consistency determination when studying the environmental effects of hypothetical future permits, even if the applicants for those permits would be required to undertake consistency review of their own.

The Ninth Circuit's decision has enormous practical and legal significance. The Ninth Circuit upheld an injunction against *all* new permits for well-stimulation treatments on the Pacific Outer Continental Shelf—a region that has produced more than 1.3 billion barrels of oil and 1.8 trillion cubic feet of natural gas and was recently estimated to have approximately 10 billion barrels of untapped oil and 16 trillion cubic feet of untapped natural gas. If allowed to stand, the decision below will undermine the development of oil, natural gas, and renewable energy on the entire Outer Continental Shelf. And more broadly, the decision will unleash premature judicial review of numerous intermediate procedural decisions by agencies, burdening both the judiciary and the executive branch. Because the Ninth Circuit has misinterpreted two vitally important federal statutes, and because the

questions presented are of exceptional importance, the petition for a writ of certiorari should be granted.

A. Background

1. This case concerns the Outer Continental Shelf, an area of exclusive federal jurisdiction. See 43 U.S.C. 1333(a)(1)(A). The Outer Continental Shelf begins several miles off the coast and extends to the boundary of United States territorial waters. See 43 U.S.C. 1301(a), 1312, 1331(a). It spans approximately 2.5 billion acres, and it contains enormous reserves of oil, natural gas, and other minerals. Bureau of Ocean Energy Management, Fact Sheet: About BOEM 2 (July 2022) <tinyurl.com/boem-fact-sheet>. Congress has recognized that the Outer Continental Shelf is a "vital national resource" that "should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs." 43 U.S.C. 1332(3).

Consistent with that policy, Congress adopted in the Outer Continental Shelf Lands Act a four-stage process for developing offshore oil and gas wells on the Outer Continental Shelf. *First*, the Department of the Interior develops a five-year leasing plan. *Second*, the Department sells leases for the exploration, development, and production of oil and natural gas. *Third*, the Department reviews and approves exploration plans submitted by lessees. *Fourth*, if a lessee discovers commercially viable deposits through exploration, it may submit a development and production plan to the Department for further review and approval. See 43 U.S.C. 1337, 1340, 1344, 1351.

Even after a plan is approved at the fourth stage, a lessee's operations continue to be regulated by the Department on an ongoing basis. As is relevant here, before

the lessee may drill a new oil or gas well or modify an existing one, it must obtain a permit from the Department. See 30 C.F.R. 250.410, 250.465. The Department reviews permit applications for potential environmental effects and compliance with applicable regulations. C.A. App. 1219.

2. In the CZMA, Congress created a mechanism for States to participate in the regulation of oil and gas exploration that affects the coastal zone. Each State's coastal zone extends from its shores to the outer boundary of its jurisdiction under federal law. 16 U.S.C. 1453(1). The CZMA encourages States to develop coastal zone management programs and submit them for federal approval. See 16 U.S.C. 1454, 1455. The CZMA also mandates that any "Federal agency activity" affecting the coastal zone of a State "be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." 16 U.S.C. 1456(c)(1)(A).

To enforce that mandate, the CZMA establishes a bifurcated process for state participation. As a general matter, before undertaking any "Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone," an agency must submit a "consistency determination" to the relevant State. 16 U.S.C. 1456(c)(1)(A), (C). At the same time, the CZMA contains an exception for activities requiring a federal "license or permit," including when such activities are contained in "any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act." 16 U.S.C. 1456(c)(3). In that circumstance, the applicant—not the agency—must undertake the consistency review. See *ibid.*

3. Federal agency actions relating to the Outer Continental Shelf are also subject to a host of general environmental-protection statutes. Of particular relevance here, the National Environmental Policy Act (NEPA) requires an agency to prepare a "detailed" document known as an environmental impact statement for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C). An agency need not prepare an environmental impact statement, however, if it "finds, on the basis of a shorter 'environmental assessment' (EA), that the proposed action will not have a significant impact on the environment." *Monsanto Co.* v. *Geertson Seed Farms*, 561 U.S. 139, 145 (2010) (citation omitted). An EA is a "concise public document" that provides evidence and analysis sufficient to allow an agency to determine whether to issue a finding of no significant impact. 40 C.F.R. 1508.1(h); see 40 C.F.R. 1501.5(c)(1), 1501.6. NEPA regulations specifically authorize agencies to use EAs to study hypothetical future actions. See 40 C.F.R. 1501.5(b).

B. Facts And Procedural History

1. There are currently 14 active oil and gas fields in federal waters off the coast of California; those fields are served by 23 platforms on the Pacific Outer Continental Shelf. Petitioners Exxon Mobil Corporation (ExxonMobil) and DCOR, LLC, operate several of those platforms under federal leases. App., *infra*, 14a; C.A. App. 1215.

Since the 1980s, in addition to granting permits to drill new wells, the Department of the Interior has granted permits authorizing well-stimulation treatments on the Pacific Outer Continental Shelf. Those treatments are designed to increase the flow of hydrocarbons; they include both fracturing and non-fracturing treatments. Fracturing treatments involve injecting fluids at high pressures

to fracture the underground formation and allow hydrocarbons to flow more easily; non-fracturing treatments involve injecting fluids at lower pressures to dissolve materials in existing underground pathways. C.A. App. 1208, 1221-1223, 1226, 1346.

