The Great American Outdoors Act: Refreshing America's National Parks

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I. INTRODUCTION

From white sandy beaches and jagged, snow-capped mountains, national monuments and even some parks in urban neighborhoods, America's federally managed public lands cover over a quarter of the country.[1] From citizens looking to increase their daily step goals to all-out adventure enthusiast vacationers, a large and diverse group of Americans use these lands every day.[2] Although public lands may often be imagined as places only for hikers and outdoor aficionados, their value to the general community should not be overlooked. Public lands offer breathtaking views, contribute to economic value, and conserve wildlife. They preserve historic sites, promote active lifestyles, and provide moments of Zen for the often all-to-busy American.[3]

Federal energy production on public lands significantly impacts the economy.[4] A large portion of the United States' energy profile is currently being produced on federally owned, public land, through oil and gas leases from the Bureau of Land Management ("BLM"), U.S. Forest Service, and other federal agencies to private parties.[5] A portion of royalties generated from oil and gas production and leases on federal lands are put back into the economy through public interest programs.[6] For example, the Land and

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1. *America's Public Lands Explained*, U.S. DEP'T OF THE INTERIOR: BLOG (June 13, 2016), https://www.doi.gov/blog/americas-public-lands-explained [https://perma.cc/9KB3-J5XV].

2. *Id.*

3. *Why We Love America's Public Lands*, U.S. DEP'T OF THE INTERIOR: BLOG (Sept. 19, 2016), https://www.doi.gov/blog/why-we-love-americas-public-lands [https://perma.cc/5Z9Y-ZPP7].

4. *About the BLM Oil and Gas Program*, BUREAU OF LAND MGMT., https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about [https://perma.cc/AKC7-KY23].

5. *Id.*

6. *Id.*

Water Conservation Fund allocates royalties from oil and gas drilling leases on federal lands to the protection and preservation of natural areas.[7]

Conservation legislation often does not receive its full funding, which creates difficulties maintaining public lands.[8] However, in August 2020, Congress passed the Great American Outdoors Act ("GAOA") to permanently allocate revenues generated from oil and gas drilling on public lands to programs like the Land and Water Conservation Fund.[9] The GAOA passed easily with bipartisan support.[10] Yet, while conservation and protection of public lands seems to act as a unifier of political parties, the GAOA presented legislators with a false dilemma based on the irony of having a conservation bill rely on offshore drilling for funding support.[11] Further, the Biden Administration is implementing strategies to transition away from offshore drilling, placing a large source of federal government revenues at risk.[12] Maintaining this revenue stream and addressing the deferred maintenance in our parks will require legislative solutions. For example, a downturn in offshore drilling leaves a window for alternative energy sources to fill the gap in revenue. Simplifying the permitting processes for offshore wind allows for the successful development of wind farms and other renewable energy development on public lands.[13] In combination with a change in the way parks are funded, these regulatory solutions will provide the GAOA with the highest chance of success to fulfill its purpose, providing accessible outdoor recreation opportunities to citizens around the country.

This Comment argues that Congress should enact regulatory solutions to adjust the federal government's revenue stream from oil and gas leases and adapt to the transition to renewable energy, especially with the enactment of new federal regulations such as the Great American Outdoors Act, which rely on federal land leases for funding. Regulatory solutions consist of partnering with coastal states to address their economic concerns, incentivizing the oil and gas industry to transition to renewable energy leases, and changing the format of how public lands are funded. Part II introduces the purpose and

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7. *See infra* notes 31–36 and accompanying text.

8. *See, e.g.*, 50 YEARS OF CONSERVING AMERICA THE BEAUTIFUL, LAND & WATER CONSERVATION FUND COAL. 3 [hereinafter 50 YEARS], https://static1.squarespace.com/static/58a60299ff7c508c3c05f2e1/t/5908c743e3df284d84bec1c7/1493747550938/LWCF_50thAnniversaryReport_FINAL.pdf [https://perma.cc/8Y5C-ZBSM].

9. 54 U.S.C. § 200402.

10. *Actions Overview H.R.1957 — 116th Congress (2019-2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/house-bill/1957/actions [https://perma.cc/4X8Q-K99P].

11. *See infra* Section III.B.

12. *See infra* Section III.A.

13. *See infra* Section II.3.

structure of the GAOA and discusses the United States' current energy leasing structure. Additionally, this Part considers the potential associated with offshore wind development. Part III contemplates the political environment surrounding the passage of the GAOA and examines the potential false dichotomy issue its passage presented. Part IV presents possible regulatory strategies that Congress could adopt to increase the efficacy of the GAOA, including (1) creating a more consolidated regulatory structure to incentivize the development of renewable energy during the transition from oil and gas to renewable energy development on federal lands; and (2) restructuring the way public lands are funded in order to decrease the demand from the federal government for funding. Part V briefly concludes.

II. THE GREAT AMERICAN OUTDOORS ACT: REGULATORY STRUCTURE AND PURPOSES

The 116th Congress passed the GAOA during the COVID-19 pandemic, a time when a growing number of Americans were turning to the outdoors for recreation activities in response to pandemic-related health and safety measures.[14] The increased use of outdoor public spaces highlighted the severity of the maintenance deficit in parks and publicly funded land around the United States.[15] Conservationists and outdoor enthusiasts alike called for a solution to the growing need for maintenance in national forests, parks, and monuments.[16] The GAOA represents a strategy to secure more funding for America's most popular parks, but it does so by relying on revenues primarily from oil and gas drilling.[17]

The 2020 presidential election placed the environment and the United States' energy portfolio at the forefront of many debates.[18] Although views on the future of the United States' energy portfolio divided the parties drastically, conservation and protection of public lands acted as a unifier between Democrats and Republicans.[19] The future of leasing federal lands

14. *Increase in Outdoor Activities Due to COVID-19*, OUTDOOR INDUS. ASS'N (Aug. 13, 2020), https://outdoorindustry.org/article/increase-outdoor-activities-due-covid-19/ [https://perma.cc/RLB4-HFB4].

15. *See* Don Belt, *A Huge Boost for National Parks*, THE PEW CHARITABLE TRS. (Nov. 16, 2020), https://www.pewtrusts.org/en/trust/archive/fall-2020/a-huge-boost-for-national-parks [https://perma.cc/DYJ7-392U].

16. *Id.*

17. 54 U.S.C. § 200402.

18. Sharon Bernstein, *Trump, Biden Clash Over Climate, Oil Industry in Final Debate*, REUTERS (Oct. 22, 2020), https://www.reuters.com/article/usa-election-debate-climate-change/trump-biden-clash-over-climate-oil-industry-in-final-debate-idINKBN2780HW [https://perma.cc/PQA2-FC8M].

19. *See id.*; *infra* Section II.A.

for offshore drilling is uncertain as concerns regarding the environment, increased risk of oil spills, and climate change become more prominent.[20] However, a decrease in offshore drilling leaves those lands available for the development of one of the largest renewable energy resources: offshore wind farms. An adjustment to offshore wind could help address some of the concerns surrounding offshore drilling while maintaining a large nontaxpayer revenue source for the federal government, allowing for the success of programs like the GAOA.

The following section explains the structure of the GAOA in greater detail, focusing on the two individual sections funded by the law and the necessity for this statute in Section II.A. It then discusses current energy production on federal lands and revenues generated therefrom in Section II.B.

A. The Great American Outdoors Act

Public lands have always been a part of American's ideology; therefore, protecting them is incredibly important.[21] However, the popularity of national parks combined with a lack of government funding for annual upkeep and maintenance resulted in deferred maintenance backlogs.[22] In fact, all fifty states and the District of Columbia have parks, projects, or monuments that are in need of maintenance.[23] This problem extends to the country's largest and most popular parks, which need millions of dollars in infrastructure upgrades, including Grand Canyon National Park in Arizona and Yosemite National Park in California.[24] Grand Canyon National Park has a maintenance backlog of $330 million, making up the majority of Arizona's $531 million backlog,[25] while the approximately $646 million maintenance deficit in Yosemite makes up a large portion of California's $1.8 billion total

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20. *See infra* Section II.B

21. *Why We Love America's Public Lands*, *supra* note 3.

22. *Maintenance Backlog*, NAT'L PARK SERV., https://www.nps.gov/subjects/infrastructure/maintenance-backlog.htm [https://perma.cc/D7ZS-F8LL] (last updated Apr. 19, 2021).

