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***CONGRESSIONAL TESTIMONY***

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**Enhancing State Management of  
Natural Resources on Federal Lands  
and Waters**

**Subcommittee on Energy and Mineral Resources**

**Committee on Natural Resources**

**U.S. House of Representatives**

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My name is Nicolas Loris and I am the Research Manager in Energy and Environment and Herbert and Joyce Morgan Research Fellow at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

I want to thank the Members of the Committee on Natural Resources' Subcommittee on Energy and Mineral Resources for this opportunity to discuss enhancing state management of natural resources on federal lands and waters.

Both proponents and opponents of increased access to natural resource extraction on federal lands and waters have expressed frustration over the leasing and permitting process. Proponents have long derided the decisions by previous Administrations to lock up resources or make it painstakingly difficult to secure and use a lease. More recently, several coastal states responded to the latest Department of Interior (DOI) offshore drilling proposal by voicing concerns that oil and gas production would have possible environmental risks and negative impacts on other sectors of their respective state's economy.

Dissatisfaction from both parties presents an opportunity to improve the current system. Rather than have a system subject to the whims of whoever is in charge, successful, comprehensive reform should accomplish four objectives. (1) Create a system that enables the energy industry to respond more quickly to rapidly changing market conditions; (2) involve states more directly in decision making; (3) protect the American taxpayer; and (4) align incentives for energy production and environmental protection.

### **The Enhancing State Management of Federal Lands and Waters Act**

The Enhancing State Management of Federal Lands and Waters Act is a discussion draft that would amend the Mineral Leasing Act (MLA) and the Outer Continental Shelf Lands Act (OCSLA) to empower states to have more control over the leasing, permitting, and regulations of oil and gas production. Title I addresses onshore oil and gas development. If enacted, a state would apply to establish enhanced management regions that would authorize the state to develop energy resources on federal land that is not Indian land, part of the National Park System, the National Wildlife Refuge System, or a congressionally designated area.

The legislation would allow states to develop programs that satisfy all applicable federal laws required to produce energy on federal lands. Therefore, states would have complete control of their energy programs. In the event that an enhanced management region generates more oil and gas production than the average of the previous five fiscal years, states receive a greater percentage of the revenue accrued from bonus bids, rentals, and royalties. If non-market factors yield less production in an enhanced management region, the Secretary of Interior can revoke authority or assess a lost production fee.

Title II of the discussion draft addresses offshore oil and gas development. The legislation would direct the Interior Secretary to conduct geological and geophysical mapping of the National Outer Continental Shelf (OCS) to establish a better estimate of oil and gas reserves off the U.S. coastline. In addition, the draft would authorize a state to approve or disapprove of each lease block offered in the DOI's lease sale if the area is within the state's administrative boundaries. If a state approves of all of the blocks in a lease sale, the state would receive 50 percent of the revenues from bonus bids, rentals, and royalties. If a state disapproves of lease blocks, the state would pay a fee to the federal government to compensate the taxpayer for lost revenues. The number of lease blocks a state disapproves of would determine the payment a state would make to the U.S. Treasury.

### **The Importance of Energy Production and Federalism**

The Enhancing State Management of Federal Lands and Waters Act and the outcome of a January 2018 meeting between Secretary of the Interior Ryan Zinke and Florida Governor Rick Scott (R) prompts an important question about federalism and states' rights in the context of energy production. Florida currently has a legislative ban on oil and gas production off the Florida coast until 2022.<sup>1</sup> Shortly after the Department of Interior released its Draft Proposed Program (DPP) for the leasing of federal lands under the National Outer Continental Shelf Oil and Gas Leasing Program for 2019–2024, Secretary Zinke met with Governor Scott.

Afterward Zinke tweeted that Florida would have no new oil and gas platforms off its coast, citing Governor Scott's position that the Sunshine State is heavily dependent on tourism for its economy.<sup>2</sup> The announcement prompted policymakers in other coastal states to request their own exemptions.<sup>3</sup> Secretary Zinke expressed intent to meet with all the relevant governors and the proposal entered the 60-day public comment period.<sup>4</sup> Conversely, lawmakers from Louisiana, which has a long history in offshore energy production, hailed the proposal as a boon for the state's economy.<sup>5</sup>

Although the Secretary's comment was not a formal action, it re-started a necessary discussion over federalism and the importance of state input. Pro-energy states, both onshore and offshore, have long disparaged federal decisions to prohibit and delay energy development and job creation in their respective states. Previous Congresses and Administrations have placed outright

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<sup>1</sup>Laura B. Comay, "Five-Year Program for Federal Offshore Oil and Gas Leasing: Status and Issues in Brief," Congressional Research Service *Report for Congress*, No. 44692, January 8, 2018, <http://plus.cq.com/pdf/crsreports-5247017.pdf?1> (accessed June 11, 2018).

