Attorneys General of Maryland, Connecticut, Delaware, Maine, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington

October 6, 2022

Via Electronic Transmission

Ms. Kelly Hammerle, Chief, National OCS Oil and Gas Leasing Program
Development and Coordination Branch
Leasing Division
Office of Strategic Resources
Bureau of Energy Management
45600 Woodland Road
Sterling, NA 20166-9216

Re: Notice of Availability of the 2023-2028 National Outer Continental Shelf Oil and Gas Leasing Proposed Program and Draft Programmatic Environmental Impact Statement (BOEM-2022-0031)

Dear Ms. Hammerle:

The undersigned Attorneys General respectfully submit these comments on BOEM's 2023-2028 National Outer Continental Shelf Oil and Gas Leasing Proposed Program ("Proposed Program"), issued pursuant to section 18 of the Outer Continental Shelf Lands Act ("OCSLA"). As elaborated below, we applaud BOEM's decision to exclude the Atlantic and Pacific program areas from the Proposed Program. Because of the imperative to attain net zero global carbon dioxide emissions by 2050, however, we strongly urge BOEM to minimize the scope and impact of new oil and gas leasing in other program areas, to the fullest extent consistent with BOEM's offshore wind leasing plans and the conditions specified by the Inflation Reduction Act.

BACKGROUND

Humans have caused atmospheric greenhouse gas concentrations to skyrocket. Annual average carbon dioxide levels, for instance, have reached 410 parts per million (ppm).[1] In 2019, those levels were higher than they have been in at least two million years.[2] That same year, concentrations of methane and nitrous oxide were higher than they have been in at least 800,000 years.[3]

---

[1] Intergovernmental Panel on Climate Change, Sixth Assessment Report, Climate Change 2021: The Physical Science Basis, Summary for Policymakers, at 4 (2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf ("IPCC Sixth Assessment Report").

[2] *Id.* at 8.

[3] *Id.*

The consequences for the climate have been dramatic. Since 1970, global surface temperature has risen more quickly than it has in any other half-century in at least two thousand years.[4] Annual average Arctic sea ice area is lower than it has been since at least 1850.[5] Since 1900, sea levels have risen more quickly than in any other century in at least three thousand years, with the oceans warming more quickly than they have in the last 11,000 years.[6]

Extreme weather events have proliferated and intensified. Heat waves have become more frequent and more severe around the world.[7] Heavy precipitation events have likewise become more frequent and intense.[8] Droughts have become more common, as has weather conducive to wildfires.[9] The United States has not been spared: witness, for instance, this year's catastrophic flooding in Kentucky,[10] record-setting heat waves in California and the Pacific Northwest,[11] and devastation wrought by Hurricane Ian in Florida and Hurricane Fiona in Puerto Rico.[12]

Without a radical change of course, greenhouse gas concentrations will continue to rise, and climate change will continue to worsen. Even under a "very low" emissions scenario analyzed by the Intergovernmental Panel on Climate Change, long-term global temperatures are very likely to exceed 1850-1900 levels by 1.0 to 1.8 °C.[13] Additional warming will only increase the frequency and intensity of phenomena such as heat waves, storms, and droughts.[14] Many aspects of climate change, including rising sea levels, will persist for centuries or millennia.[15]

---

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 8-9.

[10] *See, e.g.*, Christine Hauser, Death Toll in Kentucky Rises to 37, with More Flooding Expected, N.Y. Times, Aug. 1, 2022; Isabella Grullon Paz, "Dangerous" Heat Engulfs the Pacific Northwest, N.Y. Times, Jul. 26, 2022.

[11] *See, e.g.*, Jill Cowan, "Historic Heat Pushes California to the Brink," N.Y. Times. Sept. 7, 2022.

[12] *See, e.g.*, Derrick Bryson Taylor, Ten Days After Hurricane Fiona, Many in Puerto Rico Are Still Without Power, N.Y. Times, Sept. 27, 2022; Eden Weingart, Photos Show the Devastation That Ian Left Behind, N.Y. Times, Oct. 1, 2022.

[13] IPCC Sixth Assessment Report at 14.

[14] *Id.* at 15.

[15] *Id.* at 21.