23. Ledyard King, *Great American Outdoors Act, Which Would Provide Billions for National Parks, Passes Senate*, USA TODAY (June 17, 2020, 7:07 PM), https://www.usatoday.com/story/news/politics/2020/06/17/national-parks-bill-addresses-long-deferred-maintenance-projects/3205195001/ [https://perma.cc/82EX-AUBW]. Necessary maintenance includes fixing roads, building bridges, maintaining trails, and repairing water infrastructure. *Id.*

24. *Id.*

25. Corey Hawk, *Grand Canyon Gap: Arizona National Parks Need $531 Million to Fix Roads, Buildings*, CRONKITE NEWS (Oct. 26, 2018), https://cronkitenews.azpbs.org/2018/10/26/grand-canyon-gap-arizona-national-parks-need-531-million-to-fix-roads-buildings/ [https://perma.cc/3QF4-FL6H].

deferred maintenance.[26] In fact, nearly twelve parks have a backlog of over $100 million each.[27] Altogether, deferred maintenance in national parks totaled $11.92 billion as of September 30, 2018, some or all of which could begin to be addressed by the passing of the GAOA.[28]

The GAOA was passed in August of 2020 and consists of two parts.[29] The first part of the GAOA guaranteed permanent funding for the already-existing Land and Water Conservation Fund ("LWCF").[30] The GAOA guaranteed that the full $900 million historically allocated to the LWCF will get disbursed.[31] These funds are obtained from royalties collected from offshore drilling leases and other energy production on public land.[32] The second part uses revenue generated from oil, gas, coal, and renewable energy development on federal land and water to deposit up to $1.9 billion annually in the newly created National Parks and Public Land Legacy Restoration Fund ("Legacy Restoration Fund") for five years.[33] These funds will primarily be used for deferred maintenance projects in the National Park System, the National Forest Service, U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Indian Education.[34]

The first part of the GAOA strengthens an existing conservation program, the LWCF. Congress enacted the LWCF in 1964 with an allocation of $900 million annually[35] as part of a "bipartisan commitment to safeguard natural areas, water resources and our cultural heritage, and to provide recreation opportunities to all Americans."[36] The funding for the LWCF comes from

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26. NAT'L PARK SERV., NPS DEFERRED MAINTENANCE BY STATE AND PARK 1–2 (2018), https://www.nps.gov/subjects/infrastructure/upload/NPS-Deferred-Maintenance-FY18-State_and_Park_2018.pdf [https://perma.cc/UU46-D2V6] (as of 2018).

27. King, *supra* note 23.

28. *What Is Deferred Maintenance*?, NAT'L PARK SERV., https://www.nps.gov/subjects/infrastructure/deferred-maintenance.htm [https://perma.cc/8EPR-5B2H] (last updated Jan. 15, 2021).

29. 54 U.S.C. §§ 200303, 200402.

30. *Id.* § 200302–03.

31. *Id.* § 200303.

32. *Id.*; Dan Harsha, *The Biggest Land Conservation Legislation in a Generation*, HARV. GAZETTE (July 27, 2020), https://news.harvard.edu/gazette/story/2020/07/the-likely-impact-of-great-american-outdoors-act/ [https://perma.cc/V9GA-DQNK]. Since its initial passage in 1964, the LWCF has received half or less of the amount allocated to it in most years. *Id.* With the passage of the LWCF, the full $900 million becomes a mandatory allocation in perpetuity. *Id.* For a more detailed discussion of the generation of royalty revenue from leases on public lands, see Brethour, *infra* note 81 (Section on Oil and Gas Leasing) and accompanying text.

33. § 200402.

34. *Id.*

35. § 200303; *see also LWCF Overview*, U.S. DEP'T OF THE INTERIOR, https://www.doi.gov/lwcf/about/overview [https://perma.cc/8GFW-TGB6].

36. *About LWCF*, THE LAND & WATER CONSERVATION FUND COAL., https://www.lwcfcoalition.com/about-lwcf [https://perma.cc/W4LA-JFMM].

royalties from offshore oil and gas drilling leases;[37] however, almost every year since its enactment, Congress has diverted the funds allocated to the LWCF to other uses, resulting in the maintenance backlog discussed above.[38] In fact, the allocated amount is about twice what the Fund has actually received in the last fifty years.[39] Due to its funding source, the LWCF was initially somewhat controversial, but many environmentalists viewed it as an effort to use the revenue from the depletion of one national resource to support the conservation of another.[40]

Historically, the LWCF has been used for land acquisition by federal agencies that manage lands, grants made to states specifically for outdoor recreation purposes, and special requests by the President called "other purposes."[41] The LWCF funds the National Park Service, National Forest Service, Fish and Wildlife Service, and the Bureau of Land Management, which are the four main agencies and departments that regulate and manage federal lands.[42] The natural areas protected by the LWCF include national parks, wildlife refuges, national forests, rivers and lakes, community parks, trails, and ball fields.[43] Once the LWCF receives its full allotment, the federal government will be spending approximately $360 million annually on land acquisition.[44]

Federal public lands also provide a valuable source of economic output.[45] When the LWCF was first initiated, the $214 million spent on land acquisition created an estimated $442 million in economic activity and about 3,000 jobs.[46] Additionally, the state grants portion of the LWCF supports America's state park system which contributes $20 billion nationally to local and state economies.[47] Data provided by the Bureau of Economic Analysis shows that activities like hunting, fishing, camping, hiking, paddling, and other outdoor recreation activities contribute a total of $788 billion annually

37. *Id.*
38. *Id.*
39. *Congress Passes the Great American Outdoors Act*, SGB MEDIA (July 23, 2020), https://sgbonline.com/congress-passes-the-great-american-outdoors-act/ [https://perma.cc/L3FJ-7KQ2].
40. *About LWCF*, *supra* note 36.
41. Hannah Downey, *The Great American Outdoors Act, Explained*, PROP. & ENV'T RSCH. CTR. (Aug. 4, 2020), https://www.perc.org/2020/08/04/the-great-american-outdoors-act-explained/ [https://perma.cc/SMM8-HHUA].
42. Harsha, *supra* note 32.
43. *About LWCF*, *supra* note 36.
44. *Downey*, *supra* note 41.
45. *See About LWCF*, *supra* note 36.
46. *Id.*
47. *Id.*

to the economy and support about 5.2 million American jobs.[48] These jobs benefit from being a sustainable resource and are tourism-based; therefore, they cannot be exported.[49]

The Land and Water Conservation Fund Coalition has been working for several years to secure the full amount of funding promised for the LWCF.[50] It has done this with the goal of the original act in mind, including trying to purchase land for recreation projects, like local parks, all over the nation.[51] Newly acquired land can be used for recreation, conservation, or energy production.[52] Energy production on federal lands generates revenue for the federal government, discussed in more detail in the next section. To accomplish the GAOA's goal of public land management and maintenance, the LWCF works in tandem with the second portion of the GAOA, the Legacy Restoration Fund.

In the second portion, the GAOA allocates revenues from energy production on federal lands to fund the Legacy Restoration Fund.[53] Specifically, the GAOA allocates an amount equal to 50% of all federal revenues from the development of oil, gas, and coal, or alternative or renewable energy on federal lands and waters for fiscal years 2021–2025 to the Legacy Restoration Fund.[54] By designating a specific source of funding for the Legacy Restoration Fund, Congress avoided raising taxes on the public. Instead, it set aside a source of funding that the government is already collecting.[55]

The Legacy Restoration Fund will be used to directly contribute to the deferred maintenance deficit in National Parks.[56] Half the revenues from energy development on federal lands will be deposited in this fund, not to exceed $1.9 billion in any given fiscal year for fiscal years 2021–2025.[57] This money that would normally be going to the general treasury will instead be put into the Legacy Restoration Fund.[58] Importantly, the money from this fund must go directly to addressing deferred maintenance needs on federal lands.[59] Further, 65% of the money from the Legacy Restoration Fund must

48. *Id.*
49. *Id.*
50. *See* 50 YEARS, *supra* note 8.
51. *See id.* at 10–11.
52. *Id.* at 6–7.
53. 54 U.S.C. § 200402.
54. *Id.*
55. Belt, *supra* note 15.
56. § 200402.
57. Downey, *supra* note 41.
58. *Id.*
59. *Id.*

go towards addressing non-transportation related projects, like trail maintenance, and facility upkeep and repair.[60] This statutorily protected allocation of funds allows the National Park Service to move forward with long-term plans knowing that it will have the necessary funding to complete projects.[61]

By guaranteeing funding for the LWCF and Legacy Restoration Fund, the GAOA is regarded as one of the largest pieces of conservation legislation in recent history.[62] The Trump Administration almost always sided with industry over conservation, making cuts to public lands and opening the arctic refuge to oil drilling; as a result, the passing of the act came as a surprise.[63] Further, President Trump initially did not support permanently funding the LWCF; in fact, he even went so far as attempting to slash funding for the LWCF entirely.[64] Despite the initial pushback,[65] this bill passed with bipartisan support in both the House and the Senate and was signed—without

60. *Id.* The remaining money can go towards transportation related projects. *Id.* This structure prevents the misallocation of funds, as the U.S. Department of Transportation also receives specified funds for road maintenance on federally owned lands. *Id.*

61. *Id.*

62. Harsha, *supra* note 32.

63. *See generally* Nichola Groom, *Trump Administration Finalizes Oil Drilling Plan in Alaska Wildlife Refuge*, REUTERS (Aug. 17, 2020, 6:11 AM), https://www.reuters.com/article/us-usa-arctic-trump/trump-administration-finalizes-oil-drilling-plan-in-alaska-wildlife-refuge-idUSKCN25D1JN [https://perma.cc/WP4L-RXVN]; Press Release, Nat'l Parks Conservation Ass'n, President Trump's Proposed Budget Cuts Target National Parks (Feb. 10, 2020), https://www.npca.org/articles/2457-president-trump-s-proposed-budget-cuts-target-national-parks [https://perma.cc/RML8-MQGX].

64. Press Release, Land & Water Conservation Fund Coal., Trump Budget Slashes Funding for Conservation and Outdoor Recreation (Feb. 10, 2020), https://static1.squarespace.com/static/58a60299ff7c508c3c05f2e1/t/5e41ac86d5cefc19a771080c/1581362310654/LWCF+Coalition+Statement+-+President+Budget+FY+2021+-+Final.pdf [https://perma.cc/7998-AMP4].

