

111TH CONGRESS
2^D SESSION

H. R. 5863

To amend the Outer Continental Shelf Lands Act with regard to oversight and judicial review in connection with offshore oil production and exploration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2010

Mr. POLIS of Colorado introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Outer Continental Shelf Lands Act with regard to oversight and judicial review in connection with offshore oil production and exploration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Oil Pollution Wildlife
5 Protection Act”.

1 **SEC. 2. NOTICE OF EXPLORATION AND DEVELOPMENT AND**
2 **PRODUCTION PLANS.**

3 (a) NOTICE OF EXPLORATION PLANS.—Section 11 of
4 the Outer Continental Shelf Lands Act (43 U.S.C. 1340)
5 is amended by adding at the end the following:

6 “(i) PUBLIC NOTICE.—

7 “(1) The Secretary shall promptly publish no-
8 tice in the Federal Register of the receipt of any ap-
9 plication or plan submitted to the Secretary pursu-
10 ant to this section, and make electronically available
11 to the public any such applications or plans, except
12 any information that the Secretary determines to be
13 proprietary.

14 “(2) The Secretary shall promptly publish no-
15 tice in the Federal Register of the Secretary’s deci-
16 sion to approve, deny, or modify any application or
17 plan submitted to the Secretary pursuant to this sec-
18 tion.”.

19 (b) NOTICE OF DEVELOPMENT AND PRODUCTION
20 PLANS.—Section 25 of the Outer Continental Shelf Lands
21 Act (43 U.S.C. 1351) is amended by adding at the end
22 the following:

23 “(m) PUBLIC NOTICE.—

24 “(1) The Secretary shall promptly publish no-
25 tice in the Federal Register of the receipt of any ap-
26 plication or plan submitted to the Secretary pursu-

1 ant to this section, and make electronically available
2 to the public any such applications or plans, except
3 any information that the Secretary determines to be
4 proprietary.

5 “(2) The Secretary shall promptly publish no-
6 tice in the Federal Register of the Secretary’s deci-
7 sion to approve, deny, or modify any plan submitted
8 to the Secretary pursuant to this section.”.

9 **SEC. 3. APPLICATION OF DEVELOPMENT AND PRODUCTION**
10 **PLAN REQUIREMENTS IN THE GULF OF MEX-**
11 **ICO.**

12 Section 25 of the Outer Continental Shelf Lands Act
13 (43 U.S.C. 1351) is amended—

14 (1) by striking “other than the Gulf of Mexico,”
15 each place it appears; and

16 (2) by striking subsection (l).

17 **SEC. 4. ENSURING COMPLIANCE WITH OTHER LAWS.**

18 (a) **EXPLORATION PLANS.**—Section 11 of the Outer
19 Continental Shelf Lands Act (43 U.S.C. 1340) is further
20 amended by adding at the end the following:

21 “(j) **CERTIFICATION OF COMPLIANCE WITH OTHER**
22 **STATUTES.**—

23 “(1) **IN GENERAL.**—The Secretary shall not ap-
24 prove any exploration plan or significant revision of
25 an exploration plan, or grant any license or permit

1 under this section, unless the Secretary certifies
2 that—

3 “(A) such plan, approval, permit, or license
4 is in compliance with the National Environ-
5 mental Policy Act (42 U.S.C. 4321 et seq.),
6 Endangered Species Act (16 U.S.C. 1531 et
7 seq.), Marine Mammal Protection Act (16
8 U.S.C. 1361 et seq.), Magnuson-Stevens Fish-
9 eries Conservation and Management Act (16
10 U.S.C. 1801 et seq.), Clean Water Act (33
11 U.S.C. 1251 et seq.), Coastal Zone Manage-
12 ment Act (16 U.S.C. 1451 et seq.), and any
13 other applicable statutes, regulations, and legal
14 authorities; and

15 “(B) all permits and other authorizations
16 required under such statutes, regulations, and
17 legal authorities have been issued for activities
18 to be conducted under such plan, approval, per-
19 mit, or license.

20 “(2) PRIOR CONSULTATION REQUIRED.—Prior
21 to making such certification, the Secretary shall con-
22 sult with any Federal agency that has jurisdiction by
23 law with respect to those Acts, regulations, and au-
24 thorities.”.