<sup>2</sup>Jennifer A. Dlouhy, "About-Face Tweet on Florida Drilling May Backfire on U.S. Agency," Bloomberg, January 10, 2018, <https://www.bloomberg.com/news/articles/2018-01-10/about-face-tweet-on-florida-drilling-may-backfire-on-u-s-agency> (accessed June 11, 2018).

<sup>3</sup>David Weigel, Darryl Fears, and John Wagner, "Decision to Exempt Florida from Offshore Drilling Prompts Bipartisan Uproar," *The Washington Post*, January 10, 2018, [https://www.washingtonpost.com/politics/decision-to-exempt-florida-from-offshore-drilling-prompts-bipartisan-uproar/2018/01/10/1f5bfa4-f625-11e7-beb6-c8d48830c54d\\_story.html?utm\\_term=.810b0cc528fd](https://www.washingtonpost.com/politics/decision-to-exempt-florida-from-offshore-drilling-prompts-bipartisan-uproar/2018/01/10/1f5bfa4-f625-11e7-beb6-c8d48830c54d_story.html?utm_term=.810b0cc528fd) (accessed June 11, 2018).

<sup>4</sup>Ibid.

<sup>5</sup>Matthew Daly, "Trump Moves to Vastly Expand Offshore Drilling Off U.S. Coasts; Louisiana Delegation Welcomes Move," *The Advocate*, January 4, 2018, [http://www.theadvocate.com/baton\\_rouge/news/politics/article\\_8ad8a726-f199-11e7-9130-4395863271c7.html](http://www.theadvocate.com/baton_rouge/news/politics/article_8ad8a726-f199-11e7-9130-4395863271c7.html) (accessed June 11, 2018).

moratoriums on certain areas off America's coasts. Furthermore, costly bureaucratic delays on federal lands for issuing leases and processing applications for permits to drill stalls production and economic growth. Without a doubt, frustration exists on both sides.

The fundamental issue is that federal ownership and control of minerals offshore (and onshore) has taken decision rights away from states. Both economically and environmentally, states have proven to manage energy development prudently. For example, where states have authority over applications for permits to drill and conduct environmental reviews, oil and gas production has soared.<sup>6</sup> Energy companies have capitalized on the wealth of resources on private- and state-owned lands.<sup>7</sup> The energy industry and consumers alike benefit from most of the shale oil and shale gas—from which much of the domestic production is coming—not being under federal control.<sup>8</sup>

However, federal regulations and federal land ownership have rendered vast quantities of recoverable oil and natural gas onshore and offshore either inaccessible or costlier to extract.<sup>9</sup> Permitting energy extraction on federally owned land will result in even more oil and gas extraction and create jobs in areas that may not otherwise see such economic growth. On average, the federal processing of an application for permit to drill (APD) in the last year of the Obama Administration was 257 days, while state processing is typically 30 days or less.<sup>10</sup>

State control, local governance, and private-sector participation would result in more accountable, effective management. While the federal government can simply shift the costs of mismanagement to federal taxpayers, states have powerful incentives for better management of resources on federal lands. State governments can be more accountable to the people who will directly benefit from wise management decisions, especially as it pertains to natural resource management. According to a 2015 Property and Environment Research Council report, “On average, states generate more revenue per dollar spent than the federal government on a variety of land management activities, including timber, grazing, minerals, and recreation.”<sup>11</sup>

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<sup>6</sup>Marc Humphries, “U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas,” Congressional Research Service *Report for Congress*, No. 42432, June 22, 2016, <https://fas.org/sgp/crs/misc/R42432.pdf> (June 12, 2018).

<sup>7</sup>Institute for Energy Research, “Energy Production on Federal Lands Lags Behind Private and State Lands,” July 21, 2015, <http://instituteforenergyresearch.org/analysis/energy-production-on-federal-lands-lags-behind-private-and-state-lands/> (accessed June 12, 2018).

<sup>8</sup>U.S. Department of Energy, Energy Information Administration, “Maps: Exploration, Resources, Reserves, and Production,” <https://www.eia.gov/maps/maps.htm> (accessed June 12, 2018).