Dramatic emissions reductions can avert the worst of these consequences.[16] More specifically, to have an even chance of limiting warming to 1.5 °C without overshoot, we must achieve net zero global carbon dioxide emissions by 2050.[17] The Biden Administration has laudably embraced the goal of achieving net zero emissions by 2050, recognizing that doing so is crucial to keeping 1.5 °C of warming within reach.[18] Along the way, the Administration has committed to reducing emissions by 50-52 percent below 2005 levels by 2030, as its Nationally Determined Contribution (NDC) pursuant to the Paris Agreement.

Reaching net zero emissions by 2050, however, requires significant shifts in investment. The Proposed Plan acknowledges as much: "According to the International Energy Agency, a roadmap to net-zero emissions by 2050 for the global energy sector would require no new investment in fossil fuel supply projects."[19] The Proposed Plan then recognizes that "[u]nder this scenario, the Nation's energy needs would need to be met by sources other than new OCS leasing."[20] Elsewhere, the Administration has properly recognized that achieving net zero by 2050 will require massive decarbonization of the electricity sector (among other things), as well as electrifying other sectors and switching to clean fuels.[21]

In the meantime, generation of renewable energy has sharply increased.[22] The recently enacted Inflation Reduction Act (IRA), which underscores the nation's commitment to addressing the climate crisis, generally will accelerate that trend and speed electrification of non-energy sectors. For instance, the IRA significantly expands and extends clean energy tax

---

[16] *Id.* at 28, 30.

[17] International Energy Agency, Net Zero by 2050: A Roadmap for the Global Energy Sector, at 47 (May 2021) ("Net Zero by 2050").

[18] Executive Order No. 14,008, Tacking the Climate Crisis at Home and Abroad § 101 (Jan. 27, 2021), 86 Fed. Reg. 7619; U.S. Dep't of State and U.S. Executive Office of the President, The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050, at 3 (Nov. 2021), https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf ("Long-Term Strategy of the United States").

[19] Bureau of Ocean and Energy Management, 2023-2028 National Outer Continental Shelf Oil and Gas Leasing Proposed Program, at 3 (July 2022) (citation omitted), https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/2023-2028_Proposed%20Program_July2022.pdf ("Proposed Program"); *see* Net Zero by 2050, at 21 ("Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway . . . .").

[20] Proposed Program at 3.

[21] Long-Term Strategy of the United States at 5.

[22] *See, e.g.*, U.S. Energy Information Administration, September 2022 Monthly Energy Review, at 183 (Sept. 2022), https://www.eia.gov/totalenergy/data/monthly/pdf/mer.pdf.

credits.[23] It also invests $60 billion in domestic manufacturing of solar panels and other components critical to the transition to clean energy.[24] Overall, the IRA is expected to help reduce our country's net greenhouse gas emissions by 31-44 percent below 2005 levels, compared to 24-35 percent under pre-IRA policy.[25]

COMMENTS OF THE ATTORNEYS GENERAL

I. The Proposed Plan Properly Does Not Include Lease Sales In The Atlantic Ocean Or The Pacific Ocean.

BOEM's Proposed Plan correctly excludes lease sales in the Atlantic Ocean and the Pacific Ocean, which would pose significant risks to our states' coastal resources and economies. The Draft Proposed Plan, which BOEM announced in December 2017, included four lease sales in the Atlantic Ocean and five lease sales in the Pacific Ocean. It did so even though there had been no new leasing in these areas in decades, and even though these areas offered comparatively little potential for recovery of oil and gas.

Our states filed comments strongly opposing the inclusion of any Atlantic or Pacific Ocean leases in the Program for multiple reasons; we reiterate and incorporate those comments by reference here.[26] As we explained in our comments:

- Our states have little to no infrastructure associated with oil and gas drilling. We strongly prefer using our precious coastal resources for other purposes, including recreational and commercial fishing industries important to state and local economies. And although our states' OCS planning areas have relatively little potential for oil and gas production, they are ecologically rich.[27]

- Spills are inevitable, with even spills in excess of 1000 barrels statistically expected to occur. Moreover, the possibility of catastrophic spills akin to the *Deepwater*

[23] *See, e.g.*, Inflation Reduction Act §§ 13301-04.

[24] *See, e.g.*, Earthjustice, What the Inflation Reduction Act Means for Climate (Aug. 16, 2022), https://earthjustice.org/brief/2022/what-the-inflation-reduction-act-means-for-climate.