For example, DCOR has previously received permits to conduct well-stimulation treatments on the Pacific Outer Continental Shelf. It has conducted hydraulic fracturing there without incident, increasing the productive value of its wells by tens of millions of dollars. At present, however, no entity is authorized to conduct well-stimulation treatments on the Pacific Outer Continental Shelf. C.A. App. 795, 797.

2. In 2014 and 2015, respondents Environmental Defense Center and Center for Biological Diversity filed actions in the United States District Court for the Central District of California against the Department and two of its components (the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement), along with several federal officials. The complaints alleged that defendants had unlawfully approved permits for well-stimulation treatments. See Dkt. 1, *Environmental Defense Center* v. *Bureau of Safety and Environmental Enforcement*, Civ. No. 14-9281 (C.D. Cal. Dec. 3, 2014); Dkt. 1, *Center for Biological Diversity* v. *Bureau of Ocean Energy Management*, Civ. No. 15-1189 (C.D. Cal. Feb. 19, 2015).

In January 2016, the parties entered into a pair of substantively identical settlements, in which defendants agreed to conduct a "programmatic Environmental Assessment" that would "analyze the potential environmental impacts of well-stimulation practices" on the Pacific Outer Continental Shelf. C.A. App. 807; see *id.* at 817. The agreements specified that "the focus of the EA will

be on foreseeable future well-stimulation activities requiring federal approval." *Id.* at 807, 817. Defendants also agreed to "withhold approvals of future [permit applications] involving hydraulic-fracturing operations or acid well stimulation" on the Pacific Outer Continental Shelf until they completed the EA. *Id.* at 807-808, 818.

3. In May 2016, the Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement issued the programmatic EA and FONSI. C.A. App. 1179, 1181. The bureaus defined the "proposed action" as "continu[ing] to review applications" for permits and "approv[ing] the use of fracturing and non-fracturing" well-stimulation treatments if they are "deemed compliant with performance standards." *Id.* at 1203-1204. The bureaus determined that hypothetical future approvals of permits for well-stimulation treatments would not cause significant environmental impacts. *Id.* at 1172-1179. They did not actually approve any permits.

4. In November 2016, respondents Environmental Defense Center and Santa Barbara Channelkeeper filed a new action in the Central District of California against the Department of the Interior, the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and several federal officials (collectively, the federal respondents). The complaint alleged that the programmatic EA and FONSI violated NEPA; that the federal respondents were required under NEPA to prepare an EIS; and that the federal respondents were required to consult with the National Marine Fisheries Service and Fish and Wildlife Service under the Endangered Species Act (ESA). Also in November 2016, respondents Center for Biological Diversity and Wishtoyo Foundation filed a second action, raising the same claims. And in December 2016, respondents People of the State of California and California Coastal Commission filed a

third action, alleging violations of NEPA and the CZMA. The district court consolidated the cases. C.A. App. 92-93, 1007-1138.

Petitioners intervened as defendants. C.A. App. 2044, 2047. The federal respondents and petitioner American Petroleum Institute moved to dismiss the NEPA and CZMA claims for lack of subject-matter jurisdiction, on the ground that there was no final agency action under the APA. See App., *infra*, 77a-78a. They explained that the programmatic EA and FONSI were not "final" under the Court's two-part test for finality, because those documents did not mark the end of the federal respondents' decisionmaking process or create legal consequences. See *id.* at 80a-82a; see also *Bennett* v. *Spear*, 520 U.S. 154, 177-178 (1997).

The district court denied the motions to dismiss, holding that the programmatic EA and FONSI constituted final agency action. App., *infra*, 80a-83a. The court concluded that the EA and FONSI were "the final step in [the Department's] NEPA process" and "effectively lift[ed] the moratorium on [well-stimulation treatments]." *Id.* at 83a. The court further concluded that the EA and FONSI had legal consequences because they "allowed the [well-stimulation treatment] permitting process to proceed," and that process "impacts legal rights." *Ibid.*

The parties subsequently filed cross-motions for summary judgment. As is relevant here, petitioners and the federal respondents moved for summary judgment on the CZMA claim on the ground that the Department was not required to prepare a consistency determination. App., *infra*, 148a. As petitioners and the federal respondents explained, the programmatic EA and FONSI would facilitate the Department's consideration of subsequent per-

mit applications, but the CZMA requires only the applicants to establish consistency with California's coastal zone management program. *Id.* at 151a-152a.

The district court granted summary judgment to plaintiffs on the CZMA claim, granted partial summary judgment to plaintiffs on the ESA claims, and granted summary judgment to petitioners and the federal respondents on the NEPA claims. App., *infra*, 156a-157a. With respect to the CZMA claim, the court concluded that the Department was required to prepare a consistency determination under Section 1456(c)(1), even if permit applicants might later be required to prepare their own consistency certifications under Section 1456(c)(3). *Id.* at 154a. The court enjoined the approval of any development plans or permits for the use of well-stimulation treatments on the Pacific Outer Continental Shelf until the Department completed a consistency review under the CZMA and consultation with the Fish and Wildlife Service under the ESA. *Id.* at 157a.

