

**Attorneys General of Maryland, California, Connecticut, Maine, Massachusetts,
New Jersey, New York, North Carolina, Oregon, Rhode Island, Virginia, and Washington**

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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 Ocean Energy Management (VAM-LD)
45600 Woodland Road
Sterling, VA 20166-9216

**Re: 2019-2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program
and Notice of Intent to Prepare a Programmatic Environmental Impact Statement
(BOEM-2017-0074)**

Dear Ms. Hammerle:

The undersigned Attorneys General appreciate the opportunity to submit these comments in response to the Bureau of Ocean Energy Management’s (“BOEM”) 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program (“the DPP” or “the 2019-2024 DPP”) and its associated request for National Environmental Policy Act (“NEPA”) scoping comments. We represent states where there have been no new oil and gas leases in decades. Each of our states, however, is adjacent to at least one Outer Continental Shelf (“OCS”) planning area in which the DPP has proposed lease sales in the 2019-2024 period.¹

Expanding the scope of oil and gas leasing on the OCS runs directly counter to the imperative to reduce dependence on fossil fuels and accelerate the shift towards renewable sources of energy. Global temperatures are rising and severe weather events are becoming more frequent, due largely to emissions from human consumption of fossil fuels.² The consequences for our planet—including melting glaciers, rising sea levels, famines, and extinctions—are grave and, in many instances, irreversible. It is still possible to prevent or reverse some of the worst effects of

¹ Collectively, our states are adjacent to all four Pacific planning areas, as well as the North Atlantic and Mid-Atlantic planning areas. *See* 2019-2024 DPP, at 8 (2019-2024 Draft Proposed Program Lease Sale Schedule).

² As recognized in the DPP, for the most recently completed leasing program, BOEM “consider[ed] the full lifecycle [of] GHG emissions” in order “to better inform decisionmakers on the impacts of OCS oil and gas leasing.” *Id.* at B-10; *see also id.* at 8-11 (acknowledging that “GHGs, like carbon dioxide, could influence climate over decades to millennia”); *id.* at 5-22 (noting “GHG estimates for the full lifecycle of OCS oil and gas”).

climate change—but doing so will require us to meaningfully reduce carbon emissions by transitioning away from fossil fuels. For that reason, all of our states have adopted policies that seek to reduce dependence on oil and gas, and to promote the development and use of renewable sources of energy—whether through participation in the Regional Greenhouse Gas Initiative, California’s Cap and Trade Program, implementation of renewable portfolio standards, or provision of financing and other incentives to develop and use renewable energy sources.

Should BOEM nonetheless decide to expand the scope of oil and gas development on the OCS, we strongly oppose any new lease sales in areas off our states’ coasts. Our states’ coastal and marine environments are highly sensitive, and coastal and marine uses play a vital role in our economies. With coastal regions dedicated to other uses, our states have little of the refining, processing, or transportation infrastructure that new offshore oil or gas production would require. At the same time, the hydrocarbon resource potential of the OCS planning areas off our states’ coasts is relatively low compared to other areas encompassed by the DPP. And yet a catastrophic discharge event, on the scale of the *Deepwater Horizon*, *Exxon Valdez*, or 1969 Santa Barbara oil spill, would wreak havoc upon our states’ coastal and marine environments and economies. The minimal “benefits” of new OCS leasing to our states are simply not worth the environmental and economic disruption, much less the risk of a disaster with adverse effects persisting for many years. The Secretary of the Interior (“the Secretary”) should defer to our opposition to drilling in areas off our states’ coasts, and should exclude all such areas from any new or revised OCS leasing program. Indeed, failure to do so would be inconsistent with the Outer Continental Shelf Lands Act, 43 U.S.C. §§1331 *et seq.* (“OCSLA”), and the Department of Interior’s (“the Department”) past practice of not imposing offshore drilling over state opposition.

In the event that the Secretary excludes planning areas adjacent to our states from the 2019-2024 National OCS Oil and Gas Leasing Proposed Program (“2019-2024 Proposed Program”), a draft programmatic environmental impact statement (“PEIS”) need not consider impacts from leasing in these areas. If these areas do remain in the 2019-2024 Proposed Program, however, we believe that the PEIS prepared in 2016 (“2016 PEIS”) in support of the 2017-2022 National OCS Oil and Gas Leasing Program (“2017-2022 Program”) establishes—at a minimum—a floor for the scope of the draft PEIS for the 2019-2024 Proposed Program (“2019-2024 Draft PEIS”).³ In other words, whatever the geographic and temporal scope of a 2019-2024 Draft PEIS, it should consider at least the activities, impact-producing factors, and potentially affected resources analyzed in the 2016 PEIS.⁴ In addition, as discussed below, we urge BOEM to undertake an impact analysis that is in several respects more thorough than that in the 2016 PEIS. Upon preparation of a PEIS that adequately addresses the relevant impact-producing factors and potentially affected resources, and considers the option of excluding the Pacific, North Atlantic, and Mid Atlantic planning areas, we are confident that the Secretary will agree that no lease sales should occur in these areas.

³ Dep’t of the Interior, Bureau of Ocean Energy Management, Outer Continental Shelf Oil and Gas Leasing Program: 2017-2022—Final Programmatic Environmental Impact Statement (Nov. 2016).

⁴ *See* 2019-2024 DPP, at 7-1 (incorporating the 2016 PEIS by reference).

I. PLANNING AREAS ADJACENT TO OUR STATES SHOULD BE EXCLUDED.

A. The Draft Proposed Program Is Arbitrary And Capricious Because It Does Not Adequately Justify Departing From The 2017-2022 Program.

