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Via Electronic Submission

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Mr. J. F. Bennett
Chief, Branch of Environmental Assessment
Minerals Management Service
381 Elden Street, MS 4042
Herndon, Virginia 20170

**Re: Scoping Comments on the Environmental Impact Statement (EIS) for the
2012-2017 Outer Continental Shelf (OCS) Oil and Gas Leasing Program**

Dear Mr. Bennett:

We submit these comments on behalf of the Southern Environmental Law Center (“SELC”) and the following organizations: Alabama Rivers Alliance; Altamaha Riverkeeper & Altamaha Coastkeeper; Center for a Sustainable Coast; Choctawhatchee Riverkeeper; Coastal Conservation League; Conservation Alabama; Conservation Council of North Carolina; Conservation Voters of South Carolina; Defenders of Wildlife; Environment New Jersey; Environment Virginia; Georgia Conservancy; Glynn Environmental Coalition; Hurricane Creekkeeper, Friends of Hurricane Creek; Mobile Baykeeper; North Carolina Coastal Federation; North Carolina Conservation Network; North Carolina Native Plant Society, Southeast Coast Chapter; Oceana; Ogeechee Riverkeeper; Pamlico Tar River Foundation; PenderWatch & Conservancy; Savannah Riverkeeper; Sierra Club, North Carolina Chapter; Sierra Club, South Carolina Chapter; Sierra Club, Virginia Chapter; and Virginia League of Conservation Voters, in response to the Department of the Interior (“DOI”) Minerals Management Service’s (“MMS”) ¹ Notice of Intent To Prepare an Environmental Impact Statement (“EIS”) with respect to the OCS Oil and Gas Leasing Program for 2012–2017 and request for scoping comments on the same. ²

SELC is a regionally-focused organization that has worked for almost 25 years to protect the coastal resources of the southern states of Virginia, North Carolina, South Carolina, Georgia, and Alabama from a variety of environmental threats. The organizations listed above represent a

¹ On 18 June 2010, Secretary Salazar renamed the Minerals Management Service the Bureau of Ocean Energy Management, Regulation, and Enforcement (“BOEMRE”). Secretarial Order No. 3302, Change of the Name of the Minerals Management Service to the Bureau of Ocean Energy Management, Regulation, and Enforcement (18 June 2010), available at <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=35872>.

² 63 Fed. Reg. 1,6828 (2 April 2010).

coalition of organizations all dedicated to protecting the multitude of valuable coastal and marine resources that would be harmed by the Administration's proposal to expand offshore drilling.

We strongly urge this Administration to permanently withdraw the Mid- and South Atlantic and the eastern Gulf OCS regions from future oil and gas development. The costs and risks to the environment, people, and economies of these regions posed by offshore drilling are far too great to justify any of the purported benefits. Though this has always been the case, the recent Deepwater Horizon blowout and ongoing spill has made this point far too clear. Accordingly, we urge the administration to permanently reverse its plans to open these areas to offshore drilling. As our 21 September 2009 comments on the 2010-2015 Draft Proposed 5-Year Leasing Program³ and notice of intent to prepare an EIS for the same⁴ ("DPP comments") discussed in detail, a proper analysis under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1344, *et seq.*, likewise demands that these regions be withdrawn from future oil and gas development. According to the government's own assessments, the Mid- and South Atlantic and eastern Gulf are among the most environmentally sensitive OCS regions, yet combined hold the equivalent of only just over 7 months' worth of oil and approximately 1 year and 3 months' worth of natural gas,⁵ at current rates of U.S. consumption.⁶

Should this Administration, nevertheless, decide to retain these regions as part of its leasing program for 2012-2017, these comments identify below what the Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEMRE"), the MMS's successor agency,⁷ must, at a minimum, address in its EIS associated with that program.

I. The Administration Should Permanently Withdraw the Mid- and South Atlantic and the Eastern Gulf from Offshore Drilling.

We strongly urge this Administration to reverse its decision to expand offshore drilling to the Mid- and South Atlantic and the eastern Gulf regions as part of the next 5-year leasing program and to permanently protect these areas from future offshore exploration and development. Less than a month after the President's 31 March 2010 announcement to expand offshore drilling to these new areas, the Deepwater Horizon's exploratory well blew out, causing an explosion that killed 11 men and an oil spill that has become the largest man-made

³ MINERALS MGMT. SERV., DRAFT PROPOSED OUTER CONTINENTAL SHELF (OCS) OIL AND GAS LEASING PROGRAM 2010-2015 (2009), available at <http://www.mms.gov/5-year/2010-2015New5-YearHome.htm> [hereinafter MMS, 2010-2015 DPP].

⁴ 74 Fed. Reg. 3,631 (21 Jan. 2009) (Request for Comments); 74 Fed. Reg. 9,426 (4 Mar. 2009) (Extension of Comment Period).

⁵ See DOI, Estimated Undiscovered, Economically Recoverable Resources as of July 2010 (resources at \$80/bbl), available at http://www.doi.gov/whatwedo/energy/ocs/upload/UERR_map_2012-2017.pdf.

