H.R. 793 and H.R. 794

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

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U.S. HOUSE OF REPRESENTATIVES

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C O N T E N T S

LEGISLATIVE HEARING ON H.R. 793, A BILL TO AMEND THE OUTER CONTINENTAL SHELF LANDS ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO GRANT EASEMENTS AND RIGHTS-OF-WAY ON THE OUTER CONTINENTAL SHELF (OCS) FOR ACTIVITIES OTHERWISE AUTHORIZED BY THAT ACT, AND H.R. 794, THE COAL LEASING AMENDMENTS ACT OF 2003.

Thursday, March 6, 2003
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 10 a.m.,in Room 1334, Longworth House Office Building, Hon. Dennis R. Rehberg presiding.

Present: Representatives Rehberg, Cannon, Souder, Cole, Pearce, Kind, and Faleomavaega.

STATEMENT OF THE HON. DENNIS R. REHBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. REHBERG. Let us begin, please. We are probably going to be called to a vote, so I would like to get started, and I see that Mr. Delahunt is not here yet. So we will dispense with the opening statement.

The legislative hearing by the Subcommittee on Energy and Mineral Resources will come to order.

The Subcommittee is meeting today to hear the testimony of H.R. 793 to amend the Outer Continental Shelf Lands Act to authorize the Secretary of Interior to grant easements and rights-of-way on the Outer Continental Shelf for activities otherwise authorized by the Act, and H.R. 794 to amend the Mineral Leasing Act to provide for the development of Federal coal resources.

Under Committee Rule 4(G), the Chairman and the Ranking Minority Member can make opening statements. If any members have other statements, they can be included in the hearing record under unanimous consent. I ask unanimous consent that Representative

Kind, when he arrives, have permission to sit on the dais and participate in the hearing.

Today, the Subcommittee on Energy and Mineral Resources will hear testimony about these two bills, H.R. 793 and H.R. 794. First, H.R. 793 addresses the need for statutory authority to permit future non-traditional energy and energy related projects on the OCS. Such projects would include alternative energy projects, such as wind, wave, and solar power production, as well as ancillary projects to oil and gas development on the shelf, such as emergency medical facilities and supply facilities that support deep water exploration and development projects. Working with the Administration, we have addressed the clarification of the permitting process for these innovative projects and introduced a bill that gives the Secretary of Interior to permit and oversee energy-related activities under the OCS Lands Act.

H.R. 793 is needed because no authority currently exists to permit alternative energy projects and ancillary projects to support oil and gas development on the OCS. Clearly, America faces a growing energy supply and demand imbalance that calls for new solutions. Two innovative ways that will help us meet the challenge are increased production and use of energy, renewable energy, and production of oil and gas from deep waters.

H.R. 793 facilitates both of these solutions. The bill clarifies the jurisdiction for these projects so that private sector entities wanting to develop alternative energy resources offshore will have a clear path by which to approach relevant Federal agencies for permits. It also ensures that future projects on the OCS will be performed in a safe and environmentally sensitive manner and that a proper abandonment and reclamation process will exist for each project.

This bill will not supersede or modify existing authority or any other agency responsible for permitting or regulating offshore energy projects. It is designed to complement existing statutes and ensure that all innovative offshore energy projects have a clear and certain permitting process.

I understand that offshore wind energy projects are now being considered in the U.S. and that several have already been developed in northern Europe with significant generation capacity on the drawing board. In fact, a record 6,868 megawatts of new wind power capacity was installed worldwide in 2002, increasing generating capacity by 28 percent last year.

We need a new alternative and traditional energy solution in order to meet our future energy needs. This bill will help facilitate those solution.

Mr. REHBERG. The second bill, H.R. 794, makes targeted technical changes to the Mineral Leasing Act that adapt to the realities of market conditions so that we may make full use of America's Federal coal resources. It encourages continued diligent development of coal on Federal lands and ensures the flow of Federal royalty revenue, while giving the Interior Secretary the ability to manage coal resources for maximum value to the public. Coal is an abundant domestically produced fuel and through the continued development and implementation of clean coal technology will remain secure energy resource for years to come.

Federal coal benefits the Nation not only because it is a domestically produced energy resource, but also because the Minerals Management Service collected about 5.5 billion in revenues last year on coal produced from Federal lands. The legislation we discuss today would facilitate the continued development of Federal coal by making only changes to coal leasing provisions in the Mineral Leasing Act that present impediments to the efficient development of Federal coal resources.

One provision amends the 160-acre life-of-lease limitation on Federal coal lease modifications. This provision provides flexibility by giving the Secretary the discretion to allow production of noncompetitive coal contiguous to an existing lease so that small quantities of coal would be recovered that might otherwise be left behind. This provision is not designed to sidestep the competitive lease process, and I am willing to work the minority to address any concerns to the contrary.

Other provisions allow the consolidation of leased coal reserves requiring more than 40 years to mine; to allow the Secretary to accept the payment of advance royalties in lieu of continued operations for a total of years; a provision addresses the requirement of surety bonds for the payment of bonus bids on coal leases; and a provision to eliminate the requirement that a lessee has to file a mining plan no later than 3 years after the lease is issued. These are common sense adjustments that provide flexibility and allow cost effective development of the resource.

Mr. REHBERG. Both of these bills would provide dynamic ways for Government to help the private sector increase energy production at a low cost to the consumer.

[The prepared statement of Mr. Rehberg follows:]

Statement of The Honorable Dennis R. Rehberg, a Representative in Congress from the State of Montana, on H.R. 793 and H.R. 794

Madam Chairwoman, I thank you for scheduling this hearing today—it allows us to address an issue of supreme importance: streamlining development of additional energy sources for the nation.

H.R. 793 facilitates energy-related uses on the Outer Continental Shelf (OCS), where interest has increased in non-traditional energy projects, such as wind, wave, and solar energy production.

These non-traditional projects are important to diversifying our energy portfolio, unfortunately, authority to permit these kinds of projects is not addressed in the Outer Continental Shelf Lands Act, and existing authority to review, permit, and regulate such projects is either non-existent or limited in scope.

Chairwoman Cubin's bill helps to remedy this deficiency in permitting authority for non-traditional energy projects by clarifying the regulatory process considerably and clearly providing one agency within the Federal Government with the full array of tools needed to comprehensively manage non-traditional Outer Continental Shelf energy-related uses.

I support the Chairwoman's legislation—and the President's National Energy Policy initiative—to simplify permitting for energy production in an environmentally sensitive manner.

I am a cosponsor of the second bill on today's agenda, H.R. 794, which streamlines coal leasing on Federal lands, which comprise a huge percentage of lands in the western states and my home state of Montana.

According to the 2002 Minerals Management Service estimates, Montana sold over 18 million tons of Federal coal. The Federal royalties paid (50% to Montana) were nearly $25 million- that means over $12 million goes right back in to the state.

Nearly 40% of current United States coal production is from mines located on Federal lands. Over one-third of the nation's coal reserve is found on lands owned or controlled by the Federal Government.

The Mineral Leasing Act of 1920 outlines the law with respect to Federal coal leasing. Unfortunately, certain provisions in the Mineral Leasing Act impede operational flexibility; result in the bypass of nearby Federal coal resources; compel inefficient production; and reduce Federal and state royalty and tax revenues. Changes in market and economic conditions necessitate modifications in the coal leasing provisions of the MLA.

In order to ensure that these vast Federal coal reserves can be developed in an orderly and efficient manner without distorting coal markets nationwide, it is necessary to update the Mineral Leasing Act of 1920 or we face continued inefficient or wasteful production of coal resources.

For example, this legislation eliminates the 160 acre life-of-lease limitation on Federal coal lease modifications. The intent is to allow the flexibility to add smaller tracts of non-competitive coal that would otherwise be bypassed. This is absolutely essential in my state of Montana.

I am proud to cosponsor legislation and look forward to hearing the panelists comments and testimony today.

Thank you, Madame Chairwoman, for considering these important bills today.

Mr. REHBERG. I want to welcome our witnesses as well as our Subcommittee members to their first Subcommittee hearing of the 108th Congress. Mr. Kind will now be recognized for an opening statement.

STATEMENT OF THE HON. RON KIND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. KIND. Thank you. Excuse my tardiness. Thank you, Mr. Chairman. Thanks for the recognition.

I want to thank the witnesses here today for your presence and for your testimony, including our good friend from Massachusetts, Mr. Delahunt. This is an issue I know that he has been paying particular attention to, and we appreciate your time here today, Bill. Thanks for coming.

With the imminent threat of war with Iraq looming over this hearing, the need to develop renewable energy sources such as wind, solar, biomass could not be more evident. In addition to other concerns, a substantial portion of the domestic oil imports from the Middle East may soon be at risk; therefore, we must continue to encourage clean renewable energy alternatives now so that they will be available should the need arise.

Generally, I believe it is a good idea to clarify and specify that the Minerals Management Service has the necessary authority grant easements or rights-of-ways for alternative energy projects on the Outer Continental Shelf not currently authorized by law. I feel that with their history of managing oil and gas development projects on the OCS, the MMS is well equipped to do the job.

Last year, we expressed an interest in hearing testimony from representatives of coastal states that have a vested interest in the bill. I am pleased to see that Attorney General Reilly is here to speak on behalf of the people of Massachusetts, along with Mr. Delahunt who here with us.

We are currently engaged in a discussion over a proposed wind farm in the Nantucket Sound. I would like to see H.R. 793 amended to specifically require consultation with the affected states prior to permitting alternative energy projects such as wind farms on the OCS. While there is no shortage of controversy with the Nantucket Sound project, it is critical that the affected states and the public have sufficient opportunity to participate in the permitting process.

That said, if we are to reduce our dependance on foreign oil imports and reduce greenhouse gas emissions, as a Nation we are going to have to develop alternative energy strategies, including wind farms. We should not, indeed cannot, advocate alternatives to fossil fuels and then cry not in my backyard whenever a new project is being proposed.

I am not saying that the Nantucket Sound project should go forward. I haven't taken a position on it. I am not as acquainted with the facts as others who have been involved with this issue have been for sometime, but nevertheless, I think we need to wrestle with this so-called NIMBY problem and find out some resolution in order to encourage further development of alternative and renewable energy sources in our own jurisdiction.

However, I would note that during a recent Congressional trip to northern Europe to learn more about alternative energy projects as well as other issues before the Committee, members of this Committee had the opportunity—and the ranking chair here today was along with that trip—to view the wind energy facilities at the mouth of the Copenhagen Harbor. According to local government officials, there was some initial resistance to the proposal and still some dislike for the way the wind mills look lining up across their skyline. Nevertheless, once the wind field had been in operation and the residents became accustomed to its presence, and more importantly its production, their fears started to abate. They have found that the benefits of inexhaustible, clean and renewable energy from the offshore wind farm have thus far outweighed the more undesirable factors often cited.

Though I support the goals of H.R. 793, there are problems with the legislation which I hope to be able to work with the Chairman and other members on the Committee before the mark-up and see if we can resolve them.

The second bill being discussed today, H.R. 794, is one that relates to Federal coal leasing practices. I am aware that our Committee Ranking Member from West Virginia, Mr. Rahall, has numerous and specific concerns with the proposed legislation. I fully support his views on the subject and defer to him to comment on a bill that would most certainly upset the current state of coal leasing in America and would affect a large majority of his constituency.

In his absence, I would, however, ask for unanimous consent to have his statement recorded in the record.

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Ranking Democrat, Committee on Resources, on H.R. 794

While I have a great deal of respect for the Chair of this Subcommittee, my dear friend Representative Barbara Cubin of Wyoming, I must express vehement opposition to H.R. 794.

In my view, this legislation would eliminate many of the reforms Congress made to the Federal coal leasing program in 1976. In effect, H.R. 794 would significantly dilute the competitive nature of the Federal coal leasing program, allowing a few large coal companies to control a vast amount of America's coal resources for infinite periods of time. This is not only bad public policy, but it would also artificially enhance the competitiveness of the select few western coal producers who would benefit from this legislation to the detriment of coal producers in the Appalachian and Midwestern regions of the country.

More specifically, by eliminating the 160-acre lease modification limit the bill would subsequently eliminate the need to compete for coal leases that companies require to expand existing coal mines. And in so doing, the bill would shortchange both Federal and state coal revenues by foreclosing the kind of increased bonus payments secured in recent years.

According to BLM, since1991 successful bidders have generated more than $1.1 billion in bonus bids on Federal coal leases. These revenues are shared equally with the States in which the coal is located. For example, a 2002 Powder River Basin lease sale generated a $328 million bonus payment from Kennecott Energy. Had this bill been in effect at that time, the State of Wyoming would not have received its approximate $164 million share of the bonus payment.

In addition, under current law the Federal Government is required to let successful coal lease bidders defer payment of bonus bids. A successful bidder can either pay the full amount at the time of the sale or opt to pay in five 20 percent increments over five years. However, H.R. 794 would let coal companies terminate that Federal lease and walk away scot-free without paying any remaining balance on the outstanding bonus payment. The bill does this by preventing the BLM from requiring a surety bond guaranteeing payment of deferred bonus bids and by requiring forgiveness of any balance due from either the coal company or the surety if the coal company for any reason opts to terminate the lease. The BLM requirement to secure a bond, or other financial guarantee, in the amount due to the Treasury is simply good business practice. By requiring a bond, the Federal Government is simply trying to protect the interests of the public.

In my view, H.R. 794 has additional problems. For instance, under current law leased coal reserves can be consolidated into logical mining units in order to achieve maximum economic recovery of the coal. However, the coal reserves of the entire logical mining unit must be mined within a period of 40 years. According to information supplied to us by the BLM, there are 45 logical mining units covering approximately 367,000 acres of Western Federal land. That is nearly 80% of the 469,000 acres under coal lease on Federal lands that is closed off to other uses for the duration of the logical mining unit. However, H.R. 794 would allow these 45 units to continue in operation—and be unavailable for other uses—for as long as the coal mine wants.

Not only would H.R. 794 allow a relatively few number of corporations to hold vast sums of public lands for undetermined lengths of time—-measured in decades not years—- the bill would also allow the coal companies to take a free ride while doing so. That is because H.R. 794 would allow coal companies to be forgiven on paying certain royalties, known as advance royalties, when they decide to stop producing coal, but want to keep the lease in force anyway.

Finally, the bill would change the formula for advance royalties from one that is based on production to one that is based on the average price of coal sold in the spot market from the region. According to BLM officials, however, for many parts of the country there are no reliable spot markets for the particular type of coal produced there, and as such, there is no guaranty that this system has any merit.

Coal leasing policies in current law are not unlike standard business practices in other parts of our economy. Taken together, the bonus payment, rent and royalties paid to the U.S. Treasury equal the fair market value of the coal to be extracted from the public domain and are all parts of doing business in a Federal leasehold. The option to pay a bonus bid over time, to pay advance royalties while not producing coal, basing advance royalties on production, limiting logical mining units to 40 years are all provisions that have withstood the test of time and are still valid Federal policy that allows the coal industry to be profitable, efficient and also protects the public interest.

In sum, while certain amendments may be in order to improve the Federal coal leasing program, there is nothing on the record that I know of to justify the broad changes proposed in H.R. 794. If enacted, this bill would provide a huge windfall to a select few western coal producers while shifting significant costs and risks to the American public.

Mr. KIND. I would also like to ask that the statement of the Alliance to Protect Nantucket Sound also be admitted in the record for purposes of this hearing.

[The statement of the Alliance to Protect Nantucket Sound follows:]

Statement submitted for the record by The Alliance to Protect Nantucket Sound

Ms. Chairwoman.

Thank you for the opportunity to submit these comments on H.R. 793. I am Douglas Yearley, Chairman of the Alliance to Protect Nantucket Sound, a coalition of diverse interests with the objective of protecting the important environmental, scenic, cultural and economic values of Nantucket Sound. The Sound includes offshore areas owned both by the Commonwealth of Massachusetts and the Federal Government. The Alliance is composed of a broad mix of business, local government, fishing, environmental and other interests, with the common purpose of ensuring that development does not occur in the Sound that would destroy the unique values and natural beauty of this national treasure. Indeed, the Sound is a designated "marine protected area" under Massachusetts law and the Executive Order issued by President Clinton, and subsequently endorsed by President Bush.

The Cape Wind Project

While the interests of the Alliance are long-term and broad-based, an immediate threat has galvanized our organization. Specifically, this is the Cape Wind Project, which proposes to construct what would be the largest offshore wind energy plant in the world in the middle of the Nantucket Sound, and the first in this country. It is important for this Committee to have a sense of the scale of this project and how serious its impacts will be. Cape Wind's industrial facility would consume 24 square miles of the outer continental shelf (OCS) in Nantucket Sound. The project would include 130 wind towers, each of which would be 416 feet tall. We believe this project has significant potential to cause serious damage to the most basic values of the Sound. This includes adverse effects on endangered species, migrating birds, marine mammals, and commercially valuable fish; threats to navigation and air traffic, including national security flights; declines in property values, tourism, and tax revenue; and harm to recreational activities and scenic values. All of these adverse impacts would be caused by a project for which there is no clear energy demand in the region, and which would likely not be constructed at all but for a variety of public subsidies which make it economically profitable for the developer, largely at taxpayer expense.

While the Alliance, and the diverse interests and individuals who support it, share the public policy goal of increasing alternative and renewable energy as a part of our total energy supply, this general objective simply does not offset or justify the negative impacts of a project on this scale, in this location. Nor, as I shall explain, does it in any way legitimize the rush to develop this site, without adequate consideration of other, more suitable locations, and in the absence of any Federal law providing the authority even to build the project.

This proposed project intersects with H.R. 793 in the following way. The Minerals Management Service, and the Department of the Interior, along with the Chairwoman of this Subcommittee, have correctly recognized that no legal authority exists to convey the Federal property rights which are mandatory to allow this project to be developed. What the Administration concludes on this authority issue is in doubt and perhaps will be clarified in this hearing. Equally important to the issue of Federal ownership and authority is the complete lack of a comprehensive Federal program to articulate standards for decision making, to set environmental rules, to impose rent, or even to designate a lead agency. In the meantime, in addition to Cape Wind, a number of other wind energy projects are being proposed in this region and along the Atlantic Coast. Thus, the need for congressional authority and guidance is clear, and we commend the Chair for taking the initiative on these issues.

Despite the absence of legal authority, Cape Wind is proceeding to move the project forward with the assistance of one Federal agency in particular, the Army Corps of Engineers (COE). Cape Wind intends to build this huge energy project in an offshore area owned by the Federal Government simply on the basis of a permit under section 10 of the Rivers and Harbors Act, a law which has the important but narrow role of permitting potential obstructions to navigation. One permit already granted, but subject to appeal, is for a single scientific data gathering tower, and a second section 10 permit application, believe it or not, is the sole Federal process for the entire 130-tower wind energy project.

Remarkably, even with the admitted knowledge that no Federal authority exists to build the project on the Federal OCS, and that a section 10 permit conveys no property rights whatsoever, the COE has moved expeditiously to process the permits, including undertaking the preparation of a major environmental impact statement under NEPA for the entire 130-tower project. The COE explanation, conveyed

directly to me and other Alliance representatives is, to paraphrase—"We get a permit application; we process it." To the COE, the largest offshore wind energy project is apparently like any other section 10 permit, such as a buoy or small dock. Such a single-minded approach by the COE ignores the larger and more difficult issues that are presented by the lack of legal authority, or the existence of any Federal program for such a huge energy project in our valuable offshore waters. While the COE has expressed some limited doubts about processing the permits (at hearings of the U.S. Commission on Ocean Policy), and makes clear that no property rights whatever are conveyed in a section 10 permit, it nonetheless overcame its institutional misgivings, and has undertaken a full EIS process for 130 wind towers, despite the fact that the Federal Government has no authority for this project.

Your legislation, Ms. Chairwoman, enters the scene at this point, seeking to confirm and assert Federal ownership and control of the OCS for non-oil and gas purposes, and to provide congressional authority for a program to make Federal offshore lands available for development.

The Alliance has a number of comments as to how the legislation can be modified to increase its credibility in coastal areas, to achieve a better balance between development objectives and management and protection of the offshore environment, and to better serve taxpayer interest and the free market policies of the Congress and the Administration. To advise the Committee on these issues, we intend to touch briefly on the Federal ownership issues, and then in more detail on the nature of a program authorizing these uses you intend in H.R. 793.

At the heart of the dispute over the use of offshore lands for wind energy plants and other facilities is the absence of a mechanism to authorize the use and occupancy of Federal property held in the public trust for private development.

The United States has clear ownership of this land. This principle is embedded in Supreme Court decisions and a long line of Federal actions. It also has been clearly established through case law that private parties cannot simply make use of such land for their own purposes without express authority to do so. Under Federal law, however, no such grant of power has been delegated by Congress to the Executive Branch to approve land use and occupancy for wind energy or other projects, other than oil and gas under the OCSLA and a few other specific activities such as deep water ports and ocean thermal conversion.

Cape Wind and other developers anxious to stake out what they perceive to be a claim before a law can be passed, argue that a section 10 permit alone is enough, and if a law ultimately does provide authority that does not exist now, have their claim preserved under that law. The Corps of Engineers, also seeking to have it both ways, says that a section 10 permit does not confer property rights. At the same time, however, the Corps has stated in its brief in the pending lawsuit filed by the Alliance against the section 10 permit issued for Cape Wind's initial industrial facility that it is "the sole authority to allow and regulate all other (non-oil/gas) structures on the OCS pursuant to section 10." Corps of Engineers Brief, at 18. Thus, under the Corps' approach, the property right issue is ignored and Federal ownership of the OCS is literally at the mercy of any developer who can obtain a section 10 permit. The only exception to this, according to the Corps, is for oil and gas activities, which must comply with the rigorous OCSLA procedures and standards.

The Department of the Interior clearly takes a different position. In a statement that directly conflicts with the Corps' position on the Cape Wind project and the authority conferred by section 10, Assistant Secretary Watson has stated:

> Generally, mechanisms do not currently exist by which an applicant can obtain approval from the Federal Government to utilize the OCS for non-oil and gas related activities. Similarly, there exists no designated Federal agency that is tasked with the authority to protect the Federal interest in the OCS and to manage such activities to ensure that they are conducted in a safe and environmentally sound manner.

Letter from Rebecca W. Watson, Assistant Secretary of the Interior for Land and Minerals Management, to the Honorable Richard B. Cheney, President of the Senate 1 (June 20, 2002)(transmitting proposed legislation to provide authority to the Secretary of the Interior to grant easements or rights-of-way for traditional and non-traditional energy-related projects on the OCS). In addition, the DOI's Minerals Management Service (MMS) has testified before Congress that renewable energy projects on the OCS, including wind energy, "are not currently covered under existing statutes," and that "there currently is no legal authority to permit these types of projects." Legislative hearing on H.R. 5156, Before the House Subcommittee on Energy & Mineral Resources, Committee on Resources, 107th Cong. 2 (July 25, 2002)(statement of Johnnie Burton, Director, Minerals Management Service, Department of the Interior).

As this discussion demonstrates, there is a clear need for Congress to address the questions of whether and how to authorize the use of the OCS for non-oil and gas purposes. This question is so confused that the Federal Government is arguing against itself on this question, with the Corps saying authority currently exists and Interior saying it does not. Clearly, Congress needs to reconcile these conflicting views and define precisely what the law is.

To its credit, H.R. 793 addresses this question by establishing the mechanism by which such property rights would be conferred. As discussed below, however, the approach called for by this bill is not adequate. Granting such rights by means of an easement, though a noncompetitive process that does not apply rigorous environmental standards, or the defined and meaningful inclusion of coastal states and communities in the process, is not the appropriate solution to this issue. This testimony sets forth the Alliance's recommended approach.

