

STRENGTHENING THE ECONOMY WITH CRITICAL UN-
TAPPED RESOURCES TO EXPAND AMERICAN ENERGY
ACT

NOVEMBER 2, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4239]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4239) to distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act” or the “SECURE American Energy Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is the following:

Sec. 1. Short title; table of contents.

TITLE I—OFFSHORE

Sec. 101. Short title.

Sec. 102. Disposition of revenues from oil and gas leasing on the outer Continental Shelf to producing States.

Sec. 103. Limitations on the amount of distributed qualified outer Continental Shelf revenues under the Gulf of Mexico Energy Security Act of 2006.

- Sec. 104. Limitation of authority of the President to withdraw areas of the outer Continental Shelf from oil and gas leasing.
- Sec. 105. Modification to the outer Continental Shelf leasing program.
- Sec. 106. Inspection fee collection.
- Sec. 107. Arctic rule shall have no force or effect.
- Sec. 108. Application of outer Continental Shelf Lands Act with respect to territories of the United States.
- Sec. 109. Wind lease sales for the outer Continental Shelf.
- Sec. 110. Reducing permitting delays for taking of marine mammals.
- Sec. 111. Effect.

TITLE II—ONSHORE

- Sec. 201. Short title.
- Sec. 202. Cooperative federalism in oil and gas permitting on available Federal land.
- Sec. 203. Conveyance to certain States of property interest in State share of royalties and other payments.
- Sec. 204. Permitting on non-Federal surface estate.
- Sec. 205. State and Tribal authority for hydraulic fracturing regulation.
- Sec. 206. Review of Integrated Activity Plan for the National Petroleum Reserve in Alaska.
- Sec. 207. Protested lease sales.
- Sec. 208. Clarification regarding liability under Migratory Bird Treaty Act.

TITLE I—OFFSHORE

SEC. 101. SHORT TITLE.

This title may be cited as the “Accessing Strategic Resources Offshore Act” or the “ASTRO” Act.

SEC. 102. DISPOSITION OF REVENUES FROM OIL AND GAS LEASING ON THE OUTER CONTINENTAL SHELF TO PRODUCING STATES.

Section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338) is amended—

- (1) by striking “All rentals” and inserting the following:
- “(a) IN GENERAL.—Except as otherwise provided in this section, all rentals”; and
- (2) by adding at the end the following:

“(b) DISTRIBUTION OF REVENUE TO PRODUCING STATES.—

“(1) DEFINITIONS.—In this subsection:

“(A) COVERED PLANNING AREA.—

“(i) IN GENERAL.—Subject to clause (ii), the term ‘covered planning area’ means each of the following planning areas, as such planning areas are generally depicted in the later of the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program, dated November 2016, or a subsequent oil and gas leasing program developed under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344):

“(I) Mid-Atlantic.

“(II) South Atlantic.

“(III) Any planning area located off the coast of Alaska.

“(ii) EXCLUSIONS.—The term ‘covered planning area’ does not include any area in the Atlantic—

“(I) north of the southernmost lateral seaward administrative boundary of the State of Maryland; or

“(II) south of the northernmost lateral seaward administrative boundary of the State of Florida.

“(B) PRODUCING STATE.—The term ‘producing State’ means each of the following States:

“(i) Virginia.

“(ii) North Carolina.

“(iii) South Carolina.

“(iv) Georgia.

“(v) Alaska.

“(C) QUALIFIED REVENUES.—

“(i) IN GENERAL.—The term ‘qualified revenues’ means revenues derived from rentals, royalties, bonus bids, and other sums due and payable to the United States under oil and gas leases entered into on or after the date of the enactment of this Act for an area in a covered planning area.

“(ii) EXCLUSIONS.—The term ‘qualified revenues’ does not include—

“(I) revenues from the forfeiture of a bond or other surety securing obligations other than royalties, civil penalties, or royalties taken by the Secretary in-kind and not sold;

“(II) revenues generated from leases subject to section 8(g); and

“(III) the portion of rental revenues in excess of those that would have been collected at the rental rates in effect before August 5, 1993.

“(2) DEPOSIT OF QUALIFIED REVENUES.—

“(A) PHASE I.—With respect to qualified revenues under leases awarded under the first leasing program approved under section 18(a) that takes effect after the date of the enactment of this section, the Secretary of the Treasury shall deposit or allocate, as applicable—

“(i) 87.5 percent into the general fund of the Treasury; and

“(ii) 12.5 percent to States in accordance with paragraph (3).

“(B) PHASE II.—With respect to qualified revenues under leases awarded under the second leasing program approved under section 18(a) that takes effect after the date of the enactment of this section, the Secretary of the Treasury shall deposit or allocate, as applicable—

“(i) 75 percent into the general fund of the Treasury; and

“(ii) 25 percent to States in accordance with paragraph (3).

“(C) PHASE III.—With respect to qualified revenues under leases awarded under the third leasing program approved under section 18(a) that takes effect after the date of the enactment of this section and under any such leasing program subsequent to such third leasing program, the Secretary of the Treasury shall deposit or allocate, as applicable—

“(i) 50 percent into the general fund of the Treasury; and

“(ii) 50 percent into a special account in the Treasury from which the Secretary of the Treasury shall disburse—

“(I) 75 percent to States in accordance with paragraph (3);

“(II) 12.5 percent to the Secretary of Transportation for energy infrastructure development in coastal ports; and

“(III) 12.5 percent to the Secretary of the Interior for units of the National Park System.

“(3) ALLOCATION TO PRODUCING STATES.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Secretary of the Treasury shall allocate the qualified revenues distributed to States under paragraph (2) to each producing State in an amount based on a formula established by the Secretary of the Interior, by regulation, that—

“(i) is inversely proportional to the respective distances between—

“(I) the point on the coastline of the producing State that is closest to the geographical center of the applicable leased tract; and

“(II) the geographical center of that leased tract;

“(ii) does not allocate qualified revenues to any producing State that is further than 200 nautical miles from the leased tract; and

“(iii) allocates not less than 10 percent of qualified revenues to each producing State that is 200 or fewer nautical miles from the leased tract.

“(B) PAYMENTS TO COASTAL POLITICAL SUBDIVISIONS.—

“(i) IN GENERAL.—The Secretary of the Treasury shall pay 20 percent of the allocable share of each producing State determined under this paragraph to the coastal political subdivisions of the producing State.

“(ii) ALLOCATION.—The amount paid by the Secretary of the Treasury to coastal political subdivisions shall be allocated to each coastal political subdivision in accordance with subparagraphs (B) and (E) of section 31(b)(4).

“(iii) DEFINITION OF COASTAL POLITICAL SUBDIVISION.—In this subparagraph, the term ‘coastal political subdivision’ means—

“(I) with respect to a contiguous coastal State, a political subdivision of such State, any part of which is—

“(aa) within the coastal zone of the State (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)); and

“(bb) not more than 200 nautical miles from the geographic center of any leased tract; and

“(II) with respect to a noncontiguous coastal State—

“(aa) a county-equivalent subdivision of the State for which—

“(AA) all or part lies within the coastal zone of the State (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)); and

“(BB) the closest coastal point is not more than 200 nautical miles from the geographical center of any leased tract on the outer Continental Shelf; or

“(bb) a municipal subdivision of the State for which—

“(AA) the closest point is more than 200 nautical miles from the geographical center of a leased tract on the outer Continental Shelf; and

“(BB) the State has determined to be a significant staging area for oil and gas servicing, supply vessels, operations, suppliers, or workers.

“(4) ADMINISTRATION.—Amounts made available under paragraph (2)(B) shall—

“(A) be made available, without further appropriation, in accordance with this subsection;

“(B) remain available until expended;

“(C) be in addition to any amounts appropriated under—

“(i) chapter 2003 of title 54, United States Code;

“(ii) any other provision of this Act; and

“(iii) any other provision of law; and

“(D) be made available during the fiscal year immediately following the fiscal year in which such amounts were received.”.

SEC. 103. LIMITATIONS ON THE AMOUNT OF DISTRIBUTED QUALIFIED OUTER CONTINENTAL SHELF REVENUES UNDER THE GULF OF MEXICO ENERGY SECURITY ACT OF 2006.

Section 105(f)(1) of the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. 1331 note) is amended to read as follows:

“(1) IN GENERAL.—The total amount of qualified outer Continental Shelf revenues described in section 102(9)(A)(ii) that are made available under subsection (a)(2) shall remain available until expended and shall not exceed—

“(A) for each of fiscal years 2019 through 2028, \$500,000,000; and

“(B) for each of fiscal years 2029 through 2059, \$649,800,000.”.

SEC. 104. LIMITATION OF AUTHORITY OF THE PRESIDENT TO WITHDRAW AREAS OF THE OUTER CONTINENTAL SHELF FROM OIL AND GAS LEASING.

(a) LIMITATION ON WITHDRAWAL FROM DISPOSITION OF LANDS ON THE OUTER CONTINENTAL SHELF.—Section 12 of the Outer Continental Shelf Lands Act (43 U.S.C. 1341) is amended by amending subsection (a) to read as follows:

“(a) LIMITATION ON WITHDRAWAL.—

“(1) IN GENERAL.—Except as otherwise provided in this section, no lands of the outer Continental Shelf may be withdrawn from disposition except by an Act of Congress.

“(2) NATIONAL MARINE SANCTUARIES.—The President may withdraw from disposition any of the unleased lands of the outer Continental Shelf located in a national marine sanctuary designated in accordance with the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or otherwise by statute.

“(3) EXISTING WITHDRAWALS.—

“(A) IN GENERAL.—Except for the withdrawals listed in subparagraph (B), any withdrawal from disposition of lands on the outer Continental Shelf before the date of the enactment of this subsection shall have no force or effect.

“(B) EXCEPTIONS.—Subparagraph (A) shall not apply to the following withdrawals:

“(i) Any withdrawal in a national marine sanctuary designated in accordance with the National Marine Sanctuaries Act.

“(ii) Any withdrawal in a national monument declared under section 320301 of title 54, United States Code, or the Act of June 8, 1906 (ch. 3060; 34 Stat. 225).

“(iii) Any withdrawal in the North Aleutian Basin Planning Area, including Bristol Bay.”.

(b) TERMINATION OF AUTHORITY TO ESTABLISH MARINE NATIONAL MONUMENTS.—Section 320301 of title 54, United States Code, is amended by adding at the end the following:

“(e) LIMITATION ON MARINE NATIONAL MONUMENTS.—

“(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the President may not declare or reserve any ocean waters (as such term is defined in section 3 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1402)) or lands beneath ocean waters as a national monument.

“(2) MARINE NATIONAL MONUMENTS DESIGNATED BEFORE THE DATE OF THE ENACTMENT OF THIS SUBSECTION.—This subsection shall not affect any national monument designated by the President before the date of the enactment of this Act.”.

SEC. 105. MODIFICATION TO THE OUTER CONTINENTAL SHELF LEASING PROGRAM.

Section 18(e) of the Outer Continental Shelf Lands Act (43 U.S.C. 1344(e)) is amended by adding at the end the following: “The Secretary shall include in any such revised leasing program each unexecuted lease sale that was included in the most recent leasing program and the Secretary shall execute each such lease sale as close as practicable to the time specified in the most recent leasing program. Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) shall be deemed to have been satisfied with respect to the execution of such unexecuted lease sales if the Secretary, in the Secretary’s sole discretion, determines that such section was satisfied with respect to such unexecuted lease sales for the most recent leasing program.”.

SEC. 106. INSPECTION FEE COLLECTION.

Section 22 of the Outer Continental Shelf Lands Act (43 U.S.C. 1348) is amended by adding at the end the following:

“(g) INSPECTION FEES.—

“(1) ESTABLISHMENT.—The Secretary of the Interior shall collect from the operators of facilities subject to inspection under subsection (c) non-refundable fees for such inspections—

“(A) at an aggregate level equal to the amount necessary to offset the annual expenses of inspections of outer Continental Shelf facilities (including mobile offshore drilling units) by the Secretary of the Interior; and

“(B) using a schedule that reflects the differences in complexity among the classes of facilities to be inspected.

“(2) OCEAN ENERGY SAFETY FUND.—There is established in the Treasury a fund, to be known as the ‘Ocean Energy Safety Fund’ (referred to in this subsection as the ‘Fund’), into which shall be deposited all amounts collected as fees under paragraph (1) and which shall be available as provided under paragraph (3).

“(3) AVAILABILITY OF FEES.—

“(A) IN GENERAL.—Notwithstanding section 3302 of title 31, United States Code, all amounts deposited in the Fund—

“(i) shall be credited as offsetting collections;

“(ii) shall be available for expenditure for purposes of carrying out inspections of outer Continental Shelf facilities (including mobile offshore drilling units) and the administration of the inspection program under this section;

“(iii) shall be available only to the extent provided for in advance in an appropriations Act; and

“(iv) shall remain available until expended.

“(B) USE FOR FIELD OFFICES.—Not less than 75 percent of amounts in the Fund may be appropriated for use only for the respective Department of the Interior field offices where the amounts were originally assessed as fees.

“(4) INITIAL FEES.—Fees shall be established under this subsection for the fiscal year in which this subsection takes effect and the subsequent 10 years, and shall not be raised, except as determined by the Secretary to be appropriate as an adjustment equal to the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the fee was determined or last adjusted.

“(5) ANNUAL FEES.—Annual fees shall be collected under this subsection for facilities that are above the waterline, excluding drilling rigs, and are in place at the start of the fiscal year. Fees for fiscal year 2019 shall be—

“(A) \$10,500 for facilities with no wells, but with processing equipment or gathering lines;

“(B) \$17,000 for facilities with 1 to 10 wells, with any combination of active or inactive wells; and

“(C) \$31,500 for facilities with more than 10 wells, with any combination of active or inactive wells.

“(6) FEES FOR DRILLING RIGS.—Fees shall be collected under this subsection for drilling rigs on a per inspection basis. Fees for fiscal year 2019 shall be—

“(A) \$30,500 per inspection for rigs operating in water depths of 1,000 feet or more; and

“(B) \$16,700 per inspection for rigs operating in water depths of less than 1,000 feet.

“(7) BILLING.—The Secretary shall bill designated operators under paragraph (5) annually, with payment required within 30 days of billing. The Secretary shall bill designated operators under paragraph (6) within 30 days of the end

of the month in which the inspection occurred, with payment required within 30 days after billing.

“(8) ANNUAL REPORTS.—

“(A) IN GENERAL.—Not later than 60 days after the end of each fiscal year beginning with fiscal year 2019 and ending with fiscal year 2029, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report on the operation of the Fund during the fiscal year.

“(B) CONTENTS.—Each report shall include, for the fiscal year covered by the report, the following:

“(i) A statement of the amounts deposited into the Fund.

“(ii) A description of the expenditures made from the Fund for the fiscal year, including the purpose of the expenditures and the additional hiring of personnel.

“(iii) A statement of the balance remaining in the Fund at the end of the fiscal year.

“(iv) An accounting of pace of permit approvals.

“(v) If fee increases are proposed, a proper accounting of the potential adverse economic impacts such fee increases will have on offshore economic activity and overall production.

“(vi) Recommendations to increase the efficacy and efficiency of offshore inspections.

“(vii) Any corrective actions levied upon offshore inspectors as a result of any form of misconduct.”.

SEC. 107. ARCTIC RULE SHALL HAVE NO FORCE OR EFFECT.

The rule entitled “Oil and Gas and Sulfur Operations on the Outer Continental Shelf – Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf” and published in the Federal Register on July 15, 2016 (81 Fed. Reg. 46478), shall have no force or effect.

SEC. 108. APPLICATION OF OUTER CONTINENTAL SHELF LANDS ACT WITH RESPECT TO TERRITORIES OF THE UNITED STATES.

(a) IN GENERAL.—Section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331) is amended—

(1) in paragraph (a), by inserting after “control” the following: “or lying within the exclusive economic zone of the United States”;

(2) in paragraph (p), by striking “and” after the semicolon at the end;

(3) in paragraph (q), by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following:

“(r) The term ‘State’ includes each territory of the United States.”.

(b) EXCLUSIONS.—

(1) Section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333) is amended by adding at the end the following:

“(4) This section shall not apply to the territories and possessions of the United States.”.

(2) Section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended by adding at the end the following:

“(i) This section shall not apply to the scheduling of lease sales in the outer Continental Shelf adjacent to the territories and possessions of the United States.”.

(c) EXPLORATION LICENSES AND LEASES.—Section 8(k) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is amended by adding at the end the following:

“(3) EXPLORATION LICENSES AND LEASES ON OUTER CONTINENTAL SHELF ADJACENT TO TERRITORIES AND POSSESSIONS.—

“(A) IN GENERAL.—The Secretary is authorized to grant to any qualified applicant an exploration license which will provide the exclusive right to explore for minerals, other than oil, gas, and sulphur, in an area lying within the United States exclusive economic zone and the outer Continental Shelf adjacent to any territory or possession of the United States.

“(B) APPLICATION.—Subsection (a) shall not apply to any area conveyed by Congress to a territorial government for administration.

“(C) EXPLORATION LICENSE DURATION.—Exploration licenses granted under this paragraph will be issued for a period pursuant to regulations prescribed by the Secretary.

“(D) LEASE.—Upon showing to the satisfaction of the Secretary that valuable mineral deposits have been discovered by the licensee within the area described by the exploration license of the licensee, the licensee will be entitled to a lease for any or all of that area at a royalty rate established by regulation and lease terms.

“(E) LEASE DURATION.—Leases under this section will be issued for a period established by regulation with a preferential right in the lessee to renew.”.

SEC. 109. WIND LEASE SALES FOR THE OUTER CONTINENTAL SHELF.

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end the following:

“SEC. 33. WIND LEASE SALES FOR THE OUTER CONTINENTAL SHELF.

“(a) AUTHORIZATION.—The Secretary may conduct wind lease sales for the outer Continental Shelf.

“(b) WIND LEASE SALE PROCEDURE.—Any wind lease sale conducted under this section shall be considered a lease under section 8(p).

“(c) WIND LEASE SALE OFF COAST OF CALIFORNIA.—The Secretary, in consultation with the Secretary of Defense, shall offer a wind lease sale for the outer Continental Shelf off the coast of California as soon as practicable, but not later than one year after the date of enactment of this section.

“(d) WIND LEASE SALES OFF COAST OF PUERTO RICO, VIRGIN ISLANDS OF THE UNITED STATES, GUAM, AMERICAN SAMOA, AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—

“(1) STUDY ON FEASIBILITY OF CONDUCTING WIND LEASE SALES OFF COAST OF PUERTO RICO, VIRGIN ISLANDS OF THE UNITED STATES, GUAM, AMERICAN SAMOA, AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—

“(A) STUDY.—The Secretary shall conduct a study on the feasibility, including the long term economic feasibility, of conducting wind lease sales for the outer Continental Shelf off the coast of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(B) SUBMISSION OF RESULTS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall submit to Congress the results of the study conducted under subparagraph (A).

“(2) WIND LEASE SALES CONDITIONAL UPON RESULTS OF STUDY.—

“(A) WIND LEASE SALE OFF COAST OF PUERTO RICO.—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of Puerto Rico is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of Puerto Rico as soon as practicable, but not later than one year after the date of the enactment of this section.

“(B) WIND LEASE SALE OFF COAST OF VIRGIN ISLANDS OF THE UNITED STATES.—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of the Virgin Islands of the United States is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of the Virgin Islands of the United States as soon as practicable, but not later than one year after the date of the enactment of this section.

“(C) WIND LEASE SALE OFF COAST OF GUAM.—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of Guam is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of Guam as soon as practicable, but not later than one year after the date of the enactment of this section.

“(D) WIND LEASE SALE OFF COAST OF AMERICAN SAMOA.—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of American Samoa is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of American Samoa as soon as practicable, but not later than one year after the date of the enactment of this section.

“(E) WIND LEASE SALE OFF COAST OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of the Commonwealth of the Northern Mariana Islands is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of the Commonwealth of the Northern Mariana Islands as soon as practicable, but not later than one year after the date of the enactment of this section.

“(e) WIND LEASE SALE OFF COAST OF HAWAII.—

“(1) STUDY ON FEASIBILITY OF CONDUCTING WIND LEASE SALES OFF COAST OF THE STATE OF HAWAII.—

“(A) STUDY.—The Secretary, in consultation with the Secretary of Defense, shall conduct a study on the feasibility of conducting wind lease sales for the outer Continental Shelf off the coast of the State of Hawaii.

“(B) SUBMISSION OF RESULTS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall submit to Congress the results of the study conducted under subparagraph (A).

“(2) WIND LEASE SALES CONDITIONAL UPON RESULTS OF STUDY.—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of the State of Hawaii is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of the State of Hawaii as soon as practicable, but not later than one year after the date of the enactment of this section.”.

SEC. 110. REDUCING PERMITTING DELAYS FOR TAKING OF MARINE MAMMALS.

(a) ADDRESSING PERMITS FOR TAKING OF MARINE MAMMALS.—Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)(D)) is amended as follows:

(1) In clause (i)—

(A) by striking “citizens of the United States” and inserting “persons”;

(B) by striking “within a specific geographic region”;

(C) by striking “of small numbers”;

(D) by striking “such citizens” and inserting “such persons”; and

(E) by striking “within that region”.

(2) In clause (ii)—

(A) in subclause (I), by striking “, and other means of effecting the least practicable impact on such species or stock and its habitat”;

(B) in subclause (III), by striking “requirements pertaining to the monitoring and reporting of such taking by harassment, including” and inserting “efficient and practical requirements pertaining to the monitoring of such taking by harassment while the activity is being conducted and the reporting of such taking, including, as the Secretary determines necessary,”; and

(C) by adding at the end the following:

“Any condition imposed pursuant to subclause (I), (II), or (III) may not result in more than a minor change to the specified activity and may not alter the basic design, location, scope, duration, or timing of the specified activity.”.

(3) In clause (iii), by striking “receiving an application under this subparagraph” and inserting “an application is accepted or required to be considered complete under subclause (I)(aa), (II)(aa), or (IV) of clause (viii), as applicable,”.

(4) In clause (vi), by striking “a determination of ‘least practicable adverse impact on such species or stock’ under clause (i)(I)” and inserting “conditions imposed under subclause (I), (II), or (III) of clause (ii)”.

(5) By adding at the end the following:

“(viii)(I) The Secretary shall—

“(aa) accept as complete a written request for authorization under this subparagraph for incidental taking described in clause (i), by not later than 45 days after the date of submission of the request; or

“(bb) provide to the requester, by not later than 15 days after the date of submission of the request, a written notice describing any additional information required to complete the request.

“(II) If the Secretary provides notice under subclause (I)(bb), the Secretary shall, by not later than 30 days after the date of submission of the additional information described in the notice—

“(aa) accept the written request for authorization under this subparagraph for incidental taking described in clause (i); or

“(bb) deny the request and provide the requester a written explanation of the reasons for the denial.

“(III) The Secretary may not under this subparagraph make a second request for information, request that the requester withdraw and resubmit the request, or otherwise delay a decision on the request.

“(IV) If the Secretary fails to respond to a request for authorization under this subparagraph in the manner provided in subclause (I) or (II), the request shall be considered to be complete.

“(ix)(I) At least 90 days before the date of the expiration of any authorization issued under this subparagraph, the holder of such authorization may apply for a one-year extension of such authorization. The Secretary shall grant such extension within 14 days after the date of such request on the same terms and without further review if there has been no substantial change in the activity carried out under such authorization nor in the status of the marine mammal

species or stock, as applicable, as reported in the final annual stock assessment reports for such species or stock.

“(II) In subclause (I) the term ‘substantial change’ means a change that prevents the Secretary from making the required findings to issue an authorization under clause (i) with respect to such species or stock.

“(III) The Secretary shall notify the applicant of such substantial changes with specificity and in writing within 14 days after the applicant’s submittal of the extension request.

“(x) If the Secretary fails to make the required findings and, as appropriate, issue the authorization within 120 days after the application is accepted or required to be considered complete under subclause (I)(aa), (II)(aa), or (III) of clause (viii), as applicable, the authorization is deemed to have been issued on the terms stated in the application and without further process or restrictions under this Act.”.

(b) REMOVING DUPLICATIONS.—Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(5)(D)), as amended by subsection (a), is further amended by adding at the end the following:

“(xi) Any taking of a marine mammal in compliance with an authorization under this subparagraph is exempt from the prohibition on taking in section 9 of the Endangered Species Act of 1973 (16 U.S.C. 1538). Any Federal agency authorizing, funding, or carrying out an action that results in such taking, and any agency action authorizing such taking, is exempt from the requirement to consult regarding potential impacts to marine mammal species or designated critical habitat under section 7(a)(2) of such Act (16 U.S.C. 1536(a)(2)).”.

(c) TRANSFER OF CERTAIN RESPONSIBILITIES TO THE SECRETARY OF THE INTERIOR.—Section 3(12) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(12)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”; and

(2) by adding at the end the following:

“(C) In sections 101(a)(3), 101(a)(5), 103, and 104 (16 U.S.C. 1371(a)(3), 1371(a)(5), 1373, and 1374), for activities associated with operations authorized under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), the term ‘Secretary’ means the Secretary of the Interior with respect to all marine mammals.”.

