

Rigged: Understanding BOEM’s Decision to Include NC in Offshore Oil Program

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I. Introduction

The Outer Continental Shelf Lands Act (“OCSLA”) sets forth procedures for leasing, exploration, development, and production of offshore oil and gas resources.¹ The Bureau of Ocean and Energy Management (“BOEM”) is responsible for managing these resources in accordance with the OCSLA and developing a five-year program of lease sales designed to best meet National energy needs.² In January 2015, BOEM released its first Draft Proposed Program (“DPP”) in the process of developing the 2017-2022 Final Program.³ This DPP has unlocked nearly 80% of the nation’s undiscovered oil and gas resources and has specifically identified a new program area in the Atlantic,⁴ potentially opening the Atlantic coast to offshore development for the first time in more than three decades.⁵ The Atlantic program area includes submerged lands at least fifty miles offshore of the coasts of Virginia, North Carolina, South Carolina, and Georgia,⁶ and the first lease sale in the Atlantic program area is scheduled for 2021.⁷

BOEM must prepare and maintain the oil and gas leasing program in a manner consistent with the OCSLA.⁸ Under the OCSLA, the timing and location of exploration, development, and

¹ BUREAU OF OCEAN AND ENERGY MGMT., DEP’T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, x (2015).

² *Id.* at S-1.

³ *Id.* at 1-1.

⁴ *Id.* at S-2.

⁵ Wendy Koch, *What’s Behind U.S. Plan to Open Atlantic to Offshore Drilling*, NATIONAL GEOGRAPHIC (January 28, 2015, 1:03 PM), <http://news.nationalgeographic.com/news/energy/2015/01/150127-atlantic-coast-natural-gas-offshore-drilling-environment-energy/>.

⁶ BUREAU OF OCEAN AND ENERGY MGMT., DEP’T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, S-9 (2015).

⁷ *Id.* at S-3.

⁸ 43 U.S.C. § 1344(a) (2012).

production of OCS resources are based on a regional consideration of many key factors: (1) geographical, geological, and ecological characteristics, (2) an equitable sharing of developmental benefits and environmental risks, (3) the location with respect to national and regional energy markets, (4) the location with respect to other uses of the sea and seabed, (5) the interest of oil and gas producers, (6) laws, goals, and policies of affected States, (7) relative environmental sensitivity and marine productivity, and (8) relevant environmental and predictive information.⁹ It is unclear if analysis of the above factors supports inclusion of the Atlantic and specifically North Carolina in this DPP.

II. The Atlantic coast, particularly North Carolina, has a unique geography without the geological resources to justify the risk to the region's ecology.

The OCSLA's first guideline requires consideration of a region's geographical, geological, and ecological characteristics.¹⁰ The Atlantic coastline abuts 269 million acres of OCS land.¹¹ North Carolina, with its 326 miles of ocean shoreline, barrier islands, and nineteen active inlet complexes,¹² accounts for more than sixty-four million acres, or approximately 23 percent, of federal OCS land, more than any other state on the east coast.¹³ The continental shelf along the Atlantic coast all along the country's east coast varies dramatically, with its thinnest point of twenty miles just off of Cape Hatteras.¹⁴ The continental slope of North Carolina is

⁹ 43 U.S.C. § 1344(a)(2).

¹⁰ 43 U.S.C. § 1344(a)(2)(A).

¹¹ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 3-2 (2015).

¹² N.C. DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF COASTAL MGMT., N.C. BEACH AND INLET MGMT. PLAN, ES-1 (2011).

¹³ *Offshore Oil and Gas Energy Program*, N.C. DIV. OF ENERGY, MINERAL, AND LAND RES., <http://www.geology.enr.state.nc.us/web/lr/offshore-energy>. (last visited Jan. 16, 2016).