<sup>9</sup>Mark Green, “Expanding Offshore Access Is Key to U.S. Energy Security,” *Energy Today*, May 1, 2017, <http://energytomorrow.org/blog/2017/05/01/expanding-offshore-access-key-to-us-ener> (accessed June 12, 2018).

<sup>10</sup>News Release, “Zinke Signs Secretarial Order To Streamline Process For Federal Onshore Oil And Gas Leasing Permits,” U.S. Department of the Interior, July 6, 2017, <https://www.doi.gov/pressreleases/zinke-signs-secretarial-order-streamline-process-federal-onshore-oil-and-gas-leasing> (accessed June 12, 2018).

<sup>11</sup>Holly Fretwell and Shawn Regan, “Divided Lands: State vs. Federal Management in the West,” Property and Environment Research Center, PERC Public Lands Report, March 2015, Figure 1, [http://www.perc.org/sites/default/files/pdfs/150303\\_PERC\\_DividedLands.pdf](http://www.perc.org/sites/default/files/pdfs/150303_PERC_DividedLands.pdf) (accessed June 12, 2018).

Moreover, incentives to invest in and steward the environment are stronger when people have direct ownership and responsibility.<sup>12</sup> The Bureau of Land Management (BLM) and Forest Service (FS) lands lost \$4.38 per acre from 2009–2013, while trust lands in four western states earned \$34.60 per acre.<sup>13</sup> In terms simply of recreation, states again do a better job of making a return on their investment. Idaho and Montana averaged \$6.86 per dollar spent on recreation on state trust lands; in contrast, the BLM earned \$0.20 and the FS \$0.28 per dollar spent, resulting in a net loss.<sup>14</sup> While states and local communities may not always make perfect decisions, the best environmental policies are site- and situation-specific.

Moreover, transferring decision rights to states and the private sector could lead to an industry that is more responsive to price changes. According to a working paper from Utah State University economist Eric C. Edwards,

Even though 99% of federal drilling permits are eventually approved, bureaucratic delay imposes costs through delay and dampening. Drilling response is slower, and thus wells on federal lands do not respond to high oil and gas prices as quickly as private lands. These delays also lead to lower overall price responses—fewer overall wells drilled in response to price increases. Our findings indicate that the potential for improving the responsiveness of federal lands to price signals could be achieved through a reduction in delay in the BLM permitting process.<sup>15</sup>

While the study examines federal lands, similar logic could apply to federal waters. Remedying this situation could compensate states appropriately through expanded royalty revenue collection. With the exception of Alaska, states receive 50 percent of the revenues generated by onshore oil and natural gas production on federal lands.<sup>16</sup> Congress should apply this allocation offshore as well, including for current operations in the Gulf of Mexico. If Congress successfully transfers the permitting and environmental review to the states, the states should receive an even larger share of the royalty revenue collected.

Drilling off states' coasts and allowing them a larger share of the royalty revenue would encourage more state involvement in drilling decisions. Offshore drilling would also promote state and local government participation in allocating funds, helping to close deficits, enabling coastal restoration and conservation, and using funds for schools.

More financial stake and control over the regulatory process would encourage states to seriously consider the economic benefits and minimal risk associated with offshore energy production. In

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<sup>12</sup>For more information, see Nicolas D. Loris, “Chapter 5: Economic Freedom, Energy, and Development,” *2015 Index of Economic Freedom* (Washington, DC: The Heritage Foundation and Dow Jones & Company, Inc., 2015), <https://www.heritage.org/index/pdf/2015/book/chapter5.pdf>.

<sup>13</sup>Fretwell and Shawn Regan, “Divided Lands: State vs. Federal Management in the West.”

<sup>14</sup>*Ibid.*

<sup>15</sup>Eric C. Edwards, Trevor O’Grady, and David Jenkins, “The Effect of Land Ownership on Oil and Gas Production: A Natural Experiment,” Working Paper, December 2016, <https://papers.sioe.org/paper/2022.html> (accessed June 12, 2018).

<sup>16</sup>Elizabeth Malm, “Federal Mineral Royalty Disbursements to States and the Effects of Sequestration,” The Tax Foundation, *Fiscal Fact Sheet* No. 371, May 30, 2013, <https://files.taxfoundation.org/legacy/docs/ff371.pdf> (accessed June 12, 2018).

fact, as recently as 2013, both Democratic Senators from Virginia offered legislation to open parts of the Atlantic to offshore development.<sup>17</sup> A critical component of their legislation was to ensure Virginia received royalty revenues similar to states in the Gulf Coast region. States may choose not to develop offshore oil, gas, wind, or ocean energy projects, and forego the economic benefits increased energy production brings.

