



Pathway to an Oil Drilling Ban in The Bahamas

Executive Summary

The Our Islands Our Future coalition has researched Bahamian law, international agreements, recent policy announcements and global trends toward oil drilling policy and proposes a pathway forward for establishing a permanent ban on oil drilling in The Bahamas.

Based on mounting evidence from the global scientific community, Bahamians are showing increasing awareness of global climate change and the associated risks to their food security, economy, culture and way of life as well as the unique vulnerability of the islands and waters of The Bahamas. There is also a growing appreciation and the potential role for The Bahamas as a global leader in the move away from fossil fuels and the transition to a clean energy economy. But this potential leadership role could be abdicated if The Bahamas were to suddenly enter the realm of an oil-producing nation or a “petro-state”.

In contrast, the recent public debate and experience with the failed Perseverance-1 exploratory well in 2021 nonetheless brought issues to the forefront, showing how economic and environmental resources would be at risk in the event of a major oil spill, and just how unprepared The Bahamas would be in terms of oil response capability, and oversight capacity, while encountering uncertain and distant benefits from any drilling success that might be achieved.

In July 2021 the Government of The Bahamas declared that the pending renewal application from Challenger Energy Group of its exploratory drilling license would not be considered, at least until payment of prior accumulated license fees was secured. To the best knowledge of the authors of this paper, that is still the case. Additional statements by government officials appear to further distance the country from the possibility of resumed drilling. However that decision and subsequent rhetoric is far from permanent and does not protect The Bahamas from a new drilling proposal.

Our Islands Our Future notes that more than one year has passed since the expiration of those licenses and that this period, free from encumbrances of license agreements, is an ideal time to secure a ban against any future oil drilling scenarios. Such a ban would be consistent with recent efforts around the world including in Costa Rica, New Zealand, Wales, the Atlantic Coast of Florida, and elsewhere.

The recommended strategy is two-fold: 1) Using existing administrative power, in coordination with Cabinet, to declare an immediate moratorium by way of ministerial policy. This would signal to any would-be oil prospectors that The Bahamas would not be considering any new or renewed oil drilling license applications for the period of the moratorium. 2) Following that would be a permanent ban, best achieved by an Act of Parliament, which would add additional clarity and guard against any future reversal of administrative policy.

Our Islands Our Future shares the following document with all Bahamians to foster this discussion and a move toward better protection of Bahamas communities and natural resources. The coalition hopes to partner with the Prime Minister, government officials and the citizens and businesses of The Bahamas in moving forward with a ban which is in the best interest of all Bahamians.

Issue Background

Concerns in The Bahamas over mounting impacts of climate change, the prospect of oil drilling and oil spill risks, coupled with under-developed national spill response capabilities and limited oversight capacity have many concerned about the future.

These concerns come on the heels of the recent failed exploratory oil drilling in 2021 (Perseverance-1 Well), the non-payment of the associated license fees by the drilling company Challenger Energy Group, and the Government's decision in 2021 to not consider licence renewal as a result of that non-payment. These events, along with the lived experience of Hurricane Dorian, and the resulting 2019 oil spill at Equinor's storage terminal on Grand Bahama and the country's slow recovery from the hurricane and that spill contribute to a growing awareness of the risks of oil exploration and extraction. At the same time, there is a growing awareness in The Bahamas, and worldwide, of the impacts of climate change and the role that fossil fuels play as a driver of those impacts.

As of 2013, The Bahamas appeared to see itself as a "non-oil producing nation" and to be staking its energy future on sustainable energy opportunities,¹ but the 2021 oil drilling in the Cay Sal area had many worried that a darker future could be at stake if The Bahamas were to embrace oil drilling and become a "petro-state" under the increasing influence of oil companies.

The Government has of late distanced itself from offshore oil drilling, but has not committed to a moratorium or a permanent ban on petroleum exploration or production, leaving open the real possibility that another drilling proposal may soon land on the doorstep.

Against this backdrop, and for the benefit of Bahamian livelihoods, culture and the environment, the Our Islands Our Future (OIOF) coalition seeks to immediately advance a ban on offshore oil drilling in The Bahamas. In addition, over the longer term, OIOF aspires to spur reform of The Bahamas' legislative and policy framework with respect to all aspects of petroleum governance. To advance these efforts, this briefing paper summarises the current framework in The Bahamas with respect to petroleum policy (Part I); and examines preferred pathways for implementing a ban on offshore oil drilling, with reference to approaches taken in recent years by other countries (Part II).

