The original documents are located in Box 27, folder "Outer Continental Shelf Oil Leasing - Publications (2)" of the John Marsh Files at the Gerald R. Ford Presidential Library.

Calendar No. 1088

93D CONGRESS 2d Session } SENATE { REPORT No. 93-1140

ENERGY SUPPLY ACT OF 1974

SEPTEMBER 9, 1974.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 3221]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 3221) to increase the supply of energy in the United States from the Outer Continental Shelf; to amend the Outer Continental Shelf Lands Act; and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

The amendment to the text strikes all after the enacting clause and inserts a complete new text which is printed in italic type in the reported bill.

I. PURPOSE

During the next decade, development of conventional oil and gas from the United States Outer Continental Shelf can be expected (a) to provide the largest single source of increased domestic energy, (b) to supply this energy at a lower average cost to the U.S. economy than any alternative and (c) to supply it with substantially less harm to the environment than almost any other source.

OCS oil and gas and the policy issues associated with them have been relatively neglected during the recent crisis in favor of much less promising concerns such as price incentives for stripper wells and other marginal onshore production (whose aggregate potential contribution to increased output is quite small) or research and development for coal and oil shale conversion (which are high cost sources, have long payout times, and pose very serious environmental prob-

lems). Our effort to improve the short- and medium-term supply of domestic primary fuels should be directed first of all toward increasing the rate of exploration and development on the OCS.

The major policy issues concerning the OCS are the rate and location of leasing, environmental safeguards, impacts on coastal states, the lease allocation system and the extent to which industry information about the nature and extent of the resources should be divulged to the government and to the public.

Because the OCS represents such a large and promising area for oil and gas exploration, the Committee believes that the Congress must update the Outer Continental Shelf Lands Act of 1953 (67 Stat. 462, 43 U.S.C. §§ 1331–1343) which has never been amended to provide adequate authority and guidelines for the kind of development activity that probably will take place in the next few years.

Despite the intense and justified concern of many people over the potential damage to the environment from oil and gas development on the OCS, there is an increasing feeling that OCS development may well be more acceptable environmentally than other potential domestic energy resources such as massive strip mining for coal and oil shale.

There are a variety of obstacles to OCS oil and gas development today. These include technological, economic, environmental, legal and administrative problems.

S. 3221 is designed to remove these obstacles in order to facilitate rapid and responsible—as opposed to quick and dirty—development of the oil and gas resources of the Outer Continental Shelf.

There are two basic thrusts to the bill. First, it reasserts Congress' special Constitutional responsibility to "make all needful rules and regulations respecting the territory or other property belonging to the United States". (U.S. Const. Art. IV Sec. 3 Cl. 2) The 1953 Outer Continental Shelf Lands Act is essentially a carte blanche delegation of authority to the Secretary of the Interior. The increased importance of OCS resources, the increased consideration of environmental impacts and emphasis on comprehensive planning, require Congress to put some "flesh on the bones" in the form of standards and criteria for the Secretary to follow in the exercise of his authority.

Second, the bill gives the Secretary new authority needed to manage the programs anticipated in the last third of the twentieth century.

II. Background and Need

History of OCS Act

In 1953, Congress enacted the Outer Continental Shelf Lands Act. This Act authorizes the Secretary of the Interior to grant mineral leases on the Outer Continental Shelf and to prescribe regulations for their administration.

Presently, the Outer Continental Shelf program is handled jointly by the Geological Survey and the Bureau of Land Management under a joint arrangement which divides responsibility by allocating to the BLM the leasing function and to the Survey the prelease resource evaluation and the post-lease administration function.

The OCS Act of 1953 stemmed from the proclamation on the Continental Shelf issued by President Truman in 1945. It declared the

natural resources of the "subsoil and seabed of the Continental Shelf beneath the high seas but contiguous to the coasts of the United States" to be subject to the control and jurisdiction of the U.S. The proclamation did not define the seaward limits of the Continental Shelf but the accompanying press release (September 28, 1945) from the White House indicated that the submerged land which is covered by no more than 100 fathoms (600 feet) of water was considered as the Continental Shelf.

The 1958 Geneva Convention on the Continental Shelf ratified by the U.S. in 1960 includes an open-ended definition of the Shelf as extending to a depth of 200 meters "or beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources."

In 1947 and 1950, the Supreme Court ruled on the controversy between the United States and various coastal states over ownership and control of the Shelf. The Supreme Court decided that the entire Shelf was under Federal control. *United States* v. *California*, 332 U.S. 19 (1947); *United States* v. *Louisiana*, 339 U.S. 699 (1950); *United States* v. *Texas*, 339 U.S. 707 (1950). However, in 1953 Congress passed the Submerged Lands Act which "released and relinquished" to the coastal states that portion of the Shelf extending out from the mean high tide line for 3 miles or to their historic boundaries. Congress followed this with the OCS Lands Act which was primarily designed to be an affirmation of the 1945 assertion of jurisdiction by President Truman.

The 1953 Act reflects this emphasis on jurisdictional questions. Its "bare bones" leasing authority with essentially no statutory standards or guidelines also reflects the relative lack of basic knowledge concerning, and interest in, development of the resources of the Shelf at that time.

Current Emphasis on Domestic Sources of Energy

Since the imposition of the Arab oil embargo the United States has become intensely concerned about its dependence on foreign sources of energy. Congress and the nation have focused on the means of reducing U.S. reliance on foreign energy supplies and prudently exploiting a substantial domestic resource base. One of the major results of this effort is the National Energy Research and Development Policy Act passed by the Senate last December. That Act establishes as a national objective "development within 10 years of the option and the capability for the United States to become energy self-sufficient through the use of domestic energy resources by socially and environmentally acceptable means."

The research and development program authorized by that act is designed to help meet that goal over the next 10 years. However, in the shorter term, available domestic energy resources, particularly fossil fuels, must be developed more rapidly.

During the next decade, development of conventional oil and gas from the United States Outer Continental Shelf can be expected (a) to provide the largest single source of increased domestic energy, (b) to supply this energy at a lower average cost to the U.S. economy than any alternative and (c) to supply it with substantially less harm to the environment than almost any other source.

HISTORY OF OUTER CONTINENTAL SHELF RESOURCE DEVELOPMENT

The total shelf and continental margin area of the Outer Continental Shelf is estimated to be approximately 1,175,680,000 acres (including areas beyond the 200-meter water depth to 2,500-meter water depth). Of this total, the area under Federal jurisdiction is approximately 1,146,680,000 acres.

Pursuant to the Submerged Lands Act and subsequent court decisions, coastal states have jurisdictions within 3 miles of their coasts and Texas and Florida have jurisdiction for three marine leagues off their Gulf of Mexico coasts—which accounts for the difference in area of the shelf and margin area and that part under Federal jurisdiction.

The Department of the Interior reports that since the passage of the OCS Lands Act (67 Stat. 462; 43 U.S.C., Sec. 1331–1343) on August 7, 1953, 33 lease sales have been held, the large majority of which have been offshore Louisiana and Texas. Nineteen hundred forty leases have been issued embracing over eight million acres. Petroleum and sulfur production amounts to approximately 12 percent of total domestic production and natural gas production amounts to approximately 13 percent.

Production of hydrocarbons includes over three billion barrels of oil (including condensate) and nineteen trillion m.c.f. of natural gas. Also over thirteen million long tons of sulfur and over 4 million long tons of salt have been produced.

The Outer Continental Shelf Lands Act provides for payment to the Federal Government of revenues derived from oil and gas leases on the Outer Continental Shelf subject to Federal jurisdiction.

All OCS leases issued to date have required payment to the Federal Government based on a royalty rate of 16⅔ percent in the amount or value of the production saved, removed, or sold from the lease. The annual rental and minimum royalty required for leases offered at general lease sales (unproven areas) have been $3 per acre, and have been $10 per acre for leases offered at drainage sales (proven areas). Total Federal revenues from Outer Continental Shelf resource development amount to over 10 billion dollars.

OCS OIL AND GAS RESERVES

The U.S. Geological Survey recently estimated that there are now proved reserves of 2.2 billion barrels of oil and 2.0 trillion cubic feet of gas in the OCS off Southern California, and 3.5 billion barrels of oil and 36.8 trillion cubic feet of gas in the OCS in the Gulf of Mexico off Louisiana and Texas. This is a total of 5.7 billion barrels of oil and 38.8 trillion cubic feet of gas.

In addition to the proved, discovered reserves known to exist on the OCS, the continental margin of the United States is believed to contain very large amounts of undiscovered oil and gas resources. The presence of these resources has not actually been demonstrated, nor can it be determined what portion may prove to be economically recoverable even if they are discovered. The figures given represent those arrived at by geological inference from indirect evidence. The distinction between potential resources and proved reserves is an important one, because many billions of dollars of investment and much effort separate the one from the other.

The U.S. Geological Survey estimates that the potential recoverable petroleum resources remaining on the OCS of the United States out to a water depth of 200 meters are 58–116 billion barrels of crude oil and natural gas liquids and about 355–710 trillion cubic feet of natural gas. For purposes of comparison, the United States consumed 6 billion barrels of oil and 23 trillion cubic feet of gas in 1973.

NEED FOR LEASING IN "FRONTIER AREAS"

Of the 1,081,000 barrels a day produced in 1973 the major portion or 1,029,000 barrels a day came from wells in the Gulf of Mexico, in other words, almost all of it.

The remaining 52,000 barrels a day was produced from fields off Southern California.

Gas production totaled 8.9 billion cubic feet a day in 1973, all but 20 million cubic feet a day from the Gulf of Mexico.

During the past 20 years, over 12,000 wells have been drilled on Federal Outer Continental Shelf lands resulting in total production of 3.3 billion barrels of oil and 20.7 trillion cubic feet of gas.

If we are to increase our OCS oil and gas development, leasing must take place in new or "frontier" areas. A number of steps have already been taken in that direction.