OCSLA requires the Secretary to prepare and maintain an OCS 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.”⁵ The Secretary did this for the 2017-2022 period, in a lengthy and comprehensive process that concluded in January 2017.⁶ Certification of the 2017-2022 Program embodied a determination that “national energy needs” would be best met by a program that excluded all Atlantic and Pacific planning areas from leasing.⁷

The 2019-2024 DPP comes just one year after finalization of the 2017-2022 Program. Unlike the 2017-2022 Program, the 2019-2024 DPP proposes new leasing in the Atlantic and Pacific planning areas, including areas off the coasts of our respective states. The 2019-2024 DPP therefore necessarily implies that the program put in place just one year ago does *not* “best meet[] national energy needs.” But the 2019-2024 DPP does not explain why that is the case—that is, why new leasing in the Atlantic and Pacific planning areas was not necessary last year, but is necessary now. Without such an explanation of this extreme change in course, inclusion of these planning areas in the 2019-2024 Program is arbitrary and capricious.⁸

That the Secretary now seeks to “attain[] energy *dominance*”⁹ and position the United States as a “global energy *leader*” is insufficient to support the Secretary’s decision to reverse course and abandon the 2017-2022 Program.¹⁰ Whatever the merit of those goals, they are not what OCSLA calls for. Instead, OCSLA calls for a plan that “will best meet national energy needs.”¹¹ To be sure, the D.C. Circuit has held that the Secretary may use the leasing process to seek to achieve a more favorable energy trade balance, and there are no doubt benefits to reducing

⁵ 43 U.S.C. § 1344(a).

⁶ Dep’t of the Interior, Bureau of Ocean Energy Management, Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program, at 3 (Jan. 17, 2017).

⁷ *See id.* at 1, 3.

⁸ *See, e.g., Motor Vehicles Manufacturers Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983).

⁹ 2019-2024 DPP, at 1.

¹⁰ Sec’y of the Interior, Order No. 3350, at 2 (May 1, 2017) (“Secretarial Order No. 3350”) (emphasis added).

¹¹ 43 U.S.C. § 1344(a).

dependence on foreign sources of energy.¹² But “energy dominance” goes well beyond that objective, and cannot plausibly constitute “meet[ing] national energy needs.” The DPP’s apparent reliance on the nonstatutory criteria of “energy dominance” and “global energy leadership” is accordingly arbitrary and capricious.¹³

B. We Oppose New Leasing In Areas Adjacent To Our States’ Coasts.

Even assuming that the DPP has adequately justified abandoning the 2017-2022 Program—which it has not—we strongly oppose the inclusion of OCS planning areas adjacent to our states in any 2019-2024 Program. Currently, there is no oil or gas production in federal waters off the Atlantic coast. The same is true of the Pacific coast, with the exception of a small area off the coast of Southern California. And no new offshore oil and gas leases have been issued in these areas in decades.¹⁴ The result is that our states do not have infrastructure and resources to support offshore oil and gas development as envisioned in the DPP. Rather, our states’ economies have developed around other coastal and marine uses—including tourism, recreation, shipping, commercial fishing, and increasingly, offshore wind development—that are incompatible with offshore drilling and associated activities. New offshore leasing would force our states to involuntarily bear disproportionate burdens associated with addressing what the Secretary believes to be a national problem.¹⁵

Our opposition to new leasing off our states’ coasts is well-founded. To begin, the Atlantic and Pacific planning areas have relatively low hydrocarbon potential even by BOEM’s own estimates. As such, the benefits of oil and gas development are likely to be significantly lower than the benefits of oil and gas development in OCS areas that have greater resource potential and the existing infrastructure to support development. With respect to oil, BOEM’s estimates reflect that even at an optimistic price case of \$100 per barrel, the North Atlantic and Mid-Atlantic planning areas together account for just 3.8 percent of unleased undiscovered economically recoverable resources (UERR) on the OCS, while all of the Pacific planning areas account for 7.2 percent.¹⁶

¹² *Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 558 (D.C. Cir. 2015).

¹³ *See, e.g., State Farm*, 463 U.S. at 43. Moreover, OCSLA requires the Secretary to determine a schedule of lease sales that would “best” meet the country’s energy needs—meaning that the Secretary must consider any objective of “energy dominance” in balance with other relevant factors, as guided by OCSLA, and provide an adequate justification for his determination that any proposed lease sale schedule is “best” for the nation’s energy needs. 43 U.S.C. § 1344(a). That is a particularly heavy burden for the Secretary to carry in connection with the plan proposed here, given the importance of *reducing* our nation’s reliance on fossil fuels, whether foreign or domestic.

¹⁴ 2019-2024 DPP, at 4-1 to 4-2.

¹⁵ *Id.* at 1-2.

¹⁶ *See id.* at 5-13. We question the DPP’s quantifications of hurdle price and Net Social Value as they do not account for the lack of onshore infrastructure to support OCS oil and gas development, nor do they account for state and local policies against the siting of such infrastructure.

At a price case of \$40 per barrel, the figures are even lower, with the North Atlantic and Mid-Atlantic planning areas accounting for 3.4 percent of UERR and the Pacific planning areas just 5.1 percent.¹⁷

With respect to gas, too, the Atlantic and Pacific planning areas have relatively low production potential. At an optimistic price case of \$5.34 per thousand cubic feet of natural gas, BOEM's own estimates reflect that the North Atlantic and Mid-Atlantic planning areas account for just 12.5 percent of UERR on the OCS, while the Pacific planning areas account for 9.3 percent.¹⁸ And at a price case of \$2.14 per thousand cubic feet of natural gas, the UERR figures are just 4.9 percent for the North Atlantic and Mid-Atlantic planning areas, and 6.6 percent for the Pacific planning areas.¹⁹

Although our states' OCS planning areas are relatively low in hydrocarbon resources, they are rich in other coastal and marine resources—as the DPP itself recognizes.²⁰ In the Pacific region, coastal and marine ecosystems—including deepwater coral, rocky reefs and outcroppings, seamounts, and coastal wetlands—provide habitat for abundant flora and fauna, both resident and migratory.²¹ Animals present include marine mammals, such as whales, seals, and dolphins, as well as birds and numerous fish and benthic species valuable both ecologically and commercially.²² Many of the marine species present off the Pacific coast are endangered or threatened, including the short-tailed albatross, blue whale, leatherback turtle, and coho salmon.²³

The North Atlantic and Mid-Atlantic planning areas also are environmentally important. These ecologically diverse areas are home to a diverse array of animals and plants, including large marine mammals, pelagic birds, and many hundreds of varieties of fish and benthic organisms,²⁴

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.* BOEM's calculations of undiscovered technically recoverable resources (UTRR)—which are not sensitive to energy prices—yield similar conclusions. *See id.* at 5-9. As to oil, BOEM's estimates reflect that the North Atlantic and Mid-Atlantic planning areas together account for less than five percent of UTRR on the OCS, while all of the Pacific planning areas account for scarcely eleven percent. *See id.* As to gas, BOEM's estimates reflect that the North Atlantic and Mid-Atlantic planning areas account for just over eleven percent of UTRR on the OCS, while the Pacific planning areas account for less than five percent. *See id.*

²⁰ *See* 43 U.S.C. § 1344(a)(2)(A) (directing the Secretary to consider “existing information concerning the geographical, geological, and ecological characteristics of [OCS] regions”).