The Need for a Comprehensive Program and a Moratorium

Those larger questions of law and policy have now been framed even more vividly by the appearance of numerous additional wind energy projects that are proposed for the OCS off the southwest coast of Massachusetts and down the Atlantic Ocean shoreline to Virginia (see map attached). If the COE follows its rote "receive a permit; process a permit" approach for additional projects which cannot be built under present law and which raise issues outside the Corps' expertise, it will have contributed to the creation of an "open to entry" approach to the use of Federal offshore resources for energy development. And it will have done so without adequate review, without meaningful standards, and without revenue return to the Federal Government.

Such an applicant-driven program, called an "over-the-counter" land program in some states, puts the Federal Government, the adjacent coastal state, and all affected interests, including local and regional regulatory bodies already strapped for resources, in the position of always responding to the initiative and pressures of a project sponsor, one at a time. Such sponsors relentlessly press for quick decisions on a specific location of their choice which, as in the case of Nantucket Sound, may not be an appropriate place to develop such a project at all. This "open-to-entry" pressure is just what is happening with Cape Wind. Such project-driven programs to commit public land or other resources to private development may work for selected, unique, and smaller projects, like a single offshore platform for a support function, or a right-of-way for an underwater transmission line, but private developers of large projects requiring vast tracts should not simply be able to stake an offshore claim and hold it for development.

Congress has recognized previously that such a "permit on demand" approach does not work for larger nationwide programs like geothermal or oil and gas, which also require large areas, in different regions, and which, because of the presence of rich resources in certain locations, should always involve competition for a site to ensure maximum return to the public and the U.S. Treasury. Clearly, the permit-by-permit approach is the wrong one for the large-scale wind energy projects which are proliferating. A comprehensive Federal program is essential.

A comprehensive program for developing Federal resources or for using Federal offshore tracts is proactive, positive, and best protects the public interest. A good program should, among other purposes, encourage wise and needed energy development, guarantee a fair return for the taxpayers, set uniform standards for environmental protection, and provide extensive state, local and public participation in the process. And it should designate Federal agency leadership, not simply accept decisions from any agency with limited permit authority. Moreover, because of the importance of these public policy objectives, there is a real need to put a hold on all such development until a comprehensive program is enacted. If this is not done, important resources, such as Nantucket Sound, could be sacrificed before a legally valid and adequate Federal program exists.

We recognize and appreciate that H.R. 793 addresses the reality that no authorization now exists under which any Federal agency may grant and condition legal rights to develop resources on the OCS, other than those already authorized under the Outer Continental Shelf Lands Act (OCSLA) and a few other laws governing specific activities. The new offshore uses which are being proposed are currently without Federal legal authorization, despite their extensive and significant impacts, and without regard to the value of the taxpayer-owned resources they will use. These unauthorized uses include not only the wind energy projects I described, but also the construction of platforms and transmission systems for liquid natural gas (LNG) gasification projects, electric transmission lines, pipelines and cables, oil storage platforms, and other offshore industrial facilities. Without a doubt, such intensive uses of the Federal OCS call for a comprehensive and thoughtful program.

Specifically, and in addition to whatever permitting right-of-way or easement authority is established or smaller and more simpler projects, there should be a leasing program for large-scale and longer term uses, for which the best general model available in our current system of laws is the OCSLA itself.

H.R. 793 and the OCSLA Model

For these reasons, the Alliance applauds the intent of H.R. 793 to provide much needed authority for new energy-related uses of the Federal OCS. The Alliance cannot, however, support passage of the bill unless it is substantially amended to provide for the sort of overall program and standards that are included in the OCSLA and its legislative history, and in addition, there is assurance in the bill, that none of the so-called "Section 10 projects" will be allowed to proceed until they have fully complied with that program.

The OCSLA is a law that has evolved since 1953 to provide a balanced Federal program intended to encourage the development of Federal oil and gas and mineral resources on the OCS. Because of the OCSLA, this development has proceeded on terms that ensure the balanced protection of the public interest, affected local governments, and the significant participation of states which, after all, are the owners of offshore land up to three miles from shore. As introduced, H.R. 793 amends only section 8 (43 U.S.C. §1337) of the OCSLA. Beyond this, H.R. 793 makes no reference to the OCSLA, almost as if the application of the OCSLA is being avoided. To the contrary, H.R. 793 would be a significantly more credible bill if it were a true amendment to OCSLA and included many of its provisions.

Respect for the role of states runs throughout OCSLA, and other laws regulating the use of OCS, such as the Coastal Zone Management Act. Federal laws for offshore and marine resources reflect this respect by recognizing that the three-mile limit of state ownership must be regarded with flexibility so that states, localities and Federal agencies can work together to provide the best management of the resources.

While H.R. 793 is well intended in its creation of general authority for the Secretary of the Interior, in a number of areas the problem is that, because of the generality of the delegation of authority in the bill as introduced, the Secretary is given too little guidance as to the details of the program to be created. Congress can, and should, do more. In addition, H.R. 793 fails to give a proper role to agencies with responsibility over marine resources, such as the National Oceanic and Atmospheric Administration. Congressman Delahunt is developing proposed legislation which recognizes this role, and even assigns lead responsibility to the Department of Commerce for this reason.

The following specific areas must be addressed if H.R. 793 is to provide a credible foundation for new offshore energy development, as it appears intended to do.

Recommendations

Although this testimony does not include specific language for amendments to H.R. 793, the following points should be covered by amendments if the legislation is to provide a level of authority, guidance and protection of the public interest, similar to what currently exists in the OCSLA.

First, it is essential that any new authorization, such as H.R. 793, that would allow a broad range of new, energy uses on the OCS, is based, at least in large part, on a programmatic approach relying on leases, rather than just permits, rights-of-way or easements. A permit-to-permit, "open-to-entry" approach to the commitment of Federal property interests for project development simply does not provide either a programmatic approach or sufficient property rights, properly conditioned, for energy projects the size of those being proposed. Where 23 square miles, or more, of the OCS is committed to intensive, long-term, energy development, the Federal Government should not be approving one project at a time based on a simple permit. Rather, it must develop a serious and comprehensive program that addresses choices between alternative locations to develop or protect, that applies to all projects, and that gives coastal states, communities and citizens fair notice and a chance to do more than react to one project proposal.

The details and descriptions of such a program are scattered throughout the OCSLA and other Federal laws, but the central description of the OCS program is in 43 U.S.C. §1344. Section 1344 directs the Secretary to prepare, periodically revise, and maintain a leasing program for offshore oil and gas, and minerals, that implements the policies set out in the Act. The program is specified to be conducted in a manner that considers economic, social and environmental values of both renewable and non-renewable resources contained in the OCS, as well as the potential impact of oil and gas exploration on other resource values including the marine, coastal and human environments. The program is to be based on a broad range of

existing information regarding developmental benefits and environmental risks among regions of the country, so that the risks and benefits may be equitably shared. If we had relied on the proposals of the oil industry to develop each area they wanted, Georges Bank, instead of being comparatively considered, would have been developed long ago. The program must also fully consider other uses of the sea and seabed, including conservation, fisheries, and navigation. The OCSLA is a model that H.R. 793 would wisely follow, and it would require only slight adaptation to apply.

Such a programmatic approach can give full and fair attention, but not unfair advantage, to corporate project sponsors by comprehensively studying various areas for the significance of their resources, including wind resources, and seeking nominations for those areas that are most favored by industry. Such a program should also allow for certain areas to be nominated, and selected, for exclusion from development, where, for a variety of reasons, development would not be appropriate. Any nominations can be balanced against other factors that would include competing resource and economic values in the area, the nature of Federal or state protection of the marine resources in the area, the opinions of the adjacent state and local governments, and other factors. Such a process is intended ultimately to make available for development those areas which have high potential for energy production, but which present few conflicts for enabling the development to occur. This is exactly the sort of program that has evolved with respect to offshore oil and gas development. It is also the sort of program that led to the decision not to lease and develop some areas off of Alaska, Florida, California and New England, despite the industry's belief that the most promising resources were there. At the same time, this balanced program opened up some of the other highest potential areas with limited conflict. It is essential that a similar program be instituted for the new offshore energy uses authorized by H.R. 793.

Second, the program proposed in H.R. 793 should not be vested exclusively in the Department of the Interior. These projects will dramatically affect marine resources, and authority should be shared with the Department of Commerce through NOAA. Serious consideration should be given to the proposal of Mr. Delahunt for even greater authority, or program leadership, in the Department of Commerce and NOAA.

Third, such a program must have respect for, and provide for the substantial involvement of states, local governments and the public, in each area for which new offshore energy development is proposed. Among other provisions, 43 U.S.C. § 1344 and § 1345 set out important standards directing that the Federal OCS program be fully cooperative with adjacent states. These provisions include not only coastal zone management planning, but also involve the states fully in the Federal offshore development planning process. They establish the right of states to submit recommendations to the Secretary regarding the size, timing or location of a proposed project or lease sale. The Act also permits a state to recommend areas that should not be eligible for leasing. In essence, much of the success of the offshore oil and gas leasing program is due to the fact that the consultative process eliminates areas where state-Federal conflict is likely to forestall development, even if leases are issued. H.R. 793, in contrast, provides only the most general direction for state consultation and fails to detail a role for states, local governments or the public. For example, the Governor and Attorney General of Massachusetts oppose the Cape Wind Project. Yet under the Corps' permit by permit process, state and community concerns were relegated to reacting against a single permit proposal, rather than being part of a larger process to decide whether Nantucket Sound is an appropriate location prior to opening the area to development proposals.

Sound legislation also must authorize an ongoing program of environmental studies to identify areas where alternative energy resources, like wind, are greatest. The studies must also assess the environmental effects of developing those resources, since the impacts are certainly not benign. Such a program, as directed in 43 U.S.C. § 1346, has been established and maintained for many years with respect to offshore oil and gas. The same type of program, specifically modified to address alternative energy development, could serve as a basis for an alternative energy environmental studies program. The goal is a successful long-term approach to alternative energy development, not a rush to get the first project expedited on any terms.

Fourth, a fair return for taxpayers is addressed only in the most general terms in H.R. 793. The bill, as introduced, directs the Secretary only to establish "reasonable forms of annual or one-time payments for any easement or right-of-way granted." It also authorizes negotiated arrangements with the party to whom the easement or right-of-way is granted. The one-time payment and negotiated arrangement approach is typical of right-of-way and easement grants, for single facilities or for very defined and limited land-uses. Such a one-time fee payment approach is,

however, inappropriate for large projects that consume a great deal of land or resources, and for which the taxpayers deserve a market value return and a marketplace approach. Indeed, it is surprising that a market-driven approach would not be the cornerstone of a program from the Congress or current Administration.

In contrast, under the OCSLA, Federal leases are sold competitively to the highest bidder, an approach which is made possible by the fact that leasing of tracts occurs only after a plan has been developed that identifies high priority areas in which more than one bidder will be interested. This is far preferable to a "first come, first served, let's make a deal" approach. 43 U.S.C. § 1337. A fair return for taxpayers can be accomplished for alternative energy development, but not under the open-to-entry approach that H.R. 793 presents. At the very minimum, H.R. 793, or any bill intending to provide authorization for new energy-related uses of the OCS, should direct that competitive bidding be treated as the preferred approach to be used, unless there is justification not to do so, or an attempt to offer a property competitively draws no interest. High resource value areas, either for industrial wind projects or pipeline rights-of-way, should be competitive and sold accordingly to the market as a program preference. Otherwise, public resources will be negotiated away, and sold for single payments at levels that do not return to the taxpayers the fair market value of the valuable resource rights that are conferred. The development of alternative or renewable energy resources, to be sure, is a worthy objective, but not at any price, particularly considering the other subsidies that are provided.

The use of a competitive bidding approach is especially appropriate for offshore wind projects. As the multiplicity of sites and developers indicates, there appears to be a true "market" for offshore wind project property rights. In Massachusetts alone, there are eight sites under consideration. The Nantucket Sound site being pursued by Cape Wind is known for its wind resources, yet the Federal Government, through the Corps, ignores the potential that multiple developers would be interested and is prepared to authorize a single for profit developer to proceed with no return whatever to taxpayers. The only way to provide any return for taxpayers is to rely upon competitive bidding, and competitive bidding can only occur through a program which identifies and offers areas for development to the development community.

Neither Cape Wind, nor other alternative energy proposals, are "public service projects" undertaken by non-profit organizations. The project may provide cleaner electric generation, but the projects are private, for-profit enterprises by corporations; they create other environmental impacts, and they are based on the use of taxpayer-owned resources, just like oil and gas. The profit is supplied in substantial part by taxpayers through subsidies. This is precisely what is happening now in Nantucket Sound and is another reason that an immediate moratorium must be imposed on the permit speculators until authority and standards are established by Congress.

Fifth, H.R. 793 fails to provide for specific environmental standards. As the Cape Wind Project demonstrates, these projects have the potential to be very damaging to the environment. Any authorization for such a program must establish real standards for environmental review, including prohibitions on locating any such project in areas designated as sanctuaries or protected zones under state or Federal law. It is not good enough, in the view of coastal states and communities, and those, like fisherman, who depend on the marine environment, for Congress to simply say, "The secretary will take care of it." The question is how? And Congress must provide the standards.

Other issues that must be resolved in any bill establishing new authority for alternative energy uses for the OCS include the following:

- The authorization should contain provisions, such as those in 43 U.S.C. § 1347, providing for safety and health regulations including the use of best available and safest economically feasible technologies. No such provision exists in H.R. 793, in spite of the potential for such problems in LNG operations, oil storage and even wind energy facilities.
- The authorization should incorporate 43 U.S.C. § 1349, to provide rules for citizen suits challenging program decisions and dealing with significant jurisdictional issues. No such provision exists in H.R. 793.
- Separating leasing and development decisions, as OCSLA does with respect to OCS oil and gas, should be addressed in any authorization. H.R. 793 contains no such provisions, and in the limited hearings afforded to this legislation, there was no way in which this option could be explored. The point is that the separation of leasing and development into two phases makes sense in certain situations, as it affords states an added opportunity to review the specific plans for

development before it proceeds. The authorization need not require separation in all cases, but instruct the Secretary to consider it in all cases.

There are numerous other features of the OCSLA that would be desirable for inclusion in a bill authorizing alternative energy uses on the OCS. These features include the requirement of annual program reports, as well as regular reports on human and budgetary resources needed to carry out a credible program that will make a contribution to the nation's energy supply, while protecting the environment and other significant interests.

Perhaps no element of the OCSLA demonstrates the differences between the approach of H.R. 793, and the approach taken by the Congress for the offshore oil and gas program than does 43 U.S.C. § 1332. This section is an impressive declaration of policy by the Congress with regard to petroleum and mineral development on the Federal OCS, and confirms that it will occur only in balance with other significant interests, including environmental protection and state and local government involvement. It is unclear why H.R. 793 did not incorporate such a declaration of policy or reference Section 1332 at all.

Finally, the OCSLA includes authority to exclude specific areas that are not suitable for development from the leasing program. This provision is based on the obvious fact that particular locations in the marine environment are incompatible with development under the OCSLA. Such a principle also should be included in H.R. 793. Any such provision should, either by direct reference or through a statement of standards, ensure that marine ecosystems as pristine and valuable on ecological, economic and aesthetic grounds as Nantucket Sound are not sacrificed for private development. As the current rush to development of offshore wind projects demonstrates, there are an abundance of possible sites. There is no reason that Nantucket Sound, or other areas of similar value, should be made available to developers seeking to maximize their profits.

Comments on Other Issues

In addition to the points made above supporting comprehensive legislation to authorize the new alternative energy uses proposed on the OCS, it is also necessary that we comment on some elements of the testimony given last year on behalf of the American Wind Energy Association, testimony we are certain the Committee will hear again.

First, this testimony asked that any rules that may flow from passage of H.R. 793 "be sensitive" to the financial investments in potential offshore projects made prior to enactment of the legislation. The Association was concerned, as it said, about projects that have already begun being "disadvantaged by new rules and requirements" or "unnecessarily delayed" by whatever system Congress ultimately chooses to put in place to manage these new uses of the outer continental shelf.

This position essentially stands reason on its head. It asks that the speculative corporate developers who proceeded to invest in and force consideration of the projects they staked out, in a legal setting that clearly does not provide authority for such projects, should actually be rewarded for the attempt. Just the opposite is called for; not only should such "transitional relief" not be granted to those who were presumptuous enough to assume that they could begin these developments for their personal profit and without regard to the desires of affected communities and interest groups, but a moratorium should be placed on all Federal agencies from processing such permits to avoid creating even a suggestion of such grandfathered rights to proceed free of the constraints of a new program.

Similarly, in a short section entitled "Interconnection," the Association expressed its concern that if a current or future project gains approval and begins construction, that there be an "orderly process" to ensure the project can connect to electric substations and distribution lines on the mainland. While no one can oppose an "orderly process," and we do not, our concern is that this is "code" for the preemption of legitimate state and local rights with respect to rights-of-way across state offshore lands or local planning, zoning and utility location requirements. This would amount to an extraordinary breach of the Federalism concepts so long championed by this Committee and inherent in the OCSLA itself.

Essentially, what the Association appeared to have in mind here last year, and no doubt still does, is a totally Federalized program for alternative energy projects that preempts legitimate state and local prerogatives and eases the way for approval with minimal review and no standards. That kind of Federal overreaching should not be tolerated by this Congress. In essence, any bill that is passed to establish a new program for granting and conditioning rights for alternative energy development on the OCS should be fully applicable to all proposals, whether underway or not, and should be deeply respectful of the prerogatives of state and local

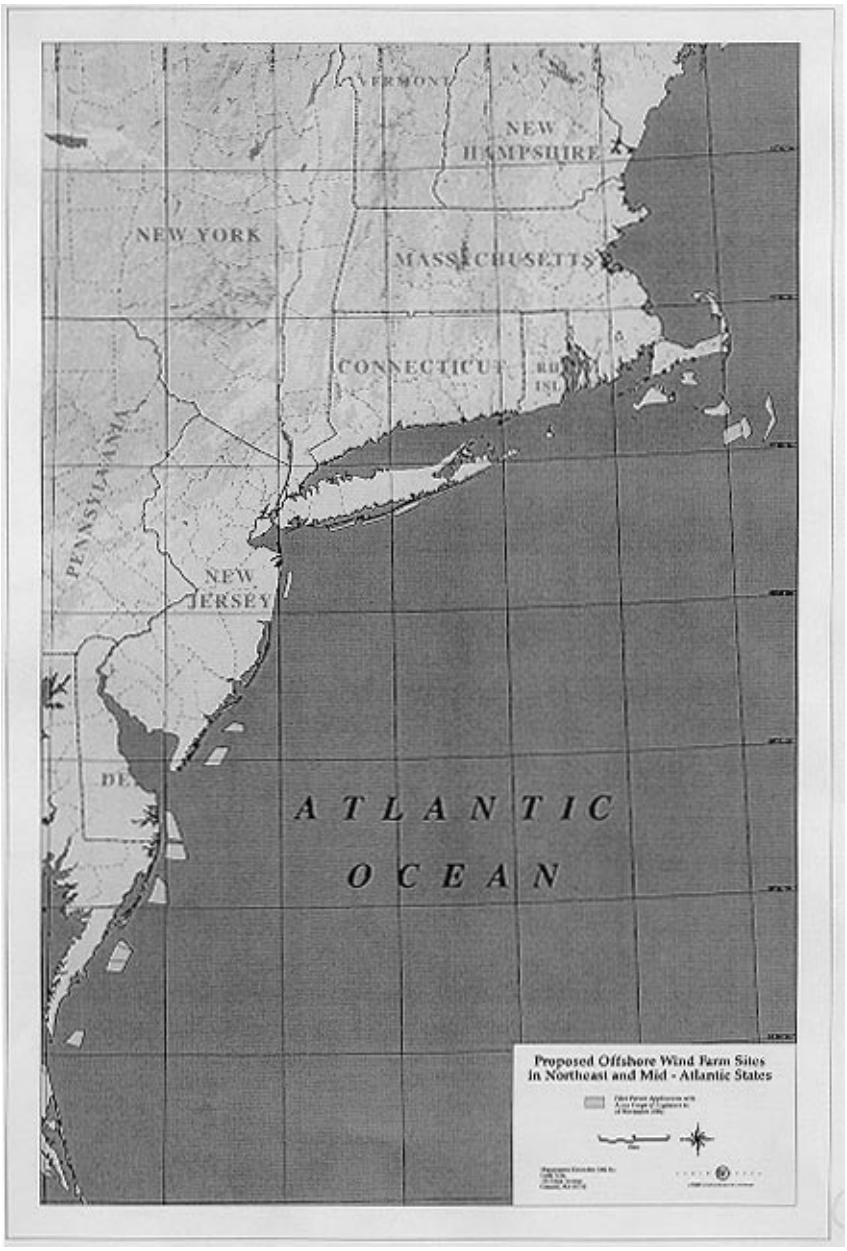
governments, avoiding Federal preemption in all cases. Those who invest prior to the existence of such authority should do so at their own risk.

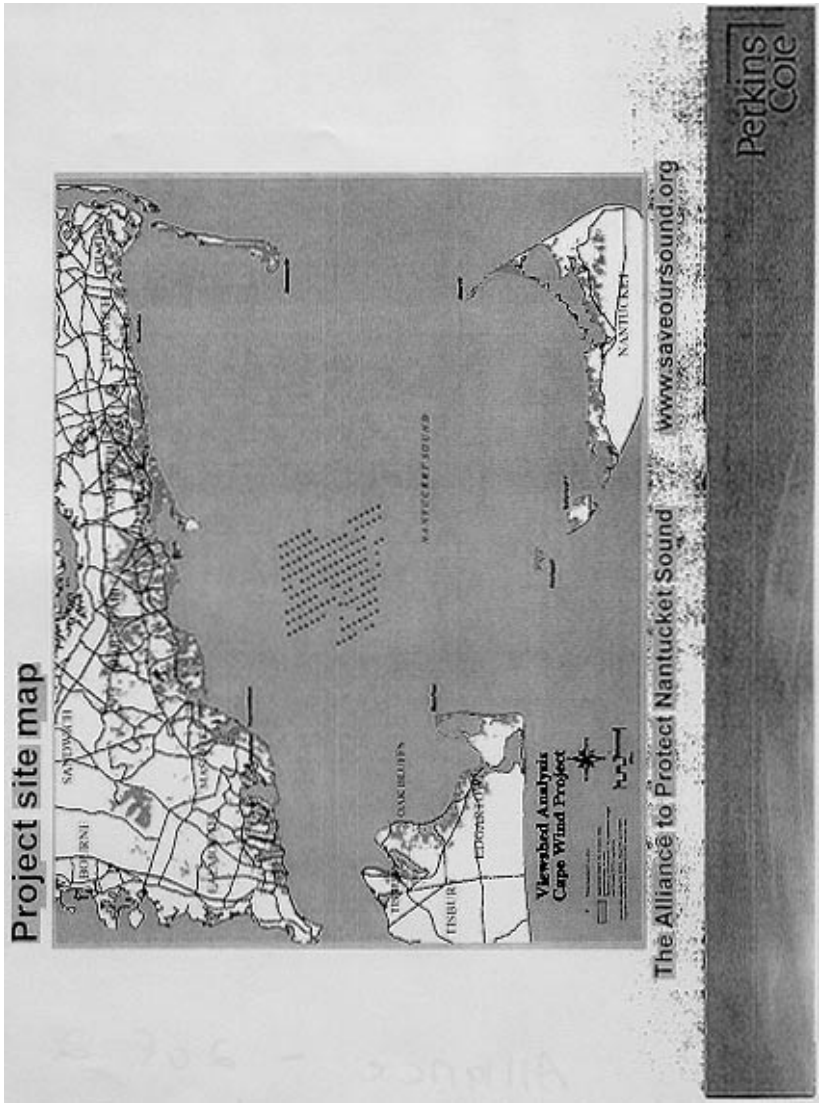
Conclusion

The Alliance to Protect Nantucket Sound recognizes, as do the sponsors of H.R. 793, that no authority currently exists for the Federal Government to grant property rights for the OCS to develop alternative energy, or for other energy activities, which are not already authorized by the OCSLA. We have already learned from the emerging wind energy project proposals that these developments can be of immense scale and impact. Fully recognizing the general and long-term value of alternative or renewable energy, offshore projects of this type must be undertaken. But they will be most successful if undertaken through a comprehensive program incorporating virtually all of the elements that are already delineated in the OCSLA. This is the approach, not the "give me my project now" approach, that will truly cause renewable energy to become institutionalized over the long-term.