### **Multiple Year Planning Processes Ignore Market Realities**

Oil and gas production is a time-consuming and capital-intensive operation. A company must win the lease sale or acquire the mineral rights, obtain the permits, conduct seismic surveys, build the necessary infrastructure, and drill and case the well. The entire process can take multiple years and the oil and gas industry makes investments considering multiple time horizons. However, the current five-year planning process is not the way commercial energy investments should be (let alone *are*, in reality) determined.

By taking a static approach to dynamic energy markets, the federal government's current policy disregards how markets function. Energy markets are exceedingly complex and prices play a critical role by efficiently allocating resources to their highest valued use. Investment decisions change as prices change. Oil prices can fluctuate significantly from one month to the next, let alone over a five-year window. For example (after adjusting for inflation):

- From 2007–2008, the price of oil increased from \$66 per barrel to \$94 per barrel.
- From 2008–2009, the price dropped to \$56 dollars per barrel, before increasing to \$74 per barrel in 2009–2010.
- From 2011–2013, the price increased to above \$94 per barrel.
- From 2014–2015, the price decreased from \$87 per barrel to \$44 per barrel.
- By 2016, significant increases in supply and less-than-projected demand pushed the price down to \$38 per barrel.<sup>18</sup>

Businesses should be able more efficiently respond to such fluctuations in price rather than waiting on a lengthy planning process and specific lease-sale schedule. As energy companies plan for the near- and long-term, the federal government should conduct lease sales if a commercial interest exists and it does not jeopardize national security. It is incumbent upon the company to develop the resources safely and responsibly.

Energy policy should not be predicated on what analysts, Members of Congress or federal regulators think is going to happen. Instead, policy should open and establish the framework for

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<sup>17</sup>News Release, “Sens. Warner and Kaine Submit Legislation to Expand Offshore Energy Leases,” Office of Senator Mark R. Warner, May 22, 2013, [https://www.warner.senate.gov/public/index.cfm/pressreleases?ContentRecord\\_id=3508f696-8280-47d2-97aa-356ec3050f9b](https://www.warner.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=3508f696-8280-47d2-97aa-356ec3050f9b) (accessed June 12, 2018).

<sup>18</sup>See U.S. Energy Information Administration, “U.S. Crude Oil First Purchase Price,” January 2, 2018, [https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=F000000\\_3&f=A](https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=F000000_3&f=A) (accessed June 12, 2018).

competitive markets and involvement from the relevant states, while ensuring the protection of property rights and the environment.

### **The Problem of Federal Ownership and Public Interest Determinations**

Oil and gas production is booming in some regions of the U.S., while the rate of production in others has slowed or even decreased. The divergent trajectories in production primarily boil down to one word: ownership. Much of the growth is occurring on private and state-owned lands. Despite the tremendous abundance of oil and gas beneath federal lands and off America's coasts, oil and gas output on federally owned lands has been mostly stagnant or declining. Companies operating in the U.S. have been the world's largest producers of oil and natural gas for six years; as a result, the nation is reaping the tremendous economic benefits that such large-scale production generates. This success emerged organically from innovation in the private marketplace to unlock energy resources formerly thought inaccessible rather than from any specific government policy to promote these technologies and processes.

The OCSLA's congressional declaration of policy states that the Outer Continental Shelf is a "vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs."<sup>19</sup> The phrase "held by the federal government for the public" is at the crux of the problem. The federal government should not hold mineral rights for the public.

The establishment of national needs, national interest, or public interest determinations is broadly problematic for energy development and projects. Decisions that should be left to the private sector and by price signals are instead left to the federal government. For instance, national and public interest determinations have been manipulated into pretexts to obstruct energy development and energy infrastructure.<sup>20</sup>

Unlike air or national security, minerals are not a public good. Public goods are non-rival and non-excludable. A non-rival good can be consumed at extremely low rates of marginal cost. Non-excludable goods are goods that people cannot be easily prevented from consuming. The energy that people use to light their schools, heat their homes, and move their vehicles is excludable and rival. For example, Katie cannot have access to gasoline unless she pays for it. Moreover, when Katie purchases a gallon of gas, that gallon cannot be simultaneously consumed by another consumer. Natural resources like oil and natural gas are privately produced and privately consumed.<sup>21</sup> Just as the federal government does not make public or national interest determinations for the clothes its citizens purchase, neither should it do so for the energy they produce and consume.