On April 18, 1973, the President announced that the Outer Continental Shelf leasing rate would be increased from 1 million acres per year to 3 million acres per year and that the 5-year tentative leasing schedule should be revised to reflect this acceleration.

On April 18, 1973, the President directed the Council of Environmental Quality (CEQ) to study the environmental impact of oil and gas production on the Atlantic and Gulf of Alaska Outer Continental Shelf, since it was clear that continued accelerated leasing in the Gulf of Mexico and offshore California would soon consume available acreage in those areas.

On January 23, 1974, the President directed that Outer Continental Shelf leasing be even further accelerated and that 10 million acres be leased in 1975.

In February of this year, Secretary of the Interior Morton asked the States, environmental and industry groups, and the general public to list the Outer Continental Shelf areas in which they had the greatest interest by their order of preference and to specify environmental problems that would be encountered in developing these Outer Continental Shelf areas.

The Committee believes that the OCS Lands Act must be amended as provided in S. 3221 before any large-scale expansion of leasing takes place.

III. Major Provisions

Policy.—The Act declares that the OCS is a vital national resource reserve held by the Federal government for all the people, which should be made available for orderly development, subject to environmental safeguards, when necessary to meet national needs.

Leasing Program.—The Secretary is directed to prepare a comprehensive leasing program designed to carry out the objective of making available for leasing as soon as practicable all OCS lands geologically favorable for oil and gas development without undue environmental damage. This program would indicate the size, timing, and location of leasing activity which the Secretary believes would meet national energy needs over the next 10 years. The leasing program must be consistent with the following principles:

(1) management of the Outer Continental Shelf in a manner which considers all its resource values and the potential impact of oil and gas development on other resource values and the marine environment;

(2) timing and location of leasing so as to distribute more evenly exploration, development and production of oil and gas among various areas of the Outer Continental Shelf considering:

(A) existing information concerning their geographical, geological and ecological characteristics;

(B) their location with respect to, and relative needs of, regional energy markets;

(C) interest by potential oil and gas producers in exploration and development as indicated by tract nominations and other representations;

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

(3) receipt of fair market value for public resources.

The program would include estimates of appropriations and staffing required to prepare the necessary environmental impact statements, obtain resource data and any other information needed to decide whether to issue any lease and to supervise operations under every lease in the manner necessary to assure compliance with the requirements of the law, the regulations, and the lease.

The environmental impact statement on the leasing program would include an assessment by the Secretary of the relative significance of the OCS energy resources toward meeting national demands, the capability of industry to develop those resources, and the relative environmental hazard of each area proposed to be leased.

There are provisions for public participation in the development of the program and coordination with the states which may be impacted by leasing and with management programs established pursuant to the Coastal Zone Management Act of 1972.

The leasing program would have to be reviewed and reapproved annually. Once the program has been approved, and no later than January 1, 1978, no leases would be issued unless they are for areas included in the program. The Secretary would be authorized to obtain from private sources any data and reports which he needed to prepare the program.

Federal Oil and Gas Survey Program.—The Secretary would be directed to conduct a survey of oil and gas resources of the OCS. This program would be designed to provide information about the probable location, extent and characteristics of these resources. It would provide a basis for development and revision of the leasing program and more

informed decisions about fair market value of resources. As part of this program the Secretary would be authorized to purchase data and contract for stratigraphic drilling on the OCS.

The Secretary would prepare and publish maps and reports on the OCS. This information should help potential oil and gas developers to participate in and the general public to understand, OCS programs.

Research and Development.—To improve technology used in OCS development, the Secretary would be directed to carry out a research and development program where such research was not being done adequately by others. This would include consideration of (1) downhole safety devices, (2) methods for reestablishing control of blowing out or burning wells, (3) methods for containing and cleaning up oil spills, (4) improved drilling bits, (5) improved flaw detection systems for undersea pipelines, (6) new or improved methods of development in water depths over six hundred meters, and (7) subsea production systems.

Oil Spill Liability.—The bill puts into law the existing rule, established by Departmental regulation, that an OCS lessee is liable for the total cost of control and removal of spilled oil. It also creates a new strict liability rule for damages from OCS oil spills. The provisions are patterned after the Trans-Alaska Pipeline Authorization Act of 1973. (Title II of P.L. 93–153.)

The damage liability is imposed without regard to fault, and without regard to ownership of the land or resource damaged if the land or resource is relied on for subsistence or economic purposes. Thus there can be recovery for damage to fisheries despite the fact that the fisherman has no property right in the uncaught fish. Resort owners could also recover for loss of business caused by an oil spill on the beach even though they do not own the beach. On the other hand, sport fishermen or vacationers could not recover for any inconvenience caused by a spill.

The provision puts a limit of $100 million for damages from any one incident. The lessee is liable for the first $7 million and the Offshore Oil Pollution Settlement Fund, created by the Act, is liable for balance.

The money in this Fund will come from a fee of 2½¢ on each barrel of oil produced from the Outer Continental Shelf. The Fund will be administered by OCS lessees subject to audit by the General Accounting Office.

The Fund is authorized to borrow from commercial sources so no government funds would be used to pay damage claims.

The Committee believes that a comprehensive Federal statute governing liability for all ocean oil spill damages is badly needed. This law should cover OCS operations, tankers, deepwater ports and all other sources. Section 303 of S. 3221 calls for a liability study by the Attorney General which would assist in preparing a comprehensive statute. The Committee anticipates working on this subject with the other Committees participating in the National Ocean Policy Study.

Assistance to the Coastal States.—The coastal states are impacted by OCS development in a variety of ways. Testimony received by the National Ocean Policy Study and the study done by the Council on Environmental Quality, "OCS Oil and Gas—An Environmental

Assessment" indicates that the secondary impacts onshore are far greater than the direct impact from oil spills and the activity on the OCS lease site itself. These impacts stem from the development of onshore support facilities for OCS development and the location of petroleum refining and transportation facilities near production sites.

The Committee believes that coastal state opposition to OCS leasing can lead to significant delays in oil and gas development. A major reason for such opposition in "frontier" leasing areas such as the Atlantic and Alaska coasts as well as in California is concern about the ability of State and local governments to cope with the onshore economic and social problems caused by OCS development.

These legitimate concerns of these States must be balanced against the national need to develop the Federal energy resources of the Outer Continental Shelf. The Committee believes that the Federal Government should assist the States in ameliorating adverse environmental impacts and controlling secondary economic and social impacts associated with OCS oil and gas development. For this reason S. 3221 provides that 10% of the Federal OCS revenues but not to exceed $200 million per year will be available for grants to impacted coastal States for this purpose.

The bill provides that these grants will be made by the Secretary of the Interior. The Secretary must coordinate the grants with management programs established under the Coastal Zone Management programs established under the Coastal Zone Management Act of 1972. The extent and nature of the overall adverse impacts may vary greatly. The Secretary is given broad discretion in determining the amount and purpose of the grants. One of the most important uses of these grants will be to develop adequate planning and management programs over the coastal landside areas where commercial and industrial development is apt to occur. The Committee expects that in many instances, the grants would be used to supplement management programs established under the Coastal Zone Management Act.

Information submissions by industry.—The bill requires any person holding a geological or geophysical exploration permit to submit to the government the data and information obtained during exploration. All oil and gas lessees would have to submit data about the oil and gas resources in the area covered by the lease. The Secretary would keep all proprietary data confidential until he determines that public availability of the data would not damage the competitive position of the permittee or lessee.

The Committee feels strongly that private parties using public resources for private profit should be required to make information they obtain about the resources available to the representatives of the public. At the same time, the Committee recognizes the value of this information to the individual explorer or producer. The provisions of S. 3221 are designed to balance the public's interest in obtaining information about its resources and public's interest in maintaining an active and competitive oil and gas industry.

Safety and Performance Standards.—S. 3221 directs the Secretary to establish safety and performance standards for all pieces of equipment pertinent to public health, safety or environmental protection. These standards must require use of the best available technology

where failure or malfunction of the equipment would have a substantial impact on public health, safety or the environment.

Enforcement of Safety Regulations.—To assure that increased OCS development proceeds in as safe a manner as possible, the Secretary would be directed to conduct regular inspections and strictly enforce safety regulations. The inspections must take place at every stage of operations which means that Congress must provide funding and manpower needed. Penalties for violation of the regulations would be increased and lessees would be required to give the Secretary any information he needs to assure a safe operation.

Development and Production Requirements.—The Secretary would be directed to include a development plan in each lease which would spell out the work to be performed and a time schedule for performance. These plans could, of course, be revised in light of changed circumstances.

Revised Bidding Systems.—There has been considerable public discussion and debate about the need for revised bidding systems for OCS leases. The existing law authorizes two methods. The first is awarding the leases to the highest bidder of a cash bonus with a royalty rate fixed in advance of the sale. This is the method used in all OCS lease sales to date.

The second method would award the lease to the person bidding the highest royalty rate with a cash bonus fixed in advance.

S. 3221 would eliminate the royalty bidding alternative. The Committee believes that royalty bidding frequently will result in very high bids because an operator risks little with such a bid. At high royalty rates only the lowest cost oil and gas will be developed and produced. (With a cash bonus and the present OCS royalty rate of 16⅔ percent, an operator would develop any property for which the cost of production less royalty was less than 83⅓ percent of the wellhead price. With a royalty rate of 75 percent, no oil that cost more than 25 percent of the wellhead price would be developed.) Perhaps only half as much oil and gas would be produced from a given tract under royalty bidding as under the cash bonus system.

Cash bonus bidding is a good system of (a) placing acreage in the hands of responsible, capable and diligent operators, (b) encouraging early exploration and development of OCS leases, (c) maximizing ultimate recovery, (d) assuring fair market value for the Government. However, the high initial investment required by cash bonus bidding tends to limit participation in OCS development.

The Committee believes that alternative lease allocation systems should be considered. The Department of Interior has announced that it intends to experiment with royalty and net profit sharing bidding. Others have advocated work program bidding such as has been used in the North Sea. S. 3221 calls for a study of alternative systems with a report and recommendations to Congress within one year.