[25] Rhodium Group, A Congressional Climate Breakthrough (July 28, 2022), https://rhg.com/research/inflation-reduction-act/.

[26] Comments of Attorneys General of Maryland, California, Connecticut, Maine, Massachusetts, New Jersey, New York, North Carolina, Oregon. Rhode Island, Virginia, and Washington on 2019-2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program and Notice of Intent to Prepare a Programmatic Environmental Impact Statement (Mar. 9, 2018).

[27] *Id.* at 4-7.

Horizon disaster looms large, with potentially devastating consequences for our states' coastal resources. [28]

- OCS oil and gas leasing without support from adjacent states would be arbitrary and capricious and would disregard the important interests of states and their residents in the leasing process. Instead, BOEM should defer to states' opposition to oil and gas leasing in adjacent planning areas.[29]

These points are no less salient today. Accordingly, we strongly support BOEM's decision, in the Proposed Program, to remove all Atlantic and Pacific Ocean areas from the Program. We applaud BOEM's recognition that support from adjacent states is critical if an area is to be included in the Program. And we appreciate BOEM's unequivocal commitment that "any area or sale not included in the Proposed Program will not be considered for inclusion in the 2023-2028 OCS National Program."[30]

II. BOEM Should Minimize The Extent And Environmental Impacts Of Any Lease Sales Held To Satisfy The IRA's Preconditions For Offshore Wind Leasing.

OCSLA calls upon BOEM to base its leasing program on an assessment of what "will best meet national energy needs for the five-year period following its approval or reapproval."[31] OCSLA does not specify, however, exactly how the Secretary is to determine what leasing activity will "best meet national energy needs." Instead, the statute states that "[m]anagement of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf,"[32] as well as "the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments."[33] OCSLA also states that the "[t]iming and location" of oil and gas exploration, development, and production must be "based on a consideration of" eight listed principles and, "to the maximum extent practicable," shall be selected "so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone."[34]

---

[28] *Id.* at 8-9.

[29] *Id.* at 10-13.

[30] Bureau of Ocean Energy Management, National OCS Oil and Gas Leasing Program for 2023-2028, https://www.boem.gov/oil-gas-energy/national-program/national-ocs-oil-and-gas-leasing-program-2023-2028.

[31] 43 U.S.C. § 1344(a).

[32] *Id.* § 1344(a)(1).

[33] *Id.*

[34] *Id.* § 1344(a)(2)-(3).

At the same time, the IRA provides that certain amounts of offshore oil and gas lease sales are a precondition for offshore wind lease sales. Specifically, the IRA states that "the Secretary [of the Interior] may not issue a lease for offshore wind development" pursuant to OCSLA § 8(p)(1)(C) unless "an offshore [oil and gas] lease sale has been held during the 1-year period ending on the date of the issuance of the lease for offshore wind development."[35] In addition, "the sum total of acres offered for lease in offshore lease sales during the 1-year period ending on the date of the issuance of the lease for offshore wind development" must have been "not less than 60,000,000 acres."[36]

The nature, extent, and timing of offshore wind leasing are outside the scope of this letter. If BOEM does wish to hold offshore wind lease sales in a manner implicating the IRA conditions described above, however, we strongly urge it to minimize the extent and environmental impact of any oil and gas leasing it undertakes to satisfy those conditions.

A. The Proposed Program Should Better Reflect The Goal Of Net Zero By 2050.

An appropriate assessment of what leasing activity "will best meet national energy needs" must take the climate crisis into account, for the nature of those needs depends, in large part, on how we address that crisis. BOEM thus is correct to observe that "the need to confront the climate crisis" is "relevant to how national energy needs are met."[37]

More specifically, the imperative to achieve net zero emissions by 2050 should be a crucial component of any assessment of "national energy needs." As the D.C. Circuit has observed, the terms "energy needs" and "energy markets," as used in OCSLA, "may be understood to encompass every type of energy and every type of energy market affected by OCS leasing."[38] And as noted above, BOEM has recognized that "[a]ccording to the International Energy Agency, a roadmap to net-zero emissions by 2050 for the global energy sector would require no new investment in fossil fuel supply projects."[39] Indeed, new fossil fuel infrastructure effectively locks in some amount of emissions, including emissions from the extraction of fossil fuel, for decades to come. Thus, at least in the absence of any statutory preconditions to offshore wind leasing, the appropriate amount of new offshore oil and gas leasing should be zero.

