



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

March 9, 2018

Ms. Kelly Hammerle  
Chief, National OCS Oil and Gas Leasing Program  
Bureau of Ocean Energy Management (VAM-LD)  
45600 Woodland Road  
Sterling, VA 20166-9216

Dear Ms. Hammerle:

The Office of the New York State Attorney General submits these comments on the Department of Interior, Bureau of Ocean Energy Management's 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program (the "Draft Proposed Program").

Attorney General Schneiderman strongly opposes the Draft Proposed Program. Under the program as proposed, areas offshore of New York would, for the first time in decades, be opened to leasing for oil and gas exploration, development and production. Subjecting the waters off New York's coast to oil and gas development would harm vital state interests, including the State's economy and the unique ecology of our shores and marine waters. New York's coastal and marine environments are highly sensitive, and coastal and marine uses play a vital role in our economy. New York has an extremely large, vibrant, and valuable ocean economy dominated by tourism and recreation. That ocean economy is inextricably linked to the health, cleanliness, and unspoiled nature of our coastal areas, and thus, supremely vulnerable to the impacts not only from spills associated with oil and gas production but also from the refining, processing, or transportation infrastructure that oil and gas exploration and development would require. Further, expanding the extraction of carbon-intensive fossil fuels is fundamentally inconsistent with the urgent need to address the harms of climate change – which New Yorkers are experiencing with ever-increasing frequency and severity – by transitioning away from fossil fuels.

In contrast to the recently completed 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program, the Draft Proposed Program reverses course and designates areas of New York and adjacent coastal states for new oil and gas drilling without providing a reasoned explanation of the reasons for reversal. Should the Department issue a final program that reverses course without a reasoned explanation for that reversal, the

program would be arbitrary and capricious.<sup>1</sup> Similarly, a final program that, without reasoned explanation, breaks with the established Department practice of not imposing offshore drilling on states that do not want it, would also be arbitrary and capricious.

For the reasons set out in this letter, we ask the Secretary of the Interior to defer to our State's opposition to the proposed oil and gas production in areas off New York's coast from the proposed leasing program, if it moves forward.

### ***The Risk of Offshore Drilling to New York's Jobs, Economy, and Natural Resources is Unacceptable***

New York boasts an ocean economy – living resources, transportation, construction, minerals, ship and boat building, and tourism and recreation – that, according to the most recent data assembled by the National Oceanic and Atmospheric Administration (NOAA), employs almost 350,000 people, generates \$11.8 billion in wages, and contributes \$24.9 billion in gross domestic product each year.<sup>2</sup> NOAA found that New York led the nation in the growth of ocean employment, and ranked third among all coastal states in the number of people employed in the ocean economy and fourth in ocean economy gross domestic product.<sup>3</sup>

According to the most recent report of the National Marine Fisheries Service, New York's seafood industry generated over 39,000 jobs, \$5.3 billion in sales, \$1.1 billion in income, and a value added of \$1.9 billion in 2015.<sup>4</sup> New York's recreational marine fishery also has substantial economic value, contributing to over 7,800 jobs, \$873 million in sales, \$376 million in income, and a value added of \$586 million that same year.<sup>5</sup>

Tourism and recreation accounts for 92 percent of employment in New York's ocean economy and 82 percent of its gross domestic product.<sup>6</sup> Long Island's tourism industry alone accounts for over \$4 billion annually, including the activities of

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<sup>1</sup> See, e.g., *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.29, 42 (1983).

<sup>2</sup> U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office for Coastal Management, *NOAA Report on the U.S. Ocean and Great Lakes Economy: Regional and State Profiles*, 2017 (available at <https://coast.noaa.gov/data/digitalcoast/pdf/econ-report-regional-state.pdf>).

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

<sup>4</sup> U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, *Fisheries Economics 2015*, Economic and Sociocultural Status and Trends Series, May 2017 (available at <https://www.fisheries.noaa.gov/resource/document/fisheries-economics-united-states-report-2015>).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

recreational divers, boaters, angler, and others.<sup>7</sup> New York has the largest concentration of registered recreational boats in the Northeast, with Long Island accounting for almost two-thirds of the 15,502 total vessels in New York.<sup>8</sup>

