

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

FILED SENATE  
Apr 2, 2019  
S.B. 517  
PRINCIPAL CLERK

S

D

SENATE BILL DRS55054-RI-4B\*

Short Title: Protect the Military/Fisheries/Tourism. (Public)

Sponsors: Senator Peterson (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT THE EXPLORATION, DEVELOPMENT, AND PRODUCTION OF  
3 OFFSHORE OIL AND GAS IN NORTH CAROLINA COASTAL WATERS IN ORDER  
4 TO PROTECT MILITARY OPERATIONS, COMMERCIAL AND RECREATIONAL  
5 FISHING, AND TOURISM, AND THE BILLIONS OF DOLLARS THEY CONTRIBUTE  
6 ANNUALLY TO THE COASTAL ECONOMY, AND THE STATE AS A WHOLE, FROM  
7 THE PROFOUND RISKS OF OFFSHORE OIL AND GAS EXPLORATION,  
8 DEVELOPMENT, AND PRODUCTION.

9 Whereas, the Department of the Interior (DOI) is currently processing permit  
10 applications for offshore oil and gas seismic permits to allow private sector entities to perform  
11 seismic airgun testing off North Carolina's coast, and the DOI has proposed a 5-year leasing  
12 program that would allow oil and gas exploration, development, and production off the  
13 Mid-Atlantic region of the Outer Continental Shelf (OCS), which includes North Carolina's  
14 coast; and

15 Whereas, the National Oceanic and Atmospheric Administration (NOAA) recently  
16 issued final Incidental Harassment Authorization (IHA) permits allowing five private sector  
17 companies to begin the practice of seismic airgun testing for oil and gas reserves in the  
18 Mid-Atlantic, including vast areas off the North Carolina coast; and

19 Whereas, seismic airgun testing is used to determine what oil and natural gas reserves  
20 lie beneath the ocean floor; and

21 Whereas, seismic airguns essentially shoot blasts of compressed air into the ocean  
22 floor, and such blasts are known to be one of the loudest man-made sounds in the ocean, and  
23 sounds from these intense blasts can travel over 2,000 miles; and

24 Whereas, if seismic airgun testing is approved, vessels would tow as many as 30  
25 airguns, which would be fired every 10 seconds continuously 24 hours a day and seven days a  
26 week for the duration of the mapping exercise, which could last for several weeks; and

27 Whereas, offshore oil and gas development activities pose profound risks to a state's  
28 natural resources and economy as evidenced by the 2010 release of an estimated 170 million  
29 gallons of oil into ocean waters from a single rig, BP's Deepwater Horizon, which severely  
30 impacted more than 600 miles of shoreline, and resulted in numerous beach closings, harmed  
31 countless numbers of marine mammals, fish, shellfish, marine birds, and other wildlife, and  
32 caused an estimated loss of more than a billion dollars to the commercial fishing industry and an  
33 estimated loss of more than 22 billion dollars to the tourism industry in the Gulf States; and

34 Whereas, a study submitted to the Joint Legislative Commission on Energy Policy in  
35 2013 reported the spillage rates for offshore oil development during the period 1964-2010 for the  
36 United States OCS shelf platform and pipeline operations with losses greater than 1,000 barrels



1 was 0.6 spills per billion barrels of oil produced, and the average loss per spill was 547,163  
2 barrels. Thus, if offshore drilling is allowed to occur, applying the average rate of spills per billion  
3 barrels of oil to the estimated average of 20 million barrels of North Carolina offshore oil to be  
4 pumped annually would yield 0.012 spills per year with an average annual spill loss of 6,566  
5 barrels. The report further went on to find that using a cleanup cost of \$12,600 per barrel, the  
6 expected annual loss from oil spillage related to offshore development in North Carolina would  
7 be \$83 million; and

8           Whereas, North Carolina has a uniquely dynamic yet fragile coast, with over 300  
9 miles of coastline, 2.5 million acres of estuarine waters, and 10,000 miles of estuarine shoreline;  
10 and

11           Whereas, maintaining a healthy coast is vital to the economic well-being of North  
12 Carolina's 20 coastal counties, and the State as a whole; and

13           Whereas, in 2013 the coastal counties represented 6.8 percent of the State's total gross  
14 domestic product (GDP) at \$32 billion, and 8.2 percent of total employment with 336,522  
15 employees; and

16           Whereas, from military operations, seafood and fishing activities, tourism and  
17 recreation, and access to global markets through shipping and transport at coastal ports, hundreds  
18 of thousands of jobs and many billions in annual revenue for the State depend on our ocean and  
19 coast; and

20           Whereas, seismic airgun testing and offshore drilling endanger military operations  
21 within the State, and the natural resources that serve as the foundation of our fishing and tourism  
22 industry and our thriving coastal economy; and