In the interim, S. 3221 would also authorize two approaches to net profit sharing. One would allow leases to be issued to the highest cash bonus bidder, with the United States taking a share of the net profits of not less than 30%. The other would permit bidding based on the net profit share with a fixed cash bonus. The Committee recognizes that these alternatives may not be the "perfect solution". However,

they should facilitate entry into the OCS development business of more independent producers and are certainly worth trying on an experimental basis.

IV. Committee Recommendation

The Committee on Interior and Insular Affairs in open markup session on August 12 recommended that S. 3221 be approved by the Senate.

V. Legislative History

S. 3221 was introduced on March 22, 1974. Hearings were held on the bill by the Interior Committee on May 6, 7, 8 and 10. In addition the Committee participated in the hearings conducted by the National Ocean Policy Study on the economic, environmental, and social impacts of development of the oil and gas resources of the Outer Continental Shelf. These took place on April 23, 24, 25, and May 2 and 22. A major focus of these hearings was the Council on Environmental Quality's study entitled, "OCS Oil and Gas—An Environmental Assessment", released April 18.

In addition the Committee has, since the initiation of the National Fuels and Energy Policy Study, conducted several hearings dealing with OCS matters. These have been printed as Outer Continental Shelf Policy Issues (92–27, parts I–III); Federal Leasing and Disposal Issues (92–32); and Trends in Oil and Gas Exploration (92–33, parts I and II).

VI. Section-By-Section Analysis

Section 1 contains the short title and table of contents.

TITLE I. FINDINGS AND PURPOSES

Section 101 sets out a number of findings about the current and future energy supply situation, and the potential role of the oil and gas resources of the Outer Continental Shelf (OCS).

Section 102 states the purposes of the Act. These include increasing production of oil and gas from the Outer Continental Shelf in a manner which assures orderly resources development, protection of the environment, and receipt of fair market return for public resources and encouraging development of new technology to increase human safety and eliminate or reduce environmental damage.

TITLE II. INCREASED PRODUCTION OF OUTER CONTINENTAL SHELF ENERGY RESOURCES

This title contains a series of amendments to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331–43) (OCS Act).

Section 201 amends Section 3 of the OCS Act to add a policy statement that OCS is held for all the people, and its resources should be made available for orderly development subject to environmental safeguards.

Section 202 adds 12 new sections to the OCS Act. These are:

SECTION 18—DEVELOPMENT OF OUTER CONTINENTAL SHELF LEASING PROGRAM

Section 18 establishes a policy of making available for leasing as soon as practicable all OCS lands determined to be *both* geologically favorable for oil and gas *and* capable of supporting development without undue environmental hazard.

The Committee recognizes that the phrase "without undue environmental hazard or damage" is imprecise. The Committee also recognizes that any oil and gas development will involve some environmental hazard or damage. This section establishes a process which will permit the Secretary to weigh the environmental risks against the potential benefits from making the oil and gas available to meet national energy needs.

Subsection 18(b) directs the Secretary to prepare a 10-year leasing program. It sets out policies to be followed in preparing the program including orderly development of energy resources, environmental protection, receipt of fair market value, public participation, and intergovernmental coordination.

The leasing program should display the information for all interested Federal, State and local government officials, the oil and gas industry, and the general public.

Subsection 18(c) requires that the program include estimates of the appropriations and staffing required to prepare the necessary environmental impact statements, obtain resource data and any other information needed to carry out the law including supervision of all operations to assure compliance. The Committee intends that these estimates represent the Secretary's best judgment of actual needs rather than the views of the Office of Management and Budget as to what funding levels are appropriate for inclusion in the President's Budget.

Subsection 18(d) requires the inclusion in the environmental impact statement on the leasing program of an assessment by the Secretary of the relative significance of the probable oil and gas resources of each area proposed to be offered for lease in meeting national demands, the most likely rate of exploration and development that is expected to occur if the areas are leased, and the relative environmental hazard of each area. The Committee recognizes that the Secretary cannot determine these factors with a great degree of precision. However, an expression of his best judgment based on available information should be very helpful in balancing the conflicting values involved during the decision-making process.

Subsection 18(e) directs the Secretary to establish procedures for receipt and consideration of nominations for areas to be offered for lease or to be excluded from leasing, for public notice of and participation in development of the leasing program, for review by State and local governments which may be impacted by the proposed leasing, and for coordination of the program with management programs established pursuant to the Coastal Zone Management Act of 1972. These procedures will be applicable to any revision or reapproval of the leasing program.

The Secretary uses a nomination process at the present time. The Committee wants to be sure that this form of industry and public participation in the leasing program is continued.

Subsection 18(f) calls for publication of a proposed leasing program in the Federal Register and its submission to the Congress within two years after enactment of this section.

Subsection 18(g) provides that after the leasing program has been approved by the Secretary or after January 1, 1978, whichever comes first, no OCS leases may be issued unless they are for areas included in the approved leasing program. The Committee believes that the 10-year program should be adopted as soon as possible. At the same time, we recognize that this will take some time and that leasing should continue during this time. Three years should be ample time to develop the program.

Subsection 18(h) provides that the Secretary may revise and reapprove the leasing program at any time and he must review and reapprove the leasing program at least once each year. The requirement for annual reapproval is designed to assure that the program fully reflects new information and changing conditions. Obviously, substantial changes in the program may be required in some years, while in others there may be little or no change.

Subsection 18(i) authorizes the Secretary to obtain from public sources or to purchase from private sources, any surveys, data, reports, or other information (excluding interpretations of such data, surveys, reports, or other information) which may be necessary to assist him in preparing environment impact statements and making other evaluations required by this Act. The Secretary must maintain the confidentiality of all proprietary data or information for such period of time as is agreed to by the parties. This confidentiality requirement is designed to allow the Secretary to negotiate for the purchase of data on the basis that it will be kept confidential for as long as the seller wishes. Requiring the public release of all purchased data at any particular time would tend to lead data owners to refuse to sell the data to the Secretary. This provision allows the Secretary and the owner of the information to work out a mutually acceptable arrangement.

Subsection 18(j) authorizes and directs the heads of all Federal departments or agencies to provide the Secretary with any nonproprietary information he requests to assist him in preparing the leasing program.

SECTION 19—FEDERAL OUTER CONTINENTAL SHELF OIL AND GAS SURVEY PROGRAM

Subsection 19(a) directs the Secretary to conduct a survey program regarding oil and gas resources of the Outer Continental Shelf. The program will provide information about the probable location, extent, and characteristics of such resources in order to provide a basis for (1) development and revision of the leasing program required by section 18 of the Act, (2) greater and better informed competitive interest by potential producers in the oil and gas resources of the Outer Continental Shelf, (3) more informed decisions regarding the value of public resources and revenues to be expected from leasing them, and (4) the mapping program required by subsection 19(c).

The Committee believes that the government must have better information about the resources it owns than it has had in the past. Publication of this information should be helpful to potential entrants into the OCS oil and gas development industry, particularly those with less capital to risk than the large major oil companies.

As part of the survey program, Subsection 19(b) authorizes the Secretary to contract for, or purchase the results of or, where the required information is not available from commercial sources, conduct seismic, geomagnetic, gravitational, geophysical, or geochemical investigations, and to contract for or purchase the results of stratigraphic drilling. The Committee believes that in most instances the Secretary can acquire the information required for the survey program from private industry. This will allow the present active exploration and data industry to continue without the government as a direct competitor. However, this subsection does authorize the Secretary to conduct certain investigations directly.

Subsection 19(c) directs the Secretary to prepare and publish and keep current a series of detailed topographic, geological, and geophysical maps of and reports about the Outer Continental Shelf, based on nonproprietary data, which shall include, but not necessarily be limited to, the results of seismic, gravitational, and magnetic surveys on an appropriate grid spacing to define the general topography, geology, and geophysical characteristics of the area.

The Committee believes that these maps and reports should be very valuable to all persons interested in OCS oil and gas development. In order to be sure that once the survey program is underway the maps and reports are available to potential lessees and other interested persons, this subsection requires publication of the maps no later than six months prior to the last day for submission of bids for any areas of the Outer Continental Shelf scheduled for lease on or after January 1, 1978. The Committee intends that the topographic maps be prepared by the National Oceanic and Atmospheric Administration, National Ocean Survey. The Secretary of the Interior, would simply provide for publication.

Subsection 19(d) provides that within six months after enactment of this section, the Secretary shall submit to Congress a plan for conducting the survey and mapping programs required by this section. This plan will identify the areas to be surveyed and mapped during the first five years of the programs and estimates of the appropriations and staffing required.

Subsection 19(e) provides that information about the program be included in the Secretary's annual report of activity under the OCS Lands Act.

Subsection 19(f) provides that the Secretary will not have to prepare an environmental impact statement before taking actions to carry out the oil and gas survey.

Subsection 19(g) authorizes appropriations to carry out the survey program in fiscal years 1975 and 1976. The Committee intends to review the survey program and enact additional authorization legislation for future years.

Subsection 19(h) provides that any person holding an oil and gas lease shall provide the Secretary with any existing data (excluding interpretations of such data) about the oil or gas resources in the area

subject to the lease. All proprietary data or information will be kept confidential until the Secretary determines that public availability of such proprietary data or information would not damage the competitive position of the lessee.

The Committee believes that users of public resources should furnish resource information to the government. However, the Committee recognizes the competitive value of proprietary information. This subsection is designed to balance the competing interests involved.

SECTION 20—RESEARCH AND DEVELOPMENT

Subsection 20(a) authorizes and directs the Secretary to carry out a research and development program designed to improve technology related to development of OCS oil and gas resources where he determines that such research and development is not being adequately conducted by any other public or private entity.

The Committee does not want the Secretary to get involved in a research and development program which duplicates work being done by private industry, or another government agency. However, it is clear that there are needs for new technology which are not being met. Where there are gaps in ongoing efforts, this provision authorizes the Secretary to fill them.