SEC. 111. EFFECT.

Nothing in this Act, with respect to the State of Florida, shall be construed to modify—

(1) the moratorium imposed by section 104 of the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. 1331 note); or

(2) the 2017–2022 leasing program prepared under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344).

TITLE II—ONSHORE

SEC. 201. SHORT TITLE.

This title may be cited as the “Opportunities for the Nation and States to Harness Onshore Resources for Energy Act” or the “ONSHORE Act”.

SEC. 202. COOPERATIVE FEDERALISM IN OIL AND GAS PERMITTING ON AVAILABLE FEDERAL LAND.

(a) IN GENERAL.—The Mineral Leasing Act (30 U.S.C. 181 et seq.) is amended—

(1) by redesignating section 44 as section 47; and

(2) by adding after section 43 the following new section:

“SEC. 44. COOPERATIVE FEDERALISM IN OIL AND GAS PERMITTING ON AVAILABLE FEDERAL LAND.

“(a) AUTHORIZATIONS.—

“(1) IN GENERAL.—Upon receipt of an application under subsection (b), the Secretary may delegate to a State exclusive authority—

“(A) to issue an APD on available Federal land; or

“(B) to approve drilling plans on available Federal land.

“(2) SUNDRY NOTICES.—Any authorization under paragraph (1) may, upon the request of the State, include authority to issue sundry notices.

“(3) INSPECTION AND ENFORCEMENT.—Any authorization under paragraph (1) may, upon the request of the State, include authorization to inspect and enforce an APD or drilling plan, as applicable. An authorization under paragraph (1)(A) shall not affect the ability of the Secretary to collect inspection fees under sec-

tion 108(d) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1718(d)).

“(b) STATE APPLICATION PROCESS.—

“(1) SUBMISSION OF APPLICATION.—A State may submit an application under subparagraph (A) or (B) of subsection (a)(1) to the Secretary at such time and in such manner as the Secretary may require.

“(2) CONTENT OF APPLICATION.—An application submitted under this subsection shall include—

“(A) a description of the State program that the State proposes to administer under State law; and

“(B) a statement from the Governor or attorney general of such State that the laws of such State provide adequate authority to carry out the State program.

“(3) DEADLINE FOR APPROVAL OR DISAPPROVAL.—Not later than 180 days after the date of receipt of an application under this subsection, the Secretary shall approve or disapprove such application.

“(4) CRITERIA FOR APPROVAL.—The Secretary may approve an application received under this subsection only if the Secretary has—

“(A) determined that the State applicant would be at least as effective as the Secretary in issuing APDs or in approving drilling plans, as applicable;

“(B) determined that the State program of the State applicant—

“(i) complies with this Act; and

“(ii) provides for the termination or modification of an issued APD or approved drilling plan, as applicable, for cause, including for—

“(I) the violation of any condition of the issued APD or approved drilling plan;

“(II) obtaining the issued APD or approved drilling plan by misrepresentation; or

“(III) failure to fully disclose in the application all relevant facts;

“(C) determined that the State applicant has sufficient administrative and technical personnel and sufficient funding to carry out the State program;

“(D) provided notice to the public, solicited public comment, and held a public hearing within the State;

“(E) determined that approval of the application would not result in decreased royalty payments owed to the United States under section 35(a), except as provided in subsection (e) of that section; and

“(F) in the case of a State applicant seeking authority under subsection (a)(3) to inspect and enforce APDs or drilling plans, as applicable, entered into a memorandum of understanding with a State applicant that delineates the Federal and State responsibilities with respect to such inspection and enforcement.

“(5) DISAPPROVAL.—If the Secretary disapproves an application submitted under this subsection, then the Secretary shall—

“(A) notify, in writing, the State applicant of the reason for the disapproval and any revisions or modifications necessary to obtain approval; and

“(B) provide any additional information, data, or analysis upon which the disapproval is based.

“(6) RESUBMITTAL OF APPLICATION.—A State may resubmit an application under this subsection at any time.

“(7) STATE MEMORANDUM OF UNDERSTANDING.—Before a State submits an application under this subsection, the Secretary may, at the request of a State, enter into a memorandum of understanding with the State regarding the proposed State program—

“(A) to delineate the Federal and State responsibilities for oil and gas regulations;

“(B) to provide technical assistance; and

“(C) to share best management practices.

“(c) ADMINISTRATIVE FEES FOR APDs.—

“(1) IN GENERAL.—A State for which authority has been delegated under subsection (a)(1)(A) may collect a fee for each application for an APD that is submitted to the State.

“(2) NO COLLECTION OF FEE BY SECRETARY.—The Secretary may not collect a fee from the applicant or from the State for an application for an APD that is submitted to a State for which authority has been delegated under subsection (a)(1)(A).

“(3) FEE AMOUNT.—The fee collected under paragraph (1) shall be less than or equal to the amount of the fee collected by the Secretary under section

35(d)(2) from States for which authority has not been delegated under subsection (a)(1)(A).

“(4) USE.—A State shall use 100 percent of the fees collected under this subsection for the administration of the approved State program of the State.

“(d) VOLUNTARY TERMINATION OF AUTHORITY.—A State may voluntarily terminate any authority delegated to such State under subsection (a) upon providing written notice to the Secretary 60 days in advance. Upon expiration of such 60-day period, the Secretary shall resume any activities for which authority was delegated to the State under subsection (a).

“(e) APPEAL OF DENIAL OF APPLICATION FOR APD OR APPLICATION FOR APPROVAL OF DRILLING PLAN.—

“(1) IN GENERAL.—If a State for which the Secretary has delegated authority under subsection (a)(1) denies an application for an APD or an application for approval of a drilling plan, the applicant may appeal such decision to the Department of the Interior Office of Hearings and Appeals.

“(2) FEE ALLOWED.—The Secretary may charge the applicant a fee for the appeal referred to in paragraph (1).

“(f) FEDERAL ADMINISTRATION OF STATE PROGRAM.—

“(1) NOTIFICATION.—If the Secretary has reason to believe that a State is not administering or enforcing an approved State program, the Secretary shall notify the relevant State regulatory authority of any possible deficiencies.

“(2) STATE RESPONSE.—Not later than 30 days after the date on which a State receives notification of a possible deficiency under paragraph (1), the State shall—

“(A) take appropriate action to correct the possible deficiency; and

“(B) notify the Secretary of the action in writing.

“(3) DETERMINATION.—

“(A) IN GENERAL.—On expiration of the 30-day period referred to in paragraph (2), if the Secretary determines that a violation of all or any part of an approved State program has resulted from a failure of the State to administer or enforce the approved State program of the State or that the State has not demonstrated its capability and intent to administer or enforce such a program, the Secretary shall issue public notice of such a determination.

“(B) APPEAL.—A State may appeal the determination of the Secretary under subparagraph (A) in the applicable United States District Court. The Secretary may not resume activities under paragraph (4) pending the resolution of the appeal.

“(4) RESUMPTION BY SECRETARY.—If the Secretary has made a determination under paragraph (3), the Secretary shall resume any activities for which authority was delegated to the State during the period—

“(A) beginning on the date on which the Secretary issues the public notice under paragraph (3); and

“(B) ending on the date on which the Secretary determines that the State will administer or enforce, as applicable, the approved State program of the State.

“(5) STANDING.—States with approved regulatory programs shall have standing to sue the Secretary for any action taken under this subsection.

“(g) DEFINITIONS.—In this section:

“(1) AVAILABLE FEDERAL LAND.—The term ‘available Federal land’ means any Federal land that—

“(A) is located within the boundaries of a State;

“(B) is not held by the United States in trust for the benefit of a federally recognized Indian Tribe or a member of such an Indian Tribe;

“(C) is not a unit of the National Park System;

“(D) is not a unit of the National Wildlife Refuge System, except for the portion of such unit for which oil and gas drilling is allowed under law;

“(E) is not a congressionally approved wilderness area under the Wilderness Act (16 U.S.C. 1131 et seq.); and

“(F) has been identified as land available for lease or has been leased for the exploration, development, and production of oil and gas—

“(i) by the Bureau of Land Management under—

“(I) a resource management plan under the process provided for in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); or

“(II) an integrated activity plan with respect to the National Petroleum Reserve in Alaska; or

- “(ii) by the Forest Service under a National Forest management plan under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).
- “(2) DRILLING PLAN.—The term ‘drilling plan’ means a plan described under section 3162.3–1(e) of title 43, Code of Federal Regulations (or successor regulation).
- “(3) APD.—The term ‘APD’ means a permit—
 - “(A) that grants authority to drill for oil and gas; and
 - “(B) for which an application has been received that contains—
 - “(i) a drilling plan;
 - “(ii) a surface use plan of operations described under section 3162.3–1(f) of title 43, Code of Federal Regulations (or successor regulation);
 - “(iii) evidence of bond coverage; and
 - “(iv) such other information as may be required by applicable orders and notices.
- “(4) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.
- “(5) STATE.—The term ‘State’ means each of the several States.
- “(6) STATE APPLICANT.—The term ‘State applicant’ means a State that has submitted an application under subsection (b).
- “(7) STATE PROGRAM.—The term ‘State program’ means a program that provides for a State to—
 - “(A) issue APDs or approve drilling plans, as applicable, on available Federal land; and
 - “(B) impose sanctions for violations of State laws, regulations, or any condition of an issued APD or approved drilling plan, as applicable.
- “(8) SUNDRY NOTICE.—The term ‘sundry notice’ means a written request—
 - “(A) to perform work not covered under an APD or drilling plan; or
 - “(B) for a change to operations covered under an APD or drilling plan.”.
- (b) INSPECTION FEES.—Section 108 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1718) is amended by adding at the end the following:
 - “(d) INSPECTION FEES FOR CERTAIN STATES.—
 - “(1) IN GENERAL.—The Secretary shall conduct inspections of operations under each oil and gas lease. The Secretary shall collect annual nonrefundable inspection fees in the amount specified in paragraph (2), from each designated operator under each oil and gas lease on Federal or Indian land that is subject to inspection under subsection (b) and that is located in a State for which the Secretary has delegated authority under section 44(a)(1)(A) of the Mineral Leasing Act.
 - “(2) AMOUNT.—The amount of the fees collected under paragraph (1) shall be—
 - “(A) \$700 for each lease or unit or communitization agreement with no active or inactive wells, but with surface use, disturbance or reclamation;
 - “(B) \$1,225 for each lease or unit or communitization agreement with 1 to 10 wells, with any combination of active or inactive wells;
 - “(C) \$4,900 for each lease or unit or communitization agreement with 11 to 50 wells, with any combination of active or inactive wells; and
 - “(D) \$9,800 for each lease or unit or communitization agreement with more than 50 wells, with any combination of active or inactive wells.
 - “(3) ONSHORE ENERGY SAFETY FUND.—There is established in the Treasury a fund, to be known as the ‘Onshore Energy Safety Fund’ (referred to in this subsection as the ‘Fund’), into which shall be deposited all amounts collected as fees under paragraph (1) and which shall be available as provided under paragraph (4).
 - “(4) AVAILABILITY OF FEES.—Notwithstanding section 3302 of title 31, United States Code, all amounts deposited in the Fund—
 - “(A) shall be credited as offsetting collections;
 - “(B) shall be available for expenditure for purposes of carrying out inspections of onshore oil and gas operations in those States for which the Secretary has delegated authority under section 44(a)(1)(A) of the Mineral Leasing Act;
 - “(C) shall be available only to the extent provided for in advance in an appropriations Act; and
 - “(D) shall remain available until expended.
 - “(5) PAYMENT DUE DATE.—The Secretary shall require payment of any fee assessed under this subsection within 30 days after the Secretary provides notice of the assessment of the fee after the completion of an inspection.
 - “(6) PENALTY.—If a designated operator assessed a fee under this subsection fails to pay the full amount of the fee as prescribed in this subsection, the Secretary may, in addition to utilizing any other applicable enforcement authority,

assess civil penalties against the operator under section 109 in the same manner as if this section were a mineral leasing law.

“(7) NOTIFICATION TO STATE OF NONCOMPLIANCE.—If, on the basis of any inspection under subsection (b), the Secretary determines that an operator is in noncompliance with the requirements of mineral leasing laws and this chapter, the Secretary shall notify the State of such noncompliance immediately.”.

(c) EXISTING AUTHORITIES.—Section 390(a) of the Energy Policy Act of 2005 (42 U.S.C. 15942(a)) is amended—

- (1) by striking “Action by the Secretary” and inserting “The Secretary”;
- (2) by striking “with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of” and inserting “shall apply”; and
- (3) by striking “would apply if the activity” and inserting “for each action described in subsection (b) if the action”.

SEC. 203. CONVEYANCE TO CERTAIN STATES OF PROPERTY INTEREST IN STATE SHARE OF ROYALTIES AND OTHER PAYMENTS.

(a) IN GENERAL.—Section 35 of the Mineral Leasing Act (30 U.S.C. 191) is amended—

- (1) in the first sentence of subsection (a), by striking “shall be paid into the Treasury” and inserting “shall, except as provided in subsection (e), be paid into the Treasury”;
- (2) in subsection (c)(1), by inserting “and except as provided in subsection (e)” before “, any rentals”; and
- (3) by adding at the end the following:

“(e) CONVEYANCE TO CERTAIN STATES OF PROPERTY INTEREST IN STATE SHARE.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, on request of a State and in lieu of any payments to the State under subsection (a), the Secretary of the Interior shall convey to the State all right, title, and interest in and to the percentage specified in that subsection for that State that would otherwise be required to be paid into the Treasury under that subsection.

“(2) AMOUNT.—Notwithstanding any other provision of law, after a conveyance to a State under paragraph (1), any person shall pay directly to the State any amount owed by the person for which the right, title, and interest has been conveyed to the State under this subsection.

“(3) NOTICE.—The Secretary of the Interior shall promptly provide to each holder of a lease of public land to which subsection (a) applies that is located in a State to which right, title, and interest is conveyed under this subsection notice that—

“(A) the Secretary of the Interior has conveyed to the State all right, title, and interest in and to the amounts referred to in paragraph (1); and

“(B) the leaseholder is required to pay the amounts directly to the State.

“(4) REPORT.—A State that has received a conveyance under this subsection shall report monthly to the Office of Natural Resources Revenue of the Department of the Interior the amount paid to such State pursuant to this subsection.

“(5) APPLICATION WITH RESPECT TO FOGPMA.—With respect to the interest conveyed to a State under this subsection from sales, bonuses, royalties (including interest charges), and rentals collected under the Federal Oil and Gas Royalty Management Act of 1983 (30 U.S.C. 1701 et seq.), this subsection shall only apply with respect to States for which the Secretary has delegated any authority under section 44(a)(1).”.

(b) ADMINISTRATIVE COSTS.—Section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)) is amended by striking “In determining” and inserting “Except with respect to States for which the Secretary has delegated any authority under section 44(a)(1), in determining”.

(c) CONFORMING AMENDMENT.—Section 205(f) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735(f)) is amended by striking “All” in the seventh sentence and inserting “Subject to subsection (e) of section 35 of the Mineral Leasing Act (30 U.S.C. 191), all”.

SEC. 204. PERMITTING ON NON-FEDERAL SURFACE ESTATE.

The Mineral Leasing Act (30 U.S.C. 181 et seq.) is amended by inserting after section 44 (as added by section 202(a)(2)) the following:

“SEC. 45. PERMITTING ON NON-FEDERAL SURFACE ESTATE.

“(a) PERMITS NOT REQUIRED FOR CERTAIN ACTIVITIES ON NON-FEDERAL SURFACE ESTATE.—The following activities conducted on non-Federal surface estate shall not require a Bureau of Land Management drilling permit under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) or section 3164.1 of title 43, Code of Federal Regulations (or successor regulation) and shall not be con-

sidered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.):

“(1) Oil and gas operations for the exploration for or development or production of oil and gas in a lease or unit or communitization agreement in which the United States holds a mineral ownership interest of 50 percent or less.

“(2) Oil and gas operations that may have potential drainage impacts, as determined by the Bureau of Land Management, on oil and gas in which the United States holds a mineral ownership interest.

“(b) DOI NOTIFICATION.—The Secretary of the Interior shall provide to each State a map or list indicating Federal mineral ownership within that State.

“(c) STATE NOTIFICATION.—Each State that has issued an APD or approved a drilling plan that would impact or extract oil and gas owned by the United States shall notify the Secretary of the Interior within 7 days of issuing an APD.

“(d) ROYALTIES.—Nothing in this section shall affect the amount of royalties due to the United States under this Act from the production of oil and gas or alter the Secretary’s authority to conduct audits and collect civil penalties pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1711 et seq.).

“(e) APPLICATION.—This section shall only apply with respect to States for which the Secretary has delegated any authority under section 44(a)(1).”.

SEC. 205. STATE AND TRIBAL AUTHORITY FOR HYDRAULIC FRACTURING REGULATION.

The Mineral Leasing Act (30 U.S.C. 181 et seq.) is amended by inserting after section 45 (as added by section 204) the following:

“SEC. 46. STATE AND TRIBAL AUTHORITY FOR HYDRAULIC FRACTURING REGULATION.

“(a) IN GENERAL.—The Secretary of the Interior shall not enforce any Federal regulation, guidance, or permit requirement regarding hydraulic fracturing relating to oil, gas, or geothermal production activities on or under any land in any State that has regulations, guidance, or permit requirements for that activity.

“(b) STATE AUTHORITY.—The Secretary of the Interior shall defer to State regulations, guidance, and permit requirements for all activities regarding hydraulic fracturing relating to oil, gas, or geothermal production activities on Federal land.

“(c) TRANSPARENCY OF STATE REGULATIONS.—

“(1) IN GENERAL.—Each State shall submit to the Bureau of Land Management a copy of the regulations of such State that apply to hydraulic fracturing operations on Federal land, including those that require disclosure of chemicals used in hydraulic fracturing operations.

“(2) AVAILABILITY.—The Secretary of the Interior shall make available to the public on the website of the Secretary the regulations submitted under paragraph (1).

“(d) TRIBAL AUTHORITY ON TRUST LAND.—The Secretary of the Interior shall not enforce any Federal regulation, guidance, or permit requirement with respect to hydraulic fracturing on any land held in trust or restricted status for the benefit of a federally recognized Indian Tribe or a member of such an Indian Tribe, except with the express consent of the beneficiary on whose behalf such land is held in trust or restricted status.

“(e) HYDRAULIC FRACTURING DEFINED.—In this section the term ‘hydraulic fracturing’ means the process of creating small cracks, or fractures, in underground geological formations for well stimulation purposes of bringing hydrocarbons into the wellbore and to the surface for capture.”.

SEC. 206. REVIEW OF INTEGRATED ACTIVITY PLAN FOR THE NATIONAL PETROLEUM RESERVE IN ALASKA.

The Secretary of the Interior shall—

(1) conduct a review of the National Petroleum Reserve–Alaska Final Integrated Activity Plan/Environmental Impact Statement, for which notice of availability was published in the Federal Register on December 28, 2012 (77 Fed. Reg. 76515), to determine which lands within the National Petroleum Reserve in Alaska should be made available for oil and gas leasing; and

(2) make available the lands described in paragraph (1) for oil and gas leasing.

SEC. 207. PROTESTED LEASE SALES.

Section 17(b)(1)(A) of the Mineral Leasing Act (30 U.S.C. 226(b)(1)(A)) is amended by inserting “The Secretary shall resolve any protest to a lease sale within 60 days following such payment.” after “annual rental for the first lease year.”.

SEC. 208. CLARIFICATION REGARDING LIABILITY UNDER MIGRATORY BIRD TREATY ACT.

Section 6 of the Migratory Bird Treaty Act (16 U.S.C. 707) is amended by adding at the end the following:

“(e) This Act shall not be construed to prohibit any activity proscribed by section 2 of this Act that is accidental or incidental to the presence or operation of an otherwise lawful activity.”.

PURPOSE OF THE BILL

The purpose of H.R. 4239 is to distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available federal land.

BACKGROUND AND NEED FOR LEGISLATION

The Strengthening the Economy with Critical Untapped Resources to Expand (SECURE) American Energy Act seeks to optimize management of our nation’s energy resources by increasing access to and promoting the development of oil, gas, and wind energy. Title I, the Accessing Strategic Resources Offshore (ASTRO) Act, facilitates access to oil and gas resources across America’s Outer Continental Shelf (OCS) lands. This bill establishes a revenue sharing framework to distribute revenues collected from oil and gas leasing on the OCS to certain coastal States. The bill increases the amount that can be distributed to qualifying States under the Gulf of Mexico Energy Security Act of 2006 (GOMESA, Public Law 109–432, Division C, Title I; 43 U.S.C. 1331 note), and limits the President’s authority to withdraw certain areas of the OCS from oil and gas leasing. Finally, this bill increases regulatory certainty by requiring the execution of all approved oil and gas lease sales, should the Secretary of the Interior call for a revised national lease sale program. Furthermore, this bill strategizes offshore wind lease sales by requiring feasibility and compatibility studies, and streamlines the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) permitting process. Title II, the Opportunities for the Nation and States to Harness Onshore Resources for Energy (ONSHORE) Act, enables States with established permitting and regulatory programs to manage certain federal permitting and regulatory responsibilities for oil and gas development on federal lands within their borders. This bill reaffirms the States’ authority to manage oil and gas development on State and private land and requires the Secretary to defer to the States regarding the regulation of hydraulic fracturing practices.

TITLE I—ASTRO ACT

Our nation is uniquely positioned to safely develop diverse energy sources, and is capable of satisfying domestic and global demand. Impeding such progress and certainty is a politicized series of laws and regulations. The Bureau of Ocean Energy Management (BOEM) estimates that 89.9 billion barrels of oil, and 327.5 trillion cubic feet of gas are contained, but undiscovered, on the OCS.¹ However, the vast majority, 94%, of the OCS is excluded from oil

¹Unlocking America’s Offshore Energy Opportunity, (Oct. 6, 2017), <http://www.americasoffshoreenergy.com/#/?section=unlocking-americasoffshore-energy-opportunity>.

and gas leasing under the 2017–2022 OCS leasing plan and Presidential withdrawals.²

Currently, the Atlantic, Pacific, and nearly all of the Alaskan OCS lands are off limits to development. Offshore operators require long lead times to plan projects, so restricting lease sales today directly reduces production in decades to come. Department of the Interior Secretary Ryan Zinke recognized the extremely harmful effects of such a restricted leasing schedule, and called for the development of a new leasing schedule to more carefully consider all potential leasing areas on the OCS.³

The exclusion of these resources comes at the expense of the taxpayer and disadvantages our national and local economies. Oil and gas revenues provide the second largest source of revenue to the U.S. Treasury, second only to federal income tax.⁴ In FY 2016, OCS revenues totaled \$2.8 billion, making up nearly half of all oil and gas revenues for the federal government.⁵ Certain States also receive a share of OCS revenues, supplementing their budgets and providing support to coastal communities.

GOMESA established a revenue distribution structure for the Gulf States of Alabama, Louisiana, Mississippi, and Texas. The shared revenues compensate these States for the large-scale infrastructure required by OCS production, and to mitigate the environmental risks presented by offshore development.

Facilitating access to exploration and production in promising OCS areas will strengthen national, State, and local economies. In addition, opening the OCS mid-Atlantic, South Atlantic and Alaska planning areas to oil and gas development would continue to strengthen the nation's position as a global energy leader. A recent study found that development of the resource potential in these areas and others would create 840,000 new jobs and would generate over \$200 billion in cumulative revenues for the nation.⁶

Allocation of revenues derived from oil and gas leasing on the Outer Continental Shelf

The federal government is charged with managing and realizing fair return for development of over 1.7 billion acres of offshore lands.⁷ Until the passage of GOMESA, the federal government generally received all revenues generated from oil and gas development on the OCS. The Gulf of Mexico quickly became the leader in offshore production, and as the number of offshore wells grew, so did the associated infrastructure and environmental risks of drilling. Ports, pipelines, and refineries rapidly expanded along the Alabama, Louisiana, Mississippi, and Texas coasts to support OCS development. Gulf States successfully negotiated GOMESA, which established a revenue sharing scheme for qualifying Gulf States. Under GOMESA, States receive 37.5% of all qualifying OCS reve-

²Evaluating Federal Offshore Oil and Gas Development: Hearing before the House Committee on Natural Resources, 115th Cong. (July 12, 2017) (statement of Katharine MacGregor, Acting Assistant Secretary, Dep't of the Interior).

³THE DEPARTMENT OF THE INTERIOR, Sec. Order No. 3350 (2017).

⁴Will revenue sharing spur more offshore drilling?, Global Energy Institute, Platts McGraw-Hill <https://www.globalenergyinstitute.org/willrevenue-sharing-spur-more-offshore-drilling>.

⁵Statistics, Office of Natural Resources Revenue, <https://statistics.onrr.gov/ReportTool.aspx>.

⁶Untapped Potential, The American Petroleum Institute. <http://maps.api.org/offshore/>.