New York has 1,850 miles of tidal shoreline, including coast, offshore islands, sounds, bay, and tidal rivers and creeks.<sup>9</sup> New York is renowned for its beautiful public beaches, many of which are part of the state's park system, including Robert Moses State Park, Jones Beach State Park, Orient Beach State Park, Hither Hills State Park, and Sunken Meadow State Park.<sup>10</sup> The 430,000 visitors to the Fire Island National Seashore in 2016 spent \$18.6 million in nearby communities, supporting 217 jobs and producing a cumulative benefit of more than \$23.5 million to the local economy.<sup>11</sup> The Gateway National Recreational Area and the nine other sites that comprise the National Parks of New York Harbor attracted more than 19.7 million visitors in 2016, who spent over \$656 million in the parks and surrounding communities.<sup>12</sup> That spending supported more than 8,120 local jobs and had a cumulative benefit to the local economy of almost \$840 million.<sup>13</sup>

The Gateway National Recreational Area includes the National Park Service-administered Jamaica Bay Wildlife Refuge, a critical stopover area on the Atlantic Flyway, one of the most significant bird sanctuaries in the Northeastern United States,<sup>14</sup> and one of the best bird watching locations in the western hemisphere.<sup>15</sup> Jamaica Bay is

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<sup>7</sup> New York Department of State, *Offshore Atlantic Ocean Study*, July 2013 (available at [https://docs.dos.ny.gov/communitieswaterfronts/ocean\\_docs/NYSDOS\\_Offshore\\_Atlantic\\_Ocean\\_Study.pdf](https://docs.dos.ny.gov/communitieswaterfronts/ocean_docs/NYSDOS_Offshore_Atlantic_Ocean_Study.pdf)).

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Department of Commerce, National Oceanic and Atmospheric Administration, *Coastline of the United States*, 1975, NOAA/PA 71046 (available at <https://shoreline.noaa.gov/faqs.html?faq=2>).

<sup>10</sup> New York State, Office of Parks, Recreation and Historic Preservation, *State Parks* (available at: <https://parks.ny.gov/parks/>).

<sup>11</sup> U.S. Department of the Interior, National Park Service, *Visitor Spending Creates More Than 23 Million in Economic Benefits*, April 25, 2017 (available at <https://www.nps.gov/fiis/learn/news/visitor-spending-creates-more-than-23-million-in-economic-benefits.htm>).

<sup>12</sup> U.S. Department of the Interior, National Park Service, *Report Show Visitor Spending Supports more than 8000 Jobs in Local Economy*, May 1, 2017 (available at <https://www.nps.gov/gate/learn/news/report-shows-visitor-spending-supports-more-than-8000-jobs-in-local-economy.htm>).

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

<sup>14</sup> National Parks of New York Harbor Conservancy, *Jamaica Bay Wildlife Refuge, Broad Channel, Queens* (available at [nyharborparks.org/visit-parks/#tab-id-10](http://nyharborparks.org/visit-parks/#tab-id-10)) (last visited Jan. 31, 2018).

<sup>15</sup> John Waldman, Biology Department, Queens College, *Research Opportunities in the Natural and Social Sciences at the Jamaica Bay Unit of Gateway National Recreation Area*. April 2008, prepared for the National Park Service, Jamaica Bay Institute, (available at [www.nps.gov/gate/learn/nature/upload/JBAY-Research%20Opportunities.pdf](http://www.nps.gov/gate/learn/nature/upload/JBAY-Research%20Opportunities.pdf)).

also home to more than 100 species of fish, mollusks, crustaceans, diamondback terrapins and occasionally federally endangered or threatened sea turtles.<sup>16</sup>

The Long Island Sound is among the 28 estuaries designated as of national significance.<sup>17</sup> The Sound is estimated to have a value of recreational and commercial activities of \$5.2 billion and an intrinsic value of \$152 million – a total value of over \$5.5 billion.<sup>18</sup> Long Island Sound generates over \$4.9 billion in revenue for the region each year.<sup>19</sup>

Recent history shows how offshore oil and gas drilling carries a substantial risk of severe and widespread damage. In 2010, the tragic *Deepwater Horizon* oil spill caused economic and ecological devastation across multiple states.<sup>20</sup> A recent study published in *Science* estimated that the spill caused \$17.2 billion in natural resource damage alone.<sup>21</sup> Even without a disaster on the scale of the *Deepwater Horizon* oil spill, offshore oil and gas drilling threatens New York's coast. A small spill has the potential to devastate sensitive marine and coastal resources. Indeed, the Draft Proposed Program admits that "there is no way to guarantee that oil spills will not occur," and that spills that "are statistically expected to occur" include those in excess of 1,000 barrels.<sup>22</sup> Risks of harm from oils spills are especially high in the Atlantic, which has virtually no spill-response infrastructure or capacity.

The risks of oil spills and other harms from offshore oil and gas drilling, and related development, pose an unacceptable threat to these New York coast and ocean resources, and the jobs and economy that depend upon them.