All who care about the manner in which the offshore areas of our country are developed should support the points that are outlined in this testimony. The Alliance urges Congress to pass legislation that provides for the development of new offshore energy resources in balance with all of the other factors that are involved. We trust that such a program, properly administered, is more likely than not to determine that a site such as Nantucket Sound should never be chosen for a project like Cape Wind. The outcome on this authorization, however, raises issues which go well beyond one project and one location. The formula for the long-term success of offshore alternative energy development is not permit by permit conflict, nor a cursory direction to the Secretary, but a comprehensive program which creates a solid foundation for offshore development. Thank you again for this opportunity to submit comments.

[Maps attached to the Alliance statement follow:]


VERMONT
NEW HAMPSHIRE
NEW YORK
MASSACHUSETTS
CONNECTICUT
PENNSYLVANIA
NEW JERSEY
ATLANTIC OCEAN
Proposed Offshore Wind Farm Sites in Northeast and Mid - Atlantic States



Mr. KIND. And with that, Mr. Chairman, I will yield back.
Mr. REHBERG. Thank you, Mr. Kind.
[The prepared statement of Mr. Kind follows:]

Statement of The Honorable Ron Kind, Ranking Democrat, Subcommittee on Energy and Mineral Resources, on H.R. 793 and H.R. 794

With the imminent threat of war with Iraq looming over this hearing, the need to develop renewable energy sources such as wind, solar and biomass could not be more evident. In addition to other concerns, a substantial portion of domestic oil imports from the Middle East may soon be at risk, therefore we must continue to encourage clean, renewable energy initiatives now so that they will be available should the need arise.

Generally I believe it is a good idea to clarify and specify that the Minerals Management Service has the necessary authority to grant easements or rights-of-way for alternative energy projects on the Outer Continental Shelf not currently authorized by law. I feel that with their history of managing oil and gas development projects on the OCS, the MMS is well equipped to do the job.

Last year, we expressed an interest in hearing testimony from representatives of coastal states that have a vested interest in the bill. I am pleased to see that Attorney General Reilly is here to speak on behalf of the people of Massachusetts, who are currently engaged in discussion over a proposed wind farm in Nantucket Sound. I would like to see H.R. 793 amended to specifically require consultation with affected States prior to permitting alternative energy projects, such as wind farms, on the OCS. While there is no shortage of controversy with the Nantucket Sound project, it is critical that the affected States and the public have sufficient opportunity to participate in the permitting process.

That said, if we are to reduce our dependence on foreign oil imports, and reduce greenhouse gas emissions, as a Nation we are going to have to develop alternative energy strategies, including wind farms. We should not, indeed, cannot, advocate alternatives to fossil fuels and then cry "not-in-my-backyard" whenever a new project is proposed. I am not saying that the Nantucket Sound project should go forward, I am not fully aware of the facts in that case.

However, I would note that during a recent Congressional trip to Northern Europe to learn more about alternative energy projects, as well as other issues before the Committee, Members of this Committee had the opportunity to view the wind energy facilities at the mouth of the Copenhagen harbor. According to local government officials, there was some initial resistance to the proposal—and still some dislike for the way the windmills look lining up across the skyline. Nevertheless, once the wind field had been in operation and the residents became accustomed to its presence, and more importantly, its production, their fears abated. They have found that the benefits of inexhaustible, clean, and renewable energy from the offshore wind farm have, thus far, outweighed the more undesirable factors.

Though I support the goals of H.R. 793, there are problems with the legislation, which I hope to work out with Chairman Cubin before the bill is marked-up.

The second bill being discussed today, H.R. 794, is one that relates to Federal coal leasing practices. I am aware that our Committee Ranking Member from West Virginia, Mr. Rahall, has numerous and specific concerns with the proposed legislation. I fully support his views on the subject and defer to him to comment on a bill that would most certainly upset the current state of coal leasing in America and would affect a large majority of his constituency. In his absence, I ask unanimous consent to submit his statement in the hearing record.

NOTE: A report submitted for the record by Mr. Kind entitled "Review of State and Federal Marine Protection of the Ecological Resources of Nantucket Sound" prepared by the Center for Coastal Studies has been retained in the Committee's official files.

We had anticipated there would be a vote. There hasn't been yet. Why don't we just kick off. We will get as far as we can and we will begin with Panel No. 1 and Mr. Delahunt.

STATEMENT OF THE HONORABLE WILLIAM D. DELAHUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. DELAHUNT. Thank you, Mr. Chairman, and let me extend an invitation immediately to all members of the Committee to come visit Nantucket sound. I am sure we could arrange for a field trip sometime in May or June and give you an opportunity to see firsthand the concerns that the people have in my district, and I think it would be enlightening to see the rather small area for which the project that Mr. Kind referred to in his opening statement, is proposed.

First, I want to extend my regards and my gratitude to you, Mr. Chairman, and specifically to the Chair of the Subcommittee, Ms.

Cubin, for her leadership in charting a course for development of renewable energy in our coastal waters. Your interest in this issue is vital to districts like mine and states like Massachusetts.

I am especially pleased that the Committee will hear from my good friend and former colleague, Tom Reilly, the Attorney General of the Commonwealth of Massachusetts and I might add one of the best Attorneys General in these United States. And as an advocate of local control and civil and states rights, I know that you will find his testimony compelling.

The problems we are here to address derive from impressive technological break-throughs that now make large renewable energy projects commercially feasible. That is very good news, as Mr. Kind indicated. Unfortunately, there is no coherent comprehensive Federal permitting process to ensure development does not violate multiple public policy considerations. Current Federal law does not provide a yardstick so we can responsibly judge the merits of individual proposals.

For example, the proposal that Mr. Kind alluded to is being processed by the Army Corps of Engineers under the authority of a statute that was enacted in 1899. With the current pace of development accelerating, I welcome your commitment to bridging the gaps in current law, and it is imperative that we act quickly to create a coherent responsible regulatory process, one that is fair and predictable for investors and one that would restore public confidence and governance of the coastal zone.

Today, I am introducing legislation which I believe will address those concerns, and I respectfully ask you to review this proposal as you proceed. My bill would affirmatively encourage alternative energy development on the Outer Continental Shelf by requiring a new licensing regime to be in place within 1 year after passage that draws, as does the so-called Cubin bill, from analogous existing provisions of oil and gas regulation.

But there are key differences: The average size of an oil and gas track leased by the Department of Interior is roughly eight square miles, while the size of proposed wind farms range from 15 to 100 square miles. The Long Island Power Authority's proposal for the waters off New York covers more than 50 square miles. The sheer size of these facilities make them more intrusive than oil and gas platforms. More over, decisions about renewable facilities tend to be more permanent than those related to oil and gas.

OCS platforms are mobile and can be moved if needed, but once concrete and steel wind towers are built, they are there imbedded in the seabed for decades. Finally, oil and gas development typically take place far from shore and Federal waters. Improved technology allows oil companies to access reserves in deep waters of the gulf and elsewhere. Because this activity is far from shore, it doesn't tend to conflict with competing interests. Conversely, almost all of the sites for proposed wind farms either straddle or abut state waters in their coastal zone.

For all these reasons, the processed outlined in my legislation foresees a new licensing program that calls on the expertise of the National Oceanographic and Atmospheric Administration and their coastal zone managers. As you know, NOAA already oversees the development of and licensing of ocean thermal energy conversion

facilities. Specifically, the bill encourages coastal states and requires the Federal Government to identify priority areas for prospective renewable energy development. It includes incentives to encourage states to amend their coastal zone management plans accordingly. It requires the construction and operation of licensed facilities to be consistent with these state CZM programs, and once a facility begins producing energy, it requires annual royalties for allocation to coastal states.

In short, our goals are to expedite energy development, minimize disruption of competing uses, capitalize on existing regulatory expertise, and respect state coastal priorities.

Where I live, Mr. Chairman, the sea is in our blood. We are a people bound to the water, and, as you know, the term "Yankee ingenuity" signifies our welcoming creativity and innovation, and they don't necessarily have to be mutually exclusive, our love for the sea and this time honored Yankee ingenuity, but when we speak of new proposals, we have to obviously factor in the consequences.

What is at stake in my area is a marine environment so ecologically valuable and fragile that is a candidate for designation as a National Marine Sanctuary. The commercial fishing fleet and vibrant tourism industry is utterly dependant on the health of Nantucket Sound. There are some mistakes that you can only make once. This is that situation.

I commend your efforts to address the shortcomings of Federal law so that we can get it right the first time. I thank the Chair and yield back whatever time I may have.

[The prepared statement of Mr. Delahunt follows:]

Statement of The Honorable William Delahunt, a Representative in Congress from the State of Massachusetts

First, my thanks to you, Madame Chairman, for your leadership as we chart a course for development of renewable energy in our coastal waters. Over the past year, I have benefited from your counsel, and that of your staff; and I appreciate your resuming this discussion so early in this session of Congress.

As you know, this is a very important issue to me and my constituents. Every community in my district is touched by the ocean. We rely on the ocean to drive important segments of our economy, such as fishing and tourism. Our ocean is also important for recreation and transportation, and because of that we have a profound respect and appreciation for a healthy marine environment.

Some months ago, developers proposed building a wind farm spanning 25 square miles in Nantucket Sound. This proposal set off a firestorm. Since then, issues of ocean governance and new policies for renewable energy in the marine environment have dominated our newspapers, our fishing piers and our town halls. I have opposed the Nantucket Sound project, not because I oppose renewable energy, but rather because I believe that we must have sensible policies in place before the Federal Government starts issuing permits for such large projects.

Since our discussions last year, when this issue arose in the context of the energy bill, I have been working with the Massachusetts Attorney General—from whom you'll hear soon—as well as the fishing and boating communities, conservation and wildlife groups, and coastal zone management experts to develop a predictable and inclusive regulatory program. Legislation I will be introducing today, I believe, a consensus among the major interest groups.

I would be pleased to discuss specific provisions of the bill and possible changes to any of them, but frankly I would rather spend the few moments we have together this morning to share with you our concerns about what appears to be a corporate land rush for our ocean seabed and the need to involve at the earliest of stages the coastal states and other users of the ocean resources.

From the outset, I want to say that I am a strong supporter of renewable energy and the bill I introduced is intended to encourage sensible development of alternative energy in the marine environment.

The problems we're here to address derive from impressive technological breakthroughs that finally mean that offshore renewable energy projects can be commercially viable. That's very good news, particularly given the geopolitical challenges we now face. The merits of wind energy are indisputable; and we should do all we can to nurture and reward investment in this sector by providing sensible guidance on how to authorize these new uses of the oceans.

That's why I welcome your commitment to addressing this issue. Last session, you introduced your own proposal. Since then, we have witnessed dozens of new wind farm proposals up and down the east coast, with a half dozen off the New England coast alone. To the taxpayer, it seems as if our coastal waters are being held hostage to whatever commercial interests stake the first or loudest claim.

In the absence of guidance from Congress, regulators now find themselves with no choice but to default to rules and standards as archaic as the mashing of corn in the gears of Cape Cod windmills. For developers, this vacuum yields uncertainties and public attacks without the benefit of referees or even ground rules.

With the pace of proposed development accelerating, I am here today to propose several constructive steps that I believe could yield a more responsible process.

First, we need to move quickly. The bill I am introducing requires the proposed licensing regime to be in place within one year after passage so as not to delay development. It recognizes that development should be done with due consideration to all the competing uses and public interests in our ocean. Just as we discourage oil development in environmentally sensitive areas like coral reefs, we would not want to put a wind farm right in the middle of a prime fishing area, shipping lane, critical marine habitat or even in the middle of a state-designated ocean sanctuary.

In many respects the siting decisions related to marine renewable energy facilities are more difficult than those related to oil and gas. For example, the average size of an oil and gas tract leased by the Department of Interior is roughly 8 square miles, while the size of proposed wind farms range from 15 to 100 square miles. The Long Island Power Authority's proposal for siting a wind farm in the coastal waters of New York covers more than 50 square miles. The shear size of these facilities makes them more intrusive than oil and gas platforms, and consequently the impacts on the other users of the ocean even greater.

Moreover, decisions about renewable facilities tend to be more permanent than those related to oil and gas. OCS platforms are mobile and can be moved if needed but once a wind farm is built it's there for decades. Concrete and steel wind towers imbedded in the seabed are permanent until dismantled.

Finally, oil and gas development in large part takes place far from shore in Federal waters. New deep water technology is allowing oil companies to access reserves in deep waters of the Gulf and elsewhere and because this activity is far from the coast, avoiding conflicts with a multitude of competing uses.

Conversely, almost all of the sites for proposed wind farms either straddle or abut state waters, near designated coastal zones, shipping lanes, fishing or boating areas and critical habitat. For this reason alone, states must have a major say in the development of offshore resources.

Consequently, the process outlined in our legislation establishes a new licensing program that calls on the expertise of the National Oceanographic and Atmospheric Administration (NOAA) and their coastal zone managers. As you know, NOAA already oversees the development and licensing of Ocean Thermal Energy Conversion (OTEC) facilities. NOAA's experience with the marine environment makes them particularly well equipped to guide this process.

Specifically, the bill encourages coastal states and the Federal Government to identify priority areas for the siting of renewable energy facilities. Identifying these priority areas up-front will help avoid costly and protracted battles among marine interests, and expedite offshore renewable energy development.

The bill authorizes financial assistance to states to ensure that they amend their coastal zone management plans to incorporate policies for assisting in the development of renewable energy. In addition to requiring that the construction and operation of renewable energy facilities be consistent with approved state management programs, the bill requires the Secretary of Commerce to consult with the relevant Federal agencies to ensure that the construction of one of these facilities will not compromise national security efforts to harm the environment. Finally, once a facility begins producing energy, the Secretary is required to establish annual royalties that will go back into the Coastal Zone Management Fund for allocation to coastal states.

In short, our goals are to expedite energy development, minimize disruption of competing uses, capitalize on existing regulatory expertise, and respect state coastal priorities.

Where I live, our historical heritage and economic vitality are interdependent with the marine environment. It's in our blood to welcome innovation, and we have always embraced renewable technology. But no matter how noble our intentions, we must never lose sight of the consequences. Any more than public transit would mean running the Boston subway system to the Cape Cod National Seashore. Or the need for prescription drugs would argue for abolishing the FDA.

What is at stake, in our own area, is a body of water so abundant in natural resources that it was nominated by the Commonwealth of Massachusetts as a National Marine Sanctuary. It is a resource that helps sustain a vibrant tourism industry and a commercial fishing fleet.

There are some mistakes you can make only once. I commend your efforts to address the shortcomings in the Federal law, so that we get it right the first time.

Mr. REHBERG. Thank you, Mr. Delahunt, and certainly those concerns will be taken into consideration in this Committee, and the Chairman I know will look forward to working with you on an acceptable compromise.

As Mr. Kind mentioned, we saw the facilities in Norway last summer, and there can be a visual change in the horizon or the outer banks that we recognize and know that not everybody will like it the way that it is, but if anybody did a nice job with it, their facilities are fairly attractive.

Mr. DELAHUNT. I believe we pose a distinctly unique situation, and again, I am going defer to my Attorney General to explain his concerns, but I think our collective concerns are concerns that you would all share. And let me again repeat the invitation to come to Nantucket Sound to visit the Cape, Nantucket, and Martha's Vineyard to observe the potential impact of this proposal on the people in my district.

Again, thank you, Mr. Chairman.

Mr. REHBERG. Thank you. Even those of us from Montana are tired of the winter. We would rather wait until spring or summer to visit you.

Mr. DELAHUNT. We will schedule it accordingly.

Mr. REHBERG. That would be nice.

Before you leave, are there any other questions from the Committee for Mr. Delahunt?

Mr. Kind.

Mr. KIND. Before you get away that easily, just so I understand the position of your constituents back home, Mr. Delahunt, are they adamantly opposed to any wind farm project occurring in the Nantucket Sound, or is it the size of the project, or is it the sightline problem?

Mr. DELAHUNT. There are a variety of concerns. We have obviously an active commercial fishing fleet. We have safety concerns. We have flights from the mainland and Cape Cod to the islands. There would be the obvious, again, safety concerns there. The Coast Guard and the Navy have articulated concerns. And, the issue of the seabed itself, it is a breeding ground for gray seals, for example.

There are multiple, multiple concerns, and I think it is important to understand that there is, in fact, a marine sanctuary that was created by the Commonwealth of Massachusetts back in 1970, and if I had a map before you now, I could demonstrate to you that this

particular proposal is surrounded, if you will, by this state marine sanctuary. And back in 1980, the entire Nantucket Sound was nominated for National Marine Sanctuary status, and again, I think this reflects the interests of the state before any proposal for a wind farm was ever put forward.

Now what we have learned, of course, is that there is no coherent comprehensive policy regarding these particular proposals, and with the advent of the first proposal, that has spawned numerous proposals. Just this past week, there were three more proposals for wind farms off of Cape Cod and Nantucket. If they were all permitted and were developed to sail from Cape Cod to Nantucket would require a skillful navigator. It would be a slalom course. It would be a disaster.

Mr. KIND. Just for my information, there is pending litigation in Boston Federal Court right now?

Mr. DELAHUNT. I will let the Attorney General address that, and again, I think it is very important, and even under the existing current Federal statutory scheme, there is language that recognizes the interests of the state and that the state must be consulted in terms of the impact as far as state coastal waters are concerned, and as I just mentioned earlier, the fact that we have a state marine sanctuary, I would suggest speaks volumes about the attitude of the state regarding this particular body of water, which I would suggest to you is absolutely one of not just Massachusetts', but this Nation's treasured resource.

Mr. KIND. Thank you.

Thank you, Mr. Chairman.

Mr. REHBERG. Thank you, Mr. Delahunt, and we will conclude with Panel No. 1 and invite Ms. Burton who is the only person on Panel 2 to please come up to the desk there.

There are advantages and disadvantages to serving in Congress. The advantage is you don't have to sit through many hours of Committee meetings. The disadvantage is when you do testify, there is a time limit, and if you will notice in front of you, there is a panel of lights. That will designate when your 5 minutes are up, and please understand that the record is always open to witnesses to put in the testimony they were unable to read before the Committee, and then we will follow with questions.

So, at this time, I would like to welcome Ms. Johnnie Burton, Director, Minerals Management Services, United States Department of Interior.

Ms. Burton.

STATEMENT OF JOHNNIE BURTON, DIRECTOR, MINERALS MANAGEMENT SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Ms. BURTON. Thank you, sir, and good morning. I appreciate the opportunity to appear today to testify on H.R. 793, the Administration's OCS alternative energy uses legislation, and also on H.R. 794, the Coal Leasing Amendment Act of 2003.

I would like to begin my oral remarks by discussing H.R. 793. As the Department has stated in previous testimony, the Administration strongly supports the enactment of this legislation. H.R. 793 embodies the Administration's legislative proposal that was formally sent to Congress in June the 2002. I would like to

thank Chairman Cubin, even though she is not here today, but I would like to thank her for introducing this legislation and introducing H.R. 793 this year.

We look forward to working closely with you and other members on this legislation as it proceeds through the legislative process. It is our hope that the legislation can be enacted in an expeditious manner.

The Administration believes that there are several benefits associated with enacting the legislation. In general, we believe it has the potential to encourage innovative alternative energy projects on the Outer Continental Shelf. It supports the President's national energy policy initiative to streamline permitting for energy production in an environmentally sensitive manner, and it will further the Secretary's commitment to facilitate renewable energy projects on Federally managed lands.

Equally important, we believe the legislation will clarify the regulatory process considerably and will provide the Department with the tools to comprehensively address in one statute the array of issues associated with permitting and managing OCS alternative energy uses. As it currently stands, the vast majority of OCS alternative energy activities that are or may be contemplated have no coordinated permitting process, nor is there a single Federal agency with an overarching role to coordinate that process and protect the spectrum of Federal interests. This legislation is designed to address those deficiencies.

There are obvious drawbacks to the present process. First, it does not ensure that Federal Government's economic and land use interests are fully considered and protected; and second, it does not encourage innovation in the energy arena since the private sector has no clearly defined and transparent permitting process.

It is important to note that the legislation does not supersede or alter the existing authority of any Federal or state agency or other Federal law. H.R. 793 is drafted as an amendment to the OCS Lands Act and sets up a comprehensive framework for permitting alternative energy activities on the OCS. Placing the authority into the OCSLA which already provides the statutory framework for oil, gas, and other mineral activities will allow the Department to build on many of the provisions already in the Act while tailoring this bill's or this act's relevant provision to innovative alternative energy-related activities.

In addition to these underlying authority, H.R. 793 also enumerates other specific provisions that are critical to the comprehensive management of alternative management activities on OCS, including: the explicit authority to grant an easement or right-of-way for an array of alternative energy activities; including renewable energy projects, such as wind, wave, solar, or other uses of the OCS oil and gas structures previously permitted under the OCSLA; provisions to protect the public's interest to capture fair value for the use of Federal OCS; provisions to issue an easement or right-of-way on either a competitive or non-competitive basis as appropriate and determined by the Secretary; provisions to ensure safety and environmental protection through the development of appropriate regulations and inspection activities; provisions to ensure that appropriate enforcement actions can be taken in the event violations

occur; and provisions to require bonds to ensure that companies have a financial surety to conduct operation on the OCS to complete end of life site clearance and reclamation.

Since the legislation was introduced last year, we have received numerous comments from interested parties, including the need for rigorous environmental review and safeguards and the need for active and meaningful participation by affected states, local governments, and the public. We agree these are important considerations, but we also believe by amending the OCSLA, a lot of the framework for these activities are already included in the present law, and these issues, after 793 is enacted into law as an amendment to OCSLA, will be dealt with; however, we are also very amenable to working with the Committee and other interested parties to ensure that these issues are addressed in an appropriate manner.

Before concluding these remarks on this bill, Mr. Chairman, the Administration would like to reiterate its strong support for enactment of H.R. 793. The bill has the potential to help increase and balance both sources and supplies of energy that are critical to our nation. Further, if we are serious about encouraging new and innovative technologies to help us meet our increasing needs, enactment of this legislation will be one important step in helping us meet those needs.

Thank you very much, Mr. Chairman.

[The prepared statement of Ms. Burton follows:]

Statement of Johnnie Burton, Director, Minerals Management Service, U.S. Department of the Interior, on H.R. 793

Madam Chairman, thank you for the opportunity to appear before the Subcommittee today to discuss two energy Bills before the Committee: H.R. 793, a Bill to facilitate alternative energy -related uses on the Outer Continental Shelf; and H.R. 794, the Coal Leasing Amendments Act of 2003.

H.R. 793, OCS Alternative Energy and Energy Related Activities

The President's National Energy Policy report laid out a comprehensive, long-term energy strategy for securing America's energy future. While many critics focus on the report's call for the production of energy from traditional sources, there are critical components of the President's policy that call for production of energy from alternative sources, such as renewable energy projects.