⁷Laura B. Comay, Five Year Program for Federal Offshore Oil and Gas Leasing: Status and Issues in Brief, (CRS R44692), (Congressional Research Service, Washington, DC), 3, March 31, 2017.

nues, with 20% of each State's share dedicated to "coastal political subdivisions."

As OCS production necessarily demands onshore infrastructure and requires States to assume environmental risks, a revenue sharing scheme should be in place for coastal States that will be directly affected by production on federal lands. In the ongoing debate about opening the Atlantic OCS to offshore production, many coastal governors and State lawmakers have made clear their support depends on the existence of a revenue sharing program that would equitably compensate their States.⁸ Virginia Governor Terry McAuliffe stated in a letter to BOEM that "... primary concern that must be satisfied in order for Virginia to be included in the leasing area is a revenue sharing agreement between participating Atlantic coasts and the federal government."⁹ One of the main provisions of this bill establishes revenue sharing for States in the Mid- and South Atlantic planning areas, including Virginia, in an attempt to fairly compensate the qualifying producing States, and to ensure disbursement certainty into the future.

Optimizing access to the Outer Continental Shelf

The federal offshore lease sale schedule is developed through an extensive process that narrows down lease locations within planning areas. BOEM weighs several factors, including geology, economics, operator and public interest, and environmental sensitivity when identifying lease sale areas. The Administration, at present, cannot add lease sales to an approved program, thereby limiting sales (and associated development and revenue) to planning decisions made up to seven years prior.

Withdrawals in December 2016 by President Obama compounded the lack of access and precluded offshore oil and gas production on millions of acres of OCS Atlantic and Alaska federal lands.¹⁰ This unilateral removal of 118.8 million acres from oil and gas development, created an immediate threat to national security and barred economic growth along these coasts. This withdrawal was predicated on Section 12(a) of the Outer Continental Shelf Lands Act, which authorizes the President to withdraw OCS lands from leasing consideration, but does not provide insight into a President's ability to undo such withdrawals.¹¹ A key provision of this bill would preclude a President from making such withdrawals, instead leaving this critical decision to Congress.

In addition to oil and gas, the OCS contains diversified renewable energy sources. Offshore wind has become the primary focus of renewable energy development, and can potentially provide over 4,000 gigawatts of energy to the mainland grid.¹² However, there exists considerable permitting and regulatory delays preventing this power from getting on line, and there are currently no constructed or approved wind farms in federal waters. For instance, BOEM has issued 13 commercial wind energy leases on the OCS, all of which are in the process of navigating the challenging and

⁸ *Supra* at 4.

⁹ Letter from Virginia Governor Terry McAuliffe to Kelly Hammerle, National Program Manager, BOEM, August 11, 2017, <http://governor.virginia.gov/media/9428/08162017-boem-letter.pdf>.

¹⁰ Representative David Brat (VA-7), H.R. 2157—OCEAN Act Summary.

¹¹ 43 U.S.C. 1331 et seq.

¹² U.S. Offshore Wind, American Wind Energy Association, Nov 3, 2017 (<https://www.awea.org/offshore-wind>).

duplicative series of environmental regulations and stakeholder engagements required for final construction approval.¹³ The nation's first offshore wind farm, the Block Island Wind Farm, located in State waters off Rhode Island, became operational at the end of 2016.¹⁴ As BOEM continues to lease federal offshore acreage for wind development, it is essential that its method be strategic and well informed.

TITLE II—THE ONSHORE ACT

The Bureau of Land Management (BLM) is responsible for managing the federal onshore mineral estate, which includes roughly 700 million acres of land held primarily by the BLM and U.S. Forest Service.¹⁵ BLM leases these lands to developers through quarterly lease sales (when parcels are available for lease)¹⁶ and issues the necessary federal permits to leaseholders required for oil and gas development. At the end of FY 2016, BLM managed a total of 40,143 onshore oil and gas leases covering only 27 million acres, the lowest number of leases since FY 1985.¹⁷

Onshore oil and gas program management under the BLM

In recent years, unnecessary permitting delays, costly regulatory requirements, and uncertainty in the leasing process have discouraged oil and gas developers from operating on federal land. While BLM manages a vast mineral estate of 700 million acres, only 113 million acres of onshore federal land are open and accessible for oil and gas development.¹⁸ In fact, 166 million acres are off limits or inaccessible to oil and gas development altogether.¹⁹ Duplicative environmental reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), along with frivolous protests on the parcels made available for leasing, have resulted in unnecessary delays in the leasing process and an overall decrease in the number of leased parcels. Since 2008, the number of acres of federal land leased for oil and gas production has decreased by over 40 percent.²⁰

Uncertainty associated with the issuance of required permits presents additional challenges to oil and gas producers seeking to develop federal land. For example, the BLM issued Applications for Permits to Drill (APD) in an average of 257 days in 2016.²¹ By contrast, State agencies can issue permits in just 30 days on average.²² While oil and gas production has increased in recent years

¹³ BOEM Fact Sheet, Renewable Energy on the Outer Continental Shelf, September 2017 (<https://www.boem.gov/BOEM-Overview-RenewableEnergy/>).

¹⁴ *Supra*, Note 12.

¹⁵ Bureau of Land Management. About the BLM Oil and Gas Program. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about> (Accessed October 10, 2017).

¹⁶ Bureau of Land Management. Oil and Gas Leasing Instructions. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing> (Accessed October 10, 2017).

¹⁷ Bureau of Land Management. Oil and Gas Statistics. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics> (Accessed October 10, 2017).

¹⁸ Marc Humphries. U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas. June 22, 2016. <http://www.crs.gov/reports/pdf/R42432>.

¹⁹ Marc Humphries. U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas. June 22, 2016. <http://www.crs.gov/reports/pdf/R42432>.

²⁰ Bureau of Land Management. Oil and Gas Statistics. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics> (Accessed October 10, 2017).

²¹ Bureau of Land Management. Oil and Gas Statistics. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics> (Accessed October 10, 2017).

²² Western Energy Alliance. Permitting. <https://www.westernenergyalliance.org/knowledge-center/land/onshore-development/permitting>.

overall, this growth has occurred largely on State and private lands.²³ Unnecessary leasing reductions coupled with lengthy and unpredictable permitting processes have discouraged producers from developing federal lands. Instead, they have opted to do business on State and private lands where higher royalty rates exist.²⁴

States rely on mineral revenues to fund their schools, universities, infrastructure projects, and a host of other necessary public programs and services.²⁵ The overly burdensome leasing, permitting, and regulatory processes facing oil and gas producers have resulted in lost revenue for the federal government and energy producing States. This means lost opportunities for economic development and job creation in communities across the country.

Delegation of authority to the States

The ONSHORE Act allows the Secretary of the Interior to delegate authority to the States for permitting and regulatory responsibilities for onshore oil and gas development on federal lands within their borders. The current one-size-fits-all federal regulatory scheme is burdensome for States and producers alike and fails to recognize the unique challenges in each State. States have extensive and sufficient regulatory frameworks for permitting oil and gas development that have been in place for decades.²⁶ Delegating certain functions currently performed by BLM to the States would ensure the responsible development of oil and gas resources while eliminating the uncertainty and significant costs associated with the federal regulatory process.

Enabling States to assume these functions for oil and gas development will result in greater certainty for producers and allow BLM to focus its limited resources on the agency's core mission of managing federal lands. These much-needed reforms will encourage oil and gas development on federal land and promote economic development and diversification in energy producing States across the West.

Administrative fees assessed on mineral revenues

The Mineral Leasing Act (30 U.S.C. 181 et seq.) provides for States to receive a 50 percent share of the revenues resulting from the leasing and production of onshore mineral resources on federal land within their borders.²⁷ These revenues include payments from rentals, bonuses, and royalties on various forms of energy production on federal public lands.²⁸ Specifically, revenues are generated by payments related to oil, gas, and coal leasing, as well as the

²³ Michael Ratner. 21st Century U.S. Energy Sources: A Primer (May 19, 2017). <http://www.crs.gov/reports/pdf/R44854>.

²⁴ Center for Western Priorities. A Fair Share: The Case for Updating Oil and Gas Royalties on Our Public Lands. Page 2. June 18, 2015. http://www.westernpriorities.org/wp-content/uploads/2015/06/Royalties-Report_update.pdf.

²⁵ The United States Extractive Industries Transparency Initiative. Explore Data, Montana. <https://useiti.doi.gov/explore/MT/#disbursements> (Accessed October 10, 2017).

²⁶ Western Energy Alliance. Comments on Bureau of Land Management Regulatory Reform, DOI-2017-0003-0003. August 10, 2017.

²⁷ 30 U.S.C. § 181. Alaska, which receives a higher percentage, is the only exception.

²⁸ Marc Humphries, Energy and Mineral Development on Federal Land (2015). <http://www.crs.gov/Reports/IF10127?source=search&guid=ab1ee1f40564437797071c178c8fa2ad&index=>.

leasing of certain minerals, including phosphates, sulfur, sodium, and potash.²⁹

Within the Department of the Interior (DOI), the Office of Natural Resources Revenue (ONRR) manages onshore and offshore federal and Indian mineral revenues associated with the leasing and production of oil, natural gas, solid minerals, and renewable energy resources. ONRR is responsible for the collection, verification, and disbursement of revenues according to the Mineral Leasing Act.³⁰ Once ONRR collects and verifies these revenues, the agency disperses the appropriate amounts to the States. While the law provides for mineral revenues to be shared evenly between the federal government and the States, DOI has assessed an administrative fee on mineral revenue collection since 2007 under Public Law 110–161. In 2014, the Mineral Leasing Act was amended to make this fee assessment authority permanent by Public Law 113–67. This two percent fee is used by DOI to cover the cost of collecting bonuses, rents, and royalties and dispersing revenues to the States. In FY 2016, this fee amounted to approximately \$25 million.³¹

The ONSHORE Act would enable States to administer the collection of their share of mineral revenues produced on their lands, eliminating the need for this administrative fee charged by the federal government. Specifically, this legislation would amend the Mineral Leasing Act to remove the authorization for the two percent administrative fee for States with approved regulatory programs under the ONSHORE Act. This will enable States with approved regulatory programs to receive the entirety of their 50 percent share of federal mineral revenues. Under the bill, States can still choose to forego this option and continue to receive their revenue disbursements through the current process administered by ONRR.

Federal mineral revenues are a crucial source of income for the States, serving to offset losses in private tax revenue due to the tax-exempt status of federal land.³² States utilize these funds to mitigate the environmental impacts of mineral development, support infrastructure projects,³³ and fund public services and programs, including public school systems and community colleges.³⁴ Allowing the States to receive the entirety of their 50 percent share of federal mineral revenues will contribute to the provision of these and other necessary public services.

Hydraulic fracturing regulations

In 2015, the Obama Administration finalized regulations that would impose federal requirements on hydraulic fracturing prac-

²⁹ Briefing by Marc Humphries, Specialist in Energy Policy, Congressional Research Service received by Energy and Mineral Resources Subcommittee Majority Staff on August 20, 2017.

³⁰ 30 U.S. Department of Interior. Office of Natural Resources Revenue. Highlights. https://www.onrr.gov/about/pdffdocs/Fact%20Sheet_ONRR%20Highlights_July%202016.pdf.

³¹ United States Department of Interior. Budget Justifications and Performance Information Fiscal Year 2018. Office of the Secretary Department-Wide Programs. https://www.doi.gov/sites/doi.gov/files/uploads/fy2018_os_budget_justification.pdf.

³² Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015). <http://www.crs.gov/reports/pdf/R43891>.

³³ Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015). <http://www.crs.gov/reports/pdf/R43891>.

³⁴ The United States Extractive Industries Transparency Initiative. Explore Data, Wyoming. <https://useiti.doi.gov/explore/WY/#disbursements> (Accessed August 29, 2017).

tices related to oil, gas, or geothermal production on federal land.³⁵ In 2016, the U.S. District Court of Wyoming invalidated the regulations, noting that Congress has not authorized DOI to regulate hydraulic fracturing practices.³⁶ The Obama Administration appealed this decision to the 10th Circuit Court of Appeals, which dismissed the case in September 2017 based on BLM's announcement that the agency would repeal the rule in July of 2017.³⁷

The ONSHORE Act prohibits DOI from enforcing federal regulations regarding hydraulic fracturing relating to oil, gas, or geothermal production activities in any State that has corresponding regulations. Instead, the Department must defer to the States' requirements concerning hydraulic fracturing on federal land. The bill would also prevent the Department from enforcing any federal regulations governing the hydraulic fracturing process relating to oil, gas, or geothermal production on land held either in trust or restricted status for the benefit of Indians except with the consent of the relevant beneficiaries.

Major Provisions of H.R. 4239

Section 102. Disposition of Revenues from Oil and Gas Leasing on the Outer Continental Shelf to Producing States. This section establishes oil and gas revenue sharing structure for Virginia, North Carolina, South Carolina, Georgia and Alaska. Modeled after GOMESA, the Atlantic States and Alaska will ultimately receive 37.5% of the revenues generated by offshore oil and gas leasing and development. Revenue Allocations provided by this bill are phased in as follows: Phase I: 87.5% to US Treasury and 12.5% to qualifying State treasuries; Phase II: 75% to US Treasury and 25% to qualifying State treasuries; and Phase III: 50% to the US Treasury; 37.5% to qualifying State treasuries; 6.25% to the Department of Transportation for investment in energy infrastructure and supporting projects in coastal ports; and 6.25% to DOI for projects on National Park System units. The section provides for a minimum allocation of 10% of revenues among the States within 200 nautical miles of a leased tract.

Section 103. Limitation on the Amount of Distributed Qualified Outer Continental Shelf Revenues Under GOMESA. This section modifies Section 105(f)(1) of GOMESA to increase the limitations on distributions to Gulf producing States over time.

Section 104. Limitation on Authority of the President to Withdraw Areas of the Outer Continental Shelf from Oil and Gas Leasing. This section requires an Act of Congress to establish new moratoriums on offshore drilling and for the creation of National Marine Monuments. It also rescinds all OCS withdrawals, other than those explicitly listed in the bill.

Section 105. Modification to the Outer Continental Shelf Leasing Program. This section requires the execution of each approved lease sale in an existing Five Year Plan, should the Secretary call

³⁵ Devin Henry, Court dismisses lawsuit over Obama-era fracking rule (September 21, 2017), <http://thehill.com/policy/energyenvironment/351771-court-dismisses-lawsuit-over-obama-era-fracking-rule>

³⁶ Timothy Cama, Obama-appointed judge strikes down federal fracking rule (June 21, 2016), <http://thehill.com/policy/energyenvironment/284388-judge-strikes-down-federal-fracking-rule>

³⁷ Devin Henry, Court dismisses lawsuit over Obama-era fracking rule (September 21, 2017), <http://thehill.com/policy/energyenvironment/351771-court-dismisses-lawsuit-over-obama-era-fracking-rule>

for a revised plan, thereby improving planning certainty by preventing the cancellation of an approved lease sale.

Section 106. Inspection Fee Collection. This section permanently authorizes the collection of offshore platform and drill rig inspection fees, without raising or otherwise affecting current fees.

Section 107. Arctic Rule Shall Have No Force or Effect. This section precludes the enforcement of the “Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf” rule, also known as the Arctic Rule.

Section 108. Application of the Outer Continental Shelf Lands Act (OCSLA) to the Territories of the United States. This section applies the OCSLA to all U.S. territories, providing the Secretary the authority to conduct energy lease sales and manage offshore natural resources.

Section 109. Wind Lease Sales on the Outer Continental Shelf. This section mandates offshore wind lease sales offshore California should this area be compatible with Department of Defense activities. In addition, the section authorizes an offshore wind lease sale offshore Hawaii if it would be compatible with Department of Defense activities and the feasibility study conducted by the Secretary supports. Finally, the section requires the Secretary to conduct economic feasibility studies for potential offshore wind leases off Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Section 110. Reducing Permitting Delays for Taking of Marine Mammals. This section addresses permits for the taking of marine mammals by clarifying certain definitions and establishing timelines for permits under the Marine Mammal Protection Act of 1972 (MMPA, 16 U.S.C. 1361 et seq.). It also eliminates duplicative regulation by exempting authorized permit holders from section 9 of the Endangered Species Act of 1972 (16 U.S.C. 1538). This section also transfers the MMPA permitting responsibilities from the Department of Commerce to the Department of the Interior for activities associated with operations authorized under the OCSLA.

Section 111. Effect. This section affirms that nothing in this bill shall modify the existing moratorium in the eastern Gulf of Mexico as imposed by section 104 of GOMESA, and states that no section of this Act will modify the 2017–2022 OCS leasing program with respect to the State of Florida.

Section 202. Cooperative Federalism in Oil and Gas Permitting on Available Federal Land. This section amends the Mineral Leasing Act to allow the Secretary of the Interior to delegate to the States authority for permitting and regulation of oil and gas activities on federal land within that State. Specifically, States may seek approval to process Applications for Permit to Drill (APDs) or drilling plans. States that seek approval to process APDs or drilling plans may also seek delegated authority from the Secretary to process sundry notices. States may also assume authority for the inspection and enforcement of drilling operations on federal land by entering in a Memorandum of Understanding (MOU) with the Secretary delineating State and federal responsibilities. This section directs States seeking to assume these responsibilities to submit an application for approval to the Secretary containing: (1) a description of the State program that the State proposes to establish and

administer under State law; and (2) a statement from the Governor or attorney general of the State that the laws of such State provide adequate authority to carry out the State program. The section requires the Secretary to approve or disapprove an application within 180 days of receipt. The Secretary may approve an application if the Secretary has: (1) determined that the State would be at least as effective as the Secretary in issuing and enforcing permits; (2) determined that the State applicant's program complies with this Act and provides for the termination of permits if a violation warrants such action; (3) determined that the State applicant has sufficient personnel and funding to carry out the State regulatory program; (4) provided public notice, opportunity for public comment, and held a public hearing within the State; (5) determined that approval of the State program would not result in a proportional decrease in royalty payments to the Treasury; and (6) entered into a MOU with a State applicant that delineates the federal and State responsibilities with respect to inspection and enforcement, if applicable. The section permits States to enter into an MOU with the Secretary of the Interior so that the Secretary may offer technical assistance in developing a proposed State program and delineate State and federal responsibilities. The section allows States that choose to take over the entire APD process to charge a fee less than or equal to the APD fee charged by the federal government and requires such States to use the fee to administer the State program. The section provides permit applicants with the option to appeal any APD or drilling plan application denied by the State to the Department of the Interior Office of Hearings and Appeals. The section allows, if a State is not adequately enforcing APDs or drilling plans, the Secretary to provide for the federal administration or enforcement of such permits or plans after notifying the State of any deficiencies and allowing 30 days for the State to correct those deficiencies. A State may appeal the Secretary's decision to assume these delegated authorities in the applicable U.S. District Court. The section also defines available federal land as federal land that is located within the boundaries of a State, is not held in trust for a federally-recognized Indian Tribe, is not a unit of the National Park System or National Wildlife Refuge System where drilling is prohibited, is not a Congressionally-approved wilderness area under the Wilderness Act, and has been identified as land available for lease for exploration, development and production of oil and gas by the BLM under a Resource Management Plan or Integrated Activity Plan, or by the Forest Service under a Forest Management Plan. This section directs the Secretary to conduct inspections and charge inspection fees to operators on federal land in States that have been delegated the authority to administer the entire APD process, even if those States have entered into an MOU with the Secretary allowing the State to assume certain inspection and enforcement authorities. This allows the Secretary to conduct inspections in addition to those conducted by the State to ensure federal oversight.

Section 203. Conveyance to Certain States of Property Interest in State Share of Royalties and Other Payments. This section amends the Mineral Leasing Act to provide that the two percent administrative fee charged by the federal government on mineral revenue collection is only assessed on States without approved State pro-

grams. This section requires, upon request, the Secretary of the Interior to convey to a State all right, title, and interest in and to a percentage of the amounts required to be paid into the Treasury from sales, bonuses, royalties, and rentals for public land or deposits located in that State. A State may only elect to collect oil and gas revenues if that State has an approved State program. Once the Secretary has conveyed the right, title and interest to a State, mineral revenue payments will be made directly to the State rather than to the Treasury.

Section 204. Permitting on Non-Federal Surface Estate. This section amends the Mineral Leasing Act to clarify that permitting for operations on State or private surface in which less than 50% of minerals accessed are owned by the federal government will not be considered a federal action and shall not require a federal permit from the BLM. The section amends the Mineral Leasing Act to clarify that permitting for oil and gas operations on non-federal surface estate concerning non-federal minerals that may have potential drainage impacts on federal minerals is not a federal action and shall not require a federal permit from the BLM.

Section 205. State and Tribal Authority for Hydraulic Fracturing Regulation. This section amends the Mineral Leasing Act to require the Secretary to defer to State regulations, permitting, and guidance for all activities regarding hydraulic fracturing relating to oil, gas, or geothermal production activities on federal land. It also requires each State to submit to BLM a copy of its regulations that: (1) apply to hydraulic fracturing operations on federal land; and (2) require disclosure of chemicals used in hydraulic fracturing operations on federal land. The Secretary of the Interior must make such State regulations available to the public. The section also prohibits the Secretary of the Interior from enforcing any federal regulation, guidance, or permit requirement governing the hydraulic fracturing process relating to oil, gas, or geothermal production activities on land held either in trust or restricted status for the benefit of Indians except with the express consent of the beneficiary on whose behalf such land is held in trust or restricted status.

Section 206. Review of Integrated Activity Plan for the National Petroleum Reserve in Alaska (NPR-A). This section directs the Secretary of the Interior to review the areas open to leasing within the NPR-A to determine which lands within the NPR-A should be made available for oil and gas leasing, and make additional lands available for leasing accordingly.

Section 207. Protested Lease Sales. This section directs the Secretary to resolve any protests to a lease sale within 60 days of payment by a successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year.

Section 208. Clarification Regarding Liability under the Migratory Bird Treaty Act. This section clarifies that the Migratory Bird Treaty Act does not prohibit accidental or incidental take as a result of an otherwise lawful activity.