²¹ 2019-2024 DPP, at 7-12. As discussed more specifically in comments submitted by individual states, we question the scientific validity of the DPP's valuation of environmental sensitivity and marine productivity.

²² *Id.*

²³ *Id.* at 7-13 to 7-14.

²⁴ *Id.* at 7-26 to 7-27.

including many fish and shellfish species that are commercially significant.²⁵ Like the Pacific coast, the North Atlantic and Mid-Atlantic planning areas provide habitat for numerous endangered or threatened species, including the piping plover, wood stork, loggerhead turtle, sperm whale, and the critically endangered North Atlantic right whale.²⁶

The Atlantic and Pacific areas proposed for new leasing support economically and culturally significant coastal and marine uses. OCSLA directs that the Secretary consider “the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer continental shelf.”²⁷ And BOEM itself has recognized that these uses are vital for our states, as explained below.

In the Pacific Region, there are multiple competing uses of coastal and marine resources. “[C]ommercial fisheries in and near the Washington/Oregon Planning Area (especially near Washington) and the Southern California Planning Area,” the DPP itself acknowledges, “are particularly essential from an economic perspective,” accounting for billions of dollars of GDP.²⁸ The Pacific Coast features four of the nation’s largest ports—Seattle, San Francisco, Los Angeles, and Long Beach—as well as many smaller ports and harbors that support commercial and sport fishing and recreation.²⁹ Outdoor and ocean-focused tourism and recreation are widespread and significant to the national economy, with the coast home to numerous national parks, national wildlife refuges, and national marine sanctuaries.³⁰ Residents and visitors alike use the Pacific Coast for swimming, boating, hiking, fishing, beachgoing, and birdwatching, among other activities.³¹ Further, Oregon and California—together with BOEM and the Federal Energy Regulatory Commission—are exploring the use of offshore areas to harness wind and wave energy, whose potential benefits and environmental safety far outweigh those of additional oil and gas development.³²

Likewise, the North Atlantic and Mid-Atlantic Planning Areas, by BOEM’s own admission, are home to multiple competing uses. Both areas have thriving commercial fishing industries, which support tens of thousands of jobs.³³ Ports in the North Atlantic and Mid-Atlantic planning

²⁵ *Id.* at 7-27.

²⁶ *Id.* at 7-28.

²⁷ 43 U.S.C. § 1344(a)(2)(D).

²⁸ 2019-2024 DPP, at 6-21.

²⁹ *Id.*

³⁰ *Id.* at 6-22.

³¹ *Id.*

³² *Id.* at 6-22 to 6-23. Additionally, the Department of Defense uses portions of the Pacific OCS for training and operations. *Id.* at 6-22.

³³ *Id.* at 6-28; NOAA, *Fisheries Economics of the United States 2012*, at 53, 77. We note that the fisheries data BOEM cites is from a 2014 publication, and does not accurately account for the important role of local fishing on both coasts. Even apart from that, the DPP contains significant errors. Specifically, it states that the value-added economic impact of commercial fishing is

areas account for a considerable share of U.S. waterborne traffic.³⁴ Ocean-dependent tourism and recreation are economically vital, too, adding many billions of dollars to coastal economies.³⁵ The areas of the Atlantic Coast adjacent to the North Atlantic and Mid-Atlantic planning areas are home to dozens of national parks, national wildlife refuges, and national recreation areas, enabling residents and visitors to engage in activities such as swimming, beach-going, and wildlife viewing.³⁶ Up and down the coast, moreover, BOEM has leased areas of the OCS for the production of wind energy.³⁷ States including Massachusetts, New York, New Jersey, Maryland, and Virginia are supporting the development of a growing U.S. offshore wind industry.

The flip side is what the Pacific and Atlantic coastal regions are *not* used for—namely, widespread production, refining, processing, and transportation of offshore oil and gas resources. OCSLA directs the Secretary to consider “the location of [OCS] regions with respect to, and the relative needs of, *regional* and national energy markets.”³⁸ The DPP, in turn, observes that “refinery capacity within a region is a key component of each region’s ability to support its own demand or the national energy demand.”³⁹ And the Atlantic and Pacific regions, as the DPP recognizes, are home to relatively little refining capacity.⁴⁰ This outcome is partly the consequence of states’ decisions regarding allocation of resources—including land that might otherwise be used for refineries or other oil and gas infrastructure, and, for many of our states, policies that incentivize investments in renewable and low-carbon energy resources and promote a long-term shift away from reliance on fossil fuels. And there is no reason to think that the relatively low level of oil or gas production or refining in our states has led to significant, long-term economic harm.

Against that background, new oil and gas leasing would threaten significant harms to the Atlantic and Pacific planning areas alike—as BOEM has admitted.⁴¹ Impacts from oil and gas

“almost \$7 million” in the Mid-Atlantic Planning Area, including \$2.2 million and \$2.8 million in New York and New Jersey, respectively. 2019-2024 DPP, at 6-28. NOAA’s reported data reflect that these figures should be expressed in billions of dollars, not millions. NOAA, *Fisheries Economics of the United States 2012*, at 77. In other words, the DPP understates the relevant economic impacts by a factor of one thousand.

³⁴ 2019-2024 DPP, at 6-28.

³⁵ *Id.* at 6-28 to 6-29.

³⁶ *Id.* at 6-29.

³⁷ *Id.* at 6-31 to 6-32.

³⁸ 43 U.S.C. § 1344(a)(2)(C) (emphasis added).

³⁹ 2019-2024 DPP, at 6-10.

⁴⁰ *Id.* at 6-10.