65. The GAOA was first proposed in March 2019 by Representative John Lewis (D-GA) as part of the Taxpayer First Act. H.R. 1957, 116th Cong. (2020), https://www.congress.gov/116/bills/hr1957/BILLS-116hr1957ih.pdf [https://perma.cc/A8EF-FPXJ]. Following amendments including combining the Legacy Restoration Fund and the LWCF into one act, Senator Cory Gardner (R-CO) reintroduced the bill as the Great American Outdoors Act in March 2020, where the bill quickly gained bipartisan support. S. 3422, 116th Cong. (2020), https://www.congress.gov/116/bills/s3422/BILLS-116s3422pcs.pdf [https://perma.cc/HRU8-3KMY] (passing, ultimately, as H.R. 1957). This bill followed proposed budget cuts to the LWCF made by the Trump Administration for 2021 from the previously allocated $900 million to just $14.7 million. U.S. DEP'T OF THE INTERIOR, FISCAL YEAR 2021 INTERIOR BUDGET IN BRIEF APP. D (2020), https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-bib-d0001.pdf [https://perma.cc/ANM3-CXCD].

controversy—by President Trump.[66] President Trump changed his initial position on the bill when two Republican senators, Cory Gardner of Colorado and Steve Daines of Montana, brought the GAOA to his attention.[67] These senators, each facing tough reelection campaigns in November 2020, convinced the President that his approval of the bill would set the stage for a conservation legacy rivaling that of Teddy Roosevelt.[68]

If successful, the GAOA is expected to create economic benefits as it restores parks, thereby boosting tourism in areas where the economy is dependent on travel to federal parks.[69] Currently, the outdoor industry contributes $778 billion to the U.S. economic output—or 2.2% of the United States' GDP every year—and provides 5.2 million American jobs.[70] Tourism in national parks alone generates $21 billion in direct spending, which results in $40 billion of economic output, supporting 340,000 jobs annually.[71] Upon passage, economists expect the GAOA will add another 100,000 jobs.[72] Further, research from Boston University shows between seventeen and thirty one jobs will be created for every $1 million invested in the LWCF.[73] Public lands are an integral part of the American economy and livelihood, so Congress's commitment to invest in them is vital. Success of the GAOA will depend on continued bipartisan support, allocations of funds to the LWCF and the Legacy Restoration Fund, and prioritization by the Department of the Interior and House committees to reap its full benefits.

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66. *Actions Overview H.R.1957 — 116th Congress (2019-2020)*, *supra* note 10; *see also* Press Release, U.S. Dep't of the Interior, ICYMI: Actually Funding the Land and Water Conservation Fund (July 27, 2020), https://www.doi.gov/pressreleases/icymi-actually-funding-land-and-water-conservation-fund [https://perma.cc/U26P-7RX4].

67. President Donald J. Trump, Remarks at Signing of H.R. 1957, The Great American Outdoors Act (Aug. 4, 2020), https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-signing-h-r-1957-great-american-outdoors-act/ [https://perma.cc/27BM-6PWY].

68. *Id.*

69. *See generally* Marcia Argust, *Great American Outdoors Act Would Improve National Parks–and U.S. Economy*, THE PEW CHARITABLE TRS. (July 16, 2020), https://www.pewtrusts.org/en/research-and-analysis/articles/2020/07/16/great-american-outdoors-act-would-improve-national-parks-and-us-economy [https://perma.cc/32CE-5SN5].

70. *Id.* Outdoor industry in this context refers to "the hiking, boating, camping equipment, outfitter, motorcyclist, and sportsmen sectors." *Id.*

71. *Id.*

72. *Id.*

73. *Id.* As the LWCF was enacted in 1964, there is more information available about its historical economic impact. As the Legacy Restoration Fund is newly enacted, historical data is not yet available, however projections show that addressing the maintenance backlogs in national parks generally will result in supporting 108,000 jobs. THE CADMUS GRP., RESTORING PARKS, CREATING JOBS 4 (2019), https://cadmusgroup.com/wp-content/uploads/2019/07/Jobs-Analysis_07122019.pdf [https://perma.cc/N6KV-T7JA] (commissioned by the PEW Charitable Trusts).

B. Current Energy Production on Public Land

Much of the energy produced for the United States' electric grid comes from oil and gas leases on federal lands.[74] About twenty-six million acres of federal land were under lease to oil and gas developers at the end of 2018.[75] In fiscal year 2018, about 8% of all oil, 9% of all natural gas, and 6% of all natural gas liquids produced in the United States were generated on federal lands.[76] These sales accounted for about $3 billion in federal revenues.[77] The production of crude oil on federal lands increased significantly in 2019, setting a record high,[78] constituting about 15% of U.S. oil production.[79] The Office of Natural Resources Revenue collects an average of $10 billion in revenues each year from federal land leases for energy production, making it one of the federal government's largest non-tax sources of income.[80] Various statutes govern leasing of federally owned land, discussed in more detail below.

Despite the value oil and gas leasing adds to the economy, several problems exist. Coastal states often oppose offshore drilling due to the risk to their economies if a catastrophe were to occur.[81] In addition, the United States is currently transitioning to lower carbon sources of energy, as oil and gas production falls.[82] While the Energy Policy Act of 2005 ("EP Act") attempted to create an incentive for leasing of federal lands for renewable energy production, it resulted in companies racing to obtain permits for these

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74. *About the BLM Oil and Gas Program*, *supra* note 4.

75. *Id.*

76. *Id.*

77. *Id.*

78. BRANDON S. TRACY, CONG. RSCH. SERV., R46537, REVENUES AND DISBURSEMENTS FROM OIL AND NATURAL GAS PRODUCTION ON FEDERAL LANDS 4 fig.3 (2020), https://fas.org/sgp/crs/misc/R46537.pdf [https://perma.cc/AM2U-ZPRE].

79. *Oil and Petroleum Products Explained*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/energyexplained/oil-and-petroleum-products/offshore-oil-and-gas-in-depth.php [https://perma.cc/HHN4-YBNK] (last updated Dec. 6, 2021).

80. Press Release, U.S. Dep't of the Interior, Interior Disburses $353 Million in GOMESA FY 2019 Revenues; Funds Support Coastal Conservation and Hurricane Protection Projects (Mar. 30, 2020) [hereinafter Dep't of Interior Press Release], https://www.onrr.gov/PDFDocs/2020_GOMESA.pdf [https://perma.cc/R3M5-6LT3]; *About Natural Resources Revenue Data*, U.S. DEP'T OF THE INTERIOR: NAT. RES. REVENUE DATA, https://revenuedata.doi.gov/?tab=tab-revenue [https://perma.cc/LEM9-P2XE].

81. *See* Annie Brethour, *Responsibility in Catastrophe: Are the Fiscal Requirements for Offshore Oil Leasing Sufficient to Cover the Costs of a Major Oil Spill?*, 49 TEX. ENV'T L.J. 269, 269–70 (2019).

82. *U.S. Renewable Energy Consumption Surpasses Coal for the First Time in Over 130 Years*, U.S. ENERGY INFO. ADMIN. (May 28, 2020), https://www.eia.gov/todayinenergy/detail.php?id=43895 [https://perma.cc/H4Y9-3VCH].

projects.[83] However, it did nothing to address the complex permitting process surrounding renewable energy projects, making development of ventures difficult.[84] A decrease in oil and gas leasing would leave a gap in revenue production open for wind and solar energy leases to fill, provided the leasing system becomes more streamlined.

This section primarily outlines (1) the leasing process and revenues generated by onshore and offshore oil and gas leasing, and (2) the current regulations for offshore wind farms, as well as a discussion of a successful wind farm project operating in Rhode Island.

1. Overview of Current Oil and Gas Leasing on Federal Lands

The Mineral Leasing Act of 1920 regulates the leasing of onshore federally owned oil and gas reserves.[85] The Mineral Leasing Act ("MLA") included a provision that allowed for the collection of royalties from minerals produced on federally owned lands.[86] The Secretary of the Interior is granted the power to lease all oil and gas deposits found on federally owned land.[87] Parcels are leased to the "highest responsible qualified bidder" via a competitive oral auction.[88] In the event no qualified bids are received, the leases are sold noncompetitively to the person who makes the first qualified offer.[89] Once the oil or natural gas well is productive, the government collects revenues in the form of rent and royalties.[90] The MLA allocates 50% of revenues from leases on federal land to the state in which the revenue was generated, 40% to the Reclamation Fund, and the remaining revenues to the Treasury.[91] In 2019, revenues generated from onshore oil and gas leases on federal lands totaled $4.2 billion.[92]

In comparison, an entirely different regulatory structure manages offshore drilling leases. The Bureau of Ocean Energy Management ("BOEM") regulates offshore oil and gas leases under the Outer Continental Shelf Lands

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83. Robert Glennon & Andrew M. Reeves, *Solar Energy's Cloudy Future*, 1 ARIZ. J. ENV'T L. & POL'Y 91, 111–12 (2010).

84. *Id.* at 112–13.

85. 30 U.S.C. § 181; Bruce M. Pendery, *BLM's Retained Rights: How Requiring Environmental Protection Fulfills Oil and Gas Lease Obligations*, 40 ENV'T L. 599, 604 (2010).

86. Pendery, *supra* note 85.

87. 30 U.S.C. § 226(a).

88. *Id.* § 226(b)(1)(A).

89. *Id.*

90. TRACY, *supra* note 78.

91. *Id.* at 10.