23           Whereas, an October 2015 study released by the Department of Defense designated  
24 portions of the North Carolina coast as areas where no offshore drilling activity at all could occur  
25 without impeding military operations, designated portions of the North Carolina coast as areas  
26 where permanent surface oil and gas structures should be prohibited, and designated the  
27 remainder of the State's coast as an area where offshore drilling could occur only with  
28 site-specific stipulations to avoid impacts on military operations; and

29           Whereas, a study by the State's Department of Commerce in 2015 estimated that  
30 military installations in North Carolina supported 578,000 jobs, \$34 billion in personal income,  
31 and \$66 billion in GDP, which amounted to roughly 10 percent of the State's overall economy;  
32 and

33           Whereas, research suggests that seismic airgun testing risks diminish essential fish  
34 stocks for commercial and recreational fishing communities in our State by imposing significant  
35 harmful impacts on marine mammals and fisheries, including acute, cumulative, and chronic  
36 negative impacts on the ability of marine mammals to send and receive signals that are essential  
37 for feeding, reproduction, raising offspring, and navigation; and

38           Whereas, seismic testing has also been correlated with body malformations in certain  
39 marine life, development delays and death of shellfish, increased mortality in larval fish, as well  
40 as declines in catch rates near seismic blasting that range from 40-60 percent, depending upon  
41 the fishery and gear type; and

42           Whereas, commercial and recreational fishing in North Carolina continues to be an  
43 important economic activity, as well as a cultural tradition along the North Carolina coast, and  
44 contributes an estimated \$2 billion annually to the State's economy, and represents thousands of  
45 jobs; and

46           Whereas, coastal tourism generates \$3.4 billion annually in North Carolina and  
47 supports more than 35,000 jobs in the eastern part of the State; and

48           Whereas, more than 200 local governments have passed resolutions opposing seismic  
49 airgun surveying and/or offshore drilling in the Atlantic Ocean, including over 30 North Carolina  
50 coastal communities; and

1           Whereas, there is widespread bipartisan opposition to seismic airgun surveys and  
2 offshore drilling from business and trade groups, tourism associations, chambers of commerce,  
3 and convention and visitors bureaus; and

4           Whereas, opposition to seismic testing and oil and gas exploration, development, and  
5 production in the Mid-Atlantic has also been expressed by the Department of Defense due to  
6 impacts to military testing, readiness, and national security; and

7           Whereas, according to BOEM, the entire Atlantic OCS contains approximately 5%  
8 of the undiscovered, technically recoverable resources of oil in all regions of the nation's OCS,  
9 and approximately 8% of the undiscovered, technically recoverable resources of gas in all regions  
10 of the nation's OCS, and the Mid-Atlantic region of the OCS is just a fraction of those  
11 percentages, and North Carolina's share yet a further fraction of the small percentages in the  
12 Mid-Atlantic region; and

13           Whereas, based on government estimates, if all of the economically recoverable  
14 offshore oil and gas in the Atlantic OCS were extracted and used, oil demand would only be met  
15 for 132 days and gas demand would only be met for 283 days, at current consumption rates; and

16           Whereas, the risks posed by offshore exploration, development, and production of oil  
17 and gas to military operations within the State, and the State's natural resources and the fishing  
18 and tourist economies on which they depend, are too grave, and those risks vastly outweigh any  
19 benefits from drilling for the amount of oil and gas estimated to be economically recoverable off  
20 the North Carolina Coast; Now, therefore,

21 The General Assembly of North Carolina enacts:

22           **SECTION 1.** G.S. 113A-119.2 reads as rewritten:

23 **"§ 113A-119.2. Review of offshore fossil fuel ~~facilities.~~ facilities in federal waters;**  
24 **prohibition on such facilities in State coastal waters.**

25           (a) In addition to the definitions set out in G.S. 113A-103, as used in this section, the  
26 following definitions shall apply:

27           (1) "Coastal fishing waters" has the same meaning as in G.S. 113-129.

28           (1a) "Development" means those activities taking place following the discovery of  
29 oil and natural gas, including geophysical activity, drilling, platform  
30 construction, pipeline construction, and operation of all onshore support  
31 facilities that are performed for the purposes of ultimately producing the  
32 resources discovered.

33           (2) "Discharge" has the same meaning as in G.S. 143-215.77.

34           (2a) "Exploration" means the process of searching for oil and natural gas, including  
35 any drilling.

36           (3) "Offshore fossil fuel facility" means those facilities for the exploration,  
37 development, or production of oil or natural gas ~~which, because of their size,~~  
38 ~~magnitude, or scope of impacts, have~~ that have the potential to affect any land  
39 or water use or natural resource of the coastal area. For purposes of this  
40 definition, offshore fossil fuel facilities shall include, but are not limited to:

41           a. Structures, including drill ships and floating platforms and structures  
42 relocated from other states or countries, located in coastal fishing  
43 waters.