¹⁴ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 3-2 (2015).

steeper than other areas of the Atlantic shelf.¹⁵ Since drilling is being considered in lands fifty-miles offshore, the thin continental shelf and steep drop in depth may limit offshore drilling in North Carolina to the the more dangerous, deep-water drilling.¹⁶

The Atlantic coast includes ten geologic structures, or plays, though only seven are fully or partially located in the DPP's Atlantic program area.¹⁷ The plays located in the program area are conceptual,¹⁸ meaning analysis suggests oil and gas resources may exist though none have been detected.¹⁹ However, the DPP states the planning area "may contain significant oil and gas resource potential."²⁰ The most recent estimates from BOEM suggest the Mid and South Atlantic may contain 2.97 billion barrels ("Bbo") of oil and 25.46 trillion cubic feet ("Tcf") of natural gas.²¹ The previous estimated amounts of undiscovered, but technically recoverable, resources in the Mid and South Atlantic represents only 3.3 percent and 6.3 percent of the United State's total oil and natural gas respectively.²² The Atlantic coast has fewer estimated resources than any other region including the Gulf of Mexico, Pacific Coast, or the Alaskan coast.²³ Under the

¹⁵ *GLORIA Geology Interpretation*, U.S. GEOLOGICAL SURVEY, <http://coastalmap.marine.usgs.gov/gloria/eastcst/geology.html>. (last visited Jan. 16, 2016).

¹⁶ *Offshore Oil Drilling in Shallow Water: Good Safety Record, Less Risky*, INSTITUTE FOR ENERGY RESEARCH (October 21, 2010), <http://instituteforenergyresearch.org/analysis/offshore-oil-drilling-in-shallow-water-good-safety-record-less-risky/>.

¹⁷ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, BOEM 2012-016, ASSESSMENT OF UNDISCOVERED TECHNICALLY RECOVERABLE OIL AND GAS RESOURCES OF THE ATLANTIC OUTER CONTINENTAL SHELF AS OF JANUARY 1, 2009, 4 (2012).

¹⁸ *Id.* at 1.

¹⁹ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 5-2 (2015).

²⁰ *Id.* at S-9.

²¹ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, ASSESSMENT OF UNDISCOVERED TECHNICALLY RECOVERABLE OIL AND GAS RESOURCES OF THE ATLANTIC CONTINENTAL SHELF, 2014 UPDATE, 2 (2014).

²² See BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, ASSESSMENT OF UNDISCOVERED TECHNICALLY RECOVERABLE OIL AND GAS RESOURCES OF THE NATION'S OUTER CONTINENTAL SHELF, 3 (2014) (Showing the Mid and South Atlantic total mean of oil as 2.97 Bbo, 2.42 plus 0.55, compared to the Nation's total mean oil as 90.02 and showing the Mid and South Atlantic total mean natural gas as 25.46 Tcfg, 23.38 plus 2.18, compared to the Nation's total mean natural gas as 404.60).

²³ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 5-12 (2015).

United State's current consumption trends, the total amount of oil found off of the Atlantic coast would last about five months and the natural gas would last almost a year.²⁴

It is important to note that the previous estimates are for what is *technically* recoverable, which differs from what is *economically* recoverable. What is technically recoverable encompasses what is technologically possible with no consideration to economic viability.²⁵ What is economically recoverable considers the costs of exploration, development, and production of a potential resource with varying energy price points.²⁶ This measurement varies with the price of oil. As the price goes up, hard-to-reach resources become more economically feasible to obtain. As the price goes down, recovering only the easy-to-reach resources makes financial sense. Therefore, resources that are economically recoverable are often significantly smaller than what is technically recoverable.²⁷ This is especially true when energy prices are low. Currently, the oil market is oversupplied and oil prices have plummeted,²⁸ so the decision to open up new areas of the OCS with minimal resource potential seems questionable.

The most important feature of the Atlantic OCS is the Gulf Stream, a warm water current that flows parallel to the southeast coast of the United States.²⁹ This current has a strong influence on the distribution of the marine mammals, sea turtles, birds, fish, and invertebrates

²⁴ See U.S. Energy Information Administration, Annual Energy Outlook 2015 with Projections to 2040, 15-16 (2015) (showing consumption trends in 2013 of 19 million barrels of oil per day and 26.2 Tcf of natural gas a year).

²⁵ *Resource Evaluation Glossary*, BUREAU OF OCEAN AND ENERGY MGMT., <http://www.boem.gov/Resource-Evaluation-Glossary/#UERR> (last visited Jan. 16, 2016).

²⁶ *Resource Evaluation Program*, BUREAU OF OCEAN AND ENERGY MGMT., <http://www.boem.gov/Oil-and-Gas-Energy-Program/Resource-Evaluation/Resource-Assessment/Methodology.aspx> (last visited Jan. 16, 2016).