92. *Id.* at 13. These revenues consisted of $2.931 billion in royalties, $1.181 billion in bonuses, $67 million in other revenue, and $22 million in rents. *Id.*

Act ("OCSLA") of 1953.[93] The OCSLA grants the Secretary of the Department of the Interior ("DOI") the authority to manage offshore energy resources and to develop regulations to carry out this authority.[94] Currently, the BOEM manages 8,000 active leases, accounting for 36 million acres of leased lands.[95] In total, the BOEM is responsible for 1.7 billion acres of offshore areas, which must be managed to protect coastal and marine environments "through advanced science and technology research."[96]

Offshore drilling takes place on the Outer Continental Shelf ("OCS"), where many oil and gas resources are located.[97] Offshore drilling is primarily located in waters of federal jurisdiction, beyond the reach of state jurisdiction. State jurisdiction extends approximately three miles offshore, beyond which it becomes federal.[98] To lease continental shelf land for offshore drilling, an environmental impact statement must first be conducted.[99] The government then accepts a bid based on the BOEM's "fair market" price.[100] The lease holder pays an annual rent during the construction phase of the process until the operation begins producing oil or gas in paying quantities.[101] At that point, the lessee stops paying rent and starts paying royalties to the Office of Natural Resources Revenue based on the amount of oil and natural gas extracted from the well site.[102] In fiscal year 2019, federal offshore leases resulted in about $6.0 billion in revenues.[103] Therefore, oil and gas leasing on federal land makes up an important part of the country's revenue stream. This in turn

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93. *Offshore Oil & Gas*, U.S. DEP'T OF THE INTERIOR: NAT. RES. REVENUE DATA, https://revenuedata.doi.gov/how-revenue-works/offshore-oil-gas/ [https://perma.cc/ZA2E-39KX].

94. *Id.*

95. BUREAU OF OCEAN ENERGY MGMT., OIL AND GAS LEASING ON THE OUTER CONTINENTAL SHELF 2, https://www.boem.gov/sites/default/files/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/5BOEMRE_Leasing101.pdf [https://perma.cc/5JDF-DEHP]. These lands account for 7% of America's natural gas production and approximately 24% of oil production. *Id.*

96. *Id.*

97. *Outer Continental Shelf*, BUREAU OF OCEAN ENERGY MGMT, https://www.boem.gov/oil-gas-energy/leasing/outer-continental-shelf [https://perma.cc/3VH2-PKYU].

98. Lawrence Susskind & Ryan Cook, *The Costs of Contentiousness: A Status Report on Offshore Wind in the Eastern United States*, 33 VA. ENV'T L.J. 204, 209 (2015).

99. *Offshore Oil & Gas*, *supra* note 93. The public can be involved at this stage of the process via a public comment period. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* The ONRR defines royalties as "payment[s] for extracted natural resources, determined by a percentage of the resources' production value." *Id.*

103. Revenue Query Data Table, U.S. DEP'T OF THE INTERIOR: NAT. RES. REVENUE DATA, https://revenuedata.doi.gov/query-data/ [https://perma.cc/7WM7-HV6Y] (enter "federal offshore" into land type query).

allows for disbursements to states and programs like the LWCF and Legacy Restoration Fund.

For example, in fiscal year 2019, the DOI distributed almost $353 million in energy revenues to Alabama, Louisiana, Mississippi, and Texas.[104] This represents an increase of 64.2%, or $138 million, over the disbursement from the prior year.[105] These coastal states are using the increase in funding primarily for ecosystem conservation or restoration projects, levee improvements, and fishery sustainability efforts.[106] The DOI, state governors, senators, and representatives attributed the increased funding to the Trump Administration's policies, which called for growth of offshore energy exploration and production.[107]

On the other hand, offshoring drilling presents challenges and faces opposition from the public as well as state governments, particularly in coastal states.[108] The largest concern is a catastrophic oil spill, which can have a devastating impact on the tourism and commercial fishing driven economies and the environment of coastal states.[109] Tourism in these parts of the country is a $60 billion industry and commercial fishing is an approximately $35 billion industry, both of which are negatively impacted by oil spills.[110] Due to the distance oil can travel, these impacts often are felt hundreds of miles away from the oil spill.[111] Regarding environmental impact, studies show that various sea life can have negative reproductive effects for generations following exposure to even small amounts of oil.[112]

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104. Dep't of Interior Press Release, *supra* note 80, at 1.

105. *Id.*

106. *Id.* at 4–5.

107. *Id.* at 4–7.

108. *See* Elvina Nawaguna, *Land and Water Conservation Fund Bill Advances, Faces GOP Pushback on Cost*, CQ ROLL CALL WASHINGTON ENERGY BRIEFING, June 9, 2020, 2020 CQFENRPT 0852 (describing Florida Senator Rick Scott's opposition to coastal oil drilling in his state due to the potential for harmful impacts); *see also* Rachel Frazin, *Trump Extends Florida Offshore Drilling Pause, Expands it to Georgia, South Carolina*, HILL, Sept. 8, 2020, 2020 WL 5369420 (describing President Trump's order to halt drilling off the coast of Florida, Georgia, and South Carolina due to opposition).

109. *See generally* Brethour, *supra* note 81 (discussing the cost of catastrophic oil spills and the cost of their clean up in various parts of the country).

110. NAT'L MARINE FISHERIES SERVICE, FISHERIES OF THE UNITED STATES 2008 79 (Elizabeth S. Pritchard, ed., 2009); U.S. COMM'N ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY 31 (2004).

111. *See* Brethour, *supra* note 81, at 278; William E. Gibson, *Offshore Drilling: A Current Danger*, S. FLA. SUN SENTINEL, (June 16, 2009, 12:00 AM), https://www.sun-sentinel.com/news/fl-xpm-2009-06-17-0906160413-story.html [https://perma.cc/2N4S-EB78].

112. NAT. RES. DEF. COUNS., PROTECTING OUR OCEAN AND COASTAL ECONOMIES: AVOID UNNECESSARY RISKS FROM OFFSHORE DRILLING 3 (2009), https://www.nrdc.org/sites/default/files/offshore.pdf [https://perma.cc/8JWD-35D3].

The potential for damage to coastal economies due to oil spills disincentivizes coastal states from opening their shores to offshore drilling.

Governments must attempt to balance an increase in national energy independence with the environmental impacts associated with offshore drilling.[113] The level of regulation for offshore drilling often depends on public support which increases when operations are successful but decreases following a major disaster, like the Deepwater Horizon disaster in 2010.[114] Just a few years later, the Trump Administration generally favored rolling back regulations.[115] For example, in December of 2017, the Bureau of Safety and Environmental Enforcement ("BSEE") proposed regulations that reduced "unnecessary regulatory burdens" imposed following the Deepwater Horizon explosion and spill.[116] Despite comments in opposition by a coalition of six different attorneys general of coastal states,[117] the BSEE issued a final rule that implemented the rollback of regulatory policies in September 2018.[118] Further, in May 2019 the BSEE published a rule that revised provisions in the Blowout Preventer and Well Control Rule, over the objections of a group of ten attorneys general from coastal states.[119] Based on the opposition from coastal states to offshore drilling, combined with the

113. Brethour, *supra* note 81, at 270–73.

114. Deepwater Horizon was an oil spill caused by the explosion of an oil rig, resulting in eleven deaths and four million barrels of spilled oil. *Deepwater Horizon – BP Gulf of Mexico Oil Spill*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill [https://perma.cc/4ZQ2-6DE8]. Additionally, the economic impact to the Gulf of Mexico totaled billions of dollars. NAT. RES. DEF. COUNS., SUMMARY OF INFORMATION CONCERNING THE ECOLOGICAL AND ECONOMIC IMPACTS OF THE BP DEEPWATER HORIZON OIL SPILL DISASTER 2 (2015), https://www.nrdc.org/sites/default/files/gulfspill-impacts-summary-IP.pdf [https://perma.cc/A9WT-L5ZU].

115. *See, e.g.*, Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems—Revisions, 82 Fed. Reg. 61703 (proposed Dec. 29, 2017) (to be codified at 30 C.F.R. § 250), https://www.govinfo.gov/content/pkg/FR-2017-12-29/pdf/2017-27309.pdf [https://perma.cc/T8E6-R337].

116. *Id.*

117. Letter from Brian E. Frosh, Att'y Gen. of Md., et al., to Scott A. Angelle, Dir., Bureau of Safety & Env't. Enf't, (Jan. 29, 2018), https://www.marylandattorneygeneral.gov/news%20documents/Production_safety_comments.pdf [https://perma.cc/3VZ3-QXHM].

118. Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems, 83 Fed. Reg. 49216 (Sept. 28, 2018) (to be codified at 30 C.F.R. § 250), https://www.govinfo.gov/content/pkg/FR-2018-09-28/pdf/2018-21197.pdf [https://perma.cc/9PP7-KG9J].

119. Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions, 84 Fed. Reg. 21908 (May 15, 2019) (to be codified at 30 C.F.R. § 250), https://www.govinfo.gov/content/pkg/FR-2019-05-15/pdf/2019-09362.pdf [https://perma.cc/H3FZ-EGVD].

Biden Administration's plan to transition to lower carbon energy sources, alternatives to offshore drilling must be explored.

2. Overview of Offshore Wind

Due to the problems that offshore drilling presents, federal land leases should be used for other forms of electricity generation to continue generating revenue. Moreover, the GAOA allows for royalties from sources other than offshore drilling, including energy production from renewable sources on federal land such as offshore wind.[120] However, this scenario presents some obstacles because leases for offshore drilling and for offshore wind farms are not governed by the same statutes, despite being located on the same tracts of land.[121] The EP Act gave the DOI the authority to regulate renewable energy development on the outer continental shelf.[122] Section 388 of the EP Act grants the DOI authority to "grant a lease, easement, or right-of-way on the [O]uter Continental Shelf for activities [that] . . . produce or support production, transportation, or transmission of energy from sources other than oil and gas."[123] However, in contrast to the accepted regulatory structure for offshore drilling leases, the regulatory environment for offshore wind development is far more uncertain.[124]

As offshore wind is a relatively new technology, no regulatory frameworks were in place when projects were originally proposed.[125] Therefore, original projects faced high amounts of uncertainty.[126] Early developers had to take steps to obtain permits and approvals from both the

120. 54 U.S.C. § 200402.