⁴¹ *See id.* at 7-50 to 70-51 (noting that “all planning areas are sensitive to oil and gas activities”); 43 U.S.C. § 1344(a)(2)(G) (directing the Secretary to consider “the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf”); *id.* § 1344(a)(2)(H) (directing the Secretary to consider “relevant environmental and predictive information for different areas of the outer Continental Shelf”).

activities might be direct or indirect; immediate or delayed; and obvious or hidden.⁴² Those impacts might result from operations that go as planned, or from the routine siting of pipelines and other infrastructure; alternatively, they might result from spills that, although “accidental,” inevitably occur in some measure in the course of oil and gas activities.⁴³ Indeed, the DPP 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.⁴⁴ Offshore oil production thus all but guarantees that oil spills—even large ones—will sully our states’ waters and coastlines.

Truly catastrophic spills, moreover, are of even graver concern.⁴⁵ We have seen the devastation wrought upon the Gulf Coast by the *Deepwater Horizon* spill, and upon Prince William Sound by the *Exxon Valdez* spill. Nearly thirty years after the *Exxon Valdez* spill, the affected ecosystems still have not fully recovered. Along the Gulf Coast, meanwhile, ecosystems and economies will be feeling the impact of the *Deepwater Horizon* spill for a generation, if not longer. And the 1969 blowout of Union Oil’s Platform A in the Santa Barbara Channel—which the DPP barely mentions—caused widespread environmental and economic damage, with tar-black pitch extending over 800 square miles of ocean. We believe it is intolerable to subject our states—including the ocean- and coast-dependent industries that are critical to our economies—to the risk of similar events.

The fact that catastrophic spills are low-probability does not make this risk acceptable. Low-probability is not zero probability.⁴⁶ The fact that there have been three catastrophic spills in recent memory, including one less than a decade ago, makes it impossible to discount the possibility of similar events transpiring in the future. What is more, the DPP’s proposal to dramatically expand offshore leasing comes alongside an effort by the Department to significantly *weaken* the important safety protections put in place following the *Deepwater Horizon* spill.⁴⁷ In other words, even as the Department proposes to expose more areas of the OCS to the risk of catastrophic spills, it is taking action that would increase the likelihood of such spills in any area used for oil and gas

⁴² 2019-2024 DPP, at 7-33.

⁴³ *Id.* at 7-33 to 7-34.

⁴⁴ *Id.* at 7-34. The DPP explains that these “[e]xpected” spills include those “estimated to occur during routine operations” and “could result from OCS exploration, development, or production operations involving drilling rigs, production facilities, barges, tankers, pipelines, and/or support vessels.” *Id.*

⁴⁵ *Id.* at 7-35 (“Although a CDE is not expected to result from activities associated with the 2019-2024 Program, the consequences of a low-probability incident, if it were to occur, could be catastrophic.”).

⁴⁶ *Id.* at 7-36.

⁴⁷ *Compare* Secretarial Order No. 3350, at 3 (directing review of certain safety regulations), *with* 2019-2024 DPP, at 7-35 (stating that “recently implemented safeguards, including increased requirements for the design, manufacture, repair, testing, and maintenance of blowout preventers, required downhole mechanical barriers, increased well design and testing requirements, and additional regulatory oversight make [a catastrophic discharge] event even less likely than in the past”).

exploration and production. We strongly oppose any weakening of the protections adopted in the wake of the *Deepwater Horizon* disaster⁴⁸—and the fact that such actions are even being considered reinforces our opposition to new leasing off our coasts.⁴⁹

In light of the foregoing, we respectfully submit that, in seeking to achieve “equitable sharing of developmental benefits and environmental risks among the various regions,”⁵⁰ the Secretary should not include areas off the coasts of our states. The risks are substantial, particularly in areas that currently are home to little or no oil and gas activity. And the benefits are uncertain at best: as explained above, the areas off our coasts have relatively low hydrocarbon resource potential, and we do not view the construction of oil and gas production infrastructure as a benefit. Under these circumstances, “equitable sharing” should not be interpreted to force states to accept packages of environmental risks and “benefits” that they strongly reject and that are inconsistent with state policy. Put differently, our states are seeking to address energy challenges in a *different* way—namely, by promoting the development and use of renewable energy sources—and it would be inequitable to override that choice. Revenue sharing, in our view, would not adequately compensate for the disruptions and risks accompanying such activities—to say nothing of the harms that would result from a catastrophic discharge event.⁵¹

To the extent that the Secretary’s concern is specifically about foreign oil and gas imports, the most responsible way to reduce such imports is not to open the Atlantic and Pacific coasts to additional leasing but, instead, to make more extensive use of renewable energy, such as our nation’s abundant offshore wind resources. Alternatively, if necessary to meet national energy needs, our nation might use oil and gas from onshore sources or from offshore areas that are already leased for production. Indeed, the DPP notes that the Gulf of Mexico region “has by far the greatest ability to use its resource potential to supply oil and gas to the United States’ top three consuming [petroleum administration defense districts].”⁵² Some existing leases in the Gulf of Mexico

⁴⁸ On January 29, 2018, six of the signatories to these comments submitted comments strongly opposing the Department’s proposed rollback of certain of these safety standards. *See* Comments of Attorneys General of Maryland, Maine, Massachusetts, New York, North Carolina, and Virginia, BOEM Docket ID No. BSEE-2017-008, Oil & Gas & Sulphur Operations on the Outer Continental Shelf—Oil & Gas Production Safety Systems—Revisions (Jan. 29, 2018).

⁴⁹ Consistent with our opposition to inclusion of areas adjacent to our states’ coasts in the 2019-2024 Program, all of our states have strong policies against the expansion of offshore drilling, and in support of preserving coastal and marine environments for other uses. Our states’ separately filed comments delineate these policies. *See* 43 U.S.C. § 1344(a)(2)(F) (directing the Secretary to consider the “laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary’s consideration”).

⁵⁰ *Id.* § 1344(A)(2)(B).

⁵¹ Current law, moreover, allows revenue sharing only with respect to small portions of the Atlantic and Pacific planning areas. *See id.* § 1337(g) (allowing revenue sharing only as to leasing revenues from certain federal tracts within three nautical miles of a coastal state’s seaward boundary).

