

JANET T. MILLS
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301
PORTLAND, MAINE 04101
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

March 9, 2018

via electronic mail

Hon. Ryan Zinke
Secretary of the U.S. Department of the Interior
1849 C Street, N.W.
Washington DC 20240

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

Dear Secretary Zinke:

I write as the Attorney General of the State of Maine to express my strong opposition to leasing for oil and gas development in the North Atlantic Planning Area, as proposed in the Bureau of Ocean Energy Management's 2019-2024 *Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program* ("DPP"). I have also joined in the multi-state comments filed on behalf of several East Coast and West Coast States' Attorneys General Offices in opposition to the opening of the Outer Continental Shelf off of both coasts to leases for oil and gas drilling and I submit these comments to describe the potential negative impacts specific to Maine.

Opposition in Maine to the DPP is bipartisan and overwhelming. Maine's legislators at both the State and National level oppose oil and gas development off the coast of Maine. Maine's Congressional Delegation is unanimous in its opposition to the DPP. Republican Representative Bruce Poliquin and Democrat Representative Chellie Pingree co-sponsored a bill to prohibit oil and gas drilling off the coast of New England, and Republican Senator Susan Collins and Independent Senator Angus King signed on to a similar bill in the Senate.¹ Similarly, the entire Maine House of Representatives and Senate united in opposition to the DPP, unanimously passing a joint resolution requesting that Maine be removed from consideration for offshore oil and gas drilling. The joint resolution states that drilling and exploration off of Maine's coast would endanger commercial fishing jobs and be an ecological and economic disaster for Maine.² I could not agree more.

¹ Bangor Daily News, January 11, 2018.

² <http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280067980>.

Maine's 4,500 miles of coastline and 4,600 islands over one acre in size are vulnerable to the impacts of an oil spill, and the health of the coast and coastal resources is fundamental to Maine's economy.³ Maine's economic prosperity is in large part dependent on its geography and its physical resources. Maine's renowned coastline, with its clean water, beautiful beaches, and abundant marine resources, is a unique asset supporting some of the State's most important industries, most notably tourism and commercial fisheries. Fifty-four percent of Mainers live in coastal counties,⁴ and the jobs of many of those Mainers are directly or indirectly tied to our coastal economy. The 46,000 jobs that Maine's ocean economy provides⁵ would be put at risk by oil and gas drilling activities off of our coast.

In your decision to remove Florida from the DPP, you identified the importance of the state's coastal tourism economy, citing the threat oil and gas drilling would pose to tourism in Florida. Tourism is a mainstay of our economy as well. Maine is an international tourist destination that attracted over 35 million tourists in 2016.⁶ Our reputation for pristine waters and an unspoiled scenic coastline brings people to enjoy our beaches, explore our islands, eat fresh local seafood, sail, take whale and seal watching cruises, kayak and fish. Of our tourism dollars, 71% of spending, or \$4 billion, is spent by tourists along the coast.⁷

I object to the DPP ranking of the environmental sensitivity of the North Atlantic Planning Area as one of the lowest of all regions in the country, at 17.8.⁸ Much of Maine's coastline is fringed with coastal wetlands of tremendous ecological importance. The Maine coast contains approximately 19,500 acres of wetland, more than any other New England state, New York, or any Canadian province in the Gulf of Maine.⁹ Due to their value and sensitivity to impacts, under Maine law these vital coastal wetlands are protected from development by

³ Brian Roach, *et al.*, *Measuring Maine's Marine Economy*, Maine Policy Review vol. 8, issue 2, pp. 56-62 (1999), available at <http://digitalcommons.library.umaine.edu/mpr/vol/iss2/7>.

⁴ Maine total population by county, 2012, US-Places.com/Maine/population-by-county/htm.

⁵ State of the U.S. Ocean and Coastal Economies, 2016, National Ocean Economics Program. http://midatlanticocean.org/wp-content/uploads/2016/03/NOEP_National_Report_2016.pdf.

⁶ *Maine Office of Tourism Annual Report, 2016*, Maine Office of Tourism & Maine Dep't of Econ. & Cmty. Dev., available at digitalmaine.com/decd_docs/168.

⁷ *Waypoints: Community Indicators for Maine's Coast and Islands*, Island Institute, 2016, p. 9. <http://www.islandinstitute.org/press-release/island-institute-publishes-first-edition-waypoints-community-indicators-maines-coast>.

⁸ Relative Sensitivity of Lower 48 States Planning Areas, BOEM DPP, Figures 7-8; 7-20

⁹ *Learn More About Coastal Wetlands*, Maine Property Owners' Guide to Erosion, Flooding & Other Coastal Hazards, University of Maine National Sea Grant, available at <https://www.seagrant.umaine.edu/coastal-hazards-guide/coastal-wetlands/learn-more>.

carefully considered regulations.¹⁰ In intertidal salt marshes, oil from a spill would destroy important habitat for invertebrates (*e.g.* lobsters and clams), juvenile fish (*e.g.* winter flounder and hake), migratory species (*e.g.* eels and alewives) and transient species (*e.g.* Atlantic herring and striped bass), and would damage the sensitive root systems of the plants that make up the marsh.¹¹ Species that are filter feeders, such as clams, mussels and oysters, are particularly vulnerable to toxins in the water.