121. Jacqueline S. Rolleri, *Offshore Wind Energy in the United States: Regulations, Recommendations, and Rhode Island*, 15 ROGER WILLIAMS UNIV. L.R. 217, 221–22 (2010).

122. *Id.* at 221.

123. Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (section 388 codified at 43 U.S.C. § 1337(p)).

124. *See About Natural Resources Revenue Data*, *supra* note 80; Susskind & Cook, *supra* note 98.

125. Susskind & Cook, *supra* note 98, at 216.

126. *See id.* In 2001, when offshore wind projects first began to be proposed, federal permitting procedures happened through the U.S. Army Corps of Engineers, which generally has authority over construction in offshore waters. *Id.* at 218–219. However, in 2005, with the passage of the EP Act, the power to regulate energy offshore was given to the DOI, forcing ongoing projects to abandon the progress they had already made towards obtaining the necessary permits. *Id.* at 219.

federal and state regulators, as well as overcome court challenges; these developers still face strong opposition and delays from opponents.[127]

While the EP Act authorized the DOI to develop a regulatory procedure that would allow federal offshore lands to be leased for wind energy,[128] the current regulatory structure for offshore wind development remains convoluted. For example, individual state governments regulate up to three miles offshore, beyond which the federal government regulates.[129] However, states retain jurisdiction over any transmission infrastructure that will need to cross their territory in order to transport the energy to where it is needed.[130] This disjunctive jurisdictional system requires a developer to go through negotiations and permitting procedures with state, federal, and regional governments.[131] This process also makes projects more vulnerable because they are impacted by policy changes at the federal, state, and regional level.[132]

With a more streamlined regulatory structure, the United States' coastline has a high potential for wind energy development.[133] The Department of Energy has estimated that the United States has the potential to harvest over 2,000 gigawatts (GW)[134] of energy from offshore wind in coastal areas.[135] Offshore wind energy projects have been in development in Massachusetts

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127. *See generally id.* at 217–24 for a discussion of the most famous offshore wind project, Cape Wind, off the coast of Massachusetts. This project was originally proposed in 2001 but has yet to break ground due to a change in regulatory structure in 2005. *Id.* at 219. The project has also faced repeated court battles from project opponents, including notable names like Senator Ted Kennedy. *Id.* at 217.

128. *Id.* at 219.

129. *Id.* at 215.

130. *Id.*

131. *Id.* at 219.

132. *See, e.g.*, *id.* at 220. Cape Wind always received considerable support from the state level government but faced considerable challenges when dealing with changing administrations at the federal level, as well as influential political actors at the local level. *Id.*

133. *Offshore Wind Power Facts*, AM. CLEAN POWER, https://cleanpower.org/facts/offshore-wind/ [https://perma.cc/DAE6-DCD4].

134. In 2020, the average American home used 10.72 MW in a year. *How Much Electricity Does an American Home Use?*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/tools/faqs/faq.php?id=97&t=3 [https://perma.cc/FU33-VB5B] (last updated Oct. 7, 2021). Two thousand GW is equivalent to 2,000,000 MW of generating capacity. *See How Much Power Is 1 Gigawatt?*, OFF. OF ENERGY EFFICIENCY & RENEWABLE ENERGY (Aug. 12, 2019), https://www.energy.gov/eere/articles/how-much-power-1-gigawatt [https://perma.cc/9SN8-99VL]. One MW can power between 400-900 homes a year. *What Is a Megawatt?*, U.S. NUCLEAR REGUL. COMM'N. 3 (2012), https://www.nrc.gov/docs/ML1209/ML120960701.pdf [https://perma.cc/6HYQ-74WS].

135. *Computing America's Offshore Wind Energy Potential*, OFF. OF ENERGY EFFICIENCY & RENEWABLE ENERGY (Sept. 9, 2016), https://www.energy.gov/eere/articles/computing-america-s-offshore-wind-energy-potential [https://perma.cc/N2UY-Z7LJ].

and Rhode Island, but have failed to get off the ground.[136] Currently, the only functional offshore wind farm in the U.S. is the Block Island Wind Farm located off the coast of Rhode Island which has a generating capacity of thirty megawatts (MW),[137] enough energy to power 17,000 homes.[138] This project was successful in large part due to Rhode Island's commitment to ensuring the success of the project.[139] In 2010, the state completed an evaluation of its coastal waters to identify areas where offshore wind would be advantageous, thereby identifying suitable developable sites.[140] The state then worked with developers and investors to secure a site lease and pursue development.[141] The state's commitment is likely why Rhode Island was the first state to successfully finish its project.[142] By siting areas that were advantageous for all stakeholders, the state increased support for the project, limited legal challenges, and thereby reduced the soft costs involved with development of these new energy projects.[143]

III. POLITICAL CONSIDERATIONS AND THE GAOA FALSE DILEMMA

Democrats and Republicans in the United States Congress are generally in contention with one another concerning most issues.[144] However, the GAOA passed easily through the House and Senate, aided by representatives who hoped to gain support in tough reelection campaigns or secure additional funding for their states.[145] However, politicians also voiced some opposition which highlighted obstacles that the GAOA must overcome in order to reach its maximum potential.[146] Furthermore, the GAOA presented a false dilemma as it seemed to present only two choices: (1) supporting the bill (and thereby conservation efforts), but also relying on oil and gas to do so; or (2) opposing

136. Susskind & Cook, *supra* note 98, at 210.

137. *Offshore Wind Power Facts*, *supra* note 133.

138. *Our Offshore Wind Projects in the U.S.: Block Island Wind Farm*, ORSTED, https://us.orsted.com/wind-projects [https://perma.cc/2JKS-8BE5].

139. Susskind & Cook, *supra* note 98, at 230.

140. *Id.*

141. *Id.* at 231.

142. *Id.*

143. *Id.*

144. Both the House and the Senate were heavily bipartisan and disagreed on most topics in 2019 and 2020, from COVID-19 relief bills to social policies. It is most common for members of the legislature to vote along party lines, regardless of their personal views on the issue.

145. *See, e.g.*, President Donald J. Trump, *supra* note 67.

146. Press Release, Rob Bishop, Rep. Utah, House Comm. on Nat. Res., Great American Outdoors Act Is More Political Games (June 8, 2020) [hereinafter Press Release, Rob Bishop], https://republicans-naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=409367 [https://perma.cc/7VVB-LYV7].

the bill in order to reduce reliance on oil and gas, but not securing any permanent funding for land conservation.[147] This structure created unlikely alliances between conservationists and oil and gas industry supporters.[148]

This Part first discusses the political environment in which the GAOA passed and analyzes some of the incentives taken into account by representatives from various states. Furthermore, potential problems with the GAOA's current structure are considered in Section III.A. The false dilemma posed to lawmakers by the GAOA's ironic pairing of oil and gas leasing with conservation legislation is explored in Section III.B.

A. Political Environment and the Perspectives of Lawmakers in Passing the GAOA

Despite the bipartisan support the GAOA initially received, there are still problems presented by its funding source, which are further highlighted by President Biden's transition to renewable energy sources and the concerns facing individual states. Unlikely support came from representatives from low-lying coastal areas.[149] State legislators representing coastal areas hoped the guaranteed money from royalties generated in their coastal areas could be used to invest in buffer zones,[150] thereby protecting their communities from more frequent storms, greater storm surges, increased flooding, and general sea-level rise.[151] For example, Florida Senator (and former Governor) Rick Scott refused to support the bill unless it included an amendment that protected Florida's coasts from offshore drilling.[152] Senator Scott recognized that Florida is unique in that its economy is heavily reliant on tourism off its

147. *See generally* Downey, *supra* note 41 (noting the paradox created by the GAOA).

148. *Id.*

149. Darryl Fears & Dino Grandoni, *America's Great Outdoors Is Showing Its Age. Congress Is Proposing a Facelift*, WASH. POST (July 14, 2020), https://www.washingtonpost.com/climate-solutions/2020/07/14/americas-great-outdoors-is-showing-its-age-congress-is-proposing-facelift/ [https://perma.cc/YTE7-G359]. States like Georgia, Florida, Colorado, and South Carolina were represented by republican Senators who generally vote along party lines. *H.R. 1957: Great American Outdoors Act*, GOVTRACK (June 17, 2020, 11:45 AM), https://www.govtrack.us/congress/votes/116-2020/s121 [https://perma.cc/WWD6-5PJC]. However, all of these states had at least one Senator deviate from that position and vote to pass the GAOA. *Id.*

150. A buffer zone is "an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property." WORLD HERITAGE CTR., OPERATIONAL GUIDELINES FOR THE IMPLEMENTATION OF THE WORLD HERITAGE CONVENTION ¶ 104 (2008), https://whc.unesco.org/archive/opguide08-en.pdf [https://perma.cc/MG7X-6E44].

