

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

May 23, 2019

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Bernhardt:

On January 4, 2018, the Bureau of Ocean Energy Management (BOEM) released the 2019-2024 National Outer Continental Shelf (OCS) Oil and Gas Leasing Draft Proposed Program (DPP), which included 47 sales in nearly all of the OCS planning areas, including the entirety of America's Atlantic, Pacific, and Arctic coasts. Since then, BOEM has received more than 2 million public comments, indicative of the tremendous public interest in which areas the Department of the Interior (DOI) intends to keep in the Proposed Program, the second major step in the development of the 2019-2024 leasing program. We are concerned that your recent announcement of an indefinite delay in releasing the Proposed Program may be in part due to political considerations and believe that you should be fully transparent with the American public as to which portions of our coastlines are still at risk of being leased for offshore oil and gas activities.

On March 6, 2019, BOEM's Acting Director, Walter Cruickshank, appeared before the Subcommittee on Energy and Mineral Resources and testified that BOEM "will release the Proposed Program in the coming weeks."¹ However, in an interview with the *Wall Street Journal* on April 25, 2019, you indicated that at your direction, development of the proposed program had been placed on hold,² and on May 7, before a House Appropriations Subcommittee, you stated that release of "[the proposed program] is not imminent at this time."³ Your stated reasoning for halting the plan is a March 29, 2019, federal court decision reinstating protections from leasing in parts of the Arctic and Atlantic oceans. While this court ruling prevents BOEM from holding lease sales in those specific areas, your experience as DOI Solicitor during development of the 2010-2015 DPP, which included the statutorily protected Eastern Gulf of Mexico planning area and was released years before a new DPP was required under the regular schedule, means you clearly understand there is no legal impediment to including protected regions in a leasing program. In fact, on May 15, 2019, when you testified before the House Natural Resources Committee, in

¹ Testimony of Walter Cruickshank, Acting Director of the Bureau of Ocean Energy Management, before the House Subcommittee on Energy and Mineral Resources. March 6, 2019.

² T. Puko, "Trump's Offshore Oil-Drilling Plan Sidelined Indefinitely." *Wall Street Journal*, April 25, 2019.

³ Testimony of Secretary David Bernhardt, Department of the Interior, before the House Appropriations Subcommittee on Interior, Environment, and Related Agencies. May 7, 2019.

referring to the 2019-2024 proposed program, you told Representative Joe Cunningham that “there’s no legal impediment to developing a leasing plan.”⁴ Since Director Cruickshank’s March 6, 2019, statement implied the Proposed Program was close to completion, this raises questions about your rationale for halting development of the plan, including the possibility that politics, not legal obstacles, is the motivating factor behind your decision.

This would not be the first instance of politics appearing to play a key role in BOEM’s development of the offshore leasing plan. On January 9, 2018, five days after the release of the DPP, then-Secretary Ryan Zinke met with then-Florida Governor Rick Scott at the Tallahassee airport, and immediately afterward tweeted that he was “removing Florida from the draft offshore plan.” Governor Scott pointed to his apparent ability to get Florida removed from the offshore drilling plan as a sign of influence with the administration during his candidacy for U.S. Senate against incumbent Senator Bill Nelson, a race he won in November 2018. However, we know Florida is not truly exempt from the plan because on January 19, 2018, Director Cruickshank informed the House Natural Resources Committee that Florida was still under consideration for oil and gas drilling activities, and on March 13, 2018, then-Secretary Zinke testified before the Senate Energy and Natural Resources Committee that “Florida is still in the process.”