²⁷ See BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, BOEM 2012-016, ASSESSMENT OF UNDISCOVERED TECHNICALLY RECOVERABLE OIL AND GAS RESOURCES OF THE ATLANTIC OUTER CONTINENTAL SHELF AS OF JANUARY 1, 2009, 37-39 (2012) (Showing lower estimates when considering what is economically recoverable).

²⁸ *Oil Snags Small Rally After Rig Numbers Drop Again*, THE WALL STREET JOURNAL (October 30, 2015, 3:55 PM), <http://www.wsj.com/articles/oil-prices-mixed-failing-to-build-on-midweek-rally-1446204241>.

²⁹ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 6-14 (2015).

species found along the Atlantic coast.³⁰ Distinct ecological regions, the North Atlantic Bight and the South Atlantic Bight, collide at Cape Hatteras, North Carolina.³¹ The Gulf Stream comes nearest to the coast just offshore of Cape Hatteras³² and interacts with the Virginia Current and Western Boundary Undercurrent.³³ These interactions results in a highly unique, productive, and potentially fragile biological community that would be threatened by offshore oil and gas activity.³⁴

III. The potential benefits to the Atlantic Coast and North Carolina do not outweigh the environmental risks.

The OCSLA’s second guideline requires an equitable sharing of developmental benefits and environmental risks among the various regions.³⁵ Though the entire country economically benefits from increased oil and gas activities,³⁶ benefits tend to accumulate in regions near OCS production.³⁷ Regions may benefit from increases in employment and, perhaps, revenue sharing.³⁸ Adversely, regions could suffer environmental impacts and damage to established industries like fishing or tourism.³⁹

The American Petroleum Institute (“API”) predicts that development in the Atlantic could create 55,000 jobs in North Carolina.⁴⁰ However, skilled workers would likely come from

³⁰ *Id.* at 6-13.

³¹ *Id.*

³² *Id.* at 6-14.

³³ *A Profile of The Point*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, http://oceanexplorer.noaa.gov/explorations/islands01/background/islands/sup8_thepoint.html (last visited Jan. 16, 2016).

³⁴ *Id.*

³⁵ 43 U.S.C. § 1344(a)(2)(B) (2012).

³⁶ BUREAU OF OCEAN AND ENERGY MGMT., DEP’T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 7-17 (2015).

³⁷ *Id.* at 2-3.

³⁸ *Id.* at 7-16.

³⁹ *Id.*

⁴⁰ *What They Are Saying About Offshore Oil & Natural Gas in North Carolina*, AMERICAN PETROLEUM INSTITUTE (February 6, 2016), <http://www.api.org/~media/files/oil-and-natural-gas/offshore/what-they-are-saying/what-they-are-saying-ofshore-oil-gas-north-carolina.pdf>.

the Gulf of Mexico Region, a region with a developed oil and gas industry and trained workforce, not from North Carolina.⁴¹ Many sources estimate huge financial benefits to the state and local governments with revenue sharing.⁴² However, there is no revenue sharing in place for the newly included Atlantic coast and only an act of Congress can establish it.⁴³ While the leasing revenues are incredibly lucrative for the federal government, generating nearly \$9 billion in 2013, this does not translate to state and local governments.⁴⁴ The seven states and numerous localities with revenue sharing receive on average less than one tenth of one percent of federal revenues.⁴⁵

Areas with new oil and gas development, such as North Carolina, require construction of supporting onshore infrastructure,⁴⁶ including: shipyards, processing plants and refineries, oil-field waste sites and landfills, and pipelines.⁴⁷ Ignoring the devastating possibilities of an oil spill, this coastal infrastructure alone could lead to destruction of habitat such as wetlands or nesting areas for turtles and birds, permanent displacement of species that rely on those habitats, and community disruptions with long-term impacts on individuals and populations.⁴⁸ The oil and gas industry also threatens North Carolina's leading industry: tourism. The tourism industry

⁴¹ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 7-3 (2015).

⁴² *What They Are Saying About Offshore Oil & Natural Gas in North Carolina*, AMERICAN PETROLEUM INSTITUTE (February 6, 2016), <http://www.api.org/~media/files/oil-and-natural-gas/offshore/what-they-are-saying/what-they-are-saying-offshore-oil-gas-north-carolina.pdf>.

⁴³ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 7-7 (2015).

⁴⁴ *Id.* at 7-8.

⁴⁵ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 7-8 (2015).

⁴⁶ *Id.* at 7-10.

⁴⁷ *Id.* at 7-11.

