

United States Senate

WASHINGTON, DC 20510

January 22, 2019

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

Dr. Walter Cruickshank
Acting Director
Bureau of Ocean Energy Management
1849 C Street, NW
Washington, DC 20240

Dear Acting Secretary Bernhardt and Acting Director Cruickshank:

We write to express our strong concerns regarding the recent decision of the Department of the Interior's Bureau of Ocean Energy Management (BOEM) to revise its contingency plan in the midst of the Trump shutdown to promote offshore oil and gas development. We urge you to reverse the decision to continue this work and to direct any funds available to BOEM toward critical bureau functions that have been hampered under the ongoing government shutdown, rather than toward actions that directly benefit the oil industry.

We oppose the decision to continue work on the National Outer Continental Shelf Oil and Gas Leasing Program (National OCS program) during the shutdown. In January of 2017, BOEM finalized a 2017-2022 Outer Continental Shelf Leasing Program¹. The program was the result of a thorough, multi-year process that carefully weighed the substantial risks of offshore drilling, and continued commonsense protections for the Atlantic, the Pacific, the Arctic, and the eastern Gulf of Mexico. The current Administration's decision to replace the five-year plan after just six months² showed a particular determination to waste taxpayer dollars at the behest of the oil industry—to continue pursuing these efforts even during a lapse in BOEM's budget is unacceptable.

Activities related to the program are clearly non-essential and were excluded from BOEM's December 2018 shutdown contingency plan, which retained only about 15% of BOEM's workforce (90% of whom were on an "on-call basis") to conduct the key functions of administrative services, emergency response, and support for Bureau of Safety and

¹ Department of the Interior. *Record of Decision and Approval of the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program*. (January 2017). <https://www.boem.gov/2017-2022-Record-of-Decision/> (last visited 1/17/19)

² 82 Federal Register 30886. *Request for Information and Comments on the Preparation of the 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Program*. (July 2017) <https://www.boem.gov/82-FR-30886/> (last visited on 1/17/19)

Environmental Enforcement permitting operations.³ A subsequent contingency plan released January 8, 2019, however, included 40 additional BOEM employees to be available on an “on-call basis” to prepare decision documents related to the National OCS program, including: developing the Programmatic Environmental Impact Statement (PEIS); completing environmental assessments; conducting work related to processing Atlantic Geophysical and Geological permits; and publishing notices of sale for lease areas in the Gulf of Mexico. According to the contingency plan, these individuals will be paid via “carryover,” defined as compensation financed by a resource other than annual appropriations.⁴

We remain strongly opposed to any efforts to further develop an American offshore oil and gas industry, which would threaten our economy and environment. But we are particularly concerned regarding the process that resulted in allowing these activities to occur during the partial government shutdown, which has left 800,000 federal employees unpaid. While the oil industry might view a delay in the approval of new offshore drilling as an emergency, the American people deserve regulators who prioritize safety and environmental protection over political expediency and the wishes of moneyed special interests.

BOEM was created in the wake of the Deepwater Horizon tragedy, when it was clear that its predecessor agency was beholden to the very oil industry it was charged with overseeing. The decision to prioritize the oil industry’s wish list during the government shutdown makes clear that this Administration has allowed those same problems to take root again. The newfound characterization of these projects as essential paints a troubling picture of an agency dedicated to mitigating the consequences of the shutdown for a powerful and well-connected corporate lobby at the expense of the American people. Given these concerns, we ask that you provide responses in writing to the following questions no later than Friday, February 1, 2019:

- 1) In the OCS contingency plan published in December 2018, employees engaged in the National OCS program are furloughed. In the BOEM contingency plan published on January 8, 2018, the plan was updated to allow 40 employees to work on the five-year leasing program. Clearly these activities were not initially seen as essential activities. What prompted the change?
- 2) Did anyone in the Trump administration discuss continuing work on the National OCS program during a shutdown with any representative of the oil and gas industry? Please provide the names of any oil and gas companies, interests, or industry groups that communicated with the Administration to discuss the Department or BOEM’s contingency plans regarding offshore oil and gas activities during the shutdown, including via email, phone calls, meetings, or other communications.

³ Bureau of Ocean Energy Management. *Bureau of Ocean Energy Management: FY 2019 Contingency Plan*. (December 2018). <https://www.doi.gov/sites/doi.gov/files/2018-12-boem-contingency-plan.pdf> (last visited 1/16/2019).

⁴ Bureau of Ocean Energy Management. *Bureau of Ocean Energy Management: FY 2019 Contingency Plan*. (January 2019). <https://www.doi.gov/sites/doi.gov/files/2019-1-boem-contingency-plan.pdf> (last visited 1/16/2019).