As Part I of this paper sets forth, The Bahamas has on the books a framework for the governance of petroleum exploration and production, including offshore drilling operations. The Act contains a provision that establishes strict liability on the part of the holder for environmental damage, but the wording contains ambiguities and leaves The Bahamas vulnerable.

Part II of this paper identifies two potential pathways to achieving a ban on future offshore oil drilling in The Bahamas: a legislative approach and/or a ministerial policy approach for implementing a ban and considers the pros and cons associated with each. (See Table 2.) Of the two, the most durable option and the one that is least vulnerable to a potential legal challenge is legislative action. One possibility is to combine a longer-term legislative effort with ministerial action in the immediate term. Many of the state members of

¹ Government of The Bahamas, "The Bahamas National Energy Policy 2013–2033" 21. This pursuant to the third goal of The Bahamas' energy policy framework: "The Bahamas will be a world leader in the development and implementation of sustainable energy opportunities and continuously pursue a diverse range of well researched and regulated, environmentally sensitive and sustainable energy programmes, built upon our geographical, climatic, and traditional economic strengths." *Id.* at 10.

Bahamas Nationally Determined Contributions (NDCs), as submitted to UNFCCC:
https://unfccc.int/sites/default/files/NDC/2022-06/Bahamas_COP-22%20UNFCCC.pdf

the new Beyond Oil & Gas Alliance (BOGA) have taken these and similar actions, and their efforts could offer a roadmap for The Bahamas. Additionally, given the potential environmental and socio-economic impacts of oil pollution, banning offshore oil development is an issue of national importance that could justify a public referendum. Provided there is strong public opposition to offshore oil production, favourable results from a public referendum could help generate the needed public and political support to enact a ban on offshore oil exploration and production.

Part I: Framework for Offshore Drilling Regulation and Petroleum Policy in The Bahamas

Petroleum policy in The Bahamas is implemented primarily through national petroleum legislation and regulations that were the subject of a significant overhaul in 2016. The Bahamas has also entered into a number of international commitments pertaining to oil, particularly with respect to oil pollution.

A. National legislation and regulations governing petroleum operations

The *Petroleum Act, 2016* and its regulations establish the present-day legal framework for petroleum policy in The Bahamas, including for offshore oil drilling. The Act is implemented principally through the *Petroleum Regulations, 2016*; the *Petroleum (Offshore Environmental Protection and Pollution Control) Regulations, 2016*; and the *Petroleum (Health and Safety) Regulations, 2016*. This legislation is the successor to earlier laws dating back to the mid-20th century.²

Over time, the laws governing petroleum extraction in The Bahamas have evolved from Colonial-era legislation dedicated to resource extraction, with little to say about pollution control, into a more comprehensive legislative framework placing greater emphasis on environmental protection. Any future reform of The Bahamas' legal framework for petroleum could fairly be characterised as part of a trend over time from a law that facilitates resource extraction to a regime that balances financial benefit with environmental protection.

Scope and administration of the Act. The Act governs exploration for and production of petroleum resources, including within the submarine areas of The Bahamas.³

The Act assigns to the “Minister responsible for petroleum”—which the authors understand to be, at present, the Minister for the Environment and Natural Resources—the role of administering the Act and grants to the Minister various general powers, including the power to enforce and monitor compliance with all laws and any standards applicable to the petroleum industry.⁴

The Act and its regulations can be technical and sets forth certain key legal definitions used by the Act and its regulatory framework (details omitted here for brevity).

Instruments used under the Act—generally. The Minister oversees petroleum operations under the law through the use of four kinds of instruments—

² The Petroleum Act, 2016 repeals the Petroleum Act, 1971; the corresponding Petroleum Regulations, 2016 repeal the Petroleum Regulations, 1978. The Bahamas' original petroleum law, which the 1971 act repealed, dates to 1945.

³ Petroleum Act, 2016 § 3 (continuing rule from preceding Bahamian petroleum legislation, dating back to the 1945 act that vested petroleum rights in the Government of the Colony).