In support of the President's energy policy initiative to simplify permitting for energy production in an environmentally sensitive manner, the Administration developed a legislative proposal last year to facilitate the permitting and development of alternative energy-related projects in the Outer Continental Shelf (OCS). The Administration's legislation was submitted to Congress in June 2002, and was introduced as H.R. 5156 by Chairman Cubin on July 18, 2002. The Administration expressed its strong support for the Bill at a hearing before this Subcommittee on July 25, 2002 and continues to strongly support enactment of this legislation.

Highlights of H.R. 793

H.R. 793 would amend the Outer Continental Shelf Lands Act (OCSLA) to set up a comprehensive framework for permitting alternative energy-related uses on the OCS not already expressly covered by existing statutes. Placing this authority under the OCSLA, which already provides the statutory framework for oil, gas, and other mineral activities, will allow the Department to build on many of the provisions already embodied in that Act, including: the authority to coordinate with and enter into agreements with other Federal agencies; requirements for occupational safety for activities; authority for site access to facilities; and the authority for imposing civil and criminal penalties. Using the OCSLA as the umbrella statutory authority will allow us the flexibility to tailor the Act's relevant provisions to innovative alternative energy-related activities.

Specifically, the proposed legislation would grant the Secretary of the Interior the authority to:

- Grant an easement or right-of-way for alternative energy-related activities on the OCS—including renewable energy projects, such as wave, wind, or solar projects; projects ancillary to OCS oil and gas operations, such as offshore staging areas; and energy or non-energy related uses of existing OCS facilities previously permitted under the OCSLA;
- Protect the public's interest to capture fair value for the use of the Federal OCS by authorizing the Secretary to require an appropriate form of payment such as a fee, rental, or other payment for use of the seabed;
- Issue the easement or right-of-way on either a competitive or non-competitive basis, as appropriate and determined by the Secretary;
- Oversee all activities associated with a project through regulations and inspection activities to ensure safety and environmental protection;
- Pursue appropriate enforcement actions in the event that violations occur; and
- Require financial surety to ensure that any facilities constructed are properly removed at the end of their economic life.

There are several benefits associated with enacting H.R. 793. First, it will clarify the regulatory process considerably. The private sector will know where to start the permitting process, and the Department will be able to inform other relevant Federal agencies of the proposal, thus better facilitating its timely review and consideration. Second, the legislation will explicitly provide the Department with the tools to comprehensively address in one statute the array of issues associated with permitting and overseeing alternative energy-related uses on the OCS.

Why the Department of the Interior Is Designated as the "Lead" Permitting Agency

As the Administration began to actively consider the best approach for addressing issues associated with siting alternative energy-related activities on the OCS, it became clear early in the process that the Department of the Interior should be given the lead role in the permitting of such activities. While there are numerous Federal agencies with permitting responsibilities on the OCS, the Department is the primary agency in the Federal Government to oversee development of our Nation's Federal energy resources. The Department manages more than 500 million surface acres of land. The Minerals Management Service (MMS) managing approximately 1.76 billion acres of offshore Federal lands for oil, gas and other mineral activities and the Bureau of Land Management (BLM) manages 262 million surface acres and more than 700 million subsurface acres of Federal mineral estate. Since the proposed legislation pertains to the permitting and oversight of energy uses on offshore Federal lands, it is only logical that any new legislative authority that is enacted remain with the Department already entrusted with that overall responsibility.

In this role, the Department has demonstrated unparalleled experience in multiple-use land management and routinely makes decisions to balance economic activities with the need to protect the environment. For this reason, the proposed legislation fits well with the Department's core missions.

Within the Department, MMS has many years of experience in overseeing oil, gas, and sand activities on offshore Federal lands. This experience covers many areas such as:

- Environmental expertise and research which are used to make informed decisions with regard to leasing and operations;
- Engineering expertise and research regarding emerging offshore technologies used to develop oil and gas resources and the various safety issues associated with these activities;
- Regulatory expertise in overseeing OCS oil and gas activities to ensure human safety and environmental protection;
- A trained offshore inspection workforce that, in addition to enforcing MMS regulations, also conducts offshore inspections for the Coast Guard and the EPA; and
- Established working relationships with State, Federal and international regulators to coordinate and share information and experience on regulation of offshore energy projects to ensure safety of workers and protection of the environment.

Highlights of Comments Received on the Administration's Legislative Proposal

Since we submitted our original legislative proposal to Congress in June 2002, we have received numerous comments from a variety of interested parties on the proposal. In general, comments and concerns can be grouped into several overarching themes. The first set of comments involve the issue of proper site planning. Many commenters expressed concerns that there needed to be a mechanism in place to

view alternative energy sites from the standpoint of all projects that may be appropriate for an area as well as what sites will be best for all affected parties—as opposed to reviewing one project and one site at a time without concern for cumulative impacts or other considerations.

Commenters also expressed concerns about the need for active and meaningful participation from the public—particularly participation from State and local governments. This participation included the review of any proposed activities under the Coastal Zone Management Act (CZMA) to ensure that a potential activity is consistent with a State's CZMA program.

Finally, commenters expressed concerns that whatever statutory process was put in place must provide for a rigorous environmental review and appropriate environmental safeguards.

We agree that these are important concerns and we are amenable to working closely with the Committee and others to ensure that the concerns mentioned above are addressed in an appropriate manner.

Conclusion

H.R. 793 will provide for the sound management of offshore public lands by ensuring that principles of safety, environmental protection, multiple use, fair compensation, and conservation of resources are all addressed before a project is initiated. It will also provide the private sector, which has expressed a desire to invest in offshore energy-related projections, certainty and predictability. Finally, H.R. 793 has the potential to help increase and balance both our sources and supplies of energy that will be so critical to our Nation in the future. We strongly believe that we must encourage new and innovative technologies to help us meet our increasing energy needs—enactment of this legislation will be one important step in helping us meet those needs.

I would again like to thank the Committee for its interest in this issue and express our sincere desire to work with you on all aspects of this important legislation.

H.R. 794, the Coal Leasing Amendments Act of 2003

H.R. 794 would amend portions of the Mineral Leasing Act relating to the development of Federal coal resources.

Coal produced from the Federal lands contributes about 40% of the national coal supply. Production from Federal lands continues to increase. In Fiscal Year 2002, production from Federal lands exceeded 400 million tons. The BLM's management and development of these Federal coal resources are governed by the Mineral Leasing Act as amended by the Federal Coal Leasing Amendments Act and implementing regulations found at 43 CFR 3400.

The Department recognizes that the Federal Coal Leasing program would benefit from select modifications to provisions of the Mineral Leasing Act (MLA), as amended by the Federal Coal Leasing Amendments Act of 1976 (FCLAA).. The President's National Energy Policy directed the BLM to analyze the effectiveness of the MLA as it relates to coal leasing on Federal lands and to recommend any needed administrative or legislative changes. Accordingly, a working group established to accomplish this task should be releasing a draft report soon. In reviewing your legislation Madam Chairman, we see several changes that are useful and important.

The Department supports repeal of the current 160-acre limitation for lease modifications as provided in section 2 of the bill. We believe the current limitation has unintentionally caused the bypass of some otherwise recoverable coal reserves. The amendments in section 2 do not affect the requirements of section 3 of the MLA that lands added to a lease be contiguous to the existing leasehold and that the Secretary find the lease modification is "in the interest of the United States."

We also agree with the provision in the bill allowing the Secretary to extend the life of a mine beyond 40 years if the Secretary determines a longer time period will ensure the maximum economic recovery of a coal deposit or is in the interest of the orderly, efficient, or economic development of the coal resources. The current legislative limit requires that a mine operator submit a plan that shows all reserves being mined out within 40 years. In some cases, this does not reflect actual mining practice, particularly where incremental parcels are being added to established logical mining units. There may also be cases where the size of a reserve in an original logical mining unit is large enough to require more than 40 years to develop it.

The Department supports legislative changes to the advanced royalty provisions. Under current law, the Secretary may suspend the condition that a lessee continually operate upon payment of advance royalties. In granting a suspension, the Secretary must find that the public interest must be served thereby. However, the aggregate number of years during the period of the lease for which advanced royalties may be accepted cannot exceed ten. H.R. 794 would extend that to 20 years. Under

this provision, an operator would not have to relinquish a lease if unfavorable market conditions make resumption of coal production uneconomic.

Section 5 of the bill eliminates the requirement that a lessee submit a mine plan within 3 years of lease issuance. We support the elimination of this provision as most mine plans submitted to meet this requirement do not reflect the actual mine plan submitted under the Surface Mining Control and Reclamation Act (SMCRA) and, therefore, are a wasted effort for both lessee and the BLM. The ultimate mining plan is reflected in the application for a permit submitted under SMCRA.

Section 6 addresses the issue of surety bonds and deferred bonus bids. The Department is concerned about the current bond availability dilemmas facing lessees, and this issue has been a subject for review by the Department's Bonding Task Force. However, we are not certain at this time that a broad prohibition on the use of surety bonds is the most appropriate solution. We would be happy to discuss the findings of the Task Force when their review is complete.

In addition, the bill removes the direct prohibition on the Secretary waiving advance royalties. We have no objection to that provision. Section 3 of the MLA provides the Secretary may only grant a waiver or suspension of royalties if it is in the interest of conservation and for the purpose of achieving the greatest ultimate recovery of the coal.

Finally, we support the objective of a Federal coal resource inventory and impediment assessment. We do point out though that funding for such an inventory should be subject to review during development of the President's budget.

We appreciate the opportunity to testify on these changes to Federal coal legislation and look forward to working with you and your staff on these and other changes to the MLA that will ensure that Federal coal resources are efficiently developed for the continued benefit of the public. If H.R. 794 is enacted, the Department will develop guidelines for carrying out the determinations required under the MLA related to the provisions mentioned above that recognize the importance of the competitive leasing process, a fair return to the taxpayer, and the efficient and orderly development of coal resources.

This concludes my written testimony. However, I would be pleased to respond to any questions from Members of the Subcommittee.

Mr. REHBERG. Thank you very much.

To begin the questioning, I would like to ask you doesn't Mineral Management Service have expertise in permitting offshore alternative energy projects now?

Ms. BURTON. The Mineral Management Service today has acquired over the last 20 years an enormous amount of experience in dealing with submerged lands and the management of the facilities offshore. It works very closely with the Coast Guard and with EPA. In fact, in inspections of offshore facilities, we have memoranda of understanding with both of these agencies, and we work very closely together to make sure that the regulations are respected and that everything is done in a manner that is going to be watching over the safety of the people as well as the safety of the environment.

So, Mr. Chairman, we have do considerable expertise.

Mr. REHBERG. Under this bill, would applicants still comply with the environmental statutes like NEPA, Coastal Zone Management Act, Endangered Species Act, Marine Mammal Protection Act? Does the language somehow supersede these statutes?

Ms. BURTON. Absolutely not, Mr. Chairman. We will comply with all those statutes because they are also referred to and expressed in the OCSLA, and this is an amendment to the OCSLA that adds, does not subtract. So we will have to follow all of those.

Mr. REHBERG. Do you believe that the state and local governments will continue to play an important role, and do you have an relationship with them now?

Ms. BURTON. They will continue to play a role under the Coastal Zone Management Act. We will continue to work with them. If the Committee feels that there has to be more consultation, we are perfectly willing and amenable to any direction on this issue.

Mr. REHBERG. Thank you. Before I pass it along to you, Mr. Kind, I would like to point out under unanimous consent, if there is no objection, if Mr. Delahunt were to come back and would like to sit at the dais as a member of the Subcommittee, we would allow him to do that.

Mr. Kind, do you have any questions?

Mr. KIND. Thank you, Ms. Burton. Thank you for your testimony here today.

I need a little clarification, because there seems to be a conflict in statutory interpretation within the Administration. If our records are correct and our memory serves us well, I believe last July when you were here testifying on H.R. 5156, you indicated that renewable energy protection projects, including wind energy projects, on the OCS are not currently covered on existing statutes and that there currently is no legal authority to permit these type of projects, and maybe the Attorney General can help me out on this as well, but in the pending case before the Federal Court in Boston, the Department of Justice is taking a different interpretation and instead is saying that Section 10, in fact, does apply and that is all the permitting process that is required, is through Section 10.

So there is a little bit of confusion between the left hand and the right hand in the Administration. Maybe you can shed a little light on that for us today.

Ms. BURTON. Mr. Chairman, this is a delicate subject because we are in litigation. So I won't be able to expand very much on that, but suffice it to say that we are not saying there is no authority to do this today under a Section 10 permit. What we are saying is that there is not one agency that has the overarching management of the land today and that it becomes very difficult to know that all precautions have been taken to make sure everything is done correctly.

Also, we need to coordinate and to make sure that the private investor who comes to do that is being guided properly to the right permits, to the right agencies, and also we need an agency that will have responsibility for monitoring the project all the way to its very end.

So it is not just a matter of a permit. It is a matter of the life of a project and who is going to watch over the Federal interest and the state interest in those projects.

Mr. KIND. But you understand the dichotomy we are kind of faced with here. Under your testimony again here today, if you feel Section 10 doesn't grant you the authority for the permitting process, then why are we allowing a project to move forward under a Section 10 analysis?

Ms. BURTON. Mr. Chairman, I don't think I said that. The Section 10 does give authority to grant permit to the Corps of Engineers. All I am saying is that we feel there has got to be more for the life of the project and that it would be easier to have every-

thing in one agency and possibly one that has experience and expertise in managing those projects offshore.

Mr. KIND. Got it. Thank you.

Mr. REHBERG. Additional questions?

Mr. Souder.

Mr. SOUDER. Do you see any reason to delay the permitting process until the release of the U.S. Oceans Commission and Pew Oceans Commission reports?

Ms. BURTON. Mr. Chairman, I think we are all waiting for that report anxiously, and we know that at that time it will have to be analyzed; it will have to be looked at, and that may change some things. But the report is due this summer or early summer. It will take for the Administration and Congress to analyze the report and to decide if new legislation is needed, and we may be two, 3 years before there are effective changes.

There are issues today, as witness the Cape Winds example, that need to be addressed. So we feel that we need to move and do something now. It may have to be amended later when that commission report comes in and is fully analyzed, but we don't think we should wait.

Mr. SOUDER. Will the environmental impacts will be adequately studied?

Ms. BURTON. Sir, the environmental impact, if this bill were to pass, will be studied as they are now for oil, gas, sand, gravel, any minerals offshore. So yes, there would be a very serious review of environmental impact.

Mr. SOUNDER. Relating to Congressman Delahunt's concerns, when you say the environmental impacts will be studied, would that include the impact on any marine sanctuaries that are adjacent or are pending proposals, and would it also include potential impact on economic revenues in an area such as tourism? I mean, the visual impact of the wind farms are substantially different than oil rigs even.

Ms. BURTON. Mr. Chairman, the impact will be determined and studied under the NEPA process, and you know this is a very comprehensive process. So yes, all of this will be looked at.

Mr. SOUDER. And that includes economic impact on an area?

Ms. BURTON. I am afraid I can't answer that specifically, but I do believe that there is a provision for it in NEPA.

Mr. SOUDER. I would hope, and I am less familiar — I am from Indiana, and so I am less familiar since we have 3 percent public land in the entire state, counting township and counties, than a lot of the westerners are, but I would hope because it goes both directions in energy projects and in environmental projects that just like when we add public lands, we look at what economic impact that has, that when we do energy things, we look at economic impact too, because these things cut both directions.

Ms. BURTON. Right, and, Mr. Chairman, I do believe there is a segment of NEPA that addresses economic impact.

Mr. SOUDER. Thank you.

I yield back.

Mr. REHBERG. Thank you. Understanding that you ran out of time before you had an opportunity to give your opinion on 794,

H.R. 794, would you like to give a brief opinion on that particular legislation?

Ms. BURTON. I will try, sir. Thank you very much.

H.R. 794 is the Coal Leasing Amendment Act of 2003. I don't need to remind anybody that coal is produced in very large part off Federal land, 40 percent of it and about 400 million tons. It is substantial.

BLM had a group that studied the Mineral Leasing Act to see whether or not it needed to have some amendments, and it came up with some amendments. I will go through them very quickly. The Department supports, generally supports, the bill. It supports the repeal of the current 160-acre limitation to lease modification. We believe that this is a very important provision and a good one.

We agree with the provision allowing the Secretary to determine whether a mine could be continued for more than 40 years if more coal is to be recovered. We support the changes to the requirements of advance royalty to provide coal operators more flexibility to meet their diligence requirements. It would extend the number of advance royalty years from 10 to 20, and the Secretary would have to flexibility there. So we think it is a good change.

The law today requires that a mine submit a plan within 3 years after leasing. We feel that very often this is a waste of time for both the staff and the operator and the requirement would be abolished by this law. We support that very much.

Bonding is an issue and it is an issue that concerns everybody. The bill, 794, proposes to abolish bonding requirements for the bonus bids, and we do support that. It does not at this point propose abolishing bonding for the option of the mine, but just for the bonus bids, and we support that, but I need to let you know that the bonding task still working on the issue, and their report is not final yet, and we would be happy to work with you when that report comes out.

And finally, we support the objective of a Federal coal resource inventory and impediment assessment; however, I am here to tell you that the bill gives the BLM 2 years to do it and the BLM just doesn't have the resources and people and funds to do it in 2 years. So if that is going to be done, they would appreciate some reconsideration of this particular issue.

I appreciate the opportunity to say a few words on this, Mr. Chairman, and I would be happy to try and answer some questions.

Mr. REHBERG. Thank you.

Are there questions from the Committee of Ms. Burton on H.R. 794?

Mr. Pearce.

Mr. PEARCE. Thank you, Ms. Burton and Mr. Chairman.

Can you go a little bit more into the surety bond process, the fact that they are not available, meaning that a bidder must put up the total bid in cash equivalent. What is the outcome of that going to be on Federal and state revenues? Our state, New Mexico, has a tremendous amount of coal leasing land.

Ms. BURTON. Right. Mr. Chairman, what is proposed here is to do away with bonding requirements on bid, meaning that a company would have to either pay cash up front, which could be a

problem, but they could still defer payment as they do today. They would have 5 years to pay for their bid. There wouldn't be a bond required, but if they were to default, then BLM would take back the lease and the money that had already been paid would stay with the state and the Federal Government, and the lease could be put back in the market and could be bid on again.

In other words, the bonding is replaced by the collateral of the lease. You would take the lease back if the operator defaults. This is how it would work. Now, how would it impact the state or the Federal Government? It would obviously abbreviate the revenue that were anticipated from that particular lease sale, but you could put the lease back on the block, so to speak, and then you would get a second bid, sell it to another company. So in the very end, you get more money because you keep whatever they paid before they defaulted. Then you get the second sale, which would bring back a new amount of money.

So there would be a gap in the revenue between the time that the company defaults and the lease is repossessed, so to speak, and the time it is sold again, but there would be at the end of the second sale additional money.

Mr. PEARCE. Mr. Chairman, when businesses do that in real estate, we call them slum lords. Are you suggesting that we are going set up a process in the Federal Government where we are going to depress the initial bid price and then hope that companies are not able to carry through and the Federal Government would enjoy some economic gain because of the inability?

Have you taken full comments from business on this?

Ms. BURTON. We have, Mr. Chairman, and at this point, I don't think we are too concerned about that. We are going to be conducting the business as we normally do, and I don't think that is an issue that we are going be very worried about.

Mr. PEARCE. Thank you, Mr. Chairman.

Mr. REHBERG. Are there any questions from the minority?

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I basically plead ignorance in terms of the provision on 794, but something did catch my attention in terms of the forgiveness of debts to the Federal Government. Can you elaborate on that?

Ms. BURTON. I am sorry, Mr. Chairman. I am afraid I did not understand the question.

Mr. FALEOMAVAEGA. There is a provision in 794 that allows forgiveness of loans or some kind of debt owing to the Federal Government by these companies. Is there a provision in that proposal, in 794, that addresses that issue?

Ms. BURTON. Mr. Chairman, not that I am aware of.

Mr. FALEOMAVAEGA. Advance royalties.

Ms. BURTON. Oh. The advance royalties is a different issue, Mr. Chairman. The advance royalties are paid by a company that cannot continue producing every year for whatever reason, and they can continue to keep their lease by paying advance royalty to the Secretary, and the advance royalty will be paid based on the spot market when they have exhausted the number of years allowed for them to do that.

If they never produce again, the Federal Government is really ahead because it kept all these advance royalties when the coal was not produced. If they produce after that, then they will get credit for what they have paid ahead of time.

So no, sir, we don't forgive debts. The company is taking a chance, if you will, when they pay advance royalty without production, and the chance they are taking, the risk they are taking, is maybe they will never be able to produce again. But that is their decision.

Mr. FALEOMAVAEGA. I gather that the Department keeps very excellent records in terms of the provisions of the royalties and amount of profits that are made by the companies. For how many years has this been done through this Mineral Leasing Act?

Ms. BURTON. I am not sure I know the answer to that, but it is has been done a long time on the 10 year. Now we are extending it to 20 years through the lease life.

Mr. FALEOMAVAEGA. Well, I am sure this is not just something that happened just 10 years ago. We have been doing this for many, many years.

Ms. BURTON. That is correct.

Mr. FALEOMAVAEGA. My only thought here is that if the office has been able to keep good records in terms of royalties owing not only to the Federal Government, but whatever is owing to these companies, unlike a very serious problem we have with the Native Americans, their royalties and the leases of their lands that companies have been using for how many years, and we can't even find the money in the Department in terms of what is owing to the Native Americans who have interests in these tracts of lands.

I was just curious if we do better recordkeeping with the leases as they go on to the mineral resources than we do with the Native Americans, what is expected to be gotten for them.

Ms. BURTON. Mr. Chairman, this is really a different system, because in this case, we know who the lessee is and we keep track per lessee. In the issue of the Native Americans, MMS collects the money, collects the royalty, but does not distribute it to individual Indian owners. We don't know who they are. That goes to the Bureau of Indian Affairs.

So I can't speak for them or what they do, but I can speak for us and we keep very good records. We have audits. Every 3 years, everything is audited. Every year, the books are audited by an outside entity, and I assure you we do keep good records.

Mr. FALEOMAVAEGA. Thank you.

What surprises me, Mr. Chairman, if we do it with this area in our lease program, then I am very disappointed that we couldn't do the same for the funds needed by the Native Americans. It ranges somewhere from two to ten billion dollars that is owing that the Department of Interior has not kept good records. I mean, this is ridiculous.

Thank you, Mr. Chairman.

Mr. REHBERG. Thank you.

Mr. Cole.

Mr. COLE. Thank you, Mr. Chairman. I actually want to follow up on a question my colleague on the other side raised just for a little specificity. This legislation impacts lands that we do hold in

trust for Native American tribes. Have any tribes expressed any opinion on 794 so far as you know, and has their opinion been solicited?

Ms. BURTON. Mr. Chairman, I cannot answer that question. I do not know the answer, but I would be happy to find an answer and get it back to you.

Mr. COLE. I would appreciate that very much. Thank you.

Ms. BURTON. You bet.

Mr. REHBERG. Additional questions on the minority side?

I would like to follow up with one last question then. Surety bonds are not available now. Doesn't this cause a reduction in bonus bids in the future of coal lease sales resulting in a significant loss in revenue to states like Montana and the Federal Government?

Ms. BURTON. The fact that companies cannot find bonds is a real, real problem, Mr. Chairman. It is a problem not just for coal. It is a problem for oil, gas offshore. It is a problem for lots of people. We are studying that today, and that certainly has been a problem for industry.

What this bill attempts to do is alleviate that problem somewhat by not requiring bonds for bidding, but the bonds will still be required for operations, and we are awaiting a bonding task force report that will, I hope, give us some options, and we are working with the bonding market as well as industry to find solutions. It is definitely a problem.