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<sup>19</sup>43 U.S.C. § 1332.

<sup>20</sup>For more information on this, see Nicolas Loris, "Removing Restrictions on Liquid Natural Gas Exports: A Gift to the U.S. and Global Economies," Heritage Foundation *Backgrounder* No. 3232, July 27, 2017, <https://www.heritage.org/sites/default/files/2017-07/BG3232.pdf>.

<sup>21</sup>Environmental statutes and regulations internalize the negative externalities associated with the burning of conventional fuels.

Another serious problem with public interest and national interest determinations is concentrating the decisions in the hands of government officials and regulators. No concrete definitions exist for national or public interest determinations, which introduces subjectivity into the determination. For example, the Natural Gas Act empowers the federal government to reject the import or export of natural gas to non-free trade agreement countries if that import or export is not “consistent with the public interest.”<sup>22</sup> However, the law never specifies what criteria should be considered when addressing the public interest. The State Department contends with similar opacity for the national interest determination when deciding on cross-border pipelines. Moreover, the OCSLA gives no outline or detail for what the DOI should consider as “national needs.”

The vagueness of these considerations allows government officials to make decisions that properly belong to companies in the private sector. Rather than meeting certain criteria, these determinations empower regulators to arbitrarily make that determination for the rest of the nation. Government officials will not always make determinations on whether to develop resources based on the public interest or even objective, transparent science; instead, they may base them on their own subjective values.

The Obama Administration’s revised 2017–2022 leasing plan is also evidence of such subjectivity. Private actors incentivized by the profit motive will know much better than regulators in Washington as to where, when, and why drilling should take place. That does not preclude the need for an environmental review and permitting process, or consideration of national security impacts, but the permitting process should not be embedded in a five-year planning process that outlines where companies may produce energy in accord with a subjective, extremely vague public interest determination.<sup>23</sup>

### **Opening Auctions to All Parties**

Two of the objectives of the Enhancing State Management of Federal Lands and Waters Act are to empower states and provide a fair return for taxpayers for producing or not producing public resources that, in their current state, belong to all Americans. As detailed in the previous section, a number of problems arise from public ownership of resources, many of which privatization would solve. Another problem is entrusting government officials to make decisions for the American people in the name of public interest. As free-market environmentalist Jane S. Shaw writes in discussing public choice theory, “although people acting in the political marketplace have some concern for others, their main motive, whether they are voters, politicians, lobbyists, or bureaucrats, is self-interest.”<sup>24</sup> In other words, government officials are people, too.

Absent privatization, one way Congress could more accurately value the land and resources is to open the lease auctions to all interested parties. Currently, only energy companies can bid on lease auctions and the federal government requires leaseholders to demonstrate intent to develop

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<sup>22</sup>15 U.S. Code § 717b.

<sup>23</sup>Nor does it mean that state regulatory regimes will always make sound policy decisions. New York’s ban on hydraulic fracturing and Florida’s request for an exemption are examples of that.

<sup>24</sup>Jane S. Shaw, “Public Choice Theory,” *The Concise Encyclopedia of Economics* (Library of Economics and Liberty, 1993), <http://www.econlib.org/library/Enc1/PublicChoiceTheory.html> (accessed June 12, 2018).



the resources. Restricting who bids and requiring the winner develop the parcels eliminates competition and fails to assess the relative value of the land. Conservationists, recreationists, alternative energy companies, ranchers, or environmentalists may value the land more for their intended use than for oil and gas development. As economist Michael Giberson and research fellow Shawn Regan write in their public comment on federal oil and gas royalties, “No method reliably integrates the variety of diverse, predominantly subjective, and sometimes conflicting values into a single, uncontroversial auction reserve price.”<sup>25</sup>

Opening the leasing process to all interested parties would not only create more competition but also potentially more cooperation. An environmental organization could pair up with a grazer to bid on a block of land. An energy company could coordinate conservationist groups to use the land in which both parties can benefit. Natural resource extraction would likely still occur, but oil and gas production will occur because the energy companies value the land and resources more than other contending interests do. As values change (for instance, if oil prices rise), buyout programs and lease re-offerings would ensure that competing interests remain involved in current and future land-use decisions. One challenge will be to establish a mechanism to compensate taxpayers for lost royalty revenues, which the BLM could accomplish by assessing grazing, recreation, or other land-use fees.