⁶ According to the EIA, in 2007 the U.S. consumed 20,680,000 barrels of oil per day. Energy Info. Admin., Petroleum Navigator, available at http://tonto.eia.doe.gov/dnav/pet/pet_cons_psup_dc_nus_mbbldpd_a.htm. In 2007 the U.S. consumed 23,097,140 million cubic feet of natural gas. Energy Info. Admin., *U.S. Natural Gas Total Consumption (Million Cubic Feet)* at Table 1, available at <http://tonto.eia.doe.gov/dnav/ng/hist/n9140us2A.htm>.

⁷ See Secretarial Order No. 3302, Change of the Name of the Minerals Management Service to the Bureau of Ocean Energy Management, Regulation, and Enforcement (18 June 2010), available at <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=35872>.

environmental disaster in our nation's history. In the President's words, the Deepwater Horizon oil spill is "the worst environmental disaster America has ever faced."⁸

Millions of gallons of crude oil have already spilled from the Deepwater Horizon well site, which continues to spew an estimated 1.5 to 2.5 million gallons of oil (35,000 to 60,000 barrels) a day, according to the government's latest estimates⁹—and the well is not expected to be under control for months. Oil has washed on to the beaches and into the marsh wetlands of Louisiana, Mississippi, Alabama, and Florida, with devastating consequences for their ecologically rich coastal resources and the coastal communities that depend on them. The wildlife death count is only just beginning. Nearly one-third of the Gulf is closed to recreational and commercial fishing for the indefinite future. The lives of millions of Gulf residents have been disrupted, and the region's economy has suffered a crippling blow.

The Deepwater Horizon spill is a tragic and sobering incident, illustrating how inherently risky, dangerous, and dirty offshore oil and gas drilling can be, notwithstanding the use of the most current drilling technologies and methods for containing and cleaning up spilled oil. That this accident occurred in, and has completely overwhelmed the response capabilities of, a region with the most offshore experience and technical expertise demonstrates why offshore drilling should not be expanded to new regions like the Mid- and South Atlantic and the eastern Gulf of Mexico. These regions are undisputedly among the most environmentally sensitive to offshore oil and gas development.¹⁰ For example, their coasts are lined with fragile wetlands and marshes and wildlife habitat that would suffer considerable harm from oil spills and onshore infrastructure associated with oil and gas development.

The Gulf tragedy has also exposed the degree to which the current legal and administrative system for regulating offshore oil and gas development is fundamentally flawed and must be reformed to ensure adequate safety and environmental reviews, oversight, and enforcement. As the President stated in his first oval office address, "[o]ne of the lessons we've learned from this spill is that we need better regulations[,] better safety standards, and better enforcement when it comes to offshore drilling."¹¹ The Administration's first priority should be to fix the system, so that it prioritizes ecosystem health and sustainability, removes incentives for risky drilling, and holds responsible parties accountable. The last thing the Administration should do is continue to entertain the notion of expanded offshore drilling as part of the next 5-year leasing program.

⁸ President Obama's Oval Office Address on the BP Oil Spill: "A Faith in the Future that Sustains us as a People" (15 June 2010), available at <http://www.whitehouse.gov/blog/2010/06/16/president-obamas-oval-office-address-bp-oil-spill-a-faith-future-sustains-us-a-peopl>.

⁹ DOI Press Release, U.S. Scientific Team Draws on New Data, Multiple Scientific Methodologies to Reach Updated Estimate of Oil Flows from BP's Well, 15 June 2010, <http://www.doi.gov/news/pressreleases/Flow-Rate-Team-Updates-Estimate-of-Oil-Flowing-from-BP-Well.cfm#>.

¹⁰ See U.S. MINERALS MGMT. SERV., PRELIMINARY REVISED PROGRAM OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM 2007-2012, at 108-09, 116 (March 2010), available at <http://www.doi.gov/whatwedo/energy/ocs/upload/PRP2007-2012.pdf> [hereinafter PRP].

¹¹ President Obama's Oval Office Address on the BP Oil Spill: "A Faith in the Future that Sustains us as a People" (15 June 2010), available at <http://www.whitehouse.gov/blog/2010/06/16/president-obamas-oval-office-address-bp-oil-spill-a-faith-future-sustains-us-a-peopl>.

At the very least, the Administration cannot defensibly move forward until it completes the various efforts it has begun, in response to the multitude of deficiencies brought to light by the Deepwater Horizon spill, to reform the manner in which offshore drilling is managed, regulated, and enforced. For example, the oil spill helped expose the inherent conflicts among the former MMS's various missions of collecting the revenues, evaluating the environmental impacts, and enforcing the safety and environmental regulations of offshore drilling. The reorganization and restructuring of MMS into three separate bureaus will fundamentally change how the agency currently goes about evaluating offshore resources, plans, and leases, and how it carries out its other duties regarding offshore oil and gas development.¹² Because the Secretary's restructuring retains the conflicting missions within the same federal agency, however, SELC is advocating that the responsibility of environmental study, oversight, and review should be transferred to another agency entirely, like NOAA or EPA, who have the mission and expertise necessary to conduct independent, meaningful environmental review.