COMMITTEE ACTION

H.R. 4239 was introduced on November 3, 2017, by Congressman Steve Scalise (R-LA). The bill was referred to the Committee on Natural Resources. On November 7, 2017, the Subcommittee on Energy and Mineral Resources held a hearing on a discussion draft

of the legislation and held hearings on October 11, 2017, and October 13, 2017, on discussion drafts of Title I and Title II of H.R. 4239, respectively. On November 7, 2017, the Natural Resources Committee met to consider the bill. Congressman Rob Bishop (R-UT) offered an amendment designated #1; it was adopted by voice vote. Congressman Darren Soto (D-FL) offered an amendment designated 075; it was not adopted by voice vote. Congresswoman Nannette Diaz Barragán (D-CA) offered an amendment designated 028; it was not adopted by a roll call vote of 14 ayes to 16 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 1

Meeting on / Amendment on: FC Mark Up on **Barragan_028 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "*Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act*" or the "*SECURE American Energy Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA			
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus				Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA			
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>				<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI			
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR			
Mr. Gosar, AZ		X		Mr. Gianforte, MT		X	
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>	X						
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>	X						
Mr. Denham, CA							
<i>Ms. Barragán, CA</i>	X			TOTAL:	14	16	

Congressman Donald S. Beyer, Jr. (D–VA) offered an amendment designated 010; it was not adopted by a roll call vote of 15 ayes to 19 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 11-08-17

Recorded Vote #: 2

Meeting on / Amendment on: FC Mark Up on **Beyer_010 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "*Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act*" or the "*SECURE American Energy Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA			
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>				<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI			
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR			
Mr. Gosar, AZ		X		Mr. Gianforte, MT		X	
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>	X						
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>	X						
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	15	19	

Congressman Donald S. Beyer, Jr. (D-VA) offered an amendment designated 013; it was not adopted by a roll call vote of 15 ayes to 19 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 3

Meeting on / Amendment on: FC Mark Up on **Beyer 013 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act" or the "SECURE American Energy Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA			
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>				<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI			
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR			
Mr. Gosar, AZ		X		Mr. Gianforte, MT		X	
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>	X						
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>	X						
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	15	19	

Congressman Raúl M. Grijalva (D-AZ) offered an amendment designated 005; it was not adopted by a roll call vote of 15 ayes to 19 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 4

Meeting on / Amendment on: FC Mark Up on **Grijalva_005 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act" or the "SECURE American Energy Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA			
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>				<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI			
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR			
Mr. Gosar, AZ		X		Mr. Gianforte, MT		X	
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>	X						
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>	X						
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	15	19	

Congressman Raúl M. Grijalva (D–AZ) offered an amendment designated 012; it was not adopted by a roll call vote of 15 ayes to 19 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 5

Meeting on / Amendment on: FC Mark Up on **Grijalva_012 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "*Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act*" or the "*SECURE American Energy Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA			
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>	X			<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI			
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR		X	
Mr. Gosar, AZ		X		Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	15	19	

Congressman A. Donald McEachin (D–VA) offered an amendment designated 002; it was not adopted by voice vote. Congressman A. Donald McEachin (D–VA) offered an amendment designated 008; it was not adopted by a roll call vote of 14 ayes to 18 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 6

Meeting on / Amendment on: FC Mark Up on **McEachin_008 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "*Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act*" or the "*SECURE American Energy Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA			
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA			
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA				Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>	X			<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI			
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR		X	
Mr. Gosar, AZ		X		Mr. Gianforte, MT		X	
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>							
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	14	18	

Congressman Alan S. Lowenthal (D-CA) offered an amendment designated 035; it was not adopted by a roll call vote of 14 ayes to 19 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 7

Meeting on / Amendment on: FC Mark Up on **Lowenthal_035 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "*Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act*" or the "*SECURE American Energy Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA			
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>			
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA			
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA				Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>	X			<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI		X	
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR		X	
Mr. Gosar, AZ		X		Mr. Gianforte, MT		X	
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>	X						
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	14	19	

Congressman Alan S. Lowenthal (D-CA) offered an amendment designated 036; it was not adopted by a roll call vote of 13 ayes to 23 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 8

Meeting on / Amendment on: FC Mark Up on **Lowenthal_036 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act" or the "SECURE American Energy Act"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>			
Mr. Gohmert, TX, Vice Chairman		X		Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>	X			<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI		X	
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR		X	
Mr. Gosar, AZ		X		Mr. Gianforte, MT		X	
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>	X						
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	13	23	

Congressman Anthony G. Brown (D–MD) offered an amendment designated 011; it was not adopted by a roll call vote of 13 ayes to 22 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 11-08-17

Recorded Vote #: 9

Meeting on / Amendment on: FC Mark Up on **Brown_011 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. “*Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act*” or the “*SECURE American Energy Act*”

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. Cook, CA		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. McEachin, VA</i>			
Mr. Gohmert, TX, Vice Chairman		X		Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>	X			<i>Mr. Gomez, CA</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Bergman, MI		X	
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY		X	
Mr. Thompson, PA		X		Mr. Johnson, LA		X	
<i>Mr. Lowenthal, CA</i>	X			Ms. González-Colón, PR			
Mr. Gosar, AZ		X		Mr. Gianforte, MT		X	
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>	X						
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	13	22	

Congressman Stevan Pearce (R-NM) offered an amendment designated 046; it was adopted by voice vote. Congressman Mike Johnson (R-LA) offered an amendment designated 027; it was adopted by a roll call vote of 23 ayes to 13 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 10

Meeting on / Amendment on: FC Mark Up on **Johnson_027 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "*Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act*" or the "*SECURE American Energy Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>			
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA	X		
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR	X		
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>		X					
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	23	13	

Congresswoman Liz Cheney (R-WY) offered an amendment designated #1; it was adopted by a roll call vote of 20 ayes to 14 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 11

Meeting on / Amendment on: FC Mark Up on **Cheney_#1 Amendment** to H.R. 4239 (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. "*Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act*" or the "*SECURE American Energy Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA	X		
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL			
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA			
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR	X		
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>		X					
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	20	14	

Congressman Daniel Webster (R-FL) offered an amendment designated 007; it was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives on November 8, 2017, by a roll call vote of 19 ayes and 14 noes, as follows:

Committee on Natural Resources

U.S. House of Representatives

115th Congress

Date: 11-08-17

Recorded Vote #: 12

Meeting on / Amendment on: **FC Mark Up on Favorably Reporting H.R. 4239** (Steve Scalise), To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes. *"Strengthening the Economy with Critical Untapped Resources to Expand American Energy Act"* or the *"SECURE American Energy Act"*

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Gohmert, TX, Vice Chairman				Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>				<i>Mr. Brown, MD</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>			
Mr. Wittman, VA	X			Mrs. Radewagen, AS			
<i>Mr. Sablan, CNMI</i>		X		<i>Mr. Gomez, CA</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL			
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Bergman, MI	X		
<i>Mr. Huffman, CA</i>				Ms. Cheney, WY	X		
Mr. Thompson, PA	X			Mr. Johnson, LA			
<i>Mr. Lowenthal, CA</i>		X		Ms. González-Colón, PR	X		
Mr. Gosar, AZ	X			Mr. Gianforte, MT	X		
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>		X					
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>							
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	19	14	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 1, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4239, the SECURE American Energy Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Jeff LaFave.

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

Enclosure.

H.R. 4239—SECURE American Energy Act

Summary: H.R. 4239 would amend existing laws regarding energy development on federal lands. Major provisions in the bill would:

- Increase the share of mineral receipts paid to states under the Mineral Leasing Act (MLA) if states assumed certain administrative functions related to oil and gas development on federal lands;
- Require the Department of the Interior (DOI) to assess inspection fees for offshore oil and gas leases, thereby changing the budgetary classification of those fees;
- Clarify DOI's authority to auction oil and gas leases on both the Alaska Outer Continental Shelf (OCS) and the Atlantic OCS;
- Authorize new direct spending of OCS receipts for payments to states and other programs; and
- Authorize DOI to auction leases for developing wind and mineral resources off the coast of certain U.S. territories.

CBO estimates that enacting H.R. 4239 would reduce net direct spending by \$187 million over the 2018–2027 period. In addition, CBO estimates that implementing the bill would cost \$186 million over the 2018–2022 period, subject to appropriation of the nec-

essary amounts. Enacting H.R. 4239 would affect direct spending; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO cannot determine whether enacting the bill would increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4239 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring state agencies to send the Bureau of Land Management (BLM) a copy of each state regulation that applies to hydraulic fracturing on federal land as well as a copy of each state regulation that requires disclosure of chemicals used in hydraulic fracturing. Because of the low administrative cost for each state to submit those reports to BLM, CBO estimates that the costs of the mandate would be small and well below the annual threshold established in UMRA for intergovernmental mandates (\$78 million in 2017, adjusted for inflation).

The bill contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effects of H.R. 4239 are shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and the environment), 800 (general government), and 950 (undistributed offsetting receipts).

Basis of estimate: For this estimate, CBO assumes that H.R. 4239 will be enacted in fiscal year 2018 and that the necessary amounts will be appropriated for each year.

Direct spending

CBO estimates that enacting H.R. 4239 would reduce net direct spending by \$187 million over the 2018–2027 period.

Payments to States Under the MLA. When companies acquire oil and gas leases on federal lands, an application for a permit to drill (APD) must be approved for each well. To obtain approval, companies must submit a drilling plan; a surface use plan, which requires the completion of an environmental analysis to ensure compliance with the National Environmental Policy Act; and other materials that must be approved by DOI before a permit to drill is issued.

	By fiscal year, in millions of dollars—												2018– 2022	2018– 2027
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027				
INCREASES OR DECREASES (–) IN DIRECT SPENDING														
Payments to States Under the MLA:														
Estimated Budget Authority	0	23	31	31	32	33	35	36	37	38	117	296		
Estimated Outlays	0	23	31	31	32	33	35	36	37	38	117	296		
Fees from Applications for Permits to Drill:														
Estimated Budget Authority	1	1	1	0	0	0	0	0	0	0	3	3		
Estimated Outlays	1	1	1	0	0	0	0	0	0	0	3	3		
Inspection Fees for Offshore Oil and Gas Operations:														
Estimated Budget Authority	0	–40	–50	–45	–45	–45	–45	–45	–45	–45	–180	–405		
Estimated Outlays	0	–40	–50	–45	–45	–45	–45	–45	–45	–45	–180	–405		
Authority to Offer Leases on the Alaska and the Atlantic OCS:														
Estimated Budget Authority	0	0	0	0	0	–26	–26	–26	–26	–26	0	–130		
Estimated Outlays	0	0	0	0	0	–26	–26	–26	–26	–26	0	–130		
Spending of Receipts from the Alaska and the Atlantic OCS:														
Estimated Budget Authority	0	0	0	0	1	0	9	19	20	20	1	69		
Estimated Outlays	0	0	0	0	1	0	9	19	20	20	1	69		
Renewable Energy Leases on the OCS:														
Estimated Budget Authority	0	0	0	0	0	–4	–4	–4	–4	–4	0	–20		
Estimated Outlays	0	0	0	0	0	–4	–4	–4	–4	–4	0	–20		
Total Changes:														
Estimated Budget Authority	1	–16	–18	–14	–12	–42	–31	–20	–18	–17	–59	–187		
Estimated Outlays	1	–16	–18	–14	–12	–42	–31	–20	–18	–17	–59	–187		
INCREASES IN SPENDING SUBJECT TO APPROPRIATION														
Estimated Authorization Level	6	40	50	45	45	46	45	45	46	45	186	413		
Estimated Outlays	0	42	52	47	45	45	46	45	45	46	186	413		
Components may not sum to totals because of rounding. MLA = Mineral Leasing Act. OCS = Outer Continental Shelf.														

Components may not sum to totals because of rounding.
 MLA = Mineral Leasing Act
 OCS = Outer Continental Shelf.

H.R. 4239 would authorize DOI to grant states the authority to carry out administrative tasks associated with APDs. Under the bill, states could request either a more limited authority to take over the approval of drilling plans or they could opt to manage the entire APD process, which would require them to review surface use plans and other materials in addition to drilling plans. Any state that chose to take over either of those functions would be entitled to an additional 1 percent share of amounts paid to DOI by the companies that extract minerals from federal lands. Under the MLA, states receive 49 percent of all royalties, rents, and bonus bids, which are amounts that companies must pay to the federal government to acquire leases.¹

Using information provided by DOI and by officials in states with significant oil and gas production on federal lands, CBO expects that states would prefer the more limited authority to approve drilling plans rather than the authority to manage the entire APD process, because managing the entire process would place a significantly higher administrative burden on state agencies. CBO also expects that all states with federal mineral leases under the MLA would pursue the more limited authority because they would receive a higher share of proceeds from federal leases. Under an assumption that DOI would grant all states the authority to approve drilling plans within two years of enactment, CBO estimates that this provision would cost \$296 million over the 2019–2027 period for a 1 percent increase in royalty payments to states.²

Fees From Applications for Permits to Drill. Under H.R. 4239, companies would no longer need an approved APD for operations on lands where the surface estate is owned by a nonfederal entity and the federal interest in the mineral estate is less than 50 percent. In 2017, DOI collected a total of \$31 million in fees from APDs. The agency is authorized to spend, without further appropriation, 85 percent of the amounts collected to administer the APD program through 2020. After 2020, the agency can spend all proceeds from APD fees. CBO expects that gross fee collections will total between \$31 million and \$37 million and that net collections will total \$5 million each year. The type of lands affected by this provision account for between 10 percent and 30 percent of all APDs issued, and CBO estimates that enacting this provision would reduce net receipts by a similar amount. Thus, enacting this provision would cost \$3 million over the 2018–2020 period.

Inspection Fees for Offshore Oil and Gas Operations. H.R. 4239 would direct DOI to collect annual fees to cover the cost of inspecting OCS facilities and drilling operations, subject to certain conditions. The bill would specify the amounts due for various types of activities and allow DOI to adjust those fees for inflation in future years. Amounts collected under the bill would be deposited into a new fund in the Treasury, and that money could be spent only if appropriated in annual appropriation acts.

Based on information from DOI and on historical trends in such activities, CBO estimates that collecting the inspection fees in H.R.

¹The state of Alaska is an exception to this provision of the MLA. It receives 90 percent of royalties, rents, and bonus bids from federal leases outside of the National Petroleum Reserve in Alaska.

²CBO expects that enacting this provision would reduce the amount of appropriated funds necessary to administer APDs; however, any reduction in amounts used for that purpose would be offset by increased spending on other DOI activities.

4239 would increase offsetting receipts by \$405 million over the 2018–2027 period. Annual appropriation acts have authorized DOI to assess similar fees each year, but that authority expires at the end of 2018. For this estimate, CBO assumes that the fees authorized by H.R. 4239 would take effect in fiscal year 2019.

Authority to Offer Leases on the Alaska and the Atlantic OCS. H.R. 4239 would expressly revoke existing restrictions on oil and gas leasing on certain portions of the Alaska and Atlantic OCS. Although the Administration issued an executive order in April 2017 to reverse those restrictions, that action is currently under judicial review. Given the legal uncertainty surrounding DOI's authority to offer leases in those areas, CBO's baseline projections reflect the assumption that there is a 50 percent chance that the April 2017 executive order will be upheld. Because H.R. 4239 would eliminate that uncertainty, CBO estimates that enacting the bill would increase potential receipts from those areas by a corresponding amount. Thus, enacting this provision would increase offsetting receipts by about \$130 million over the 2018–2027 period, relative to current law. CBO estimates that most of those additional receipts would stem from leases on the Alaska OCS.

Spending of Receipts from the Alaska and the Atlantic OCS. H.R. 4239 would authorize direct spending of a portion of the offsetting receipts from leases awarded after the date of enactment for the Alaska, mid-Atlantic, and south Atlantic OCS. Under the bill, the portion spent each year would depend on the timing of OCS lease sales, rising from 12.5 percent to 50 percent over a period of several years. The bill would allocate that spending for various purposes, including payments to states and for certain other programs. Funds would be disbursed the year after receipts were collected.

CBO estimates that the receipts that would be available for direct spending under this provision would total \$315 million over the 2018–2027 period—\$210 million that will be collected under current law and \$105 million that would result from new authority in the bill.³ Over the 2018–2029 period, the formulas in the bill would authorize an average of 22 percent to be spent without further appropriation. Thus, CBO estimates that implementing this provision would increase direct spending by \$69 million over the 10-year period, with almost all of those costs occurring after 2022.⁴

Renewable Energy Leases on the OCS. H.R. 4239 would direct DOI to study the potential for production of electricity generated by wind off the coasts of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands. If those studies showed that developing offshore wind resources was feasible, the bill would direct DOI to conduct lease sales in those areas. CBO estimates that implementing those provisions would in-

³ CBO's estimate of receipts subject to revenue sharing reflects the one-year lag between the time receipts are collected and spent. It consists of \$95 million from leases on the Atlantic OCS under current law and about \$220 million from the Alaska OCS (\$115 million under current law and another \$105 million assuming enactment of provisions in H.R. 4239 that would clarify DOI's leasing authority in areas previously subject to restrictions).

⁴ CBO estimates that most of the direct spending would occur after 2022 because the current five-year plan for OCS lease sales does not include auctions on the Atlantic or most of the Alaska OCS over the 2017–2022 period. Decisions about whether to include those areas in future five-year plans will be made administratively in consultation with industry and states. Because scheduling policies for lease sales have varied among Administrations, CBO assumes that there is a 50 percent chance that the affected areas would be included in the five-year plan covering 2023 to 2027. If a new five-year plan is adopted before 2023, CBO will update its baseline projections to reflect the revised auction schedule.

crease offsetting receipts by \$20 million over the 2018–2027 period, net of payments to states and territories.

Since 2013, auctions from leases of wind resources along the Atlantic coast have generated gross receipts of almost \$70 million, or a net of \$50 million after payments to states. Several factors suggest that receipts from auctions in the Caribbean and Pacific may be considerably lower, at least for the next few years. For example, technological advances are needed to deploy systems that can withstand category 5 hurricane-force winds in the Caribbean. Similarly, current technologies for producing electricity from offshore wind may not be economically viable for the relatively small markets in the Pacific territories. CBO estimates that any auctions in the new areas probably would occur toward the end of the 10-year period and that the proceeds would be similar to the amounts received for smaller sales (between \$1 million and \$10 million each).

Finally, the bill also would direct DOI to study and then to conduct lease sales for wind resources off the coasts of California and Hawaii. CBO estimates that those requirements would have no significant net effect on offsetting receipts because such auctions are expected to occur under current law as soon as practical.

Mineral Licenses for the OCS Adjacent to U.S. Territories and Possessions. H.R. 4239 would authorize DOI to issue licenses to companies to explore and develop mineral resources other than oil and gas in areas within the exclusive economic zone (EEZ) on the OCS adjacent to any territory or possession of the United States. The duration of and compensation for such licenses would be determined by the Secretary of the Interior and could be awarded non-competitively. A licensee would be entitled to a lease for the area for development if valuable minerals were discovered, subject to royalty rates and lease terms specified by the Secretary.

Based on the available information regarding deep-sea mining opportunities in the South Pacific, CBO estimates that any proceeds from issuing licenses for such mining would be negligible over the 2018–2027 period. According to the World Bank and others, the EEZs off the coast of American Samoa and other territories are relatively small and no large nodules of precious metals or minerals have been discovered.⁵

Spending subject to appropriation

CBO estimates that implementing H.R. 4239 would cost \$186 million over the 2018–2022 period, subject to appropriation of the necessary amounts, largely as a result of provisions changing the budgetary classification of fees for inspections of OCS facilities.

Based on historical trends in spending for similar activities, CBO estimates that completing the studies and activities related to leasing off the coast of U.S. territories would cost about \$6 million over the 2018–2022 period. Most of that spending would be for the technical and environmental assessments of offshore wind and mineral development off the coasts of U.S. territories in the Caribbean and South Pacific. CBO estimates that conducting lease sales in those areas would cost about \$2 million, but expects that such spending would occur after 2022.

⁵See, for example, World Bank *Precautionary Management of Deep Sea Mining Potential in Pacific Island Countries* (draft for discussion, accessed November 29, 2017). <http://tinyurl.com/y9a81q18> (PDF, 3.4 MB).

Under H.R. 4239, the proceeds from fees on inspections of OCS facilities would be treated as reductions in direct spending. In recent years, the authority for DOI to collect fees for OCS inspections has been provided in annual appropriation acts, and the proceeds were netted against discretionary appropriations. As a result, CBO estimates that implementing this change would increase DOI's net spending subject to appropriation by a corresponding amount—\$180 million over the 2018–2022 period and \$405 million over the 2018–2027 period. CBO estimates that implementing H.R. 4239 would have no significant effect on the discretionary cost of inspecting OCS operations.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4239, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON NOVEMBER 8, 2017

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018– 2022	2018– 2027
NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	1	–16	–18	–14	–12	–42	–31	–20	–18	–17	–59	–187

Increase in long-term direct spending and deficits: CBO cannot determine whether enacting H.R. 4239 would increase net direct spending by more than \$2.5 billion or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028. Under H.R. 4239, DOI would be authorized to spend proceeds from federal oil and gas leases for several purposes without further appropriation after 2027. CBO expects that outlays resulting from the bill would be less than \$2.5 billion in each of the respective decades if the resources found on the Atlantic OCS remain undeveloped, but would exceed \$2.5 billion in at least one of the decades if market conditions spurred production and generated significant bonus payments and royalties from that area.

Spending of receipts from the Gulf of Mexico OCS

The bill would increase the amount authorized to be spent from proceeds from leases in the Gulf of Mexico by \$150 million a year from 2029 through 2055, or by a total of \$1.5 billion in certain decades. H.R. 4239 would change the statutory cap on those payments to about \$650 million a year during the 2029–2059 period. Under the technical and economic assumptions used in CBO's June 2017 baseline projections CBO estimates that enacting this provision would increase outlays by \$150 million each year over the 2029–2055 period. Applying that cap to spending over the 2056–2059 period could reduce direct spending in those years relative to current law.

Spending of receipts from the Alaska and the Atlantic OCS

In addition, the bill would authorize DOI to spend 50 percent of the proceeds from leasing on the Alaska and Atlantic OCS during

the period.⁶ Whether spending from the bonus bids, rents, and royalties from the Atlantic OCS would equal or exceed \$1 billion in any decade (an average of \$100 million a year) would depend on the nature of the resources in the area as well as on market conditions. Estimates of future bonus payments and royalties are inherently uncertain, especially for areas that have not been developed. During the 1970s and 1980s, for example, companies spent \$2.8 billion (\$7.7 billion in today's dollars) for leases on the Atlantic OCS although none produced any oil or gas.

Starting in 2029, H.R. 4239 would increase direct spending of receipts from certain leases on the OCS. Under current law, a portion of the receipts from leases issued after 2006 in the Central and Western Gulf of Mexico may be spent for payments to certain states and the Land and Water Conservation Fund without further appropriation. Current law caps those payments at \$500 million a year through 2055, after which payments will be determined by formula.

Mandates: H.R. 4239 would impose an intergovernmental mandate as defined in UMRA by requiring state agencies to send BLM a copy of each state regulation that applies to hydraulic fracturing on federal land as well as a copy of each state regulation that requires disclosure of chemicals used in hydraulic fracturing. Because of the low administrative cost of meeting those requirements, CBO estimates that the costs of the mandate would be small and well below the annual threshold established in UMRA for intergovernmental mandates (\$78 million in 2017, adjusted for inflation).

The legislation would benefit state and local governments by increasing the generation of royalties from oil and gas production on public lands and in federal waters. Portions of the royalties would be shared with those governments under formulas specified by the bill and under federal laws governing oil and gas production. Over the 2018–2027 period, CBO estimates, state and local governments in which production occurs would receive a total of about \$370 million in royalties.

The bill contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Kathleen Gramp and Jeff LaFave; Mandates: Jon Sperl.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved offshore oil and gas leases, to promote offshore wind lease sales, and to empower States to manage the development and production of oil and gas on available federal land.

⁶The net effect of the legislation on direct spending from new leases on the Alaska OCS after 2027 depends on the outcome of the judicial review of Presidential actions restricting development. CBO currently estimates that the cost of provisions authorizing direct spending of receipts from the Alaska OCS would be offset by the additional income stemming from provisions in the bill that increase the probability that leasing would occur there. That estimate could change, however, depending on the outcome of the judicial review.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. Section 108, Application of Outer Continental Shelf Lands Act With Respect to Territories of the United States, contains one directed rulemaking for the Secretary of the Interior for exploration licenses and leases on the outer Continental Shelf adjacent to territories and possessions.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

OUTER CONTINENTAL SHELF LANDS ACT

* * * * *

SEC. 2. DEFINITIONS.—When used in this Act—

(a) The term “outer Continental Shelf” means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control *or lying within the exclusive economic zone of the United States*;

(b) The term “Secretary” means the Secretary of the Interior, except that with respect to functions under this Act transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term “Secretary” means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be;

(c) The term “lease” means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration for, and development and production of, minerals;

(d) The term “person” includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation;

(e) The term “coastal zone” means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

(f) The term “affected State” means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State—

(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of this Act;

(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(g) The term “marine environment” means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

(h) The term “coastal environment” means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(i) The term “human environment” means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

(j) The term “Governor” means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act;

(k) The term “exploration” means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

(l) The term “development” means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered;

(m) The term “production” means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over drilling;

(n) The term “antitrust law” means—

- (1) the Sherman Act (15 U.S.C. 1 et seq.);
- (2) the Clayton Act (15 U.S.C. 12 et seq.);
- (3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);
- (4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or
- (5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

(o) The term “fair market value” means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

(p) The term “major Federal action” means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); **[and]**

(q) The term “minerals” includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from “public lands” as defined in section 103 of the Federal Land Policy and Management Act of 1976**[.]**; *and*

(r) *The term “State” includes each territory of the United States.*

* * * * *

SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental shelf were an area of exclusive Federal jurisdiction located within a state: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2)(A) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after the date of enactment of this subparagraph, the President shall establish procedures for settling any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the Outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(4) *This section shall not apply to the territories and possessions of the United States.*

(b) With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources,

or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.

(d)(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulation issued under this Act, and the owner shall pay the cost of such marking.

(e) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is hereby extended to the artificial islands, installations, and other devices referred to in subsection (a).

(f) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

* * * * *

SEC. 8. LEASES, EASEMENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTINENTAL SHELF.—(a)(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf

which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

(A) cash bonus bid with a royalty at not less than $12\frac{1}{2}$ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

(B) variable royalty bid based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount for exploration or a fixed cash bonus as determined by the Secretary, or both;

(C) cash bonus bid, or work commitment bid based on a dollar amount for exploration with a fixed cash bonus, and a diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than $12\frac{1}{2}$ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

(D) cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(E) fixed cash bonus with the net profit share reserved as the bid variable;

(F) cash bonus bid with a royalty at no less than $12\frac{1}{2}$ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a fixed per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(G) work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty in amount or value of the production saved, removed, or sold;

(H) cash bonus bid with royalty at no less than 12 and $\frac{1}{2}$ per centum fixed by the Secretary in amount or value of production saved, removed, or sold, and with suspension of royalties for a period, volume, or value of production determined by the Secretary, which suspensions may vary based on the price of production from the lease; or

(I) subject to the requirements of paragraph (4) of this subsection, any modification of bidding systems authorized in subparagraphs (A) through (G), or any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this Act, except that no such bidding system or modification shall have more than one bid variable.

(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years after the date of the lease sale.

(3)(A) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recov-

ery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

(B) In the Western and Central Planning Areas of the Gulf of Mexico and the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude and in the Planning Areas offshore Alaska, the Secretary may, in order to—

(i) promote development or increased production on producing or non-producing leases; or

(ii) encourage production of marginal resources on producing or non-producing leases; through primary, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease(s). With the lessee's consent, the Secretary may make other modifications to the royalty or net profit share terms of the lease in order to achieve these purposes.

(C)(i) Notwithstanding the provisions of this Act other than this subparagraph, with respect to any lease or unit in existence on the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act meeting the requirements of this subparagraph, no royalty payments shall be due on new production, as defined in clause (iv) of this subparagraph, from any lease or unit located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, until such volume of production as determined pursuant to clause (ii) has been produced by the lessee.