5. The court of appeals affirmed in part, reversed in part, and remanded. App., *infra*, 1a-67a. It ruled in favor of plaintiffs across the board, upholding the district court's conclusion that the programmatic EA and FONSI constituted final agency action; affirming the summary judgment for plaintiffs on the CZMA and ESA claims; and reversing the summary judgment for petitioners and the federal respondents on the NEPA claims.

The court of appeals first held that the district court had subject-matter jurisdiction because the programmatic EA and FONSI constituted final agency action. App., *infra*, 19a-23a. The court acknowledged that, as a practical matter, "the use of well stimulation treatments will not occur * * * until an individual permit application has been approved." *Id.* at 21a. But the court never-

theless concluded that the EA and FONSI were the consummation of the Department's decisionmaking process because "no further programmatic environmental review" of well-stimulation treatments would be conducted. *Ibid.* The court also expressed skepticism that the EA and FONSI were merely preliminary steps because the Department had previously approved well-stimulation treatments. *Id.* at 22a. And the court concluded that legal consequences flowed from the EA and FONSI because they marked the "lifting of the moratorium on well stimulation treatments"; affected "the rights of [p]laintiffs to further environmental review" and "the obligations of the agencies to prepare a full EIS"; and "green li[t] the unrestricted use of well stimulation treatments." *Id.* at 23a.

On the merits of the CZMA claim, the court of appeals held that the Department of the Interior was required to prepare a consistency determination under Section 1456 (c)(1). App., *infra*, 55a-62a. The court acknowledged that an action that must be reviewed under Section 1456(c)(3) need not be reviewed under Section 1456(c)(1). *Id.* at 56a. It also acknowledged that, before any well-stimulation treatments could occur, specific permit applications might be reviewed for consistency under Section 1456(c)(3). *Id.* at 61a. But the court concluded that a consistency determination was nevertheless required under Section 1456(c)(1) because the "programmatic decision differs in scope and in stage" from the "later decisions about specific permit applications." *Ibid.*[*]

[*] The court of appeals reversed the grant of summary judgment to defendants on the NEPA claims, holding that the EA was arbitrary and capricious and that the federal respondents were required to prepare an EIS. App., *infra*, 27a-49a. The court of appeals affirmed the grant of summary judgment to plaintiffs on the ESA claims, holding that the federal respondents had failed sufficiently to consult with the

The court of appeals remanded with instructions to modify the injunction to prohibit approval of permits for well-stimulation treatments until the agencies completed an EIS under NEPA, as well as a consistency review under the CZMA and consultation under the ESA. App., *infra*, 66a.

6. Petitioners and the federal respondents sought rehearing en banc. ExxonMobil, DCOR, and the federal respondents sought rehearing on the jurisdictional question of final agency action. They explained, in the words of the federal respondents, that the panel "clearly and consequentially erred" and created a risk of "routine entanglement [that] could slow or even de[r]ail an array of agency decisionmaking processes in a way that Congress never intended." Fed. Resp. C.A. Pet. for Reh'g 1, 2. Petitioners and the federal respondents also sought rehearing on the CZMA question. They explained, again in the words of the federal respondents, that the panel's decision "conflicts with the Supreme Court's * * * application of the CZMA's reticulated consistency-review regime" and "threatens to stunt all manner of energy development on the Outer Continental Shelf, including potentially wind development." *Id.* at 2, 3. The court of appeals denied the petitions. App., *infra*, 166a-167a.

REASONS FOR GRANTING THE PETITION

In the decision below, the Ninth Circuit badly erred by misinterpreting both the APA's finality requirement and the CZMA's consistency-review provisions, with enormous practical and legal consequences. In holding that a

---

Fish and Wildlife Service. *Id.* at 50a-54a. Although petitioners do not challenge the court of appeals' holdings on the merits of those claims, the ESA consultation required by the court of appeals is already underway, *id.* at 52a, and reversal of the finality holding would dispose of the NEPA claims.

programmatic EA and FONSI constitute final agency action, the Ninth Circuit departed from this Court's precedents and opened the door to review of interim procedural decisions made by numerous agencies. And in holding that the Department of the Interior was required to conduct a consistency review under the CZMA in conjunction with its study of future well-stimulation treatments—even though permit applicants must conduct their own consistency reviews—the Ninth Circuit contravened the text, structure, and purposes of the statute. Both questions presented have particularly acute practical significance for domestic energy production, not least because the Ninth Circuit upheld an injunction against the issuance of *any* permits for well-stimulation treatments on the Pacific Outer Continental Shelf.

Notably, the federal respondents, authorized by the Solicitor General, sought rehearing below on the grounds that the panel erred on both questions and that the questions were of exceptional importance. Put simply, the Ninth Circuit's decision cannot be defended. The petition for a writ of certiorari should be granted.

A. The Decision Below Is Incorrect And Conflicts With This Court's Decisions

1. The Administrative Procedure Act provides for judicial review only of "final agency action." 5 U.S.C. 704; see *Sackett* v. *Environmental Protection Agency*, 566 U.S. 120, 125-126 (2012). The finality requirement "allows the agency an opportunity to apply its expertise and correct its mistakes"; it "avoids disrupting the agency's processes"; and it "relieves the courts from having to engage in piecemeal review which is at the least inefficient and upon completion of the agency process might prove to have been unnecessary." *DRG Funding Corp.* v. *Secretary of Housing and Urban Development*, 76 F.3d 1212,

1214 (D.C. Cir. 1996) (internal quotation marks and citation omitted).

