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Submitted Electronically via comment@neoceanplanning.org

RE: Comments on Draft Northeast Ocean Plan

The American Petroleum Institute (“API”) offers the following comment on the draft Northeast Ocean Plan (henceforth referred to as the “draft Plan”). API is a national trade association representing over 650 member companies involved in all aspects of the oil and natural gas industry, including offshore exploration and development in and adjacent to U.S. coastal and Outer Continental Shelf (“OCS”) ocean waters as well as delivery of resources to regions dependent on oil and gas. While our industry does not currently engage in offshore exploration or development in the Northeast Atlantic OCS of the U.S. Exclusive Economic Zone, seismic surveys and drilling in the North Atlantic have occurred in the past, enhancing understanding of the resource potential in this region. These activities are currently taking place in Canadian OCS waters directly adjacent to U.S. waters covered by the Plan. API and its members remain concerned with the potential for unintended consequences to arise from the implementation of the draft Plan. Not only could it be used as a tool to limit and delay future conventional energy exploration and development opportunities in the northeastern Atlantic OCS, but it could affect current oil and gas operations surrounding the infrastructure and delivery of fossil fuels to a region heavily dependent on oil and gas.

In particular, the draft Plan is short-sighted in its approach to oil and gas resources, especially as demand for natural gas continues to grow steadily. Notwithstanding the Bureau of Ocean Energy Management's ("BOEM") decision to exclude lease sales in the Atlantic Planning Region between 2017-2022, by not providing a clear path forward for possible conventional petroleum development, the Northeast Regional Planning Body ("RPB") is obsequious to current political forces rather than being open to critical consideration of all potential future scenarios in which energy demand and costs may change. As described later in this letter, excluding any such scenarios or options from the plan could be read as "binding" BOEM to not allow lease sales or permit seismic data acquisition indefinitely. Decisions on leasing OCS lands should not be based on constraints introduced by the RPB process and its Plan; instead, BOEM should base its decision on the OCS Lands Act in which the governors provide appropriate input and BOEM's analysis is based on that and other factors established with the Act. The Plan should not be used create new or unauthorized constraints on regulatory agencies.

Similarly, such an approach of binding agencies to defer or be consistent with the RPB's Plan may also unnecessarily limit and create uncertainty related to permitting of infrastructure projects in the Northeast including fossil fuel shipping/delivery, liquefied natural gas ("LNG") terminals, and port/infrastructure planning. Energy infrastructure in the United States is a complex, multijurisdictional, and multidimensional process, with no two projects facing the same set of issues. As LNG supplies enter the region through import terminals located in Massachusetts, Maryland, and New Brunswick, Canada, those federal agencies that permit and oversee activities in the Northeast United States must consider a range of factors that may not be contemplated in the Plan and that require deviations from the Plan. The Plan should not create another level of review or consistency requirements that could delay or unnecessarily constrain such critical projects.

While the above concerns are important specifically to the oil and gas industry and those dependent on oil and gas delivery, API notes a number of policy and process concerns that could affect all ocean-dependent industries, and our members strongly support the comments that have been submitted by the National Ocean Policy Coalition.

One of our primary, immediate concerns revolves around the lack of clarity on how the draft Plan will be used in conjunction with, or in lieu of, existing statutes and regulations and the quality of new data that was presented as part of the draft Plan – including 3,000 plus maps covering marine mammals, birds, sensitive areas, biological hotspots, and so on. API is very concerned about the use and integrity of Plan-related data and information, including referenced data on the Northeast Ocean Data Portal. The draft Plan acknowledges "limitations" associated with data products it references, yet the draft Plan directs agencies and others use the data products to influence regulatory and environmental reviews of ocean resources and uses. Without a thorough review of all the data underlying these maps or a clear picture of how they will be used, our concern is that this will become the de facto "best available science" and used as a decision making tool by regulators without having been subject to peer-review, validation, and applicable data quality standards.¹ If the RPB finds it necessary to direct use of the data

¹ See e.g. Information Quality Act of 2000 (P.L. 106-554), Paperwork Reduction Act of 1995 (P.L. 104-13), Office of Management and Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (Feb. 22, 2002, 67 FR 8452-8460), Office of Management and Budget Circular No. A-16 Revised (accessible at https://www.whitehouse.gov/omb/circulars_a016_rev#1), NOAA Information Quality Guidelines (accessible at http://www.cio.noaa.gov/services_programs/IQ_Guidelines_103014.html), U.S. Interior Department Information Quality Guidelines (accessible at

products via the Data Portal, API echoes the recommendations of the National Ocean Policy Coalition that all Plan and Plan-referenced data that is housed on the Portal should be reviewed to ensure compliance with all relevant data quality laws, standards, and protocols. Any references to data that is determined to not be compliant or complete should be removed from the Plan. The RPB should ensure that every Portal map that is referenced in the Plan includes a direct link to the metadata and data quality reporting information. In addition, the RPB should amend the plan to make it clear that federal agencies must further validate the accuracy of any data used in decision-making, disregard data found to be incomplete or inaccurate, and access any and all other data outside the Data Portal or Plan that may be necessary or relevant for making an informed decision on ocean resource use.