The President also established the National Commission on the BP Deepwater Horizon Oil Spill to conduct a thorough review of the root causes of the spill and to compile a report on how to guard against and mitigate the impact of offshore oil spills in the future.¹³ Among other options, the President directed the Commission to consider in its report "improvements to Federal laws, regulations, and industry practices applicable to offshore drilling."¹⁴ The Commission's report will provide critical information that must be known and understood before the Administration can make any sound decisions regarding future offshore drilling.

Finally, various amendments to existing laws governing offshore oil and gas drilling have also either been introduced or supported by members of Congress, which if enacted into law would change the context and statutory framework within which decisions about offshore drilling will be made. It would be simply imprudent for the Administration to move forward with its proposed leasing program to expand offshore drilling to new OCS regions before all of these review and reform efforts are resolved, and before critical information about the cause of the spill and its impacts on the environment are known.

Nevertheless, offshore drilling will always carry risks and pose environmental harm. Not only will there always be human error but, as BP's CEO testified before Congress, current offshore drilling technology is not advanced enough to truly be failsafe and ensure adequate safety to people and the environment.¹⁵ Representatives of the other major oil companies—Shell, Exxon, Chevron, ConocoPhillips—similarly could not assure Congress that events like the

¹² See Secretarial Order No. 3299, Establishment of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue (19 May 2010), available at http://elips.doi.gov/app_so/act_getfiles.cfm?order_number=3299.

¹³ See Executive Order 13543 of 21 May 2010, 75 Fed. Reg. 2,9397 (26 May 2010). Text of the Executive Order is also available at the White House Website: <http://www.whitehouse.gov/the-press-office/executive-order-national-commission-bp-deepwater-horizon-oil-spill-and-offshore-dri>.

¹⁴ See *id.*

¹⁵ *The Role of BP in the Deepwater Horizon Explosion and Oil Spill: Hearing Before the Subcomm. on Oversight and Investigations*, 111th Cong. 182, 202 (2010) (statement of Tony Hayward, CEO of BP) available at <http://energycommerce.house.gov/documents/20100617/transcript.06.17.2010.oi.pdf>.

Deepwater Horizon blowout and spill would never happen again.¹⁶ In the case of the environmentally sensitive Mid- and South Atlantic and the eastern Gulf regions, the costs and risks of such harm are simply not justified. We therefore implore this Administration to withdraw new areas from consideration in the next 5-year leasing program, and to permanently protect these areas from any offshore oil and gas development in the future. We urge the Administration to instead expeditiously and aggressively institute programs that support energy efficiency and renewable energy development.

Indeed, as the President himself has recognized, the Gulf disaster “is the most painful and powerful reminder yet that the time to embrace a clean energy future is now.”¹⁷ Clean energy solutions will keep our region’s environment and coastal communities safe, while also reducing our dependence on fossil fuels and staving off the impacts of climate change. We encourage the Administration to take meaningful action towards these solutions now.

II. A Proper Balance Under the OCSLA Warrants Excluding the Mid- and South Atlantic and the Eastern Gulf from the 5-Year Leasing Program.

In addition to the reasons illustrated by the heartbreaking catastrophe unfolding in the Gulf, a proper balance under Section 18 of OCSLA, 43 U.S.C. § 1344, warrants excluding the Mid- and South Atlantic and the eastern Gulf OCS regions from the 5-year leasing program. Section 18 of OCSLA requires the Secretary to consider eight factors when developing a leasing program, 43 U.S.C. § 1344(a)(2), and then to strike a proper balance between potential for oil and gas production and the potential for environmental damage, 43 U.S.C. § 1344(a)(3). As set forth in detail in our DPP comments at 5-12, the former by no stretch of the imagination outweighs the certain environmental costs and potential environmental damage associated with oil and gas development in the region.

DOI’s estimates for the Mid- and South Atlantic OCS regions, combined, amount to a maximum of just 1.15 billion barrels of oil and 11.7 trillion cubic feet of natural gas,¹⁸ which translates to less than two months’ worth of oil (approximately 56 days) and 6 months’ worth of natural gas, at current rates of U.S. consumption.¹⁹ When added to the estimated maximum of 3.5 billion barrels of oil and 17 trillion cubic feet of natural gas in the eastern Gulf,²⁰ the total estimated economically recoverable resources from these OCS regions translates to just over 7 months’ worth of oil and approximately 1 year and 3 months’ worth of natural gas. Because

¹⁶ See *id.* at 179 (statements of Rep. Gonzalez, Member, Comm. On Energy and Commerce, and Tony Hayward, CEO of BP).

¹⁷ President Obama’s Oval Office Address on the BP Oil Spill: “A Faith in the Future that Sustains us as a People” (15 June 2010), available at <http://www.whitehouse.gov/blog/2010/06/16/president-obamas-oval-office-address-bp-oil-spill-a-faith-future-sustains-us-a-peopl>.

¹⁸ DOI, Estimated Undiscovered, Economically Recoverable Resources as of July 2010 (resources at \$80/bbl), available at http://www.doi.gov/whatwedo/energy/ocs/upload/UERR_map_2012-2017.pdf.