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<sup>16</sup> *Id.*

<sup>17</sup> US Environmental Protection Agency, National Estuary Program (NEP). *Overview of the National Estuary Program* (available at <https://www.epa.gov/nep/overview-national-estuary-program>)

<sup>18</sup> Long Island Sound Study, *Sound Values* (available at <http://longislandsoundstudy.net/2010/03/sound-values/>)

<sup>19</sup> *Id.*

<sup>20</sup> See, e.g., National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water The Gulf Oil Disaster and the Future of Offshore Drilling, Report to the President*, January 2011 (available at <https://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf>)

<sup>21</sup> Richard C. Bishop, *Putting a Value on Injuries to Natural Assets: The BP Oil Spill*, *Science*, vol. 356, issue 6335, pp. 253-254, April 21, 2017.

<sup>22</sup> Draft Proposed Program at 7-34. The Draft Proposed Program explains that "[e]xpected (i.e., occurring with regular frequency) accidental events include spills estimated to occur during routine operations" and "[a]ccidental, small, and large spills could result from OCS exploration, development, or production operations involving drilling rigs, production facilities, barges, tankers, pipelines, and/or support vessels."

## ***The Department Must Consider Expanded Oil and Gas Leasing's Impact on Climate Change***

The requirements of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*, and the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, dictate that Bureau of Ocean Energy Management's preparation of any new National Outer Continental Shelf Leasing Program must – as the current 2017-2022 Program did – include a full consideration of whether expanded oil and gas leasing on the Outer Continental Shelf would interfere with the United States' ability to mitigate the substantial adverse societal and environmental impacts of climate change.<sup>23</sup>

As you may be aware, the Third National Climate Assessment (2014) concluded that the majority of global warming that has occurred over the past 50 years can only be explained by the effects of human activities, especially emissions from the burning of fossil fuels (coal, oil and natural gas) and from deforestation. The production and burning of fossil fuels causes emissions of heat-trapping "greenhouse gases," such as carbon dioxide and methane, that are affecting our climate. Carbon dioxide emissions from human activities also cause ocean acidification, which harms ecosystems and marine biodiversity and as a result, negatively impacts food security and the economy.<sup>24</sup>

New York is already experiencing adverse effects from climate change. The State's rate of sea level rise is much higher than the national average and could result in up to six feet of additional rise by 2100 if greenhouse gas emissions are not abated. The approximately 12 inches of sea level rise New York City has already experienced since 1900 may have expanded Superstorm Sandy's flood area by about 25 square miles, flooding the homes of an additional 80,000 people in New York and New Jersey alone.<sup>25</sup>

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<sup>23</sup> See, e.g., 43 U.S.C. § 1344(a) (requiring that leasing program consider, among other things, (1) the impact of oil and gas exploration on the marine, coastal and human environments, (2) environmental risks of the leasing program, (3) the environmental sensitivity and marine productivity of areas of the outer continental shelf, and (4) environmental information relevant to the leasing program); 42 U.S.C. § 4332(C) (for every recommendation or report on proposals for federal actions significantly affecting the quality of the human environment, the responsible official must prepare a detailed statement about, among other things, (1) the environmental impacts of the proposed project, (2) any adverse environmental effects which cannot be avoided should the proposal be implemented, (3) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (4) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented).

<sup>24</sup> International Geosphere-Biosphere Programme, et al., *Ocean Acidification Summary for Policymakers, Third Symposium on the Ocean in a High-CO<sub>2</sub> World.*, 2013 (available at <http://www.igbp.net/publications/summariesforpolicymakers/summariesforpolicymakers/oceanacidificationsummaryforpolicymakers2013.5.30566fc6142425d6c9111f4.html>)

<sup>25</sup> Horton, R., C. Little, V. Gornitz, D. Bader, and M. Oppenheimer, *New York City Panel on Climate Change 2015 Report, Chapter 2: Sea Level Rise and Coastal Storms*, January 2015,

The costs of Superstorm Sandy to New York alone will likely top \$40 billion, including \$32.8 billion to repair and restore damaged housing, parks and infrastructure and to cover economic losses and other expenses. That figure includes \$9.1 billion to help mitigate and prevent potential damages from future severe weather events.<sup>26</sup>

A recent analysis of the frequency and intensity of damaging extreme rainfall events in New York found such events are increasing, consistent with scientists' predictions.<sup>27</sup> For example, in 2011, Tropical Storm Irene dropped more than 11 inches of rain in just 24 hours, causing catastrophic flooding in the Hudson Valley, eastern Adirondacks, Catskills and Champlain Valley. Thirty-one counties were declared disaster areas. Over one million people were left without power, more than 33,000 had to seek disaster assistance, and 10 were killed. Damage estimates totaled \$1.3 billion. Additional anticipated harms in New York from climate change include increased ozone pollution in the New York City area, resulting in worsening asthma rates, and the loss of native brook trout or other coldwater fisheries in the Adirondack Park.