⁴ Petroleum Act, 2016 § 6 & 6(b).

- permits, which confer a non-exclusive right to carry out geological or geophysical studies or surveys (including seismic);
- exploration licences;
- production leases; and
- petroleum agreements concerning exploration for and production of petroleum.

The categories of instruments are summarised in Table 1.

Table 1. Instruments under the Petroleum Act

| Instrument | Purpose | Maximum term | Renewable/extendable? |
|----------------------------|--------------------------|-------------------|-----------------------|
| <i>Permit</i> | Studies & surveys | one (1) year | yes |
| <i>Licence</i> | Exploration | three (3) years | yes |
| <i>Lease</i> | Production | thirty (30) years | yes |
| <i>Petroleum agreement</i> | Exploration & production | N/A | N/A |

Part II of the Act governs permits, licences, and leases, including procedures for application, issuance, renewal, variation, assignment and transfer, and termination. The Act grants to the Minister broad authority to determine whether to grant or refuse permits, licences, and leases, and in each instance he may do so upon such terms and conditions as he deems appropriate.⁵ Before issuing a licence or lease, the Minister must consider the applicant’s fitness, experience, and technical and financial capacity.

A permit is issued for a maximum of one year, a licence for a maximum of three years, and a lease for a maximum of thirty years. Application fees are set forth in a schedule to the Act that the Minister may amend by order.

Obligations of instrument holders & operators. Holders of instruments under the Petroleum Act, 2016 must satisfy numerous legal obligations. Operators are subject to many technical requirements for production and, specifically, for drilling activities carried out under an instrument. All operators have a basic duty to ensure that a facility is safe and “possesses such integrity as is reasonably practicable,” and that all work and other activities on the facility are carried out in a safe manner.

—*Environmental authorisation.* It is prohibited to carry out petroleum operations without an environmental authorisation from the Minister responsible for petroleum. The application for such authorisation must include both an environmental impact assessment (EIA) and an environmental management plan (EMP). Detailed requirements for both an EIA and an EMP are provided by regulation. Additionally, all operations for which an environmental authorisation is granted must be managed in accordance with an environmental management system.⁶ It is prohibited to operate an offshore installation without an EMP approved as part of the environmental authorisation, and, at all times, the operator is bound by the EMP as a condition of the

⁵ See Petroleum Act, 2016 §§ 13 (Grant of permit); 16 (Considerations for grant of licence); 17 (Grant of licence); 18 (Considerations for grant of lease); & 19 (Grant of lease). The Minister is further authorized pursuant to part IV of the Act to grant ancillary rights to instrument holders. *Id.* §§ 45–50.

⁶ Petroleum (Offshore Environmental Protection and Pollution Control) Regulations, 2016 § 9(1). Such a system must be consistent with ISO 14001, and a key component of the system is developing and implementing the aforementioned EMP. *Id.* § 9(2), (3).

grant of such authorisation. The Minister may grant an environmental authorisation under such terms and conditions as may be determined; the authorisation is granted for a period of up to three years.

Authority to make regulations. The Minister has broad authority to make regulations under the Act, including, specifically, as concerns the responsibility of an operator in respect of health, safety, and environmental protection for the conduct of operations of a facility under the Act.⁷ The Act grants a further general regulatory authority to “prescribe[e] any other matter or thing required, authorized or contemplated by th[e] Act to be prescribed or as are necessary or desirable to be prescribed for giving effect to th[e] Act.” Indeed, the Minister has already exercised his authority under the Act to issue multiple significant regulations.

Offences and penalties. It is unlawful for any person to carry out any activity for which an instrument is required, except as provided for by the Act. Violators commit an offence carrying a fine of up to five million dollars, imprisonment for up to ten years, or both. Failure to comply with financial security provisions of the Act is an offence carrying a fine of up to ten million dollars, imprisonment for up to twenty years, or both.⁸

B. Select international commitments for climate & environment

As discussed above in Part I, the Petroleum Act, 2016 and its regulations establish the core domestic legal framework governing petroleum operations in The Bahamas. The Bahamas has also entered into a number of international treaty commitments that bear directly or indirectly on petroleum policy. Select conventions are referenced below.⁹

Two interrelated aspects of sound petroleum policy are slowing and combating the harmful effects of climate change and protecting the natural marine environment and its ecosystems. While The Bahamas is not currently producing oil, continued exploratory drilling in the offshore environment with the goal of generating future oil production poses a significant risk to the marine ecosystems upon which the Bahamian economy relies. It is also inconsistent with The Bahamas’ clean energy transition and its international commitments with respect to climate change.