¹⁹ According to the EIA, in 2007 the U.S. consumed 20,680,000 barrels of oil per day. Energy Info. Admin., Petroleum Navigator, available at http://tonto.eia.doe.gov/dnav/pet/pet_cons_psup_dc_nus_mbbldpd_a.htm. In 2007 the U.S. consumed 23,097,140 million cubic feet of natural gas. Energy Info. Admin., *U.S. Natural Gas Total Consumption (Million Cubic Feet)* at Table 1, available at <http://tonto.eia.doe.gov/dnav/ng/hist/n9140us2A.htm>.

²⁰ DOI, Estimated Undiscovered, Economically Recoverable Resources as of July 2010 (resources at \$80/bbl), available at http://www.doi.gov/whatwedo/energy/ocs/upload/UERR_map_2012-2017.pdf.

President Obama is proposing to open only a portion of the eastern Gulf, this figure is overly conservative.

In stark contrast to these meager estimates, the potential for environmental damage to the region is severe. According to DOI's own analysis, the Mid- and South Atlantic and the eastern Gulf are among the most environmentally sensitive of all the OCS regions because of the sensitivity of their marine and coastal resources to multiple impact-producing factors, such as oil spills, sound and physical disturbance, and increased sensitivity due to climate change and ocean acidification.²¹ In particular, the shorelines and coastal habitats of these regions are the most sensitive of all OCS regions to the adverse impacts of oil spills.²² The Mid- and South Atlantic and the eastern Gulf essentially represent the most environmentally sensitive and least oil-and-gas-rich regions of the OCS. Accordingly, a proper and objective application of OCSLA demands that these regions not be open to offshore oil and gas development.

III. NEPA Requires that an EIS Fully Examine the Substantial Adverse Environmental Impacts of the Proposed 5-Year Leasing Program and Potential Alternatives.

Should the Administration decide to retain the Mid- and South Atlantic and the eastern Gulf as part of the leasing program for 2012-2017, which we strongly oppose, NEPA requires an EIS that fully examines the substantial adverse impacts of oil and gas development on those regions and identifies and assesses potential alternatives. We identified the scope of information that such an EIS must, at a minimum address, in our comments on the DPP. This letter incorporates by reference those comments. In addition, in light of significant events, new information, and changes to the proposed 5-year leasing program that have taken place since then, we outline here additional information that the EIS must address.

A. The EIS Must be Informed by CEQ's Review of MMS's Current NEPA Policies and Procedures and Comply with CEQ's Recommendations for Change.

In response to the Deepwater Horizon spill, the Council on Environmental Quality ("CEQ") initiated a 30-day formal review of MMS's existing NEPA policies, practices, and procedures, and requested comments on the same, for the purpose of assessing their consistency with NEPA and issuing recommendations for change.²³ A number of comments pointed out how MMS's existing NEPA policies and practices consistently disregard the agency's obligation under NEPA to conduct thorough, adequate environmental review that takes a "hard-look" at the environmental impacts of offshore drilling at each of OCSLA's stages. For example, MMS improperly used categorical exclusions and authorized activities without the required environmental reviews. MMS also repeatedly abused the concept of tiering by preparing overly broad environmental analyses at the 5-year program and leasing stages with the promise of performing more detailed assessments at later stages—promises that were never followed through. Additionally, MMS frequently failed to comply with CEQ regulations governing how it

²¹ See PRP at 104-05.

²² See DPP at 99; see also PRP at 116.

²³ See 75 Fed. Reg. 2,9996 (28 May 2010).

must assess environmental impacts in the face of uncertain or incomplete information.²⁴ Rather than obtain critical base-line information, MMS proceeded with inadequate and incomplete analyses. Accordingly, numerous public comments, which we endorse, urged CEQ to address these failures by issuing guidance that prohibits the use of categorical exclusions to authorize offshore drilling activities; directs the agency to conduct detailed review at all OCSLA stages; and clarifies the agency's duty to seek out baseline information and conduct proper analyses when data gaps cannot be filled. The CEQ is expected to issue a report and recommendations based on its review shortly. The EIS for the next 5-year program must be fully informed by and consistent with those recommendations as well as any subsequently issued regulations regarding the same.

B. The EIS Must Include a Thorough Oil Spill Risk and Impact Analysis.

The Deepwater Horizon spill and the ongoing efforts to respond to and mitigate its environmental impacts have exposed serious inadequacies in the analyses that MMS has prepared in the past regarding environmental impacts of oil spills associated with offshore drilling. The EIS for the next 5 year program must include a thorough oil spill risk and impact analysis for each of the OCS regions. That analysis must take into consideration the lessons learned from the Deepwater Horizon spill and realistically assess the risk of various spill sizes and frequencies. It must analyze the potential environmental and economic impacts of a catastrophic spill event given realistic assumptions about underwater and surface response capabilities, taking into consideration the different level of resources, support infrastructure, and experienced personnel available in each OCS region.

