



# Animal Welfare Institute

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Bureau of Ocean Energy Management  
Office of Public Affairs  
1849 C Street, NW  
Washington, D.C. 20240  
Attn: William Yancey Brown, Chief and Amanda Lefton, Director

RE: BOEM-2020-0018

Dear Chief Brown and Director Lefton:

On behalf of the Animal Welfare Institute (AWI), I submit the following comments on the proposed Cook Inlet (Alaska) OCS Oil & Gas Lease Sale 258 (LS 258). 86 Fed. Reg. 60,068 (Oct. 29, 2021). **We strongly oppose this lease sale.**

AWI is a non-profit organization founded in 1951. We advocate for animal welfare through engagement with policymakers, scientists, industry, and the public. While a wide diversity of marine mammals exists in Cook Inlet, all of which deserve agency protection from oil and gas activities, our greatest concern and focus of this letter is for the Cook Inlet beluga whale and Northern Sea Otter Southwestern distinct population segments (Cook Inlet belugas and sea otter DPS).

## **Overview**

In reviewing the draft environmental impact statement (DEIS), AWI contends that for the Bureau of Ocean Energy Management (BOEM) to fulfill its obligation under the Outer Continental Shelf Lands Act (OCSLA) and remain consistent with other US federal laws, the agency should choose the “no action” alternative. Only the “no action” alternative will ensure the essential protection of the endangered Cook Inlet belugas and sea otter DPS from LS 258.

The DEIS is not a decision document itself but is meant to guide the agency in determining whether to hold the lease sale, and under what terms and conditions. AWI appreciates that the OCSLA provides for a multi-stage framework with numerous National Environmental Protection Act (NEPA) checkpoints. Prior to submitting a list of recommended areas for leasing and any proposed lease stipulations to the Secretary of Interior, BOEM has the profound opportunity to appropriately fulfill the purpose of the Act: “[to perform] expeditious and orderly development [of outer continental shelf resources] subject to environmental safeguards.” 43 U.S.C. § 1332(3).

However, BOEM should not assume future NEPA documents produced closer to the final stages of development (i.e., prior to approving any exploration plans or development production plans) will ensure both environmentally and economically sound management. This stage is critical in determining whether to expend further governmental resources under OCSLA for the purpose of a lease sale that includes critical habitat for the Cook Inlet belugas. BOEM should find that, because the lease sale includes Cook Inlet beluga critical habitat, the most appropriate action is the “no action” alternative.

## **Major Concerns**

AWI has five major concerns with the DEIS prepared by BOEM and the chosen preferred alternative.

### **1. The Cook Inlet beluga whales, as an endangered DPS and depleted stock, must be afforded effective protection under US federal law**

The Cook Inlet beluga population has declined by nearly 80 percent<sup>1</sup> since 1979 and continues to decline at a rate of 2.3 percent annually.<sup>2</sup> In 2000, the Cook Inlet belugas were designated as depleted under the Marine Mammal Protection Act (MMPA) because the stock was (and continues to be) below its optimum sustainable population levels.<sup>3</sup> In 2008, the Cook Inlet belugas were listed as endangered under the Endangered Species Act (ESA).<sup>4</sup>

In 2011, the National Marine Fisheries Service (NMFS) designated two areas of Cook Inlet as critical habitat *because they are essential to the belugas’ survival*.<sup>5</sup> In 2016, NMFS finalized the Recovery Plan for the Cook Inlet belugas (2016 Recovery Plan).<sup>6</sup> The Plan identifies ten threats to the population’s recovery and ranks them in order of their relative concern, with the following three as high concern: (i) anthropogenic noise; (ii) catastrophic events (e.g., spills, mass strandings, natural disasters); and (iii) cumulative effects.<sup>7</sup> All of these are likely outcomes from further oil and gas activities in Cook Inlet. As these continued efforts spanning over a decade

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<sup>1</sup> NOAA Fisheries, Beluga Whale Overview, Species Directory, <https://www.fisheries.noaa.gov/species/beluga-whale> (last visited Dec. 11, 2021).