The Court has identified a two-part test for determining whether an agency action is final. "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature." *Bennett* v. *Spear*, 520 U.S. 154, 177-178 (1997) (internal quotation marks and citation omitted). "And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Id.* at 178 (internal quotation marks and citation omitted). Here, the programmatic EA and FONSI do not satisfy either requirement, and the Ninth Circuit's decision is "flatly contrary to *Bennett*." Fed. Resp. C.A. Pet. for Reh'g 2.

a. With respect to the first requirement, the programmatic EA and FONSI do not mark the consummation of the Department's decisionmaking process concerning well-stimulation treatments. As the Ninth Circuit conceded, "the use of well stimulation treatments will not occur in practice until an individual permit application has been approved." App., *infra*, 21a. When the Department issued the EA and FONSI, it did not approve any permits. See, *e.g.*, Fed. Resp. C.A. Pet. for Reh'g 5. As the federal respondents put it below, the Ninth Circuit "reviewed an environmental analysis that has not been used to support *any* agency action." *Id.* at 1. And in reviewing any future permit applications, the Department must consider the environmental impact of the proposed well-stimulation treatments and may revisit any previous findings. See, *e.g.*, 30 C.F.R. 250.410, 250.465; Forms BSEE-0123, BSEE-0124; C.A. App. 1175, 1203-1204, 1223. The EA and FONSI are thus "just one step in an agency's decisionmaking process, not its culmination"; indeed, no permit applications are currently pending. Fed. Resp. C.A.

Pet. for Reh'g 6. Under *Bennett*, the need for further analysis and approval renders the EA and FONSI non-final.

The Ninth Circuit's characterization of the relevant agency action is contrary to this Court's decision in *Federal Trade Commission* v. *Standard Oil Co. of California*, 449 U.S. 232 (1980). In that case, the Federal Trade Commission issued a complaint based on a finding that there was "reason to believe" that Standard Oil was violating the law. *Id.* at 241. This Court explained that a mere "threshold determination that further inquiry is warranted" does not constitute final agency action. *Ibid.* Here, by contrast, the Ninth Circuit relabeled a threshold determination concerning the impact of hypothetical future permit applications as the Department's "final word on the environmental impacts" of those applications. App., *infra*, 21a.

Under the Ninth Circuit's approach, *any* preliminary or interlocutory agency decision could be reconceived as a "final" decision. To take one example, the Court explained in *Dalton* v. *Specter*, 511 U.S. 462 (1994), that an agency's recommendation to the President did not constitute final agency action because "[t]he President, not the [agency], takes the final action." *Id.* at 470 (first alteration in original) (quoting *Franklin* v. *Massachusetts*, 505 U.S. 788, 799 (1992)). But under the Ninth Circuit's approach, one could simply recharacterize the recommendation as final action on the matter of making a recommendation. The APA does not permit such slicing and dicing; to the contrary, the question of finality "must be measured in relation to the agency's entire process, not just one phase of the process." *Nasdaq Stock Market LLC* v. *Securities and Exchange Commission*, 1 F.4th 34, 39 (D.C. Cir. 2021) (internal quotation marks and citation omitted).

To the extent the Ninth Circuit viewed the EA and FONSI as final merely because they "conclude[d] the agencies' programmatic review under NEPA * * * and reflect[ed] the agencies' understanding that CZMA review is not required," it also ran afoul of the distinction between substantive and procedural actions. App., *infra*, 20a. The text of the APA differentiates between "final agency action," which is immediately reviewable, and "preliminary, procedural, or intermediate agency action," which is reviewable only after final agency action has occurred. 5 U.S.C. 704; see *National Association of Home Builders* v. *U.S. Army Corps of Engineers*, 417 F.3d 1272, 1279 (D.C. Cir. 2005); *Aluminum Co. of America* v. *United States*, 790 F.2d 938, 941-942 (D.C. Cir. 1986). Although a programmatic EA and FONSI may be reviewed when they accompany a final agency action, they do not constitute final agency action themselves. They are simply intermediate, procedural actions meant to inform and improve subsequent, substantive agency actions. Indeed, the environmental-review requirement in NEPA and the consistency-review requirement in the CZMA are both explicitly contingent on an agency taking some other, substantive action. See 16 U.S.C. 1456(c)(1)(C); 42 U.S.C. 4332(2)(C). Any failure to comply with those requirements can be reviewed after (and only after) substantive action has been taken.

Finally on this point, the Ninth Circuit's reference to previously issued (and now-expired) permits for well-stimulation treatments, App., *infra*, 22a, is simply baffling. To be sure, the issuance of each of *those* permits constituted a final agency action. But a programmatic EA and FONSI cannot become the consummation of the Department's decisionmaking concerning the issuance of hypothetical future permits simply because the Department has issued similar permits in the past. Because the EA

and FONSI do not satisfy the first part of the *Bennett* test, the Ninth Circuit's decision on finality was erroneous.

b. Even if the Ninth Circuit were correct on the first part of the *Bennett* test, its interpretation of the second part was independently flawed. In order to qualify as final agency action, an action "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett*, 520 U.S. at 178 (internal quotation marks and citation omitted). The programmatic EA and FONSI do not satisfy that requirement.