⁵² 2019-2024 DPP, at 6-14.

are not even currently producing, due to low oil and gas prices, extensive onshore production, and steady or declining energy demand. One of the largest interstate pipelines in California is proposing to reduce its capacity by 50 percent after an evaluation of market needs.⁵³ And there is no indication that oil and gas prices will significantly increase in the coming years—further undermining the DPP’s suggestion that additional oil and gas production in frontier offshore areas holds the answer to our nation’s energy challenges.

C. The Secretary Should Defer To Our Opposition To New Leasing Off Our Coasts.

As explained above, all of us oppose the inclusion of OCS areas off our states’ coasts in the 2019-2024 Program. The Department’s past practice dictates that state opposition should be dispositive. More specifically, in each of the past two leasing cycles, the Department excluded both Atlantic and Pacific planning areas after adjacent states expressed their opposition to oil and gas exploration off their coasts. That is a sensible approach consistent with OCSLA and federal administrative law, and there is no reason to depart from it here.

1. *The 2012-2017 and 2017-2022 Programs*

In formulating a leasing program for 2012-2017, the Department deferred to states’ desires that oil and gas exploration not take place off their coasts. The Draft Proposed Program issued by the Minerals Management Service (“MMS”) for that period proposed three lease sales off the coast of California, as well as a total of five lease sales in the North Atlantic, Mid-Atlantic, and South Atlantic planning areas.⁵⁴ Multiple adjacent states opposed the proposed leases.⁵⁵

Consistent with that opposition, MMS’s subsequent EIS scoping notice eliminated the California planning areas, as well as the North Atlantic planning area.⁵⁶ The Proposed Program, in turn, excluded all of the Atlantic and Pacific planning areas—and did so in large part because of states’ opposition.⁵⁷ As to the Pacific region, the 2012-2017 Proposed Program explained: “The Proposed Program specifically seeks to accommodate the recommendations of governors of coastal states and of state and local agencies. The exclusion of the Pacific Coast is consistent with state interests, as framed in an agreement that the governors of California, Washington, and Oregon signed in 2006, which expressed their opposition to oil and gas development off their coasts. Western states have continued to voice these concerns, including in formal comments on the DPP.”⁵⁸

⁵³ See <http://www.line901r.com/index.php/project>.

⁵⁴ 2010-2015 DPP, at 8-9. At the Draft Proposed Program stage, the Department envisioned that the five-year leasing program would span the 2010-2015 period; later in the process, the Department pushed the period back to 2012-2017.

⁵⁵ 2012-2017 Proposed Program, at 166-67 (summarizing comments).

⁵⁶ Department of the Interior, Minerals Management Service, Notice of Intent to Prepare and Scope an Environmental Impact Statement (EIS) for the Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2012-2017, 75 Fed. Reg. 16,828, 16,829 (Apr. 2, 2010).

⁵⁷ 2012-2017 Proposed Program, at xi.

⁵⁸ *Id.* at xiv.

As to the Atlantic region, the Department took into account multiple factors—lack of information about resource potential, lack of infrastructure, and conflicting uses—but also stressed coastal states’ opposition: “Many Atlantic states,” the Proposed Program explained, “expressed concerns about oil and gas development off the coasts.”⁵⁹ Thus, the Department declined to impose new leasing over the objections of adjacent states.

Development of the 2017-2022 Program followed a similar trajectory, with states’ opposition to drilling off their coasts prompting exclusion of adjacent planning areas from the Program. States’ responses to the Secretary’s initial request for information (“RFI”) prompted exclusion of geographic areas even from the 2017-2022 DPP. The RFI sought “information on all 26 planning areas, including areas currently under moratorium or otherwise withdrawn.”⁶⁰ In connection with the three Atlantic areas, it noted that the Department “is pursuing a specific strategy to evaluate potential future offshore oil and gas leasing in these areas.”⁶¹ In response to the RFI, six states’ governors requested exclusion from the 2017-2022 DPP—namely, Washington, Oregon, California, Maryland, Delaware, and Massachusetts.⁶² Collectively, those states bordered all four Pacific planning areas, as well as the Mid-Atlantic and North Atlantic planning areas.⁶³

Consistent with that opposition, the 2017-2022 DPP did not propose any lease sales for the Pacific or North Atlantic planning areas. With respect to the Pacific planning areas, the DPP explained:

No lease sales have been identified in the Pacific for additional analysis. . . . The exclusion of the Pacific Region is consistent with the long-standing interests of Pacific coast states, as framed in the 2006 West Coast Governors’ Agreement on Ocean Health. The agreement expressed the Governors’ opposition to oil and gas development off their coasts, and these states have continued to voice concerns, including in formal comments on the RFI.⁶⁴

The 2017-2022 DPP explained that BOEM was excluding the North Atlantic planning area, meanwhile, in part “[b]ased on . . . comments received”⁶⁵

⁵⁹ *Id.* at xiii; *see id.* at 6 (noting that “the Governor of California reiterated the state’s long-standing opposition by governors of both parties to new leasing off its coast”).

⁶⁰ Department of the Interior, Bureau of Ocean Energy Management, Request for Information and Comments on the Preparation of the 2017-2022 Outer Continental Shelf (OCS) Oil and Gas Leasing Program, 79 Fed. Reg. 34,349, 34,351 (June 16, 2014).

⁶¹ *Id.* at 34,350.

⁶² 2017-2022 DPP, at S-3.

⁶³ *Id.* at 1-2.

⁶⁴ *Id.* at S-10.

⁶⁵ *Id.* at 9-9.

The 2017-2022 DPP did not exclude the Mid-Atlantic planning area altogether, choosing instead to propose a single lease sale in the Mid-Atlantic and South Atlantic planning areas combined.⁶⁶ Nonetheless, BOEM heeded the wishes of Maryland and Delaware that oil and gas exploration not take place off their respective shores. Specifically, the 2017-2022 DPP provided that the sale would take place in an area that would exclude areas off the coasts of Maryland and Delaware, “in accordance with the expressed opposition of those States.”⁶⁷

Ultimately, the 2017-2022 Proposed Program eliminated even that single Atlantic lease sale.⁶⁸ It did so “for a number of reasons, including strong local opposition, conflicts with other ocean uses, and current market dynamics.”⁶⁹ And so, the approved 2017-2022 Program did not include any lease sales in the Pacific planning areas or the Atlantic planning areas.