<sup>2</sup> NOAA Fisheries, Cook Inlet Belugas: A Population in Decline, Resources, <https://www.fisheries.noaa.gov/resource/educational-materials/cook-inlet-belugas-population-decline> (last visited Dec. 11, 2021). *See also*, United States Bureau of Ocean Energy Management, Draft Environmental Impact Statement (DEIS) for the Cook Inlet planning area, oil and gas lease sale 258, Cook Inlet, Alaska, Vol.1, at 82 (2021). However, the Cook Inlet population has continued decreasing to an estimated 279 individuals, despite ESA and MMPA protections, *id*.

<sup>3</sup> Depleted Designation for Cook Inlet Population of Beluga Whales, 50 C.F.R. § 216 (2000).

<sup>4</sup> Endangered Status for the Cook Inlet Beluga Whale, 50 C.F.R. 224 (2008).

<sup>5</sup> NOAA Fisheries, Beluga Whale: Conservation & Management, Management Overview, Species Directory, <https://www.fisheries.noaa.gov/species/beluga-whale#conservation-management> (last visited Dec. 11, 2021). *Emphasis added. See also*, DEIS at 83. Two areas consisting of 7,809 km<sup>2</sup> of marine and estuarine environments were designated as Cook Inlet beluga whale Critical Habitat by NMFS (76 FR 20180, April 11, 2011) and are essential to the survival and recovery of the Cook Inlet beluga whales, *id*.

<sup>6</sup> National Marine Fisheries Service, Recovery plan for the Cook Inlet beluga whale (*Delphinapterus leucas*) (2016), <https://www.fisheries.noaa.gov/resource/document/recovery-plan-cook-inlet-beluga-whale-delphinapterus-leucas>.

<sup>7</sup> NOAA Fisheries, Beluga Whale: Conservation & Management, Management Overview, Species Directory, <https://www.fisheries.noaa.gov/species/beluga-whale#conservation-management> (last visited Dec. 11, 2021).

suggest, the endangered Cook Inlet belugas depend on all government agencies to provide extra scrutiny during NEPA decision-making processes.

Alaska is the only place in the United States where one can observe belugas in their natural habitat.<sup>8</sup> Belugas are known as the “canaries of the sea” because of their diverse communication calls and their highly sociable behavior.<sup>9</sup> Only one population of belugas is found in Cook Inlet and is genetically isolated from other populations.<sup>10</sup> Moreover, the Cook Inlet belugas are a unique population because of their strong site fidelity, which makes them especially vulnerable to anthropogenic impacts.<sup>11</sup>

The DEIS recognizes the direct impacts that LS 258 would have on marine mammals. With regard to Alternative 1, the DEIS notes that potential impacts will include noise associated with seismic airguns and pile-driving, habitat alteration, and vessel strikes.<sup>12</sup> For post-lease activities, the DEIS characterizes the impacts on marine mammals as negligible to minor, and for a large spill as minor to moderate.<sup>13</sup> By avoiding critical habitat for the Cook Inlet belugas and sea otter DPS, Alternatives 3A and 4A offer improved approaches over Alternative 1, but nevertheless remain unacceptable.

Anthropogenic noise is a threat of high concern for the recovery of these whales, as found by NMFS in finalizing the 2016 Recovery Plan, especially in the upper inlet.<sup>14</sup> The noise from various sources (e.g., seismic surveys, pile driving, geohazard surveys, installation of equipment and pipelines, drilling, traffic) can mask beluga hearing at certain frequencies, prevent necessary communication among their population, and disrupt their ability to echolocate.<sup>15</sup> Belugas have sensitive hearing that approaches the lower levels of noise in their habitat.<sup>16</sup> The belugas’ large dynamic range of hearing, which encompasses high to low amplitudes, works in quiet environments “but is inherently limited in noisy environments.”<sup>17</sup> For example, beluga communication signals and other biological sounds in their environment are often low amplitude.<sup>18</sup> Unfortunately, much of the research on cetaceans and anthropogenic noise focuses

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<sup>8</sup> Defenders of Wildlife, *Defending Cook Inlet Belugas*, StoryMapsArcGis (Dec. 8, 2021), <https://storymaps.arcgis.com/stories/9760c6e5b99f46e1ab95f63b88e418ff>.