151. Fears & Grandoni, *supra* note 149.

152. Nawaguna, *supra* note 108.

coast.[153] For this reason, he opposes drilling off the coast of Florida because a spill could have dramatic effects on the state's economy.[154] Similarly, Senator Bill Cassidy from Louisiana pledged to vote against final passage of the GAOA unless it included an amendment to increase disbursements from offshore drilling that Gulf Coast states receive to address coastal resiliency and restoration efforts.[155] In an attempt to maintain support from these states, just days after the signing of the GAOA, President Trump signed an executive order extending a ban on oil and gas drilling off the coasts of Florida, Georgia, and South Carolina.[156]

Furthermore, this issue is exacerbated by President Biden's position on fossil fuels. In January 2021, President Biden signed an executive order that temporarily halted new oil and gas leases on federal lands.[157] His administration suspended leases to "review existing leasing and permitting practices 'related to fossil fuel development' on the properties."[158] President Biden used this as a first step in his plan to decrease carbon emissions and comply with the Paris Climate Accord.[159] However, completely halting new oil and gas leasing and drilling decreases the amount of revenues generated from nontaxpayer sources. Without a replacement source of income, the decrease in revenues limits the amount of funding distributable to the LWCF and the Legacy Restoration Fund under the GAOA.[160] The GAOA requires a

153. Frazin, *supra* note 108.

154. *See* Coral Davenport, *Florida is Exempted from Coastal Drilling. Other States Ask, 'Why Not Us?,'* N.Y. TIMES (Jan. 10, 2018), https://www.nytimes.com/2018/01/10/climate/coastal-drilling-florida-exempt-zinke.html [https://perma.cc/E7FK-67H3].

155. Nawaguna, *supra* note 108; *see also* Press Release, Bill Cassidy, U.S. Sen. La., Put People Before Parks (June 12, 2020), https://www.cassidy.senate.gov/newsroom/press-releases/video-cassidy-to-senate-put-people-before-parks [https://perma.cc/4GRV-WQLH].

156. Frazin, *supra* note 108.

157. Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 20, 2021) [hereinafter Exec. Order]; Nathan Rott et al., *Biden Hits 'Pause' on Oil and Gas Leasing on Public Lands and Waters*, NPR (Jan. 27, 2021, 2:30 PM), https://www.npr.org/sections/president-biden-takes-office/2021/01/27/960941799/biden-to-pause-oil-and-gas-leasing-on-public-lands-and-waters [https://perma.cc/X9ZP-MK9B].

158. Rott et al., *supra* note 157.

159. *Id.* During his election campaign, Joe Biden pledged to impose rigorous methane restrictions, take steps to achieve net-zero emissions by 2050, and invest and deploy clean energy technology. *9 Key Elements of Joe Biden's Plan for a Clean Energy Revolution*, BIDEN HARRIS, https://joebiden.com/9-key-elements-of-joe-bidens-plan-for-a-clean-energy-revolution/ [https://perma.cc/FQ5J-QDMG].

160. Royalties from offshore drilling contribute approximately $10 billion dollars to the United States Treasury each year. *About Natural Resources Revenue Data*, *supra* note 80. If the government were to stop receiving this funding without a replacement source of income, the general amount in the U.S. Treasury would decrease. *Id.*

consistent funding source to realize its full potential.[161] To guarantee that funding is available and to promote President Biden's agenda, alternatives to the current leasing regulatory structure warrant examination.

As coastal states have already rejected an increase in oil drilling, the transition to lower carbon energy sources like offshore wind creates an opportunity to involve governments at the federal, state, and local level.[162] Coastline areas are important for energy production, because not only do they have extensive oil and gas reserves, but also some of the best developable wind resources in the country.[163] To address the concerns of coastal states while still ensuring growth of the renewable energy sector, the 117th U.S. Congress should build off the bipartisan momentum created by the passing of the GAOA to ensure it meets expectations.

However, implementation of new policies that promote offshore wind development on federal lands will not address all of the concerns of those opposed to the GAOA. Despite generally enjoying bipartisan support, the GAOA has faced intense criticism.[164] Rob Bishop, Utah's House Representative for the First Congressional District and the leading Republican on the natural resources panel, has disparaged the bill as a guise for a "divisive measure" on land and water conservation "that will increase our debt" and do little for economic recovery by pairing it with a popular idea to address long outstanding maintenance issues with parks and increase American jobs.[165] Bishop further criticized the mandatory spending the GAOA requires as America has already increased debt to stimulate growth throughout the COVID-19 pandemic.[166] Congress's commitment to spending $900 million annually in perpetuity diverts funds from areas that more directly stimulate the economy in wake of the pandemic, without helping

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161. *See generally* Downey, *supra* note 41.

162. *See* Nawaguna, *supra* note 108.

163. *See generally U.S. Offshore 90-Meter Wind Resource Potential*, OFF. OF ENERGY EFFICIENCY & RENEWABLE ENERGY: WIND EXCHANGE, https://windexchange.energy.gov/maps-data/320 [https://perma.cc/BAR2-6QXR].

164. *See, e.g.*, Press Release, Rob Bishop, *supra* note 146 (demonstrating an example of criticism the GAOA has received).

165. *Id.* Support for the renewable energy sector is often paired with a promise of an increase in jobs as a selling point. Press Release, U.S. Dept. of the Interior, President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Water, Invest in Clean Energy Future (Jan 27, 2021) [hereinafter Press Release, President Biden to Take Action] (discussing Biden's Build Back Better Plan and job creation), https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands [https://perma.cc/XC7X-GEXV].

166. Press Release, Rob Bishop, *supra* note 146. However, other representatives have associated an increase in spending with an increase in jobs, thereby actually boosting the economy in areas that are dependent on tourism and outdoor recreation. See *supra* notes 45–48 and accompanying text for a discussion of the proposed economic benefits of the GAOA.

achieve environmental goals.[167] Bishop argued that these problems are disguised with hopeful figures about increasing domestic jobs and supporting gateway economies through land and water conservation.[168]

This criticism is intensified under the GAOA as federal land acquisition is funded forever via the LWCF, however funding for the Legacy Restoration Fund to address the maintenance deficit and park restoration is only funded for five years.[169] Beyond this five-year mark, no legal provision ensures that the newly acquired land, as well as already existing federally owned lands, will be properly maintained. The disparity in the timescales in which funding is available to each program increases the likelihood that the federal government will continue to obtain more land, without ensuring proper funding is available for maintenance.[170] This concern is amplified by the fact that the distribution to the Legacy Restoration Fund over a five-year period totals $9.5 billion; however, the maintenance deficit in national parks alone was already $11.2 billion in 2018.[171] While the GAOA attempts to address this issue, acquisition of more land by the federal government without a consistent maintenance fund will recreate the current situation.

The GAOA requires continued bipartisan support to be successful, but without addressing the concerns of those who opposed its passing, the GAOA's future is uncertain. Only three months after the bill was signed into law, the Trump Administration failed to meet a self-set deadline of November 2, 2020.[172] By that deadline, the DOI should have prepared two lists of projects that would receive priority funding under the GAOA: one for the Legacy Restoration Fund and one for the LWCF.[173] The DOI supplied a list of projects that would receive funding under the Legacy Restoration Fund but failed to submit a list of projects to be prioritized by the LWCF.[174] A perceived lack of commitment to successfully executing the GAOA speaks to the contentious political environment surrounding its passage, including

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167. *See* Press Release, Rob Bishop, *supra* note 146.

168. *Id.*

169. Downey, *supra* note 41.

170. *Id.*

171. *See What Is Deferred Maintenance?*, *supra* note 28.

172. Rachel Frazin, *Trump Administration Misses Deadline on Conservation Projects, Top Democrat Says*, HILL, (Nov. 3, 2020, 3:02 PM), https://thehill.com/policy/energy-environment/524265-interior-fails-to-provide-list-of-conservation-projects-to-congress [https://perma.cc/8UKD-3DG5].

173. *Id.*

174. *Id.*; *Great American Outdoors Act*, U.S. FOREST SERV., https://www.fs.usda.gov/managing-land/gaoa [https://perma.cc/S6BG-PDP4]; Letter from Jon Tester, Sen. Mont., to Hon. David L Bernhardt, U.S. Dep't of the Interior, and Hon. Sonny Perdue, U.S. Dep't of Agric. (Nov. 6, 2020) https://www.tester.senate.gov/files/Letters/2020-11-06%20LWCF%20project%20list%20letter.pdf [https://perma.cc/9JCQ-JZLU].

the interesting bedfellows made out of conservationists and the oil and gas industry.

B. False Dilemma and the Environment as a Partisan Unifier

The GAOA received bipartisan support, which creates the illusion that the environment acted as a unifier among political parties at a time when most issues served as party dividers. But it is unlikely environmental conservation was the underlying issue which led to unification. Rather, support for the GAOA can be classified as a false dilemma. A false dilemma occurs when people make choices based on a perceived set of variables which do not actually represent the choices available to the decision-maker.[175] In a false dilemma, the situation becomes oversimplified, such that the decision-maker is offered a limited number of options, most often two, even though there are actually more options available.[176] This strategy has the effect of reducing complex issues to overly simplistic choices.[177] Applying this framework to the GAOA, it seems as though there are only two choices: losing public land funding but protecting the environment through a decrease in the amount of offshore drilling the United States conducts; or increasing funding for public lands and national parks through the use of increased royalties from natural gas drilling.[178] Tying national park funding directly with revenues from oil and gas leases also explains how the bill passed with so much bipartisan support.