44           b. Any equipment associated with a structure described in  
45 sub-subdivision a. of this subdivision, including, but not limited to,  
46 gathering systems, processing and storage facilities, and pipelines and  
47 ~~vessels~~ that are used to carry, transport, or transfer oil, natural gas,  
48 liquid natural gas, liquid propane gas, or synthetic gas.

49           c. Onshore support or staging facilities associated with a structure  
50 described in sub-subdivision a. of this subdivision.

51           (4) "Oil" has the same meaning as in G.S. 143-215.77.

1           (5)    "Production" means those activities that take place after the successful  
2           completion of any means for the removal of oil and natural gas, including that  
3           removal, field operations, transfer or resources to shore, operation,  
4           monitoring, maintenance, and workover drilling.

5           (b)    In addition to any other information necessary to determine consistency with State  
6 guidelines adopted pursuant to G.S. 113A-107, the following information is required for the  
7 review of an offshore fossil fuel facility located ~~in coastal fishing waters~~ more than three  
8 geographical miles offshore:

- 9           (1)    All information required to be included in an Exploration Plan required  
10 pursuant to Subpart B of Part 250 of 30 C.F.R. (July 1, 2009 edition).  
11           (2)    All information required to be included in an Oil-Spill Response Plan required  
12 pursuant to Subpart B of Part 254 of 30 C.F.R. (July 1, 2009 edition).  
13           (3)    An assessment of alternatives to the proposed offshore fossil fuel facility that  
14 would minimize the likelihood of an unauthorized discharge.  
15           (4)    An assessment of the potential for an unauthorized discharge to cause  
16 temporary or permanent violations of the federal and State water quality  
17 standards, including the antidegradation policy adopted pursuant to section  
18 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).  
19           (5)    Any other information that the Commission determines necessary for  
20 consistency ~~review~~ review of an offshore fossil fuel facility located more than  
21 3 geographical miles offshore.

22           (c)    Notwithstanding any other provision of law, the exploration, development, or  
23 production of oil or natural gas within the estuarine and ocean waters of the State, which includes  
24 those ocean waters extending offshore to the limits of State jurisdiction, is prohibited. In addition,  
25 the construction or operation of offshore fossil fuel facilities is prohibited in such waters."

26           **SECTION 2.** G.S. 146-8 reads as rewritten:

27           **"§ 146-8. Disposition of mineral deposits in State lands under water.**

28           (a)    The State, acting at the request of the Department of Environmental Quality, is fully  
29 authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits  
30 belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other  
31 waters of the State. The State, acting at the request of the Department of Environmental Quality,  
32 is authorized and empowered to convey or lease to such person or persons as it may, in its  
33 discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits  
34 found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by  
35 the State. The State, acting at the request of the Department of Environmental Quality, is  
36 authorized to grant to any person, firm, or corporation, within designated boundaries for definite  
37 periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same  
38 upon such other terms and conditions as may be deemed wise and expedient by the State and to  
39 the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved  
40 by the Department of Administration and by the Governor and Council of State.

41           (b)    Any sale, lease, or other disposition of such mineral deposits shall be made subject to  
42 all rights of navigation and subject to such other terms and conditions as may be imposed by the  
43 State.

44           (c)    The net proceeds derived from the sale, lease, or other disposition of such mineral  
45 deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the  
46 Department of Environmental Quality in paying the costs of administration of this section and  
47 for the development and conservation of the natural resources of the State, including any  
48 advertising program which may be adopted for such purpose, all of which shall be subject to the  
49 approval of the Governor, acting by and with the advice of the Council of State.

50           (d)    Notwithstanding any other provision of law, the sale, lease, or other disposition of  
51 any submerged lands in the estuarine and ocean waters of the State for the exploration,

1 development, or production of oil or natural gas, and the construction or operation of offshore  
2 fossil fuel facilities, is prohibited. The definitions in G.S. 113A-119.2 apply to this subsection."

3 **SECTION 3.(a)** G.S. 143-215.94CC reads as rewritten:

4 **"§ 143-215.94CC. Liability under this section; exceptions.**

5 (a) Any responsible person shall be strictly liable, notwithstanding any language of  
6 limitation found in G.S. 143-215.89, for all cleanup and removal costs and all direct or indirect  
7 damages incurred within the territorial jurisdiction of the State by any injured party that arise out  
8 of, or are caused by any of the following:

9 (1) The discharge, as defined in G.S. 143-215.77, of natural gas, oil, or drilling  
10 waste into or onto coastal fishing waters or offshore waters, from any of the  
11 following sources wherever located:

12 a. Any well or undersea site at which there is exploration for or extraction  
13 or recovery of natural gas or oil.

14 b. Any facility, oil rig, or oil platform at which there is exploration for,  
15 or extraction, recovery, processing, or storage of, natural gas or oil.