⁴⁸ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 7-11 (2015).

directly supports nearly 200,000 jobs across the state, generating over \$20 billion annually,⁴⁹

About one fifth of travelers to North Carolina enjoy the State's beaches and this tourism relies on beautiful, unmarred beaches.

IV. The United States market is oversupplied and the Atlantic's and North Carolina's contribution is unnecessary.

The OCSLA's third principle requires consideration of the location of the region with the needs of national and regional energy markets.⁵⁰ Energy is a huge industry in the United States, and oil and gas supply about 64 percent of the energy consumed domestically.⁵¹ While historically the United States has imported much of its crude oil and petroleum products,⁵² the United States has become the world's biggest oil producer in the world.⁵³ This boom in production has led to an oversupply of oil,⁵⁴ and prices have consequently plummeted by 70% in the past 15 months.⁵⁵

This situation has been exacerbated by the United State's inability to process the type of oil it is now extracting.⁵⁶ Essentially all of the growth in production in recent years has been in light, sweet crude, a higher-quality crude.⁵⁷ Unfortunately, the United States' refinery and

⁴⁹ *North Carolina* Tourism, N.C. DEP'T OF COMMERCE, <https://www.nccommerce.com/tourism> (last visited Jan. 16, 2016).

⁵⁰ 43 U.S.C. § 1344(a)(2)(C) (2012).

⁵¹ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 4-1 (2015).

⁵² *Id.* at 4-3.

⁵³ Grant Smith, *U.S. Seen as Biggest Oil Producer After Overtaking Saudi*, BLOOMBERGBUSINESS (July 4, 2014, 11:56 AM), <http://www.bloomberg.com/news/articles/2014-07-04/u-s-seen-as-biggest-oil-producer-after-overtaking-saudi>.

⁵⁴ Alistair MacDonald & Timothy Puko, *Oil Rally Fizzles Because of Oversupply*, NASDAQ (October 30, 2015, 11:33 AM), <http://www.nasdaq.com/article/oil-rally-fizzles-because-of-oversupply-20151030-00691>.

⁵⁵ *Oil Price Briefly Falls Below \$30 a Barrel*, BBC (January 13, 2016), <http://www.bbc.com/news/business-35302509>.

⁵⁶ *U.S. Crude Oil Exports: Benefits for America's Economy and Consumers*, AMERICAN PETROLEUM INSTITUTE, 2 (2015), http://www.api.org/policy-and-issues/policy-items/exports/~/_media/Files/Policy/Exports/Crude-Oil-Exports-primer/US-Crude-Oil-Exports-low-res.pdf.

⁵⁷ *Id.*

infrastructure is meant to handle the heavy, sour crude.⁵⁸ It is extremely expensive to retool a facility to process a different grade of crude oil.⁵⁹ According to the API, we have reached a tipping point where production of light crude exceeds the US's refining ability to process.⁶⁰ Excess light, sweet crude would need to be exported, so further production will not go to United States' markets.⁶¹ In line with this prediction, in December, 2015, the US lifted the nation's forty-year ban on oil exports⁶² and the US is predicted to export as much as two million barrels of light, sweet crude oil every day in the next 5 years.⁶³

In 2012, the East Coast used 29 percent and 28 percent of the nation's oil and natural gas respectively, though it produced only 1 percent and 12 percent of the nation's oil and natural gas respectively.⁶⁴ A key component of each region's ability to support its own energy demand is the refinery capacity within that region.⁶⁵ Depending on refinery capability, production from new OCS areas, such as North Carolina, could potentially feed directly into the market.⁶⁶ However, the East Coast has only 7 percent of the nation's refining capacity,⁶⁷ and North Carolina itself

⁵⁸ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 4-7 (2015).

⁵⁹ *Id.* at 4-8.

⁶⁰ *U.S. Crude Oil Exports: Benefits for America's Economy and Consumers*, AMERICAN PETROLEUM INSTITUTE, 2 (2015), <http://www.api.org/policy-and-issues/policy-items/exports/~media/Files/Policy/Exports/Crude-Oil-Exports-primer/US-Crude-Oil-Exports-low-res.pdf>.

⁶¹ *See U.S. Crude Oil Exports: Benefits for America's Economy and Consumers*, AMERICAN PETROLEUM INSTITUTE, 2 (2015), <http://www.api.org/policy-and-issues/policy-items/exports/~media/Files/Policy/Exports/Crude-Oil-Exports-primer/US-Crude-Oil-Exports-low-res.pdf>.