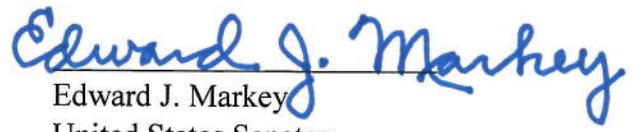
- 3) On what legal basis did the Administration rely to change its treatment of offshore oil and gas activities in the BOEM January 2019 contingency plan as compared to its December 2018 contingency plan, given the constraints of the Antideficiency Act and appropriations law? If BOEM did not feel that these activities were legally permissible under the December 2018 plan, on what basis did they become legally permissible in the January 2019 plan?
- 4) In the Explanatory Statement accompanying the Consolidated Appropriations Act, 2018, Congress provided \$171,000,000 for BOEM in Fiscal Year 2018, and included full funding for the five-year offshore leasing program through regular appropriations.⁵ At this time, what specific accounts, subaccounts, and programs are the Department or BOEM relying on to fund the continuation of the above-referenced offshore oil and gas activities? Were these funds being used for other activities under the BOEM December 2018 contingency plan following the start of the government shutdown, and if so, what were those activities? Were these funds being used for other activities under the normal operations of the government prior to the shutdown on December 22, 2018, and if so, what were those activities?
- 5) Are BOEM's essential functions of 1) emergency response and 2) support for Bureau of Safety and Environmental Enforcement permitting operations short-staffed during the ongoing shutdown? If so, could the carryover funds used to support the 40 on-call employees working on the National OCS program have otherwise been used to support these shorthanded essential functions?
- 6) While it is our understanding that the essential functions mentioned in Question 5 are still ongoing in some capacity during the shutdown, is BOEM support for Bureau of Safety and Environmental Enforcement related to the Environmental Compliance Monitoring program ongoing as well? If so, has the scope of these activities, which include monitoring for compliance with the Clean Air Act and Clean Water Act, been at all curtailed during the shutdown, and to what extent? Please include any reductions in personnel, inspections, or other relevant metrics.
- 7) The BOEM contingency plan from December 2018 lists 8 excepted employees and 550 employees on furlough in the event of a shutdown; these add up to the 558 full time employees at BOEM. However, the BOEM contingency plan from January 2019 lists 84 excepted employees and 558 employees on furlough in the event of a shutdown; which does not add up to the 558 full time employees at BOEM. What is the reason for this discrepancy?

⁵ 164 Cong. Rec. H2617 (daily ed. March 22, 2018) (statement of Rep. Frelinghuysen).
<https://www.congress.gov/crec/2018/03/22/CREC-2018-03-22-bk2.pdf> (last visited 1/17/2019).

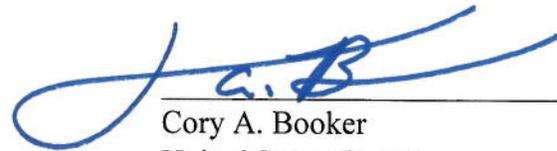
The Trump shutdown demonstrates the President's profound lack of commitment to the federal workforce and disregard for a well-functioning democracy. The modification of BOEM's contingency plan shows an unfailing commitment to carrying out the agenda of the oil industry at the expense of coastal communities. In addition to providing prompt responses to the questions above, we urge you to rethink these decisions and to revise BOEM's contingency plan accordingly.

Sincerely,

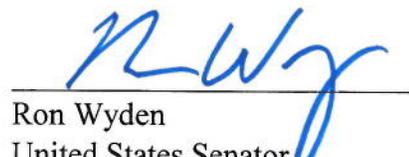

Robert Menendez
United States Senator


Edward J. Markey
United States Senator


Richard Blumenthal
United States Senator


Cory A. Booker
United States Senator


Jack Reed
United States Senator


Ron Wyden
United States Senator

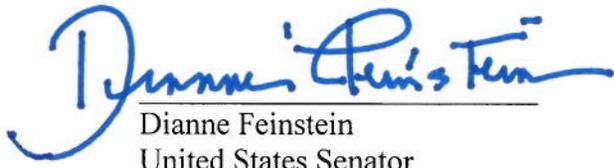

Sherrod Brown
United States Senator

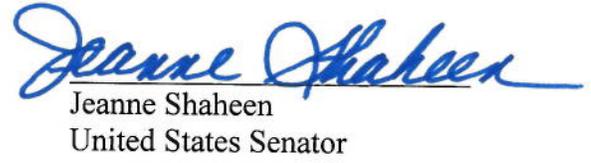

Jeffrey A. Merkley
United States Senator


Bernard Sanders
United States Senator

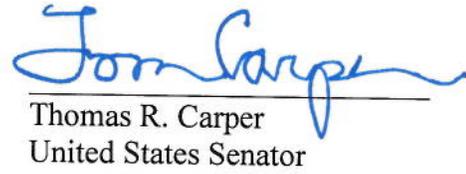

Benjamin L. Cardin
United States Senator

Cc: Mary L. Kendall, Deputy Inspector General, U.S. Department of the Interior


Dianne Feinstein
United States Senator


Jeanne Shaheen
United States Senator


Patrick Leahy
United States Senator


Thomas R. Carper
United States Senator