<sup>9</sup> NOAA Fisheries, *Species in the Spotlight: Cook Inlet Beluga Whale*, News (Feb. 14, 2018), <https://www.fisheries.noaa.gov/video/species-spotlight-cook-inlet-beluga-whale>.

<sup>10</sup> Center for Biological Diversity, *Cook Inlet Beluga Whale*, Natural History, [https://www.biologicaldiversity.org/species/mammals/Cook\\_Inlet\\_beluga\\_whale/natural\\_history.html](https://www.biologicaldiversity.org/species/mammals/Cook_Inlet_beluga_whale/natural_history.html) (last visited Dec. 12, 2021).

<sup>11</sup> NOAA Fisheries, *Viability of a small, geographically-isolated population of beluga whales*, Resources (March 22, 2015), <https://www.fisheries.noaa.gov/resource/peer-reviewed-research/viability-small-geographically-isolated-population-beluga-whales>. (“A genetically distinct population of beluga whales in Cook Inlet, Alaska, displays strong site fidelity to the inlet year-round.”).

<sup>12</sup> DEIS at 12.

<sup>13</sup> *Id.*

<sup>14</sup> 2016 Recovery Plan at III30-III31.

<sup>15</sup> Manuel Castellote, Bruce Thayre, Michael Mahoney, Jeffrey Mondragon, Marc Lammers & Robert J. Small, *Anthropogenic noise and the endangered Cook Inlet beluga whale, Delphinapterus leucas: Acoustic considerations for management*, *Marine Fisheries Review*, at 63 (2019).

<sup>16</sup> T. Aran Mooney, et. al., *Local acoustic habitat relative to hearing sensitivities in beluga whales*, *Journal of Ecoacoustics*, 2, at 10 (June 20, 2018).

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.*

on response to high-amplitude sounds.<sup>19</sup> Therefore, human-induced low level noise could result in masking quiet but vital acoustic environmental cues for sensitive hearing in quiet landscapes.<sup>20</sup>

In addition, anthropogenic noise can disrupt behavior essential to survival, including foraging and resting.<sup>21</sup> For example, the masking resulting from anthropogenic noise “can reduce the range of acoustic detection of prey and communication in cooperative feeding such that beluga [sic] feed more efficiently in quieter areas.”<sup>22</sup> In areas where noise levels are substantially higher or inherently noisy (e.g., Cook Inlet), scientists are not yet certain of the effects on cetacean hearing thresholds “but masking would likely occur more often.”<sup>23</sup>

BOEM suggests “that whales... would likely avoid activities that disturb them,”<sup>24</sup> but fails to address the fact that the belugas would be unlikely to avoid such activities within the inlet due to their strong site fidelity. BOEM should not ignore its own findings that “elevated noise levels in *or near* critical habitat may likely adversely impact the ESA-listed species, [the very] areas designations are intended to protect.”<sup>25</sup>

In the 2016 Recovery Plan, NMFS explained how cumulative effects from multiple stressors limiting recovery is the most plausible explanation for why the Cook Inlet beluga whale population has not recovered.<sup>26</sup> Yet BOEM examines noise and other high threats to the endangered belugas in a vacuum, suggesting that “collectively, impacts from post-lease activities conducted as a result of LS 258... would mostly consist of non-injurious, short-term effects” on marine mammals.<sup>27</sup> In its Recovery Plan, however, NMFS came to the opposite conclusion. NMFS explains that “although individual activities might be deemed insignificant when considered independently, creeping normality<sup>28</sup> (e.g., *death by a thousand cuts*) can cause substantial adverse effects to nearly any entity, including Cook Inlet belugas, at both individual and population levels.”<sup>29</sup> BOEM must recognize how vulnerable the endangered Cook Inlet belugas are to cumulative effects.