⁶² Amy Harder & Lynn Cook, *Congressional Leaders Agree to Lift 40-Year Ban on Oil Exports*, WALL STREET JOURNAL (December 16, 2015, 10:38 AM), <http://www.wsj.com/articles/congressional-leaders-agree-to-lift-40-year-ban-on-oil-exports-1450242995>.

⁶³ Alison Sider, *U.S. Exports First Freely Traded Oil in 40 Years*, WALL STREET JOURNAL (January 13, 2016, 1:48 PM), <http://www.wsj.com/articles/u-s-exports-first-freely-traded-oil-in-40-years-1452643962>.

⁶⁴ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 4-17 (2015).

⁶⁵ *Id.* at 4-16.

⁶⁶ *Id.* at 4-23.

⁶⁷ *Id.* at 4-18.

does not have any refineries.⁶⁸ Shallow, shifting sands at North Carolina ports also indicate the shipping industry for offshore oil, even from offshore of North Carolina, would move through Charleston, South Carolina, or Norfolk, Virginia.⁶⁹ Despite the east coast's high-energy usage, these circumstance combined with the minimal resources and oversupplied national market render the east coast's resources irrelevant.

V. The Atlantic coast and North Carolina already have many other important uses of the OCS.

The OCSLA's fourth guideline considers other uses of the OCS.⁷⁰ Fishing, ocean-dependent tourism, and commercial shipping and transportation are important economic uses along the Atlantic Coast.⁷¹ Commercial fishing along the planning area totals more than \$1.5 billion in total value added to the GDP.⁷² Recreational fishing expenditures added more than \$3.3 billion to the Mid and South Atlantic economy, with North Carolina accounting for more than a third of this amount.⁷³ Ocean-dependent tourism along the planning area accounts of \$10.9 billion in value added to adjacent coastal areas, and is particularly important to North Carolina.⁷⁴ Ports located along the planning area handle approximately five percent of total U.S. waterborne traffic.⁷⁵

⁶⁸ Number and Capacity of Petroleum Refineries in North Carolina, U.S. ENERGY INFORMATION ADMINISTRATION, http://www.eia.gov/dnav/pet/pet_pnp_cap1_dc_u_snc_a.htm.

⁶⁹ Jackie Starkey, *Riggs: Conditions are Wrong for Oil Off NC*, CARTERET COUNTY NEWS-TIMES (October 28, 2015, 12:00 PM), http://www.carolinacoastonline.com/news_times/article_412b6fe6-7d88-11e5-8f5c-efc5bd35e272.html.

⁷⁰ 43 U.S.C. § 1344(a)(2)(D) (2012).

⁷¹ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 4-34 (2015).

⁷² *Id.* at 4-34.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

The Atlantic coast also contains many National Wildlife Refuges (“NWR”), National Parks (“NP”), National Seashores (“NS”), State parks and recreational areas.⁷⁶ North Carolina’s coast has three NWR’s, two NS’s, and numerous state protected area’s.⁷⁷ The Mid Atlantic and South Atlantic Fishery Management Councils have established several Essential Fish Habitats off of North Carolina’s coast.⁷⁸ These areas should be protected from direct, indirect, and cumulative impacts of OCS production. North Carolina’s coast is also a critical habitat for the endangered Loggerhead Turtle and is used by the critically endangered North Atlantic Right Whale.⁷⁹

The Mid and South Atlantic Planning Areas have also been previously identified by the Department of Defense (“DOD”) as areas important to training and testing.⁸⁰ Several Navy at-sea training areas, some of the most extensive offshore areas of use, are located along the coast.⁸¹ The DOD will be conducting an analysis of mission compatibility with offshore development.⁸² In addition to military installations, there are also several NASA facilities along the Atlantic Coast.⁸³ NASA has indicated that offshore activities may impact operations.⁸⁴ Drilling was limited to fifty miles offshore of the Atlantic to, among various reasons, minimize conflicts with these activities.⁸⁵

⁷⁶ BUREAU OF OCEAN AND ENERGY MGMT., DEP’T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 4-34 (2015).

⁷⁷ BUREAU OF OCEAN AND ENERGY MGMT., DEP’T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 4-34 (2015).

⁷⁸ Letter from Pat McCrory, Governor, State of North Carolina, to Sally Jewell, Secretary, United States Dep’t of the Interior (Aug. 15, 2014) (on file N.C. Dep’t of Environmental Quality).