(ii) Upon submission of a complete application by the lessee, the Secretary shall determine within 180 days of such application whether new production from such lease or unit would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph. In making such determination, the Secretary shall consider the increased technological and financial risk of deep water development and all costs associated with exploring, developing, and producing from the lease. The lessee shall provide information required for a complete application to the Secretary prior to such determination. The Secretary shall clearly define the information required for a complete application under this section. Such application may be made on the basis of an individual lease or unit. If the Secretary determines that such new production would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph, the provisions of clause (i) shall not apply to such production. If the Secretary determines that such new production would not be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i), the Secretary must determine the volume of production from the lease or unit on which no royalties would be due in order to make such new production economically viable; except that for new production as defined in clause (iv)(I), in no case will that volume be less than 17.5 million barrels of oil equivalent in water depths of 200 to 400 meters, 52.5 million barrels of oil equivalent in 400–800 meters of water, and 87.5 million barrels of oil equivalent in water depths greater than 800 meters. Redetermination of the applicability of

clause (i) shall be undertaken by the Secretary when requested by the lessee prior to the commencement of the new production and upon significant change in the factors upon which the original determination was made. The Secretary shall make such redetermination within 120 days of submission of a complete application. The Secretary may extend the time period for making any determination or redetermination under this clause for 30 days, or longer if agreed to by the applicant, if circumstances so warrant. The lessee shall be notified in writing of any determination or redetermination and the reasons for and assumptions used for such determination. Any determination or redetermination under this clause shall be a final agency action. The Secretary's determination or redetermination shall be judicially reviewable under section 10(a) of the Administrative Procedures Act (5 U.S.C. 702), only for actions filed within 30 days of the Secretary's determination or redetermination.

(iii) In the event that the Secretary fails to make the determination or redetermination called for in clause (ii) upon application by the lessee within the time period, together with any extension thereof, provided for by clause (ii), no royalty payments shall be due on new production as follows:

(I) For new production, as defined in clause (iv)(I) of this subparagraph, no royalty shall be due on such production according to the schedule of minimum volumes specified in clause (ii) of this subparagraph.

(II) For new production, as defined in clause (iv)(II) of this subparagraph, no royalty shall be due on such production for one year following the start of such production.

(iv) For purposes of this subparagraph, the term "new production" is—

(I) any production from a lease from which no royalties are due on production, other than test production, prior to the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or

(II) any production resulting from lease development activities pursuant to a Development Operations Coordination Document, or supplement thereto that would expand production significantly beyond the level anticipated in the Development Operations Coordination Document, approved by the Secretary after the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act.

(v) During the production of volumes determined pursuant to clauses (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for light sweet crude oil exceeds \$28.00 per barrel, any production of oil will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clause (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds \$28.00. After the end of the calendar year, when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

(vi) During the production of volumes determined pursuant to clause (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for natural gas exceeds \$3.50 per million British thermal units, any production of natural gas will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clauses (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds \$3.50. After the end of the calendar year, when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

(vii) The prices referred to in clauses (v) and (vi) of this subparagraph shall be changed during any calendar year after 1994 by the percentage, if any, by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.

(4)(A) The Secretary of Energy shall submit any bidding system authorized in subparagraph (H) of paragraph (1) to the Senate and House of Representatives. The Secretary may institute such bidding system unless either the Senate or the House of Representatives passes a resolution of disapproval within thirty days after receipt of the bidding system.

(B) Subparagraphs (C) through (J) of this paragraph are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this paragraph, and they supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(C) A resolution disapproving a bidding system submitted pursuant to this paragraph shall immediately be referred to a committee (and all resolutions with respect to the same request shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representative, as the case may be.

(D) If the committee to which has been referred any resolution disapproving the bidding system of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same bidding system which has been referred to the committee.

(E) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to

the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(F) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same bidding system.

(G) When the committee has reported, or has been discharged from further consideration of, a resolution as provided in this paragraph, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(H) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(I) Motions to postpone, made with respect to the discharge from the committee, or the consideration of a resolution with respect to a bidding system, and motions to proceed to the consideration of other business, shall be decided without debate.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a bidding system shall be decided without debate.

(5)(A) During the five-year period commencing on the date of enactment of this subsection, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this Act, require, as to no more than 10 per centum of the tracts offered each year, each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random for the acquisition of valid statistical data if such bidding alternative is otherwise consistent with the provisions of this Act.

(B) The bidding systems authorized by paragraph (1) of this subsection, other than the system authorized by subparagraph (A), shall be applied to not less than 20 per centum and not more than 60 per centum of the total area offered for leasing each year during the five-year period beginning on the date of enactment of this subsection, unless the Secretary determines that the requirements set forth in this subparagraph are inconsistent with the purposes and policies of this Act.

(6) At least ninety days prior to notice of any lease sale under subparagraph (D), (E), (F), or, if appropriate, (H) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net

profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee.

(7) After an oil and gas lease is granted pursuant to any of the work commitment options of paragraph (1) of this subsection—

(A) the lessee, at its option, shall deliver to the Secretary upon issuance of the lease either (i) a cash deposit for the full amount of the exploration work commitment, or (ii) a performance bond in form and substance and with a surety satisfactory to the Secretary, in the principal amount of such exploration work commitment assuring the Secretary that such commitment shall be faithfully discharged in accordance with this section, regulations, and the lease; and for purposes of this subparagraph, the principal amount of such cash deposit or bond may, in accordance with regulations, be periodically reduced upon proof, satisfactory to the Secretary, that a portion of the exploration work commitment has been satisfied;

(B) 50 per centum of all exploration expenditures on, or directly related to, the lease, including, but not limited to (i) geological investigations and related activities, (ii) geophysical investigations including seismic, geomagnetic, and gravity surveys, data processing and interpretation, and (iii) exploratory drilling, core drilling, redrilling, and well completion or abandonment, including the drilling of wells sufficient to determine the size and area extent of any newly discovered field, and including the cost of mobilization and demobilization of drilling equipment, shall be included in satisfaction of the commitment, except that the lessee's general overhead cost shall not be so included against the work commitment, but its cost (including employee benefits) of employees directly assigned to such exploration work shall be so included; and

(C) if at the end of the primary term of the lease, including any extension thereof, the full dollar amount of the exploration work commitment has not been satisfied, the balance shall then be paid in cash to the Secretary.

(8) Not later than thirty days before any lease sale, the Secretary shall submit to the Congress and publish in the Federal Register a notice—

(A) identifying any bidding system which will be utilized for such lease sale and the reasons for the utilization of such bidding system; and

(B) designating the lease tracts selected which are to be offered in such sale under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (H) of paragraph (1), and the reasons such lease tracts are to be offered under a particular bidding system.

(b) An oil and gas lease issued pursuant to this section shall—

(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

(2) be for an initial period of—

(A) five years; or

(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions, and as long after such initial period as oil or gas is produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

(3) require the payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section;

(4) entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this Act;

(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 5 of this Act;

(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced on such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.

(c)(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease may create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

(A) refuse (i) to accept an otherwise qualified bid for such lease, or (ii) to issue such lease, notwithstanding subsection (a) of this section; or

(B) issue such lease, and notify the lessee and the Attorney General of the reason for such decision.

(4)(A) Nothing in this subsection shall restrict the power under any other Act or the common law of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(B) Neither the issuance of a lease nor anything in this subsection shall modify or abridge any private right of action under the antitrust laws.

(d) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases.

(e) No lease issued under this Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General.

(f) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(g)(1) At the time of soliciting nominations for the leasing of lands containing tracts wholly or partially within three nautical miles of the seaward boundary of any coastal State, and subsequently as new information is obtained or developed by the Secretary, the Secretary, in addition to the information required by section 26 of this Act, shall provide the Governor of such State—

(A) an identification and schedule of the areas and regions proposed to be offered for leasing;

(B) at the request of the Governor of such State, all information from all sources concerning the geographical, geological, and ecological characteristics of such tracts;

(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

(D) at the request of the Governor of such State, an identification of any field, geological structure, or trap located wholly or partially within three nautical miles of the seaward boundary of such coastal State, including all information relating to the entire field, geological structure, or trap.

The provisions of the first sentence of subsection (c) and the provisions of subsections (e)–(h) of section 26 of this Act shall be applicable to the release by the Secretary of any information to any coastal State under this paragraph. In addition, the provisions of subsections (c) and (e)–(h) of section 26 of this Act shall apply in their entirety to the release by the Secretary to any coastal State of any information relating to Federal lands beyond three nautical miles of the seaward boundary of such coastal State.

(2) Notwithstanding any other provision of this Act, the Secretary shall deposit into a separate account in the Treasury of the United States all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly (or, in the case of Alaska, partially

until seven years from the date of settlement of any boundary dispute that is the subject of an agreement under section 7 of this Act entered into prior to January 1, 1986 or until April 15, 1993 with respect to any other tract) within three nautical miles of the seaward boundary of any coastal State, or, (except as provided above for Alaska) in the case where a Federal tract lies partially within three nautical miles of the seaward boundary, a percentage of bonuses, rents, royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of such tract equal to the percentage of surface acreage of the tract that lies within such three nautical miles. Except as provided in paragraph (5) of this subsection, not later than the last business day of the month following the month in which those revenues are deposited in the Treasury, the Secretary shall transmit to such coastal State 27 percent of those revenues, together with all accrued interest thereon. The remaining balance of such revenues shall be transmitted simultaneously to the miscellaneous receipts account of the Treasury of the United States.

(3) Whenever the Secretary or the Governor of a coastal State determines that a common potentially hydrocarbon-bearing area may underlie the Federal and State boundary, the Secretary or the Governor shall notify the other party in writing of his determination and the Secretary shall provide to the Governor notice of the current and projected status of the tract or tracts containing the common potentially hydrocarbon-bearing area. If the Secretary has leased or intends to lease such tract or tracts, the Secretary and the Governor of the coastal State may enter into an agreement to divide the revenues from production of any common potentially hydrocarbon-bearing area, by unitization or other royalty sharing agreement, pursuant to existing law. If the Secretary and the Governor do not enter into an agreement, the Secretary may nevertheless proceed with the leasing of the tract or tracts. Any revenue received by the United States under such an agreement shall be subject to the requirements of paragraph (2).

(4) The deposits in the Treasury account described in this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

(5)(A) When there is a boundary dispute between the United States and a State which is subject to an agreement under section 7 of this Act, the Secretary shall credit to the account established pursuant to such agreement all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1)), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary asserted by the State, if that money has not otherwise been deposited in such account. Proceeds of an escrow account established pursuant to an agreement under section 7 shall be distributed as follows:

(i) Twenty-seven percent of all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1)), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978, of any tract which lies wholly within three nautical miles of the seaward boundary asserted by the Federal Government in the boundary dispute, together with all accrued interest thereon, shall be paid to the State either—

(I) within thirty days of December 1, 1987, or

(II) by the last business day of the month following the month in which those revenues are deposited in the Treasury, whichever date is later.

(ii) Upon the settlement of a boundary dispute which is subject to a section 7 agreement between the United States and a State, the Secretary shall pay to such State any additional moneys due such State from amounts deposited in or credited to the escrow account. If there is insufficient money deposited in the escrow account, the Secretary shall transmit, from any revenues derived from any lease of Federal lands under this Act, the remaining balance due such State in accordance with the formula set forth in section 8004(b)(1)(B) of the Outer Continental Shelf Lands Act Amendments of 1985.

(B) This paragraph applies to all Federal oil and gas lease sales, under this Act, including joint lease sales, occurring after September 18, 1978.

(6) This section shall be deemed to take effect on October 1, 1985, for purposes of determining the amounts to be deposited in the separate account and the States' shares described in paragraph (2).

(7) When the Secretary leases any tract which lies wholly or partially within three miles of the seaward boundary of two or more States, the revenues from such tract shall be distributed as otherwise provided by this section, except that the State's share of such revenues that would otherwise result under this section shall be divided equally among such States.

(h) Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title or interest in, any submerged lands.

(i) In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of subsection (a) of section 6 of this Act, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

(j) A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the

payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production of value of the sulphur at the wellhead, and (4) contained such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

(k)(1) The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

(2)(A) Notwithstanding paragraph (1), the Secretary may negotiate with any person an agreement for the use of Outer Continental Shelf sand, gravel and shell resources—

(i) for use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

(ii) for use in a construction project, other than a project described in clause (i), that is funded in whole or in part by or authorized by the Federal Government.

(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against a Federal, State, or local government agency.

(C) The Secretary may, through this paragraph and in consultation with the Secretary of Commerce, seek to facilitate projects in the coastal zone, as such term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453), that promote the policy set forth in section 303 of that Act (16 U.S.C. 1452).

(D) Any Federal agency which proposes to make use of sand, gravel and shell resources subject to the provisions of this Act shall enter into a Memorandum of Agreement with the Secretary concerning the potential use of those resources. The Secretary shall notify the Committee on Merchant Marine and Fisheries and the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on any proposed project for the use of those resources prior to the use of those resources.

(3) *EXPLORATION LICENSES AND LEASES ON OUTER CONTINENTAL SHELF ADJACENT TO TERRITORIES AND POSSESSIONS.—*

(A) *IN GENERAL.—The Secretary is authorized to grant to any qualified applicant an exploration license which will provide the exclusive right to explore for minerals, other than oil, gas, and sulphur, in an area lying within the United States exclusive economic zone and the outer Continental Shelf adjacent to any territory or possession of the United States.*

(B) *APPLICATION.—Subsection (a) shall not apply to any area conveyed by Congress to a territorial government for administration.*

(C) *EXPLORATION LICENSE DURATION.*—*Exploration licenses granted under this paragraph will be issued for a period pursuant to regulations prescribed by the Secretary.*

(D) *LEASE.*—*Upon showing to the satisfaction of the Secretary that valuable mineral deposits have been discovered by the licensee within the area described by the exploration license of the licensee, the licensee will be entitled to a lease for any or all of that area at a royalty rate established by regulation and lease terms.*

(E) *LEASE DURATION.*—*Leases under this section will be issued for a period established by regulation with a preferential right in the lessee to renew.*

(l) Notices of sale of leases, and the terms of bidding authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

(m) All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 9 of this Act.

(n) The issuance of any lease by the Secretary pursuant to this Act, or the making of any interim arrangements by the Secretary pursuant to section 7 of this Act shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

(o) The Secretary may cancel any lease obtained by fraud or misrepresentation.

(p) *LEASES, EASEMENTS, OR RIGHTS-OF-WAY FOR ENERGY AND RELATED PURPOSES.*—

(1) *IN GENERAL.*—The Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant departments and agencies of the Federal Government, may grant a lease, easement, or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this Act, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law, if those activities—

(A) support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium;

(B) support transportation of oil or natural gas, excluding shipping activities;

(C) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

(D) use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under this Act, except that any oil and gas energy-related uses shall not be authorized in areas in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium.

(2) *PAYMENTS AND REVENUES.*—(A) The Secretary shall establish royalties, fees, rentals, bonuses, or other payments to

ensure a fair return to the United States for any lease, easement, or right-of-way granted under this subsection.

(B) The Secretary shall provide for the payment of 27 percent of the revenues received by the Federal Government as a result of payments under this section from projects that are located wholly or partially within the area extending three nautical miles seaward of State submerged lands. Payments shall be made based on a formula established by the Secretary by rulemaking no later than 180 days after the date of enactment of this section that provides for equitable distribution, based on proximity to the project, among coastal states that have a coastline that is located within 15 miles of the geographic center of the project.

(3) COMPETITIVE OR NONCOMPETITIVE BASIS.—Except with respect to projects that meet the criteria established under section 388(d) of the Energy Policy Act of 2005, the Secretary shall issue a lease, easement, or right-of-way under paragraph (1) on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.

(4) REQUIREMENTS.—The Secretary shall ensure that any activity under this subsection is carried out in a manner that provides for—

- (A) safety;
- (B) protection of the environment;
- (C) prevention of waste;
- (D) conservation of the natural resources of the outer Continental Shelf;
- (E) coordination with relevant Federal agencies;
- (F) protection of national security interests of the United States;
- (G) protection of correlative rights in the outer Continental Shelf;
- (H) a fair return to the United States for any lease, easement, or right-of-way under this subsection;
- (I) prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;
- (J) consideration of—
 - (i) the location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and
 - (ii) any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;
- (K) public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this subsection; and
- (L) oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.

(5) LEASE DURATION, SUSPENSION, AND CANCELLATION.—The Secretary shall provide for the duration, issuance, transfer, renewal, suspension, and cancellation of a lease, easement, or right-of-way under this subsection.

(6) SECURITY.—The Secretary shall require the holder of a lease, easement, or right-of-way granted under this subsection to—

(A) furnish a surety bond or other form of security, as prescribed by the Secretary;

(B) comply with such other requirements as the Secretary considers necessary to protect the interests of the public and the United States; and

(C) provide for the restoration of the lease, easement, or right-of-way.

(7) COORDINATION AND CONSULTATION WITH AFFECTED STATE AND LOCAL GOVERNMENTS.—The Secretary shall provide for coordination and consultation with the Governor of any State or the executive of any local government that may be affected by a lease, easement, or right-of-way under this subsection.

(8) REGULATIONS.—Not later than 270 days after the date of enactment of the Energy Policy Act of 2005, the Secretary, in consultation with the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce, heads of other relevant departments and agencies of the Federal Government, and the Governor of any affected State, shall issue any necessary regulations to carry out this subsection.

(9) EFFECT OF SUBSECTION.—Nothing in this subsection displaces, supersedes, limits, or modifies the jurisdiction, responsibility, or authority of any Federal or State agency under any other Federal law.

(10) APPLICABILITY.—This subsection does not apply to any area on the outer Continental Shelf within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.

SEC. 9. DISPOSITION OF REVENUES.—[All rentals] (a) *IN GENERAL.*—*Except as otherwise provided in this section, all rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.*

(b) *DISTRIBUTION OF REVENUE TO PRODUCING STATES.*—

(1) *DEFINITIONS.*—*In this subsection:*

(A) *COVERED PLANNING AREA.*—

(i) *IN GENERAL.*—*Subject to clause (ii), the term “covered planning area” means each of the following planning areas, as such planning areas are generally depicted in the later of the 2017–2022 Outer Continental Shelf Oil and Gas Leasing Proposed Final Program, dated November 2016, or a subsequent oil and gas leasing program developed under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344):*

(I) *Mid-Atlantic.*

(II) *South Atlantic.*

(III) *Any planning area located off the coast of Alaska.*

(ii) *EXCLUSIONS.*—The term “covered planning area” does not include any area in the Atlantic—

(I) north of the southernmost lateral seaward administrative boundary of the State of Maryland; or

(II) south of the northernmost lateral seaward administrative boundary of the State of Florida.

(B) *PRODUCING STATE.*—The term “producing State” means each of the following States:

(i) Virginia.

(ii) North Carolina.

(iii) South Carolina.

(iv) Georgia.

(v) Alaska.

(C) *QUALIFIED REVENUES.*—

(i) *IN GENERAL.*—The term “qualified revenues” means revenues derived from rentals, royalties, bonus bids, and other sums due and payable to the United States under oil and gas leases entered into on or after the date of the enactment of this Act for an area in a covered planning area.

(ii) *EXCLUSIONS.*—The term “qualified revenues” does not include—

(I) revenues from the forfeiture of a bond or other surety securing obligations other than royalties, civil penalties, or royalties taken by the Secretary in-kind and not sold;

(II) revenues generated from leases subject to section 8(g); and

(III) the portion of rental revenues in excess of those that would have been collected at the rental rates in effect before August 5, 1993.

(2) *DEPOSIT OF QUALIFIED REVENUES.*—

(A) *PHASE I.*—With respect to qualified revenues under leases awarded under the first leasing program approved under section 18(a) that takes effect after the date of the enactment of this section, the Secretary of the Treasury shall deposit or allocate, as applicable—

(i) 87.5 percent into the general fund of the Treasury; and

(ii) 12.5 percent to States in accordance with paragraph (3).

(B) *PHASE II.*—With respect to qualified revenues under leases awarded under the second leasing program approved under section 18(a) that takes effect after the date of the enactment of this section, the Secretary of the Treasury shall deposit or allocate, as applicable—

(i) 75 percent into the general fund of the Treasury; and

(ii) 25 percent to States in accordance with paragraph (3).

(C) *PHASE III.*—With respect to qualified revenues under leases awarded under the third leasing program approved under section 18(a) that takes effect after the date of the enactment of this section and under any such leasing program subsequent to such third leasing program, the Sec-

retary of the Treasury shall deposit or allocate, as applicable—

(i) 50 percent into the general fund of the Treasury; and

(ii) 50 percent into a special account in the Treasury from which the Secretary of the Treasury shall disburse—

(I) 75 percent to States in accordance with paragraph (3);

(II) 12.5 percent to the Secretary of Transportation for energy infrastructure development in coastal ports; and

(III) 12.5 percent to the Secretary of the Interior for units of the National Park System.

(3) ALLOCATION TO PRODUCING STATES.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary of the Treasury shall allocate the qualified revenues distributed to States under paragraph (2) to each producing State in an amount based on a formula established by the Secretary of the Interior, by regulation, that—

(i) is inversely proportional to the respective distances between—

(I) the point on the coastline of the producing State that is closest to the geographical center of the applicable leased tract; and

(II) the geographical center of that leased tract;

(ii) does not allocate qualified revenues to any producing State that is further than 200 nautical miles from the leased tract; and

(iii) allocates not less than 10 percent of qualified revenues to each producing State that is 200 or fewer nautical miles from the leased tract.

(B) PAYMENTS TO COASTAL POLITICAL SUBDIVISIONS.—

(i) IN GENERAL.—The Secretary of the Treasury shall pay 20 percent of the allocable share of each producing State determined under this paragraph to the coastal political subdivisions of the producing State.

(ii) ALLOCATION.—The amount paid by the Secretary of the Treasury to coastal political subdivisions shall be allocated to each coastal political subdivision in accordance with subparagraphs (B) and (E) of section 31(b)(4).

(iii) DEFINITION OF COASTAL POLITICAL SUBDIVISION.—In this subparagraph, the term “coastal political subdivision” means—

(I) with respect to a contiguous coastal State, a political subdivision of such State, any part of which is—

(aa) within the coastal zone of the State (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)); and

(bb) not more than 200 nautical miles from the geographic center of any leased tract; and

(II) *with respect to a noncontiguous coastal State—*

(aa) *a county-equivalent subdivision of the State for which—*

(AA) *all or part lies within the coastal zone of the State (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)); and*

(BB) *the closest coastal point is not more than 200 nautical miles from the geographical center of any leased tract on the outer Continental Shelf; or*

(bb) *a municipal subdivision of the State for which—*

(AA) *the closest point is more than 200 nautical miles from the geographical center of a leased tract on the outer Continental Shelf; and*

(BB) *the State has determined to be a significant staging area for oil and gas servicing, supply vessels, operations, suppliers, or workers.*

(4) *ADMINISTRATION.—Amounts made available under paragraph (2)(B) shall—*

(A) *be made available, without further appropriation, in accordance with this subsection;*

(B) *remain available until expended;*

(C) *be in addition to any amounts appropriated under—*

(i) *chapter 2003 of title 54, United States Code;*

(ii) *any other provision of this Act; and*

(iii) *any other provision of law; and*

(D) *be made available during the fiscal year immediately following the fiscal year in which such amounts were received.*

* * * * *

SEC. 12. RESERVATIONS.—**[(a) The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.]**

(a) *LIMITATION ON WITHDRAWAL.—*

(1) *IN GENERAL.—Except as otherwise provided in this section, no lands of the outer Continental Shelf may be withdrawn from disposition except by an Act of Congress.*

(2) *NATIONAL MARINE SANCTUARIES.—The President may withdraw from disposition any of the unleased lands of the outer Continental Shelf located in a national marine sanctuary designated in accordance with the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or otherwise by statute.*

(3) *EXISTING WITHDRAWALS.—*

(A) *IN GENERAL.—Except for the withdrawals listed in subparagraph (B), any withdrawal from disposition of lands on the outer Continental Shelf before the date of the enactment of this subsection shall have no force or effect.*

(B) *EXCEPTIONS.—Subparagraph (A) shall not apply to the following withdrawals:*

(i) Any withdrawal in a national marine sanctuary designated in accordance with the National Marine Sanctuaries Act.

(ii) Any withdrawal in a national monument declared under section 320301 of title 54, United States Code, or the Act of June 8, 1906 (ch. 3060; 34 Stat. 225).

(iii) Any withdrawal in the North Aleutian Basin Planning Area, including Bristol Bay.

(b) In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any mineral produced from the outer Continental Shelf.

(c) All leases issued under this Act, and leases, the maintenance and operation of which are authorized under this Act, shall contain or be construed to contain a provision whereby authority is vested in the Secretary, upon a recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after the effective date of this Act, to suspend operations under any lease; and all such leases shall contain or be construed to contain provisions for the payment of just compensation to the lessee whose operations are thus suspended.