Both the National Climate Assessment and Intergovernmental Panel on Climate Change conclude that the magnitude of additional global warming will depend primarily on the amount of additional greenhouse gases emitted into the atmosphere.<sup>28,29</sup> The continued emission of greenhouse gases, primarily carbon dioxide, will lock in further warming for future generations and long-lasting changes in the climate system, increasing the likelihood of severe, pervasive, and irreversible impacts to people and

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Ann. N.Y. Acad. Sci. ISSN 0077-8923 (available at  
<http://onlinelibrary.wiley.com/doi/10.1111/nyas.12593/full>)

<sup>26</sup> State of New York, Governor Cuomo Holds Meeting with New York's Congressional Delegation, Mayor Bloomberg and Regional County Executives to Review Damage Assessment for the State in the Wake of Hurricane Sandy, November 26, 2012 (available at <https://www.governor.ny.gov/news/governor-cuomo-holds-meeting-new-yorks-congressional-delegation-mayor-bloomberg-and-regional>)

<sup>27</sup> New York State Attorney General Eric T. Schneiderman, *Current & Future Trends in Extreme Rainfall Across New York State* (based on data from the 2014 National Climate Assessment and the National Oceanographic and Atmospheric Administration's Northeast Regional Climate Center), September 2014 (available at [https://ag.ny.gov/pdfs/Extreme\\_Precipitation\\_Report%209%202%2014.pdf](https://ag.ny.gov/pdfs/Extreme_Precipitation_Report%209%202%2014.pdf))

<sup>28</sup> Walsh, J., D. Wuebbles, K. Hayhoe, J. Kossin, K. Kunkel, G. Stephens, P. Thorne, R. Vose, M. Wehner, J. Willis, D. Anderson, S. Doney, R. Feely, P. Hennon, V. Kharin, T. Knutson, F. Landerer, T. Lenton, J. Kennedy, and R. Somerville, *Ch. 2: Our Changing Climate. Climate Change Impacts in the United States: The Third National Climate Assessment*, 2014, J. M. Melillo, Terese (T.C.) Richmond, and G. W. Yohe, Eds., U.S. Global Change Research Program, 19-67. doi:10.7930/JoKW5CXT (available at: [https://s3.amazonaws.com/nca2014/low/NCA3\\_Full\\_Report\\_02\\_Our\\_Changing\\_Climate\\_LoWRes.pdf?download=1](https://s3.amazonaws.com/nca2014/low/NCA3_Full_Report_02_Our_Changing_Climate_LoWRes.pdf?download=1))

<sup>29</sup> Intergovernmental Panel on Climate Change (IPCC), *Fifth Assessment Synthesis Report*, November 2014 (available at: [https://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR\\_AR5\\_FINAL\\_full.pdf](https://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full.pdf))

ecosystems. However, substantial and sustained reductions in greenhouse gas emissions, together with adaptation, can limit climate change risks.

In light of these scientific findings, climate change's substantial and increasing societal and environmental impacts in New York, and the legal requirements of the Outer Continental Shelf Lands Act and the National Environmental Policy Act, the Secretary must fully identify, evaluate, and address the societal and environmental impacts and costs of leasing and developing additional, publicly-owned oil and gas resources on the outer Continental Shelf, particularly those arising from climate change.

The Bureau of Ocean Energy Management prepared a Programmatic Environmental Impact Statement for the 2017-2022 National Outer Continental Shelf Leasing Program that analyzed the potential lifecycle greenhouse gas emissions using the social cost of carbon associated with its proposal and alternatives to its proposal, including a "no-action" alternative. At a minimum, the Bureau should perform an equivalent analysis on any new outer continental shelf leasing proposal developed in this proceeding.

### ***The Department Should Exclude Areas Offshore of New York from the Proposed Leasing Program***

The Outer Continental Shelf Lands Act requires the Secretary of the Interior to prepare and maintain an outer continental shelf oil and gas leasing program that "shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval" (emphasis added).<sup>30</sup> The Secretary finalized a five-year oil and gas leasing program as required by the Act in January of 2017. This 2017-2022 leasing program found – upon consultation with coastal states and in consideration of ecological resources, competing outer continental shelf uses, and other factors – that national energy needs can be met without any new oil and gas leasing in areas off the coast of New York and adjacent coastal states.

