UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, *et al.*,		
Plaintiffs,		
v.	Civil Action No.:	21-2317 (RC)
DEBRA A. HAALAND, *et al.*,	Re Document No.:	34, 42, 43, 45
Defendants,		
STATE OF LOUISIANA, *Intervenor-Defendant*,		
AMERICAN PETROLEUM INSTITUTE, *Intervenor-Defendant.*		

MEMORANDUM OPINION

GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT; GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; GRANTING IN PART AND DENYING IN PART INTERVENOR-DEFENDANT LOUISIANA'S CROSS-MOTION FOR SUMMARY JUDGMENT; GRANTING IN PART AND DENYING IN PART INTERVENOR-DEFENDANT AMERICAN PETROLEUM INSTITUTE'S CROSS-MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Lease Sale 257 is the eighth in a series of sales offering federal lands in the Outer Continental Shelf to leasing for the production and development of oil and gas under the Bureau of Ocean Energy Management ("BOEM")'s 2017–2022 Program. Lease Sale 257 made 80.8 million acres in the Gulf of Mexico available for oil and gas leasing, the largest offshore oil and gas lease sale in U.S. history. Organizational Plaintiffs Friends of the Earth, Healthy Gulf, Sierra Club, and Center for Biological Diversity brought suit against the Secretary of the United States Department of the Interior, the Assistant Secretary of the Interior for Land and Minerals

Management, the Department of the Interior, and the Bureau of Ocean Energy Management, alleging that the federal defendants violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA). Compl. ¶¶ 1, 5–8, ECF No. 1.

Now pending before the Court are four cross-motions for summary judgment filed by Plaintiffs, Federal Defendants, Intervenor-Defendant Louisiana, and Intervenor-Defendant American Petroleum Institute ("API"). *See* Mem. Supp. Pls.' Mot. Summ. J. ("Pls.' Mot."), ECF No. 34-1; Defs.' Mot. Summ. J. & Opp'n Pls.' Mot. Summ. J. ("Defs.' Mot."), ECF No. 45; Mem. Supp. Louisiana's Cross-Mot. Summ. J. & Opp'n Pls.' Mot. Summ. J. ("La. Mot."), ECF No. 42-1; Mem. of Intervenor-Def. American Petroleum Institute in Supp. Cross-Mot. Summ. J. & Opp'n Pls.' Mot. Summ. J. ("API Mot."), ECF No. 43-1. For the reasons that follow, the Court will grant in part and deny in part all four motions.

II. BACKGROUND

The Gulf of Mexico "is a unique and important part of the American landscape and economy." *Oceana v. Bureau of Ocean Energy Mgmt.*, 37 F. Supp. 3d 147, 151 (D.D.C. 2014). It is one of the nation's most biologically diverse ecosystems, sustaining thousands of marine plant and animal species, including numerous endangered and threatened species. *See* Compl. ¶¶ 54–56, ECF No. 1. It produces over one third of the country's domestic seafood supply and supports "a robust economy" of coastal tourism and commercial fishing. *Id.* ¶ 57. It also contains significant oil and gas reserves in the Outer Continental Shelf, "a vast underwater expanse nearly equal in size to the Australian continent" that "extends roughly two hundred miles into the ocean to the seaward limit of the international-law jurisdiction of the United States." *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 592 (D.C. Cir. 2015) [hereinafter "*Sustainable Economy*"]. Oil and gas production on the Outer Continental Shelf is accomplished

through leases that are awarded in a competitive bidding process subject to a complex statutory and regulatory scheme. *See, e.g.*, 43 U.S.C. § 1337. The challenged agency decision in this case, Lease Sale 257, made 80.8 million acres of the Outer Continental Shelf in the Gulf of Mexico available for lease. AR0029790.