Additionally, the EIS must consider not only the impacts of the oil itself but also the environmental impacts of the various techniques for treating and responding to spills, including the use of dispersants and in situ burning. As of 28 June 2010, more than 1,552,000 gallons of dispersants had been applied in the Gulf of Mexico to respond to the Deepwater Horizon spill—more than 1 million gallons on the surface and more than 552,000 gallons deep underwater.²⁵ Though the short- and long-term impacts of dispersants on the environment have not been fully tested, dispersants are known to have significant adverse impacts on marine life, including marine mammals, fish, and birds. Dispersants contain toxic chemicals that break down oil and that, alone or in combination with the already toxic oil droplets, can cause a variety of harms. For example, the chemicals in dispersants, including surfactants and detergents, can damage the lungs of mammals and birds, and cover the gills of fish with a film that prevents them from breathing.²⁶ Further, according to some studies, the combination of dispersants and crude oil can be more toxic than either alone because they contain many of the same toxic properties and because the basic properties of dispersants make it easier for crude oil to enter the body, enter cells, and cause damage.²⁷ In addition to causing harm to the marine environment, dispersants pose health concerns for workers involved in clean-up efforts. A number of workers in the Gulf

²⁴ See 40 C.F.R. § 1502.22.

²⁵ Deepwater Horizon Response, Operations and Ongoing Response – June 28, 2010, <http://www.deepwaterhorizonresponse.com/go/doc/2931/716951/> (last visited 28 June 2010).

²⁶ See SCIENCECORPS, GULF OIL SPILL HEALTH HAZARDS, at 15 (14 June 2010), available at http://www.sciencecorps.org/Gulf_Spill_Chemical_Hazards_Report.pdf.

²⁷ See *id.* at 38.

have already been hospitalized due to complaints of nausea, shortness of breath, and high blood pressure, believed to be caused by exposure to dispersants.²⁸ The EIS must, therefore, fully discuss the potential impacts of both surface and subsea dispersant use on marine wildlife and their habitats as well as on the men and women who would be exposed to the dispersants through cleanup-up efforts.

Oil spill response techniques also include removing surface oil through controlled burning operations, called “in-situ burning.” As of 28 June 2010, the Deepwater Horizon response efforts had burned nearly 9.9 million gallons of oil.²⁹ Although in-situ burning can remove large quantities of surface oil at a time and help prevent oil from reaching shore, it can generate large quantities of highly visible smoke that may adversely affect humans and other exposed populations downwind; cause plant and animal deaths and other adverse biological impacts at the sea surface; and produce burn residues that sink and expose benthic organisms.³⁰ The EIS must fully assess the environmental impacts of in-situ burning, along with dispersant use and other response techniques, so that the various environmental trade-offs associated with response efforts can be fully analyzed and compared and decisions about when and where to use various techniques are fully informed.

C. The EIS must Fully Assess Alternatives.

MMS has stated that it will consider as alternatives increasing or decreasing the number or frequency of sales, coastal buffers, limiting areas available for leasing, and excluding parts of or entire planning areas,³¹ and we endorse excluding areas for the reasons stated above. However, as we discussed in previous comments, MMS must also rigorously explore alternatives to oil and gas development in the first instance, including options for meeting energy needs through conservation and renewable energy sources. For example, according to the Institute for Local Self-Reliance, southern states can meet significant levels of energy needs through tapping renewable sources within their own borders, including offshore and onshore wind, rooftop solar, small hydropower, combined heat and power, and geothermal: Virginia: 177%; North Carolina: 237%; South Carolina: 236%; Georgia: 34%; and Alabama: 25%.³² The EIS must identify and fully assess alternatives such as these and analyze their impacts on the environment along with those of those of offshore drilling.

D. Conflicts with U.S. Department of Defense Operations on the OCS.

²⁸ Leslie Kaufman and Elisabeth Rosenthal, Worry About Dispersant Rises as Men in Work Crew Complain of Health Problems, NY TIMES, 27 May 2010, <http://www.nytimes.com/2010/05/28/science/earth/28workers.html>.

²⁹ Deepwater Horizon Response, Operations and Ongoing Response – June 28, 2010, <http://www.deepwaterhorizonresponse.com/go/doc/2931/716951/> (last visited 28 June 2010).

³⁰ See NOAA, Office of Response and Restoration, Questions About Environmental Tradeoffs, [http://response.restoration.noaa.gov/topic_subtopic_entry.php?RECORD_KEY%28entry_subtopic_topic%29=entry_id,subtopic_id,topic_id&entry_id\(entry_subtopic_topic\)=227&subtopic_id\(entry_subtopic_topic\)=8&topic_id\(entry_subtopic_topic\)=1](http://response.restoration.noaa.gov/topic_subtopic_entry.php?RECORD_KEY%28entry_subtopic_topic%29=entry_id,subtopic_id,topic_id&entry_id(entry_subtopic_topic)=227&subtopic_id(entry_subtopic_topic)=8&topic_id(entry_subtopic_topic)=1) (last visited 28 June 2010).

³¹ 63 Fed. Reg. 1,6828 (2 April 2010).

³² JOHN FARRELL AND DAVID MORRIS, ENERGY SELF-RELIANT STATES, SECOND AND EXPANDED EDITION, 20 (May 2010), available at <http://www.newrules.org/energy/publications/energy-selfreliant-states-second-and-expanded-edition>.