In addition to creating confusion regarding compliance with existing and regulations and the many Federal mandates to apply best available science, we have other fundamental policy and process concerns with understanding the *real-world impacts* of the Plan. As stated in the Executive Order that established the National Ocean Policy and alluded to above, federal agencies are directed to implement the regional marine plans to the maximum extent, including through regulations where necessary.² This thought was carried through in the official announcement of the draft Plan, which stated that, “[f]ederal NE RPB members with regulatory responsibilities will incorporate the final NE Ocean Plan into their pre-planning, planning, and permitting to guide and inform Federal agency internal and external permitting decisions, environmental compliance, resource management plans, and other actions taken pursuant to existing statutory and regulatory authorities,” and that those agencies “will ensure their scientists, managers, decision-makers, and analysts align their actions with the NE Ocean Plan to the fullest extent possible under existing statutory and regulatory authorities.”

These directives that bind federal agencies to implement the plan through agency policies, decision-making, and regulation present significant problems. First, this directive limits the options that agencies can consider as they work to apply existing Congressional authorities to ever-changing environmental and economic conditions along our nation’s coasts and oceans. Instead of using existing governance processes (e.g., regulatory processes guided by APA, interagency coordination customized to address emerging issues, etc.), agencies would have to ensure consistency with a Plan that – due to incomplete information, outdated analyses, and/or misaligned goals – may not be relevant to agency needs or that introduces bureaucratic steps that force costs and delays to mount. Second, and perhaps more troubling, is the fact that the draft Plan simply does not contain enough information for stakeholders like API to understand how federal agency compliance with the plan will affect our members. As federal agencies change their policy, decision-making, and regulatory activities to be consistent with the Plan, it will certainly affect the options and activities of regulated entities. In order to allow for informed public comments – a cornerstone of government transparency and accountability – the draft Plan must more clearly specify how the document is going to be used by federal regulators when taking actions that will substantively affect regulated entities. While the draft Plan acknowledges that it does not augment or supersede existing authorities, NOAA stated just the opposite in its recently released draft Ocean Noise Strategy Roadmap: “Marine planning seeks to

https://www.doi.gov/sites/doi.gov/files/migrated/ocio/information_management/upload/515Guides.pdf), U.S. Defense Department Information Quality Guidelines (*accessible at* <http://www.defense.gov/Resources/DoD-Information-Quality-Guidelines>), and U.S. Homeland Security Department Information Quality Guidelines (*accessible at* <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf>).

² See Executive Order for Stewardship of the Ocean, Our Coasts, and the Great Lakes, July 19, 2010, available at <http://www.whitehouse.gov/files/documents/2010stewardship-eo.pdf>, Section 6

augment statutorily-directed consultation and environmental impact assessment processes that are standardly used to address noise impacts.”³ This and other substantive impacts of the Plan must be clearly and transparently disclosed to the public.

While those concerns drive API’s concerns with the Plan, we do appreciate the intent of Plan language emphasizing interagency coordination. In a number of places, the draft Plan discusses the need for better coordination among agencies and states in making decisions and recognizes the role of multiple existing laws and regulations. The draft Plan also notes that these laws and regulations already require agencies to coordinate with each other. API is very much in favor of better coordination between governmental agencies and believes this could yield positive results.

However, it is still not clear how the draft Plan will improve the current situation. The draft Plan does not help to clarify our understanding of how improvements in interagency coordination will be achieved, given the lack of specificity as to many of the proposed actions to be taken and the agencies that would be involved. API finds that interagency coordination goals could be achieved through other means outside the RPB process – such as facilitating conversations across agencies, increasing transparency of agency actions, and building bespoke coordination teams to address specific questions – and that these do not require new bureaucracies like the RPB or directives established in vague terms in the Plan. If the RPB still finds it necessary to promote interagency coordination via the Plan and its bureaucracy, the Plan should be modified to make it clear that any and all coordination and collaboration tools included in the Plan are entirely flexible and may be adopted or further refined to meet agency and stakeholder needs as all parties deem appropriate, given the unique coordination needs that may arise across ocean resource issues over time. The Plan should also make it clear that agencies will not be limited to those coordination and collaboration practices established under the Plan.

In sum, API finds that the risks and uncertainties established in the Plan could lead to confusion, delay, and cost for all regulated entities, and that these costs far outweigh the benefits of the Plan. Moreover, the benefits of interagency coordination could be achieved through other means. We respectfully request your serious consideration of these costs and benefits and modify the plan to add clarity, complete those sections of the Plan that are not yet defined, and ensure that agencies are free to choose the best way to achieve their statutory mandates – not being bound to a vague and incomplete Plan. After such revisions are made, the Plan should be re-released for public review and comment. API appreciates the opportunity to comment on the draft Plan and should you have any questions, please contact me at 202-682-8584 or radforda@api.org.

Sincerely,



Andy Radford
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³ See NOAA Draft Ocean Noise Strategy Roadmap, Page 30