No legal consequences flow from the programmatic EA and FONSI. They neither granted nor denied rights. They imposed no legal obligations, exposed no one to penalties, and in no way tied the government's hands with respect to future applications. Instead, they are simply intermediate, procedural actions that leave open the possibility of a subsequent, substantive action. Because the EA and FONSI "[c]ompel[] no one to do anything" and have "no binding effect whatsoever," they do not constitute final agency action. *Independent Equipment Dealers Association* v. *Environmental Protection Agency*, 372 F.3d 420, 427 (D.C. Cir. 2004); see Fed. Resp. C.A. Pet. for Reh'g 7-8, 10.

In that respect, the programmatic EA and FONSI differ from agency actions that the Court has recently held to be final. For example, in *Sackett* v. *Environmental Protection Agency*, 566 U.S. 120 (2012), the "compliance order" issued to property owners by the Environmental Protection Agency placed the owners under a "legal obligation" to restore their property according to the agency's directives. *Id.* at 126. The order also exposed the owners to heightened penalties if they failed to comply, and it "severely limit[ed]" their ability to obtain cer-

tain permits. *Ibid.* Likewise, in *U.S. Army Corps of Engineers* v. *Hawkes Co.*, 578 U.S. 590 (2016), a "jurisdictional determination" by the agency adjudicated the property owner's entitlement to a five-year "safe harbor" under the Clean Water Act. *Id.* at 598-599. Here, by contrast, the EA and FONSI merely studied possible future actions that, if taken, could affect the rights of private actors and bind federal agencies.

In reaching a contrary conclusion, the Ninth Circuit cited three categories of purported legal consequences, none of which withstands scrutiny. *First*, the Ninth Circuit suggested that the programmatic EA and FONSI "lifted" what the court referred to as "the moratorium on well stimulation treatments in the Pacific Outer Continental Shelf." App., *infra*, 23a. But the Department "did not approve the use of well stimulation treatments through" the EA or FONSI, Fed. Resp. C.A. Pet. for Reh'g 10; anyone wishing to conduct such activities must still obtain a permit, see 30 C.F.R. 250.410, 250.465, 250.513, 250.613.

Second, the Ninth Circuit posited that the EA and FONSI "fully and finally determined" the "rights of [p]laintiffs to further environmental review, and the obligation of the agencies to prepare a full EIS." App., *infra*, 23a. But any final decision on a permit application will be subject to all of the same statutory and regulatory requirements, including the obligation to undertake an EIS if necessary. C.A. App. 1219.

Third, the Ninth Circuit believed that the programmatic EA and FONSI "green li[t] the unrestricted use of well stimulation treatments, with no cautionary limitations." App., *infra*, 23a. But once again, no one is allowed to conduct well-stimulation treatments without first obtaining a permit, which may be denied (or granted subject to limitations). C.A. App. 1218-1219; see 30 C.F.R.

250.465. Absent a decision with identifiable legal consequences, plaintiffs must await individual permitting decisions and then seek review of them on a "case-by-case" basis, which is "the traditional * * * mode of operation of the courts." *Lujan* v. *National Wildlife Federation*, 497 U.S. 871, 894 (1990).

To be sure, the rights and obligations identified by the Ninth Circuit might be the *indirect* consequence of the programmatic EA and FONSI, if a permit is ultimately issued. But those indirect effects are insufficient to render an agency action final. For example, in *Franklin*, *supra*, plaintiffs seeking to challenge an allocation decision in the 1990 Census contended that the Secretary of Commerce's recommendation to the President was final agency action even though the President had final decisionmaking authority. See 505 U.S. at 798. The Court explained that, "[b]ecause the Secretary's report to the President carries no direct consequences," it was not final, whatever weight the Secretary's recommendation might carry. *Ibid.*

Two years later, in *Dalton*, *supra*, plaintiffs seeking to challenge the closure of a naval shipyard argued that agencies making statutorily required recommendations to the President regarding base closures had taken final action, even though the President had final decisionmaking authority. 511 U.S. at 470. The Court observed that the recommendations in that case, "like the report of the Secretary of Commerce in *Franklin*, 'carr[y] no direct consequences' for base closings." *Id.* at 469 (alteration in original) (quoting *Franklin*, 505 U.S. at 798). An indirect consequence is thus plainly insufficient to qualify as a "legal consequence" under *Bennett*. The Ninth Circuit's decision on finality was erroneous for that independent reason as well, and the Ninth Circuit should have concluded that it lacked jurisdiction over the CZMA and NEPA claims.