The unique oceanographic conditions in Georges Bank and the Gulf of Maine would make an oil spill particularly devastating to the coast of Maine. Georges Bank is characterized by shallow water, tidal fluctuations, and a clockwise spinning gyre that would exacerbate damage to the region's renowned ground fishery. The Gulf of Maine gyre to the north has the potential to draw an oil slick into coastal waters and continuously recirculate the pollution as it coats the shoreline.¹² A major oil spill in these waters would cause an unprecedented disaster. In addition to the devastating effects on fish and plant life, oil from a spill would destroy the insulating ability of the coats of fur-bearing mammals, such as seals, and the water repellency of birds' feathers, thus exposing these creatures to the harsh elements of Maine's climate. Without the ability to repel water and the insulation from the cold water, birds and mammals would be at risk of death from hypothermia.¹³

Maine's coastal wetlands are vital habitat for shorebirds, wading birds and ducks. Our Department of Environmental Protection and Department of Inland Fisheries and Wildlife have designated 158 shorebird habitat areas along Maine's coast as Significant Wildlife Habitat and have adopted regulations providing high levels of protection for these valuable habitats.¹⁴ These areas are recognized as the most important southward staging areas for shorebirds in eastern North America. Many of these designated coves and marshes provide essential feeding, roosting and staging areas where tens of thousands of shorebirds like plovers and sandpipers congregate

¹⁰ See 38 M.R.S. § 480-D; Maine's Wetlands and Waterbodies Regulation, 06-096 CMR 310.4.

¹¹ *How Do Oils Spills Impact Casco Bay*, Toxics Pollution in Casco Bay; Sources and Impacts, Muskie School of Public Service, Casco Bay Estuary Partnership, p.28, available at <http://muskie.usm.maine.edu/cascobay/pdfs/Toxics%20Chapter%203.pdf>.

¹² *The Gulf of Maine in Context: State of the Gulf of Maine Report* (2010), Gulf of Maine Council on the Marine Environment, available at www.gulfofmaine.org/state-of-the-gulf/docs/the-gulf-of-maine-in-context.pdf.

¹³ *How Do Oils Spills Impact Casco Bay*, Toxics Pollution in Casco Bay; Sources and Impacts, Muskie School of Public Service, Casco Bay Estuary Partnership, p. 23, available at <http://muskie.usm.maine.edu/cascobay/pdfs/Toxics%20Chapter%203.pdf>.

¹⁴ DEP fact sheet, Significant Wildlife Habitats: Shorebird Habitat (made up of Shorebird Feeding areas and Roosting areas), July 12, 2007; Natural Resources Protection Act, 38 M.R.S. 480-D & Significant Wildlife Habitat regulations, 06-096 CMR 335.

on the coast of Maine to feed and rest during the long migration from their arctic breeding grounds to winter in South America.¹⁵

Commercial and recreational fishing also would sustain devastating impacts if Maine's waters were contaminated by an oil spill. Maine's dependence on commercial fishing is unparalleled on the East Coast. In 2015, Maine accounted for 30% of all commercial fishing trips on the East Coast, with Maine license holders making almost 469,000 commercial fishing trips, 270,000 of which were lobster trips. In comparison, Florida was the next highest, with only 206,000 trips.¹⁶ In 2017, Maine's commercial fisherman landed \$569,178,089 worth of marine resources.¹⁷

Maine's unique lobster population, in particular, and the economic value of the harvesting of lobsters, would be severely impacted by a spill. According to National Marine Fisheries data, American lobster was the species of highest landed value in the U.S. in 2016, and Maine's landings accounted for approximately 80% of that landed value.¹⁸ There are approximately 4,500 active lobster boat captains and between 8,000 and 10,000 jobs on lobster boats in Maine. The lobster industry has an estimated \$1.5 billion economic impact in Maine's economy.¹⁹ Other fisheries, including scallops, groundfish, shrimp, salmon, crab, herring, urchins, elvers, clams, mussels and oysters, would also be at risk and they contribute a significant amount both in direct landings and in jobs in Maine's coastal communities.²⁰ In addition to traditional commercial fishing, Maine's clean coastal waters support a strong aquaculture industry, in which shellfish, salmon and seaweed are produced. In 2014, Maine's aquaculture sector had a direct impact of \$73.4 million on the State's economy.²¹

¹⁵ *Conserving Maine's Significant Wildlife Habitat: Shorebirds*, Maine Audubon, p.1. <http://www.maineaudubon.org/wp-content/uploads/2017/03/MEAud-Conserving-Wildlife-Shorebirds.pdf>.