The Bahamas has itself acknowledged, in international reporting with respect to meeting its United Nations Sustainable Development Goals (SDGs), the risks that oil poses to its marine environment:

There also continues to be concerns of oil spills from existing oil plants and offshore drilling and gas which pose significant risks to the marine environment, exacerbated by the many shipping lanes present within the Exclusive Economic Zone.¹⁰

⁷ Petroleum Act, 2016 § 52 & 52(k).

⁸ Petroleum Act, 2016 § 40(5). Continuing offences are subject to a further fine of up to five thousand dollars per day. *Id.* This provision is without prejudice to any right that the Minister may have to pursue a civil claim against a licensee or lessee. *Id.* § 40(6).

⁹ Additional compilations of The Bahamas’ treaty commitments have been prepared by the Legal Division (Multilateral Treaty Register, rev’d 2012), at <https://www.bahamas.gov.bs/wps/wcm/connect/f63c4369-0d62-41d7-8abb-4a8fe638eb73/MULTILATERAL+TREATY+REGISTER.pdf?MOD=AJPERES>; and by the Department of Environmental Planning and Protection (multilateral environmental agreements), at <https://www.depp.gov.bs/international-conventions/>.

¹⁰ Gov’t of The Bahamas, Voluntary National Review on the Sustainable Development Goals to the High Level Political Forum of the United Nations Economic and Social Council 110 (July 2018).

A brief introduction to select climate and environmental commitments of The Bahamas follows.

→ *UN Framework Convention on Climate Change (UNFCCC); Kyoto Protocol (inc. Doha Amendment); Paris Agreement.* A critical dimension with respect to petroleum policy is slowing and combating the harmful effects of climate change. The Bahamas ratified the Paris Agreement on Climate Change in 2016 and established clean energy targets as set forth in The Bahamas' Nationally Determined Contribution (NDCs). Specifically, The Bahamas aims to reduce greenhouse gas emissions by thirty percent by 2030 by diversifying energy sources and shifting away from reliance on petroleum and towards renewable energy sources, such as wind and solar.¹¹ As of 2018, however, renewable energy made up only one percent of The Bahamas' total primary energy supply.¹² To meet its 2030 clean energy targets under the Paris Agreement, The Bahamas will need to undertake a more aggressive shift away from oil.

As part of its climate adaptation strategy, The Bahamas also committed under both the Paris Agreement and the Caribbean Challenge Initiative¹³ to protect twenty percent of its marine and coastal environment. And yet, it has been recently observed that areas subject to oil licenses have been adjacent to and even within areas designated or proposed as marine protected areas.¹⁴

→ *Convention on Biological Diversity (CBD); Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention).* The Bahamas is party to several major international multilateral environmental agreements that protect species and their habitats, including the CBD and the Ramsar Convention. Adopted (and ratified by The Bahamas) in 1993, the CBD has served as the principal global agreement committed to the conservation of biological diversity and the sustainable use of its components.

The Ramsar Convention, the premier international agreement for the protection of wetlands, entered into force in The Bahamas in 1997. The Convention's definition of a wetland is broad and inclusive of coral reefs, mangrove, and other coastal areas. The Ramsar Convention is implemented through the Bahamas National Wetlands Policy.¹⁵ The Bahamas has designated one Wetland of International Importance as a Ramsar site: Inagua National Park.

¹¹ Government of the Bahamas, Intended Nationally Determined Contribution (INDC) (first) under the UNFCCC (Nov. 2015).

¹² See International Renewable Energy Agency, "Bahamas Energy Profile," Sept. 29, 2021 (updated), at https://www.irena.org/IRENADocuments/Statistical_Profiles/Central%20America%20and%20the%20Caribbean/Bahamas_Central%20America%20and%20the%20Caribbean_RE_SP.pdf.