2. Even if the Ninth Circuit had jurisdiction over the CZMA claim, it further erred by holding that the CZMA required the Department of the Interior to prepare a "consistency determination" under 16 U.S.C. 1456(c)(1). Because the activity affecting the coastal zone in this case requires a federal permit, it is future applicants—not the Department—that must undertake a consistency review. The Ninth Circuit's contrary holding is in conflict with the plain text of the CZMA and this Court's foundational decision in *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984).

a. The CZMA provides that "[e]ach Federal agency activity * * * that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." 16 U.S.C. 1456(c)(1)(A). To implement that obligation, the CZMA generally provides that "[e]ach Federal agency carrying out" such an activity "shall provide a consistency determination to the relevant State agency." 16 U.S.C. 1456(c)(1)(C). But the CZMA relieves federal agencies of that obligation if the activity is "subject to paragraph (2) or (3)" of Section 1456(c). 16 U.S.C. 1456(c)(1)(A). As is relevant here, Section 1456 (c)(3) provides that "any person" conducting an activity on the Outer Continental Shelf pursuant to an exploration, development, or production plan must prepare a consistency certification when applying for a "license or permit for [the] activity" if it "affect[s] any land or water use or natural resource of the coastal zone." 16 U.S.C. 1456(c)(3)(B). Accordingly, an activity covered by Section 1456(c)(3) cannot also be covered by Section 1456(c)(1); the two provisions are mutually exclusive.

Under a straightforward reading of the CZMA, the requirement in Section 1456(c)(1) does not apply here.

There is no dispute that a federal permit is required to conduct well-stimulation treatments on the Outer Continental Shelf. Section 1456(c)(3) dictates that an applicant for such a permit generally must prepare a consistency certification. And the coordination provision in Section 1456(c)(1)(A) correspondingly dictates that an agency need *not* provide a consistency determination when the activity affecting the coastal zone requires a federal permit.

b. That reading is compelled by the Court's decision in *Secretary of the Interior*, *supra*. The question presented in that case was whether lease sales triggered consistency review under a previous version of Section 1456(c)(1) that regulated activities "*directly* affecting" the coastal zone. 464 U.S. at 315 (emphasis added). The Court explained that there are "four distinct statutory stages to developing an offshore oil well," and it concluded that "[f]ormal review of consistency with state coastal management plans is expressly reserved for the last two stages"—"exploration" and "development and production." *Id.* at 337. And as is relevant here, the Court reasoned that lease sales were analogous to the granting of permits for exploration, development, and production—all of which are subject to Section 1456(c)(3)—with the result that Section 1456(c)(1) should not apply to lease sales. See *id.* at 332-334, 342.

Although Congress subsequently amended the CZMA to require Section 1456(c)(1) review for lease sales, see App., *infra*, 60a, the Court's recognition that Section 1456(c)(3) applies to exploration, development, and production remains valid. Nothing in Congress's amendments suggests that consistency review might be required for the myriad intermediate procedural steps leading to the issuance of permits or licenses. What is more, nothing in those amendments indicates that the very same activity

might be subject to duplicative consistency review under both Section 1456(c)(1) and Section 1456(c)(3). Indeed, it was the amendments that added the sentence to Section 1456(c)(1)(A) clarifying that review is not required under Section 1456(c)(1)(C) if it is required under Section 1456(c)(3). See Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 6208, 104 Stat. 1388-307. Any suggestion that Congress somehow endorsed duplicative review under both Section 1456(c)(1) and Section 1456(c)(3) is thus baseless.

c. To the extent the Ninth Circuit conceived of the programmatic EA and FONSI as separate from the activity of well-stimulation treatments, that effort is unavailing. See App., *infra*, 61a-62a. The preparation of those documents cannot be conceived of as independent "agency activity"; they are simply preliminary studies conducted prior to reviewing permit applications. And to apply Section 1456(c)(1) on that basis would impose duplicative consistency determinations, in violation of Congress's express policy judgment.

The Ninth Circuit also purported to identify a standalone "plan" or "proposal" to approve all applications to use well-simulation treatments. App., *infra*, 58a. But that "plan" or "proposal" is simply an aggregation of *hypothetical* permit approvals—approvals that would indisputably be subject to Section 1456(c)(3), not Section 1456(c)(1). That the agencies chose to subject multiple hypothetical approvals to programmatic environmental review does not generate an additional "agency activity" distinct from the approvals themselves. To the contrary, programmatic EAs are appropriate when analyzing common elements of "multiple projects that are temporally or spatially connected and that will have a series of associated concurrent or subsequent decisions." Memorandum from Michael Boots, Council on Environmental Quality, to

Heads of Federal Departments and Agencies 14-15 (Dec. 18, 2014) <tinyurl.com/2014ceqmemo>. And nothing in NEPA requires that an EA be tied to contemporaneous action being undertaken by the agency. By regulation, an agency may conduct a NEPA analysis to assist in its planning for future, hypothetical actions. See 40 C.F.R. 1501.5(b). That is precisely what happened here.

* * * * *

The Ninth Circuit badly erred by exercising jurisdiction over the CZMA and NEPA claims, and it badly erred again in its decision on the merits of the CZMA claim. And both errors ultimately stem from the same conceptual problem: the Ninth Circuit's mistaken effort to slice a final agency action (under the APA) or an agency activity (under the CZMA) into its component procedural parts. As the federal government has argued, the Ninth Circuit's decision "conflicts with basic, black-letter principles of administrative law," Fed. Resp. C.A. Pet. for Reh'g 8, and it cannot be reconciled with numerous decisions of this Court. Accordingly, the Court should grant the petition for a writ of certiorari and reverse.