2. *Deference to state objections makes good sense.*

As shown above, the Department’s recent practice has been to defer to state objections, and not to schedule lease sales off the coast of a state that does not want them. That approach is a sensible one.

First, states are in the best position to determine whether the potential benefits associated with offshore oil and gas activity are worth the harms that come with such activity. Offshore leasing could severely disrupt local economies—particularly those that rely on tourism, recreation, fishing, maritime commerce, and other activities that have a connection with the sea. States would have to house new oil and gas infrastructure and accommodate increased ship traffic; competing uses of land and sea would have to give way. And in the event of a catastrophic discharge event like the *Deepwater Horizon* spill, the effects on local economies could be cataclysmic—as, indeed, they were for Gulf Coast communities and injured marine and coastal resources that have yet to recover. States and directly affected communities are in the best position to determine whether these risks are acceptable.

Second, deferring to a state’s opposition to drilling off its coast is sensible because of the extensive state and local cooperation that offshore oil and gas activities require. As a practical matter, such activities must have state and local support—for instance, with respect to permitting of onshore facilities, use of state waters and ports, and construction of onshore oil and gas transportation infrastructure. More generally, a supportive population is necessary to ensure proper integration of oil and gas exploration and production into communities not accustomed to such

⁶⁶ *Id.* at S-3.

⁶⁷ *Id.* at 9-8. The 2017-2022 DPP also excluded the portion of the South Atlantic planning area offshore Florida, “in deference to the request of the Florida Department of Environmental Protection that primary consideration be given to long-term protection of marine and coastal environments.” *Id.* at 9-8. The remaining states adjacent to the Mid-Atlantic and South Atlantic planning areas—Georgia, North Carolina, South Carolina, and Virginia—had asked to be included. *Id.* at S-3; *see id.* at 3-11 (summarizing governors’ comments).

⁶⁸ *See* 2017-2022 Proposed Program, at S-2.

⁶⁹ *Id.*

activities. Opposition from state and local governments, and from the citizens to whom state and local officials are accountable, sets up oil and gas activities for failure.

3. *There is no reason for the Department to depart now from its practice of deference to state objections.*

The Department's established practice of not imposing offshore drilling on states that do not want it should guide its decisionmaking process now. Settled principles of administrative law demand as much. Although an agency is free to change course, it must justify that change of course with a reasoned explanation.⁷⁰ We respectfully submit that no such explanation could justify departing from the practice of not imposing offshore drilling on states that do not want it. Circumstances have not meaningfully changed since just over a year ago, when the 2017-2022 Program was finalized. A mere desire to achieve "energy dominance" is insufficient.

If anything, the speed with which the Secretary seemed to accede to Florida's exclusion request undermines any attempt to retreat from the Department's practice of deferring to state opposition. Just one week after issuing the 2019-2024 DPP, and following a meeting with Florida's governor, the Secretary issued a statement that read, in pertinent part, as follows:

President Trump has directed me to rebuild our offshore oil and gas program in a manner that supports our national energy policy and also takes into consideration the local and state voice. I support the governor's position that Florida is unique and its coasts are heavily reliant on tourism as an economic driver. As a result of discussion with Governor Scott's [sic] and his leadership, I am removing Florida from consideration for any new oil and gas platforms.⁷¹

Although the Secretary purported to rest on the fact that Florida's "coasts are heavily reliant on tourism as an economic driver," the same is true of *all* coastal regions—including those of our states. Thus, rather than reflecting anything truly unique about Florida, the Secretary's seeming exclusion of areas off the Florida coast can be understood only as an accommodation of Florida's opposition. In undertaking the administrative process prescribed by statute, the Secretary cannot now rebuff similar opposition from other states.⁷²

⁷⁰ *See, e.g., State Farm*, 463 U.S. at 42.

⁷¹ Richard Gonzales, "Secretary Zinke: Florida Offshore Drilling Is 'Off the Table,'" <https://www.npr.org/sections/thetwo-way/2018/01/09/576938087/interior-secretary-zinke-florida-offshore-oil-drilling-is-off-the-table> (Jan. 9, 2018).

⁷² The process by which the Secretary announced exclusion of areas off the coast of Florida was not consistent with the orderly notice-and-comment process that OCSLA and the Administrative Procedure Act prescribe. *See, e.g.,* 43 U.S.C. § 1344(c)-(d); 5 U.S.C. § 553(c). Whatever steps BOEM might take to make Florida's apparent exclusion consistent with that process, however, it would be arbitrary and capricious not to extend this exclusion, consistent with the decision-making process required by law, to other states that oppose oil and gas activities off their coasts.

II. SCOPING COMMENTS IN CONNECTION WITH DRAFT PEIS

The undersigned Attorneys General also submit the following scoping comments in connection with the draft programmatic environmental impact statement (“PEIS”) that the Department plans to prepare pursuant to NEPA, 42 U.S.C. §§ 4321-4370h, in connection with the 2019-2024 Proposed Program. As an initial matter, however, we reiterate our position that the areas off our coasts should be excluded altogether from the Proposed Program, for the reasons set forth above. Should these areas be removed from the scope of the 2019-2024 Program, there would be no need for the draft PEIS to consider the impacts of oil and gas exploration and production taking place in these areas.

Nevertheless, the following comments relate to issues that cut across multiple planning areas. (In some instances, separate comments submitted by individual states include additional scoping comments relevant to impacts on those states.)

We note that BOEM prepared a draft and final PEIS for the 2017-2022 Program. That PEIS was issued in November 2016, little more than a year ago. The 2017-2022 final PEIS did not address impacts from oil and gas leasing activities in the Atlantic or Pacific planning areas, as those areas were not included in the 2017-2022 Program (although portions of the Mid-Atlantic and South Atlantic planning areas were included in the 2017-2022 Proposed Program, and thus were included in the draft PEIS). Regardless of its geographic scope, however, the 2017-2022 final PEIS addressed a broad range of activities, impact-producing factors, and potentially impacted resources and environmental conditions. At a minimum, we believe that these topics provide a floor for the draft PEIS for the 2019-2024 Program. We urge BOEM, however, to expand the scope of the 2016 PEIS alternatives analysis to include the alternatives discussed below.⁷³

A. Activities To Be Considered

The draft PEIS for the 2019-2024 Program should consider impacts from at least those activities analyzed in the PEIS for the 2017-2022 Program. Specifically, it should consider impacts from at least the following:

Exploration: The draft PEIS should consider impacts resulting from exploration of potential hydrocarbon resources on the OCS. Such exploration includes seismic and other geophysical and geotechnical surveys. It also includes the drilling of exploratory wells to determine the presence and extent of hydrocarbon resources in a particular location.