Mr. REHBERG. Great. Thank you very much for being with us.

Mr. Faleomavaega?

Mr. FALEOMAVAEGA. I just again plead a layman's ignorance in the very important proposed legislation that we have with us. On page 4 of the H.R. 794, subparagraph B, line 1 does say under Section 39 we are amending something here that would allow or authorize the Secretary of the Interior, at least if I correctly read the proposal here, is to allow the Secretary of the Interior to waive, suspend, or reduce the advance royalties.

Is this something that would enure to the benefit of the government? Are we giving something away that should belong to the people?

If I read this correctly, it allows the Secretary of the Interior to forgive certain royalties owed to the U.S. Treasury. That is my reading of this provision here. Can you elaborate on this a little more?

Ms. BURTON. Mr. Chairman, I don't think I can elaborate on that specifically. There might be someone else who can in here, but again, this is something I would need to get back to you on.

Mr. FALEOMAVAEGA. Please.

Ms. BURTON. The bill, generally speaking, is designed to give a little more flexibility to the Administration in order to give industry a better hold on producing the coal. The bottom line is that this Administration would like to have more production of energy, coal being one of the major fuels that we use.

So with more flexibility, we can provide more help to industry to go and produce more coal, but I don't think that I can answer your question specifically, and I would appreciate if you would let me get back to you in writing.

Mr. FALEOMAVAEGA. I would really appreciate it if you could submit that for the record.

Ms. BURTON. I sure will.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. REHBERG. Ms. Burton, we will excuse you now and thank you for appearing before our Subcommittee.

We will now invite Mr. Reilly, Mr. Smith, Mr. Bailey, and Mr. Shelly, Panel No. 3.

Mr. CANNON. [presiding] Thank you all. We appreciate your indulging us as we shift chairs for just a moment. Mr. Rehberg will join us shortly and take over the Chair.

We appreciate this panel for joining us. We have the Honorable Tom Reilly, the Massachusetts Attorney General. Thank you for joining us; Mr. Eric Smith, Vice President for Strategic Planning, Global Industries, Inc. Thank you, Mr. Smith. We have Mr. Bruce Bailey, the President of AWS Scientific, and Mr. Peter Shelley, the Vice President of the Conservation Law Foundation. Thank you.

Mr. Reilly, if you would like to begin your testimony, we would appreciate that now.

STATEMENT OF HON. TOM REILLY,
MASSACHUSETTS ATTORNEY GENERAL

Mr. REILLY. First of all, my name is Tom Reilly. I am the Attorney General for Massachusetts. I want to thank the Committee for the courtesy of allowing me to appear and testify before you on this very important issue. I have submitted written testimony with supporting documents and certainly will rely upon that.

I want to use the time that I have, realizing that it is limited, to focus on a few specific points. The first is that there is certainly no question that we have to develop new sources of energy. It is vital for our economy and our national security and certainly for the protection of our environment. There is also no question in our mind that wind energy presents very exciting possibilities and must be part of that effort.

But I am here today to tell you that there is a right way to do things, and there is a right way to develop renewable energy. It includes planning. It includes respect for our national treasures. It includes respect to the rights of the state. It requires a set of rules and regulations which will guide the development of wind energy, and that is not what is happening now.

Exhibit No. 1, case study, what is happening is a proposal to build an offshore wind plant in Nantucket Sound, and I won't repeat what Congressman Delahunt so eloquently described as the beauty of Nantucket Sound. I would urge you to visit it. I would urge a little bit of a wait. It has been a very harsh winter even by Montana standards.

But it is beautiful, beautiful area. It is absolutely fantastic body of water, situated right off of Cape Cod and between the scenic islands of Nantucket and Martha's Vineyard. It has been a historic treasure for our state and all of New England. People from all of over the world come and enjoy its scenic beauty and its recreational opportunities. It has been considered so important by our state that we have designated the entire sound as a protected ocean sanctuary.

Tragically, unless Congress acts and acts quickly, Nantucket Sound is about to be violated in a major, major way. There is a proposal with a full head of steam by Cape Wind Associates which is proposing to build a large wind power plant smack dab in the middle of Nantucket Sound. If you can visualize it, 130 wind turbines over 400 feet in the air. They are going take up over 24 square miles of pristine waters, and those 24 square miles are about to be turned over to a private developer — a private developer — for no compensation to the state or Federal Government. No compensation. No competition. One person. One private developer.

This is the first project of this kind offshore in this nation. It will be, if it goes ahead as planned, the largest wind energy facility in the entire world. This is not the way that renewable energy should be developed, and this is not the precedent that we want to establish as to how we are going to go about this process, but that is exactly what is about to happen.

The Army Corps of Engineers has been very clear about this, and they recently have told unless Congress acts, this project is moving forward. I think it is clear and I don't think anyone can question that Federal law as it exists today is insufficient and there is a gaping loophole that one private developer is taking advantage. Congress and only Congress can close this loophole and stop this project now.

And when I say Exhibit 1 and people say it is provincial, what does that have to do with the other states and the rest of the country, this isn't just Nantucket Sound. If it can happen here, it can ham anywhere up and down our coastlines, and you will see exhibits, dozens of them. There are 22 proposals now as people see a wind rush with no rules, no regulations unless Congress steps in.

And that is why I am here today and that is why I am here before this Committee, this Subcommittee. I am asking you to step in and set a framework for development that takes into consideration the rights of a state that are impacted dramatically, as this will be, and bring in the types of rules and regulations and safeguards that you would build in. This wouldn't happen anywhere. Any other type of development would be put under some type of rules and regulations and certainly oversight which is not happening here.

I will close by saying that H.R. 793 is certainly a good starting point. I have worked long and hard, and I want to thank Congressman Delahunt for his leadership and his efforts, but I do believe we need more. We need a mechanism for identifying in advance, not ad hoc, in advance what are the appropriate sites. We need a process for soliciting competing proposals. We need compensation, compensation for state and Federal Government, and we need a meaningful role where states like Massachusetts or any other state that is impacted dramatically by a project of this sort.

So this is Nantucket Sound and it is beautiful and it is gorgeous and it is important to New England and certainly to Massachusetts. It is a national treasure like the Grand Canyon to us, but we are asking you to step in with rules and a framework that will strike the proper balance as we go forward.

Thank you very much for you consideration.

[The prepared statement of Mr. Reilly follows:]

Statement of The Honorable Thomas F. Reilly, Attorney General, State of Massachusetts, on H.R. 793

Thank you Congressman Delahunt, for that kind introduction and for your leadership on this issue.

Good morning, Chairman Cubin, Ranking Member Kind, and members of the Committee. I very much appreciate the opportunity to testify before you today on this extremely important issue—the appropriate development, permitting and siting of alternative sources of energy.

There is no question that the sensible development of new sources of energy is one of the most important energy matters facing us today. Indeed, offshore wind projects present exciting possibilities for the development of renewable energy resources. The controversy surrounding a recent proposal to build a large wind energy facility in Nantucket Sound, however, highlights the immediate need to develop a meaningful process at the Federal level to carefully review these types of proposals.

Let me start by giving you a frame of reference for the debate—the proposal to build an offshore wind energy facility in Nantucket Sound.

First, for those of you who aren't from New England—Nantucket Sound is a body of water 163 square nautical miles in size, situated between Cape Cod, and the islands of Martha's Vineyard and Nantucket. Massachusetts has historically revered Nantucket Sound as a vital national treasure—not unlike the Grand Canyon and other national parks. The Sound is renowned for its natural resources, marine habitats, scenic beauty and extensive recreational outlets—and Massachusetts has designated the entire Sound, as well as much of the Massachusetts coastline as a protected Ocean Sanctuary.

With that context in mind—I turn to the specific proposal of Cape Wind Associates to illustrate one project that seems to have generated the largest head of steam so far—at least in New England. Cape Wind has proposed to develop a wind energy facility consisting of:

- 130 wind turbines
- spread over 24 square miles
- in the middle of the Sound, only
- 4 ° miles off the coast of Cape Cod

The proposed facility would occupy 15% of the entire Sound and would literally be surrounded by (and within 2 miles in some directions of) the area that Massachusetts has designated as a protected Ocean Sanctuary. This would be the first project of its kind in the nation, and to date, the largest offshore wind energy facility in the world.

Chairman Cubin, your leadership in recognizing that Federal law is insufficient to appropriately license and site proposed wind energy facilities is admirable. And your timing in directing your attention to this issue now is critical, since the Army Corps of Engineers recently told the Cape Cod Times that, without legislation or:

> "unless Cape Wind pulls its application, the process [of permitting the Cape Wind proposal] will move forward."

It is imperative that no proposals to site such offshore facilities be permitted until Congress has had the opportunity to establish national policy to govern them. To allow otherwise will effectively lead to a gold rush—or wind rush—if you will. Developers such as Cape Wind Associates are taking advantage of a perceived loophole in the law before Congress has time act. In addition to the 130 turbines proposed in Nantucket Sound, another company is proposing to build wind farms on 22 separate sites along the east coast, and published reports estimate that in New England alone, proposed wind developments are now valued at $615 million,

Elsewhere, according to published reports, Florida Light and Power plans a project that, upon completion, would cost $4.7 billion and increase wind generation this year by at least 25 percent. These proposed projects—and many likely in the future—highlight the importance of a rational planning process.

We should not allow the permitting of offshore projects to move forward with such haste that we risk siting large-scale wind projects in areas that—with proper deliberation—we may determine to be inappropriate.

Such an approach is consistent with Federal policy with respect to other offshore projects. As you know, Section 1701 of that Federal Land Policy Management Act establishes that:

> "the national interest will be best realized if public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts."

The Bill that you have introduced—H.R. 793—certainly provides a good starting point for a national policy. I respectfully suggest, however, that an appropriately comprehensive regulatory scheme must include—at a minimum—

- a mechanism for identifying—in advance—appropriate sites for developing offshore wind energy facilities that provide the greatest source of energy with the least damage to the environment and do not pillage our most treasured natural resources;
- a process for soliciting competing proposals for renewable energy facilities in the same locations;
- compensation to the government for the value of the license; and
- meaningful state input throughout the process.

I have worked with Congressman Delahunt on this issue, and my office stands ready to assist the Subcommittee in any way that you deem helpful and appropriate as you craft this crucial national policy.

Mr. CANNON. Thank you very much, Mr. Reilly, and what we will try to do is just give a little tap of the mallet as you get at the end of the timeframe so that we all can move forward, and you can finish your thoughts. We don't mean to shut everything off, but if you will finish your thought and try to draw it to a close, then I think we are going to have a pretty aggressive questioning period where you can elaborate on the ideas that you all have on the panel.

So thank you very much, Mr. Reilly.

Mr. Smith, would you favor us with your comments?

STATEMENT OF ERIC SMITH, VICE PRESIDENT FOR STRATEGIC PLANNING, GLOBAL INDUSTRIES, LTD.

Mr. SMITH. Thank you, Mr. Chairman, members of the Subcommittee. I appreciate the opportunity to testify here today on H.R. 793. It is a bill to provide authority to the Secretary to grant easements or rights-of-way for energy-related projects on the OCS.

I am the Vice President of Global Industries, one of the companies that builds things on the OCS. I am also a member of the Board of Directors of NOIA, National Ocean Industry Association. NOIA is the only trade group that speaks for all of the companies that participate in the OCS. We have 300 members who range from drillers to producers to developers to engineering firms to folks who provide marine transportation, air transportation, offshore construction, equipment manufacturing, pretty much the gamut of activities that occur.

This testimony is submitted on behalf of NOIA as well as DPC, the IPAA, IADC, and NGSA. These are other trade groups that have an interest in what happens on the OCS. We all work together to explore and produce hydrocarbon energy resources from the Nation's Outer Continental Shelf in an environmentally responsible manner.

Global itself provides offshore construction, engineering, and support services, including pipeline construction, platform installation and removal, diving services for the oil and gas industry in the Gulf of Mexico and around the world. We are a leading provider of offshore services with 20 construction barges, 22 lift boats, 17 dive boats, and 15 support units around the world. A large portion of those operate in the Gulf of Mexico today.

The domestic offshore natural oil and gas industry generates nearly $4 billion in revenue for the Federal Treasury every year. We produce something like 13 billion cubic feet of natural gas and

1.3 million barrels of oil a day. We also have over 4,000 fixed structures installed in the Gulf. We have installed over 6,000 and removed over 2,000. There is also 31,000 miles of pipeline, pipeline rights-of-way that exist and are monitored by the MMS with very stringent rules about what you have to do if you want to cross one of them, for example.

All told, there are more than 170,000 jobs associated with the OCS and in the offshore oil and gas production industry. So in our business, we are well acquainted with the Federal process required of companies operating on the OCS.

The U.S. Minerals Management Service implements, also, the Outer Continental Shelf Lands Act, and it regulates our activities to ensure that we produce natural gas and oil for the Nation in a safe and environmentally sound manner; however there are several energy-related projects under discussion for the offshore that are not clearly covered under the Outer Continental Shelf Lands Act as currently constituted.

In order to continue to supply the United States with natural gas and oil, our industry has moved into deeper waters of late. Today, over half of the oil that is produced off of the Outer Continental Shelf is produced from deep waters, a thousand feet or greater. That wasn't true 10 years ago. It wasn't true 5 years ago.

The offshore oil and gas industry is contemplating ancillary projects offshore that would directly support this OCS oil and gas development in deep water. These projects may include developing offshore staging facilities, emergency medical facilities, supply points, a whole variety of support structures which will keep the time and support costs to a minimum for these facilities that may be out in 8,000 feet of water and over 200 miles from shore.

Unfortunately, no Federal agency currently has a statutory authority to permit these ancillary facilities; therefore, our industry finds a regulatory black hole as we discuss possible future developments with our clients and with the various interested Federal agencies. H.R. 793 will fill that statutory gap for those structures, those activities not already covered by authority, and would give the Secretary of the Interior the authority to permit and oversee these energy-related activities on the Outer Continental Shelf.

Current natural gas and oil operations will unavoidably be affected by anything that is added to that offshore universe, those 4,000 platforms and 31,000 miles of pipe. It is a finite area, and as I say, whether it is a wind farm or a solar facility or whatever, it is going to need to be installed. It is going to need to have umbilicals and service lines connecting it back to the shore, and those will unavoidably cross other rights-of-way that exist and are monitored by the MMS.

Our industry interest is 793 is substantial. We are uniquely suited to comment on this positive impact it could have for continued safe and productive offshore operations. We commend the Administration and you, Mr. Chairman, for allowing us to speak.

[The prepared statement of Mr. Smith follows:]

Statement of Eric Smith, Vice President, Strategic Planning, Global Industries, Ltd., on behalf of the National Ocean Industries Association, Domestic Petroleum Council, Independent Petroleum Association of America, International Association of Drilling Contractors, and Natural Gas Supply Association, on H.R. 793

Madam Chairman and Members of the Subcommittee, I appreciate the opportunity to testify here today on H.R. 793, a bill to provide authority to the Secretary of the Interior to grant easements or rights-of-way for energy-related projects on the Outer Continental Shelf (OCS). I am the Vice President for Strategic Planning of Global Industries, Ltd., and a member of the Board of Directors of the National Ocean Industries Association (NOIA). NOIA is the only national trade association representing all segments of the offshore energy industry. The NOIA membership comprises more than 300 companies engaged in activities ranging from producing to drilling, engineering to marine and air transport, offshore construction to equipment installation, manufacture and supply, and geophysical surveying to diving and remotely operated vehicle operations.

This testimony is submitted on behalf of NOIA, the Domestic Petroleum Council, the Independent Petroleum Association of America, the International Association of Drilling Contractors, and the Natural Gas Supply Association. We all work to explore for and produce hydrocarbon energy resources from the nation's Outer Continental Shelf in an environmentally responsible manner.

Global Industries Ltd. provides offshore construction, engineering and support services, including pipeline construction, platform installation and removal, and diving services, to the oil and gas industry in the Gulf of Mexico and around the world. We are a leading provider of offshore construction services, with 20 construction barges, 22 liftboats, 17 dive support vessels, and 15 support vessels. Of these, 9 construction barges, 22 lift boats, 7 dive support vessels, and 4 support units operate in the Gulf of Mexico.

The domestic offshore natural gas and oil industry generates nearly $4 billion annually for the Federal treasury in bonuses, rents and royalties. Our industry produces approximately 13 billion cubic feet of natural gas and 1.3 million barrels of oil from the Outer Continental Shelf per day. In the Gulf of Mexico, our industry works from approximately 4,034 offshore platforms, and more than 31,000 miles of pipeline have been installed. And, more than 170,000 Gulf region jobs result directly from the offshore exploration and production industry.

In our business, we are well acquainted with the Federal processes required of companies operating on the Outer Continental Shelf. The U.S. Minerals Management Service implements the Outer Continental Shelf Lands Act, regulating our activities to ensure that we produce natural gas and oil for the nation in a safe and environmentally sound manner. However, there are several energy-related proposals under discussion for the offshore that are not clearly covered under the Outer Continental Shelf Lands Act.

In order to continue to supply the United States with natural gas and oil, our industry has moved into the deep water of the Gulf of Mexico. The offshore oil and gas industry is contemplating ancillary projects offshore that would directly support OCS oil and gas development, particularly in these deep water areas. These projects may include developing offshore staging facilities, emergency medical facilities, and supply facilities. However, no Federal agency currently has the statutory authority to permit these types of projects. Therefore, our industry finds ourselves in a regulatory black hole as we discuss possible future projects with our clients and the different Federal agencies, and try to determine the appropriate and legal means to proceed. H.R. 793 would fill that statutory gap for those activities not already covered under some other statutory authority, and would give the Secretary of the Interior the authority to permit and oversee these energy-related activities on the Outer Continental Shelf under the Outer Continental Shelf Lands Act.

Current natural gas and oil operations would be directly affected by any approvals granted under the proposed legislation, whether the new approvals were to support existing offshore operations or for alternative energy projects. Our industry's interest in H.R. 793 is, therefore, substantial, and we are uniquely suited to comment upon the positive impact it could have for continued safe and productive offshore operations.

We commend the Administration for its efforts in transmitting this proposed legislation to Congress in support of the National Energy Policy Initiative, and thank you, Madam Chairman, for sponsoring the bill. This legislation would authorize the Secretary of the Interior to grant easements or rights-of-way for projects to support development in the deep water areas of the Outer Continental Shelf. Under the bill, the Secretary would also be able to authorize renewable energy projects, such as

wind, wave and solar energy. The proposed legislation would provide clarity to potential new and innovative energy-generating OCS operators, identifying the agencies, laws, and regulations with jurisdiction over their proposals.

We support this grant of authority to the Secretary of the Interior to manage activities on the Outer Continental Shelf that are not currently covered under existing authorities. The Secretary, through the Minerals Management Service, currently manages natural gas and oil operations on the Outer Continental Shelf These operations constitute more than 25% of our nation's daily natural gas and oil production. The agency's experience in overseeing the construction, installation, operation, and eventual removal of thousands of offshore facilities and pipelines, the granting of rights-of-way, the conducting of environmental reviews under the National Environmental Policy Act, not to mention coordinating approvals among all interested Federal and state agencies, make it clear that the Department of the Interior and the Minerals Management Service are uniquely qualified to manage and regulate these alternative energy-related activities, as well.

This concludes my prepared remarks. I will be happy to answer any questions.

Mr. CANNON. Thank you, Mr. Smith.

Mr. Bailey, if you would like to present your testimony.

STATEMENT OF BRUCE H. BAILEY, PRESIDENT, AWS SCIENTIFIC, INC.

Mr. BAILEY. Thank you and good morning, Mr. Chairman and members of the Subcommittee.

My name is Bruce Bailey. I am the president of AWS Scientific based in Albany, New York. I am also on the Board of Directors of the American Wind Energy Association. My 20-year-old firm provides wind energy consulting services to some of the country's most progressive energy companies which are building wind farms all across America.

Wind energy holds the distinction of being the world's fastest growing electricity-generating technology as well as being one of the lowest cost renewable energy sources. Over the past 2 years, I have had the good fortune of working with several public and private organizations interested in offshore wind energy. They include Cape Wind Associates, the Massachusetts Technology Collaborative, Northeast Utilities, the Connecticut Clean Energy Fund, the New York State Research and Development Authority, and the Long Island Power Authority or LIPA.

On behalf of LIPA and over 30 civic and environmental and faith-based groups, I led the siting team to identify the targeted area for a hundred megawatt offshore wind farm south of Long Island which is planned for construction within the next 4 years. We have had several discussions with the U.S. Army Corps of Engineers, the Coast Guard, the FAA, and other agencies to identify relevant authorities and the logistics of permitting and environmental reviews. The single offshore wind project will generate enough clean energy to satisfy the needs of over 30,000 Long Island homes for next 30 years.

Offshore wind power has the potential of providing a significant portion of the electricity requirements of coastal states. Indeed, about 54 percent of the country's population lives in coastal areas; however, many coastal states are in short supply of appropriate onshore sites for large-scale wind development. So, consequently, turning to the sea is the only option for states to make wind power a meaningful part of their energy mix. Many coastal areas, including Long Island, are also transmission constrained. So using the

sea as an alternative path for electricity delivery helps relieve transmission congestion and avoids the need for expensive grid upgrades.

I would like to address a few issues specifically involving H.R. 793 and the future of wind energy development on the OCS. First, recognizing wind energy as a national asset, offshore wind energy development offers significant benefits to the Nation's energy economy, the environment, and national security. The bill's goal of expediting projects to increase the production and transmission of energy like wind on the OCS is welcomed.

Second, payments for easements and rights-of-way, if Congress deems it appropriate, the wind industry is willing to make fair payments for easements and rights-of-way just as it already does for projects on land. The bill appropriately leaves the method of determining payment amounts to the discretion of the Secretary.

Due to the long lead time and millions of dollars required to determine the commercial viability of wind resources at any specific offshore site, it is imperative to leave an incentive for private initiative in proposing offshore commercial wind projects. For much the same reason, the Bureau of Land Management recently announced its interim wind development policy which includes the first come review of wind projects proposed by private industry on public lands at prescribed royalty rates as the preferred method with bidding for sites selected and tested for commercial viability by the Government as a secondary option. At this early and entrepreneurial stage of the offshore wind industry, the same treatment is appropriate here.

Third, transitional issues, is it requested that the offshore wind projects already underway not be disadvantaged by new rules that would cause unnecessary and expensive delays or the need to begin a new application process. Considerable effort has already been taken to work with state and Federal agencies to fulfill permitting requirements in an environmentally responsible way.

And finally, implementation, it is also requested that the implementation of this bill not inadvertently impose new barriers in the permitting approval process for offshore wind projects. Rather, it is desired that the process become more orderly and predictable.

Our country's demand for energy sources continues to grow as does the public's appetite for cleaner sources of energy. Offshore wind energy is an untapped resource that holds great promise, especially for coastal states that have very limited opportunities for wind development on land due either to land use competition or relatively weak wind resources. By facilitating development of environmentally responsible wind projects on the Outer Continental Shelf, the many benefits of clean wind power can be realized by a greater portion of the American public.

I thank you for your attention.

[The prepared statement of Mr. Bailey follows:]

Statement of Bruce H. Bailey, President, AWS Scientific, Inc., Albany, New York, on H.R. 793,

Chairman Cubin and members of the Subcommittee, my name is Bruce Bailey. I am the president of AWS Scientific, Inc., based in Albany, New York. I am also on the Board of Directors of the American Wind Energy Association. My 20-year old firm provides wind energy consulting services to some of the country's most progres-

sive energy companies. These companies, which include EnXco, FPL Energy, Renewable Energy Systems, Zilkha Renewable Energy, and Atlantic Renewable Energy, are building wind farms all across America. Wind energy holds the distinction of being the world's fastest growing electricity generating technology as well as one of the lowest cost renewable energy sources.