## **2. Critical habitat is designated with a purpose and BOEM should not ignore or diminish the importance of such designations**

Under the ESA, each federal agency is required to ensure that their actions are not likely to adversely modify the critical habitat of any listed species. 16 U.S.C. § 1536(a)(2). The “no action” alternative will ensure that Cook Inlet beluga critical habitat will not be adversely modified by LS 258.

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<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id at 10.

<sup>23</sup> Id at 10.

<sup>24</sup> DEIS at 86.

<sup>25</sup> Id. Emphasis added.

<sup>26</sup> 2016 Recovery Plan at III7-III8.

<sup>27</sup> DEIS at 90.

<sup>28</sup> 2016 Recovery Plan Fn 30 at VI-30 says: “Creeping Normality: the way a major negative change, which happens slowly in many unnoticed increments, is not perceived as objectionable. For more information about the concept of creeping normality, see the book ‘Collapse: How Societies Choose to Fail or Succeed’ by Jared Diamond.”

<sup>29</sup> 2016 Recovery Plan at VI30-VI30. Emphasis added.

In designating critical habitat for the Cook Inlet beluga DPS under the ESA, NMFS considered public and peer review comments, as well as economic and national security impacts.<sup>30</sup> In fact, NMFS specifically chose to exclude consideration of the Port of Anchorage as critical habitat, in consideration of national security interests. NMFS was purposeful and deliberate in selecting the 7,809 km<sup>2</sup> of marine habitat as “critical” for the Cook Inlet beluga. Yet, except for the “no action” alternative, BOEM states that “beluga whale critical habitat within the...OCS blocks represents approximately 0.85 percent of the total area of the beluga whale critical habitat,”<sup>31</sup> giving the impression that the agency views the potential impacts on the area as trivial. The designated critical habitat includes the 0.85 percent that overlaps with LS 258 because NMFS concluded it was *essential* to the population’s recovery.

Post-lease-sale exploration and development raises the risk of catastrophic events like oil spills, which NMFS ranked amongst the greatest threats to the Cook Inlet belugas in the 2016 Recovery Plan.<sup>32</sup> A spill or leaking pipeline could pose a serious threat to this small population. As seen from December 2016 to April 2017, Hilcorp Alaska’s natural gas pipeline running across Cook Inlet was leaking for an estimated two months before it was detected, and it was another two months before temporary repairs were made.<sup>33</sup> Following the leak, an unusually high number of beluga mortalities were reported in September and October of that year. BOEM wrongly dismisses effects as inconsequential due solely to the notion that a spill or leak is extremely unlikely to occur, a presumption that is neither supported by empirical data or modeling nor precautionary. As the Alaska Wildlife Alliance puts it, “with a mere 279 belugas remaining, one spill could be the final straw that breaks the beluga’s back.”<sup>34</sup>

### **3. The DEIS fails to provide adequate transparency with regard to the lack of data on Cook Inlet belugas, particularly on their health impacts from anthropogenic noise**

NEPA requires BOEM to analyze the full range of direct, indirect, and cumulative effects of the identified alternatives. 42 U.S.C. §§ 4321 et seq. The agency has an obligation to identify data gaps if it lacks information after making a reasonable attempt to obtain such information. 40 C.F.R. § 1502.22. As suggested in both major concerns (1) and (2), BOEM fails to explicitly identify the critical data gaps in Cook Inlet beluga research and understanding and goes further, filling those gaps with unsupported speculations.

BOEM suggests that marine mammal responses to noise from lease sales would only result in severe injuries where the “mammal remains in an ensonified area for an extended amount of time,” and then goes further to speculate that “even then the injuries would most likely be temporary.”<sup>35</sup> BOEM suggests that, in seeking to avoid ensonified areas, marine mammals may

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<sup>30</sup> Designation of Critical Habitat for Cook Inlet Beluga Whale, 50 C.F.R. § 226 (2011).

<sup>31</sup> DEIS at 5.

<sup>32</sup> 2016 Recovery Plan at iii5-iii7.

