

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

H

1

HOUSE BILL 545

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

Sponsors: Representatives Butler, Harrison, Martin, and Russell (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

April 3, 2019

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

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

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

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

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

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

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

Whereas, a study submitted to the Joint Legislative Commission on Energy Policy in 2013 reported the spillage rates for offshore oil development during the period 1964-2010 for the



1 United States OCS shelf platform and pipeline operations with losses greater than 1,000 barrels
2 was 0.6 spills per billion barrels of oil produced, and the average loss per spill was 547,163
3 barrels. Thus, if offshore drilling is allowed to occur, applying the average rate of spills per billion
4 barrels of oil to the estimated average of 20 million barrels of North Carolina offshore oil to be
5 pumped annually would yield 0.012 spills per year with an average annual spill loss of 6,566
6 barrels. The report further went on to find that using a cleanup cost of \$12,600 per barrel, the
7 expected annual loss from oil spillage related to offshore development in North Carolina would
8 be \$83 million; and

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

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

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

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

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

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

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

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

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

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

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

49 Whereas, more than 200 local governments have passed resolutions opposing seismic
50 airgun surveying and/or offshore drilling in the Atlantic Ocean, including over 30 North Carolina
51 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.