Subsection 20(b) requires the Secretary, after review and comment by the Administrator of the Environmental Protection Agency, to establish safety and environmental performance standards for all pieces of equipment, that are pertinent to public health, safety, or environmental protection, used in exploration, development, and production of oil and gas from the Outer Continental Shelf. These standards must call for use of best available technology when the potential effect of malfunctions on public health, safety, or the environment would be substantial.

The Committee believes that requiring use of best available technology is essential to assure the highest degree of safety in OCS operations. However, the Committee does not intend that installed equipment must be replaced with every minor technological improvement. It also recognizes that there may be more than one "best" way to achieve a particular objective or do a particular job.

Subsection 20(c) directs the Secretary, with the concurrence of the Secretary of the department in which the Coast Guard is operating, to establish equipment and performance standards for oil spill cleanup plans and operations. Such standards shall be coordinated with the National Oil and Hazardous Substances Pollution Contingency Plan. The Committee is aware that the Secretary has already developed procedures for oil spill cleanup. This subsection does not require him to start all over again, but rather to update the existing program.

Under Subsection 20(d) the Secretary, in cooperation with the Secretary of the Navy and the Director of the National Institutes of Health, will conduct studies of underwater diving techniques and equipment suitable for protection of human safety at depths greater than those where such diving now takes place.

The Committee is aware that the Navy is conducting diving studies at the present time. Work on oil platform submersibles is being done

by the Manned Undersea Science and Technology Office of the National Oceanic and Atmospheric Administration. The expected increase in OCS operations in deep water makes it imperative that this work be continued and expanded if necessary to assure diver safety.

SECTION 21—ENFORCEMENT OF SAFETY REGULATIONS; INSPECTIONS

Subsection 21(a) directs the Secretary to regularly inspect all operations authorized pursuant to this Act and strictly enforce safety regulations promulgated pursuant to this Act and other applicable laws and regulations relating to public health, safety, and environmental protection. It also requires holders of leases to allow access to any inspector promptly and provide any requested documents and records that are pertinent to public health, safety, or environmental protection.

The subsection also requires physical observation by an inspector of the installation or testing at least once each year of all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and periodic onsite inspection without advance notice to the lessee to assure compliance with public health, safety, or environmental protection regulations.

The Secretary also must investigate and report on all major fires and major oil spillage occurring as a result of operations pursuant to this Act.

Subsection 21(c) provides that the Secretary shall consider any allegation from any person of the existence of a violation of any safety regulations issued under this Act. The Secretary must answer such allegation no later than ninety days after receipt thereof, stating whether or not such alleged violations exist and, if so, what action has been taken.

This provision is designed to allow any interested person who believes the safety regulations are being violated to trigger an investigation by the Secretary. In most cases this form of citizen involvement would be more effective than legal action.

SECTION 22—LIABILITY FOR OIL SPILLS

Subsection 22(a) requires any person in charge of any operations in the Outer Continental Shelf, as soon as he has knowledge of a discharge or spillage of oil from an operation, to notify immediately the appropriate agency of the United States Government.

Subsection 22(b) is patterned after the tanker oil spill liability provisions of the Trans-Alaska Pipeline Authorization Act of 1973.

Subsection 22(b)(1) makes the holder of a lease or right-of-way issued or maintained under this Act and the Offshore Oil Pollution Settlements Fund established by this subsection strictly liable without regard to fault and without regard to ownership of any adversely affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by any damaged party for subsistence or economic purposes. The holder is liable for all damages, sustained by any person as a result of discharges of oil or gas from any operation authorized under this Act if such damages occurred (A) within the territory of the United States, Canada, or Mexico or (B) in or on waters within

two hundred nautical miles of the baseline of the United States, Canada, or Mexico from which the territorial sea of the United States, Canada, or Mexico is measured, or (C) within one hundred nautical miles of any operation authorized under this Act.

The Committee included damages in Canada and Mexico in order to protect the interests of our neighbors.

Subsection 22(b)(2) provides three exceptions to the strict liability rule.

Strict liability is not imposed on the holder or the fund if the holder or the fund proves that the damage was caused by an act of war. Strict liability is not imposed on the holder if the holder proves that the damage was caused by the negligence of the United States or other governmental agency. Strict liability is not imposed with respect to the claim of a damaged person if the holder or the fund proves that the damage was caused by the negligence or intentional act of such person.

Strict liability for all claims out of any one incident is limited to $100 million. The holder is liable for the first $7 million and the fund is liable for the balance. If the total claims allowed exceed $100,000,000, they are reduced proportionately.

In any case where liability without regard to fault is imposed pursuant to this subsection, the rules of subrogation shall apply in accordance with the State law.

The Offshore Oil Pollution Settlements Fund is administered by the holders of leases issued under this Act under regulations prescribed by the Secretary. The fund is subject to annual audit by the Comptroller General. A fee of 2½ cents per barrel of oil produced pursuant to any lease issued or maintained under this Act is paid into the fund. Costs of administration are paid from the fund. If the fund is unable to satisfy a claim, the fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest.

Notice of the damage must be given to the Secretary within three years following the date on which the damage occurred. The collection of amounts for the fund ceases when $100 million has been accumulated, but is renewed when the accumulation in the fund falls below $85 million.

Subsection 22(c) restates the existing rule established by Departmental regulation, that the lessee is liable for the total cost of control and removal of any spilled oil.

Subsection 22(d) requires all holders of leases issued or maintained under this Act to establish and maintain evidence of financial responsibility of not less than $7 million. It spells out ways of establishing such responsibility.

Subsection 22(e) provides that Section 22 does not supersede section 311 of the Federal Water Pollution Control Act Amendments of 1972 or preempt the field of strict liability or to enlarge or diminish the authority of any State to impose additional requirements.

The Committee did not want to override the cleanup requirements of the 1972 Act except to provide unlimited liability for cost of cleaning up OCS oil spills. The Committee also did not want to preclude the States from imposing more stringent requirements if they wished to do so.

SECTION 23—NEGOTIATIONS WITH STATES

Section 23 directs the Secretary to negotiate with those coastal States which are asserting jurisdiction over the Outer Continental Shelf with a view to developing interim agreements which will allow energy resource development prior to final judicial resolution of the dispute. The Committee is aware of the current litigation between the United States and the Atlantic Coastal States over those States' claims to ownership of the Outer Continental Shelf. The Committee believes that such disputes should not be allowed to prevent development of the OCS oil and gas resources.

SECTION 24—DETERMINATION OF BOUNDARIES

Section 24 authorizes the President to establish procedures for settling any outstanding boundary disputes, including international boundaries between the United States and Canada and between the United States and Mexico, and establish boundaries between adjacent States, as directed in section 4 of the OCS Act. Negotiations of this type have been going on for many years. This section expresses the sense of the Committee that a greater sense of urgency is needed in order to arrive at a settlement.

SECTION 25—COASTAL STATE FUND

Subsection 25(a) establishes a Coastal States Fund in the Treasury. The Secretary is directed to make grants from the Fund to the coastal States impacted by anticipated or actual oil and gas production to assist them to ameliorate adverse environmental effects and control secondary social and economic impacts associated with the development of Federal energy resources in, or on the Outer Continental Shelf adjacent to those States. The grants may be used for planning, construction of public facilities, and provision of public services, and such other activities as the Secretary may prescribe by regulations. The grants must be used for activities directly related to such environmental effects and social and economic impacts. In order to be eligible for grants from the Fund, the coastal State must establish pollution containment and cleanup systems for pollution from oil and gas development activities on its submerged lands.

The Committee believes that the Federal Government should assist the States in ameliorating adverse environmental impacts and controlling secondary economic and social impacts associated with OCS oil and gas development. The need for such grants is discussed in the Major Provisions section of this report.

Subsection 25(b) gives the Secretary broad discretion to determine the amount and purpose of the grants and to set guidelines for grant eligibility. The Secretary must coordinate the grants with management programs established under the Coastal Zone Management Act of 1972. The Committee expects the Secretary to work closely with the Secretary of Commerce in developing criteria for grants and establishing coordination procedures.

The Committee rejected the concept of coastal States receiving a fixed share of Federal OCS revenues. However, the Committee recognizes that Federal decisions to develop OCS resources can have impacts

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on the States. It is the Committee's intent that grants under this section shall be adequate to compensate impacted coastal States for the full costs of any adverse environmental effects and social and economic impacts caused by Federal offshore oil and gas exploration, development, and production.

Subsection 25(c) provides that ten per centum of the Federal revenues from the Outer Continental Shelf Lands Act shall be paid into the Fund. However, the total amount paid into the Fund shall not exceed $200 million per year.

The Committee believes that the $200 million per year ceiling on the Fund should provide an adequate source of grants for the foreseeable future.

In order to make some funds available for grants immediately, subsection 25(d) authorizes a direct appropriation to the Fund of $100 million. This amount will be repaid out of future OCS revenues allocated to the Fund.

SECTION 26—CITIZEN SUITS

Section 26 provides for citizen participation in the enforcement of the Act by civil law suits (1) against any person who is alleged to be in violation of the Act or the regulations, or any lease or permit issued under the Act; or (2) against the Secretary for alleged failure to perform a nondiscretionary act or duty.

Suits may be brought by "any person having an interest which is or may be adversely affected." The Committee intends that this includes persons who meet the requirements for standing to sue set out by the Supreme Court in *Sierra Club* v. *Morton* (405 U.S. 727 (1972)).

Subsection (b) requires that no action for violation of the law may be started for 60 days after written notice under oath of the alleged violation to the alleged violator and the Secretary. If the Secretary begins a civil action against the violation, no court action could take place on the citizen's suit. The 60-day waiting period does not apply when the violation or failure to act constitutes an imminent threat to the plaintiff's health or safety or would immediately affect a legal interest of the plaintiff. This provision is designed to give the Secretary and the alleged violator an opportunity to stop any violation thus making court proceedings unnecessary.