B. The Questions Presented Are Exceptionally Important And Warrant The Court's Review In This Case

As the federal respondents agreed in seeking rehearing below, the questions presented here have substantial practical and legal importance. Because this case is an optimal vehicle for resolution of those questions, the Court's review is warranted.

1. The practical implications of the Ninth Circuit's holding concerning finality are enormous. Congress has judged that the Outer Continental Shelf should be "available for expeditious and orderly development, subject to environmental safeguards, in a manner which is con-

sistent with the maintenance of competition and other national needs." 43 U.S.C. 1332(3); see also Fed. Resp. C.A. Pet. for Reh'g 17. But the decision below upheld an injunction that prevents *all* well-stimulation treatments on the Pacific Outer Continental Shelf—a region that has produced over 1.3 billion barrels of oil and 1.8 trillion cubic feet of natural gas and was recently estimated to have approximately 10 billion barrels of untapped oil and 16 trillion cubic feet of untapped natural gas. See Bureau of Safety and Environmental Enforcement, Pacific Facts and Figures <tinyurl.com/bseepacificfacts> (last visited Jan. 25, 2023); Bureau of Ocean Energy Management, 2021 Assessment of Oil and Gas Resources: Assessment of the Pacific Outer Continental Shelf Region 11 (Sept. 1, 2021) <tinyurl.com/2021boemassessment>. Without well-stimulation treatments or other secondary techniques, well operators can typically recover only 30% to 35% of the oil in a reservoir. C.A. App. 1217-1218. And daily oil production on the Pacific Outer Continental Shelf has already declined to less than one-fifth of its peak in 1995. *Id.* at 1218. The ongoing delay caused by the injunction thus inflicts significant damage to the development of crucial national energy resources.

The practical effects extend beyond oil and natural gas. The Department of the Interior also sells leases and authorizes development for renewable energy sources on the Outer Continental Shelf. See 43 U.S.C. 1337(p); 30 C.F.R. 585.102, 585.200-202, 585.300, 585.600; see also Fed. Resp. C.A. Pet. for Reh'g 17. In particular, the Outer Continental Shelf is a critical source of wind energy. Last year, the Department issued offshore leases for wind development covering a total of roughly one million acres off the coasts of California, New York, and the Carolinas. See 87 Fed. Reg. 64,093, 64,096 (Oct. 21, 2022); 87 Fed. Reg. 17,324, 17,326 (Mar. 28, 2022); 87 Fed. Reg. 2,446, 2,448

(Jan. 14, 2022). The government has also announced an initiative to deploy 30 gigawatts of offshore wind energy by 2030—enough to power 10 million homes for a year. See White House, Fact Sheet: Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs (Mar. 29, 2021) <tinyurl.com/whwind>. And the Department recently proposed a "major modernization" of the relevant regulations to "meet [the government's] offshore wind energy commitment." Department of the Interior, Renewable Energy Modernization Rule 7, 34 (Jan. 10, 2023) <tinyurl.com/BOEM-2022-0019>. Because both NEPA and the CZMA apply to wind-energy projects, just as they do to oil and gas development, the decision below enables premature and duplicative challenges to the development of renewable energy.

2. The Ninth Circuit's approach has the further effect of upending longstanding doctrine about reviewability, thereby "disrupt[ing] careful and thoughtful deliberations throughout federal agencies" and "replacing them with premature litigation." Fed. Resp. C.A. Pet. for Reh'g 11.

In particular, the decision below will bog down the critically important preliminary work of NEPA review. That review typically consists of multiple stages. See, *e.g.*, Bureau of Ocean Energy Management, 2023-2028 National Outer Continental Shelf Oil and Gas Leasing Proposed Program 1-18, 1-19 (July 2022) <tinyurl.com/proposedprogram2023-2028>. Although the Court has adjudicated the adequacy of NEPA review, it has done so only as part of a challenge to some independently reviewable final agency action. See, *e.g.*, *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 762 (2004). Here, however, the Ninth Circuit decided a NEPA challenge even though the agencies have not reached a "critical stage of a decision which will result in irreversible and

irretrievable commitments of resources." *Center for Biological Diversity* v. *Department of Interior*, 563 F.3d 466, 480 (D.C. Cir. 2009) (internal quotation marks and citation omitted). The Ninth Circuit has thus unleashed a flood of challenges at each stage of NEPA review—and litigants are already citing its decision for the proposition that all NEPA documents are final agency actions. See Fed. Resp. C.A. Pet. for Reh'g 12; Dkt. 31, *Western Watersheds Project* v. *Secretary of the Interior*, Civ. No. 21-297 (D. Or. June 9, 2022).

Nor are the consequences of the Ninth Circuit's decision limited to the context of NEPA. If plaintiffs may challenge any agency determination that supposedly allows a "process * * * to proceed," App., *infra*, 23a, then innumerable agency actions will be subject to challenge. For example, an agency report determining that a substance was a carcinogen would satisfy the Ninth Circuit's test, because it would enable agencies subsequently to restrict the use of the substance—even though the report itself would have no legal effect. See *Flue-Cured Tobacco Cooperative Stabilization Corp.* v. *Environmental Protection Agency*, 313 F.3d 852, 858-862 (4th Cir. 2002). Similarly, an interlocutory decision in an adjudication that resolves some, but not all, of the issues presented would also be final, because such a decision could determine whether the adjudication would proceed. See *CSX Transportation, Inc.* v. *Surface Transportation Board*, 774 F.3d 25, 30-31 (D.C. Cir. 2014). If such an intermediate decision constitutes final agency action, "then the doctrine of finality is indeed an empty box," *Aluminum Co.*, 790 F.2d at 942, and courts will be able to "intrude[] directly into [an] agency's decisionmaking process at its earliest stage," Fed. Resp. C.A. Pet. for Reh'g 11.