(d) The United States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no exploration or operations may be conducted on any part of the surface of such area except with the concurrence of the Secretary of Defense; and if operations or production under any lease theretofore issued on lands within any such restricted area shall be suspended, any payment of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

(e) All uranium, thorium, and all other materials determined pursuant to paragraph (1) of subsection (b) of section 5 of the Atomic Energy Act of 1946, as amended, to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the subsoil or seabed of the outer Continental Shelf are hereby reserved for the use of the United States.

(f) The United States reserves and retains the ownership of and the right to extract all helium, under such rules and regulations as shall be prescribed by the Secretary, contained in gas produced from any portion of the outer Continental Shelf which may be subject to any lease maintained or granted pursuant to this Act, but the helium shall be extracted from such gas so as to cause no substantial delay in the delivery of gas produced to the purchaser of such gas.

* * * * *

SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—(a) The Secretary, pursuant to procedures set forth in subsections (c) and (d) of this section, shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this Act. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

(F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

(G) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and

(H) relevant environmental and predictive information for different areas of the outer Continental Shelf.

(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

(4) Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.

(b) The leasing program shall include estimates of the appropriations and staff required to—

(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this Act;

(3) conduct environmental studies and prepare any environmental impact statement required in accordance with this Act and with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirement of applicable laws and regulations, and with the terms of the lease.

(c)(1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider any suggestions from the executive of any affected local government in such an affected State, which have been previously submitted to the Governor of such State, and from any other person.

(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (3) of this subsection, the Secretary shall submit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in his State which he, in his discretion, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such correspondence between the Secretary and Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

(3) Within nine months after the date of enactment of this section, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, and the Governors of affected States, and shall publish such proposed program in the Federal Register. Each Governor shall, upon request, submit a copy of the proposed leasing program to the executive of any local government affected by the proposed program.

(d)(1) Within ninety days after the date of publication of a proposed leasing program, the Attorney General may, after consultation with the Federal Trade Commission, submit comments on the anticipated effects of such proposed program upon competition. Any State, local government, or other person may submit comments and recommendations as to any aspect of such proposed program.

(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or local government was not accepted.

(3) After the leasing program has been approved by the Secretary, or after eighteen months following the date of enactment of this section, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

(e) The Secretary shall review the leasing program approved under this section at least once each year. He may revise and reapprove such program, at any time, and such revision and reapproval, except in the case of a revision which is not significant, shall be in the same manner as originally developed. *The Secretary shall include in any such revised leasing program each unexecuted lease sale that was included in the most recent leasing program and the Secretary shall execute each such lease sale as close as practicable to the time specified in the most recent leasing program. Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) shall be deemed to have been satisfied with respect to the execution of such unexecuted lease sales if the Secretary, in the Secretary's sole discretion, determines that such section was satisfied with respect to such unexecuted lease sales for the most recent leasing program.*

(f) The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(2) public notice of and participation in development of the leasing program;

(3) review by State and local governments which may be impacted by the proposed leasing;

(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

(5) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 305 or section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454, 1455).

Such procedures shall be applicable to any significant revision or reapproval of the leasing program.

(g) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the de-

partment or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.

(h) The heads of all Federal departments and agencies shall provide the Secretary with any nonprivileged or nonproprietary information he requests to assist him in preparing the leasing program and may provide the Secretary with any privileged or proprietary information he requests to assist him in preparing the leasing program. Privileged or proprietary information provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

(i) *This section shall not apply to the scheduling of lease sales in the outer Continental Shelf adjacent to the territories and possessions of the United States.*

* * * * *

SEC. 22. ENFORCEMENT.—(a) The Secretary, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Army shall enforce safety and environmental regulations promulgated pursuant to this Act. Each such Federal department may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of their respective regulations.

(b) It shall be the duty of any holder of a lease or permit under this Act to—

(1) maintain all places of employment within the lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the outer Continental Shelf;

(2) maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf; and

(3) allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

(1) scheduled onsite inspection, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

(2) periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

(d)(1) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil during a period of thirty days. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

(2) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

(e) The Secretary, or, in the case of occupational safety and health, the Secretary of the Department in which the Coast Guard is operating, may review any allegation from any person of the existence of a violation of a safety regulation issued under this Act.

(f) In any investigation conducted pursuant to this section, the Secretary or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process, as in the district courts of the United States. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

(g) *INSPECTION FEES.*—

(1) *ESTABLISHMENT.*—*The Secretary of the Interior shall collect from the operators of facilities subject to inspection under subsection (c) non-refundable fees for such inspections—*

(A) at an aggregate level equal to the amount necessary to offset the annual expenses of inspections of outer Continental Shelf facilities (including mobile offshore drilling units) by the Secretary of the Interior; and

(B) using a schedule that reflects the differences in complexity among the classes of facilities to be inspected.

(2) *OCEAN ENERGY SAFETY FUND.*—*There is established in the Treasury a fund, to be known as the “Ocean Energy Safety Fund” (referred to in this subsection as the “Fund”), into which shall be deposited all amounts collected as fees under paragraph (1) and which shall be available as provided under paragraph (3).*

(3) *AVAILABILITY OF FEES.*—

(A) IN GENERAL.—*Notwithstanding section 3302 of title 31, United States Code, all amounts deposited in the Fund—*

- (i) shall be credited as offsetting collections;
- (ii) shall be available for expenditure for purposes of carrying out inspections of outer Continental Shelf facilities (including mobile offshore drilling units) and the administration of the inspection program under this section;
- (iii) shall be available only to the extent provided for in advance in an appropriations Act; and
- (iv) shall remain available until expended.

(B) *USE FOR FIELD OFFICES.*—Not less than 75 percent of amounts in the Fund may be appropriated for use only for the respective Department of the Interior field offices where the amounts were originally assessed as fees.

(4) *INITIAL FEES.*—Fees shall be established under this subsection for the fiscal year in which this subsection takes effect and the subsequent 10 years, and shall not be raised, except as determined by the Secretary to be appropriate as an adjustment equal to the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the fee was determined or last adjusted.

(5) *ANNUAL FEES.*—Annual fees shall be collected under this subsection for facilities that are above the waterline, excluding drilling rigs, and are in place at the start of the fiscal year. Fees for fiscal year 2019 shall be—

- (A) \$10,500 for facilities with no wells, but with processing equipment or gathering lines;
- (B) \$17,000 for facilities with 1 to 10 wells, with any combination of active or inactive wells; and
- (C) \$31,500 for facilities with more than 10 wells, with any combination of active or inactive wells.

(6) *FEES FOR DRILLING RIGS.*—Fees shall be collected under this subsection for drilling rigs on a per inspection basis. Fees for fiscal year 2019 shall be—

- (A) \$30,500 per inspection for rigs operating in water depths of 1,000 feet or more; and
- (B) \$16,700 per inspection for rigs operating in water depths of less than 1,000 feet.

(7) *BILLING.*—The Secretary shall bill designated operators under paragraph (5) annually, with payment required within 30 days of billing. The Secretary shall bill designated operators under paragraph (6) within 30 days of the end of the month in which the inspection occurred, with payment required within 30 days after billing.

(8) *ANNUAL REPORTS.*—

(A) *IN GENERAL.*—Not later than 60 days after the end of each fiscal year beginning with fiscal year 2019 and ending with fiscal year 2029, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report on the operation of the Fund during the fiscal year.

(B) *CONTENTS.*—Each report shall include, for the fiscal year covered by the report, the following:

(i) A statement of the amounts deposited into the Fund.

(ii) A description of the expenditures made from the Fund for the fiscal year, including the purpose of the expenditures and the additional hiring of personnel.

(iii) A statement of the balance remaining in the Fund at the end of the fiscal year.

(iv) An accounting of pace of permit approvals.

(v) If fee increases are proposed, a proper accounting of the potential adverse economic impacts such fee increases will have on offshore economic activity and overall production.

(vi) Recommendations to increase the efficacy and efficiency of offshore inspections.

(vii) Any corrective actions levied upon offshore inspectors as a result of any form of misconduct.

* * * * *

SEC. 33. WIND LEASE SALES FOR THE OUTER CONTINENTAL SHELF.

(a) **AUTHORIZATION.**—The Secretary may conduct wind lease sales for the outer Continental Shelf.

(b) **WIND LEASE SALE PROCEDURE.**—Any wind lease sale conducted under this section shall be considered a lease under section 8(p).

(c) **WIND LEASE SALE OFF COAST OF CALIFORNIA.**—The Secretary, in consultation with the Secretary of Defense, shall offer a wind lease sale for the outer Continental Shelf off the coast of California as soon as practicable, but not later than one year after the date of enactment of this section.

(d) **WIND LEASE SALES OFF COAST OF PUERTO RICO, VIRGIN ISLANDS OF THE UNITED STATES, GUAM, AMERICAN SAMOA, AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.**—

(1) **STUDY ON FEASIBILITY OF CONDUCTING WIND LEASE SALES OFF COAST OF PUERTO RICO, VIRGIN ISLANDS OF THE UNITED STATES, GUAM, AMERICAN SAMOA, AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.**—

(A) **STUDY.**—The Secretary shall conduct a study on the feasibility, including the long term economic feasibility, of conducting wind lease sales for the outer Continental Shelf off the coast of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(B) **SUBMISSION OF RESULTS.**—Not later than 180 days after the date of the enactment of this section, the Secretary shall submit to Congress the results of the study conducted under subparagraph (A).

(2) **WIND LEASE SALES CONDITIONAL UPON RESULTS OF STUDY.**—

(A) **WIND LEASE SALE OFF COAST OF PUERTO RICO.**—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of Puerto Rico is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of Puerto Rico as soon as practicable, but not later than one year after the date of the enactment of this section.

(B) *WIND LEASE SALE OFF COAST OF VIRGIN ISLANDS OF THE UNITED STATES.*—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of the Virgin Islands of the United States is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of the Virgin Islands of the United States as soon as practicable, but not later than one year after the date of the enactment of this section.

(C) *WIND LEASE SALE OFF COAST OF GUAM.*—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of Guam is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of Guam as soon as practicable, but not later than one year after the date of the enactment of this section.

(D) *WIND LEASE SALE OFF COAST OF AMERICAN SAMOA.*—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of American Samoa is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of American Samoa as soon as practicable, but not later than one year after the date of the enactment of this section.

(E) *WIND LEASE SALE OFF COAST OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.*—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of the Commonwealth of the Northern Mariana Islands is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of the Commonwealth of the Northern Mariana Islands as soon as practicable, but not later than one year after the date of the enactment of this section.

(e) *WIND LEASE SALE OFF COAST OF HAWAII.*—

(1) *STUDY ON FEASIBILITY OF CONDUCTING WIND LEASE SALES OFF COAST OF THE STATE OF HAWAII.*—

(A) *STUDY.*—The Secretary, in consultation with the Secretary of Defense, shall conduct a study on the feasibility of conducting wind lease sales for the outer Continental Shelf off the coast of the State of Hawaii.

(B) *SUBMISSION OF RESULTS.*—Not later than 180 days after the date of the enactment of this section, the Secretary shall submit to Congress the results of the study conducted under subparagraph (A).

(2) *WIND LEASE SALES CONDITIONAL UPON RESULTS OF STUDY.*—If the study required under paragraph (1)(A) concludes that a wind lease sale for the outer Continental Shelf off the coast of the State of Hawaii is feasible, then the Secretary shall offer a wind lease sale for the outer Continental Shelf off the coast of the State of Hawaii as soon as practicable, but not later than one year after the date of the enactment of this section.

GULF OF MEXICO ENERGY SECURITY ACT OF 2006

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DIVISION C—OTHER PROVISIONS

**TITLE I—GULF OF MEXICO ENERGY
SECURITY**

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**SEC. 105. DISPOSITION OF QUALIFIED OUTER CONTINENTAL SHELF
REVENUES FROM 181 AREA, 181 SOUTH AREA, AND 2002-
2007 PLANNING AREAS OF GULF OF MEXICO.**

(a) **IN GENERAL.**—Notwithstanding section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338) and subject to the other provisions of this section, for each applicable fiscal year, the Secretary of the Treasury shall deposit—

(1) 50 percent of qualified outer Continental Shelf revenues in the general fund of the Treasury; and

(2) 50 percent of qualified outer Continental Shelf revenues in a special account in the Treasury from which the Secretary shall disburse—

(A) 75 percent to Gulf producing States in accordance with subsection (b); and

(B) 25 percent to provide financial assistance to States in accordance with section 200305 of title 54, United States Code, which shall be considered income to the Land and Water Conservation Fund for purposes of section 200302 of that title.

(b) **ALLOCATION AMONG GULF PRODUCING STATES AND COASTAL POLITICAL SUBDIVISIONS.**—

(1) **ALLOCATION AMONG GULF PRODUCING STATES FOR FISCAL YEARS 2007 THROUGH 2016.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), effective for each of fiscal years 2007 through 2016, the amount made available under subsection (a)(2)(A) shall be allocated to each Gulf producing State in amounts (based on a formula established by the Secretary by regulation) that are inversely proportional to the respective distances between the point on the coastline of each Gulf producing State that is closest to the geographic center of the applicable leased tract and the geographic center of the leased tract.

(B) **MINIMUM ALLOCATION.**—The amount allocated to a Gulf producing State each fiscal year under subparagraph (A) shall be at least 10 percent of the amounts available under subsection (a)(2)(A).

(2) **ALLOCATION AMONG GULF PRODUCING STATES FOR FISCAL YEAR 2017 AND THEREAFTER.**—

(A) **IN GENERAL.**—Subject to subparagraphs (B) and (C), effective for fiscal year 2017 and each fiscal year thereafter—

(i) the amount made available under subsection (a)(2)(A) from any lease entered into within the 181

Area or the 181 South Area shall be allocated to each Gulf producing State in amounts (based on a formula established by the Secretary by regulation) that are inversely proportional to the respective distances between the point on the coastline of each Gulf producing State that is closest to the geographic center of the applicable leased tract and the geographic center of the leased tract; and

(ii) the amount made available under subsection (a)(2)(A) from any lease entered into within the 2002-2007 planning area shall be allocated to each Gulf producing State in amounts that are inversely proportional to the respective distances between the point on the coastline of each Gulf producing State that is closest to the geographic center of each historical lease site and the geographic center of the historical lease site, as determined by the Secretary.

(B) MINIMUM ALLOCATION.—The amount allocated to a Gulf producing State each fiscal year under subparagraph (A) shall be at least 10 percent of the amounts available under subsection (a)(2)(A).

(C) HISTORICAL LEASE SITES.—

(i) IN GENERAL.—Subject to clause (ii), for purposes of subparagraph (A)(ii), the historical lease sites in the 2002-2007 planning area shall include all leases entered into by the Secretary for an area in the Gulf of Mexico during the period beginning on October 1, 1982 (or an earlier date if practicable, as determined by the Secretary), and ending on December 31, 2015.

(ii) ADJUSTMENT.—Effective January 1, 2022, and every 5 years thereafter, the ending date described in clause (i) shall be extended for an additional 5 calendar years.

(3) PAYMENTS TO COASTAL POLITICAL SUBDIVISIONS.—

(A) IN GENERAL.—The Secretary shall pay 20 percent of the allocable share of each Gulf producing State, as determined under paragraphs (1) and (2), to the coastal political subdivisions of the Gulf producing State.

(B) ALLOCATION.—The amount paid by the Secretary to coastal political subdivisions shall be allocated to each coastal political subdivision in accordance with subparagraphs (B), (C), and (E) of section 31(b)(4) of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a(b)(4)).

(c) TIMING.—The amounts required to be deposited under paragraph (2) of subsection (a) for the applicable fiscal year shall be made available in accordance with that paragraph during the fiscal year immediately following the applicable fiscal year.

(d) AUTHORIZED USES.—

(1) IN GENERAL.—Subject to paragraph (2), each Gulf producing State and coastal political subdivision shall use all amounts received under subsection (b) in accordance with all applicable Federal and State laws, only for 1 or more of the following purposes:

(A) Projects and activities for the purposes of coastal protection, including conservation, coastal restoration, hur-

ricane protection, and infrastructure directly affected by coastal wetland losses.

(B) Mitigation of damage to fish, wildlife, or natural resources.

(C) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan.

(D) Mitigation of the impact of outer Continental Shelf activities through the funding of onshore infrastructure projects.

(E) Planning assistance and the administrative costs of complying with this section.

(2) LIMITATION.—Not more than 3 percent of amounts received by a Gulf producing State or coastal political subdivision under subsection (b) may be used for the purposes described in paragraph (1)(E).

(e) ADMINISTRATION.—Amounts made available under subsection (a)(2) shall—

(1) be made available, without further appropriation, in accordance with this section;

(2) remain available until expended; and

(3) be in addition to any amounts appropriated under—

(A) the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.);

(B) chapter 2003 of title 54, United States Code; or

(C) any other provision of law.

(f) LIMITATIONS ON AMOUNT OF DISTRIBUTED QUALIFIED OUTER CONTINENTAL SHELF REVENUES.—

[(1) IN GENERAL.—Subject to paragraph (2), the total amount of qualified outer Continental Shelf revenues made available under subsection (a)(2) shall not exceed \$500,000,000 for each of fiscal years 2016 through 2055.]

(1) IN GENERAL.—The total amount of qualified outer Continental Shelf revenues described in section 102(9)(A)(ii) that are made available under subsection (a)(2) shall remain available until expended and shall not exceed—

(A) for each of fiscal years 2019 through 2028, \$500,000,000; and

(B) for each of fiscal years 2029 through 2059, \$649,800,000.

(2) EXPENDITURES.—For the purpose of paragraph (1), for each of fiscal years 2016 through 2055, expenditures under subsection (a)(2) shall be net of receipts from that fiscal year from any area in the 181 Area in the Eastern Planning Area and the 181 South Area.

(3) PRO RATA REDUCTIONS.—If paragraph (1) limits the amount of qualified outer Continental Shelf revenue that would be paid under subparagraphs (A) and (B) of subsection (a)(2)—

(A) the Secretary shall reduce the amount of qualified outer Continental Shelf revenue provided to each recipient on a pro rata basis; and

(B) any remainder of the qualified outer Continental Shelf revenues shall revert to the general fund of the Treasury.

TITLE 54, UNITED STATES CODE

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**SUBTITLE III—NATIONAL PRESERVATION
PROGRAMS**

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**CHAPTER 3203—MONUMENTS, RUINS, SITES, AND
OBJECTS OF ANTIQUITY**

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§ 320301. National monuments

(a) **PRESIDENTIAL DECLARATION.**—The President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.

(b) **RESERVATION OF LAND.**—The President may reserve parcels of land as a part of the national monuments. The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

(c) **RELINQUISHMENT TO FEDERAL GOVERNMENT.**—When an object is situated on a parcel covered by a bona fide unperfected claim or held in private ownership, the parcel, or so much of the parcel as may be necessary for the proper care and management of the object, may be relinquished to the Federal Government and the Secretary may accept the relinquishment of the parcel on behalf of the Federal Government.

(d) **LIMITATION ON EXTENSION OR ESTABLISHMENT OF NATIONAL MONUMENTS IN WYOMING.**—No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

(e) **LIMITATION ON MARINE NATIONAL MONUMENTS.**—

(1) *IN GENERAL.*—*Notwithstanding subsections (a) and (b), the President may not declare or reserve any ocean waters (as such term is defined in section 3 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1402)) or lands beneath ocean waters as a national monument.*

(2) *MARINE NATIONAL MONUMENTS DESIGNATED BEFORE THE DATE OF THE ENACTMENT OF THIS SUBSECTION.*—*This subsection shall not affect any national monument designated by the President before the date of the enactment of this Act.*

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MARINE MAMMAL PROTECTION ACT OF 1972

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DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term “depletion” or “depleted” means any case in which—

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 109, determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.

(2) The terms “conservation” and “management” mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term “district court of the United States” includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term “humane” in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term “intermediary nation” means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B).

(6) The term “marine mammal” means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7) The term “marine mammal product” means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8) The term “moratorium” means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this Act.

(9) The term “optimum sustainable population” means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term “person” includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term “population stock” or “stock” means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(12)(A) Except as provided in [subparagraph (B)] *subparagraphs (B) and (C)*, the term “Secretary” means—

(i) The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this Act with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) The Secretary of the Interior as to all responsibility, authority, funding, and duties under this Act with respect to all other marine mammals covered by this Act.

(B) in section 118 and title IV (other than section 408) the term “Secretary” means the Secretary of Commerce.

(C) *In sections 101(a)(3), 101(a)(5), 103, and 104 (16 U.S.C. 1371(a)(3), 1371(a)(5), 1373, and 1374), for activities associated with operations authorized under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), the term “Secretary” means the Secretary of the Interior with respect to all marine mammals.*

(13) The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

(15) The term “waters under the jurisdiction of the United States” means—

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the

baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(16) The term “fishery” means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(17) The term “competent regional organization”—

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

(B) in any other case, means an organization consisting of those nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

(18)(A) The term “harassment” means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) In the case of a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) or a scientific research activity conducted by or on behalf of the Federal Government consistent with section 104(c)(3), the term “harassment” means—

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.

(C) The term “Level A harassment” means harassment described in subparagraph (A)(i) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(i).

(D) The term “Level B harassment” means harassment described in subparagraph (A)(ii) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(ii).

(19) The term “strategic stock” means a marine mammal stock—

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future; or

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this Act.

(20) The term “potential biological removal level” means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21) The term “Regional Fishery Management Council” means a Regional Fishery Management Council established under section 302 of the Magnuson Fishery Conservation and Management Act.

(22) The term “bona fide research” means scientific research on marine mammals, the results of which—

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23) The term “Alaska Native organization” means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24) The term “take reduction plan” means a plan developed under section 118.

(25) The term “take reduction team” means a team established under section 118.

(26) The term “net productivity rate” means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27) The term “minimum population estimate” means an estimate of the number of animals in a stock that—

(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

(28) The term “International Dolphin Conservation Program” means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized,

modified, and enhanced in accordance with the Declaration of Panama.

(29) The term "Declaration of Panama" means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

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TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Consistent with the provisions of section 104, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 104(c)(5), may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 104(c)(5), which is consistent with the purposes and policies of section 2 of this Act. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103, or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103. Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill

or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C) shall not accept such documentary evidence if—

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

(D) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as such ban is in effect; and

(F)(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (F), the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term "driftnet" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal

Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: Provided, however, That the Secretary, in making such determinations, must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: Provided further, however, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)(A) Except as provided in subparagraphs (B) and (C), the provisions of this Act shall not apply to the use of measures—

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973, the Secretary shall recommend specific measures which may be used to non-lethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this Act.

(5)(A)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(I) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or, in the case of a cooperative agreement under both this Act and the Whaling Convention Act of 1949, pursuant to section 112(c); and

(II) prescribes regulations setting forth

(aa) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(bb) requirements pertaining to the monitoring and reporting of such taking.

(ii) For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), a determination of “least practicable adverse impact on such species or stock” under clause (i)(II)(aa) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(iii) Notwithstanding clause (i), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A)

pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)(i) Upon request therefor by [citizens of the United States] *persons* who engage in a specified activity (other than commercial fishing) [within a specific geographic region], the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment [of small numbers] of marine mammals of a species or population stock by [such citizens] *such persons* while engaging in that activity [within that region] if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b), or section 109(f) or pursuant to a cooperative agreement under section 119.

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity[, and other means of effecting the least practicable impact on such species or stock and its habitat], paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119, and

(III) [requirements pertaining to the monitoring and reporting of such taking by harassment, including] *efficient and practical requirements pertaining to the monitoring of such taking by harassment while the activity is being con-*

ducted and the reporting of such taking, including, as the Secretary determines necessary, requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f) or pursuant to a cooperative agreement under section 119.

Any condition imposed pursuant to subclause (I), (II), or (III) may not result in more than a minor change to the specified activity and may not alter the basic design, location, scope, duration, or timing of the specified activity.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after [receiving an application under this subparagraph] *an application is accepted or required to be considered complete under subclause (I)(aa), (II)(aa), or (IV) of clause (viii), as applicable, and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).*

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this Act for taking by harassment that occurs in compliance with such authorization.

(vi) For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), [a determination of “least practicable adverse impact on such species or stock” under clause (i)(I)] *conditions imposed under subclause (I), (II), or (III) of clause (ii) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.*

(vii) Notwithstanding clause (iii), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(viii)(I) The Secretary shall—

(aa) accept as complete a written request for authorization under this subparagraph for incidental taking described in clause (i), by not later than 45 days after the date of submission of the request; or

(bb) provide to the requester, by not later than 15 days after the date of submission of the request, a written notice describing any additional information required to complete the request.

(II) If the Secretary provides notice under subclause (I)(bb), the Secretary shall, by not later than 30 days after the date of submission of the additional information described in the notice—

(aa) accept the written request for authorization under this subparagraph for incidental taking described in clause (i); or

(bb) deny the request and provide the requester a written explanation of the reasons for the denial.

(III) The Secretary may not under this subparagraph make a second request for information, request that the requester withdraw and resubmit the request, or otherwise delay a decision on the request.