Subsection (d) provides that the court may award costs of litigation including reasonable attorney's fees to any party and require a bond where a temporary restraining order or preliminary injunction is sought.

The Committee believes that citizen suits can play an important role in assuring that lessees comply with the law. The possibility of a citizen suit should help to keep program administrators "on their toes."

SECTION 27—PROMOTION OF COMPETITION

Section 27 directs the Secretary to prepare a report with recommendations for promoting competition and maximizing production and revenues from the leasing of Outer Continental Shelf lands. The report is due within one year and will include a plan for implementing recommended administrative changes and drafts of any proposed legislation. The report will consider (1) other competitive bidding systems permitted under present law as compared to the bonus bidding system; (2) evaluation of alternative bidding systems not permitted under present law; (3) measures to ease entry of new competitors; and (4) measures to increase supply to independent refiners and distributors.

The Committee believes that it would be desirable to increase the competition in the OCS oil and gas development industry. The Committee recognizes that OCS development requires large capital expenditures which tend to limit participation. The study required by this section is designed to assist the Committee in making further changes in the Outer Continental Shelf Lands Act.

SECTION 28—ENFORCEMENT AND PENALTIES

Subsection 28(a) authorizes the Attorney General to institute, at the request of the Secretary, civil actions for restraining orders or injunctions or other appropriate remedies to enforce the Act or any regulation or order issued under it.

Subsection 28(b) provides for a civil penalty to be assessed against any person who after notice of failure to comply and opportunity for a hearing continues to fail to comply with the Act or any regulation or order issued under it. The maximum penalty is $5,000 per day.

Subsection 28(c) provides criminal penalties for knowing and willful violations of any provision of this Act, or any regulation or order issued under the authority of this Act designed to protect public health, safety, or the environment or conserve natural resources. There are also criminal penalties for any person who knowingly and willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act, or who knowingly and willfully falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act or knowingly and willfully reveals any data or information required to be kept confidential by this Act.

The criminal penalty is a fine not more than $100,000, or imprisonment for not more than one year, or both.

Subsection 28(d) provides for application of the criminal penalties against corporate officials when the violator is a corporation or other business entity.

Subsection 28(e) states that the remedies prescribed in this section may be exercised concurrently and are in addition to any other remedies afforded by any other law or regulation.

SECTION 29—ENVIRONMENTAL BASELINE AND MONITORING STUDIES

Subsection 29(a) requires that prior to permitting oil and gas drilling on any area of the Outer Continental Shelf not previously leased under this Act, the Secretary, in consultation with the Administrator of the National Oceanic and Atmospheric Administration of the Department of Commerce, shall make a study of the area involved to establish a baseline of those critical parameters of the Outer Continental Shelf environment which may be affected by oil and gas development.

The Committee believes that these environmental baseline studies are essential to determining the actual environmental impacts of oil and gas development. The baselines studies may be made after leases are issued but must be completed prior to the time drilling begins.

Subsection (b) requires monitoring of production areas in a manner designed to provide time-series data which can be compared with previously collected data for the purpose of identifying any significant changes.

Subsection (c) directs the Secretary to give preference to the use of Government owned and Government operated vessels, to the maximum extent practicable, in contracting for work in connection with the environmental baseline and monitoring studies. The Secretary will coordinate all such studies with the Administrator of the National Oceanic and Atmospheric Administration and shall, whenever possible, utilize existing Government owned and Government operated marine research laboratories in conducting the studies.

The Conference Report of the House and Senate Appropriations Committees on the Special Energy Research and Development Act of 1975, H.R. 14434 (H. Rept. No. 93–1123), detailed the agreement that with regard to energy-related environmental baseline research on the Outer Continental Shelf, the resources of the agency best outfitted to carry out this task be utilized on a contract basis. It was agreed that this agency was the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. The Special Energy R & D Act appropriated $6,630,000 to the Department of Commerce to remove from mothball, properly outfit and man three of the nation's finest research vessels, the *Discoverer*, the *Surveyor*, and the *Miller Freeman*. These vessels would be made available to work with the Department of Interior in conducting environmental baseline research, especially in target areas for new development.

The Committee wants the studies mandated by the section to be cooperative efforts of all government agencies with capability. This would include NOAA, the Geological Survey, and the Bureau of Land Managment.

Testimony in five days of hearings before the Senate Ocean Policy Study (S. Res. 222) has confirmed that current Federal data-gathering efforts on the OCS are inadequate and insufficient to cope with a stepped-up leasing effort. Additional scientists, ships and equipment are going to be needed.

Section 203 revises the terms under which the Secretary of the Interior may offer oil and gas leases on the Outer Continental Shelf.

Under existing law the Secretary is permitted to offer oil and gas leases on the basis of either (1) a cash bonus bid with a royalty fixed at no less than 12½% of the gross revenue from the lease, or (2) on the basis of a royalty rate bid with a fixed cash bonus. Since the OCS Lands Act was approved in 1953 all OCS leases have been offered for cash bonus bids with a royalty rate fixed at 16⅔% of the gross value of production. The Department of the Interior plans a small scale test of royalty bidding as part of the OCS lease sale scheduled for September, 1974. Section 203 revises subsection 8(a) of the OCS Lands Act to

eliminate the provision which allows royalty bidding. The new subsection 8(a) retains the cash bonus bidding option and adds the option of a lease under which a net profits share is reserved to the United States.

The Committee's decision to eliminate the royalty bidding alternative is based on the widespread agreement of most economists and oil industry representatives concerning the unndesirable effects of royalty bidding. Specifically, the Committee believes that royalty bidding would encourage speculation, increase the likelihood of premature shutdown of production under conditions of high royalty rates, and result in reduction in petroleum output and lease revenues.

However, the Committee wants to provide a lease allocation system that would encourage the widest possible participation in competitive lease sales consistent with receipt by the public of fair market value for its resources. Testimony before this Committee and elsewhere has revealed general acceptance of the proposition that high bonus bids have created a barrier to the entry of small and medium size oil firms to the OCS arena. The Committee believes that net profits share arrangements can be effective in shifting government revenue away from initial bonuses and into deferred payments made out of a leaseholders profits.

Under the provisions of Section 203 the Secretary would be allowed to offer net profits leases either (1) on the basis of a cash bonus with a fixed share of the net profits derived from operation of the tract of no less than 30 per centum reserved to the United States, or (2) on the basis of a fixed cash bonus with the net profit share reserved to the United States as the bid variable.

In order to determine net profits it is necessary to resolve a number of potentially complex accounting issues concerning the allocation of costs and income. The overall impact of these matters on the government's revenue should be relatively minor since any reduction in the public's net profits share (resulting—for example—from the caluculation of net profits after rather than before income taxes) probably would be offset by a compensating increase in bonus payments. This increase could be substantial. Since a reduction in bonuses is an important objective of the legislation it was decided that these cost allocation issues should be resolved in favor of lower bonuses, with attention to administrative simplicity and accepted industry practices.

Under existing law, all OCS oil and gas leases are for a primary term of five years. As amended by Section 203, Subsection 8(b) of the OCS Lands Act would permit the Secretary to issue leases with a primary term of up to ten years.

The purpose of the increase in permissible maximum primary lease term is to encourage exploration and development in areas of unusually deep water or adverse weather conditions, where the five year period may be insufficient for both exploration and the mobilization of new technology called for in the event of a discovery.

Section 204 further amends Section 8 of the OCS Lands Act by requiring that royalty and net profits share oil produced from all leases granted after the effective date of the amendment be offered

by the Government at a competitive auction. The physical quantity represented by the Government's net profit share is determined by dividing the net profit due the United States attributable to oil by its unit value at the wellhead.

The existing law (Section 5(a)(1)) authorizes sales of royalty oil and gas "at not less than market value" but sets out no other guidelines. The Secretary has been allocating royalty oil to "small refiners", as defined in Department regulations.

The purpose of the amendment is to create a free market in crude petroleum. However, the Committee was anxious to insure that independent refiners not be denied access to OCS crude. To this end, Section 203 directs the Secretary to limit participation in sales where such limitation is necessary to assure adequate supplies of oil at equitable prices to independent refiners. The Secretary can define the term "independent refiner" by regulation. The Committee intends that the term apply only to those refiners not part of an organization which produces crude petroleum. The Secretary could impose a size limitation in terms of refining capacity if he deemed that desirable.

Section 205 amends Section 15 of the OCS Lands Act to provide for a comprehensive annual report by the Secretary to the Congress on the entire Outer Continental Shelf program. It specifies that the report include: a detailing of all moneys received and expended, and of all leasing, development, and production activities; a summary of management, supervision, and enforcement activities; a summary of grants made from the Coastal State Fund; and recommendations to the Congress for improvements in management, safety and amount of production in leasing and operations in the Outer Continental Shelf and for resolution of jurisdictional conflicts or ambiguities.

This report will aid the Congress in performing its oversight functions and should be very useful to anyone interested in the OCS program.

Section 206 adds two new subsections to Section 5 of the OCS Lands Act. Both are designed to insure maximum production from outstanding leases.

The new subsection 5(d) provides that all leases issued after S. 3221 is enacted must require that development be carried out in accordance with a development plan which has been approved by the Secretary. Failure to comply with the development plan will terminate the lease.

The development plan will set forth, in the degree of detail established in regulations issued by the Secretary, specific work to be performed, environmental protection and health and safety standards to be met, and a time schedule for performance. The development plan may apply to all leases included within a production unit.

A proposed development plan must be submitted to the Secretary within six months after the date of enactment of S. 3221 for all outstanding permits and leases. Failure to submit a development plan or to comply with an approved development plan shall terminate the lease.

The Committee recognizes that there must be some flexibility in the degree of detail required in development plans. It expects that the Secretary will require exploration activity to start within a specified time. If production is established the development plan would need to be revised. This subsection authorizes revisions of development plans if the Secretary determines that revision will lead to greater recovery of the oil and gas, improve the efficiency of the recovery operation, or is the only means available to avoid substantial economic hardship on the lessee or permittee.