<sup>33</sup> Alaska Department of Environmental Conservation, Hilcorp Natural Gas Leak from 8” Pipeline, Division of Spill Prevention and Response: Prevention Preparedness and Response, <https://dec.alaska.gov/spar/ppr/spill-information/response/2017/04-hilcorp/> (last visited Dec. 11, 2021).

<sup>34</sup> Alaska Wildlife Alliance, Out Comment on the preparation of a potential June 2021 Cook Inlet lease sale 258 (Oct. 13, 2020), <https://www.akwildlife.org/news/cook-inlet-lease-sale-boem-beluga-whale>.

<sup>35</sup> DEIS at 86.

leave or abandon their habitat which “could lead to very small energetic costs to individual marine mammals that should not have meaningful effects on their health.”<sup>36</sup> In the 2016 Recovery Plan, NMFS came to the opposite conclusion: “Despite the fact that direct and indirect effects of these sounds on [Cook Inlet] belugas have not been analyzed and are currently unknown, there is enough evidence from other odontocete species (including other beluga populations) to conclude that a high potential exists for negative impacts [from anthropogenic noise].”<sup>37</sup> When assessing impacts to a species or population that is in danger of extinction, it is unacceptable for a government agency to speculate to this degree as the basis for its decision-making, especially in light of the directly conflicting findings from NMFS. The Ninth Circuit has invalidated agency determinations when it fails to address concerns raised by its own experts along with other state and federal agencies.<sup>38</sup> Further, in *Cook Inletkeeper v. Raimondo*, the court found, where the agency failed to explain why the effects of noise on Cook Inlet belugas will be insignificant, the EA failed to take the requisite hard look at the effects of the agency action (tugs towing drill rigs in Cook Inlet).<sup>39</sup>

In 2019, NMFS released findings from a five-year set of sound recordings in Cook Inlet. Manuel Castellote, research affiliate at NMFS’s Alaska Fisheries Science Center, determined that, at a minimum, several of the current anthropogenic noise sources will likely affect beluga behavior and result in the possibility of acoustic injury, but concluded that more research is needed to be certain of the health impacts from the noise.<sup>40</sup> Inter-governmental scientists continue to collect data on anthropogenic noise impacts on Cook Inlet belugas, but thus far current methods have been unable to identify specific impacts to the population’s long-term health.<sup>41</sup> In the 2016 Recovery Plan, NMFS concluded that anthropogenic noise might induce chronic effects in the long term, “altering the health of individual [Cook Inlet] belugas, which in turn have consequences at the population level (i.e., decreased survival and reproduction).”<sup>42</sup> In 2019, NMFS clarified that scientists do not yet fully understand the long-term impact of noise on belugas<sup>43</sup> (or indeed, most marine mammals).

Where there is significant uncertainty about health impacts to an affected species or population, agencies should be explicit in identifying such unknowns, and should invoke the precautionary principle. The MMPA was developed with precaution as a guiding principle for management.<sup>44</sup> The “precautionary approach” was outlined at the UN Rio Declaration Environment and

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<sup>36</sup> *Id.*

<sup>37</sup> 2016 Recovery Plan at III31-III31.

<sup>38</sup> *See, e.g., Western Watersheds Project v. Kraayenbrink*, 632 F. 3d at 492. (Sept. 1, 2010). In doing so, the agency “offered no reasoned analysis whatsoever in support of its conclusion – which is in direct conflict with the conclusion of its own experts and sister agency... - that there will be no environmental effect caused by” the federal action, *id.* at 492.

<sup>39</sup> *Cook Inletkeeper, et. al. v. Raimondo, et. al.*, No. 3:19-cv-00238-SLG, at 47 (D. Alaska Mar. 30, 2021).

<sup>40</sup> NOAA Fisheries, Potential Impacts of Noise on Endangered Beluga Whales in Cook Inlet, News (June 3, 2019), <https://www.fisheries.noaa.gov/feature-story/potential-impacts-noise-endangered-beluga-whales-cook-inlet>.