Over the past two years I've had the good fortune of working with several public and private organizations interested in offshore wind energy. They include Cape Wind Associates, the Massachusetts Technology Collaborative, Northeast Utilities, the Connecticut Clean Energy Fund, the New York State Energy Research and Development Authority, and the Long Island Power Authority (LIPA). On behalf of LIPA and over 30 civic, environmental and faith-based groups, I led the siting team to identify the target area for a 100 MW offshore wind farm south of Long Island, which is planned for construction within the next four years. We have had several discussions with the U.S. Army Corps of Engineers, the Coast Guard, the FAA, and other agencies to identify the relevant authorities and the logistics of permitting and environmental reviews. This single offshore wind project will generate enough clean electricity to satisfy the needs of over 30,000 Long Island homes for the next 30 years.

Offshore wind power has the potential of providing a significant portion of the electricity requirements of coastal states. Indeed, about 54% of the country's population lives in coastal areas. However, many coastal states are in short supply of appropriate onshore sites for large-scale wind development. Consequently, turning to the sea is the only option for states to make wind power a meaningful part of their energy mix. Many coastal areas, including Long Island, are also transmission constrained, so using the sea as an alternative path for electricity delivery helps relieve transmission congestion and avoid the need for expensive grid upgrades.

Wind power applications on land are technologically mature and reliable, and in windy areas they are cost-competitive with conventional energy sources. Worldwide, the wind is satisfying the electricity needs of over 30 million homes. Wind can also be a major electricity provider, as evidenced in Denmark which derives 18% of its electricity needs from the wind. Wind energy can provide a number of local, regional and national benefits as well. The U.S. Department of Energy's Wind Powering America initiative states that wind power "can help the United States achieve targeted regional economic development, protect the local environment, reduce air pollution, lessen the risks of global climate change, and increase energy security." Some specific advantages of wind power:

- It is clean and inexhaustible. A single large-scale wind turbine can displace over 2,000 tons of carbon dioxide, 14 tons of sulfur dioxide, and 8 tons of nitrogen oxides (based on the U.S. average utility generation fuel mix). In California alone, wind plants effectively save the energy equivalent of nearly 5 million barrels of oil per year, and unlike oil, it is renewable year after year without incurring fuel costs.
- It promotes local economic development. Wind energy provides more jobs per dollar invested than any other energy technology. And major manufacturers like General Electric are investing heavily in developing world-class wind turbine designs tailored for offshore applications. Wind plants throughout America also increase property tax revenues for local communities while providing another source of income to landowners who lease their land for wind development.
- It is modular and scalable. Wind applications can take many forms, including large wind farms, distributed generation, and singe end-use systems.
- It promotes energy price stability. By further diversifying the energy mix, wind energy reduces dependence on conventional fuels that are subject to price and supply volatility.

Europe's pursuit of offshore wind development, which began over 10 years ago, is being demonstrated as a viable way to realize the benefits of wind energy while avoiding the barriers to its use posed on land in coastal areas. By the end of this decade, thousands of megawatts of offshore wind power will be built off the shores of the United Kingdom, Germany, Denmark, and other countries. The most recent offshore project—known as Horns Rev and having a generating capacity of 160 MW—was commissioned last fall off the west coast of Denmark. Interest in offshore opportunities in the U.S. is growing rapidly, as evidenced by projects in Massachusetts and New York that are in the advanced stages of planning.

I would like to address a few issues specifically involving H.R. 793 and the future of wind energy development on the outer continental shelf:

- Recognizing Wind Energy as a National Asset: Offshore wind energy development offers significant benefits to the nation's energy economy, environment, and national security. The bill's goal of expediting projects to increase the

production and transmission of energy like wind on the Outer Continental Shelf is welcomed.

- Payments for Easements and Rights-of–Way: If Congress deems it appropriate, he wind industry is willing to make fair payments for easements and rights-of-way, just as it already does for projects on land. The Bill appropriately leaves the method of determining payment amounts (i.e., whether by specified rates or competitive bidding) to the discretion of the Secretary. Due to the long lead-time and millions of dollars required to determine the commercial viability of wind resources at any specific offshore site, it is imperative to leave an incentive for private initiative in proposing offshore commercial wind projects. For much the same reason, the Bureau of Land Management recently announced its Interim Wind Development Policy, Inst. Memo No. 2003–020, which includes the "first come" review of wind projects proposed by private industry on public lands, at prescribed royalty rates, as the preferred method, with bidding for sites selected and tested for commercial viability by the Government (at taxpayer expense and risk) as a secondary option. At this early and entrepreneurial stage of the offshore wind industry, the same treatment is appropriate here. Unlike oil or natural gas facilities, offshore wind plants will not extract any finite fuel source from the Outer Continental Shelf where the wind is naturally replenished.
- Transitional Issues: It is requested that offshore wind projects already underway not be disadvantaged by new rules that would cause unnecessary and expensive delays or the need to begin a new application process. Considerable effort has already been taken to work with state and Federal agencies to fulfill permitting requirements in an environmentally responsible way.
- Implementation: It is also requested that the implementation of this bill not inadvertently impose new barriers in the permitting approval process for offshore wind projects. Rather it is desired that the process become more orderly and predictable.

Our country's demand for energy sources continues to grow, as does the public's appetite for cleaner sources of energy. Offshore wind energy is an untapped resource that holds great promise, especially for coastal states that have very limited opportunities for wind development on land, due either to land use competition or relatively weak wind resources. By facilitating the development of environmentally responsible wind projects on the outer continental shelf, the many benefits of clean wind power can be realized by a greater portion of the American public. Thank you.

Mr. REHBERG [presiding]. Thank you.
Mr. Shelley.

STATEMENT OF PETER SHELLEY, VICE PRESIDENT, CONSERVATION LAW FOUNDATION

Mr. SHELLEY. Thank you, Mr. Chair, and members of the Subcommittee. My name is Peter Shelley. I am with the Conservation Law Foundation, a regional environmental advocacy organization in the New England area, founded in 1966. I am also pleased to be here on behalf of the Union of Concerned Scientists, the Natural Resources Defense Counsel and Environmental Defense. I would ask that a copy of our full statement be introduced into the record of the Subcommittee.

Mr. Chair, our groups are committed to ensure that critical renewable energy development occurs in a timely manner, occurs in the right locations, occurs subject to terms that fully project the public interest and through processes that ensure ample public input. To that end, we urge Congress to establish a comprehensive statutory framework for offshore renewable energy development.

However, we do not see H.R. 793 as the vehicle for developing that framework and urge that the Subcommittee reject this bill as it is currently written. H.R. 793 fails to specify the appropriate balances between industrial activities and our coastal waters and

stewardship of shelf's invaluable living resources and other public values.

H.R. 793 improperly grants jurisdiction over a broad range of potential new industrial activities to an agency with little core expertise in these technologies or policies, and H.R. 793 improperly mixes unrelated extractive and non-extractive industries in one statutory framework, threatening to overregulate some activities and underregulate others.

I would like to spend some time addressing for the Subcommittee some of the core principles that we feel should be in any comprehensive legislation that should go forward for renewable energy development. First, we do believe this legislation should wait and be informed by the reports of the President's U.S. Commission on Ocean Policy and the Pew Oceans Commission. Both of these bodies are likely to make very important recommendations both in terms of the government institution who should be involved in the marine resource issues as well as some of substantive programs, including renewables.

Second, we think that offshore renewable energy development is fundamentally different from oil and gas extraction and related oil and gas extraction activities and should be regulated separately such as was done with the Ocean Thermal Energy Conversion Act. The legislative purpose of such legislation should be to establish a comprehensive regime to promote appropriate offshore renewable energy development while minimizing harm to the environment and mitigating unavoidable harms.

We feel that Interior Minerals Management Service is not the right agency for the task of regulating offshore renewables which falls more within the core competencies of NOAA or perhaps the National Ocean Service. We believe that project-specific reviews and permitting should fully include state agencies and the Governors of the states in the process. We believe that ocean renewable energy projects should be fully subject to all applicable Federal law. Any financial obligations or lease assignments associated with renewable leasing arrangements — and we do prefer leases to govern these activities at this point to easements or rights-of-way — should be tailored to the different nature and the state of maturity of the offshore renewable industry; and finally, sitings should avoid all designated marine protected areas as well as physical or biologically unique or important areas, not just national marine sanctuaries as is specified in H.R. 793 currently.

Finally, we would like to collectively state that because of the imperative need to develop renewable wind energy as well as what we feel is a comprehensive environmental review process currently in place and being applied to all projects, that there is no need for Congressional moratoria on these projects. It is simply not needed.

In conclusion, on behalf of our members, we ask that this Committee reject H.R. 793 and offer our assistance to the Committee staff and others to develop legislation that approaches offshore renewable regulations separately, directly, and in a positive light.

Thank you very much.

[The prepared statement of Mr. Shelley follows:]

Statement of Peter Shelley, Conservation Law Foundation, on behalf of The Conservation Law Foundation and the Union of Concerned Scientists, on H.R. 793

Madame Chair and Members of the Committee, thank you for this opportunity to appear before you today to present testimony on H.R. 793. My name is Peter Shelley. I am a Vice President of the Conservation Law Foundation, directing CLF's Rockland, Maine Advocacy Center. CLF is the oldest and largest regional environmental advocacy organization in the nation. I have worked extensively on marine issues at CLF, including landmark cases on fisheries management, the pollution of Boston Harbor, and Outer Continental Shelf oil and gas leasing proposals.

I am pleased to be here to testify on behalf of CLF and the Union of Concerned Scientists (UCS), a nonprofit organization of more than 60,000 citizens and scientists working for practical environmental solutions. For more than two decades, UCS has combined rigorous analysis with committed advocacy to reduce the environmental impacts and risks of energy. UCS' energy program focuses on encouraging the development of clean and renewable energy resources, such as solar, wind, geothermal and biomass energy, and on improving energy efficiency.

We are committed to ensuring that environmentally important renewable energy development occurs in a timely manner, in the right locations, subject to terms that fully protect the public interest, and through processes that ensure ample public input. To that end, we believe that Congress should establish a comprehensive statutory framework for offshore renewable energy development, and we stand ready to assist Congress in whatever way appropriate to develop and enact such legislation.

As much as our organizations want to see the promotion of timely and environmentally responsible renewable energy projects on the Outer Continental Shelf ("OCS"), we cannot support H.R. 793. This piece of legislation is fundamentally flawed and should not be supported by the members of this Subcommittee. The proposed legislation fails to strike an appropriate balance between industrial development of the coastal marine system and protection of its invaluable living marine resources; it grants broad jurisdiction to an agency without expertise in the requisite areas of marine policy and regulation; and it would require substantial modification before it could serve as an appropriate framework for offshore renewable energy development.

H.R. 793 is substantially identical to H.R. 5156, legislation that was introduced and failed in the last session as a result of widespread opposition. In its current form, H.R. 793 grants unprecedented jurisdiction to the Secretary of the Interior over future permitting and rights of way for virtually all energy and energy-related activities on the OCS, mixing together renewable energy projects with unrelated fossil fuel facilities and activities. While we salute the fact that this bill recognizes offshore renewable energy development as important, a bad bill in this area is worse than no bill at all.

Rather than simply registering our objections to H.R. 793, however, we would like to provide the members of the Subcommittee with an affirmative view of what a regulatory framework for offshore renewable energy projects should look like and what form the Federal legislation creating such a framework should take.

Any legislation of this kind should be informed by the findings and reports of the U.S. Commission on Ocean Policy and the Pew Oceans Commission on Ocean Zoning, which are due to be released this year. Both Commissions are expected to make critical strategic recommendations on this Nation's ocean policy, including the siting of renewal energy projects on the Outer Continental Shelf. In light of the high relevance of these studies to marine protection and siting issues inherent in offshore renewable energy development, it seems premature to go forward with legislation before knowing the outcomes of these studies.

That said, I would like briefly to present some core principles on which we believe any statutory framework for offshore wind, wave, and tidal energy projects should be based. These principles are complimentary to existing Federal law, as many of them are derived from existing Federal schemes including the Ocean Thermal Energy Conversion Act (OTEC Act):

1. Offshore renewable energy (wind, wave, and tidal energy) development is fundamentally different from oil and gas extraction and related activities, and therefore should be subject to a separate statutory framework. Impacts of offshore renewable energy projects are generally limited to the installation and dismantling of structures that are attached to the seabed. Once in operation, renewable energy projects have minimal impacts and risks compared to oil and gas operations.
2. The purpose of offshore renewable energy legislation should be to establish a comprehensive regime to permit and promote development of appropriate

wind, wave, and tidal energy projects in a manner that minimizes harm to the environment and provides proper mitigation of unavoidable harms.

3. The Department of the Interior/Minerals Management Service (MMS) should not be the principal Federal agency overseeing offshore renewable energy.
4. Oversight of offshore renewable energy projects in the oceans should include a leading role for Federal agencies with a direct marine regulatory and habitat protection mission, including the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS).
5. Project-specific reviews and permitting processes should include state environmental and marine resource agencies and governors from affected states.
6. Construction of an offshore renewable energy project should be fully subject to existing Federal law, including the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Magnuson–Stevens Fisheries Conservation and Management Act.
7. Any financial obligations that come from renewable leasing arrangements should be appropriate for renewable energy applications, which differ from conventional resource projects, are non-extractive, and have lower environmental impacts and risks than other offshore facilities based on extractive industries.
8. Siting of renewable energy projects should be avoided in areas on the Outer Continental Shelf that meet the definition of a Marine Protected Area (MPA) contained in Executive Order 13158 (65 Fed. Reg. 34909 (May 26, 2000)) ("any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein") and in areas that contain biologically or physically unique or sensitive marine habitats.
9. Offshore renewable energy legislation should authorize term-limited leases, rather than easements or rights of way, for eligible offshore energy projects.
10. Leases for offshore renewable energy projects should be assigned on a basis that considers factors including the following: minimum environmental detriment, timely commencement of operation, maximum net energy impact, and lower initial installation and operations and maintenance costs to the extent that such differentials may significantly affect the ultimate cost to the consumer.

Measured against these principles, H.R. 793 falls far short of the mark and should be rejected by the Subcommittee.

While we would support legislation that incorporated these principles and promoted the findings of the U.S. Commission on Oceans and the Pew Oceans Commission on Ocean Zoning, I want to clarify that our organizations do not believe that Congress should impose an economically and potentially environmentally damaging moratorium on offshore wind development pending enactment of such a comprehensive statutory framework.

The absence of a Federal asset management framework for renewable energy does not compromise environmental protection of the OCS and its resources from the impacts of development. Given existing permitting authority and environmental regimes, it would be a mistake to put review of offshore wind proposals on hold. Together with the National Environmental Policy Act, the Army Corps of Engineers' Section 10 regulations provide clear authority to conduct a comprehensive environmental review process and to issue permits after consultation with all relevant agencies and entities. If these authorities are used together, and used thoughtfully and in combination with state environmental reviews, we believe they provide an adequate process until appropriate legislation can provide additional clarity and establish a process for addressing various aspects of a developer's relationship with the Federal Government, such as leases and royalties.

Timely development of wind energy is imperative in light of dramatic current and future damage caused by power plant emissions and the importance of wind energy as a means of mitigating that damage. In New England, for example, wind power represents about three-fourths of the region's renewable energy potential and is considered a critical component to the region's strategy to combat global warming.

Specific concerns about H.R. 793

As I mentioned, we are very concerned about H.R. 793 because it would grant unprecedented jurisdiction to the Secretary of the Interior over future permitting and rights of way for virtually all energy and energy-related activities on the Outer Continental Shelf (OCS). The Department of Interior's record in managing the nation's offshore oil and gas program and in preventing that program from damaging our environment is, unfortunately, not one we would like to see emulated for other types

of offshore energy development. We are particularly concerned that this bill would provide a shortcut mechanism by which proponents of a wide range of commercial-scale projects could circumvent existing Federal jurisdictions and sidestep long-standing requirements for appropriate environmental review of the full range of energy facilities and activities in the marine environment.

It appears this bill would not only grant Interior/MMS jurisdiction over offshore wind generation, wave energy, and other "alternative" energy projects, but also significantly expand and centralize Interior/MMS jurisdiction over new types of offshore hydrocarbon facilities such as at-sea floating and stationary marine terminals, gasification plants, and subsea pipelines. This new authority would be created over and above the new jurisdiction for the Department of Interior that was established only last year over Liquefied Natural Gas (LNG) facilities in the adopted amendments to the Deepwater Ports Act.

In addition, it appears that H.R. 793 would establish broad, open-ended Interior/MMS authority over a range of additional unidentified "support" facilities associated with offshore oil and gas development, such as offshore floating oil storage and processing facilities. In this regard, H.R. 793 could create a regulatory "end run" for many types of offshore activities that are otherwise subject to the jurisdictional protections of the present Presidential OCS Deferrals and the long-established bipartisan legislative OCS moratorium provisions.

On behalf CLF and UCS, we urge the members of this Subcommittee to reject this bill as written. Any legislation governing offshore renewable energy projects should be separate and apart from legislation affecting oil and gas activities on the OCS, and should strike an appropriate balance between promoting offshore renewable energy development and protecting the resources of our marine environment. H.R. 793 fails to do so.

Thank you for the Committee's attention to these matters.

Mr. REHBERG. I thank the members of the panel. If you will bear with us, we have a series of at least one, perhaps two, votes. We will get back as quickly as we can and we will open up it up for questions that we might have of you.

So if you could bear with us, and we will begin as soon as I get back. Thank you.

[Recess.]

Mr. REHBERG. All right. Why don't we start.

Question for Mr. Reilly: Doesn't the OCS Lands Act which House Resolution 793 would amend require state and local participation in activities affecting the state's coastal zone?

Mr. REILLY. It does allow for that. It is unclear exactly how this is going to happen here, and it is still outside that three-mile limit. It certainly impacts the coastal zone, but what exactly the role is going to be, how much importance is going to be given to it, and simply as well, you know, in terms of the way this goes about, this is not what the Army Corps of Engineers does in terms of their area of expertise and interest and focus. They are going to be focused on the navigational aspects of it.

Mr. REHBERG. You suggest identify appropriate offshore wind energy sites in advance. Who would identify these sites and how might the selection process work?

Mr. REILLY. I believe that you could select, certainly, the agency, but putting it under the Coastal Zone Management Act with a meaningful role for certainly the state and particularly in an area as close as this to do the siting, to do the planning, and to go about it in a logical and a rational way. But I believe that the Coastal Zone Management is the appropriate vehicle.

Mr. REHBERG. OK. The legislation allows the Secretary of the Interior to set the compensation to the Government for the easement or right-of-way by rule or through negotiations with the lessee. Do

you think that is the right way to go? Do think that is sufficient, or do you believe that these fees should be set by legislation?

Mr. REILLY. I think these fees should be tied to fair market value unless there is specific reasons why you would not follow that. Certainly, I would be in favor of encouragements and particularly with the development of renewable energy and take into consideration certain benefits that would go into it, but fair market value and one of the most important factors is competition, that there be a competitive process and that is how you will find fair market value.

Mr. REHBERG. I understand you have a plane to catch, and I have no further questions.

Mr. Delahunt.

Mr. DELAHUNT. Yes. Thank you, Mr. Chairman, and I want to extend my gratitude to Attorney General Reilly. You are making us proud, Tom, in terms of protecting the people of Massachusetts and particularly this resource that truly is a national treasure.

I think it is important, Mr. Chairman, to note also, and we have not yet had an opportunity to sit down with the Governor of the state, the newly elected Governor whom of course Mr. Cannon knows quite well because of his connection to Utah, and, Mr. Chairman, he also happens to be a Republican, but he recently made public statements regarding this specific proposal, that he shares the same perspective that Mr. Reilly and myself do regarding the Cape Winds proposal.

I again want to emphasize that the Attorney General and I are looking forward to sitting down with the Governor and have him reaffirm his public statements to us that we can work together to protect the people, not just in Massachusetts, by the way, but on both coasts and maybe even up the Mississippi. Who knows? I am not really familiar with that issue.

But I would also ask unanimous consent to introduce a report that I commissioned that was conducted by the Center for Coastal Studies located in Provincetown, and it is entitled "The Review of State and Federal Marine Protection of the Ecological Resources of Nantucket Sound", and if the Chair would indulge me, I am just going to read very quickly an excerpt, again to underscore the particular value of this body of water.

"Nantucket Sound contains significant ecological, commercial, and recreational resources that have been at the heart of several past nominations for enhanced environmental protection and conservation policies within the region. The biological diversity and unique habitat areas of Nantucket Sound led the state, the Commonwealth of Massachusetts, to nominate the area for national marine sanctuary status in 1980", a long time before the application was filed by the entity known as Cape Wind. The resources of Nantucket Sound were again deemed worthy of consideration for national marine sanctuary status by the Resource Evaluation Committee appointed by the National Marine Sanctuary program in 1983.

These resources are equally significant today, and I would hope you and other members would have the time and the opportunity to read this report which I think speaks eloquently of why Attorney General Reilly and myself are here today.

Mr. REHBERG. Thank you very much.

Mr. DELAHUNT. Thank you.

Mr. REHBERG. Thank you. If you need to leave, please do.

Mr. Smith, under the status quo, how would you go about applying for permits for energy-related projects not covered by the OCS Lands Act?

Mr. SMITH. I think our natural tendency would be to go to the MMS and say who should we be talking to on this particular issue, we see where it fits partly into MMS, but perhaps the Corps of Engineers has a role to play and frequently does on the Gulf Coast.

I was making the point earlier that in Massachusetts right now, there is a pipeline project ongoing using equipment that would be typically seen in the Gulf of Mexico, and as I understand it, the basis of the code, if you will, for building that pipeline started out with the MMS rules which were then modified for use by the State of Massachusetts.

Mr. REHBERG. Do you see a value in having one agency with the lead role?

Mr. SMITH. Absolutely. I don't see how it is possible to go out in an area certainly one as developed as the Gulf of Mexico and start putting in rights-of-way and pipelines and power cables and other structures without having some context and some understanding of what is already there. MMS has very strict rules about how you approach pipeline crossings, for example, how much separation, whether it is buried or not, what permission you need from the title holders to the existing line. All of that needs coordination.

Mr. REHBERG. Mr. Bailey, will you answer the same question? Do you see a value in having a single agency take the lead role in energy permitting?

Mr. BAILEY. Yes. I can see some value in having one agency take sort of lead authority. I say it that way because the current process is very rigorous in terms of environmental scrutiny and looking after the public interest. Siting and permitting of offshore wind projects fall under the jurisdiction of the Army Corps of Engineers, and the number of other Federal agencies as well as state agencies who have to be involved in this process does require rigorous review and scrutiny.

So we feel that it is not essential to have MMS step in as an overseeing body. We see that it can facilitate the process and give more clarity and predictability to it, but the process right now, we don't feel is broken.

Mr. REHBERG. Mr. Shelley, H.R. 793 specifically says that nothing shall be construed to displace, supersede, limit, or modify the jurisdiction responsibility or authority of any Federal or state agency under any other Federal law. Doesn't this fully address the situation of offshore renewable energy under the existing Federal law? I guess I don't understand what the concern is.

Mr. SHELLEY. Mr. Chair, we just wanted to reemphasize that all those statutes should continue to apply to this new development activity as well as other activities related to oil and gas development. We wanted the legislative history to be clear on that point.

Mr. REHBERG. OK. It also says that it shall not apply to any area outside the Outer Continental Shelf designated as a marine sanctuary. Doesn't this address your concern about the national marine sanctuaries?