The new subsection 5(e) prohibits flaring of natural gas from any well after the date of enactment of S. 3221, unless the Secretary finds that there is no practicable way to obtain production or to conduct testing or workover operations without flaring.

The Committee believes that unnecessary waste of this valuable natural resource must not be permitted.

Section 207 amends Section 11 of the OCS Lands Act which authorizes the Secretary to permit geological and geophysical exploration in the Outer Continental Shelf.

The revised Section 11 would require that all permits for such explorations contain terms and conditions designed to (1) prevent interference with actual operations under any OCS lease and (2) prevent or minimize environmental damage. The permittee would be required to furnish the Secretary with copies of all data (including geological, geophysical, and geochemical data, well logs, and drill core analyses) obtained during such exploration. The Secretary must maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the permittee, whichever comes later.

The Committee believes that requiring the permittee to give the data to the representative of the property owner (i.e. the Secretary) is an appropriate condition for allowing the exploration. At the same time, the Committee believes that the confidentiality requirement will protect the competitive interest of the explorer.

Section 208 is a technical amendment to delete material from Subsection 5(a)(2) which duplicates the new Section 28 which would be added by S. 3221.

Paragraph (2) of Subsection 4(a) of the OCS Lands Act provides that:

> To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the Outer Continental Shelf. . . .

The phrase "as of the effective date of this Act" has been interpreted to freeze the applicable State law as of August 7, 1953. The Commit-

tee believes that whenever State law is applied on the Outer Continental Shelf it should be the law in effect at the time of application. Section 209 achieves this by deleting the reference to the effective date of the OCS Lands Act.

TITLE III. MISCELLANEOUS PROVISIONS

Section 301 directs the Secretary of Transportation to review appropriations and staffing needed to monitor adequately pipelines to assure that they meet safety standards and to identify needs for new legislation. It also directs the Interstate Commerce Commission and the Secretary of Transportation to report on the adequacy for transportation facilities for OCS oil and gas.

Section 302 directs the Secretary of the Interior to report to the Comptroller General and the Congress within 6 months on all shut-in oil and gas wells and all wells flaring natural gas. The Comptroller General is to review and evaluate the reasons for allowing the wells to be shut-in or to flare gas within 6 months after receiving the Secretary's report. The Committee is aware that the Secretary and the Federal Power Commission have collected considerable data on this subject already. It is not intended that this job should be repeated as long as the existing reports contain the information needed by the Comptroller General.

Section 303 directs the Attorney General to study methods for implementing a uniform Federal law providing liability for damage from marine oil spills from all sources, including OCS operations, tankers, and deepwater ports. The Administrative Conference of the United States and the Office of Technology Assessment are to be consulted.

The Committee is acutely aware of the need for a comprehensive Federal statute providing liability for oil spill damage. The Trans-Alaska Pipeline Act (P.L. 93–153) established special liability rules and funding for oil which passes through the pipeline and is spilled from tankers. The Deepwater Ports Act currently under consideration will establish another set of rules for such ports, as will this Act, for OCS spills. Legislation for tanker oil spill liability is being drafted by the Committee on Commerce. The Committee hopes that one Federal law can be enacted to cover all these situations. Section 303 is identical to a provision in the Deepwater Ports bill being reported jointly by this Committee, and the Committees on Public Works and Commerce.

Section 304 is a standard severability clause.

VII. Tabulation of Votes Cast in Committee

Pursuant to Section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of voters of the Committee during consideration of S. 3221:

1. During the Committee's consideration of S. 3221 a number of voice votes and formal roll call votes were taken on amendments. These votes were taken in open markup session and, because they were previously announced by the Committee in accord with the provisions of Section 133(b), it is not necessary that they be tabulated in the Committee report.

2. S. 3221 was ordered favorably reported to the Senate on a roll call vote of 10 yeas and 5 nays. The vote was as follows:

Jackson—Yea	Fannin—Nay
Bible—Yea	Hansen—Nay
Church—Yea	Hatfield—Yea
Metcalf—Yea	Buckley—Nay
Johnston—Yea	McClure—Nay
Abourezk—Yea	Bartlett—Nay
Haskell—Yea	
Nelson—Yea	
Metzenbaum—Yea	

VIII. Cost Estimates

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 the Committee provides the following estimates of cost:

Enactment of S. 3221 will entail some increase of Federal costs for more intensive management and inspection of OCS operations. The Committee believes that these costs should be offset by increased revenues to the government from the increased oil and gas development on the OCS.

IX. Executive Communications

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 4 1974

Dear Mr. Chairman:

This responds to your request for the views of this Department concerning several bills which deal with the energy resources of the Outer Continental Shelf, S. 3221, S. 2762, S. 2858, S. 2922, S. 2389 and S. 3185.

We recommend that none of these bills be enacted, since appropriate action with respect to OCS energy resources can be taken under existing law.

The bills

S. 3221 would require the Secretary of the Interior to undertake a program of promoting petroleum production from the Outer Continental Shelf subject to new environmental and safety requirements. The Outer Continental Shelf Lands Act would be amended to declare that United States policy is to make available for leasing prior to 1985 all OCS lands determined to have geologically favorable potential and be capable of development without undue environmental harm. To carry out this policy the Secretary would be required to develop a leasing program, specifying the size, timing and location of leasing activity that will best meet energy needs for the ten year period following approval, subject to certain criteria directed toward overall resource management, geographic decentralization of leasing and receipt of fair market value for public resources. An open nomination procedure would be established for areas to be leased or excluded from leasing. The bill specifies matters to be included in the environmental impact statement for leased areas and authorizes the Secretary to obtain all information from public or private sources necessary to make evaluations required by the Act.

The bill would also require the Secretary to undertake a major OCS oil and gas survey, including geologic investigations and drilling, and a mapping program. No part of the survey and mapping program would be considered a major Federal action under the National Environmental Policy Act of 1969 except drilling exploratory wells. Persons holding leases or permits for oil or gas exploration or development on the OCS would be required to provide the Secretary with pertinent information concerning the area which the lease or permit covers. In addition,

the Secretary would be required to carry out a research and development program to improve technology related to development of OCS oil and gas resources.

The bill provides for a safety and environmental protection program which would include (i) safety and environmental standards for equipment used in OCS exploration, development and production, (ii) equipment and performance standards for oil spill cleanup plans and operations, and (iii) a safety regulation enforcement program which includes specified Federal inspection of OCS operations. Issuance and continuance of leases would be conditioned upon compliance with such regulations. A standard of strict liability for oil spill damages would be imposed on leaseholders except where damage is caused by war or the damaged party.

Section 8 of the Outer Continental Shelf Lands Act would be revised to specify that bidding for OCS leases on a "net profit" basis is allowed, in addition to bonus bidding, but royalty bidding would be excluded. The bill would also permit the Secretary to sell Federal royalty oil by competitive bidding and would prohibit him from continuing leases which would otherwise terminate, unless there is a reasonable assurance of production from such leases within the period of an extension. Additional provisions are included to assure full development and maximum production from OCS leases, including a General Accounting Office audit of shut-in wells, Secretarial unitization or cooperation or pooling agreements, and review authority for development plans.

Five percent of OCS revenues would be paid into a newly created Coastal States Fund, subject to a $200 million per year maximum. The Secretary would be authorized to make grants from the Fund to coastal States to ameliorate adverse environmental effects and control secondary social and economic impacts associated with development of Federal OCS energy resources. Secretarial regulations for administration of the Fund would include requirements for grant eligibility, with the proviso that no grant could be made for more than ninety percent of the cost of activities to be conducted under the grant. The Secretary would also be authorized to negotiate with a view to developing interim agreements to permit energy resource development prior to final judicial resolution of disputes relating to such resources. The President would be authorized to establish procedures for resolution of international or interstate boundary disputes.

S. 2858 requires the Secretary to prepare within 6 months of enactment a leasing schedule of all OCS areas to be leased in the ensuing five years. The schedule must include an assessment of relative hazards to the environment, or commercial or recreational uses of adjacent ocean and coastal areas, of operations in each area, compared to the environmental hazard in all other areas under consideration in the leasing schedule. Broad authority is provided for the Secretary to obtain information necessary to assist him in making the assessment. Within the earlier of (1) one year after enactment or (2) promulgation of the five-year leasing schedule and assessment of environmental hazards, the Secretary would be prohibited from taking steps to lease any area until other areas having a lesser hazard to the environment or commercial or recreational uses have already been leased or the leasing process for such areas has already begun. New leasing schedules and environmental assessments would be required at not less than five year intervals.

The bill also would establish a policy of insuring, "through improved techniques, maximum precautions, and constant use of the best available technology by well-trained personnel, the safest possible operations in the Outer Continental Shelf." A number of fixed requirements to implement this policy are set forth in the bill together with an elaboration of procedures to be followed in imposing safety requirements. Additional enforcement provisions and civil and criminal penalties are included in the bill. The bill also imposes strict liability for unlawful oil spills up to $15 million and subject to the defense that damage resulted from an act of the injured party or an act of war or government. Liability in excess of $15 million would be subject to ordinary negligence rules.

S. 2672 creates a Marine Resources Conservation and Development Fund into which would be paid seventy percent of the revenues from OCS leases after enactment. Thirty percent of such revenues would be paid to the coastal state adjacent to the lease to be used for conservation purposes. The Marine Resources Conservation and Development Fund would be available to the Secretary of Interior for "broad and varied marine resources conservation and development programs." A newly established Advisory Board would be established to assist the Secretary in carrying out his functions in using the Fund, and Regional Environmental Review Boards would be established to review the adequacy of provisions of law and regulations to protect the environment and to monitor enforcement actions, make recommendations to the Secretary, and hold public hearings in connection with administration of the Act.

S. 2922 would provide that sixty percent of revenues from OCS leases after enactment would be paid to the adjacent coastal states without limitation on use except that (i) rentals, bonuses or revenues other then royalties shall be included only if necessary to produce revenues of $50 million in each state and (ii) if revenues attributable to a state in any one year exceed $25 million the share of the excess over that amount shall be reduced in accordance with a schedule of percentages ranging from 45 down to 10 percent on the excess over $50 million.