1 (b) DEVELOPMENT AND PRODUCTION PLANS.—Sec-
2 tion 25 of the Outer Continental Shelf Lands Act (43
3 U.S.C. 1351) is further amended by adding at the end
4 the following:

5 “(n) CERTIFICATION OF COMPLIANCE WITH OTHER
6 STATUTES.—

7 “(1) IN GENERAL.—The Secretary shall not ap-
8 prove any development and production plan, or a
9 significant revision of a development and production
10 plan, unless the Secretary certifies that—

11 “(A) such plan, approval, permit, or license
12 is in compliance with the National Environ-
13 mental Policy Act (42 U.S.C. 4321 et seq.),
14 Endangered Species Act (16 U.S.C. 1531 et
15 seq.), Marine Mammal Protection Act (16
16 U.S.C. 1361 et seq.), Magnuson-Stevens Fish-
17 eries Conservation and Management Act (16
18 U.S.C. 1801 et seq.), Clean Water Act (33
19 U.S.C. 1251 et seq.), Coastal Zone Manage-
20 ment Act (16 U.S.C. 1451 et seq.), and any
21 other applicable law and regulations; and

22 “(B) all permits and other authorizations
23 required under such statutes, regulations, and
24 legal authorities have been issued for activities

1 to be conducted under such plan, approval, per-
2 mit, or license.

3 “(2) **PRIOR CONSULTATION REQUIRED.**—Prior
4 to making such certification, the Secretary shall con-
5 sult with any Federal agency that has jurisdiction by
6 law with respect to those Acts or other applicable
7 law and regulations.”.

8 **SEC. 5. CONSULTATION REQUIREMENTS FOR ENDANGERED**
9 **SPECIES AND FISHERIES.**

10 Section 19 of the Outer Continental Shelf Lands Act
11 (43 U.S.C. 1346) is amended—

12 (1) by striking so much as precedes subsection
13 (a) and inserting the following:

14 **“SEC. 19. CONSULTATION REQUIREMENTS.”;**

15 and

16 (2) by adding at the end the following:

17 “(f) **CONSULTATION REQUIREMENTS FOR ENDAN-**
18 **GERED SPECIES AND FISHERIES.**—The Secretary shall
19 treat the notice of any lease sale, and the approval of any
20 leasing program, exploration plan or permit, development
21 and production plan, or development operation coordina-
22 tion document, or the significant revision of such a pro-
23 gram, plan, permit, or document, as an agency action re-
24 quiring consultation—

1 “(1) with the Secretary of Commerce or of the
2 Interior pursuant to section 7 of the Endangered
3 Species Act of 1973 (16 U.S.C. 1536) for any listed
4 species that occur in the proposed area of activity;
5 and

6 “(2) with the Secretary of Commerce pursuant
7 to section 305(b) of the Magnuson-Stevens Fisheries
8 Conservation and Management Act (16 U.S.C.
9 1855(b)).”.

10 **SEC. 6. CUMULATIVE IMPACTS ON MARINE MAMMAL SPE-**
11 **CIES AND STOCKS AND SUBSISTENCE USE.**

12 Section 20 of the Outer Continental Shelf Lands Act
13 (43 U.S.C. 1346) is amended by adding at the end the
14 following:

15 “(g) CUMULATIVE IMPACTS ON MARINE MAMMAL
16 SPECIES AND STOCKS AND SUBSISTENCE USE.—In deter-
17 mining, pursuant to subparagraphs (A)(i) and (D)(i) of
18 section 101(a)(5) of the Marine Mammal Protection Act
19 of 1972 (16 U.S.C. 1371(a)(5)), whether takings from
20 specified activities administered under this title will have
21 a negligible impact on a marine mammal species or stock,
22 and not have an unmitigable adverse impact on the avail-
23 ability of such species or stock for taking for subsistence
24 uses, the Secretary of Commerce or Interior shall incor-
25 porate any takings of such species or stock from any other

1 reasonably foreseeable activities administered under this
2 Act.”.