Development: The draft PEIS should consider impacts resulting from the drilling of development wells, as well as construction of the infrastructure necessary to support commercial drilling. Such infrastructure includes production platforms and seafloor pipelines. It also includes facilities for the processing, refining, or storage of oil or natural gas.

⁷³ See 2019-2024 DPP, at 7-1 (incorporating the 2016 PEIS by reference).

Production: The draft PEIS should consider impacts resulting from the production of oil and gas, including the extraction of oil or gas through hydraulic fracturing or other means; transportation of oil or gas to processing facilities; processing, storage, or refining of crude oil or natural gas; and maintenance of production wells, platforms, and other infrastructure.

Decommissioning: The draft PEIS should consider impacts resulting from the decommissioning of production or other infrastructure. Decommissioning includes plugging wells, removing platforms and other facilities, and removing or treating pipelines. The PEIS should further consider the relative difficulty of decommissioning of infrastructure in deep water and infrastructure closer to shore.

Spills and related events: In connection with all stages listed above, the PEIS should consider impacts potentially resulting from spills and related pollution and discharge events that are expected to occur over the life of the leases proposed. The PEIS should also consider impacts potentially resulting from lower-probability catastrophic discharge events, such as the *Deepwater Horizon*, *Exxon Valdez*, and 1969 Santa Barbara disasters. The PEIS should also consider the variability of sea conditions in different planning areas as affecting the likelihood of a spill and its impacts.

B. Impact-Producing Factors

The draft PEIS for the 2019-2024 Program should consider, at a minimum, the impact-producing factors analyzed in the PEIS for the 2017-2022 Program. Specifically, it should consider impacts from at least the following:

Noise: The draft PEIS should consider noise impacts, including undersea ones. Specifically, it should consider the impact of noise associated with geophysical and geotechnical surveys; noise from ships; noise from aircraft; noise from drilling operations; noise from production and extraction of oil; noise from trenching pipelines; noise from offshore and onshore construction; and noise from explosives and other means of removing production platforms.

Traffic: The draft PEIS should consider traffic impacts, including impacts from aircraft and marine vessels.

Routine discharges: The draft PEIS should consider impacts from routine discharges. Specifically, it should consider impacts from sanitary waste; gray water (domestic waste) and other miscellaneous discharges; produced water; fluids associated with well completion activities and enhanced recovery operations; drilling muds and associated cuttings; and loss of debris, including on the sea floor.

Bottom and land disturbance: The draft PEIS should consider impacts from disturbance of the sea floor and of land onshore. Specifically, it should consider sea floor impacts from drilling; structure emplacement; anchoring; pipeline trenching; and removal of pipelines and other structures. It should also consider impacts from the construction of onshore infrastructure such as

ports and support facilities, transportation facilities, processing and storage facilities, and construction facilities.

Air emissions: The draft PEIS should consider air emission impacts, including greenhouse gas emissions, associated with offshore infrastructure and activities (such as vessel operations, drilling activities, and evaporation of volatile organic compounds), as well as onshore infrastructure and operations (such as vehicle or train transportation of extracted and processed hydrocarbon materials) and the ultimate combustion of extracted fuel by end users.

Lighting and physical presence: The draft PEIS should consider physical presence and lighting impacts, both offshore and onshore. Offshore, the draft PEIS should consider such impacts from platforms, vessels, mobile offshore drilling units, and other structures. Onshore, the draft PEIS should consider such impacts from onshore infrastructure such as ports and support facilities, transportation facilities, processing and storage facilities, and construction facilities.

Visible infrastructure and activities: The draft PEIS should consider visual and aesthetic impacts from onshore and offshore infrastructure and activities associated with oil and gas exploration and drilling.

Space-use conflicts: The draft PEIS should consider space-use conflicts resulting from offshore and onshore infrastructure and operations. Offshore, the draft PEIS should consider conflicts with uses such as fishing, marine transportation, recreational activities, renewable energy, scientific research, and military activities. Onshore, it should consider conflicts resulting from the planning and siting of infrastructure such as ports and support facilities, transportation facilities, processing and storage facilities, and construction facilities. It also should assess the consistency of oil and gas development activities with states' ocean and coastal zone plans.

Non-routine events: The draft PEIS should consider impacts resulting from spills associated with accidents and weather events. Such impacts include probabilistically expected spills, as well as lower-probability catastrophic discharge events on the scale of the *Deepwater Horizon* and *Exxon Valdez* spills.

C. Potentially Affected Resources

The draft PEIS for the 2019-2024 Program should consider potential impacts from the foregoing factors on at least the resources analyzed in the PEIS for the 2017-2022 Program. Specifically, it should consider impacts on at least the following:

Air quality and climate: The draft PEIS should consider air quality impacts from emissions of criteria pollutants and other pollutants. It also should consider climate impacts from greenhouse gas emissions due to extraction, transportation, and use (including combustion) of hydrocarbon products, including the effects of climate change on the other resources identified in this subsection.

Water quality: The draft PEIS should consider water quality impacts, including changes in temperature, salinity, dissolved oxygen, chlorophyll levels, nutrient levels, pH, Eh (reduction potential), pathogen levels, transparency, and contaminant levels.

Coastal and estuarine habitats: The draft PEIS should consider impacts to coastal and estuarine habitats, which vary regionally and can include wetlands, bays, barrier islands, submerged aquatic vegetation, and beaches.

Marine benthic communities: The draft PEIS should consider impacts to marine benthic communities in areas potentially affected by oil and gas exploration, including impacts to invertebrate populations and sea floor habitats.

Pelagic communities: The draft PEIS should consider impacts to pelagic communities in areas potentially affected by oil and gas exploration, including impacts to pelagic organisms and habitats.

Marine mammals: The draft PEIS should consider impacts on marine mammals, including whales, dolphins, seals, and manatees.

Birds: The draft PEIS should consider impacts on birds, including those resident in particular planning areas as well as those present seasonally, such as during migration.