⁷⁹ BUREAU OF OCEAN AND ENERGY MGMT., DEP’T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 6-4 (2015).

⁸⁰ BUREAU OF OCEAN AND ENERGY MGMT., DEP’T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, S-9 (2015).

⁸¹ *Id.* at 4-38.

⁸² *Id.* at 4-39.

⁸³ *Id.* at 4-38.

⁸⁴ *Id.* at 4-39.

⁸⁵ *Id.* at S-10.

Offshore development may also conflict with renewable energy development of the same lands, specifically offshore wind.⁸⁶ Renewable energy leases have been issued along the east coast with activities potentially beginning in the 2017-2022 period.⁸⁷ In 2014, BOEM announced three areas offshore of North Carolina for wind energy leasing consideration.⁸⁸ Oceana has found that offshore wind in the Atlantic could produce more energy than the resource reserves while creating twice as many jobs.⁸⁹

VI. The oil and gas industry is undeniably interested in the Atlantic Coast, though low oil prices are discouraging industry growth.

The OCSLA's fifth guideline takes into account the potential interest of oil and gas producers in a given region.⁹⁰ BOEM analyzed comments from industry to determine interest in the Atlantic Coast and these comments were generally supportive of including all OCS regions.⁹¹ Industry supporters have started an ad blitz in southern U.S. states, arguing offshore oil and gas exploration can exist side-by-side with the environment as new technologies increase the safety of offshore endeavors.⁹² However, falling oil prices have led to oil and gas industries to pull back across the country,⁹³ even abandoning development efforts in Alaska.⁹⁴

⁸⁶ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 4-35 (2015).

⁸⁷ *Id.*

⁸⁸ *Id.* at 4-37.

⁸⁹ Daniel Graeber, *Industry Lobbies for Atlantic Drilling*, UNITED PRESS INTERNATIONAL (October 30, 2015, 8:14 AM), http://www.upi.com/Business_News/Energy-Industry/2015/10/30/Industry-lobbies-for-Atlantic-drilling/2481446206105/.

⁹⁰ 43 U.S.C. § 1344(a)(2)(E) (2012).

⁹¹ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 3-13 (2015).

⁹² Daniel Graeber, *Industry Lobbies for Atlantic Drilling*, UNITED PRESS INTERNATIONAL (October 30, 2015, 8:14 AM), http://www.upi.com/Business_News/Energy-Industry/2015/10/30/Industry-lobbies-for-Atlantic-drilling/2481446206105/.

⁹³ Carolyn Davis, *Shell Records \$7.9B in Charges, Pulls Back Across North America*, NATURAL GAS INDEX (October 29, 2015), <http://www.naturalgasintel.com/articles/104178-shell-records-79b-in-charges-pulls-back-across-north-america>.

⁹⁴ Carey Restino, *Low Oil Prices, Not Federal Regulations, Ended Shell's Bid in Alaska Arctic*, BRISTOL BAY TIMES (OCTOBER 2, 2015), http://www.thebristolbaytimes.com/article/1540low_oil_prices_not_federal_regulations_ended.

VII. North Carolina's laws, goals, and policies may not support its inclusion in the DPP.

The sixth guideline requires that laws, goals, and policies identified by the Governor be considered by the Secretary.⁹⁵ The Governors of Virginia, North Carolina, and South Carolina requested that the Mid and South Atlantic Planning Areas be included in the DPP.⁹⁶ Georgia's Department of National Resources, on behalf of the governor, also expressed its interest in increasing access to domestic oil and gas resources.⁹⁷ The Governor's of Virginia, North Carolina, and South Carolina also commented as part of the OCS Governors Coalition in support of increased access.⁹⁸

North Carolina Governor Pat McCrory specifically indicated that the state's ocean and coastal resources are managed under the state's federally approved Coastal Management Plan.⁹⁹ Consistency, to the maximum extent practical, is required with the State's Coastal Management Plan.¹⁰⁰ North Carolina's Coastal Area Management Act's goals include preserving and managing natural ecological conditions of the beaches while safeguarding their productivity, biological, economic, and esthetic values. In 1990, the Division of Coastal Management found proposed drilling to be inconsistent with the NC Coastal management plan.¹⁰¹ Governor McCrory also identified North Carolina's Oil Pollution and Hazardous Substances Control Act

⁹⁵ 43 U.S.C. § 1344(a)(2)(F) (2012).