3 **SEC. 7. CITIZEN SUITS.**

4 (a) **ADDITIONAL AUTHORITY TO BRING ACTION**
5 **UNDER OTHER STATUTES.**—Section 23 of the Outer Con-
6 tinental Shelf Lands Act (43 U.S.C. 1349) is amended
7 by adding at the end the following:

8 “(d) **ADDITIONAL AUTHORITY TO BRING ACTION**
9 **UNDER OTHER STATUTES.**—

10 “(1) **AUTHORITY.**—In addition to remedies
11 available under other laws, any person may com-
12 mence a civil action on the person’s own behalf,
13 against the United States and any other subject in-
14 strumentality or agency that is alleged to have ap-
15 proved a leasing program, lease sale, exploration
16 plan or permit, or development and production plan,
17 under section 18, 8, 10, or 25, respectively—

18 “(A) without having prepared an environ-
19 mental impact statement or environmental as-
20 sessment pursuant to section 102(2)(C) of the
21 National Environmental Policy Act 1969 (42
22 U.S.C. 4332), consulted with the Secretary of
23 Commerce or Secretary of the Interior pursuant
24 to section 7 of the Endangered Species Act
25 1973 (16 U.S.C. 1536), or consulted with the

1 Secretary of Commerce pursuant to section 305
2 of the Magnuson-Stevens Fisheries Conserva-
3 tion and Management Act (16 U.S.C. 1855); or

4 “(B) without having complied with any
5 other provision of such statutes, the provisions
6 of Act this related to such statutes, or any reg-
7 ulation implementing or issued under their au-
8 thority of such statutes.

9 “(2) MARINE MAMMAL PROTECTION ACT OF
10 1972.—

11 “(A) IN GENERAL.—In addition to rem-
12 edies available under other laws, any person
13 may commence a civil action on the person’s
14 own behalf to enjoin any person who is al-
15 leged—

16 “(i) to have failed to obtain proper
17 authorization, pursuant to subparagraphs
18 (A) and (D) of section 101(a)(5) of the
19 Marine Mammal Protection Act of 1972
20 (16 U.S.C. 1371(a)(5)), prior to com-
21 mencing an activity that may take a ma-
22 rine mammal in exploration, development,
23 or production activities administered under
24 this Act; or

1 “(ii) to be in violation of any other
2 provision of the Marine Mammal Protec-
3 tion Act of 1972 (16 U.S.C. 1361 et seq.),
4 or any regulation issued under the author-
5 ity thereof, with respect to exploration, de-
6 velopment, or production activities admin-
7 istered under this Act.

8 “(B) INTERVENTION; AWARD OF COSTS.—

9 In any action under this paragraph—

10 “(i) the Attorney General, at the re-
11 quest of the Secretary or of the Secretary
12 of Commerce, may intervene on behalf of
13 the United States as a matter of right; and

14 “(ii) the court, in issuing any final
15 order, may award costs of litigation (in-
16 cluding reasonable attorney and expert wit-
17 ness fees) to any party, whenever the court
18 determines such award is appropriate.”.

19 (b) TIME TO BRING ACTION.—Section 23(a) of the
20 Outer Continental Shelf Lands Act (43 U.S.C. 1349(a))
21 is amended—

22 (1) in paragraph (2)(A)—

23 (A) by striking “sixty days after the plain-
24 tiff has given” and inserting “the plaintiff giv-
25 ing”; and

1 (B) by striking “under oath”; and

2 (2) by striking paragraph (3) and redesignating
3 paragraphs (4) through (6) as paragraphs (3)
4 through (5), respectively.

5 (c) REVIEW OF APPROVAL OF LEASING PROGRAM
6 AND APPROVAL, MODIFICATION, OR DISAPPROVAL OF
7 PLANS.—Section 23(c) of the Outer Continental Shelf
8 Lands Act (43 U.S.C. 1349(c))—

9 (1) in paragraph (1), by inserting after “Dis-
10 trict of Columbia” the following: “or in a United
11 States court of appeals for a circuit in which an af-
12 fected State is located”;

13 (2) in paragraph (3)—

14 (A) by striking “paragraphs (1) and (2)”
15 and inserting “paragraph (1)”; and

16 (B) by striking “sixty” and inserting “90”;

17 (3) in paragraph (5), by striking “involved”
18 and inserting “specified in paragraph (1)”; and

19 (4) in paragraph (6), by striking the sentence
20 beginning “The findings of the Secretary”.

21 (d) NONRESTRICTION CLAUSE.—Nothing in this sec-
22 tion shall restrict any right that any person (or class of
23 persons) may have under any other statute or under com-
24 mon law to seek enforcement of such statute or to seek

- 1 any other relief (including relief against the Secretary or
- 2 other persons).

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