Yet less than a year after finalization of the 2017-2022 plan, the Secretary has proposed a new Draft Proposed Program that includes new leasing off the New York coast and adjacent areas without an explanation of why new leasing in these areas is now necessary to meet national energy needs. The Secretary now appears to have established a new, undefined goal for the oil and gas leasing program of "energy dominance"<sup>31</sup> – a substantial overreach of the program from the statutory requirement that any leasing program "best meet national energy needs." Further, after the

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<sup>30</sup> 43 U.S.C. § 1344(a).

<sup>31</sup> Draft Proposed Program at 1.

Secretary tweeted that he was “taking #Florida off the table for offshore oil and gas,”<sup>32</sup> he and the agency have offered multiple, contradictory statements about Florida’s status and the reasons for its apparent exemption.<sup>33</sup> These inconsistent remarks suggest that Department decision making regarding the federal oil and gas leasing program may not be based on reasoned analysis of relevant factors, as required by the Outer Continental Shelf Lands Act, which would be both a violation of the Act and arbitrary and capricious.<sup>34</sup> Without a full explanation for why, unlike the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program, the 2019-2024 Draft Proposed Program includes areas of New York and adjacent coastal states for new oil and gas drilling, the inclusion of these areas in a final program would be arbitrary and capricious.<sup>35</sup>

In the 2017-2022 and prior leasing cycle, the Department of Interior deferred to the considered judgment of New York and other states that oil and gas exploration should not take place off their coasts, and excluded these areas from the leasing program. With the Department having established a practice of not imposing offshore drilling on states that do not want it, that approach should guide the agency’s decision making now. Absent a reasoned explanation, the Department’s change in course and disregard of state opposition in a final program would be arbitrary and capricious.<sup>36</sup>

We urge the Department of Interior to, at a minimum, honor our request and that of other New Yorkers that the North Atlantic Region as defined in the Draft Proposed Program, which includes waters off the coast of New York be excluded from the proposed Outer Continental Shelf oil and gas program. If the Department does not terminate the proposed oil and gas leasing program, or remove these areas from future consideration for such leasing, the Office of the New York State Attorney General will use all appropriate legal avenues to vigorously oppose the Department’s program. In

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<sup>32</sup> Secretary Ryan Zinke, @SecretaryZinke, Twitter post and statement, Jan. 9, 2018, 3:48 PM, [twitter.com/SecretaryZinke/status/950876846698180608](https://twitter.com/SecretaryZinke/status/950876846698180608).

<sup>33</sup> After the Secretary Zinke’s January 9 announcement, officials from the Bureau of Ocean Energy Management appeared to signal that the Secretary had reversed course, testifying before Congress that Florida actually is still included in the Program. See Jim Turner, *Official’s Comment Stirs Up Oil-Drilling Debate*, Daytona Beach News-Journal (Jan. 20, 2018), at C5. However, in a CNN interview a few days later, the Secretary again indicated that Florida was excluded from the Draft Proposed Program. See Gregory Wallace, *Zinke on Offshore Drilling Flip: Florida’s ‘Coastal Currents’ Are Different*, CNN.com (Jan. 23, 2018), available at [www.cnn.com/2018/01/23/politics/zinke-florida-tides/index.html](http://www.cnn.com/2018/01/23/politics/zinke-florida-tides/index.html). This time, the Secretary cited a different set of purported reasons, stating that the exemption was because of unique “currents” and “geography” in Florida.

<sup>34</sup> See, e.g., 43 U.S.C. § 1344(a) (requiring that leasing program consider, among other things, (1) the impact of oil and gas exploration on the marine, coastal and human environments, (2) environmental risks of the leasing program, (3) the environmental sensitivity and marine productivity of areas of the outer continental shelf, and (4) environmental information relevant to the leasing program); *State Farm*, 463 U.S. at 43.

<sup>35</sup> See, e.g., *State Farm*, 463 U.S. at 42.

<sup>36</sup> See, e.g., *State Farm*, 463 U.S. at 42.



addition, the Department should evaluate the climate change impacts of oil and gas exploration, development and production in all areas for which such exploration, development and production is contemplated under the Draft Proposed Program.

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We thank you for the opportunity to submit these comments. We reiterate our strong opposition to the proposed oil and gas leasing in areas offshore of New York, and our request that the Secretary defer to our State's opposition to the proposed oil and gas production in areas off New York's coast, and exclude these areas from the Proposed Program.

Sincerely

A handwritten signature in black ink, appearing to read 'Lemuel M. Srolovic', with a long horizontal flourish extending to the right.

Lemuel M. Srolovic  
Chief, Environmental Protection Bureau  
New York State Office of the Attorney General