<sup>41</sup> NOAA Fisheries, Species in the Spotlight: Cook Inlet Beluga Whale, News (Feb. 14, 2018), <https://www.fisheries.noaa.gov/video/species-spotlight-cook-inlet-beluga-whale>.

<sup>42</sup> 2016 Recovery Plan at III31-III31.

<sup>43</sup> NOAA Fisheries, Potential Impacts of Noise on Endangered Beluga Whales in Cook Inlet, News (June 3, 2019), <https://www.fisheries.noaa.gov/feature-story/potential-impacts-noise-endangered-beluga-whales-cook-inlet>.

<sup>44</sup> Jeffrey D. Burreight, Adaptive meets precautionary: Navigating risk and rules in collaborative marine renewable energy permitting processes, *Marine Resource Management*, 10-10 (Dec. 7, 2017).

Development Summit in 1992.<sup>45</sup> The report advocates that the precautionary principle “shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>46</sup> The MMPA explicitly seeks to prevent continued depletion of marine mammal populations by requiring immediate measures be taken to replenish stocks and to protect essential habitats for populations suffering from anthropogenic impacts.<sup>47</sup> As demonstrated in the DEIS, there is a widely diverse set of marine mammals living within and near Cook Inlet. BOEM should recognize the importance of these marine mammals and adopt the precautionary approach found at the heart of the MMPA.

#### **4. The threatened Northern Sea Otter Southwestern distinct population segment must be afforded effective protection under US federal law**

The Northern sea otter DPS once contained over half of the world’s sea otters.<sup>48</sup> The population has declined nearly 65 percent since the mid-1980s.<sup>49</sup> In 2005, the U.S. Fish and Wildlife Service (FWS) listed these sea otters as threatened under the ESA.<sup>50</sup> In 2009, the FWS designated critical habitat for the population encompassing about 15,000 km<sup>2</sup>.<sup>51</sup> In 2013, the FWS finalized a Recovery Plan for these otters.<sup>52</sup>

BOEM concludes that sea otters, including the DPS, are “year-round residents within the Proposed Lease Sale Area, including nearshore areas in parts of western and eastern lower Cook Inlet.”<sup>53</sup> However, BOEM characterizes the geographic extent of sea otter critical habitat within the proposed lease sale area as negligible, finding it “equates to a small percentage [0.75 percent] of northern sea otter critical habitat.”<sup>54</sup> BOEM once again fails to adequately portray and appreciate the purpose of critical habitat designations. The FWS designated all 15,000 km<sup>2</sup> as essential to the population’s recovery, including the 0.75 percent that overlaps with seven blocks in LS 258. Critical habitat should not be characterized as negligible no matter the size, because its very purpose is to ensure the survival of threatened and endangered species.

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<sup>45</sup> United Nations Conference on Environment and Development, Report of the United Nations Conference on Environment and Development, Rio Declaration on Environment and Development 3-14 (June 1992).

<sup>46</sup> *Id.* at 3.

<sup>47</sup> Marine Mammal Protection Act, 16 U.S.C. § 1361(2) (2012).

<sup>48</sup> U.S. Fish & Wildlife Service, Northern Sea Otter, Endangered Species, <https://www.fws.gov/alaska/pages/endangered-species/northern-sea-otter> (last visited Dec. 12, 2021).

<sup>49</sup> *Id.*

<sup>50</sup> Determination of Threatened Status for the Southwest Alaska Distinct Population Segment of the Northern Sea Otter, 50 C.F.R. 17 (2005).

<sup>51</sup> Alaska Department of Fish and Game, Northern Sea Otter Critical Habitat, Federally Listed Threatened Species, <http://www.adfg.alaska.gov/index.cfm?adfg=specialstatus.fedhabitat&species=northernseaotter> (last visited Dec. 12, 2021).

<sup>52</sup> Alaska Department of Fish and Game, Northern Sea Otter Policy Actions, Federally Listed Threatened Species, <http://www.adfg.alaska.gov/index.cfm?adfg=specialstatus.fedpolicy&species=northernseaotter> (last visited Dec. 12, 2021).

<sup>53</sup> DEIS at 85.