Offshore oil and gas development in the Mid- and South Atlantic and eastern Gulf would present serious conflict issues for the U.S. Department of Defense (“DOD”), which relies on offshore areas within these regions for critical testing and training operations. As stated in our previous comments, oil and gas development in the Virginia lease sale area is of particular concern. The U.S. Navy has clearly stated that oil and gas exploration there is incompatible with its operations in the Virginia Capes Operations Area (“VACAPES”), which stretches from Delaware to North Carolina.³³ Those operations are based out of the Norfolk Naval Base in Virginia, the world’s largest, and an economic mainstay of Hampton Roads, Virginia. DOD reiterated its opposition to oil and gas development in a report to MMS made public earlier this year in which it stated that oil and gas activity in 72% of the Virginia sale area would unduly interfere with its operations and must, therefore, be off limits.³⁴ The incompatibility of oil and gas development off the coast of Virginia and other southern states with the existing DOD operations is just one more reason for the Administration to permanently withdrawing these regions from future oil and gas development, and to permanently cancel the Virginia lease sale in particular. If DOI retains the Mid- and South Atlantic and eastern Gulf OCS regions in the proposed leasing program for 2012-2017, however, the EIS must thoroughly examine the adverse impacts that offshore drilling would have on military operations there and the resulting adverse impacts to the local economies that rely on these operations for valuable jobs and revenue.

E. Deepwater Habitats of Particular Sensitivity.

The EIS must examine the severe environmental impacts that offshore oil and gas development could have on deepwater habitats. The areas off the coast of the Mid-Atlantic contain particularly sensitive marine canyons that currently receive special protection from degradation. Four canyons, known as Oceanographer, Lydonia, Veatch and Norfolk, are among the best-documented deepwater habitats in the U.S. The canyons are home to a multitude of marine animals, including sponges, corals, lobsters and fish. In recognition of their ecological importance, these canyons are closed to bottom trawling and dredging.

Four canyons, Wilmington, Baltimore, Hydrographer, and Washington, are subject to specific trawling fisheries regulations in light of their importance as coral and fish habitats. Norfolk Canyon is within the Virginia lease sale 220 area, as is Washington Canyon. The Washington and Norfolk Canyons have been designated as a Habitat Areas of Particular Concern by the National Marine Fisheries Service. Offshore drilling in the Mid-Atlantic will detrimentally impact these special areas.

Additionally, the South Atlantic region is home to what may be the largest continuous distribution of deepwater corals in the world. The coral is valuable habitat for an array of vertebrate and invertebrate marine life. Five areas of these corals, totaling more than 23,000

³³ Letter from Donald R. Schregardus, Dept. of the Navy, to R.M. Burton, Dir., Minerals Mgmt. Serv. (10 Apr. 2006).

³⁴ Report on the compatibility of Department of Defense activities with oil and gas resource development on the Outer Continental Shelf; http://www.acq.osd.mil/ie/offshore/dod_ocs_rept_02152010_release.pdf. DOD also said 9% of the Mid-Atlantic, 10% of the South Atlantic, and 11% of the eastern Gulf OCS regions must be off limits to oil and gas and additional area would need to be subject to strict DOD stipulations based on military needs to avoid conflicts with crucial training, testing and other military operations. *Id.*

square miles, have been designated as Coral Habitat Areas of Particular Concern by the National Marine Fisheries Service and granted special protections. Oil and gas development would introduce routine marine pollution, including toxic drilling muds, into the marine environment that could have dire consequences for these fragile deepwater habitats. The EIS must address how these and other environmental impacts associated with oil and gas development would affect these deepwater coral and canyon habitats and the marine life that depends on them.

F. Eastern Gulf of Mexico.

The eastern Gulf is currently protected from drilling until 30 June 2022, pursuant to the Gulf of Mexico Energy Security Act of 2006.³⁵ As such, our 2009 DPP comments did not address the impacts analysis to that area required for an EIS under NEPA. With the President's 31 March 2010 announcement to reconsider this area, and subsequently work with Congress to lift the moratorium, however, this region is now at risk. Should the Administration decide to extend drilling to the eastern Gulf as part of the leasing program for 2012-2017, an EIS must fully account for the potential environmental impacts.

1. Oil and Gas Development will have Significant Direct Impacts on the Eastern Gulf of Mexico.

a. Oil and Gas Development will Significantly Impact Threatened and Endangered Species.

Oil and gas development in the eastern Gulf could significantly impact numerous threatened and endangered species. For example, the Gulf of Mexico is home to 32 threatened and endangered species, including 5 whale species, the West Indian manatee, 5 sea turtle species, 4 species of beach mice, 7 seabird species, and 4 species of fish.³⁶ These species also inhabit the eastern region of the Gulf. In addition, the once highly endangered Brown Pelican, one of only two pelican species native to North America, is a particularly iconic species in the eastern Gulf. While the Brown Pelican has been removed from the endangered list in Alabama and Florida, oil and gas development in the eastern Gulf may significantly affect the recovery process.³⁷ As a result, an EIS for the next 5 year program must address how oil and gas development in the eastern Gulf may impact the habitat, food supply, reproduction rates, and overall health of these threatened and endangered species.

b. Oil and Gas Development will Significantly Impact Sensitive Marine and Coastal Habitats.