¹³ In 2020, The Bahamas joined the Caribbean Challenge Initiative (CCI), a coalition of governments, companies, and partners working together to accelerate action on the marine and coastal environment. See <https://www.caribbeanchallengeinitiative.org>. The Bahamas joined in an effort to meet the obligations of the Programme of Work on Protected Areas (PoWPA) under the UN Convention on Biological Diversity (CBD). The Bahamas, along with other Caribbean countries, was struggling to meet the goal of the PoWPA of effective management of protected areas.

¹⁴ See, e.g., Earthjustice Comment Letter Re: Bahamas Petroleum Company PLC License Renewal Application, May 13, 2021 at https://earthjustice.org/sites/default/files/files/20210513_-_letter_re_discretion_to_deny_bpc_license_renewal_request.pdf

¹⁵ See BEST Commission National Wetlands Committee, "Bahamas National Wetlands Policy."

Part II

Pathways for Implementing a Ban on Offshore Oil Drilling

The first and most effective potential approach to effecting a ban is legislative: Parliament could amend the Petroleum Act, 2016 to implement the ban—or adopt new legislation to achieve the same end. Multiple countries have framed such a ban through climate legislation (discussed below).

As a preliminary measure the government could affect a ban by simply announcing its intention going forward to decline, pursuant to its legal authority and in its discretion, to issue the relevant instruments or other required permissions under the Petroleum Act, 2016 and its regulations, for any new exploration or production. Such a proclamation, though potentially reversible by future administrations or legislation, might have more impact if it was given the import and clarity of a name and a date range - such as a Ten-year Moratorium on Offshore Oil Drilling. This could set a timeline for accomplishing the related parliamentary legislation with decreased risk of a new proposal being accepted in the interim.

Though other options and instruments exist, jurisdictions recently imposing bans on offshore oil exploration and production have typically lined up behind one of these approaches, or a combination of the two—beginning with the policy announcement and pairing a legislative effort. These efforts are usually framed as part of a national effort to combat climate change and satisfy domestic and international climate objectives.

Notably, in November 2021, countries led by Costa Rica and Denmark announced the formation of the Beyond Oil & Gas Alliance (BOGA), an alliance of governments and stakeholders working together to facilitate the managed phase-out of oil and gas production.¹⁶

Regardless of the pathway(s) pursued in The Bahamas, it will be important to keep in mind the integral role of Cabinet. Given the public importance of offshore oil drilling and its impacts, and the fact that a ban would signal a new policy direction for The Bahamas, any pathway would likely have to secure Cabinet approval. Cabinet provides for the general direction and control of the Government, and all major decisions of policy must be made by Cabinet. Cabinet authorises the preparation of bills for introduction in Parliament and also approves subsidiary legislation (i.e., regulations). A fundamental principle of Cabinet government is unity: notwithstanding the assignment of responsibility to individual ministers, decisions made by a minister about any matter in his or her portfolio, when it is not within policy already decided by Cabinet, must always be reasonably able to be defended and supported by Cabinet, without doubt. Thus Cabinet approval would be required for any pathway for banning offshore oil drilling in The Bahamas.

¹⁶ Launched at the UNFCCC Conference of the Parties (COP) 26 in Glasgow, the alliance aims to elevate the issue of oil and gas production phase-out in international climate dialogues, mobilise action and commitments, and create an international community of practice on this issue. See <https://beyondoilandgasalliance.com>. See also Reuters, “Denmark, Costa Rica seek alliance to speed up the end of oil and gas,” Aug. 25, 2021.

All parties involved with BOGA must sign the BOGA declaration and then are placed at one of three levels. BOGA identifies its “core members” as Denmark, Costa Rica, France, Greenland, Ireland, Québec, Sweden, and Wales. Core members commit to end new concessions, licensing, or leasing rounds for oil and gas production and exploration and to set a Paris-aligned date for ending oil and gas production and exploration on the territory over which they have jurisdiction.

“Associate members,” which include California, New Zealand, and Portugal, have taken one or more specified steps that contribute to the reduction of oil and gas production.