S. 2922 also requires the Secretary within one year after enactment to conduct a comprehensive study and collect all relevant data on OCS areas "potentially available for exploration of oil and gas resources," but not yet leased pursuant to the Act. No leasing could be conducted on any area until the study of that area was completed.

On the basis of the study and other specified procedures, the Secretary would also be required to designate (i) priority areas having the greatest potential for development of oil and gas resources and the least risk of environmental damage (ii) areas of critical environmental concern in which leasing should be prohibited. The bill specifies certain sources from which the Secretary would gather information, including non-governmental parties. All such information must be made available to the public but, unless otherwise provided by law or the Act, individual company data obtained would be kept confidential for one year except as necessary to carry out the bill's provisions. Public hearings would be required in coastal areas affected by leasing and the consent of the Governor of any affected coastal state would also be required.

The bill imposes several additional leasing requirements. The Secretary must make public sixty days prior to entering into any lease the term of a lease, the background information obtained for the area in which the lease is located, and, upon request, bids and supporting materials. Special conditions to take the background information into account could be imposed in any lease and specific authority would be given to allow the Secretary to give preference as to the oil and gas produced to the area affected by the lease. The bill also requires the Secretary to impose specified production requirements and to conduct a survey of 'producing, shut-in' wells.

S. 2922 also adds a requirement that no lease be issued until the Federal Trade Commission and the Department of Justice determine that it will not involve an antitrust law violation. Also required would

be a Secretarial report with recommendations for promoting competititon and maximizing revenues from OCS leasing and a plan for implementing such recommendations. The report would be required to consider various bidding systems, measures to ease entry of new competitors and measures to increase supply to independent refiners and distributors.

The Environemntal Protection Agency would be given authority to prescribe and enforce environmental protection regulations and an Outer Continental Shelf Operations Advisory Board would be established. The bill would also require States to prepare a report like the environmental impact statement which Federal agencies are required to prepare under the National Environmental Policy Act before construction or development of any kind is permitted on navigable waters, as defined in section 2(a)(2) of the Submerged Lands Act. The bill also imposes strict oil discharge responsibility up to $100 million, subject to certain defenses including the defense that the discharge was caused by act of war or by negligence of the damaged party. An Outer Continental Shelf Liability Fund would be established to pay claims in excess of those recoverable against private parties (up to $100 million). Owners and operators of vessels would be liable only up to $14 million. The Fund would be constituted and continually replenished by a five cents per barrel fee imposed on OCS production.

The bill would also require the Secretary to establish and maintain on OCS lands a reserve operating capacity for ninety days production of an amount of oil equal to one-fourth of 1972 crude oil imports.

S. 2380 requires a distribution of OCS revenues from leases after enactment (i) 50% to the adjacent coastal state (ii) 25% to other states, and (iii) 25% to the Federal government.

S. 3185 specifies a formula for determining Federal OCS revenues in addition to the cash bonus for each lease executed after enactment. Under the formula, the Federal government would receive sixty percent of the well head value of oil and gas produced after deduction of production and exploration costs. Such costs would be limited to forty percent of the well head value of oil and gas produced, except that the Secretary could allow additional costs associated with secondary recovery methods. Exploration and production costs could be carried over from year to year. The Secretary would also be given discretion to reduce the 60 percent Federal share to 50 percent and to require that not over 16 2/3 percent of the Federal entitlement be paid in kind. The Secretary would have authority to prescribe regulations and lease terms including imposition of rentals.

Discussion We agree generally with many of the essential objectives of these bills, but recommend against their enactment at this time. The existing Outer Continental Shelf Lands Act permits substantial latitude for adjustment to changing circumstances and our program for development of the OCS can be fully carried out under the present law. Significant changes in that law could seriously delay achievement of the degree of national energy independence which we believe is vital.

Discussed more specifically below are some of the more important respects in which we believe provisios of these bills are either unnecessary or undesirable.

Scope of leasing program Provisions limiting or otherwise modifying the scope of the OCS leasing program are undesirable. For example, the goal stated in S. 3221 of leasing all available prospectively productive OCS lands by 1985 is unrealistic and implies a rapid rate of development which may involve undesirable environmental or other effects and which is far in excess of that presently planned. Our best estimate of the next appropriate change in the scope of the OCS program is to lease some 10 million acres in calendar year 1975. We believe that the rate of leasing implicit in S. 3221 would dispose of vast OCS acreages without increasing petroleum exploration and production beyond that achievable under the current program. The current leasing program is sufficiently large that availability of drilling rigs will be the main limiting constraint rather than availability of unexplored leases. Conversely, the requirement in S. 2858 that all areas be ranked by expected productivity and hazard to environmental, commercial and recreational factors and be made available for development so that the most environmentally safe areas are leased first is unduly restrictive. We lack information and administrative ability to carry out this task, even if it were desirable to do so. Complying with this bill's limitations could well result in a moratorium on leasing vitally needed OCS energy resources.

Furthermore, the CEQ study has concluded that leasing can be carried out in the areas included in that study if appropriate safety and environmental requirements are adhered to in each area. We intend to require of the industry whatever design criteria and practices are necessary to meet the CEQ concerns.

In contrast, the present law provides sufficient flexibility for an appropriate balancing of energy and environmental factors. Our concern is to improve the leasing system within the present framework and in this connection the Department recently has adopted a two-tier system for

designating tracts to be leased. Under it industry nominates promising areas and the public at large is invited to comment on environmental and other considerations bearing on tract selection. Based on this and its own independent review, the Department then specifies areas to be leased.

A related consideration is the specific study or other requirements found in several of the bills which are prerequisites to leasing. S. 2922, for example, requires completion of a very comprehensive study and also mandates that the consent of adjacent coastal State governors be obtained prior to leasing. We concur in the need for adequate study of areas to be leased. Present law adequately provides for this through the National Environmental Policy Act and the Outer Continental Shelf Lands Act, and our policy is to expand our capability rapidly for determining all the facts necessary to a balanced leasing program. We also agree that consultation with coastal States is appropriate but requiring consent of their governors is unwise in view of the broader national aspects of the OCS program.

Lease offering and conditions - competition and other economic considerations The OCS Lands Act provide that leasing of OCS lands shall be by competitive sealed bidding on the basis of a cash bonus bid with a fixed royalty on a bid royalty with a fixed bonus, but in no instance can the royalty be less than 12.5 percent. The leases are for a five year term. These provisions are sufficiently flexible for institution of the most desirable alternative leasing systems to promote competition while serving the public's interest in receiving a fair return for its resources and using those resources in the most responsible manner.

Different methods of bidding for OCS leases are under constant consideration. Bonus bidding has historically been used for Federal OCS leasing, but the Department is committed to a test royalty bid offering not later than the September 1974 OCS lease sale. Although this experiment is a royalty bid experiment, we believe that the information developed will tell us enough about both bonus and royalty bidding to indicate whether further consideration of other possible bidding methods is justified. We are also examining the feasibility of a number of other systems such as profit sharing, installment or contingency bonus payments.

We are opposed to mandating any single system which would result in a loss of the flexibility which the present Act provides. Imposition, for example, of the net revenue sharing formula in S. 3185 would be highly undesirable, even though such a leasing system may have advantages (as well as disadvantages) compared to other leasing methods.

We also oppose the provision in S. 2922 specifically requiring FTC and Justice Department review and approval of each lease for antitrust law violations. Normal antitrust inforcement procedures are adequate to assure compliance with these laws and individual lease reviews would unduly disrupt the OCS program. In addition, the bill's requirement that Interior report on ways to promote competition is unnecessary in light of our present continuing effort to develop more competitive leasing system.

Safety and environmental programs. The need for constantly improving our environmental protection and safety programs is clear and we concur in the broad objective of several of the bills to achieve this end.

The Interior Department is, however, implementing the present OCS Lands Act in accordance with the National Environmental Policy Act to insure that these considerations are adequately taken into account. Provisions such as those contained in S. 2858, S. 2672, S. 2922 and S. 3221 are unnecessary as the actions are authorized under existing laws. Also such provisions might be detrimental if transitional problems of complying with their provisions delay current studies or other actions we are currently undertaking to improve environmental protection and other requirements. Moreover, complying with such elaborate procedures as those mandated in section 4 of S. 2858 (particularly new sections 10 of the Act) could well hinder prompt and balanced development of environmental and safety requirements. And we oppose specifically the undersirable fragmentation of responsibility which would result from assigning safety and environmental regulation responsibility to the Environemental Protection Agency, as does S. 2922.

The Department is undertaking preparation of a full environmental impact statement on the new 10 million acre leasing program pursuant to the National Environmental Policy Act. The Council on Environmental Quality has recently completed a study of OCS leasing, which includes a number of recommendations which we believe will improve our administration of the OCS program. These and other actions will, we submit, appropriately serve the objective of insuring safety and environmental protection.

Research and Development A strong research and development program is essential both with respect to energy and environmental aspects of OCS mineral development. It is, however, being accomplished under existing law and several provisions in the bills under consideration might, if enacted, actually adversely affect the R&D effort. Mandating

a wide range of studies by different agencies, as does S. 3221, may preclude desirable coordination and executive flexibility. S. 2672 would channel funds on an arbitrary basis to states and thereby constitute an unwise diffusion of R&D efforts.

Public information and participation in OCS decisions Assuring that the public has access to information needed to make intelligent decisions with respect to OCS energy resources and an adequate opportunity to participate in OCS program decisions is essential. Equally important is the desirability of developing a more extensive resource information base.

The Interior Department presently has the necessary authority to pursue these objectives. Consultations with industry representatives, environmentalists and others are presently underway concerning the advisability of an exploratory program. The present OCS Lands Act permits the Department to require that permittee furnish us with data obtained during exploration and we expect to reach conclusions about what should be done in this regard shortly.