Due to the clear waters and low sediment input of the eastern Gulf, this area is ideal for seagrass,³⁸ which serves as critical habitat for fish and coastal species. The northeastern corner

³⁵ Gulf of Mexico Energy Security Act of 2006, Pub L. No. 109-432, § 104, 120 Stat. 3000 (2006).

³⁶ MINERALS MGMT. SERV., MMS 2007-018, GULF OF MEXICO OUTER CONTINENTAL SHELF OIL & GAS LEASE SALES: 2007-2012 FINAL ENVIRONMENTAL IMPACT STATEMENT at 3-34, 3-45, 3-55, 3-61, 3-64 (2007).

³⁷ *Id.* at 3-63.

³⁸ M. W. BECK, ET AL., NATURE CONSERVANCY, IDENTIFICATION OF PRIORITY SITES FOR CONSERVATION IN THE NORTHERN GULF OF MEXICO: AN ECOREGIONAL PLAN 5 (2000).

of the Gulf contains extensive seagrass beds as well as limestone hardbottom, to which sponges and corals attach.³⁹ Many offshore species use this nearshore environment as nursery habitat.⁴⁰ Though this aspect of the eastern Gulf is still “largely unstudied,”⁴¹ it is estimated that in general seagrass, estuarine, and marsh environments are ten times more valuable than terrestrial habitat in terms of ecosystem services like recreation and nutrient cycling.⁴² The Apalachicola Bay is one of the most “biologically productive estuaries in the country” and the source of 10% of the country’s oysters.⁴³ The Apalachicola watershed contains more than 1,300 plant species, 83 reptile species, over 50 species of mammals, and 46 amphibian species.⁴⁴ This enormous diversity and productivity demonstrates the degree of fragility and importance of the coastal regions of the eastern Gulf.

In 2000, The Nature Conservancy developed a portfolio of priority conservation sites in the northern Gulf, which encompasses the eastern Gulf of Mexico. Relevant sites with their respective target species and habitats include: Bayous of Escambia Bay, for tidal fresh marsh and Gulf sturgeon; Santa Rosa Sound, for seagrass, green turtles, and plovers; St. Joseph Bay, for seagrass and shellfish; Apalachicola Bay, for oyster reef, tidal fresh marsh, and manatee; Northeastern Apalachee Bay, for sponge and coral, seagrass, manatee, Kemp’s ridley turtle, and Fringed pipefish; Suwannee Sound, for Gulf sturgeon, manatee, and oyster reef; and Southern Apalachee Bay, for sponge and soft coral, seagrass, manatee, Kemp’s ridley turtle, Dwarf seahorse, Fringed pipefish, and intertidal shrub/forest.⁴⁵ The Nature Conservancy’s rankings and conservation efforts to protect these areas are further evidence of the importance of coastal ecosystems to the region.

Many areas in the eastern Gulf are also designated as Marine Protected Areas due to the sensitivity of the ecosystems. Included among the Marine Protected Areas are Alabama’s Bon Secour National Wildlife Refuge and Grand Bay National Wildlife Refuge, as well as 19 National Wildlife Refuges off the western coast of Florida.⁴⁶ Thus, it is critical that an EIS address, at a minimum, how oil and gas development may affect these sensitive coastal environments.

2. Oil and Gas Development will have Significant Indirect and Cumulative Impacts on the Eastern Gulf of Mexico.

a. Oil and Gas Development will have Significant Indirect Impacts on Commercial and Recreational Fishing.

³⁹ *Id.*

⁴⁰ *Id.* at 6.

⁴¹ *Id.* at 5.

⁴² *Id.* (citing R. Constanza, et al. *The Value of the World’s Ecosystem Services and Natural Capital*, 387 NATURE 253–60).

⁴³ *Id.* at 20.

⁴⁴ The Nature Conservancy, Places the Nature Conservancy Protects in the Gulf of Mexico, <http://www.nature.org/wherewework/northamerica/gulfofmexico/preserves/> (last visited 24 June 2010).

⁴⁵ *Id.* at 19–23.

⁴⁶ National Marine Protected Areas Center, List of National Marine Protected Areas, http://mpa.gov/pdf/helpful-resources/national_system_mpas_list_100512.pdf. See also Fish and Wildlife Service – Southeast Region, National Wildlife Refuge System, <http://www.fws.gov/southeast/refuges/refuges-by-state.html>.

Commercial fishing is a critical industry in the eastern Gulf. In 2008, the western coast of Florida generated 60 million pounds of commercial seafood, at an estimated value of \$122.5 million.⁴⁷ Similarly, waters off the coast of Alabama yielded 24 million pounds, at an estimated value of \$44 million for 2008.⁴⁸ The western coast of Florida and Alabama are responsible for providing 2.7 million pounds and 1.8 million pounds of economically valuable blue crab each year, respectively, for an aggregate value of \$4.8 million.⁴⁹ Shrimp landings in Alabama amount to 17 million pounds, with a dockside value of \$38.4 million, and 9.9 million pounds, with a dockside value of \$23.3 million, in West Florida.⁵⁰ Furthermore, oyster production, in which the Gulf region leads the nation, represents 2.5 million pounds and \$6.87 million for West Florida and 72,776 pounds and \$243,414 for Alabama.⁵¹ NOAA projects that the Deepwater Horizon oil spill will have extensive ecological and economic impacts on these species and commercial landings.⁵² Consequently, if the Administration decides to go forward, an EIS must account for how oil and gas development will impact the population of commercial fish, and thus the economic health of the eastern Gulf.