(IV) If the Secretary fails to respond to a request for authorization under this subparagraph in the manner provided in subclause (I) or (II), the request shall be considered to be complete.

(ix)(I) At least 90 days before the date of the expiration of any authorization issued under this subparagraph, the holder of such authorization may apply for a one-year extension of such authorization. The Secretary shall grant such extension within 14 days after the date of such request on the same terms and without further review if there has been no substantial change in the activity carried out under such authorization nor in the status of the marine mammal species or stock, as applicable, as reported in the final annual stock assessment reports for such species or stock.

(II) In subclause (I) the term “substantial change” means a change that prevents the Secretary from making the required findings to issue an authorization under clause (i) with respect to such species or stock.

(III) The Secretary shall notify the applicant of such substantial changes with specificity and in writing within 14 days after the applicant’s submittal of the extension request.

(x) If the Secretary fails to make the required findings and, as appropriate, issue the authorization within 120 days after the application is accepted or required to be considered complete under subclause (I)(aa), (II)(aa), or (III) of clause (viii), as applicable, the authorization is deemed to have been issued on the terms stated in the application and without further process or restrictions under this Act.

(xi) Any taking of a marine mammal in compliance with an authorization under this subparagraph is exempt from the prohibition on taking in section 9 of the Endangered Species Act of 1973 (16 U.S.C. 1538). Any Federal agency authorizing, funding, or carrying out an action that results in such taking, and any agency action authorizing such taking, is exempt from the requirement to consult regarding potential impacts to marine mammal species or designated critical habitat under section 7(a)(2) of such Act (16 U.S.C. 1536(a)(2)).

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Con-

servation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

- (I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;
 - (II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and
 - (III) where required under section 118, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.
- (ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 118, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 118 shall not be subject to the penalties of this Act for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 118.
- (iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 118 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.
- (iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.
- (v) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this subparagraph.
- (vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(F) Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) shall not be subject to the following requirements:

- (i) In subparagraph (A), “within a specified geographical region” and “within that region of small numbers”.
 - (ii) In subparagraph (B), “within a specified geographical region” and “within one or more regions”.
 - (iii) In subparagraph (D), “within a specific geographic region”, “of small numbers”, and “within that region”.
- (6)(A) A marine mammal product may be imported into the United States if the product—

- (i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;
- (ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or
- (iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

- (i) “Native inhabitant of Russia, Canada, or Greenland” means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and
- (ii) “cultural exchange” means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Except as provided in section 109, the provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

- (1) is for subsistence purposes; or
- (2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of panto-graphs, multiple

carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting; and

(3) in each case, is not accomplished in a wasteful manner. Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 117(b)(2), or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) It shall not be a violation of this Act to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) GOOD SAMARITAN EXEMPTION.—It shall not be a violation of this Act to take a marine mammal if—

(1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;

(2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;

(3) reasonable care is exercised to prevent any further injury to the marine mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(e) ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

(f) EXEMPTION OF ACTIONS NECESSARY FOR NATIONAL DEFENSE.—(1) The Secretary of Defense, after conferring with the Sec-

retary of Commerce, the Secretary of the Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement of this Act, if the Secretary determines that it is necessary for national defense.

(2) An exemption granted under this subsection—

(A) subject to subparagraph (B), shall be effective for a period specified by the Secretary of Defense; and

(B) shall not be effective for more than 2 years.

(3)(A) The Secretary of Defense may issue additional exemptions under this subsection for the same action or category of actions, after—

(i) conferring with the Secretary of Commerce, the Secretary of the Interior, or both as appropriate; and

(ii) making a new determination that the additional exemption is necessary for national defense.

(B) Each additional exemption under this paragraph shall be effective for a period specified by the Secretary of Defense, of not more than 2 years.

(4) Not later than 30 days after issuing an exemption under paragraph (1) or an additional exemption under paragraph (3), the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate notice describing the exemption and the reasons therefor. The notice may be provided in classified form if the Secretary of Defense determines that use of the classified form is necessary for reasons of national security.

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MINERAL LEASING ACT

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SEC. 17. (a) All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary.

(b)(1)(A) All lands to be leased which are not subject to leasing under paragraphs (2) and (3) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, except in Alaska, where units shall be not more than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding, except as provided in subparagraph (C). Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for lease. Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. *The Secretary shall resolve*

any protest to a lease sale within 60 days following such payment. All bids for less than the national minimum acceptable bid shall be rejected. Lands for which no bids are received or for which the highest bid is less than the national minimum acceptable bid shall be offered promptly within 30 days for leasing under subsection (c) of this section and shall remain available for leasing for a period of 2 years after the competitive lease sale.

(B) The national minimum acceptable bid shall be \$2 per acre for a period of 2 years from the date of enactment of the Federal Onshore Oil and Gas Leasing Reform Act of 1987. Thereafter, the Secretary, subject to paragraph (2)(B), may establish by regulation a higher national minimum acceptable bid for all leases based upon a finding that such action is necessary: (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and gas resources on Federal lands. Ninety days before the Secretary makes any change in the national minimum acceptable bid, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The proposal or promulgation of any regulation to establish a national minimum acceptable bid shall not be considered a major Federal action subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.

(C) In order to diversify and expand the Nation's onshore leasing program to ensure the best return to the Federal taxpayer, reduce fraud, and secure the leasing process, the Secretary may conduct onshore lease sales through Internet-based bidding methods. Each individual Internet-based lease sale shall conclude within 7 days.

(2)(A)(i) If the lands to be leased are within a special tar sand area, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 5,760 acres, which shall be as nearly compact as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary.

(ii) Royalty shall be 12½ per centum in amount of value of production removed or sold from the lease subject to section 17(k)(1)(c).

(iii) The Secretary may lease such additional lands in special tar sand areas as may be required in support of any operations necessary for the recovery of tar sands.

(iv) No lease issued under this paragraph shall be included in any chargeability limitation associated with oil and gas leases.

(B) For any area that contains any combination of tar sand and oil or gas (or both), the Secretary may issue under this Act, separately—

(i) a lease for exploration for and extraction of tar sand; and

(ii) a lease for exploration for and development of oil and gas.

(C) A lease issued for tar sand shall be issued using the same bidding process, annual rental, and posting period as a lease issued for oil and gas, except that the minimum acceptable bid required for a lease issued for tar sand shall be \$2 per acre.

(D) The Secretary may waive, suspend, or alter any requirement under section 26 that a permittee under a permit authorizing

prospecting for tar sand must exercise due diligence, to promote any resource covered by a combined hydrocarbon lease.

(3)(A) If the United States held a vested future interest in a mineral estate that, immediately prior to becoming a vested present interest, was subject to a lease under which oil or gas was being produced, or had a well capable of producing, in paying quantities at an annual average production volume per well per day of either not more than 15 barrels per day of oil or condensate, or not more than 60,000 cubic feet of gas, the holder of the lease may elect to continue the lease as a noncompetitive lease under subsection (c)(1).

(B) An election under this paragraph is effective—

(i) in the case of an interest which vested after January 1, 1990, and on or before the date of enactment of this paragraph, if the election is made before the date that is 1 year after the date of enactment of this paragraph;

(ii) in the case of an interest which vests within 1 year after the date of enactment of this paragraph, if the election is made before the date that is 2 years after the date of enactment of this paragraph; and

(iii) in any case other than those described in clause (i) or (ii), if the election is made prior to the interest becoming a vested present interest.

(C) Notwithstanding the consent requirement referenced in section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352), the Secretary shall issue a noncompetitive lease under subsection (c)(1) to a holder who makes an election under subparagraph (A) and who is qualified to hold a lease under this Act. Such lease shall be subject to all terms and conditions under this Act that are applicable to leases issued under subsection (c)(1).

(D) A lease issued pursuant to this paragraph shall continue so long as oil or gas continues to be produced in paying quantities.

(E) This paragraph shall apply only to those lands under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following).

(c)(1) If the lands to be leased are not leased under subsection (b)(1) of this section or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding, upon payment of a non-refundable application fee of at least \$75. A lease under this subsection shall be conditioned upon the payment of a royalty at a rate of 12.5 percent in amount or value of the production removed or sold from the lease. Leases shall be issued within 60 days of the date on which the Secretary identifies the first responsible qualified applicant.

(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the national minimum acceptable bid and (ii) for which, at the end of the period referred to in subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is cancelled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.

(d) All leases issued under this section, as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, shall be conditioned upon payment by the lessee of a rental of not less than \$1.50 per acre per year for the first through fifth years of the lease and not less than \$2 per acre per year for each year thereafter. A minimum royalty in lieu of rental of not less than the rental which otherwise would be required for that lease year shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

(e) Competitive and noncompetitive leases issued under this section shall be for a primary term of 10 years: *Provided, however,* That competitive leases issued in special tar sand areas shall also be for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

(f) At least 45 days before offering lands for lease under this section, and at least 30 days before approving applications for permits to drill under the provisions of a lease or substantially modifying the terms of any lease issued under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agencies. Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area. The requirements of this subsection are in addition to any public notice required by other law.

(g) The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this Act may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. The Sec-

retary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this Act.

(h) The Secretary of the Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture.

(i) No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within sixty days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent, of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same unless the lessee is allowed a reasonable time, which shall be not less than sixty days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the leased premises without permission granted by the Secretary under the provisions of this Act.

(j) Whenever it appears to the Secretary that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, he may negotiate agreements whereby the United States, or the United States and its lessees, shall be compensated for such drainage. Such agreements shall be made with the consent of the lessees, if any, affected thereby. If such agreement is entered into, the primary term of any lease for which compensatory royalty is being paid, or any extension of such primary term, shall be extended for the period during which such compensatory royalty is paid and for a period of one year from discontinuance of such payment and so long thereafter as oil or gas is produced in paying quantities.

(k) If, during the primary term or any extended term of any lease issued under this section, a verified statement is filed by any mining claimant pursuant to subsection (c) of section 7 of the Multiple Mineral Development Act of August 13, 1954 (68 Stat. 708), as amended (30 U.S.C. 527), whether such filing occur prior to enactment of the Mineral Leasing Act Revision of 1960 or thereafter, as-

serting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted as to any lands covered by the lease, the running of time under such lease shall be suspended as to the lands involved from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

(l) The Secretary of the Interior shall, upon timely application therefor, issue a new lease in exchange for any lease issued for a term of twenty years, or any renewal thereof, or any lease issued prior to August 8, 1946, in exchange for a twenty-year lease, such new lease to be for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities and at a royalty rate of not less than $12\frac{1}{2}$ per centum in amount of value of the production removed or sold from such leases, except that the royalty rate shall be $12\frac{1}{2}$ per centum in amount or value of the production removed or sold from said leases as to (1) such leases, or such parts of the lands subject thereto and the deposits underlying the same, as are not believed to be within the productive limits of any producing oil or gas deposit, as such productive limits are found by the Secretary to have existed on August 8, 1946; and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved cooperative or unit plan of development or operation from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such plan, and which is determined by the Secretary to be a new deposit, where such lease, or a lease for which it is exchanged, was included in such plan at the time of discovery or was included in a duly executed and filed application for the approval of such plan at the time of discovery.

(m) For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of said oil or gas pool, field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collective adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this Act shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

Any plan authorized by the preceding paragraph which includes lands owned by the United States may, in the discretion of the Secretary, contain a provision whereby authority is vested in the Secretary of the Interior, or any such person, committee, or State or Federal officer or agency as may be designated in the plan, to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control under the provisions of any section of this Act.

When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. Any other lease issued under any section of this Act which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: *Provided*, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: *Provided, however*, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities. The minimum royalty or discovery rental under any lease that has become subject to any cooperative or unit plan of development or operation, or other plan that contains a general provision for allocation of oil or gas, shall be payable only with respect to the lands subject to such lease to which oil or gas shall be allocated under such plan. Any lease which shall be eliminated from any such approved or prescribed plan, or from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

The Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, associations, or corporations whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under the provisions of this Act.

The Secretary of the Interior, to avoid waste or to promote conservation of natural resources, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under this Act. Such authorization may provide for the payment of a storage fee or rental on such stored oil or gas or, in lieu of such fee or rental, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(n)(1)(A) The owner of (1) an oil and gas lease issued prior to the date of enactment of the Combined Hydrocarbon Leasing Act of 1981 or (2) a valid claim to any hydrocarbon resources leasable under this section based on a mineral location made prior to January 21, 1926, and located within a special tar sand area shall be entitled to convert such lease or claim to a combined hydrocarbon lease for a primary term of ten years upon the filing of an application within two years from the date of enactment of that Act containing an acceptable plan of operations which assures reasonable protection of the environment and diligent development of those resources requiring enhanced recovery methods of development or mining. For purposes of conversion, no claim shall be deemed invalid solely because it was located as a placer location rather than a lode location or vice versa, notwithstanding any previous adjudication on that issue.

(B) The Secretary shall issue final regulations to implement this section within six months of the effective date of this Act. If any oil and gas lease eligible for conversion under this section would otherwise expire after the date of this Act and before six months following the issuance of implementing regulations, the lessee may preserve his conversion right under such lease for a period ending six months after the issuance of implementing regulations by filing with the Secretary, before the expiration of the lease, a notice of intent to file an application for conversion. Upon submission of a complete plan of operations in substantial compliance with the regulations promulgated by the Secretary for the filing of such plans, the Secretary shall suspend the running of the term of any oil and gas lease proposed for conversion until the plan is finally approved or disapproved. The Secretary shall act upon a proposed plan of operations within fifteen months of its submittal.

(C) When an existing oil and gas lease is converted to a combined hydrocarbon lease, the royalty shall be that provided for in the original oil and gas lease and for a converted mining claim, $12\frac{1}{2}$

per centum in amount or value of production removed or sold from the lease.

(2) Except as provided in this section, nothing in the Combined Hydrocarbon Leasing Act of 1981 shall be construed to diminish or increase the rights of any lessee under any oil and gas lease issued prior to the enactment of such Act.

(o) CERTAIN OUTSTANDING OIL AND GAS.—(1) Prior to the commencement of surface-disturbing activities relating to the development of oil and gas deposits on lands described under paragraph (5), the Secretary of Agriculture shall require, pursuant to regulations promulgated by the Secretary, that such activities be subject to terms and conditions as provided under paragraph (2).

(2) The terms and conditions referred to in paragraph (1) shall require that reasonable advance notice be furnished to the Secretary of Agriculture at least 60 days prior to the commencement of surface disturbing activities.

(3) Advance notice under paragraph (2) shall include each of the following items of information:

(A) A designated field representative.

(B) A map showing the location and dimensions of all improvements, including but not limited to, well sites and road and pipeline accesses.

(C) A plan of operations, of an interim character if necessary, setting forth a schedule for construction and drilling.

(D) A plan of erosion and sedimentation control.

(E) Proof of ownership of mineral title.

Nothing in this subsection shall be construed to affect any authority of the State in which the lands concerned are located to impose any requirements with respect to such oil and gas operations.

(4) The person proposing to develop oil and gas deposits on lands described under paragraph (5) shall either—

(A) permit the Secretary to market merchantable timber owned by the United States on lands subject to such activities; or

(B) arrange to purchase merchantable timber on lands subject to such surface disturbing activities from the Secretary of Agriculture, or otherwise arrange for the disposition of such merchantable timber, upon such terms and upon such advance notice of the items referred to in subparagraphs (A) through (E) of paragraph (3) as the Secretary may accept.

(5)(A) The lands referred to in this subsection are those lands referenced in subparagraph (B) which are under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following), but does not have an interest in oil and gas deposits that may be present under such lands. This subsection does not apply to any such lands where, under the provisions of its acquisition of an interest in the lands, the United States is to acquire any oil and gas deposits that may be present under such lands in the future but such interest has not yet vested with the United States.

(B) This subsection shall only apply in the Allegheny National Forest.

(p) DEADLINES FOR CONSIDERATION OF APPLICATIONS FOR PERMITS.—

(1) IN GENERAL.—Not later than 10 days after the date on which the Secretary receives an application for any permit to drill, the Secretary shall—

(A) notify the applicant that the application is complete; or

(B) notify the applicant that information is missing and specify any information that is required to be submitted for the application to be complete.

(2) ISSUANCE OR DEFERRAL.—Not later than 30 days after the applicant for a permit has submitted a complete application, the Secretary shall—

(A) issue the permit, if the requirements under the National Environmental Policy Act of 1969 and other applicable law have been completed within such timeframe; or

(B) defer the decision on the permit and provide to the applicant a notice—

(i) that specifies any steps that the applicant could take for the permit to be issued; and

(ii) a list of actions that need to be taken by the agency to complete compliance with applicable law together with timelines and deadlines for completing such actions.

(3) REQUIREMENTS FOR DEFERRED APPLICATIONS.—

(A) IN GENERAL.—If the Secretary provides notice under paragraph (2)(B), the applicant shall have a period of 2 years from the date of receipt of the notice in which to complete all requirements specified by the Secretary, including providing information needed for compliance with the National Environmental Policy Act of 1969.

(B) ISSUANCE OF DECISION ON PERMIT.—If the applicant completes the requirements within the period specified in subparagraph (A), the Secretary shall issue a decision on the permit not later than 10 days after the date of completion of the requirements described in subparagraph (A), unless compliance with the National Environmental Policy Act of 1969 and other applicable law has not been completed within such timeframe.

(C) DENIAL OF PERMIT.—If the applicant does not complete the requirements within the period specified in subparagraph (A) or if the applicant does not comply with applicable law, the Secretary shall deny the permit.

* * * * *

SEC. 35. (a) All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, [shall be paid into the Treasury] *shall, except as provided in subsection (e), be paid into the Treasury* of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under

this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as “miscellaneous receipts”, as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(b) DEDUCTION FOR ADMINISTRATIVE COSTS.—[In determining] *Except with respect to States for which the Secretary has delegated any authority under section 44(a)(1), in determining* the amount of payments to the States under this section, beginning in fiscal year 2014 and for each year thereafter, the amount of such payments shall be reduced by 2 percent for any administrative or other costs incurred by the United States in carrying out the program authorized by this Act, and the amount of such reduction shall be deposited to miscellaneous receipts of the Treasury.

(c)(1) Notwithstanding the first sentence of subsection (a) *and except as provided in subsection (e)*, any rentals received from leases in any State (other than the State of Alaska) on or after the date of enactment of this subsection shall be deposited in the Treasury, to be allocated in accordance with paragraph (2).

(2) Of the amounts deposited in the Treasury under paragraph (1)—

(A) 50 percent shall be paid by the Secretary of the Treasury to the State within the boundaries of which the leased land is located or the deposits were derived; and

(B) 50 percent shall be deposited in a special fund in the Treasury, to be known as the “BLM Permit Processing Improvement Fund” (referred to in this subsection as the “Fund”).

(3) USE OF FUND.—

(A) IN GENERAL.—The Fund shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, for the co-

ordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land.

(B) ACCOUNTS.—The Secretary shall divide the Fund into—

(i) a Rental Account (referred to in this subsection as the “Rental Account”) comprised of rental receipts collected under this section; and

(ii) a Fee Account (referred to in this subsection as the “Fee Account”) comprised of fees collected under subsection (d).

(4) RENTAL ACCOUNT.—

(A) IN GENERAL.—The Secretary shall use the Rental Account for—

(i) the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land under the jurisdiction of the Project offices identified under section 365(d) of the Energy Policy Act of 2005 (42 U.S.C. 15924(d)); and

(ii) training programs for development of expertise related to coordinating and processing oil and gas use authorizations.

(B) ALLOCATION.—In determining the allocation of the Rental Account among Project offices for a fiscal year, the Secretary shall consider—

(i) the number of applications for permit to drill received in a Project office during the previous fiscal year;

(ii) the backlog of applications described in clause (i) in a Project office;

(iii) publicly available industry forecasts for development of oil and gas resources under the jurisdiction of a Project office; and

(iv) any opportunities for partnership with local industry organizations and educational institutions in developing training programs to facilitate the coordination and processing of oil and gas use authorizations.

(5) FEE ACCOUNT.—

(A) IN GENERAL.—The Secretary shall use the Fee Account for the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land.

(B) ALLOCATION.—The Secretary shall transfer not less than 75 percent of the revenues collected by an office for the processing of applications for permits to the State office of the State in which the fees were collected.

(d), BLM OIL AND GAS PERMIT PROCESSING FEE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, for each of fiscal years 2016 through 2026, the Secretary, acting through the Director of the Bureau of Land Management, shall collect a fee for each new application for a permit to drill that is submitted to the Secretary.

(2) AMOUNT.—The amount of the fee shall be \$9,500 for each new application, as indexed for United States dollar inflation

from October 1, 2015 (as measured by the Consumer Price Index).

(3) USE.—Of the fees collected under this subsection for a fiscal year, the Secretary shall transfer—

(A) for each of fiscal years 2016 through 2019—

(i) 15 percent to the field offices that collected the fees and used to process protests, leases, and permits under this Act, subject to appropriation; and

(ii) 85 percent to the BLM Permit Processing Improvement Fund established under subsection (c)(2)(B) (referred to in this subsection as the “Fund”); and

(B) for each of fiscal years 2020 through 2026, all of the fees to the Fund.

(4) ADDITIONAL COSTS.—During each of fiscal years of 2016 through 2026, the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing applications for permits to drill.

(e) CONVEYANCE TO CERTAIN STATES OF PROPERTY INTEREST IN STATE SHARE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, on request of a State and in lieu of any payments to the State under subsection (a), the Secretary of the Interior shall convey to the State all right, title, and interest in and to the percentage specified in that subsection for that State that would otherwise be required to be paid into the Treasury under that subsection.

(2) AMOUNT.—Notwithstanding any other provision of law, after a conveyance to a State under paragraph (1), any person shall pay directly to the State any amount owed by the person for which the right, title, and interest has been conveyed to the State under this subsection.

(3) NOTICE.—The Secretary of the Interior shall promptly provide to each holder of a lease of public land to which subsection (a) applies that is located in a State to which right, title, and interest is conveyed under this subsection notice that—

(A) the Secretary of the Interior has conveyed to the State all right, title, and interest in and to the amounts referred to in paragraph (1); and

(B) the leaseholder is required to pay the amounts directly to the State.

(4) REPORT.—A State that has received a conveyance under this subsection shall report monthly to the Office of Natural Resources Revenue of the Department of the Interior the amount paid to such State pursuant to this subsection.

(5) APPLICATION WITH RESPECT TO FOGRMA.—With respect to the interest conveyed to a State under this subsection from sales, bonuses, royalties (including interest charges), and rentals collected under the Federal Oil and Gas Royalty Management Act of 1983 (30 U.S.C. 1701 et seq.), this subsection shall only apply with respect to States for which the Secretary has delegated any authority under section 44(a)(1).

* * * * *

SEC. 43. LANDS NOT SUBJECTED TO OIL AND GAS LEASING.

(a) **PROHIBITION.**—The Secretary shall not issue any lease under this Act or under the Geothermal Steam Act of 1970 on any of the following Federal lands:

(1) Lands recommended for wilderness allocation by the surface managing agency.

(2) Lands within Bureau of Land Management wilderness study areas.

(3) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area.

(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

(b) **EXPLORATION.**—In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas, coal, oil shale, phosphate, potassium, sulphur, gilsonite or geothermal resources by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment.

SEC. 44. COOPERATIVE FEDERALISM IN OIL AND GAS PERMITTING ON AVAILABLE FEDERAL LAND.

(a) **AUTHORIZATIONS.**—

(1) **IN GENERAL.**—*Upon receipt of an application under subsection (b), the Secretary may delegate to a State exclusive authority—*

(A) to issue an APD on available Federal land; or

(B) to approve drilling plans on available Federal land.

(2) **SUNDRY NOTICES.**—*Any authorization under paragraph (1) may, upon the request of the State, include authority to issue sundry notices.*

(3) **INSPECTION AND ENFORCEMENT.**—*Any authorization under paragraph (1) may, upon the request of the State, include authorization to inspect and enforce an APD or drilling plan, as applicable. An authorization under paragraph (1)(A) shall not affect the ability of the Secretary to collect inspection fees under section 108(d) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1718(d)).*

(b) **STATE APPLICATION PROCESS.**—

(1) **SUBMISSION OF APPLICATION.**—*A State may submit an application under subparagraph (A) or (B) of subsection (a)(1) to the Secretary at such time and in such manner as the Secretary may require.*

(2) **CONTENT OF APPLICATION.**—*An application submitted under this subsection shall include—*

(A) a description of the State program that the State proposes to administer under State law; and

(B) a statement from the Governor or attorney general of such State that the laws of such State provide adequate authority to carry out the State program.

(3) *DEADLINE FOR APPROVAL OR DISAPPROVAL.*—Not later than 180 days after the date of receipt of an application under this subsection, the Secretary shall approve or disapprove such application.