Mr. SHELLEY. The national marine sanctuary program is actually quite a limited program in the United States. It was frozen at a certain point by Congress and in our view doesn't reflect all of the areas that are really entitled and deserving of special protection. So that is why we have spoken in terms of President Bush's executive order designating marine protected areas, as well as really wanting to put an emphasis on some of the unique resources that could be irreversibly harmed in a siting process.

So national marine sanctuaries are a subset, Mr. Chair, but not fully sufficient.

Mr. REHBERG. At this point, I would ask if there were any other questions of any Committee members, but clearly there must not be. So I will excuse this panel and thank you all for coming, and any additional material you would like to have put into the record, please do so at this time or feel free to at a later date.

At this time, I will invite Mr. Quinn and Ms. Kendall.

Mr. REHBERG. I thank you both for joining us today, and I would like to introduce Ms. Sara Kendall, Washington Office Director, Western Organization of Resource Councils, and Mr. Harold Quinn, Senior Vice President, Legal and Regulatory Affairs and General Counsel, National Mining Association.

Why don't we begin with Mr. Quinn.

STATEMENT OF HAROLD P. QUINN, JR., SENIOR VICE PRESIDENT, LEGAL & REGULATORY AFFAIRS AND GENERAL COUNSEL, NATIONAL MINING ASSOCIATION

Mr. QUINN. Thank you, Mr. Chairman.

Thirty years ago in the wake of the 1973 oil embargo, attention was focused upon the development of our Nation's vast coal resources, especially our Federal coal reserves as a source of fuel for our domestic energy needs. Back then, despite vast reserves under Federal leases, the relatively few Federal leases that were in production accounted for only 3 percent of our national production.

Today, we again face questions about the security and reliability of our Nation's energy supply. For Federal coal, the questions about its role and capability have largely been answered. The critical role of Federal coal and the coal industry's capability to produce it reliably and affordably has been realized. Today, coal produced from Federal leases accounts for almost 40 percent of all domestic production, and with electricity requirements predicted to rise by 40 percent in the next two decades, Federal coal will need to assume a greater role in the energy equation. In order to meet this challenge, we should now decide whether to change existing leasing policies which thwart the most efficient and orderly development of our Federal coal resources.

A number of the existing leasing policies embodied in the Mineral Leasing Act were established to address concerns and an industry structure of a different era. The industry, its market, and price structures are substantially different now than they were 25 years ago when the Mineral Leasing Act was amended substantially in 1976.

Allow me just to address a few of those structural issues and differences that bear on that legislation before you. First, substantially more coal is produced from substantially fewer mines today.

Coal prices in both nominal and real terms have declined substantially and consistently since the early 1980's. The average mine size is three times larger than 25 years ago, and in turn, the life of mines must be longer in order to justify the substantial capital investment required to compete in today's marketplace.

Larger mines with longer lives require more coal reserves to replace those depleted; however, in the last decade, the reserves owned or leased at producing mines continues to decline as reserves are not being replaced at a rate which keeps pace with production. H.R. 794 would provide the changes to leasing policy that are required to accommodate the operating flexibilities necessary today, extend the life of those mines, and preserve the high-paying jobs as well as the tax and royalty revenue stream those mines provide the Federal and state governments.

In the interest of time, I won't address all the sections or provisions of H.R. 794, but I will address a number of those that I heard questions about this morning. First, the lease modification process: The law allows the addition of coal contiguous to an existing lease on an emergency or expedited basis. This process affords the opportunity to add nearby coal that might otherwise be bypassed if not mined while the operations are in that vicinity; however, the current law places a 160-acre limit on the amount of land that can be added in this manner over the entire life of the original lease. This limit seems arbitrary since it does not appear reasonably related to geological or other circumstances that would dictate the addition of greater amounts of Federal coal that might be bypassed permanently if not mined in conjunction with the mine plan for the existing operations.

Removing the acreage limit would not provide an open invitation to add any amount of coal desired. The decision to approve the use of this expedited leasing mechanism would still be subject to the findings that the Government will receive fair market value, there is no competitive interest in leasing the area, and that the area itself could not support and independent operation.

Advance royalties: The law requires that a lease commence production in commercial quantities within 10 years. After this so-called due diligence milestone is reached, the lease must continue producing coal annually at minimum commercial quantity rates of 1 percent of the coal reserves or pay advance royalties in lieu of production; however, the law currently imposes a 10-year limit on the number of years one can pay advance royalties for the entire life of the lease. Operations are idle from time to time when, for example, the mine loses its customers, its competitive position is eroded by changes in cost structure due to new or changed regulatory requirements, increases in labor, fuel, or material costs, or unanticipated geological conditions that increase mining costs.

Once the 10-year limit has been reached, the operator has a difficult choice, either forfeit the lease and the investment or produce the minimum quantities and sell that production at distressed prices. Neither choice is desirable from an economic standpoint. First, if the operator produces coal to avoid forfeiture of the lease and its investment, the coal will likely be placed on the market at distressed prices which harms other producers competing in the marketplace. The amount of coal pushed into the market can be

substantial since the minimum commercial quantities for many Federal leases exceeds the annual production for most mines in the United States.

Second, if the operator forfeits the lease, the investments, jobs, Federal and state revenue generated by the operation will be lost.

There is one other feature that deserves some attention that I will address today on the advanced royalties. Advanced royalties paid in the first 20 years cannot be credited against subsequent production produced during the next 20-year term. This artificially inflates the effective royalty rate on subsequent production to twice the otherwise applicable rate. In the case of surface coal mines, it will be 25 percent, underground coal mines, 16 percent.

I see my time is out, but let me just conclude with one final word about the revenues these mines provide to the Federal and state local governments. Production of Federal coal generates more than $330 million annually in Federal coal royalties with half of that being shared with the states. In addition, these mines pay abandoned mine land taxes, black lung taxes, and an assortment of state severance and sales taxes. Placed in perspective, a large surface coal mine in Wyoming, for example, that would produce 67 million tons of coal annually has a payroll or supports a payroll of $50 million, purchases about a hundred million dollars in goods and services each year, pays $14 million in state severance taxes, $13 million in black lung taxes, $23 million in AML taxes, and more than $41 million in Federal royalties. Quite apart from the essential fuel these mines with Federal coals leases supply for our Nation's energy needs, I think these are the types of investments everyone should see as worthy of supporting and preserving.

Thank you, Mr. Chair.

[The prepared statement of Mr. Quinn, Jr. follows:]

Statement of Harold P. Quinn, Jr., Senior Vice President, Legal & Regulatory Affairs and General Counsel, The National Mining Association, on H.R. 794

My name is Harold P. Quinn, Jr. I am appearing here on behalf of the National Mining Association ("NMA"), to testify on the critical role coal resources on Federal lands have in providing a reliable and affordable supply of energy to sustain our economy and Nation's well being. More specifically, I am here to provide the reasons why the National Mining Association supports H.R. 794, the "Coal Leasing Act Amendments of 2003," introduced by Chairman Cubin. Thank you for the opportunity to express the mining industry's views on this subject and legislation.

General Introduction

The National Mining Association (NMA) represents producers of over 80% of America's coal—a reliable, affordable, domestic fuel that is the source of over fifty percent (50%) of the electricity used in America. NMA's members also include the producers of metals and non-metal minerals, manufacturers of processing equipment, machinery and supplies, transporter of coal and mineral products, and engineering, consulting and financial institutions serving the mining industry.

Federal Coal and Its Contribution to the Nation's Energy Security

Coal accounts for approximately one-third of the United States' primary energy production, the largest portion of any energy source. About 35% of the nation's coal production is from mines located on Federal lands. The Energy Information Agency (EIA) is predicting that electricity use will increase by over 40% by 2020, which in turn will require a 28% increase in coal production. A substantial portion of the coal production needed to meet this increase will come from Federal lands.

Currently, over one third of our coal reserves are owned or controlled by the Federal Government. More than 70% of the coal production in the western United States comes from mines located on Federal lands. Moreover, a majority of privately

held western coal reserves are effectively controlled by Federal land policies as a result of land ownership patterns that place state and private coal reserves nearby Federally owned coal.

There is no question that our Nation will require more energy in the future to fuel economic growth. We will use energy more efficiently due to technological advances, conservation and increased efficiency. But, we will use more energy. Meeting this demand with reliable affordable and secure sources will be a challenge, but a challenge that can be met with the correct policies that enhance the role of all domestic energy sources, including those found on Federal lands. H.R. 794 embodies the very type of policy choices that must be made to meet this challenge by adjusting Federal coal leasing polices to ensure that our Federal coal resources can continue to play a critical role in our energy future.

Background

The Mineral Leasing Act of 1920 (MLA) established a program for leasing Federally owned coal for development subject to various terms and conditions. The oil embargo of 1973 focused attention on the question of domestic energy supplies including the development of the Federal coal resource base. By the early 1970s, the amount of coal under lease was four times the amount leased prior to 1960, but actual production had not increased significantly. Apparently only about 10% of the Federal coal leases were producing coal in an amount just slightly more than 3% of the national total. This raised concerns about the holding of vast coal reserves for speculation and whether the government was receiving a fair return for the resource.

In 1976, after several administrative moratoriums on coal leasing, Congress addressed these concerns with the passage of the Federal Coal Leasing Amendments Act (FCLAA). FCLAA imposed a series of requirements related to development time frames, land use planning, and royalty rates for Federal coal leases. Many of these policies were based upon forecasts of immediate spikes in coal demand and prices in the wake of the 1973–1974 oil embargo. For example, FCLAA's legislative history cites forecasts that predict coal demand reaching as high as 1.4 billion tons by 1980. Although the energy supply disruptions of the early 1970s spurred development of western coal reserves, coal demand never reached the level predicted, and coal prices actually declined in real terms by $10 a ton in just 10 years following FCLAA's enactment.

In many respects, the coal leasing policies adopted in FCLAA were intended to address a coal market and industry structure anticipated in a different era. In the more than 25 years since FCLAA's enactment, the coal industry has undergone a substantial restructuring in order to survive a market and price structure that dictates flexibility and efficiency. A combination of market forces and coal leasing policies has reduced by 40% the number of Federal coal leases. A number of features of the Federal coal leasing program today present impediments to the most rational and efficient development of Federal coal resources. The changes proposed in the Coal Leasing Amendments Act of 2003 address provisions of the MLA that: no longer reflect economic and coal market realities; result in the bypass of nearby Federal coal reserves; compel inefficient production; and reduce Federal and state royalty revenues.

H.R. 794 recognizes the long lead times and extremely large capital expenditures necessary to produce Federal coal in the most efficient, low cost and environmentally sound manner. Moreover, it reflects the very type of flexibility most private coal lessors retain in order to assure that their coal resource can be fully developed so they can maximize their return in the form of future coal royalty revenue.

Coal Lease Modifications

The MLA recognized that it might not always be possible to determine all the lands to include in an initial lease due to geologic uncertainty and that that an operating mine may need to add Federal coal. In 1976, amendments imposed a limit of 160 acres for all such modifications throughout the life of a lease. Section 2 of H.R. 794 would eliminate the 160 acre life-of-mine limitation on Federal coal lease modifications. This would allow the Secretary to add small quantities of non-competitive coal to an existing lease outside the time consuming lease-by-application process. The lease modification process facilitates the leasing of contiguous coal that might otherwise be bypassed forever as the coal in question cannot support a stand alone mining operation.

The Secretary s discretion in the granting of lease modifications is not unfettered. 43 CFR 3432 allows the authorized officer to modify the lease to include all or part of the lands applied for if it is determined that: (1) the modification serves the interests of the Untied States; (2) there is not competitive interest in the lands or

deposits; and (3) the additional lands or deposits cannot be developed as part of another potential or existing independent operation. While the lands could be added without competitive bidding, the government would retain discretion to lease these tracts based upon its determination whether it will receive the fair market value for the lease of the added lands, either by cash payment or adjustment of the royalty applicable to the lands added to the lease by the modification.

40 Year Mine-out Requirement

The Secretary should be given the discretion to allow the consolidation of leased coal reserves into a logical mining unit (LMU) that will require more than 40 years to mine. A logical mining unit may include Federal leases as well as contiguous lands where the U.S. does not own the coal. The purpose of an LMU is to allow the coal lessee to achieve maximum economic recovery of Federal coal, as well as nearby state and private coal, by combining these tracts of coal into one unit for purposes of coordinating and meeting the diligent development and continued operations requirements of the law. Current law requires that the coal reserves of the entire LMU must be mined within a period of 40 years.

This change would allow long term efficiency and orderly development of Federal, state and private coal and minimize the premature closure of mines, the potential for bypassing nearby coal resources, and the attendant loss of Federal and state royalty and tax revenue. This proposal would not affect the existing requirement of diligent development or continued operation.

Advance Royalties

The Secretary should be allowed to accept the payment of advance royalties in lieu of continued operation for a total of 20 years, allow the lessees to apply those paid royalties against actual production beyond the initial twenty year lease term, and simplify the methodology for computing advance royalties. This change would permit the Secretary and Federal coal lease holders the flexibility to manage Federal coal resources for maximum return to the Federal and state treasuries and avoid the compulsion of production that is not warranted by market conditions.

Federal coal leases are subject to the MLA's requirements of "diligent development" and "continued operation." To meet the diligent development requirement, a Federal lessee must produce the commercial quantities of the recoverable coal reserves within the initial 10-years of the lease. "Commercial quantities" is defined by regulation as 1% of the recoverable coal reserves contained in a lease. Failure to meet diligent development requirements results in the termination of the lease. The diligent development requirement cannot be postponed or substituted by the payment of advance royalties. H.R. 794 does not alter the existing diligent development requirement in the MLA.

After the diligent development requirement is met, however, the lessee must continue to produce coal in commercial quantities (i.e., 1% of the recoverable reserves) during the remainder of the lease term. This is commonly referred to as the continued operation requirement. The law currently limits the flexibility to pay advance royalties in lieu of production to ten years for the entire life of the lease. Once that limit is reached, the lessee must either produce coal at the commercial quantity level, notwithstanding economic and market factors, or forfeit the lease.

Continued operation is not always possible if the coal producer cannot mine coal at the prevailing market price. As a practical matter, a lessee must spend tens of millions of dollars, if not hundreds, in order to lease Federal coal, prepare and process permits, acquire equipment, hire a labor force, and achieve diligent development. Obviously, the mine operator desires to continue operating after the significant costs to open the mine have been expended. However, a currently operating mine may temporarily lose its competitiveness, due to a number of factors, including: increased costs of production due to geology; limited labor supply in rural areas; changes in prices for competing fuels; changes in transportation costs; and changes in state and Federal environmental regulations which affect either production costs or the ability of customers to use the coal from that lease. When one or more of these factors arise, an operation is generally idled and when the market dictates, operations resume.

Advance royalties provide a royalty income stream for the government while a mine is idled. However, the current 10-year limit on accepting advance royalties constrains the lessee's flexibility in operating the mine in accordance with prudent economic principles. With the current life of many currently operating mines exceeding 25 years, and the potential for many additional years of mining at the same locations, the 10-year limit should be increased to 20 years.

When advance royalties are paid in lieu of continued operation, those amounts can be used to offset production royalties due when coal is again produced. At

present, no advance royalty paid during the initial 20-year term of a Federal lease or LMU may be used to reduce a production royalty after the 20th year of that lease or LMU's initial term. This arbitrary limitation should be removed in light of the longevity of mines producing Federal coal.

When advance royalty is accepted in lieu of continued operation, it is paid in the amount equal to the royalty that would be owed on the production of 1 percent of the recoverable coal reserves. The royalty on this production is calculated by selecting an assumed sales price that reflects the value at which the coal would have been sold in the market. Determining the appropriate sales price is a long and contentious process. Establishing that the value on the basis of the average price for coal sold in the spot market from the same region would save considerable Federal and industry resources currently expended over disputes on acceptable valuation methods, and more accurately reflects the current market conditions that idled the mine. Simply put, if the mine is idled, the coal is marginal and would find its highest value in the spot market. If the actual sale price is higher later when the coal is produced and sold, the difference is paid at that time.

Due to the shifting competitiveness of various operations, several Federal coal lessees have been forced temporarily to curtail production and idle mines. Without the option of extending the lease by paying advance royalties, producers will be forced to take one of three courses of action: 1) prematurely terminating leases and walking away from the massive existing investment; 2) pay advance royalties on older leases with no opportunity to recover advance royalties; 3) dump coal onto the market at distressed prices. All of these options will have a negative impact on the Nation's energy position, disrupt coal and electricity markets, waste Federal coal resources, cost jobs, and reduce Federal and state tax and royalty income.

If leases are terminated, the probability of the lease being mined again is small. Royalty income that would otherwise flow from the payment of advance royalties would cease. Not only would jobs at the subject mine be lost, but so would jobs in the mine support sector (transportation, construction, vendors, consultants, and other jobs in the community that support the miners and their families.) Coal that otherwise would fuel electricity generation would remain in the ground—wasted.

Paying advance royalties without ever recouping the payment would result in the practical application of a 25 percent royalty on future production. Even if the market could bear the price of coal burdened with this levy, which is unlikely, electricity rates would ultimately reflect this increase.

If Federal coal lessees produce this coal in order to recover at least a portion of their capital and operating costs, it would compete not just with other Federal coal from the West, but also private coal in markets shared by private coal from the Midwest and Appalachia. Failure to address these anachronistic provisions in the MLA will hurt non-Federal coal producers in the Midwest and Appalachia. Modifications to the advance royalty provisions do not favor Western coal over Eastern coal or Federal coal over private coal. They just make good sense for America's energy future.

Coal Lease Operation and Reclamation Plan

Under current law, before causing a significant disturbance of the environment, but no later than three years of lease issuance a lessee must submit for the Secretary's approval an operation and reclamation plan. NMA supports the elimination of the three year mandate.

This change would allow the coal operator to coordinate the preparation and submission of its MLA mine plan dealing with coal resource recovery with the permit required under the Surface Mining Control and Reclamation Act (SMCRA) which addresses the environmental planning and protection measures. This will eliminate duplication of resources by both the lessee and the Department while still requiring the lessee/operator to submit a plan before it takes any action which might cause a significant environmental disturbance as required presently by the MLA.

Financial Assurances with Respect to Bonus Bids

This section clarifies that MLA does not require a bond in connection with deferred bonus bids for coal leases. However, if the lessee fails to pay any installment of a deferred bid, the lease would terminate.

A combination of economic conditions and extraordinary events over the past two years has caused severe constraints in the surety capacity available to satisfy financial assurance requirements of the coal mining industry. It is unlikely that in the near term adequate surety capacity will be available to meet the mining industry's financial assurance requirements. The mining industry's inability to access surety for various financial assurance requirements imposed under Federal and state regulatory programs is a product of severe disruptions to the credit markets, and not

a result of any unusual loss experience associated with mining related projects. Indeed, the surety industry loss experience for mining related bonds are no more, and often less, than that for the other surety lines. Between 1989 and 2000, for example, the loss ratio for the entire surety industry was about 28%, while the ratio for mining related obligations was about 25%. However, substantial losses that began to appear at the end of 2000 through 2002 in the surety industry's other underwriting lines of business has resulted in the exit of many primary sureties from the market and caused the remaining ones to limit their underwriting in all areas. For the mining industry, the inability to access surety jeopardizes the continuation of existing operations and thwarts development of new operations since bonds are required as a condition to receive permits or other necessary government authorizations.

Last summer, the House Resource Committee Subcommittee on Energy and Mineral Resources conducted a hearing on this emerging crisis in the surety market. The Subcommittee heard testimony describing how an investment grade company was unable to access a surety bond at a reasonable price and terms to secure its deferred bonus bid payments for a Federal coal lease. Companies that cannot access surety bonds for their financial assurance requirements must use cash or cash equivalents which compromise their capital and liquidity positions. The effect of these developments for the Federal coal leasing program is that potentially fewer bidders will participate and bids will be lower than before as companies factor in the higher expense of posting some form of financial assurance. At the same time, not requiring a bond or other form of financial assurance to secure future installments for a deferred bonus bid does not pose any undue risk. First, bonus bids must be paid in five installments with the first due upon execution of the lease. Placing a lease into production typically exceeds five years so the leasehold will remain largely undisturbed. If the successful bidder defaults on an installment and is unable to cure that default, the Department of the Interior can cancel the lease and the cancelled lease resold to another prospective bidder.

In sum, this provision protects the government in the event of default without further reducing the limited surety capacity available to guarantee performance of other regulatory obligations.

Conclusion

Again, thank you for the opportunity to express the mining industry's views on the critical role of Federal coal resources to our Nation's energy security and how H.R. 794 will assist in ensuring that those resources are produced in an orderly and efficient manner for the benefit of all Americans.

Mr. REHBERG. Thank you.

Ms. Kendall.

STATEMENT OF SARA KENDALL, WASHINGTON OFFICE DIRECTOR, WESTERN ORGANIZATION OF RESOURCE COUNCILS

Ms. KENDALL. Good afternoon. My name is Sara Kendall. I am the Washington Office Director for WORK, the Western Organization of Resource Councils. WORK is a network of grassroots organizations from seven western states. Many of our members live and work in communities impacted by coal mining, and most are taxpayers in coal-producing states.

We have worked for over 30 years to ensure that the benefits of natural resource development are shared with the local people and that Federal coal management takes into account the needs of local people and communities to plan with certainty for their futures.

WORK was one of the principal organizations advocating for the passage of the Coal Leasing Amendments Act of 1976. This Act was passed in direct response to a decade of rampant speculation on Federal coal leases and enjoyed strong bipartisan support of Members of Congress from coal-producing areas.

I want to thank you for the opportunity to present our views on H.R. 794. We are concerned that the broad changes proposed in

this bill would eliminate many of the requirements Congress placed on the Federal coal leasing program to encourage a fair return to Federal and state taxpayers for the use of public minerals and promote the diligent development of those minerals. I will focus on our three primary concerns with the bill this morning.

First, by eliminating the 160-acre limit on lease modifications, H.R. 794 would effectively allow mines to expand indefinitely without having to bid competitively and make bonus payments. In areas where there has been competition to secure leases for the remaining unleased acreage, a coal company seeking to expand its operation could submit a plan modification for additional acreage and not have to compete for the coal as is currently the case.

While there is some limits on the Secretary's discretion to improve lease modifications, we believe that maintaining an acreage limit is necessary to ensure that the lease by application process remaining part of common practice in order to ensure that the public's coal is properly valued. In removing the acreage limit, we remove the incentive for lessees to design tracts that are big enough and allow lease configurations that split deposits that would be competitive as a whole into a series of noncompetitive parcels that can be added later without undergoing the competitive bid process. An acreage limit helps ensure that the lease modification process is used as was intended for adjustments to borders and that the lease by application process is used when the lessee needs more coal.

Second, although the Mineral Leasing Act's requirement that lessees produce commercial quantities of coal within 10 years would not be changed, a series of provisions in H.R. 794 would remove other important protections that currently ensure that coal leases are developed in a timely way and that the leasing program is not misused to speculate with the people's coal. When the investment required to hold the lease is reduced below the fair market value and the requirements for timely production are relaxed, a lessee is more free to hold a lease during the period when it can be economically mined and then terminate the lease and walk away.

H.R. 794 would eliminate the requirement of a surety bond or other financial assurance to guarantee cash bonus payments, allow operators to mine logical mining units for more than 40 years, allow companies to stop producing coal for 20 years instead of 10 and pay advance royalties instead of production royalties during this period, and finally, give the Secretary the discretion to reduce, suspend, or forgive advance royalties during such periods of nonproduction.

The provision that would allow the waiving of advance royalties is particularly disturbing to us. I see no protection against uneven application of royalty waivers, and only way that this provision when implemented could be viewed as anything other than a special favor for specific companies is if it applied across board to all lessees. I don't think either of these options is a desirable alternative.