It is our concern that the Proposed Program was to be released imminently as of the date of the court decision, with lease sales included for portions, if not all, of the Eastern Gulf of Mexico and South Atlantic planning areas. This is supported by numerous comments in news reports and from DOI officials. One recent story quotes an “industry lobbyist familiar with the plan” as saying, “For all intents and purposes, it’s done,”⁵ and another quotes Assistant Secretary for Land and Minerals Management Joe Balash saying in reference to applications for seismic airgun testing in the Atlantic Ocean, “I will tell you we wouldn’t work really really [*sic*] hard to get the seismic permits out, if it was an area that wasn’t going to be available.”⁶

Including either of these areas in the Proposed Program or eventual Final Program would come with significant political risk to the President, as was noted by Florida Republican Ted Yoho, who said, “He would have a price to pay for that.”⁷ The March 29 court case provides a useful excuse for DOI to delay the release of the Proposed Program until after the 2020 presidential election, allowing the President to avoid paying the political price at the small cost (for him) of misleading coastal voters into believing that their coastlines are safe.

In order to allow the Committee on Natural Resources to carry out its oversight function and consider the need for potential amendments to the OCS Lands Act, we reiterate our January 24, 2019, request for documents relevant to then-Secretary Zinke’s January 2018 tweet, and ask you provide us the following additional documents at the soonest possible date, but no later than June 28, 2019:

⁴ Testimony of Secretary David Bernhardt, Department of the Interior, before the House Natural Resources Committee. May 15, 2019.

⁵ Z. Colman and B. Lefebvre, “The confidential oil plan that could cost Trump reelection.” Politico, April 10, 2019.

⁶ J. Tobias, “US official reveals Atlantic drilling plan while hailing Trump’s ability to distract public.” *The Guardian*, March 14, 2019.

⁷ Ref. 5

1. All documents and communications of employees and persons within the Department of the Interior and the Florida Governor's office regarding the contents of BOEM's 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Proposed Program and the timing of the public release of the Proposed Program between January 1, 2019, and April 25, 2019.
2. All documents and communications of employees and persons within the Department of the Interior and the White House regarding the contents of BOEM's 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Proposed Program and the timing of the public release of the Proposed Program between January 1, 2019, and April 25, 2019.
3. All documents and communications of employees and persons within the Department of the Interior and the Republican National Committee regarding the contents of BOEM's 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Proposed Program and the timing of the public release of the Proposed Program between January 1, 2019, and April 25, 2019.
4. A copy of BOEM's 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Proposed Program as it existed in draft form on March 29, 2019.

Please refer to the attached instructions on how to respond to this document request. As specified therein, upon completion of the document production, please submit a written certification that a diligent search has been completed and all responsive documents have been produced to the Natural Resources Committee. If you have any questions about this request, please contact Natural Resources Committee staff at (202) 225-6065.

Sincerely,



Raúl M. Grijalva
Chair
Natural Resources Committee



Alan S. Lowenthal
Chair
Energy and Mineral Resources
Subcommittee



Kathy Castor
Chair
Select Committee on the Climate Crisis



Frank Pallone, Jr.
Chair
Committee on Energy and
Commerce

Responding to Committee Document Requests

In responding to document requests from the Committee on Natural Resources, please apply the instructions and definitions set forth below:

Instructions

1. In complying with the request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or individual denoted in this request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., memory stick or thumb drive) in lieu of paper productions. Documents produced in electronic format should also be organized, identified, and indexed electronically. Consult with the Committee to determine the appropriate format in which to produce the information.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box, or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
8. It shall not be a basis for refusal to produce documents that any other person or entity also possesses a non-identical or identical copy of the same documents.
9. If compliance with the request cannot be made in full, compliance should be made to the extent possible and should include an explanation of why full compliance is not possible.

10. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be Bates-stamped sequentially and produced sequentially.
15. Documents produced to the Committee in response to this request should be delivered to majority staff in Room 1324 of the Longworth House Office Building.

Definitions

1. The term "**document**" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, text messages, MMS or SMS messages, other mobile-to-mobile messages, instant messages or online chat messages, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of

any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "**documents in your possession, custody, or control**" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "**communication**" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, facsimile, mail, e-mail (desktop or mobile device), text message, MMS or SMS message, other mobile-to-mobile message, instant message or online chat, telexes, releases, personal delivery, or otherwise.
4. The terms "**and**" and "**or**" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "**person**" or "**persons**" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The term "**identify**," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The terms "**referring or relating**," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.
8. The term "**employee**" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.