A. *Legislation*

The surest and most defensible path to implementing a ban on offshore oil drilling is legislative: Parliament can amend the Petroleum Act, 2016 to achieve this, or accomplish it by way of climate-based or other legislation, or both. Just as Parliament has exercised its authority to allow for and regulate offshore drilling, Parliament is free to revoke in part or in full that legislative grant of authority. This approach would leave no doubt about the intent of the Government of The Bahamas. It is also the most durable option: to overturn it in the future would require further new action by Parliament.

Among other countries to impose versions of oil and gas bans in recent years, the legislative pathway appears to be the most common. To date, legislative bans have been enacted in various forms by: Italy (2015); France (in 2017); Belize (in 2018); Denmark (in 2020); Ireland (in 2021); and Spain (in 2021). Just this year, in 2022, the Canadian province of Québec banned oil and gas development in its territory, the first jurisdiction in the world to impose such a complete ban—noteworthy in part because Canada is among the top oil producing nations in the world.¹⁷

Additionally, Costa Rica, a popular ecotourism destination, has since at least 2021 been considering new national legislation that would permanently ban fossil fuel exploration and extraction as part of the nation’s decarbonisation efforts.¹⁸ As of early 2022, Sweden is considering a managed phase-out of oil and gas production, by way of proposed amendments to the Swedish Environmental Code and the Mineral Act.¹⁹

B. *Policy-level ban (Minister/Cabinet)*

The Bahamian legal framework governing petroleum exploration and production establishes no right to a licence or a lease. The granting of relevant permissions under the law lies within the authority, and evidently within the sound case-by-case discretion, of the Minister responsible for petroleum and/or the Prime Minister. As such, the Prime Minister could arguably announce a ban (or moratorium) and indicate that no further licences or leases can be granted consistent with the Act’s many requirements for ensuring environmental protection; nor would granting further leases or licences be consistent with the Government’s climate commitments.

As an established principle of Bahamian law more generally, where any written law (such as the Petroleum Act, 2016) confers power upon any person to make, issue, or approve any instrument, licence, or permit, such power also includes the powers to: amend or suspend the instrument; substitute another instrument; withdraw approval of the instrument; and declare the period of operation of the instrument. This authority that the Prime Minister can exercise lawfully with respect to instruments arguably also includes the blanket authority to determine that no instrument can issue under any current circumstances.

This approach of simply announcing a halt to the issuance of new licences appears to have been followed by multiple countries and seems to be gaining momentum. For example, in 2018, New Zealand’s prime minister

¹⁷ Québec Bill no. 21 (2022). The new law revokes all existing licences and will pay financial compensation to the industry. *See, e.g.*, Oil & Gas Journal, “Quebec proceeds with law banning oil and gas production, financing,” April 14, 2022.

¹⁸ Reuters, “Costa Rica eyes permanent ban on fossil fuel exploration and extraction,” Aug. 4, 2021.

¹⁹ *See* Gov’t of Sweden, Press Release, “Government proposes a ban on extraction of coal, oil and natural gas and stricter rules on extraction of alum shale,” March 3, 2022.

announced that the government would [grant no new offshore oil and gas exploration permits](#). The decision was characterised as an important action to combat climate change. Existing permits were not affected, allowing the government to balance present and future interests in oil exploration and production.

Greenland’s government in 2021 acted similarly, [announcing through its minister of natural resources that it would cease to issue exploration licences](#). In late 2021, Wales, as part of BOGA, [pledged](#) to use “all of [its] powers to phase out fossil fuels, through [its] planning frameworks, licensing powers and [its] policy frameworks which set out a strong presumption against new fossil fueled power plants.” And earlier this year the Australian state of New South Wales [announced a policy-level ban](#) on commercial offshore mineral and petroleum exploration and mining in and adjacent to state coastal waters.

Costa Rica also provides an interesting example, as that country began efforts to ban fossil fuel exploration in 2002 under then-President Abel Pacheco. This ban was supposed to expire in 2014 but has [been extended until 2050](#). As noted above, Costa Rica is now considering whether to enshrine the ban in legislation.

In Portugal, while the details of what transpired are not entirely clear, it appears that sustained public resistance to drilling for offshore oil and gas ultimately [led in 2018 to what has been described in the press as the “cancelation” of all contracts](#).