Likewise, recreational fishing is an important pastime and economic driver in the eastern Gulf. In 2008, almost 3.2 million residents participated in recreational marine fishing in the Gulf of Mexico, for a total of 25 million trips, catching nearly 194 million fish.⁵³ Over 67 percent of the trips were made in west Florida and 7 percent in Alabama.⁵⁴ Popular sporting fish in the Gulf include red snapper, grouper, mackerel, mahi mahi, saltwater catfish, and sharks. An EIS must account for the impact that oil and gas development will have on these species as well as the recreational fishing industry.

b. Oil and Gas Development will have Significant Indirect Impacts on Coastal Tourism Economies.

Tourism plays a significant role in Gulf state economies, and oil and gas development off the coast could have adverse impacts on this sector. In Alabama in 2009, tourism on the coast accounted for 58,142 jobs, \$1.3 billion in earnings, and \$3.2 billion in total expenditures.⁵⁵ In Alabama, for every \$85,050 in expenditures in the travel industry, one direct job is created, and with every two direct jobs created, an additional indirect job is created.⁵⁶ Furthermore, in 2009,

47 National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Annual Commercial Landing Statistics, http://www.st.nmfs.noaa.gov/st1/commercial/landings/annual_landings.html (last visited 24 June 2010).

⁴⁸ *Id.*

⁴⁹ National Oceanic and Atmospheric Administration, NOAA's Oil Spill Response: Fish Stocks in the Gulf of Mexico 1 (2010), available at http://response.restoration.noaa.gov/book_shelf/1886_Fish-Stocks-Gulf-fact-sheetv2.pdf.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* 1–2.

⁵³ National Marine Fisheries Service, *U.S. Marine Recreational Fisheries 22* (2008) available at http://www.st.nmfs.noaa.gov/st1/fus/fus08/03_recreational2008.pdf.

⁵⁴ *Id.*

⁵⁵ Alabama Travel Industry, Economic Report 9 (2009), available at http://www.alabama.travel/media/media_room/Report/2009TourismReport.pdf.

⁵⁶ *Id.* at i.

the travel and tourism industry in all of Alabama produced \$679 million in state and local tax revenues.⁵⁷ The travel industry in Alabama represented 5.5% of the state's Gross Domestic Product in 2009.⁵⁸

Similarly, Florida is highly dependent on the tourism industry. In 2009, 80.9 million people visited Florida.⁵⁹ In 2008, 82.5 visitors traveled to Florida.⁶⁰ In addition, in 2008, over one million people were employed in the Florida tourism industry, with \$13.3 million generated in payroll.⁶¹ Total expenditures amounted to \$65.2 billion in 2008.⁶² Clearly tourism in Alabama and Florida is a substantial contributor to the economic health of the region. As such, an EIS should consider the economic impact on the tourism industry as a result of oil and gas development.

c. Oil and Gas Development will have Significant Cumulative Impacts.

In addition to the types of cumulative impacts we identified in our DDP comments on the 2010-2015 program, the EIS for the proposed 2012-2017 program must take into account the impacts the current spill is having on various resources of the eastern Gulf, including the marine and coastal environment, local economies, and the way of life of coastal communities. In the cumulative impacts analysis required under NEPA, an EIS must consider how the current oil spill, combined with the risk inherent in future drilling, will affect these resources, particularly in the face of uncertain safety and technology.

Conclusion

In summary, we urge the Obama Administration to permanently withdraw the Mid- and South Atlantic and the eastern Gulf OCS regions from this and all future programs for oil and gas development. The short-term gain from the meager estimated recoverable oil and gas reserves in these OCS regions is not worth the long-term costs and substantial risk to their fragile marine and coastal resources, and the vibrant coastal economies that rely on them. The ongoing tragedy in the Gulf is a painful example of the risks and costs associated with drilling, and demonstrates the urgency with which our nation needs to transition to a clean energy economy now. We urge the Administration to take real action towards this goal by expeditiously instituting robust energy efficiency programs and investing in renewable energy development.

We appreciate the opportunity to comment on this proposal.

Sincerely,

⁵⁷ *Id.* at ii.

⁵⁸ *Id.*

⁵⁹ Visitflorida.com, Research, <http://media.visitflorida.org/research.php> (last visited 28 June 2010).

⁶⁰ Visitflorida.org, Tourism Fast Facts, http://www.visitflorida.org/AM/Template.cfm?Section=Tourism_Fast_Facts&Template=/CM/HTMLDisplay.cfm&ContentID=6607 (last visited 28 June 2010).

⁶¹ *Id.*

⁶² *Id.*

Sincerely yours,



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