False dilemmas in politics occur when Congress chooses to tie a piece of controversial legislation with a piece of widely supported of legislation.[179] For example, a common false dilemma is the combination of taxation on marijuana sales and its use to fund schools. In 2012, Coloradans voted to pass a bill that would allocate the first $40 million of tax dollars from the sale of recreational marijuana to the public school system.[180] The allocation of public funding remained popular among voters, often seen as the biggest benefit of the bill.[181] Many people that did not initially support recreational marijuana

175. A. Benjamin Archibald, *The False Dilemma*, 47 BOSTON BAR J. 16, 16 (2003).

176. *See id.*

177. *See id.*

178. *See e.g.*, Downey, *supra* note 41 (discussing the paradox of GAOA's reliance on oil and gas drilling as a funding source).

179. *See* Janie Brisson et al., *Reasoning from an Incompatibility: False Dilemma Fallacies and Content Effects*, 46 MEMORY & COGNITION 657, 657–58 (2018).

180. Alia Wong, *The False Promise of Marijuana Money in Education*, ATLANTIC, (May 4, 2015) https://www.theatlantic.com/education/archive/2015/05/the-false-promise-of-marijuana-money-in-education/392165/ [https://perma.cc/2SJC-QKUB].

181. *Id.*

legalization voted in favor of it anyway because of the projected benefits to the public education system. However, the state is finding that it is only meeting about half of the $40 million allocation at this time.[182] Therefore, the anticipated funding has not reached the school system.[183] This is an example of how it can be ineffective to pair favorable legislation with unpopular ideas, as the success of one does not guarantee the success of the other. The GAOA presents a similar situation by coupling favorable environmental conservation legislation with a dependence on continued oil and gas leasing. Conservationist parties backed the GAOA based on its obvious support of the parks and public land restoration, regardless of the funding source. Meanwhile, oil and gas drilling supporters passed a conservation bill under the pretense that it will actually help the oil and gas industry. With these conflicting interests, the GAOA is vulnerable to a similar lack of success that recreational marijuana legislation experienced if the two political parties cannot continue to agree on priorities of the act in the future.

While the GAOA is regarded as a large piece of conservation legislation, supporters have raised questions about its credibility and goals.[184] After all, if President Biden continues to phase out federal oil and gas leasing,[185] the collection of revenues from these sources will decline. The dependence of the GAOA on these non-taxpayer revenues could actually incentivize the continuance of oil and gas drilling on federal lands and waters to ensure a steady revenue source and enough income to meet the mandatory allocations.[186] So, conservationists could potentially be supporting an outcome contrary to their goals. They have countered that the GAOA simply makes good use of the money from a dying industry, and that when money from royalties collected from oil and gas drilling ceases, Congress will need to find other funding sources.[187] Even conservation organizations like the Property and Environment Research Center ("PERC"), which supported the passing of the GAOA, have acknowledged that the current funding format is not sustainable.[188]

Conversely, the GAOA paved a strong reelection platform for republicans representing states with economies that rely heavily on the outdoor industry.[189] However, the Republican Party has generally been a proponent

182. *Id.*
183. *Id.*
184. *See* Downey, *supra* note 41.
185. *See* Exec. Order, *supra* note 157.
186. *See generally* Downey, *supra* note 41 (discussing the paradox of relying on fossil fuel production to fund public land conservation and maintenance).
187. *Id.*
188. *Id.*
189. *See* President Donald J. Trump, *supra* note 67.

of continued oil and gas drilling.[190] Some republican support could have come from individuals with an interest in oil and gas leasing, hoping that the need for revenues would act as a buffer to allow continued drilling. So, while it seems as though the parties united on their views surrounding conservation, motivations for passing the GAOA likely varied. However, maximizing the potential of the GAOA requires recognition of scenarios beyond just the two presented in the initial false dilemma.

IV. POTENTIAL STRATEGIES TO INCREASE THE LONGEVITY AND EFFECTIVENESS OF THE GAOA

The primary goal of the GAOA was to address maintenance deficits in national parks and increase Americans' access to quality recreation experiences in the country's most beautiful parks.[191] However, the current federal permitting process, state opposition to continued offshore drilling, President Biden's plans to transition to renewable energy, and structural problems within the GAOA itself present problems for the full, successful implementation of the act.[192] To address the false dilemma the GAOA presents, the implementation of a regulatory strategy that incentivizes investment by the oil and gas industry in renewable energy production would be helpful.[193] This strategy could also aid in the transition from oil and gas to wind that the Biden Administration has already taken the first steps in implementing.[194] Further, to address the longevity of the GAOA and disparities in timelines of funding[195], the regulatory structure that provides funding for national parks and federally-owned recreation areas should be amended to decrease reliance on federal funds. These regulatory adjustments provide the best opportunity for the GAOA's long-term success. This Part expands on the argument that Congress can pass regulation that supports both the oil and gas industry while still transitioning to renewable energy in Section IV.A. It also addresses several potential regulatory strategies to help incentivize this transition and streamline the process in Section IV.B.

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190. The Trump Administration's fiscal year data show a steady increase in distributions from oil and gas leasing, particularly offshore drilling. *See* TRACY, *supra* note 78.

191. *See* Great American Outdoors Act, Pub. L. No. 116-152, 134 Stat. 682 (2020), https://www.congress.gov/116/plaws/publ152/PLAW-116publ152.pdf. [https://perma.cc/8Q3V-VK8R].

192. *See supra* Section III.A.

193. *See supra* Section III.B.

194. Exec. Order, *supra* note 157.

195. *See supra* Section III.A.

C. Addressing the False Dilemma and Transitioning to Wind Energy

The GAOA presents lawmakers with a false dilemma which requires them to choose between supporting the oil and gas industry and conservation.[196] However, by creating incentives for the oil and gas industry to invest in development of wind and solar energy on public lands (both on and offshore), Congress could address both interests. The GAOA statute already provides for royalties to be collected from renewable energy, such as wind, solar, and geothermal, that are generated on public lands.[197] Currently, the wind and solar market comprise only a small percentage of the royalties collected from energy development on federal public lands.[198] However, large gaps remain in the renewable energy market that could be incentivized and capitalized on to promote renewable energy development—for example, offshore wind farms.[199]

By incentivizing the development of renewable energy technologies on public lands, both on and offshore, the revenue stream that funds programs such as the GAOA could remain uninterrupted. Renewable energy development will likely require cooperation from the oil and gas industry. In fact, the oil and gas industry could play a critical role in clean energy technology development and implementation because these companies are well-positioned to invest in capital-intensive markets, such as carbon capture storage and utilization, biofuels, and offshore wind development.[200] As of right now, investment in low carbon technologies makes up less than 1% of capital expenditure for oil and gas companies,[201] so there is ample room to expand their investments. However, social and environmental pressures alone likely are not enough to lower oil and gas production to conform with the goals of the Paris Accord and other environmental regulations. Therefore, oil and gas companies should be further incentivized to aid in the transition to renewable energy sources through changes in the regulatory structure.

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196. *See supra* Section III.B.

197. 54 U.S.C. § 200402.

198. *U.S. Energy Facts Explained*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/energyexplained/us-energy-facts/ [https://perma.cc/KNN7-96F8] (last updated May 14, 2021).

199. *Id.*

200. INT'L ENERGY AGENCY, THE OIL AND GAS INDUSTRY IN ENERGY TRANSITIONS 10 (2020), https://iea.blob.core.windows.net/assets/4315f4ed-5cb2-4264-b0ee-2054fd34c118/The_Oil_and_Gas_Industry_in_Energy_Transitions.pdf [https://perma.cc/8RSS-FRTQ].

201. *Id.* at 7.

D. Potential Regulatory Strategy

If Congress incentivizes the transition to renewables through changes in royalty structures on land leases, the oil and gas industry is more likely to assist in the transition instead of pushing back as it currently is. Congress should implement regulatory structures to motivate oil and gas companies to invest in renewable energy technologies on public lands to transition the revenue stream from oil and gas leases to renewable energy leases. Further, to address states' environmental and economic concerns surrounding offshore drilling, Congress should change the regulatory structure that provides allocations to national parks.

3. Ramping Up Oil and Gas Royalty Rates

The government could require royalties generated from new oil and gas leases on public lands (for allocation to the GAOA and other federal programs) to increase based on a fixed schedule over an extended period of time.[202] As the percentage of royalties imposed on the production value of each new lease increases, the total cost of the leases to the lessees would increase over time. As this structure would only be imposed on oil and gas drilling leases, those leases would become more expensive than leases for renewable energy sources. This shift in rate structure would incentivize oil and gas companies to transition away from the use of oil and gas leases while still generating sufficient revenues for the United States government.[203] In addition, this shift would coordinate with President Biden's halt of new oil and gas leases, as well as his goal of doubling offshore wind leases by 2030.[204]

If sufficient new revenues are not generated from the development of renewables on public land to reach the necessary allocations after a predetermined year, say 2025, royalty rates under all new federal oil and gas leases could be ramped up aggressively until enough revenues to meet all the

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202. Currently, offshore royalty rates on the lessee's production are usually either 12.5% or 16.7% depending on the location. Amy McIntire, *Oil and Gas Development on the Outer Continental Shelf: The Uphill Battle for State Input Into Federal Policy*, 9 TEX. J. OIL, GAS, & ENERGY L. 37, 47 (2013). In this proposed solution, the rates imposed on the value of production would increase on a set schedule over time.

203. *Id.* at 52–53. In the past, lease moratoriums (either legislative or executive) have decreased federal revenues, and therefore put pressure on lawmakers to maintain these profits. *Id.* at 53. This strategy would maintain a revenue source without imposing a complete moratorium.