Giberson and Regan write, “In a number of cases private conservation groups have negotiated with parties over specific grazing rights or oil and gas leases on federal lands in an effort to protect environmental values. As long ago as 1992 the Conservation Fund purchased grazing rights in the Glen Canyon National Recreation Area in southern Utah. By 2003, at least a half-dozen conservation and sportsmen organizations had grazing permit buyout programs. In 2012 the Trust for Public Land, a conservation group, worked with a variety of other groups and donors to purchase and retire oil and gas leases representing 58,000 acres in Wyoming’s Hoback Basin from Plains Exploration and Production Co.”<sup>26</sup>

### **Energy, Economic Diversity, and Environmental Safety**

For six years, the United States has been the world’s leading producer in petroleum and natural gas hydrocarbons, which has produced astounding economic benefits and put money back into the wallets of American families. In fact, in November 2017 the U.S. crude oil supplies surpassed 10 million barrels per day, breaking a record high from nearly 50 years ago. The extraordinary technological advancements in resource extraction have the United States in position to overtake Saudi Arabia and Russia as the world’s top oil producer. The latest projection from the Energy Information Administration estimates that U.S. production could reach nearly 12 million barrels per day in 2019.<sup>27</sup>

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<sup>25</sup>Michael Giberson and Shawn Regan, “Public Interest Comment in Response to U.S. Department of Interior’s Advanced Notice of Proposed Rulemaking,” comment submitted in response to *Federal Register*, Vol. 80 (June 5, 2015), p. 22148, June 5, 2015, <https://www.regulations.gov/document?D=BLM-2015-0002-0019> (accessed June 12, 2018).

<sup>26</sup>Ibid.

<sup>27</sup>U.S. Energy Information Administration, “Short-Term Energy Outlook (STEO),” May 2018, [https://www.eia.gov/outlooks/steo/pdf/steo\\_full.pdf](https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf) (accessed June 12, 2018).

The story is made more amazing by the fact that federal energy policy actively hindered this energy renaissance as it was taking place. Centuries' worth of oil, natural gas, and coal resources lie beneath private property as well as under lands owned by state governments. While federally owned lands are also full of energy potential, a bureaucratic regulatory regime has mismanaged land use for decades. The tremendous economic benefits of open energy markets and the proven track record of the individual states' regulatory structures dictate a re-examination of the way the federal government manages resources on federal lands.

Both onshore and offshore energy production has the potential to boost and diversify states' economies. Whether it is hunting, fishing, recreation, or seafood production, energy production and other industries can work in harmony. Texas, California, North Dakota, Oklahoma, Pennsylvania, Colorado, Alaska, and others have demonstrated this for periods spanning more than a century and a half.

When it comes to offshore production, Louisiana is the poster child for a state that benefits from an abundance of offshore natural resources but also has strong industries in seafood and tourism. With more than 80 percent of waterborne U.S. rigs off Louisiana's coast,<sup>28</sup> and with oil and gas production in the Gulf Coast region accounting for approximately 18 percent of oil production and 4 percent of natural gas production in the U.S.,<sup>29</sup> the state has generated significant economic benefits. The energy industry contributes tens of billions of dollars annually to the economic welfare of the state and is a critical part of the state's culture and way of life. In 2014, the industry generated \$44 billion for the state economy and another \$36 billion when including related infrastructure and refining activity.<sup>30</sup>

In addition to energy production, seafood and tourism industries stand out as significant contributors to Louisiana's economy. Louisiana represents 30 percent of the commercial fishing for the continental United States and are substantial producers of shrimp, oysters, crawfish, and crabs.<sup>31</sup> Many of the seafood businesses are smaller, family-owned operations that have a long and rich history. Annually, the industry creates \$2.4 billion in economic growth for Louisiana.<sup>32</sup> In 2016, 46.7 million people visited Louisiana, generating \$16.8 billion.<sup>33</sup>

These industries work in harmony. Every year, residents of the Gulf region come to Morgan City, Louisiana, to celebrate the lifeblood of the region's economy: seafood and oil. The Louisiana Shrimp and Petroleum Festival's website emphasizes "the unique way in which these two seemingly different industries work hand-in-hand culturally and environmentally in our

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<sup>28</sup>Louisiana Economic Development, "Louisiana's Energy Advantages," <https://www.opportunitylouisiana.com/key-industries/energy> (accessed June 12, 2018).