---

[35] Inflation Reduction Act § 50264. The term "offshore lease sale," in turn, is defined as "an oil and gas sale . . . that is held by the Secretary in accordance with [OCSLA]; and . . . that, if any acceptable bids have been received for any tract offered in the lease sale, results in the issuance of a lease." *Id.* § 50265(a)(2).

[36] *Id.* § 50264.

[37] Proposed Program at 3; *see id.* (stating that "[t]he long-term nature of OCS oil and gas development, such that production on a lease can continue for decades[,] makes consideration of future climate pathways relevant to the Secretary's determinations with respect to how the OCS leasing program best meets the Nation's energy needs").

[38] *Center for Sustainable Economy v. Jewell*, 779 F.3d 599, 608 n.11 (D.C. Cir. 2015).

[39] Proposed Program at 3.

We appreciate BOEM's recognition of the importance of achieving net zero emissions by 2050, as well as its recognition that new fossil fuel infrastructure will frustrate that goal. We believe, however, that the Proposed Program does not adequately incorporate these principles into its assessment of national energy needs and markets. In the Proposed Plan, it appears that BOEM's rationale for scheduling multiple lease sales, notwithstanding the climate crisis, is that the move towards renewables and away from fossil fuels might be less pronounced than the climate crisis demands, or might not take place at all. For this reason, BOEM suggests, it makes sense to schedule lease sales that might not take place, because it is easier and faster to cancel lease sales and stop producing fossil fuels than it is to add lease sales and ramp up production.[40]

We believe that is the wrong approach to meeting national energy needs. BOEM should base its leasing program on the premise that the move towards renewable energy, and away from fossil fuels, *will* happen in a manner consistent with reaching net zero emissions by 2050. That means BOEM should not schedule lease sales simply to accommodate an alternative future scenario in which fossil fuels remain more central. Indeed, the mere act of scheduling offshore oil and gas sales sends a message that fossil fuel investment will continue, dilutes the urgency of drastic emissions reductions, and may undermine the goal of attaining net zero emissions.[41] For similar reasons, the Proposed Program errs in treating net-zero pathways as only one possibility in assessing future national energy needs.[42] Instead, BOEM should—consistent with the Administration's stated commitments—treat it as given that the country will proceed toward net zero emissions, for accommodating higher-emission scenarios may make those scenarios more likely.

Further, the volume of new leases offered will not materially affect gasoline prices. Public concern about high gasoline prices is understandable, of course. But a decision to offer more leases will not alleviate the pressures consumers currently are facing, nor will a decision to offer fewer leases aggravate those pressures. That is because leases issued now are unlikely to produce oil or gas for at least five years—if they ever do so. And even after they begin producing, their effect on gasoline prices will likely be trivial.[43]

Thus, whatever role fossil fuels play in the short term, we applaud the fact that the Proposed Program envisions far less new oil and gas leasing outside the Atlantic and Pacific Oceans than did the Draft Proposed Program. And we urge BOEM to further reduce the amount

---

[40] *See* Proposed Program at 6-6.

[41] By the same token, BOEM's own analysis recognizes that less offshore extraction of oil and gas will, in some measure, tend to reduce fossil fuel consumption. *Id.* at 5-40 to 5-41. It follows that new leasing will, by some measure, tend to increase fossil fuel consumption.

[42] *See id.* at 6-5.

[43] NRDC Issue Brief, The Case Against New Offshore Oil and Gas Leasing on the Outer Continental Shelf (May 2022), at 2, https://www.nrdc.org/sites/default/files/case-against-new-offshore-oil-gas-leasing-ocs-ib.pdf.

of new offshore oil and gas leasing, to the fullest extent compatible with offshore wind leasing goals in light of the conditions the IRA attaches to the latter. Put differently: If BOEM plans to issue offshore wind leases, it should satisfy the preconditions set forth in the IRA in a manner that minimizes environmental impacts and results in as little new fossil fuel infrastructure as possible.

At a minimum, the Program should do nothing to preclude BOEM from undertaking emissions mitigation measures at a later stage of the OCS leasing process, such as when BOEM issues new leases or reviews the proposed drilling of development or production wells. Such measures might include, for instance, determinations not to hold particular lease sales envisioned by the Program, or determinations to offer leases for certain areas rather than others. They also might include conditions attached to leases that BOEM issues to minimize environmental impacts. Such conditions, or other mitigation measures, might be identified through the NEPA process in connection with leasing or drilling activity. We strongly recommend that BOEM make clear, in any Program it finalizes, that steps such as these will be considered at subsequent stages.