We are also particularly concerned with the proposal to eliminate the requirement of a surety bond for deferred bonus payments. Requiring such financial assurance is a well-established business practice and entirely appropriate in this case. Bonus payments are

part of the cost of securing a Federal leasehold and should not be forgiven if a lessee changes its business plan or the market chains.

Our third area of concern is with the impact these amendments would have on the states. Since bonus payments and royalties are shared equally with the states in which the coal is located, state as well as Federal revenues would be impacted if the removal of the 160-acre limit on the lease modifications results in reduced bonus payments, if deferred bonus payments are not paid in full due to a lack of financial assurance, if advance royalty waivers are granted, and/or if we see a return to speculation that reduces the overall development of Federal coal resources.

In closing, although there may be some specific cases where the requirements of current law are impeding further development, we do not believe that the case has been adequately made that the overall program is not functioning well and that the broad changes are needed. We are not as opposed to allowing narrow exemptions for individual companies in specific cases where burdensome problems can be alleviated, but we are concerned that the amendments proposed in H.R. 794 would return us to speculation with public resources, and we urge you to reconsider this approach.

Thanks again for the opportunity.

[The prepared statement of Ms. Kendall follows:]

Statement of Sara Kendall, on behalf of the Western Organization of Resource Councils, on H.R. 794

Madam Chairwoman, my name is Sara Kendall. I am the Washington, D.C. Office Director for WORC—the Western Organization of Resource Councils. WORC is a network of grassroots organizations from seven western states that include 8,250 members and 46 local community groups—the Dakota Resource Council in North Dakota, Dakota Rural Action in South Dakota, the Idaho Rural Council, the Northern Plains Resource Council in Montana, Oregon Rural Action, the Powder River Basin Resource Council in Wyoming and Western Colorado Congress.

Many of WORC's members live and work in communities impacted by coal mining, and most are taxpayers in coal-producing states. We have worked for over 30 years to ensure that the benefits of natural resource development are shared with local people, and that Federal coal management takes into account the needs of local people communities to plan with certainty for their futures. WORC was one of the principle organizations advocating for the passage of the Coal Leasing Amendments Act of 1976. This Act was passed in direct response to a decade of rampant speculation on Federal coal leases, and enjoyed the strong bipartisan support of members of Congress from coal producing areas.

Thank you for the opportunity to present our views on H.R. 794. WORC is concerned that this bill would eliminate many of the requirements Congress placed on the Federal coal leasing program to encourage a fair return to Federal and state taxpayers for the use of public minerals, and promote the diligent development of those minerals. We are quite concerned that the broad changes proposed in H.R. 794 would result in a return to policies that allowed coal companies to amass control of large amounts of public land and coal, and hold them for an indefinite period without mining. We have four concerns with the bill.

First, by eliminating the 160-acre limit on lease modifications, H.R. 794 would effectively allow mines to expand indefinitely without having to bid competitively and make bonus payments. In areas where there has been competition to secure leases for the remaining unleased acreage, such as the Powder River Basin, a coal company seeking to expand its operation could submit a plan modification for additional acreage and not have to compete for the coal as is currently the case.

While there are some limits on the Secretary's discretion to approve lease modifications, we believe that maintaining an acreage limit is necessary to ensure that the lease by application process remains part of common practice in order to ensure that the public's coal is properly valued. In removing the acreage limit, we remove the incentive for lessees to design lease tracts that are big enough, and allow lease configurations that split deposits that would be competitive as a whole into a series of non-competitive parcels that can be added later without undergoing the competi-

tive bid process. An acreage limit helps ensure that the lease modification process is used as it was intended, for adjustments to borders, and that the lease by application process is used when the lessee needs more coal.

Second, although the Mineral Leasing Act's requirement that lessees produce commercial quantities of coal within ten years would not be changed, a series of provisions in H.R. 794 would remove other important protections that currently ensure that coal leases are developed in a timely way, and that the leasing program is not misused to speculate with the peoples' coal. When the investment required to hold a lease is reduced below the fair market value, and the requirements for timely production are relaxed, a lessee is more free to hold a lease during the period when it can be economically mined, then terminate the lease and walk away.

H.R. 794 would:

- Eliminate the requirements of a surety bond or other financial assurance to guarantee cash bonus payments,
- Allow operators to mine "logical mining units" for longer than 40 years,
- Allow companies to stop producing coal for 20 years instead of ten, and pay advance royalties instead of production royalties during this period,
- Give the Secretary the discretion to reduce, suspend or forgive advance royalties during such periods of non-production, and
- Eliminate the requirement that operating and reclamation plans be submitted within three years of lease issuance.

The provision that would allow the waiving of advance royalties is particularly disturbing. I see no protection against uneven application of royalty waivers. The only way this provision, when implemented, could be viewed as anything other than a special favor for specific companies is if it's applied across the board to all lessees. Neither of these options is a desirable alternative.

Congress had the foresight to allow bonus payments to be deferred over a five-year period. In return, the lessee must secure a surety bond or other financial assurance mechanism to protect the government's interests. Requiring such financial assurance is a well-established business practice and entirely appropriate in this case. Bonus payments are part of the cost of securing a Federal leasehold, and should not be forgiven if a lessee changes its business plan or the market changes.

Third, we are concerned about the impact many of these amendments would have on the states. Since bonus payments and royalties are shared equally with the states in which the coal is located, state as well as Federal revenues would be impacted if:

- Removal of the 160-acre limit on lease modifications results in reduced bonus payments,
- Deferred bonus payments are not paid in full due to lack of financial assurance,
- Advance royalty waivers are granted, and/or
- We see a return to speculation that reduces the overall development of Federal coal resources.

Finally, H.R. 794 would change the method for computing advance royalties from the amount of production royalties that would have been paid to be based instead on the average price of coal sold in the spot market from the region. It is unclear how this system would work and whether it would result in a fair return to the public.

In closing, although there may be specific cases where the requirements of current law are impeding further development, we do not believe that the case has been made that the overall program is not functioning well and that broad changes are needed. We are not opposed to allowing narrow exemptions for individual companies in specific cases where burdensome problems can be alleviated, but we are concerned that the amendments proposed in H.R. 794 would return us to a day of speculation with public resources. We urge you to reconsider this approach. Thank you again for the opportunity to testify.

Mr. REHBERG. Thank you.

Mr. Quinn, Ms. Kendall reiterated a position or at least a question that Ms. Burden was asked earlier about the fact that the Secretary could forgive debt. Could you explain what the provision does? Can the Secretary just forgive royalties that are due?

Mr. QUINN. No. There is no provision in law that allows the Secretary to forgive royalties that are due on production. It believe there was some confusion being expressed about advance royalties. Advance royalties are not due the Government. Advance royalties

are paid in lieu of production if allowed, and you have to pay them to get the opportunity to put your mine on an idle status. So the fact that this law would allow some flexibility to continue to pay advance royalties does not absolve anybody of paying them if they choose that option.

Mr. REHBERG. I thought I heard you say that there could not be a cumulative expansion under the 160 acres, and yet Ms. Kendall said that there would be. How do you respond to her position that there would be that expansion indefinitely?

Mr. QUINN. The criteria that applies currently for what we call bypass or at least modifications is that the Government will receive fair market value at the operation, there is no other competitive interest in that lease tract, and three, that tract alone could not support an independent operation on its own. Those criteria, I think would govern and guide the Secretary's discretion in ensuring that, as Ms. Kendall suspects, that people will take a lease initially at a smaller size and then just keep adding on.

I can tell you from a matter of economics in the west, for western mines, you are not going to start with a small lease and then try to grow it. You are going try to start with a sizable lease that will support production levels that get you into the marketplace, and thereafter, you will try to add to it. But the marginal lease modification process won't be adequate for that. That is really to pick up coal nearby that you would otherwise be bypassing anyway and would be lost forever.

Mr. REHBERG. Do the provisions of this proposed legislation eliminate or change the diligence development requirement of the Mineral Leasing Act?

Mr. QUINN. No, they don't, and the diligence development requirement of 10 years was the provision in the 1976 Act to address so-called speculation. That provision stays in tact. You cannot evade that by paying advance royalties. You have to be in production within 10 years.

Mr. REHBERG. Ms. Kendall, right now, surety bonds — and I asked this question earlier — are not available, meaning that the bidder on a coal lease must put up the total bid in cash or cash equivalent, thereby negating any advantage of deferring payment of the entire bonus bid. Isn't this going to cause a reduction in bonus bids in future lease sales, causing a significant loss of revenue to both state and Federal Governments?

Ms. KENDALL. I think our concern is that, you know, whether doing away with financial assurance for deferred bonus payments is an appropriate response. There was a hearing before the Subcommittee last year in which the surety industry testified, and with respect to these specific bonds, their testimony was that the concern they had — if my recollection is correct, the concern that they had was that they were not allowed to cover the cost of the bond, that the lease would revert back to the Government and that that is what made those bonds are poor risk.

So I am not sure that completely doing away with the bonding requirement is the appropriate response to the problem that we are seeing in the industry right now.

Mr. REHBERG. You expressed concerns about the affects this bill would have on the royalties collected by states. What states? Have you heard from individual states that have concerns about this?

Ms. KENDALL. We have not, and I think this is just a general concern, and part of the problem is that we don't have specifics, and I think the industry has asked for these changes. The Administration supports them, and they have talked about the need to maintain flexibility, but we don't have a lot of specifics. There was some testimony over on the Senate side from Arch Minerals, I believe it was, last week, and they talked about certain companies coming close to the 160-acre limit, for example, but we don't have the details.

So it is very hard to assess what kind of impact these changes would have, but I do think that if you look at doing away with the 160-acre limit on lease modifications, that does away with the bonus payments for any additional average that is added, and that is a reduction in revenues. I mean, there may be also an associated rise in coal production, but it is very hard to assess in the absence of more information.

I think the other points that we raised about the language, the language in the bill that I was referring to earlier that had to do with the authority to waive, suspend, or reduce advance royalties is near the end, and it basically strikes language that says nothing in this section shall be construed as granting the Secretary the authority to waive, suspend, or reduce advance royalties, which subjects that you are giving the Secretary the authority to do that or the discretion to do that. I mean, you may be able to argue that that will spur more coal development, but if the Secretary is reducing advance royalties, then that is a reduction in revenues to both the Federal and state governments.

And so those are just two examples. I think there are others that we have the concerns about. We have not assessed the specifics and we have not heard from states.

Mr. REHBERG. Well, I want to thank you for coming before this Committee today. I apologize on behalf of our Chairman, Chairman Cubin who has an excused absence today, was not anticipating being absent, and so I need to say that member of the Subcommittee will have additional time. They might have additional questions that they might have of the witnesses, and we ask that you respond in writing, if you would, please.

The hearing record will be open for 10 days for these responses, and if there is no further business before this Subcommittee, the Chairman again thanks the members of the Subcommittee and our witnesses, and the Subcommittee stands adjourned.

[Whereupon, at 12:29 p.m., the Subcommittee was adjourned.]

The following information was submitted for the record.

[The prepared statement of Mrs. Cubin follows:]

Statement of The Honorable Barbara Cubin, Chairman, Subcommittee on Energy and Mineral Resources, on H.R. 793 and H.R. 794

Today, the Subcommittee on Energy and Mineral Resources will hear testimony about two bills, H.R.793, legislation on energy related uses of the Outer Continental Shelf (OCS), and H.R. 794, the Coal Leasing Amendment Acts of 2003.

H.R. 793 addresses the need for statutory authority to permit future non-traditional energy and energy-related projects on the OCS. Such projects would include

alternative energy projects—such as wind, wave and solar power production—as well as ancillary projects to oil and gas development on the Shelf—such as emergency medical facilities and supply facilities that support deepwater exploration and development projects.

Last year, I was contacted by the Administration about the need for legislation that would clarify the permitting process for these innovative projects on the OCS. Working with the Administration, we introduced a bill that gives the Secretary of the Interior the authority to permit and oversee energy related activities under the OCS Lands Act. I have again introduced that bill for consideration in the 108th Congress.

H.R. 793 is needed because no authority currently exists to permit alternative energy projects and ancillary projects to support oil and gas development on the OCS. Clearly, America faces a growing energy supply and demand imbalance that calls for new solutions.

Two innovative ways that will help meet that challenge are increased production and use of renewable energy and production of oil and gas from deep waters. H.R. 793 facilitates both of these solutions. The bill clarifies the jurisdiction for these projects so that private sector entities, wanting to develop alternative energy resources offshore, will have a clear path by which to approach relevant Federal agencies for permits. It is crucial for the development of any alternative or traditional energy project to have certainty in the permitting and regulatory processes. This bill would provide such certainty. It also ensures that future projects on the OCS will be performed in a safe and environmentally sensitive manner and that a proper abandonment and reclamation process will exist for each project.

H.R. 793 enables the Department of Interior to inform and work with other Federal agencies that will be involved in the project permitting process. It is my understanding that the legislative language in H.R. 793 has gone through an extensive discussion and approval process amongst all Federal agencies that have an interest in the OCS, and that the legislative language has been agreed to by those agencies and the OMB. This bill will not supercede or modify any existing authority of any other agency responsible for permitting or regulating offshore energy projects. It is designed to complement existing statutes and ensure that all innovative offshore energy projects have a clear permitting process.

The President's National Energy Plan called for the simplification of permitting for energy production in an environmentally-sensitive manner. It also called on the Secretaries of the Interior and Energy to evaluate access limitations to Federal lands in order to increase renewable energy production. This legislation helps to address both of these goals.

I understand that offshore wind energy projects are now being considered in the U.S. and that several have already been developed in Northern Europe with significant generation capacity on the drawing board. In fact, a record 6,868 megawatts of new wind power capacity was installed worldwide in 2002, increasing generating capacity by 28% last year, according to new figures released from the American Wind Energy Association and European Wind Energy Association.

Offshore wind development is a sound use of public resources for energy production. We need new alternative and traditional energy solutions in order to meet our future energy needs. I believe this bill will help to facilitate these solutions.

H.R. 794 makes targeted technical changes to the Mineral Leasing Act that adapt to the realities of market conditions so that we may make full use of the America's Federal coal resources. It encourages continued diligent development of coal on Federal lands and ensures the flow of Federal royalty revenue while giving the Interior Secretary the ability to manage coal resources for maximum value to the public.

Coal is the largest domestically produced energy source and remains the largest source of electricity generation in the nation, at about 50% of current generation capacity. Coal is an abundant, domestically produced product and, through the continued development and implementation of clean-coal technology, will remain a secure energy resource for years to come.

Currently over one-third of our coal is mined on Federal lands. Federal coal benefits the nation not only because it is a domestically produced energy resource, but also because the Minerals Management Service collected about $5.5 billion in revenues on coal produced from Federal lands. The legislation seek today would facilitate the continued development of Federal coal by making only changes to coal leasing provisions in the Mineral Leasing Act that present impediments to the efficient development of Federal coal resources.

One provision amends the 160 acre life-of-lease limitation on Federal coal lease modifications. This provision provides flexibility by giving the Secretary the discretion to allow production of non-competitive coal contiguous to an existing lease so that small quantities of coal will be recovered that might otherwise be left behind.

This provision is designed to provide a common sense way to encourage efficient production of a domestic energy resource. It is not designed to side step the competitive lease process. I am willing to work with the minority to address any concerns to the contrary.

Other provisions allow the consolidation of leased coal reserves requiring more than 40 years to mine, allow the Secretary to accept the payment of advance royalties in lieu of continued operations for a total of 20 years and eliminate the requirement under the Mineral Leasing Act that a lessee to file a mining plan no later than three years after the lease is issued. SMCRA contains a similar requirement which remains in force. These are common sense adjustments that provide flexibility and allow cost-effective development of the resource.

Finally, a provision addresses the requirement of surety bonds for the payment of bonus bids on coal leases. A lease will be terminated if a lessee fails to make a bonus bid payment.

These bills promote ways for government to help the private sector increase energy production. A new round of energy price spikes in recent weeks are yet another wake-up call concerning our need to increase domestic energy production in this country. Energy issues will again be a major priority in this Congress and the development of a comprehensive energy bill is underway.

I want to welcome our witnesses as well as our Subcommittee members to the first Subcommittee hearing of the 108th Congress. I look forward to working with you all on these legislative issues and all of the issues that will come before our Subcommittee this year.

[A statement submitted for the record on H.R. 793 by the Long Island Power Authority follows:]

Statement submitted for the record by the Long Island Power Authority

The Long Island Power Authority ("LIPA") is pleased to provide testimony on H.R. 793, to amend the Outer Continental Shelf Lands Act for Alternative Energy–Related Uses. LIPA is a corporate municipal instrumentality of the State of New York and was established by the New York legislature in 1986. LIPA provides electric service to nearly 1.1 million customers in Nassau and Suffolk counties, and the Rockaway Peninsula in Queens, New York.

LIPA requests that H.R. 793 not impose new impediments on offshore wind projects that are currently underway. On January 22, 2003, LIPA, supported by a coalition of interests representing over 30 Long Island-based environmental, civic and faith-based groups, released a Request for Proposals ("RFP") seeking development of an offshore wind project to be operational by 2007. The RFP requests proposals for wind power to be produced from a facility located 2 to 6 miles offshore of Long Island with a total generating capacity of 100–140MW. LIPA intends to purchase 100% of the capacity, ancillary services, and environmental attributes of the offshore project for a term of at least 15 years. We will provide an underground cable to connect the offshore wind project to LIPA's power grid.

The offshore wind project is intended to help meet the region's growing electricity demands in an environmentally sensible way. Population density and the continued rapid development on Long Island has resulted in the lack of suitable locations to site and construct electricity generation projects powered by wind. The offshore area of Long Island, however, has the potential to accommodate significant amounts of wind energy. One recent study shows that an area of over 314 square miles off the coast of Long Island could yield 5,200 megawatts of wind power capacity which would produce the equivalent of 77% of Long Island's current electricity needs.

This ongoing wind project is part of LIPA's Clean Energy Initiative, a multi-year, $170 million program implemented by New York Governor George Pataki to promote energy conservation and efficiency, and to research, develop and implement the use of alternative energy technologies. These programs have yielded over 122 GWH of energy savings with 290 GWH of energy savings projected by the end of 2004.

In addition, this offshore wind project is an important means for achieving Governor Pataki's proposed renewable energy portfolio standard which requires that 25% of electricity bought in New York State must come from renewable technologies within 10 years.

This project has broad support from the State of New York, business groups and the environmental community on Long Island, including the Environmental Advocates of New York, the Natural Resources Defense Council, the Neighborhood Net-

work, the Long Island Sustainable Energy Alliance, the Citizen's Campaign for the Environment, the New York Public Interest Group and the Citizens Advisory Panel.

The developer of the offshore wind project must obtain all necessary Federal, state and local permits. LIPA has already conducted studies on the project's impact on marine and avian species and a legal analysis of Federal, state and local laws relevant to project. In addition, LIPA has completed siting assessments on the location of the offshore wind project. The 60-page Phase II Siting Assessment evaluated a number of environmental, economic and operational factors to identify for potential developers the offshore area that offers the best opportunity for constructing and operating the offshore park with the least environmental impact on the communities. The success of our efforts thus far, is evidenced by the fact that the major environmental groups on Long Island support the project.

As the Committee continues its assessment of H.R. 793, LIPA requests that this legislation not be drafted in a manner that will impose delays or added costs to offshore projects, like ours, that are well underway. LIPA's offshore wind project is important to meeting Long Island's growing electricity needs in an environmentally sensible way. As consideration of this legislation moves forward, LIPA would be pleased to provide any additional information about this offshore wind project.

[A statement submitted for the record on H.R. 793 by Kevin Rackstraw, Clipper Windpower, Inc., and Aquantis, LLC, Bethesda, Maryland follows:]

March 19, 2003

The Honorable Barbara Cubin, Chair
Committee on Resources
Subcommittee on Energy and Mineral Resources
1334 Longworth House Office Building
Washington, DC

Dear Representative Cubin:

My name is Kevin Rackstraw. I am the Eastern Regional Leader for Clipper Windpower, Inc., one of the leading developers of wind energy projects. In addition, I also represent an affiliated company called Aquantis, LLC, which is developing an undersea ocean current turbine.

Thank you for your efforts to bring some certainty and structure to the approvals process for utilizing the tremendous energy resources off the coasts of the United States. Attached is written testimony I would like to submit for the record related to the hearing held on March 6, 2003, about H.R. 793, your bill to amend the Outer Continental Shelf Lands Act for Alternate Energy–Related Uses. I apologize for not being present at the March 6 hearing, but unfortunately we did not learn of the opportunity to testify until relatively late. I am happy to make myself or members of the Aquantis team available to the Subcommittee should the opportunity arise to brief you, the Members or staff on the ocean current turbine.

Thank you again for your interest in this important matter.

Sincerely,

Kevin Rackstraw
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Statement submitted for the record by Kevin Rackstraw, Clipper Windpower, Inc., and Aquantis, LLC, Bethesda, Maryland, on H.R. 793

My name is Kevin Rackstraw. I am the Eastern Regional Leader for Clipper Windpower, Inc., one of the leading developers of wind energy projects. I am submitting testimony to support your efforts to streamline and clarify the process for the granting of rights to develop renewable energy projects on the Outer Continental Shelf (OCS). Clipper is expecting offshore windpower to be an important part of the country's effort to develop domestic, renewable energy projects over the coming years. It is vital that the process for granting rights to utilize the huge offshore wind resource be clarified and streamlined. The current situation of overlapping and

uncertain jurisdiction and absence of a grant or easement process makes it difficult to attract the necessary capital to move this huge opportunity forward. Clipper supports the testimony submitted by Bruce Bailey for the American Wind Energy Association at your March 6, 2003, hearing.

I also represent an affiliated company called Aquantis, LLC, which is developing an ocean current turbine that can be deployed at moderate depths below marine traffic and yet cause a minimal disturbance to the ocean floor. Ocean currents are relatively constant, meaning that ocean current technology can provide baseload power year around. We also believe that this technology will be competitive with any other renewable energy technology within a relatively short time and has the potential to be directly competitive with conventional energy as well. Aquantis is within several years of commercial deployment of this technology, so it is vital to the technology's future that any effort to clarify the offshore permitting process addresses ocean currents as well.

Aquantis has received substantial research grants from the State of California and the U.S. Government through the Small Business Innovative Research (SBIR) program to continue the development of this very promising technology and has recently tested a prototype at the Naval Surface Warfare Center at Carderock. Admiral Albert Baciocco, former Chief of the Office of Naval Research, is on the Aquantis Board of Directors, as is Richard Metrey, former head of the Carderock facility.

Much like Clipper, Aquantis will also seek the right to utilize the huge natural and renewable resources that are present offshore of the United States. Ocean currents are not mentioned in your current bill, which does make specific mention of wave energy. We believe that ocean current technology will be the first ocean energy technology to make a significant contribution to our energy future, so we would respectfully request that the bill's language be expanded to cover ocean currents. I will provide in a separate mailing to the Subcommittee more details on the design and operation of the turbine to allow the Members and staff to validate the strides that this new technology has made.

I would like to echo in particular one specific comment made by Bruce Bailey in his March 6, 2003, testimony before the Subcommittee. We respectfully request the Subcommittee to ensure that the implementation of this bill not impose new barriers in the permitting approval process for offshore projects, whether wind or ocean-based. We support the purpose of the bill, which is to make the process more orderly and certain.

Thank you for the opportunity to present testimony on this important bill. We look forward to working with you to develop the huge offshore renewable energy resources that are available to us. Generating electricity from clean and renewable sources of energy from the wind and oceans will help to lessen our dependence on imported and polluting sources of energy, which will be a boon to both our environment and our economy.