In The Bahamas, this approach has the key benefit of being the easiest to implement—it amounts to, essentially, a statement by the Prime Minister (reflecting the will of Cabinet) regarding how he intends to exercise his authority under the Petroleum Act, going forward. At the same time, it would also potentially be the least durable approach—and thus readily reversible in the future by another Government. Nonetheless, The Bahamas could consider beginning with this approach, for immediate effect, while at the same time actively working toward a more durable legislative ban, as other countries have done. Such an action might be articulated as a moratorium, rather than as a ban: they are the same in practical effect, but the former could be framed as less drastic and more consistent with ministerial authority under the law.

Table 2. Selected pathways for implementing a ban (or moratorium) on offshore oil drilling

| Pathway | Description | Basis | Key pros/cons |
|-------------------------|---|---|---|
| <i>Legislation</i> | Legislative action by Parliament to implement ban | New Act (potentially under climate legislation) or amendment to Petroleum Act, 2016 | <ul style="list-style-type: none"> • Most durable option; further legislative action needed to reverse • Little or no vulnerability to legal challenge • Strongest possible public statement by The Bahamas at domestic and int’l levels • May not be the most immediate or expeditious pathway |
| <i>Policy level ban</i> | Implementation of ban by Minister as a statement of | An exercise of authority pursuant to the Petroleum Act, 2016 to | <ul style="list-style-type: none"> • Less durable option • Some potential vulnerability to a legal |

| | | | |
|--|--------------------------|--|---|
| | policy by the Government | oversee granting of permits, licences—but on a blanket level | <p>challenge that the Petroleum Act, 2016 may not authorise an advance/blanket determination not to grant applications</p> <ul style="list-style-type: none"> • No legislative or regulatory time delay so potential for immediate implementation • Could serve as an intermediary step to legislative action |
|--|--------------------------|--|---|

Lastly, any preferred option for The Bahamas should take into account two considerations. First, as discussed in Part I of this paper, Parliament has already enacted a comprehensive legislative scheme governing all offshore petroleum operations by way of the Petroleum Act, 2016 and its regulations. Thus, any ban would not be taking place on a blank slate, but rather against a legal backdrop where Parliament has presumably already balanced the economic and environmental needs of Bahamians. Any new proposal for a ban or moratorium short of Parliamentary action should at least account for, and be framed in terms of, this prior balancing by Parliament.

Second, there is precedent in The Bahamas for halting oil exploration: a 2008 moratorium (first put in place to allow for international boundary delineation with The Bahamas’ neighbours) was continued following the tragic Gulf of Mexico Deepwater Horizon oil spill in 2010, and was not lifted until 2014. There was public discussion in 2013–14 of holding a voter referendum on whether to go forward with offshore oil production, but this was to be delayed until a determination could be made as to whether The Bahamas has commercially viable reserves.

Conclusion

Based on the foregoing analysis, it is the position of Our Islands Our Future that the Government of The Bahamas, including Cabinet and the Prime Minister’s office, could and should move forward with an immediate ban or moratorium on offshore oil drilling by way of declared ministerial policy within current administrative powers. However, the best and most permanent way to establish such a ban or moratorium would be to back it up with a full and permanent legislative ban by act of Parliament. Doing so would not only be in the best interest of Bahamians and their treasured natural environment, but would send a message to the World, to help other nations move as rapidly as possible away from fossil fuels and toward a sustainable energy future. If successful, this global achievement would provide additional benefits to The Bahamas in terms of forestalled impacts of climate change that threaten long-term impacts to the local Bahamian economy, environment, food systems, land, security and well-being of all Bahamians.

The foregoing is a partial analysis of the available instruments for accomplishing protection of lands waters and communities in The Bahamas from oil drilling. Our Islands Our Future looks forward to working with the current (and future) administration(s), and members of Parliament to provide additional analysis and support to accomplish these goals.

*Disclaimer: Our Islands Our Future and its associated organisations, offer this document to aid the discussion of a pathway towards a ban on oil drilling in The Bahamas. The analysis presented here is a portion of information that was reviewed and it has been edited for brevity in order to better communicate a compelling path forward. The coalition looks forward to engaging with citizens, government officials and ministers of parliament on any questions or additional research, or citations that may be requested. This does not constitute legal advice for the Government of The Bahamas or anyone else.