



March 9, 2018

VIA ELECTRONIC SUBMISSION

The Honorable Ryan Zinke  
Secretary, U.S. Department of the Interior  
C/O Ms. Kelly Hammerle, Chief  
National 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 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program**

Dear Secretary Zinke:

The U.S. Small Business Administration's Office of Advocacy (Advocacy) applauds the United States Department of the Interior's Bureau of Ocean Energy Management (BOEM)'s efforts to expand the area of the outer continental shelf (OCS) available for oil and gas leasing, as these efforts have the potential to benefit small businesses by creating new opportunities for small entities to enter and remain competitive in the industry. Advocacy appreciates BOEM's efforts to engage the public on its proposal and respectfully submits the following comments on BOEM's request for public comment on the Draft Proposed Program (DPP). Advocacy encourages BOEM to consider the impacts to small entities when making final decisions regarding the proposal.

**The Office of Advocacy**

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.



## **Background**

The Outer Continental Shelf Lands Act (43 U.S.C. § 1331) sets forth procedures for leasing, exploration, and production of oil and gas resources on the Outer Continental Shelf (OCS). Section 18 of the act, requires the Secretary of the Interior to prepare a nationwide OCS leasing program, with a five-year schedule of lease sales that best meet the Nation’s energy needs.<sup>1</sup>

On April 28, 2017, President Trump issued Executive Order (E.O.) 13795, “Implementing an America-First Offshore Energy Strategy.”<sup>2</sup> This E.O. directs Agencies to revise the schedule of proposed oil and gas lease sales, so that they include annual lease sales to the maximum extent permitted by law in several areas including the OCS. Subsequently on May 1, 2017, you issued Secretarial Order 3350, “America-First Offshore Energy Strategy,” which called for enhanced opportunities for energy exploration, leasing and development in the OCS, as well as an enhancement of conservation stewardship.<sup>3</sup>

In response to these Orders, on July 3, 2017, BOEM published a request for information (RFI) in the Federal Register with a 45-day comment period.<sup>4</sup> Following the closure of the RFI comment period, BOEM released a DPP on January 4, 2018.<sup>5</sup> BOEM is currently seeking comments on the DPP.

The DPP would open approximately 98 percent of the OCS for consideration of oil and gas leasing during the 2019-2024 period. The proposal names 47 lease sales in all four OCS regions comprising, 19 lease sales in Alaska, 7 lease sales in the Pacific region, 12 lease sales in the Gulf of Mexico, and 9 lease sales in the Atlantic region. In its proposal, BOEM recommends several options for each region, but states that the preferred option is the one that allows for the greatest potential for discovery including the opportunity to bid on rejected, relinquished or expired blocks.<sup>6</sup>

## **Small Businesses are Affected by Oil and Gas Leasing Changes**

Advocacy conducted an outreach effort to speak with small businesses about the impacts of the DPP. Small oil and gas companies in Texas, Louisiana, and the Northeast stated that they support the DPP, and specifically the amount of the OCS that will be available for oil and gas

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<sup>1</sup> 43 U.S.C. § 1331

<sup>2</sup> Exec. Order No. 13795, 82 Fed. Reg. 20815 (April 28, 2017).

<sup>3</sup> U.S. Dept. of the Interior, Secretarial Order No. 3350, (May 1, 2017), *available at* <https://www.doi.gov/sites/doi.gov/files/press-release/secretarial-order-3350-offshore-508.pdf>

<sup>4</sup> Request for Information and Comments on the Preparation of the 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Program MAA104000, 82 Fed. Reg. 30886, (July 3, 2017).

<sup>5</sup> Notice of Availability of the 2019-2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program and Notice of Intent to Prepare a Programmatic Environmental Impact Statement, 83 Fed. Reg. 829, (January 8, 2018).

<sup>6</sup> BUREAU OF OCEAN ENERGY MANAGEMENT, DRAFT PROPOSED PROGRAM, 2019-2024 NATIONAL OUTER CONTINENTAL SHELF OIL AND GAS LEASING, PART I: DRAFT PROPOSAL ON THE SIZE, TIMING AND LOCATION OF OCS LEASE SALES, PAGE 1 (January 4, 2018), *available at* <https://www.boem.gov/NP-Draft-Proposed-Program-2019-2024/>.

leasing. These entities stated that they support maintaining an expansive leasing program as it will allow them the opportunity to build new business.

In contrast however, certain small coastal tour and recreation operators, as well as fisheries are concerned about being impacted negatively by the proposal as there is uncertainty as to what effects a broad offshore drilling program will have on their ability to conduct business in the areas affected. This is especially true in areas that have not previously had robust offshore oil exploration and drilling operations, such as the Northeast and the Pacific.

### **Advocacy's Comments**

Advocacy applauds BOEM's efforts to keep the public informed of its proposal for oil and gas leasing. Given the information Advocacy received from small business owners, Advocacy suggests that BOEM consider the economic impacts on small entities when evaluating the proposed program. The proposal may have both positive and negative effects on different small entities, including both communities and businesses.

These impacts should be carefully considered in the Agency's evaluation to ensure any negative impact on small entities and communities is minimized. Further, BOEM should consider how the differing benefits opening these regions to drilling fall on large and small businesses. Advocacy encourages BOEM to consider feasible alternatives such as a lease set-aside program for small businesses that may maximize the benefits for small entities and ensure they are not unfairly competitively disadvantaged. In addition, BOEM should consider ways in which it can offset any burdens that may be felt by other industries as a result of offshore drilling, including impacts to tourism, coastal recreation, and fisheries.

Advocacy encourages BOEM, before releasing a Proposed Program for public comment, to conduct specific small entity outreach to assist in analyzing the impacts the proposal will have on small business and gather information about how small businesses may meaningfully and fairly participate in the leasing program. Advocacy is available to assist in such efforts.

Advocacy suggests that BOEM use the Regulatory Flexibility Act (RFA)<sup>7</sup> as a framework for its small business economic analysis, and if possible include this analysis directly in its Proposed Program for public comment. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>8</sup> gives small entities a voice in the rulemaking process. While the RFA does not specifically apply in this instance, the factors set forth in section 603(b) on creating an Initial Regulatory Flexibility Analysis (IRFA) may be a useful tool for BOEM to consider when conducting its review.<sup>9</sup> Specifically, BOEM may wish to consider the following factors:

1. A description of reasons why action is being considered;
2. The objectives of, and legal basis for the action;
3. A description of, and estimated number of small entities affected;

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<sup>7</sup> 5 U.S.C. §601 et seq.

<sup>8</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

<sup>9</sup> 5 U.S.C. § 603 (b).

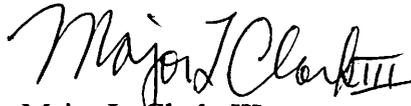
4. A description of, and estimate of compliance requirements including differences in cost, if any, for different groups of small entities;
5. Identification of duplication, overlap, and conflict with other rules and regulations; and
6. A description of significant alternatives to the action.

Performing this analysis may help BOEM to reach decisions regarding oil and gas leasing that are not overly burdensome and level the playing field for small entities. Advocacy is also available to assist with such analysis.

### **Conclusions and Recommendations**

Advocacy appreciates the opportunity to comment publicly on this issue, and encourages BOEM to give full consideration to the above recommendations. If you have any questions or require additional information please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or by email at [prianka.sharma@sba.gov](mailto:prianka.sharma@sba.gov).

Sincerely,



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