⁹⁶ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, S-9 (2015).

⁹⁷ *Id.*

⁹⁸ *Id.* at 3-10.

⁹⁹ Letter from Pat McCrory, Governor, State of North Carolina, to Sally Jewell, Secretary, United States Dep't of the Interior (Aug. 15, 2014) (on file N.C. Dep't of Environmental Quality).

¹⁰⁰ Letter from Pat McCrory, Governor, State of North Carolina, to Sally Jewell, Secretary, United States Dep't of the Interior (Aug. 15, 2014) (on file N.C. Dep't of Environmental Quality).

¹⁰¹ N.C. DEP'T OF COMMERCE, REPORT OF THE GOVERNOR'S SCIENTIFIC ADVISORY PANEL ON OFFSHORE ENERGY, 58 (SEPTEMBER 30, 2011).

(N.C.G.S. 143-215.1)¹⁰² which is purposed with promoting the health, safety, and welfare of NC citizens by protecting the land and the waters over which this State has jurisdiction of from pollution by oil,¹⁰³ and the Mining Act of 1971 (N.C.G.S. Article 7)¹⁰⁴ which is purposed with ensuring the greatest practical degree of protection of the usefulness, productivity, and scenic values of all lands and waters.¹⁰⁵ It is unclear how offshore drilling furthers these goals.

VIII. The Atlantic Program area is particularly environmentally sensitive.

The OCSLA's seventh guideline requires assessment of a region's environmental sensitivity and marine productivity.¹⁰⁶ BOEM defines the term "sensitivity" as sensitivity specifically to potential impacts from oil and gas exploration and development.¹⁰⁷ The Mid and South Atlantic rank among the highest relative environmental sensitivity scores of all the planning areas.¹⁰⁸ "Productivity" is defined as the rate of biomass production per unit of time.¹⁰⁹ Though the South and Mid Atlantic have relatively low primary productivity rates,¹¹⁰ the high environmental sensitivity scores indicate the region may not be ideal for offshore oil and gas activities.

¹⁰² Letter from Pat McCrory, Governor, State of North Carolina, to Sally Jewell, Secretary, United States Dep't of the Interior (Aug. 15, 2014) (on file N.C. Dep't of Environmental Quality).

¹⁰³ Oil Pollution and Hazardous Substances Control Act of 1978, N.C. Gen. Stat. § 143-215.76.

¹⁰⁴ Letter from Pat McCrory, Governor, State of North Carolina, to Sally Jewell, Secretary, United States Dep't of the Interior (Aug. 15, 2014) (on file N.C. Dep't of Environmental Quality).

¹⁰⁵ The Mining Act of 1971, N.C. Gen. Stat. § 74-48.

¹⁰⁶ 43 U.S.C. § 1344(a)(2)(G) (2012).

¹⁰⁷ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 2-4 (2015).

¹⁰⁸ BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 6-19 (2015).

¹⁰⁹ *Id.* at 2-5.

¹¹⁰ *Id.* at 6-17.

IX. Analysis of relevant environmental and predictive information for the Atlantic is incomplete.

The OCSLA's last factor includes relevant environmental and predictive information for different areas of the OCS.¹¹¹ The DPP does not directly address this factor but these impacts will be fully analyzed in a future document for the 2017-2022 Program.¹¹² It is clear that BOEM's decision to include the Atlantic and North Carolina in its offshore development plan is based on incomplete analysis.

X. Conclusion

North Carolina and the Atlantic coast generally is a region with a vibrant ecology and booming tourism and fisheries industries reliant on its clean beaches and waters. The potential benefits from the region's meager resources are limited and cannot justify the risks. Further, North Carolina's environmental laws, goals, and policies do not align with the offshore oil and gas development. The OCSLA requires that the timing and location of exploration, development, and production of oil and gas resources be based on a consideration of these factors. However, it is unclear how proper consideration of these factors supports inclusion of the Atlantic Coast, including North Carolina.

¹¹¹ 43 U.S.C. § 1344(a)(2)(H) (2012).

¹¹² BUREAU OF OCEAN AND ENERGY MGMT., DEP'T OF THE INTERIOR, 2017-2022 OUTER CONTINENTAL SHELF OIL AND GAS LEASING DRAFT PROPOSED PROGRAM, 2-5 (2015).