Threatened and endangered species. The draft PEIS should consider impacts on species listed and protected under the federal Endangered Species Act or under analogous state laws, including the short-tailed albatross, leatherback turtle, loggerhead turtle, piping plover, wood stork, sperm whale, blue whale, and North Atlantic right whale.

Fishes and essential fish habitat: The draft PEIS should consider impacts on fish resources (including shellfish and other invertebrates) and areas designated as essential fish habitat, including those areas designated as habitat areas of particular concern.

Archaeological, cultural, and historical resources: The draft PEIS should consider impacts on archaeological, cultural, and historical resources, including shipwrecks, archaeological sites that pre-date or post-date first contact between indigenous and non-indigenous peoples, and historical structures such as lighthouses.

Population, employment, and income: The draft PEIS should consider impacts on population, employment, total economic activity, sectoral economic activity, and income levels and distribution in regions adjacent to the planning areas implicated by the 2019-2024 Program, including changes in the nature of employment.

Land use and infrastructure: The draft PEIS should consider impacts on land use and infrastructure, including impacts on existing recreational and commercial use as well as the introduction of new oil and gas infrastructure.

Commercial and recreational fisheries: The draft PEIS should consider impacts on recreational and commercial fisheries and fishing, including activities and resources in state waters that could be affected by OCS oil and gas activities.

Tourism and recreation: The draft PEIS should consider impacts on tourism and recreation, including fishing, kayaking, hiking, boating, sightseeing, beachgoing, swimming, and wildlife viewing.

Sociocultural systems: The draft PEIS should consider impacts on sociocultural systems, including impacts on port and maritime communities and economies, indigenous peoples, and communities that rely on subsistence fishing and hunting.

Environmental justice: The draft PEIS should consider the extent to which environmental or health impacts would disproportionately impact low-income or minority populations.

D. Cumulative Impacts

At the programmatic stage, BOEM must consider cumulative impacts from its 2019-2024 Program. That means that, for each alternative considered, it must consider the total impacts from *all* leasing encompassed by that alternative. At a minimum, BOEM should analyze all cumulative impacts assessed in the 2016 PEIS. We also urge BOEM to undertake a more thorough and robust cumulative impact analysis than in the 2016 PEIS, particularly with respect to cumulative climate impacts; cumulative noise impacts, including from geophysical surveys utilizing seismic testing; and cumulative vessel traffic impacts, including ship strike impacts that injure or kill marine mammals.

E. Alternatives To Be Considered

As noted above, we believe that the areas off of our states' coasts should be excluded from the 2019-2024 Proposed Plan altogether. Should those areas remain in the Proposed Plan, the draft PEIS must consider any reasonable alternatives in order to comply with BOEM's NEPA obligations, including the following alternatives:⁷⁴

No action: The draft PEIS should consider a no-action alternative.⁷⁵

Renewable energy: The draft PEIS should consider an alternative in which BOEM uses the OCS for renewable energy development rather than for oil and gas development.⁷⁶ A renewable energy alternative is reasonable because increasing onshore oil and gas production adequately

⁷⁴ We reserve our right to suggest additional alternatives at the DEIS phase if planning areas bordering our states are included in the Proposed Program.

⁷⁵ See, e.g., 40 C.F.R. § 1502.14(d) (requiring consideration of a no-action alternative).

⁷⁶ BOEM manages both forms of development from the OCS, so this alternative is within BOEM's jurisdiction to consider.

meets the nation's needs for petroleum products; OCSLA does not require BOEM to recommend oil and gas leasing to the Secretary; and there is an increasing demand for renewable energy.

No lease sales in Pacific, North Atlantic, or Mid-Atlantic planning areas: The draft PEIS should consider an alternative in which no lease sales are scheduled anywhere in the Pacific planning areas, the North Atlantic planning area, or the Mid-Atlantic planning area.

Fewer lease sales in Pacific, North Atlantic, and Mid-Atlantic planning areas: The draft PEIS should consider one or more alternatives in which the Pacific planning areas, the North Atlantic planning area, and the Mid-Atlantic planning area are subject to fewer lease sales than proposed in the DPP.

Exclusion of zones of particular ecological significance: The draft PEIS should consider an alternative in which, within the Pacific planning areas, the North Atlantic planning area, and the Mid-Atlantic planning area, zones of particular ecological significance (for instance, marine monuments or submarine canyons) are excluded from leasing.⁷⁷

In considering impacts from these alternatives (as well as the Proposed Program itself), the draft PEIS should assume that all scheduled lease sales actually take place on the stated timeframe. In other words, although the Secretary retains the authority to cancel or postpone lease sales that have already become part of an approved five-year leasing program, the draft PEIS should assume that this authority will not be exercised. A contrary approach would amount to partial circumvention of the EIS process with respect to leases that do go forward as scheduled.

* * *

We thank the Secretary for the opportunity to submit these comments, and we reiterate our strong opposition to new oil and gas leases off our states' coasts.

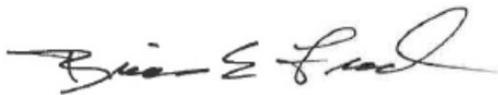
⁷⁷ In suggesting these last two alternatives, the undersigned Attorneys General do not mean to suggest that new oil and gas leasing in the Pacific planning areas, the North Atlantic planning area, or the Mid-Atlantic planning area would somehow be acceptable if only its volume were reduced, or if only it were confined to certain regions within these planning areas. Rather, we adhere to the position expressed above, namely, that no new oil and gas leases should be issued in the Pacific planning areas, the North Atlantic planning area, or the Mid-Atlantic planning area. Our scoping comments include these last two alternatives only because we believe that they are within the reasonable range of alternatives that BOEM is required to consider in order to comply with its NEPA obligations. *See, e.g.*, 40 C.F.R. § 1502.14(a) (requiring agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives”).

Ms. Kelly Hammerle

March 9, 2018

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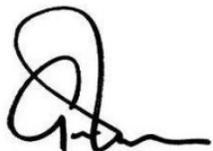
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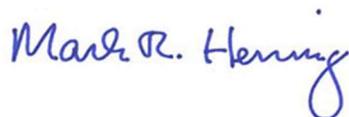
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