204. Press Release, President Biden to Take Action, *supra* note 165.

allocations are generated.[205] Such a structure would motivate the oil and gas industry to aid in the growth of wind and solar development and leasing. Increased offshore wind leasing on public lands would contribute to the total increase of revenues the federal government collects, thereby meeting the allocations. As long as the required revenue is being generated, the steep royalty rate increases on new oil and gas leases would not go into effect as the necessary allocations are being met. Further, transitioning from strictly oil and gas companies to energy companies enables development and success on long-term time scales.[206]

Both conservationists and oil and gas companies could benefit from the royalty rate increases proposed here.[207] Decreasing the amount of oil and gas leases is consistent with President Biden's plans and helps to address the false dilemma the GAOA posed. Further, it helps address states concerned about oil and gas development off their coasts. Lawmakers have expressed opposition based on fear that the GAOA will increase spending without helping the economy grow.[208] However, the renewable energy industry is rapidly growing.[209] Focusing on renewable energy development on public lands promotes carbon neutral energy sources, provides long-term solutions to energy problems, and increases reliability of the grid.[210] An increase in renewable energy development creates a demand for domestic jobs, which in turn should benefit the economy.[211]

4. Addressing State Interests to Streamline Regulatory Processes

An additional way to break some of the barriers to development on public lands is to pre-select or pre-site areas of federal lands to make development easier for investors.[212] The House started this process with the passage of the Public Land Renewable Energy Development Act of 2019 ("PLREDA"), which requires the DOI to "establish priority areas on covered land" for the

205. The royalty rates on production value would increase steeply, which would require oil and gas companies to pay more in royalty payments to the federal government, thereby increasing the total amount of revenues collected. In order to avoid paying the increased rates, the oil and gas industry would be incentivized to transition to leases for renewable energy development, as these leases would not have the steep rate increases imposed on them.

206. INT'L ENERGY AGENCY, *supra* note 200.

207. *Id.*

208. *See* Press Release, Rob Bishop, *supra* note 146.

209. *U.S. Energy Facts Explained*, *supra* note 198.

210. *See* Seth H. Handy, *Whose Energy Grid is it Anyway*, 64 R.I. BAR J. 11, 11 (2016).

211. *Id.*

212. Susskind & Cook, *supra* note 98, at 230.

development of solar, geothermal, or wind projects.[213] Under PLREDA, the Secretary of the Interior must also establish a Renewable Energy Coordination Office responsible for developing a method for permit coordination between federal, state, and local governments.[214] PLREDA passed through the U.S. House Committee on Natural Resources unanimously, and was placed on the Union Calendar in December 2020, but did not go to the floor before the end of session.[215] With the change in administrations in November 2020, and the already strong showing of bipartisan support, this bill would likely pass in the future.

The designation of specific "priority areas" for renewable energy leases and development creates incentives for investors to start projects, as there will be more certainty regarding the permitting process.[216] Coordination between various levels of government will also help to address individual states' environmental and economic concerns,[217] such as Florida and Georgia, who have indicated they do not want offshore drilling to proceed off their coasts.[218] Without the risk of dozens of legal battles,[219] developers can site and build projects more quickly, while remaining in full compliance with environmental regulations. A more streamlined regulatory structure would allow renewable energy leases on federally owned land to take the place of current oil and gas leases, as they are phased out, by providing a continuous funding source.

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213. Public Land Renewable Energy Development Act of 2019, H.R. 3794, 116th Cong. (2020), https://www.congress.gov/116/bills/hr3794/BILLS-116hr3794rh.pdf [https://perma.cc/LHV6-9LBY].

214. *Id.*

215. *Actions Overview H.R.3794 — 116th Congress (2019-2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/house-bill/3794/actions.

216. This will relieve the soft costs associated with development, such as Environmental Impact Statements and permitting. See Section II.B.2 for further discussion on regulatory issues associated with offshore wind.

217. *See* McIntire, *supra* note 202, at 54.

218. Renewable energy development does not implicate the dangerous environmental impacts that accompany deep sea oil drilling, which can alleviate some concerns in regard to the fishing and tourism industries. Brethour, *supra* note 81, at 272. Without the risk of catastrophic oil spills, states like Florida and Georgia *may* be more willing to open their shores to renewable energy development. Further, many turbines are so far out in the ocean that they can hardly be seen from land, so they have a relatively small impact on tourism. Mitchell Hokanson, *Avoiding the Doldrums: Evaluating the Need for Change in the Offshore Wind Permitting Process*, 44 COLUM. J. ENV'T L. 181, 212 n.202 (2019).

219. For an example, see the discussion of Cape Wind *supra* note 127.

5. National Park and Public Land Funding Source Changes

Some of the uncertainties surrounding the success of the GAOA are also a result of the regulatory structure in place, which dictates how parks and other public lands are funded. The future of the GAOA relies on Congress's commitment to continue to allocate funds to the LWCF and the Legacy Restoration Fund. It also relies on the DOI and House committees taking their roles as major players seriously, which thus far has not happened, evidenced by the first missed deadline on November 2, 2020.[220] Relying on allocations from Congress is partially how the National Parks were so neglected—through constant underfunding. Furthermore, even with a full distribution of funds under the GAOA, there will still be an outstanding maintenance deficit in national parks.[221] Therefore, Congress should amend the funding and fee structure for national parks and other public lands to decrease their reliance on federal funding and create a solution to the disparate time scales between the LWCF and the Legacy Restoration Fund.[222]

Currently, 40% of LWCF funds is distributed to federal land acquisition, while another 40% is distributed to stateside grants.[223] Instead of being mandated to acquire *more* federal land, public lands managers should be given flexibility to use this funding in areas of greater need.[224] Public lands managers are in the best position to evaluate what matters present the most pressing concern to the parks.[225] Therefore, allowing parks to have more control over their allocated funding would allow routine maintenance to be addressed as it comes up, before it becomes a maintenance deficit. This helps break the cycle presented by the disparity in funding timelines[226] as it avoids creating an even larger deficit.

Additionally, the structure under which public lands get funded could be amended to include user-based fees, thereby removing some of the dependence on federal allocations.[227] A user-based model ensures that those

220. *See* Frazin, *supra* note 172.

221. *See What Is Deferred Maintenance?*, *supra* note 28.

222. *See supra* notes 169–72 and accompanying text.

223. 54 U.S.C. § 200304.

224. *Implementation of the Land and Water Conservation Fund Program: Hearing Before the S. Comm. on Energy & Nat. Res.*, 116th Cong. 1 (2019) (statement of Brian Yablonski, Executive Director, Property and Environment Research Center), https://www.energy.senate.gov/services/files/994332E7-E16C-44EF-9BB8-C52D081C0DC4 [https://perma.cc/H7R3-CBT8].

225. *Id.*

226. *See supra* notes 169–171 and accompanying text.

227. TATE WATKINS, HOW WE PAY TO PLAY: FUNDING OUTDOOR RECREATION ON PUBLIC LANDS IN THE 21ST CENTURY 27–28 (2019), https://www.perc.org/wp-content/uploads/2019/05/how-we-pay-to-play.pdf [https://perma.cc/JQ2P-HCYQ].

who use the lands are also paying for them. For example, state fish and wildlife agencies receive the majority of their funding through either licensing fees or excise taxes on firearms, ammunition and fishing gear.[228] These funding sources have been proven to provide a stable revenue source, and even continued growth over time.[229] Therefore, tying funding for outdoor recreation to user-based models provides a stable source of income. Diversifying the funding sources of national parks decreases the likelihood of returning to an extreme maintenance deficit, as parks will have another revenue source to conduct routine maintenance, even if the federal government fails to meet its full allocation.

V. CONCLUSION

Congress should pass new regulations that incentivize renewable energy development, reduce the soft costs associated with renewable energy projects, and restructure the way national parks are funded. A bipartisan Congress passed the GAOA in summer 2020, thereby committing to the conservation and protection of federal lands.[230] Under the current economy, funding for the GAOA will come primarily from oil and gas leasing on the OCS.[231] However, this structure is not compatible with President Biden's energy policy plans.[232] Furthermore, several coastal states are hesitant to open their shores to increased offshore drilling.[233] Because the preservation of public lands is important to both the economy and the livelihoods of many Americans, the GAOA should be able to adapt as the energy market shifts.[234] A reduction in oil and gas drilling leases impacts an important source of nontaxpayer income for the federal government.[235] But this reduction also leaves a gap in the market for renewable energy development. Revenues from renewable energy leases on public lands could be used in much the same way oil and gas leases are currently used.[236] Meeting the stringent goals set by the Biden Administration for reduction in carbon emissions will require incentivizing oil and gas companies to aid in the transition through increased royalties on oil and gas leasing.[237] Additionally, simplifying the permitting

228. *Id.* at 23–26.
229. *Id.*
230. *See supra* Section II.A.
231. *See supra* Section II.A.
232. *See supra* Section III.A.
233. *See supra* Section III.A.
234. *See supra* Section III.B.
235. *See supra* Section III.A.
236. *See supra* Section IV.B.1.
237. *See supra* Section IV.B.1.

process and pre-siting locations for renewable energy development will decrease soft costs to developers, creating a smoother transition.[238] Finally, the LWCF should be amended to allow public lands managers greater flexibility in managing their allocated funding to avoid the reoccurrence of large maintenance deficits.[239] By creating an adaptable regulatory regime, conservation of public lands can continue even as the energy market shifts, thereby preserving these invaluable areas for future generations.

238. *See supra* Section IV.B.2.
239. *See supra* Section IV.B.3.