<sup>29</sup>News Release, "Secretary Zinke Announces Plan For Unleashing America's Offshore Oil and Gas Potential."

<sup>30</sup>The Louisiana Mid-Continent Oil and Gas Association and the Louisiana Association of Business and Industry, "Request for Information on 2019–2024 Outer Continental Shelf Oil & Gas Leasing Program," August 17, 2017, [http://labi.org/assets/images/media/LMOGA\\_LABI\\_Comments\\_OCS\\_Five\\_Year\\_Program\\_Final3589.pdf](http://labi.org/assets/images/media/LMOGA_LABI_Comments_OCS_Five_Year_Program_Final3589.pdf) (accessed June 12, 2018).

<sup>31</sup>Ibid.

<sup>32</sup>Louisiana Seafood, "The Backstory," <http://www.louisianaseafood.com/industry> (accessed June 12, 2018).

<sup>33</sup>The Louisiana Mid-Continent Oil and Gas Association and the Louisiana Association of Business and Industry, "Request for Information on 2019–2024 Outer Continental Shelf Oil & Gas Leasing Program."

area.”<sup>34</sup> The festival is a tradition that dates back more than 80 years. Even the adverse effects of the Deepwater Horizon oil rig accident did not disrupt the harmony of the state economy. In many respects, the spill strengthened the bond between the oil and seafood industry, with shrimpers and fishers alike extremely vocal in support of lifting the offshore drilling ban after the spill.<sup>35</sup> At the time, Harlon Pearce, owner of one of the largest seafood processors in the state and Chair of Louisiana’s Seafood Promotion and Marketing Board, said, “I am not in favor of the moratorium. You’ve got to be down here to see and feel what I’m telling you. It’s our brothers, uncles, and cousins that are working in the oil industry.”<sup>36</sup> Ewell Smith, executive director of the Board, said, “If you’ve seen Grand Isle or those [other fishing communities], you’ve seen how much oil and gas and seafood coexist in this state.”<sup>37</sup>

The Rigs to Reef program is another example of how energy businesses operating in the Gulf also help the environment. The program converts old platforms into artificial reefs.<sup>38</sup> The reefs provide enormous ecological benefits, as a typical eight-legged structure provides habitat for 12,000–14,000 fish.<sup>39</sup> The more than 470 platforms that serve as artificial reefs in the Gulf are inviting for both anglers and divers.<sup>40</sup> (California, which has more than two dozen offshore platforms off its coasts, is considering implementing a similar program.<sup>41</sup>)

Whether it is federal, state or privately owned land, energy production underneath America’s soil in harmony with other sectors of the economy. With the abundance of energy off America’s coastline, other states have the opportunity to imitate the symbiotic relationship between the energy industry and other critical sectors of the economy in Louisiana.

### **A Better Path Forward**

The statutes guiding oil and gas development on federal lands and federal waters are in need of comprehensive reform. The Enhancing State Management of Federal Lands and Waters Act would accomplish two important objectives in delegating more authority to the states and using financial incentives to inform states’ decisions. States share the cost of the maintenance of federal lands, whether by the liability of no management, the lost opportunity of poor management, or the infrastructure needed to support development of resources. States have a proven record of managing resources, and already have the regulatory structures in place to do so

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<sup>34</sup>Louisiana Shrimp and Petroleum Festival, “History,” <http://www.shrimppandpetroleum.org/history> (accessed January 25, 2018).

<sup>35</sup>Josh Harkinson, “Oil Rigs and the Fishermen Who Love Them,” *Mother Jones*, June 24, 2010, <https://www.motherjones.com/environment/2010/06/oil-rigs-moratorium-louisiana-fishermen/> (accessed June 12, 2018)

<sup>36</sup>*Ibid.*

<sup>37</sup>*Ibid.*

<sup>38</sup>U.S. Department of the Interior, Bureau of Safety and Environmental Enforcement, “Rigs to Reefs,” <https://www.bsee.gov/what-we-do/environmental-focuses/rigs-to-reefs> (accessed February 12, 2018).