A. Statutory and Regulatory Context

1. Outer Continental Shelf Lands Act ("OCSLA")

The Outer Continental Shelf Leasing Act ("OCSLA") is the statutory framework under which the Department of the Interior may lease areas of the Outer Continental Shelf. 43 U.S.C. § 1334; *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 563 F.3d 466, 472 (D.C. Cir. 2009) [hereinafter "*Biological Diversity*"]. OCSLA sets forth a four-stage process for potential oil and gas production that is "pyramidic in structure, proceeding from broad-based planning to an increasingly narrower focus as actual development grows more imminent." *State of Cal. ex rel. Brown v. Watt*, 668 F.2d 1290, 1297 (D.C. Cir. 1981). First, the Department of the Interior "creates a leasing program by preparing a five-year schedule of proposed lease sales," and second, "solicits bids and issues leases for particular offshore leasing areas." *Biological Diversity*, 563 F.3d at 473. "After a lease is approved, a lessee may conduct ancillary activities, which include geological and geophysical explorations and development, and surveys." *Oceana*, 37 F. Supp. 3d at 150 (citing 30 C.F.R. § 550.207). At the third stage, lessees must submit a more detailed exploration plan, which Interior may only approve if exploration "will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance." 43 U.S.C. § 1340(g)(3). The final stage is the development and production stage, during which "Interior and those affected state and local

governments review an additional and more detailed plan from the lessee" that may be terminated if Interior determines that the plan would "probably cause serious harm or damage." *Biological Diversity*, 563 F.3d at 473 (quoting 43 U.S.C. § 1351(h)(1)(D)(i)).

2. National Environmental Policy Act ("NEPA")

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4331 *et seq.*, "is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process." 40 C.F.R. § 1500.1 (2019).[1] It requires Federal agencies to "include in every recommendation or report on . . . major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official" that includes "(i) the environmental impact of the proposed action; (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action." 42 U.S.C. § 4332(2)(C). "This environmental impact statement ["EIS"], as it has come to be called, has two purposes. It forces the agency to take a 'hard look' at the environmental consequences of its actions . . . [and] [i]t also ensures that these environmental consequences, and the agency's consideration of them, are disclosed to the public." *Sierra Club v. FERC*, 867 F.3d 1357, 1367 (D.C. Cir. 2017) [hereinafter "*Sierra Club (Southeast Market)*"]. NEPA also requires agencies to prepare a supplemental EIS for outstanding federal actions if "[t]here are significant new circumstances or information relevant

[1] The regulations for NEPA, found at 40 C.F.R. §§ 1500 *et seq.*, were amended in 2020. *See* Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304-01 (July 16, 2020). However, because those modifications did not apply to NEPA processes begun before September 14, 2020, *id.* at 43372–73, including this one, the Court will (as the parties have) refer to the regulations as codified at 40 C.F.R. Parts 1500-08 (2019). *See* Pls.' Mot. at 24, n.10; Defs.' Mot. at 4, n.1.

to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. §§ 1502.9(c)(1)(ii) (2019).

3. Interaction of OCSLA and NEPA

The statutory schemes of NEPA and OSCLA are not inconsistent. Interior must consider the environmental impacts of a decisions to open up federal lands for oil and gas leases in accordance with NEPA prior to holding a lease sale. *See Sec'y of the Interior v. California*, 464 U.S. 312, 338 (1984) (noting that the "[r]equirements of the National Environmental Protection Act and the Endangered Species Act must be met" before the lease sale stage). And although OCSLA's primary purpose is development of the Outer Continental Shelf, "OCSLA does not mandate the approval of every proposed lease sale." *Gulf Restoration Network v. Bernhardt*, 456 F. Supp. 3d 81, 97 (D.D.C. 2020); *see also State of Cal. ex rel. Brown*, 712 F.2d at 588 ("[W]hile an area excluded from the [Five-Year] leasing program cannot be leased, explored, or developed, an area included in the program may be excluded at a latter stage.").

Nor does the multi-step framework of OCSLA purport to lessen the rigor of the "hard look" that NEPA requires. *See* 43 U.S.C. § 1346(a)(1) (requiring environmental studies "of any area or region included in any oil and gas lease sale" under OCSLA); (*Vill. of False Pass v. Clark*, 733 F.2d 605, 609 (9th Cir. 1984) (interpreting § 1346 to mean that "[a]t the lease sale stage, OCSLA implies this review must meet NEPA standards."). Although the D.C. Circuit has stated that OCSLA itself "concerns the local environmental impact of leasing activities" and therefore "does not authorize—much less require—Interior to consider the environmental impact of post-exploration activities such as consuming fossil fuels on either the world at large," *Biological Diversity*, 563 F.3d at 485, that opinion concerned only OCSLA itself and did not reach the NEPA challenges to the Five-Year Program on the merits. "In the context of NEPA,

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