The problem is even more acute than it might seem at first blush, because the purported final agency actions

that the Ninth Circuit reviewed are, in reality, ones that the agency might never take. As the federal respondents explained in seeking rehearing, the result of the decision below is not simply that courts will "find themselves endlessly entangled in abstract policy disagreements." Fed. Resp. C.A. Pet. for Reh'g 11. It is also that the disagreements concern "possible agency actions that might never materialize and that the agencies themselves might ultimately reject." *Ibid.* For all of those reasons, the first question presented is exceptionally important.

3. The second question presented is important too, because the Ninth Circuit's holding on that question will thwart progress on a substantial range of activities that are subject to the CZMA. Consistency certifications are required for everything from offshore energy production (including offshore wind projects) to the construction of pipelines, power plants, bridges, and deepwater ports. See, *e.g.*, California Coastal Commission, List of Federal Licenses and Permits Subject to Certification for Consistency <tinyurl.com/cccconsistencylist> (last visited Jan. 25, 2023); Massachusetts Office of Coastal Zone Management, Policy Guide 150 (Oct. 2011) <tinyurl.com/consistencyma>.

To take just one example, consider the more than 3.5 trillion cubic feet of liquified natural gas exported from the United States in 2021, the vast majority of which exited through terminals to be shipped to its destination. See Energy Information Administration, U.S. Natural Gas Exports and Re-Exports by Point of Exit (Dec. 30, 2022) <tinyurl.com/eiaexports>. In addition to authorizations to drill on the Outer Continental Shelf, 43 U.S.C. 1351, a company generally must receive federal authorizations to build a right-of-way pipeline, 30 C.F.R. 250.1000(d); construct a terminal, 15 U.S.C. 717b(e); or dredge in federal navigation channels to facilitate ship

transports, 33 U.S.C. 1344. The company often must prepare a consistency certification under Section 1456(c)(3) at each step of the process. But under the Ninth Circuit's rule, the relevant federal agency would likely have to conduct its own consistency review as well, because NEPA review would presumably be required for each of those actions. As the federal respondents noted in seeking rehearing below, that would "impose significant new burdens on agencies permitting or licensing projects on the Outer Continental Shelf," consume limited agency resources, and create years of delay without any valid justification. Fed. Resp. C.A. Pet. for Reh'g 17.

The Ninth Circuit's interpretation of the CZMA is all the more troubling because of the substantial number of licensing processes that are subject to both NEPA and CZMA review. Both of those statutes apply to a vast array of activities ranging from the operation of hydroelectric facilities, see *City of Tacoma* v. *FERC*, 460 F.3d 53, 60 (9th Cir. 2006), to the construction and operation of pipelines, see *Millennium Pipeline Co.* v. *Gutierrez*, 424 F. Supp. 2d 168, 172-173 (D.D.C. 2006). Under the Ninth Circuit's interpretation of the CZMA, however, it is not only the application processes themselves that are subject to consistency review, but also the statutorily mandated environmental reviews that precede those application processes. The decision below is thus a mandate for duplication and delay far beyond the specific context of oil and gas platforms on the Outer Continental Shelf.

4. Finally, this case is an optimal vehicle in which to decide the questions presented. The parties fully briefed those questions, and both the district court and the court of appeals thoroughly considered them in their respective opinions. This case thus squarely presents the Court with the opportunity to reaffirm the meaning of "final agency action" under the APA, as well as the boundaries between

the consistency-review provisions of the CZMA. Because of the immense practical and legal importance of those questions, the Court should grant review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

STEVEN J. ROSENBAUM
BRADLEY K. ERVIN
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001

Counsel for Petitioner
American Petroleum Institute

M. RANDALL OPPENHEIMER
DAWN SESTITO
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071

JONATHAN A. HUNTER
JONES WALKER LLP
201 St. Charles Avenue,
Suite 5100
New Orleans, LA 70170

STEPHEN W. WIEGAND
LISKOW & LEWIS, APLC
701 Poydras Street,
Suite 5000
New Orleans, LA 70139

Counsel for Petitioner
Exxon Mobil Corporation

KANNON K. SHANMUGAM
BRIAN M. LIPSHUTZ
YISHAI SCHWARTZ
MATTHEW J. DISLER
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

Counsel for Petitioner
Exxon Mobil Corporation

ANDREW M. GROSSMAN
KRISTIN A. SHAPIRO
BAKER & HOSTETLER LLP
1050 Connecticut
Avenue, N.W.
Washington, DC 20036

L. POE LEGGETTE
BAKER &HOSTETLER LLP
811 Main Street, Suite 1100
Houston, TX 77002

Counsel for Petitioner
DCOR, LLC

JANUARY 2023