<sup>54</sup> *Id.*

Similar to the Cook Inlet belugas, the sea otter DPS will experience direct impacts from post-lease-sale activities. Sea otters use all of their senses to interact with their environment.<sup>55</sup> Often, otters forage at night when light is limited and must use their paws and whiskers to efficiently find food.<sup>56</sup> Like belugas, sea otters are known as social species and communicate often within their groups.<sup>57</sup> The Alaska Department of Fish and Game finds that sea otters are at high risk of negative impacts in the case of oil spills, due to the percentage of time they spend floating at the water surface (thereby with high potential to have their fur oiled, which decreases their ability to retain body heat and can lead to fatal hypothermia, as well as to ingest oil as they try to clean their coat).<sup>58</sup>

In 2020, BOEM began an ongoing study to quantify sea otter abundance, distribution, and foraging intake in Cook Inlet.<sup>59</sup> BOEM stresses that information is limited on the effects of post-lease-sale activities on sea otter distribution and behavior.<sup>60</sup> One of the specific research questions BOEM plans to address is what effect oil and gas development activities might have on otter abundance and distribution in lower Cook Inlet.<sup>61</sup> Yet in the DEIS, BOEM comes to the conclusion: “[C]ollectively, impacts from post-lease activities conducted as a result of LS 258... would mostly consist of non-injurious, short-term effects resulting in temporary behavioral reactions by affected individuals, and would not result in population-level effects.”<sup>62</sup> BOEM finds that there is not enough known about oil and gas development activities’ impact on the sea otter DPS, yet concludes that post-lease-sale activities from LS 258 would mostly be non-injurious and short term. This conclusion goes well beyond what is supported by the current science and is non-precautionary. The only action that will ensure no long-term impacts from oil and gas development is to the “no action” alternative.

## **5. BOEM should seek to limit US contributions to climate change by finding for the “no action” alternative**

The effects of anthropogenic greenhouse gas emissions are widespread, with glaciers and ice sheets melting, oceans absorbing increasing amounts of heat and carbon dioxide (leading to ocean acidification), and global sea levels rising.<sup>63</sup> BOEM, as the critical agency administering OCSLA, has an important opportunity to treat the climate crisis seriously by limiting oil and gas

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<sup>55</sup> Dana Kobilinsky, Sea otters use whiskers and paws to find their prey, The Wildlife Society (Nov. 14, 2018), <https://wildlife.org/sea-otters-use-whiskers-and-paws-to-find-their-prey/>

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> Alaska Department of Fish and Game, Northern Sea Otter Species Profile, Animal Description, <http://www.adfg.alaska.gov/index.cfm%3Fadfg=seaotter.main> (last visited Dec. 12, 2021).

<sup>59</sup> Bureau of Ocean Energy Management, Environmental studies program ongoing study: Quantifying sea otter abundance, distribution, and foraging intake in Cook Inlet Alaska, using unmanned aircraft systems technology, at 1 (Oct. 16, 2019), [https://www.boem.gov/sites/default/files/documents/environment/environmental-studies/AK-20-04\\_0.pdf](https://www.boem.gov/sites/default/files/documents/environment/environmental-studies/AK-20-04_0.pdf)

<sup>60</sup> Id.

<sup>61</sup> Id at 3.

<sup>62</sup> DEIS at 91.

<sup>63</sup> Columbia Law School: Sabin Center for Climate Change, Notice of intent to prepare an environmental impact statement for the proposed 2019 Beaufort Sea Planning Area, Docket ID BOEM-2018-0054, PDF (Jan. 3, 2019), <https://climate.law.columbia.edu/sites/default/files/content/docs/comments%20and%20legal%20briefs/EIA-Comments-01-2019-Beaufort-Proposed-2019-Lease-Sale-NOI-for-EIS.pdf>

leases into the future. BOEM should not treat lease sales as givens, nor post-lease-sale activities as stand-alone actions.