16 c. Any vessel in which natural gas, oil, or drilling waste is transported,  
17 processed or stored other than for purposes of fuel for the vessel  
18 carrying it.

19 d. Any pipeline in which natural gas, oil, or drilling waste is transported.

20 (2) ~~Any exploration in or upon coastal fishing waters.~~ exploration, development,  
21 or production, as those terms are defined under G.S. 113A-119.2, occurring  
22 in waters beyond the jurisdiction of the State.

23 (3) Any technique or method used for cleanup and removal of any discharge of  
24 natural gas, oil, or drilling waste from any source listed in subdivision (1) of  
25 this subsection into or onto coastal fishing waters, including, but not limited  
26 to, chemical dispersants.

27 (b) A responsible person is not liable to an injured party under this section for any of the  
28 following:

29 (1) Damages, other than costs of removal incurred by the State or a local  
30 government, caused solely by any act of war, hostilities, civil war, or  
31 insurrection or by an unanticipated grave natural disaster or other act of God  
32 of an exceptional, inevitable, and irresistible character, which could not have  
33 been prevented or avoided by the exercise of due care or foresight.

34 (2) Damages caused solely by the negligence or intentional malfeasance of that  
35 injured party.

36 (3) Damages caused solely by the criminal act of a third party other than the  
37 defendant or an agent or employee of the defendant. In any action arising  
38 under the provisions of this Article wherein this exception is raised as a  
39 defense to liability, the burden of proving that the alleged third-party  
40 intervention occurred in such a manner as to limit the liability of the person  
41 sought to be held liable shall be upon the person charged.

42 (4) Natural seepage not caused by a responsible person.

43 (5) Discharge of oil or natural gas from a private pleasure boat or commercial  
44 fishing vessel having a fuel capacity of less than 500 gallons.

45 (6) Damages which arise out of, or are caused by, a discharge that is authorized  
46 by and in compliance with a State ~~or federal~~ permit.

47 (7) Damages that could have been reasonably mitigated by the injured party in  
48 accordance with common law.

49 (c) A court of suitable jurisdiction in any action under this Part may award reasonable  
50 costs of the suit and attorneys' fees, and the costs of any necessary expert witnesses, to any  
51 prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any

1 prevailing defendant only if the court finds that the plaintiff commenced or prosecuted the suit  
2 under this Part in bad faith or solely for purposes of harassing the defendant."

3 **SECTION 3.(b)** G.S. 143-215.94GG reads as rewritten:

4 "**§ 143-215.94GG. Notification by persons responsible for discharge.**

5 (a) Any person responsible for an offshore discharge under this Part shall immediately  
6 notify the Division of Emergency Management and the Department of Environmental Quality  
7 pursuant to rules established by the Secretary of Environmental Quality and the Secretary of  
8 Public Safety, if any, but in no case later than two hours after the discharge. Failure to so notify  
9 the Division of Emergency Management and the Department of Environmental Quality shall  
10 make the responsible person liable to the penalties set out in subsection (b) of this section. ~~No~~  
11 ~~penalty shall be imposed under this section when the owner or operator has promptly reported~~  
12 ~~the discharge to federal authorities designated pursuant to 33 U.S.C. § 1321.~~

13 ...."

14 **SECTION 3.(c)** G.S. 143-215.94HH reads as rewritten:

15 "**§ 143-215.94HH. Oil spill contingency plan.**

16 (a) The State Emergency Response Commission, in consultation with the Secretary of  
17 Administration ~~or his designee in the Outer Continental Shelf Lands Office,~~ and the Secretary of  
18 Environmental Quality or their designees, shall develop a State oil spill contingency plan relating  
19 solely to the undersea exploration, extraction, production and transport of oil or natural gas in the  
20 marine environment off the North Carolina ~~east, including coast for~~ any such development on  
21 the Outer Continental Shelf seaward of the State's jurisdiction over its territorial waters.

22 (b) The Secretary of Public Safety or his designee shall establish, pursuant to such a plan,  
23 an emergency oil spill control network which shall be comprised of available equipment from  
24 appropriate State, ~~county-county,~~ and municipal governmental agencies. Such network shall be  
25 employed to provide an immediate response to an oil discharge into the offshore marine  
26 environment which is reasonably likely to affect the State's coastal waters. Furthermore, such  
27 network shall be employed in conjunction with the cleanup operations under this Article or any  
28 applicable federal law, required of the owner or operator of the discharging operation, vessel, or  
29 facility, the Department of Environmental Quality, and any federal agency.

30 ...."

31 **SECTION 4.** If any section or provision of this act is declared unconstitutional or  
32 invalid by the courts, it does not affect the validity of this act as a whole or any part other than  
33 the part declared to be unconstitutional or invalid.

34 **SECTION 5.** This act is effective when it becomes law.