¹⁶ Maine Department of Marine Resources Women in Government Conference, September 29, 2016. <http://www.womeningovernment.org/sites/default/files/document/events/Meredith%20Mendelson-%20Sustainable%20Fisheries.pdf>.

¹⁷ Maine Department of Marine Resources 2017 Landings Report, March 2, 2018. <http://www.maine.gov/dmr/news-details.html?id=788939>.

¹⁸ Maine Department of Marine Resources 2017 Landings Report, March 2, 2018. <http://www.maine.gov/dmr/news-details.html?id=788939>.

¹⁹ *Waypoints: Community Indicators for Maine's Coast and Islands*, Island Institute, 2016. <http://www.islandinstitute.org/press-release/island-institute-publishes-first-edition-waypoints-community-indicators-maines-coast>.

²⁰ *Waypoints*, p.9. <http://www.islandinstitute.org/press-release/island-institute-publishes-first-edition-waypoints-community-indicators-maines-coast>.

²¹ Maine Aquaculture Economic Impact Report, January 2017, University of Maine Aquaculture Research Institute, p. 27.

The Georges Bank area, 150 miles long and 75 miles wide, is a highly productive marine ecosystem with a rich history as a fishing site for groundfish, including cod, haddock and flounder. It is bisected by the border between the United States and Canada and heavily fished by both countries. The Georges Bank is the offshore area with the highest potential for oil and gas reserves in a region with very little such potential overall.²² Due to its high value from a fisheries perspective, the Canadian government has in place a ban on oil and gas drilling in the section of Georges Bank over which it has jurisdiction until at least 2022.²³ If the United States were to authorize drilling in this region it would fly in the face of the joint management of this precious resource as a region protection from drilling. It may also lead to oil and gas exploration in Canadian waters, which would increase the risks of a devastating oil spill affecting Maine's coast without any benefit to the United States.

Significant portions of the Maine coast are protected in the form of parks, wildlife sanctuaries, or recreation areas, and these areas would risk severe damage if a spill were to occur. The highest profile of these, Acadia National Park, had 3.3 million visitors in 2016. This park, one of the most visited national parks in the country, consists of 49,052 acres and is primarily located on an island. The environmental impacts and the impacts to tourism in and around Acadia if a spill were to occur would be devastating. The Rachel Carson National Wildlife Refuge would also be at risk, as it spans 50 miles of Maine's coastline.²⁴ Another preserve along our shoreline, the Maine Coastal Islands National Wildlife Refuge Complex, consists of 8,238 acres of coastal habitats, protects 61 islands, four coastal parcels and five national wildlife refuges. Further, the State of Maine has 13 State Parks along its coastline which provide recreational opportunities such as beach-going, camping and boating. All of these areas are protected to preserve Maine's coastal resources. The natural resources they protect, and the recreational and scientific study opportunities they provide, would be jeopardized by the DPP.

I also question whether DOI has considered the potential impacts of the DPP on Tribal lands, including specifically the Passamaquoddy Tribe's Reservation at Pleasant Point. DOI should be well acquainted with the fact that Tribe considers portions of its coastline to have cultural, historical and religious significance from the Bureau of Indian Affairs' involvement in a controversial lease proposal for a liquefied natural gas terminal there. *See Nulankeyutmonen Nkihtaqmikon v. Impson*, 584 F.3d 495 (1st. Cir. 2009) (discussing significance of the land to Tribal members). DOI has an obligation to take into account the interests of federally recognized tribes like the Passamaquoddy Tribe in the administration of federal statutes such as the Outer

²² *Final Report for Ocean Energy Task Force, 2009*, Robert G. Marvinney, Maine State Geologist, Appendix 6, p. A-34, available at https://umaine.edu/offshorewindtestsite/wp-content/uploads/sites/303/2017/02/OETF_FinalReportAppendices.pdf.

²³ Georges Bank Moratorium Extended to 2022, Nova Scotia, available at <https://novascotia.ca/news/release/?id=20151126001>.

²⁴ U.S. Fish & Wildlife Service, Rachel Carson National Wildlife Refuge. https://www.fws.gov/refuge/Rachel_Carson/about.html.

Continental Shelf Lands Act. *See Nulankeyutmonen Nkihtaqmikon v. Impson*, 503 F.3d 18, 32 (1st Cir. 2007) (describing limits of federal “trust responsibility” toward tribes).

Maine’s coastal and marine resources play a vital role in the health of Maine’s economy. Our State has extensive measures in place to protect our natural resources along the coast, and our ethic of environmental protection is strong. Clean waters and the natural beauty of our coastline are fundamental necessities for our tourism economy and our fishing economy to thrive. I urge you to respect the wishes of every member of the Maine Legislature and the Maine Congressional delegation and withdraw the Maine Outer Continental Shelf from the 2019-2024 proposed leasing program.

Sincerely,

A handwritten signature in cursive script, appearing to read 'J. Mills', written in black ink.

Janet T. Mills
Attorney General