<sup>39</sup>*Ibid.*

<sup>40</sup>*Ibid.*

<sup>41</sup>Nuala Sawyer, “California’s Defunct Oil Rigs May Become Thriving Ocean Reefs Under New Legislation,” *San Francisco Examiner*, February 17, 2017, <http://www.sfoxaminer.com/californias-defunct-oil-rigs-may-become-thriving-ocean-reefs-new-legislation/> (accessed June 12, 2018).

on federal lands within their boundaries as well. Not only would new management multiply benefits for all Americans, it would also encourage better care of the environment and natural resources by putting them in the hands of people who have an immediate stake in wise management. Washington-centric approach to management stifles creative, collaborative solutions to competing interests that could be resolved at local, state, or regional levels without the added baggage of national political battles and federal regulatory processes. While states and local communities may not always make perfect decisions, the best environmental policies are site-specific and situation-specific and emanate from liberty.

Several ways in which policymakers could improve the draft legislation are to:

- **Specify that if the Secretary of Interior does not make a decision to approve or disapprove of an application for an enhanced management region program, that the plan is approved.** Forcing the DOI to issue a decision will prevent the agency from sitting on the application.
- **Confirm that the Department of Interior is the lead agency for any section of land where management includes both the Forest Service and Bureau of Land Management.** Problems have arisen with competing land-use plans between the Forest Service and the Bureau of Land Management in the past. Designating a lead agency will help avoid any duplication or confusion.
- **Apply the same reforms to all energy sources and technologies.** States should have the same incentives and choices the draft legislation provides to oil and gas production, whether it is a solar farm in Nevada or an offshore wind farm in the Atlantic.
- **Eliminate the five-year planning process for offshore leasing.** The current five-year planning process ignores how businesses operate in the face of rapid market and technological changes. Through legislation, Congress should eliminate the five-year plans and authorize the DOI to conduct lease sales if interest for development exists while weighting the consultation with heavily impacted states in offering those lease sales. Such a reform would allow the safe development of energy off America's coasts while empowering state stakeholders. Removing the lengthy and unnecessary planning process would create a system that is more responsive both to price changes and to the needs and interests of states. The permitting would also need to meet any Department of Defense requirements.
- **Empower companies, groups, and people that are not energy companies to bid on lease sales.** If a conservationist organization values non-production or an alternative use of land or waters, they should be permitted to bid in the auction. Opening up the bidding process would incentivize more competition and potentially more cooperation and could alleviate some of the non-production fees a state would have to pay for failing to develop oil and gas reserves.

- **Ensure that states have access to resources within their boundaries or off their coasts in the event that the current Administration is hostile to energy production.** States have expressed concern over the Department of Interior’s aggressive push to open access to the abundance of resources in the OCS. A number of political and economic factors could force that to change. Just as the federal government should not force energy production upon the states, the Department of Interior (and Department of Agriculture) should not obstruct a state’s desire to produce energy and create jobs within their borders and administrative boundaries. Congress and the federal government should, at the very least, ensure access to provide the choice to the states to develop natural resources and alternative forms of energy.
- **Transfer the environmental review and permitting process for offshore energy development to the states.** Similar to the draft legislation’s proposal that would allow states to assume exclusive jurisdiction over the leasing, permitting, and development of oil and gas operations for enhanced management regions, Congress should amend the OCSLA and SLA to do the same for offshore operations if a state desires to assume responsibility. The state regulatory program would be sufficient in lieu of federal requirements (e.g., from the Clean Air Act and the National Environmental Policy Act). To support their reviews, state regulators can request technical or safety expertise from the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement and use previous DOI environmental assessments. In addition, state regulators would work in conjunction with the Environmental Protection Agency and the U.S. Coast Guard to assess environmental impact and maritime safety and security. States assuming responsibility would also receive a higher percentage of the royalties.

## Conclusion

For decades, excessive regulations and bureaucratic inefficiencies have stymied oil and gas production and prevented the full effects of the energy boom. It can take anywhere from five to 10 years for a company to move from approval to production, with no guarantee that the permit obtained will lead to successful crude oil production.<sup>42</sup> Much of this is due to regulatory red tape and federal control over resource production. Authorizing states to manage onshore and offshore resource production for a greater percentage of the revenue will create a system that permits industry to better respond to changing market conditions. The Enhancing State Management of Federal Lands and Waters Act would implement significant reforms that involve states more directly with the decision-making process, protect the American taxpayers, and align incentives for energy production and environmental protection.

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<sup>42</sup>American Petroleum Institute, “Offshore Leasing, Exploration, and Development Process,” 2013, <http://www.api.org/~media/Files/Oil-and-Natural-Gas/Exploration/Offshore/Offshore-Process-Feb-2013.pdf> (accessed January 25, 2018).

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