(4) *CRITERIA FOR APPROVAL.*—The Secretary may approve an application received under this subsection only if the Secretary has—

(A) determined that the State applicant would be at least as effective as the Secretary in issuing APDs or in approving drilling plans, as applicable;

(B) determined that the State program of the State applicant—

(i) complies with this Act; and

(ii) provides for the termination or modification of an issued APD or approved drilling plan, as applicable, for cause, including for—

(I) the violation of any condition of the issued APD or approved drilling plan;

(II) obtaining the issued APD or approved drilling plan by misrepresentation; or

(III) failure to fully disclose in the application all relevant facts;

(C) determined that the State applicant has sufficient administrative and technical personnel and sufficient funding to carry out the State program;

(D) provided notice to the public, solicited public comment, and held a public hearing within the State;

(E) determined that approval of the application would not result in decreased royalty payments owed to the United States under section 35(a), except as provided in subsection (e) of that section; and

(F) in the case of a State applicant seeking authority under subsection (a)(3) to inspect and enforce APDs or drilling plans, as applicable, entered into a memorandum of understanding with a State applicant that delineates the Federal and State responsibilities with respect to such inspection and enforcement.

(5) *DISAPPROVAL.*—If the Secretary disapproves an application submitted under this subsection, then the Secretary shall—

(A) notify, in writing, the State applicant of the reason for the disapproval and any revisions or modifications necessary to obtain approval; and

(B) provide any additional information, data, or analysis upon which the disapproval is based.

(6) *RESUBMITTAL OF APPLICATION.*—A State may resubmit an application under this subsection at any time.

(7) *STATE MEMORANDUM OF UNDERSTANDING.*—Before a State submits an application under this subsection, the Secretary may, at the request of a State, enter into a memorandum of understanding with the State regarding the proposed State program—

- (A) to delineate the Federal and State responsibilities for oil and gas regulations;
- (B) to provide technical assistance; and
- (C) to share best management practices.

(c) *ADMINISTRATIVE FEES FOR APDS.*—

(1) *IN GENERAL.*—A State for which authority has been delegated under subsection (a)(1)(A) may collect a fee for each application for an APD that is submitted to the State.

(2) *NO COLLECTION OF FEE BY SECRETARY.*—The Secretary may not collect a fee from the applicant or from the State for an application for an APD that is submitted to a State for which authority has been delegated under subsection (a)(1)(A).

(3) *FEE AMOUNT.*—The fee collected under paragraph (1) shall be less than or equal to the amount of the fee collected by the Secretary under section 35(d)(2) from States for which authority has not been delegated under subsection (a)(1)(A).

(4) *USE.*—A State shall use 100 percent of the fees collected under this subsection for the administration of the approved State program of the State.

(d) *VOLUNTARY TERMINATION OF AUTHORITY.*—A State may voluntarily terminate any authority delegated to such State under subsection (a) upon providing written notice to the Secretary 60 days in advance. Upon expiration of such 60-day period, the Secretary shall resume any activities for which authority was delegated to the State under subsection (a).

(e) *APPEAL OF DENIAL OF APPLICATION FOR APD OR APPLICATION FOR APPROVAL OF DRILLING PLAN.*—

(1) *IN GENERAL.*—If a State for which the Secretary has delegated authority under subsection (a)(1) denies an application for an APD or an application for approval of a drilling plan, the applicant may appeal such decision to the Department of the Interior Office of Hearings and Appeals.

(2) *FEE ALLOWED.*—The Secretary may charge the applicant a fee for the appeal referred to in paragraph (1).

(f) *FEDERAL ADMINISTRATION OF STATE PROGRAM.*—

(1) *NOTIFICATION.*—If the Secretary has reason to believe that a State is not administering or enforcing an approved State program, the Secretary shall notify the relevant State regulatory authority of any possible deficiencies.

(2) *STATE RESPONSE.*—Not later than 30 days after the date on which a State receives notification of a possible deficiency under paragraph (1), the State shall—

- (A) take appropriate action to correct the possible deficiency; and

- (B) notify the Secretary of the action in writing.

(3) *DETERMINATION.*—

(A) *IN GENERAL.*—On expiration of the 30-day period referred to in paragraph (2), if the Secretary determines that a violation of all or any part of an approved State program has resulted from a failure of the State to administer or enforce the approved State program of the State or that the State has not demonstrated its capability and intent to administer or enforce such a program, the Secretary shall issue public notice of such a determination.

(B) *APPEAL*.—A State may appeal the determination of the Secretary under subparagraph (A) in the applicable United States District Court. The Secretary may not resume activities under paragraph (4) pending the resolution of the appeal.

(4) *RESUMPTION BY SECRETARY*.—If the Secretary has made a determination under paragraph (3), the Secretary shall resume any activities for which authority was delegated to the State during the period—

(A) beginning on the date on which the Secretary issues the public notice under paragraph (3); and

(B) ending on the date on which the Secretary determines that the State will administer or enforce, as applicable, the approved State program of the State.

(5) *STANDING*.—States with approved regulatory programs shall have standing to sue the Secretary for any action taken under this subsection.

(g) *DEFINITIONS*.—In this section:

(1) *AVAILABLE FEDERAL LAND*.—The term “available Federal land” means any Federal land that—

(A) is located within the boundaries of a State;

(B) is not held by the United States in trust for the benefit of a federally recognized Indian Tribe or a member of such an Indian Tribe;

(C) is not a unit of the National Park System;

(D) is not a unit of the National Wildlife Refuge System, except for the portion of such unit for which oil and gas drilling is allowed under law;

(E) is not a congressionally approved wilderness area under the Wilderness Act (16 U.S.C. 1131 et seq.); and

(F) has been identified as land available for lease or has been leased for the exploration, development, and production of oil and gas—

(i) by the Bureau of Land Management under—

(I) a resource management plan under the process provided for in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); or

(II) an integrated activity plan with respect to the National Petroleum Reserve in Alaska; or

(ii) by the Forest Service under a National Forest management plan under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

(2) *DRILLING PLAN*.—The term “drilling plan” means a plan described under section 3162.3–1(e) of title 43, Code of Federal Regulations (or successor regulation).

(3) *APD*.—The term “APD” means a permit—

(A) that grants authority to drill for oil and gas; and

(B) for which an application has been received that contains—

(i) a drilling plan;

(ii) a surface use plan of operations described under section 3162.3–1(f) of title 43, Code of Federal Regulations (or successor regulation);

- (iii) evidence of bond coverage; and
- (iv) such other information as may be required by applicable orders and notices.

(4) *SECRETARY.*—The term “Secretary” means the Secretary of the Interior.

(5) *STATE.*—The term “State” means each of the several States.

(6) *STATE APPLICANT.*—The term “State applicant” means a State that has submitted an application under subsection (b).

(7) *STATE PROGRAM.*—The term “State program” means a program that provides for a State to—

(A) issue APDs or approve drilling plans, as applicable, on available Federal land; and

(B) impose sanctions for violations of State laws, regulations, or any condition of an issued APD or approved drilling plan, as applicable.

(8) *SUNDRY NOTICE.*—The term “sundry notice” means a written request—

(A) to perform work not covered under an APD or drilling plan; or

(B) for a change to operations covered under a an APD or drilling plan.

SEC. 45. PERMITTING ON NON-FEDERAL SURFACE ESTATE.

(a) *PERMITS NOT REQUIRED FOR CERTAIN ACTIVITIES ON NON-FEDERAL SURFACE ESTATE.*—The following activities conducted on non-Federal surface estate shall not require a Bureau of Land Management drilling permit under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) or section 3164.1 of title 43, Code of Federal Regulations (or successor regulation) and shall not be considered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.):

(1) Oil and gas operations for the exploration for or development or production of oil and gas in a lease or unit or communitization agreement in which the United States holds a mineral ownership interest of 50 percent or less.

(2) Oil and gas operations that may have potential drainage impacts, as determined by the Bureau of Land Management, on oil and gas in which the United States holds a mineral ownership interest.

(b) *DOI NOTIFICATION.*—The Secretary of the Interior shall provide to each State a map or list indicating Federal mineral ownership within that State.

(c) *STATE NOTIFICATION.*—Each State that has issued an APD or approved a drilling plan that would impact or extract oil and gas owned by the United States shall notify the Secretary of the Interior within 7 days of issuing an APD.

(d) *ROYALTIES.*—Nothing in this section shall affect the amount of royalties due to the United States under this Act from the production of oil and gas or alter the Secretary’s authority to conduct audits and collect civil penalties pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1711 et seq.).

(e) *APPLICATION.*—This section shall only apply with respect to States for which the Secretary has delegated any authority under section 44(a)(1).

SEC. 46. STATE AND TRIBAL AUTHORITY FOR HYDRAULIC FRACTURING REGULATION.

(a) *IN GENERAL.*—The Secretary of the Interior shall not enforce any Federal regulation, guidance, or permit requirement regarding hydraulic fracturing relating to oil, gas, or geothermal production activities on or under any land in any State that has regulations, guidance, or permit requirements for that activity.

(b) *STATE AUTHORITY.*—The Secretary of the Interior shall defer to State regulations, guidance, and permit requirements for all activities regarding hydraulic fracturing relating to oil, gas, or geothermal production activities on Federal land.

(c) *TRANSPARENCY OF STATE REGULATIONS.*—

(1) *IN GENERAL.*—Each State shall submit to the Bureau of Land Management a copy of the regulations of such State that apply to hydraulic fracturing operations on Federal land, including those that require disclosure of chemicals used in hydraulic fracturing operations.

(2) *AVAILABILITY.*—The Secretary of the Interior shall make available to the public on the website of the Secretary the regulations submitted under paragraph (1).

(d) *TRIBAL AUTHORITY ON TRUST LAND.*—The Secretary of the Interior shall not enforce any Federal regulation, guidance, or permit requirement with respect to hydraulic fracturing on any land held in trust or restricted status for the benefit of a federally recognized Indian Tribe or a member of such an Indian Tribe, except with the express consent of the beneficiary on whose behalf such land is held in trust or restricted status.

(e) *HYDRAULIC FRACTURING DEFINED.*—In this section the term “hydraulic fracturing” means the process of creating small cracks, or fractures, in underground geological formations for well stimulation purposes of bringing hydrocarbons into the wellbore and to the surface for capture.

SEC. [44.] 47. SHORT TITLE.

This Act may be cited as the “Mineral Leasing Act”.

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982

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TITLE I—FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

* * * * *

INSPECTIONS

SEC. 108. (a)(1) On any lease site on Federal or Indian lands, any authorized and properly identified representative of the Secretary may stop and inspect any motor vehicle that he has probable cause to believe is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site, for the purpose of determining whether the driver of such vehicle has documentation related to such oil as required by law.

(2) Any authorized and properly identified representative of the Secretary, accompanied by any appropriate law enforcement officer,

or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he has probable cause to believe the vehicle is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site. Such inspection shall be for the purpose of determining whether the driver of such vehicle has the documentation required by law.

(b) Authorized and properly identified representatives of the Secretary may without advance notice, enter upon, travel across and inspect lease sites on Federal or Indian lands and may obtain from the operator immediate access to secured facilities on such lease sites, for the purpose of making any inspection or investigation for determining whether there is compliance with the requirements of the mineral leasing laws and this Act. The Secretary shall develop guidelines setting forth the coverage and the frequency of such inspections.

(c) For the purpose of making any inspection or investigation under this Act, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

(d) *INSPECTION FEES FOR CERTAIN STATES.*—

(1) *IN GENERAL.*—*The Secretary shall conduct inspections of operations under each oil and gas lease. The Secretary shall collect annual nonrefundable inspection fees in the amount specified in paragraph (2), from each designated operator under each oil and gas lease on Federal or Indian land that is subject to inspection under subsection (b) and that is located in a State for which the Secretary has delegated authority under section 44(a)(1)(A) of the Mineral Leasing Act.*

(2) *AMOUNT.*—*The amount of the fees collected under paragraph (1) shall be—*

(A) \$700 for each lease or unit or communitization agreement with no active or inactive wells, but with surface use, disturbance or reclamation;

(B) \$1,225 for each lease or unit or communitization agreement with 1 to 10 wells, with any combination of active or inactive wells;

(C) \$4,900 for each lease or unit or communitization agreement with 11 to 50 wells, with any combination of active or inactive wells; and

(D) \$9,800 for each lease or unit or communitization agreement with more than 50 wells, with any combination of active or inactive wells.

(3) *ONSHORE ENERGY SAFETY FUND.*—*There is established in the Treasury a fund, to be known as the "Onshore Energy Safety Fund" (referred to in this subsection as the "Fund"), into which shall be deposited all amounts collected as fees under paragraph (1) and which shall be available as provided under paragraph (4).*

(4) *AVAILABILITY OF FEES.*—*Notwithstanding section 3302 of title 31, United States Code, all amounts deposited in the Fund—*

(A) *shall be credited as offsetting collections;*

(B) *shall be available for expenditure for purposes of carrying out inspections of onshore oil and gas operations in*

those States for which the Secretary has delegated authority under section 44(a)(1)(A) of the Mineral Leasing Act;

(C) shall be available only to the extent provided for in advance in an appropriations Act; and

(D) shall remain available until expended.

(5) *PAYMENT DUE DATE.*—*The Secretary shall require payment of any fee assessed under this subsection within 30 days after the Secretary provides notice of the assessment of the fee after the completion of an inspection.*

(6) *PENALTY.*—*If a designated operator assessed a fee under this subsection fails to pay the full amount of the fee as prescribed in this subsection, the Secretary may, in addition to utilizing any other applicable enforcement authority, assess civil penalties against the operator under section 109 in the same manner as if this section were a mineral leasing law.*

(7) *NOTIFICATION TO STATE OF NONCOMPLIANCE.*—*If, on the basis of any inspection under subsection (b), the Secretary determines that an operator is in noncompliance with the requirements of mineral leasing laws and this chapter, the Secretary shall notify the State of such noncompliance immediately.*

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TITLE II—STATES AND INDIAN TRIBES

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SEC. 205. DELEGATION OF ROYALTY COLLECTIONS AND RELATED ACTIVITIES.

(a) Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to:

- (1) conduct inspections, audits, and investigations;
- (2) receive and process production and financial reports;
- (3) correct erroneous report data;
- (4) perform automated verification; and
- (5) issue demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes,

to any State with respect to all Federal land within the State.

(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that—

- (1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;
- (2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section;
- (3) such delegation will not create an unreasonable burden on any lessee;
- (4) the State agrees to adopt standardized reporting procedures prescribed by the Secretary for royalty and production accounting purposes, unless the State and all affected parties (including the Secretary) otherwise agree;

(5) the State agrees to follow and adhere to regulations and guidelines issued by the Secretary pursuant to the mineral leasing laws regarding valuation of production; and

(6) where necessary for a State to have authority to carry out and enforce a delegated activity, the State agrees to enact such laws and promulgate such regulations as are consistent with relevant Federal laws and regulations with respect to the Federal lands within the State.

(c) After notice and opportunity for hearing, the Secretary shall issue a ruling as to the consistency of a State's proposal with the provisions of this section and regulations under subsection (d) within 90 days after submission of such proposal. In any unfavorable ruling, the Secretary shall set forth the reasons therefor and state whether the Secretary will agree to delegate to the State if the State meets the conditions set forth in such ruling.

(d) After consultation with State authorities, the Secretary shall by rule promulgate, within 12 months after the date of enactment of this section, standards and regulations pertaining to the authorities and responsibilities to be delegated under subsection (a), including standards and regulations pertaining to—

- (1) audits to be performed;
- (2) records and accounts to be maintained;
- (3) reporting procedures to be required by States under this section;
- (4) receipt and processing of production and financial reports;
- (5) correction of erroneous report data;
- (6) performance of automated verification;
- (7) issuance of standards and guidelines in order to avoid duplication of effort;
- (8) transmission of report data to the Secretary; and
- (9) issuance of demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes.

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

(e) If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation. If, after providing written notice to a delegated State and a reasonable opportunity to take corrective action requested by the Secretary, the Secretary determines that the State has failed to issue a demand or order to a Federal lessee within the State, that such failure may result in an underpayment of an obligation due the United States by such lessee, and that such underpayment may be uncollected without Secretarial intervention, the Secretary may issue such demand or order in accordance with the provisions of this Act prior to or absent the withdrawal of delegated authority.

(f) Subject to appropriations, the Secretary shall compensate any State for those costs which may be necessary to carry out the dele-

gated activities under this Section. Payment shall be made no less than every quarter during the fiscal year. Compensation to a State may not exceed the Secretary's reasonably anticipated expenditure for performance of such delegated activities by the Secretary. Such costs shall be allocable for the purposes of section 35(b) of the Act entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain", approved February 25, 1920 (commonly known as the Mineral Leasing Act) (30 U.S.C. 191 (b)) to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in land owned by the United States. Any further allocation of costs under section 35(b) made by the Secretary for oil and gas activities, other than those costs to compensate States for delegated activities under this Act, shall be only those costs associated with onshore oil and gas activities and may not include any duplication of costs allocated pursuant to the previous sentence. Nothing in this section affects the Secretary's authority to make allocations under section 35(b) for non-oil and gas mineral activities. **[All]** *Subject to subsection (e) of section 35 of the Mineral Leasing Act (30 U.S.C. 191), all moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States.*

(g) Any action of the Secretary to approve or disapprove a proposal submitted by a State under this section shall be subject to judicial review in the United States district court which includes the capital of the State submitting the proposal.

(h) Any State operating pursuant to a delegation existing on the date of enactment of this Act may continue to operate under the terms and conditions of the delegation, except to the extent that a revision of the existing agreement is adopted pursuant to this section.

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ENERGY POLICY ACT OF 2005

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TITLE III—OIL AND GAS

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Subtitle G—Miscellaneous

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SEC. 390. NEPA REVIEW.

(a) NEPA REVIEW.—**[Action by the Secretary]** *The Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, [with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of] shall apply* a categorical exclusion under the National Environmental Policy Act of 1969

(NEPA) [would apply if the activity] *for each action described in subsection (b) if the action* is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas.

(b) ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are the following:

(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

(5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.

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MIGRATORY BIRD TREATY ACT

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SEC. 6. (a) Except as otherwise provided in this section, any person, association, partnership, or corporation who shall violate any provisions of said conventions or of this Act, or who shall violate or fail to comply with any regulation made pursuant to this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$15,000 or be imprisoned not more than six months, or both.

(b) Whoever, in violation of this Act, shall knowingly—

(1) take by any manner whatsoever any migratory bird with intent to sell, offer to sell, barter or offer to barter such bird, or

(2) sell, offer for sale, barter or offer to barter, any migratory bird shall be guilty of a felony and shall be fined not more than \$2,000 or imprisoned not more than two years, or both.

(c) Whoever violates section 3(b)(2) shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.

(d) All guns, traps, nets and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in pursuing, hunting, taking, trapping, ensnaring, capturing, killing, or attempting to take, capture, or kill any migratory bird in violation of this Act with the intent to offer for sale, or sell, or offer for barter, or barter such bird in violation of this Act shall be forfeited to the United States and may be seized and held pending the prosecution of any person arrested for violating this Act and upon conviction for such violation, such forfeiture shall be adju-

dedicated as a penalty in addition to any other provided for violation of this Act. Such forfeited property shall be disposed of and accounted for by, and under the authority of, the Secretary of the Interior.

(e) This Act shall not be construed to prohibit any activity proscribed by section 2 of this Act that is accidental or incidental to the presence or operation of an otherwise lawful activity.

* * * * *

DISSENTING VIEWS

H.R. 4239 is another attempt by the Majority to prioritize drilling for oil and gas over all other uses of America's public lands, and a back-door method to hand over the management of those public lands to the states. Despite the Majority's claims, it would do nothing to increase America's energy independence or energy security, but it would overturn longstanding principles of public land and forest management, reduce opportunities for public and tribal input into land management decisions, harm endangered species and marine mammals, and encourage offshore drilling in the Arctic Ocean while at the same time making it more dangerous.

Title I of the bill, the ASTRO Act, would share federal revenues from offshore drilling with Alaska and certain Atlantic states, a giveaway of federal funds in a blatant attempt to entice states on the Atlantic seaboard to support drilling off their beaches. While the Majority uses inflated statistics to encourage state and local officials to dream of oil and gas windfalls, they neglect to mention the potential devastating impacts of offshore drilling to the vibrant tourism, recreation, and fishing industries, which generate more than \$50 billion annually in GDP and support more than 1 million direct jobs along the eastern seaboard.¹

Section 104 would eliminate the ability of future Presidents to use their authority under the Antiquities Act to protect underwater resources through the creation of Marine National Monuments, an authority first used by a Republican President, George W. Bush. Section 107 eliminates the Arctic Drilling Safety Rule finalized just last year, which was based on lessons learned from Shell's bungled attempts to drill in the Arctic Ocean in 2012 and 2015. The Arctic is a uniquely harsh and uncompromising environment, and operating safely in that region requires very different safety regulations than those governing drilling in the Gulf of Mexico. This legislation, however, eliminates any additional protections for the Arctic, increasing the chances of a future environmental disaster.

Section 108 creates a new system for exploration licenses and leases for seabed mining a few miles off the coasts of U.S. territories. The need for or impact of this section has not been discussed in the committee at all in recent years, yet it could vastly expand this relatively new and potentially destructive form of resource extraction. Far more discussion is needed before Congress gives the green-light to wholesale mining of our territorial waters.

Section 110 would severely weaken one of our bedrock environmental laws, the Marine Mammal Protection Act (MMPA), in order to make it even easier to conduct destructive seismic testing for offshore oil and gas. The MMPA has been incredibly effective in re-

¹National Oceanic and Atmospheric Administration (NOAA). Economics: National Ocean Watch (ENOW) Data for 2014. Based on data from the Bureau of Labor Statistics and the Bureau of Economic Analysis Charleston, SC: NOAA Office for Coastal Management.

storing populations of seals, sea lions, whales, dolphins, and other marine mammals whose populations were severely depleted. This section would virtually eliminate the ability of the National Oceanic and Atmospheric Administration from requiring mitigation measures to protect marine mammals, and would automatically approve permits if the agency missed arbitrary deadlines.

Title II of the bill, the ONSHORE Act, would completely upend decades of public land management principles on Bureau of Land Management (BLM) and U.S. Forest Service lands. Public lands are a public trust, owned by all Americans, and managed in such a way as to ensure that all Americans have a say in the management of those lands and that multiple uses are allowed. H.R. 4239, however, would shut the public out, make oil and gas drilling the dominant use of public lands, and hand over control of public lands to any state that applied for it.

Giving the states permitting authority for applications for permits to drill on federal public land, including the surface use plan of operations, creates a number of serious negative consequences. Because permit approval would no longer be a federal action, requirements for the federal government under the National Historic Preservation Act, Endangered Species Act, and National Environmental Policy Act, along with its public comment opportunities, would no longer apply. States aren't required to adhere to the multiple use mandate that drives federal land management, so states could approve wells, roads, drill pads, waste pits, and other surface impacts without having to consider the impacts on recreation, grazing, conservation, or other public land uses and resources. During a hearing on a discussion draft of the bill, the Director of the North Dakota Industrial Commission Department of Mineral Resources pointed out that his state does not require permit applicants to submit a biological study, a wildlife survey, an endangered species review, a master development plan, a reclamation plan, a waste management plan, a surface use plan, or a number of other items that BLM requires to ensure compliance with federal laws, the multiple use mandate, and approved resource management plans.

While the legislation does require that permit applicants submit "such other information as may be required by applicable orders and notices," that clause is meaningless. Even if state permitting authorities had the necessary expertise to review that additional information—which they most likely would not—they would not be required to do so. And nothing in the bill requires states to have requirements to allow for public review and comment of drilling permits or plans. People would be completely shut out from decisions that impact public lands unless they live in one of the few states that have their own public comment requirements for oil and gas drilling.

The entire argument for handing permitting responsibility to the states is built on quicksand. There is no shortage of approved federal permits: at the end of Fiscal Year 2016, companies held 7,950 approved permits they hadn't used yet, the highest value ever reported by BLM, while only 2,552 permits were waiting to be processed, the lowest number in nearly a decade. Oil production on federal land went up 78 percent from 2008 to 2015, not much different from the 88 percent increase in total U.S. oil production in the

same timeframe. In fact, in certain states such as New Mexico, the growth in oil production on federal lands (213 percent) significantly outpaced overall state oil production (145 percent). While the Majority repeatedly claims that companies are fleeing federal lands, the data clearly shows that is not the case.

Section 205 also prohibits the federal government from setting commonsense baseline standards for hydraulic fracturing (or “fracking”) on federal lands in any state that has existing fracking regulations of their own, no matter how weak. Forbidding federal agencies from enacting rules to protect federal resources—in this case federal land and mineral resources—is completely inappropriate, and is evidence of a severe misunderstanding of how federal and state oil and gas regulations have coexisted on public lands for nearly a century.

At markup on the bill, Democrats offered a number of commonsense amendments designed to protect marine mammals, marine monuments, air quality, military training areas, and the Eastern Gulf of Mexico. All were rejected by the Republicans. The Majority also rejected amendments that would have simply required additional data collection and reporting, permanently reauthorized the Land and Water Conservation Fund, and required climate considerations to be taken into account. Two Majority amendments—further weakening the MMPA and the Migratory Bird Treaty Act—were adopted, making a damaging industry giveaway bill even worse.

For all of these reasons, we strongly oppose H.R. 4239 as reported.

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

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