Alaska is on the front lines of the climate crisis. In the last 50 years, Alaska has warmed by about 2.5 degrees Fahrenheit on average.<sup>64</sup> In comparison, the contiguous US has warmed by about 1.5 degrees Fahrenheit on average.<sup>65</sup> The higher northern latitudes are warming at a much faster rate than the more temperate zones globally.<sup>66</sup> Current climate models show that Arctic waters could be completely ice-free in the late summers due to shrinking glaciers, receding sea ice, and thawing permafrost by 2050.<sup>67</sup>

These drastic changes in the climate have already begun to affect the lives of Alaska Natives and residents across the state. In 2019, the federal cod fishery in the Gulf of Alaska closed for the 2020 season due to concerns over low stock from warming ocean temperatures.<sup>68</sup> In fall of 2019, a stock assessment showed Gulf cod populations at historic lows, with “next to no” new eggs.<sup>69</sup> The Institute of Social and Economic Research, University of Alaska Anchorage, developed a report in 2018 on the economic effects of climate change in Alaska.<sup>70</sup> The report concluded that overall, from five relatively certain large effects that could be readily quantified, an annual net cost of \$340–\$700 million would be imposed on the Alaskan government from the effects of climate change.<sup>71</sup> Due to permafrost thaw, an estimated \$6 billion in costs for buildings, pipelines, roads, and other infrastructure over the next 20 years is expected because of uneven sinking ground.<sup>72</sup>

BOEM comes to the same conclusion in the DEIS, finding that these climate impacts are no longer abstract or in the future but are presently affecting the state. BOEM finds that “long-term and widespread impacts from climate change include ocean acidification, rising sea levels, shoreline erosion, warming of surface water temperatures, and an overall drying of onshore surface waters.”<sup>73</sup> Once again, however, BOEM concludes that, despite these “long-term and widespread impacts,” the cumulative effects to water quality resulting from climate change would be minor.<sup>74</sup> This is unacceptable. BOEM must help limit contributions to climate change by finding for the “no action” alternative in the DEIS.

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<sup>64</sup> The Climate Reality Project, How is the climate crisis affecting Alaska (Mar. 11, 2020).  
<https://www.climaterealityproject.org/blog/how-climate-crisis-affecting-alaska>

<sup>65</sup> Id.

<sup>66</sup> Matthew Berman & Jennifer Schmidt, Economic effects of climate change in Alaska, University of Alaska, American Meteorological Society (Dec. 12, 2021).

<sup>67</sup> The Climate Reality Project, How is the climate crisis affecting Alaska (Mar. 11, 2020).  
<https://www.climaterealityproject.org/blog/how-climate-crisis-affecting-alaska>

<sup>68</sup> Kavitha George, Alaska cod fishery closes and industry braces for ripple effect, NPR (December 8, 2019).  
<https://www.npr.org/2019/12/08/785634169/alaska-cod-fishery-closes-and-industry-braces-for-ripple-effect>

<sup>69</sup> Id.

<sup>70</sup> Matthew Berman & Jennifer Schmidt, Economic effects of climate change in Alaska, University of Alaska, American Meteorological Society (Dec. 12, 2021).

<sup>71</sup> Id.

<sup>72</sup> Environmental Defense Fund, How will climate change affect Alaska?, State-By-State Fact Sheet PDF, [https://www.edf.org/sites/default/files/content/regional\\_releases\\_alaska\\_web\\_version.pdf](https://www.edf.org/sites/default/files/content/regional_releases_alaska_web_version.pdf) (last visited Dec. 12, 2021).

<sup>73</sup> DEIS at 57.

<sup>74</sup> DEIS at 57-58.

## **Conclusion**

AWI believes BOEM should have concluded that the best action to take in this situation is no action. Oil and gas leases in critical habitat of endangered and threatened marine mammals are bad not only for wildlife but for humans, as they will also exacerbate our contributions to climate change. We ask BOEM to choose the “no action” alternative and cancel LS 258.

Sincerely,

A handwritten signature in black ink that reads "Susan Millward". The signature is written in a cursive style with a large initial 'S' and a distinct 'M'.

Susan Millward  
Marine Program Director