The likelihood of spills only underscores the importance of minimizing the extent and impact of oil and gas leasing. BOEM's own analysis acknowledges that spills are inevitable, and that the only question is their extent.[44] And while the risk of catastrophic spills may be difficult to quantify, that risk is very much present. As the lingering effects of the Deepwater Horizon spill illustrate, the impact of a catastrophic spill can persist for generations, and can spread from one area to another.[45] Harm to birds and other animals, for instance, can ultimately be felt throughout their migratory range.[46] These harms make it all the more important for BOEM to minimize the extent of new offshore oil and gas leasing.

B. The *Center for Biological Diversity* Decision Does Not Undermine This Approach.

The D.C. Circuit's decision in *Center for Biological Diversity v. U.S. Department of Interior*,[47] which rejected a challenge to the 2007-2012 leasing program, does not counsel against the approach described above. That decision held that "OCSLA does not require Interior to

---

[44] *See, e.g.*, Proposed Program at 5-25 to 5-26.

[45] *See, e.g.*, Charles Digges, Bellona Foundation, "Ten Years After the Deepwater Horizon, New Spills Seem Imminent," https://bellona.org/news/fossil-fuels/2020-04-ten-years-after-the-deepwater-horizon-new-spills-seem-imminent (Apr. 24, 2020) (describing lingering fish contamination and effects on human health, and noting that the spill had reached as far as the southern tip of Florida).

[46] *See, e.g.*, Oceana, Time for Action: Six Years After Deepwater Horizon (Apr. 2016), at 7-8, https://usa.oceana.org/wp-content/uploads/sites/4/deepwater_horizon_anniversary_report_updated_4-28.pdf.

[47] 563 F.3d 466 (D.C. Cir. 2009).

consider the global environmental impact of oil and gas consumption before approving a Leasing Program."[48] It further stated that "OCSLA . . . concerns the local environmental impact of leasing activities in the OCS and does not authorize—much less require—Interior to consider the environmental impact of post-exploration activities such as consuming fossil fuels on either the world at large, or the derivative impact of global fossil fuel consumption on OCS areas."[49]

Center for Biological Diversity does not preclude BOEM from seeking to minimize the extent and impact of leasing in the manner we urge. To begin, the D.C. Circuit has treated *Center for Biological Diversity* as a decision merely upholding an agency's exercise of its discretion under *Chevron*, rather than a decision barring the agency from considering certain factors.[50] Even setting that point aside, moreover, minimizing the extent of leasing would not be a response to the impact of downstream emissions as such. Rather, it would reflect a determination that "national energy needs" are best served by a transition away from fossil fuels. Further, as *Center for Biological Diversity* recognizes, the emissions that offshore drilling generates arise not just at the consumption stage, but also at the production stage.[51] Minimizing the extent of oil and gas leasing thus would minimize these production-stage emissions and associated environmental impact, too.

* * *

We appreciate the opportunity to submit these comments and thank the Administration for its commitment to taking bold steps to confront the climate crisis.

Respectfully submitted,

Brian E. Frosh
Attorney General of Maryland

---

[48] *Id.* at 484; *see id.* (stating that "Interior need not consider the impacts of the *consumption* of oil and gas after it has been extracted from the OCS").

[49] *Id.*

[50] *See Center for Sustainable Economy*, 779 F.3d at 608 n.11 ("In *CBD*, we concluded that OCSLA was sufficiently ambiguous to permit Interior to forgo consideration of climate-related effects of burning OCS-derived fossil fuels, and to allow Interior to limit its consideration of the environmental impact of OCS leasing.").

[51] *See id.*

William Tong
Attorney General of Connecticut

Kathleen Jennings
Attorney General of Delaware

Aaron M. Frey
Attorney General of Maine

Maura Healey
Attorney General of Massachusetts

Matthew J. Platkin
Attorney General of New Jersey

Letitia James
Attorney General of New York

Ellen F. Rosenblum
Attorney General of Oregon

Peter F. Neronha
Attorney General of Rhode Island

Bob Ferguson
Attorney General of Washington