It would not be appropriate to amend the OCS Lands Act at this time to require the development of specific informational programs. To illustrate, the survey and mapping program required by section 202 of S. 3221 would impact quite heavily and perhaps undesirably on our OCS program. If enacted, this provision would require that a survey of OCS oil and gas resources be conducted and that the Secretary maintain a current series of detailed topographic, geological, and geophysical maps of and reports about the OCS. Maps for all areas under lease or proposed for leasing prior to July 1, 1977, would have to be prepared and published prior to July 1, 1976; maps of areas proposed for leasing after July 1, 1977, would have to be prepared and published not later than six months prior to the last day for submitting bids for the areas offered for lease; the maps of all prospective areas must be prepared and published not later than ten years after the date of enactment.

Under these provisions a plan for conducting the prescribed survey and mapping programs would have to be submitted to Congress within six months after enactment. A progress report to Congress, including a summary of initial data compiled, would be due within 20 months after enactment, and progress reports would be required on an annual basis thereafter. Conducting such an extensive mapping and survey effort would be extremely difficult, expecially within the time frame set forth, and would not likely produce results justifying the effort. Again, our present program undertaken pursuant to existing authority and modified as needs change, should be satisfactory.

Moreover, since the bill's provisions would exempt all actions other than the drilling of exploratory wells from classification as a major Federal action for the purposes of Section 102(2)(C) of NEPA, it would seem that exploratory wells must therefore be considered major Federal actions. Requiring an EIS could significantly delay the drilling of exploratory wells that are important to the conduct and completion of the survey and mapping programs prescribed under S. 3221 and could result in unnecessary delays in the preparation and publication of the prescribed maps and in the development of information important to an effective and expeditious leasing program for OCS lands.

Similar objections appear in several of the other bills. S. 2922 imposes several data gathering requirements in section 3 (adding a new section 15 to the OCS Lands Act) which are costly and may be virtually impossible to obtain within the time frame set forth. The impact of the study requirement is particularly serious because of the bill's requirement that no leasing be conducted in any area for which the study has not been completed.

Distribution of OCS revenues Several of the bills (S. 3221, S. 2672, S. 2922, S. 2389) would divert revenues from the U.S. Treasury to adjacent coastal and other states and we oppose such provisions. Receipts under the Outer Continental Shelf Lands Act from OCS oil and gas leases belong to the Federal Government and currently make a substantial contribution to Federal income. If such revenues were diverted to coastal and other States, as the bills provide, the Federal Government would need to increase its income from other sources. Also the bills adopt inflexible allocations of funds to such States without regard to need or resources.

* * *

To summarize, the bills before the Committee deal with the major issues relating to use of the energy resources of the Outer Continental Shelf. To meet our present energy needs, however, we believe that the present OCS Lands Act provides a satisfactory framework and that further legislation such as that before the Committee is undesirable or unnecessary.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administrations's program.

Sincerely yours,

John C. Whitaker

Under Secretary of the Interior

Hon. Henry M. Jackson
Chairmman, Committee on
Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

United States Senate
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

20 May 1974

The Honorable John C. Whitaker
Under Secretary
Department of the Interior
Washington, D. C. 20240

Dear Secretary Whitaker:

During your testimony on May 6 on S. 3221 and other bills pending before the Subcommittee which would revise the Outer Continental Shelf Lands Act, you indicated that the Department was in "general agreement with many of the essential objectives of the bills" but you recommended against their enactment "at this time". Your statement indicated that your recommendation was based on the belief "that a significant change in that law (OCS Lands Act) could create serious delays in achieving the degree of energy self-sufficiency for the nation which is no necessary".

In order to help the Subcommittee in its deliberations, I would appreciate it if you would specify what provisions of S. 3221 could, in your opinion, "create serious delays" and indicate precisely how and why such delays could occur.

In addition to this information, I have a number of specific questions which I would like the Department to answer. They are:

1. What is the status of the alternatives for Outer Continental Shelf exploratory programs which you indicated the Department was discussing with environmental and industry groups?

The Honorable John C. Whitaker 20 May 1974
Page 2

2. You indicated that the Department had not decided to conduct profit sharing experiments because there might be a legal challenge. Do you object to being given the express authority to conduct such an experiment as S. 3221 would provide?

3. You indicated that the Department was establishing an environmental monitoring and/or baseline study program in the Mississippi-Alabama-Florida area leased recently. Please describe this program in some detail. What is the nature and scope of the information being sought? How long will the studies be conducted? What level of funding and manpower is allocated to these studies?

4. You indicated that the coastal states have the right to refuse to allow a pipeline from the Federal Outer Continental Shelf to cross the State owned submerged lands. Has the Department Solicitor or the Attorney General made a formal ruling on this question? If so, please furnish it to the Committee. If no formal ruling has been made, what is the basis for your opinion? It appears to me that your position is inconsistent with the provisions of Section 6 of the Submerged Lands Act (43 USC 1314) which reserves certain rights to the United States over the submerged lands.

5. You indicated that in order to lease ten million acres in 1975 as directed by the President the Department would probably offer between 12 and 15 million acres. In light of the experience in the Department's most recent sale, when less than 50% of the acreage offered was actually leased, isn't it likely that the Department might have to offer twenty million acres in 1975?

Thank you very much for your cooperation.

Very truly yours,

Lee Metcalf
Chairman, Subcommittee on
Minerals, Materials and Fuels

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 1 1974

Honorable Lee Metcalf
Chairman, Subcommittee on
Minerals, Materials and Fuels
United States Senate
Washington, D.C. 20510

Dear Senator Metcalf:

In response to your letter regarding Under Secretary Whitaker's May 6 testimony on S. 3221 and other legislation dealing with S. 3221, please find enclosed our comments on specific provisions of S. 3221 which could create serious delays in achieving the degree of energy self-sufficiency for the nation which is so necessary.

Generally, while many features of the bill are apparently directed at improving OCS leasing procedures, there is little to encourage early exploration and optimum production from OCS leases. Much of the authority proposed concentrates heavily on geological and geophysical investigation and reporting. The bill requires minerals fact finding studies with obligations to report to Congress, without reference to authority to implement findings and recommendations.

Responses are also provided to the five specific questions you asked.

We will be glad to provide any further information you desire.

Sincerely yours,

(Sgd) Ken M. Brown

Ken M. Brown
Legislative Counsel

Enclosures

Question 1:

What is the status of the alternatives for Outer Continental Shelf exploratory programs which you indicated the Department was discussing with environmental and industry groups?

Answer:

We have had a series of useful discussions with representatives from industry and environmental organizations. A report summarizing the various opinions that were expressed during these discussions is enclosed. After a careful appraisal of the alternative exploratory programs which had been proposed, we doubt that any one of them would add much to the 10-million acre offshore leasing program planned for 1975. But we have not completely rejected the option of accelerating offshore activities by a suitable exploratory program and will closely examine each promising program that is recommended. We are also pursuing some other measures which will increase the rate of exploration on the Outer Continental Shelf. The Department is discussing a limited deep stratigraphic drilling program with an industry group, which would provide geologic information for several frontier areas. All drilling would take place under carefully specified conditions to prevent undue harm to the environment. All information would be made available to the Department 30 days after collection, except for information on environmental hazards or shows of petroleum, which must be reported immediately. Data on environmental hazards would be, and data on shows of petroleum when judged to be significant may be, made public at once. The Department is also considering a policy of requiring that all industry geological and geophysical data should be made available to the Government. Such data would be released to the public 10 years after collection, or 60 days after a lease sale, whichever comes sooner. A public hearing has been scheduled for the 15th of July for this purpose.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Memorandum

MAY 24 1974

To: Secretary
Under Secretary

Through: Jared G. Carter

From: Darius W. Gaskins, Jr.

Subject: OCS - Summary of consultations with Industry and Environmental Organizations

We recently met with representatives of the following companies:

Amoco	Exxon	Murphy Oil
Citgo	General Crude Oil	Phillips
Columbia Gas	Gulf	Shell
Continental Oil	Husky Oil	Sun Oil
Dow Chemical	Mobil	Texaco

and environmental organizations:

Center for Law and Social Policy	NRDC
Environmental Policy Center	National Wildlife Federation
The Institute of Ecology	Sierra Club
National Audubon	Sport Fishing Institute

to obtain their views on the alternative exploration programs we had been considering and on some other matters. Briefly, the programs are:

1. Sale in 1975 in several frontier areas covering a limited number of leases and requiring unitized exploration.

2. Company exploratory drilling on structures through one-year leases in limited number of frontier areas, followed by a preference lease if a discovery is made. All data to be made public.

3. Federal exploratory leasing program, all data being made public immediately.

4. Federal stratigraphic drilling program, all data being made public immediately.

This is a summary of their answers to the main questions put to them.

Question 1: Would any of the proposed exploration programs get petroleum faster than the planned ten million acre two-tier leasing program?

There was not a single company which thought that any of the proposed programs would add much to the current ten million acre program. A typical comment was: "We believe pre-lease drilling is wholly unnecessary, would delay the programs, and further would not be very effective because the best structures are usually large and complex, and they require a considerable exploration program involving many wells to define their potential." We were told repeatedly that a few holes even when drilled on structure would not condemn an area if they turn out to be dry and not significantly increase the speed of initial exploration if shows of hydrocarbon appear. Specific examples noted were:

- About 200 holes were drilled in the North Sea before the first major oil discovery was made.
- About 65 holes have been drilled off Nova Scotia without finding commercial quantities of hydrocarbons.
- With the exception of Prudhoe Bay, many unsuccessful holes were drilled on the Alaskan North Slope.

This is not to say that some companies would not like more information on frontier OCS basins. One major, e.g., said that 30 holes if drilled on structure would really give us a lot of information. The Oregon/Washington case was cited as an example where a few holes told a lot about that area. And if one of the proposed exploration programs had to be selected, this company would prefer alternative 1. But they, as well as all the other companies, would rather proceed under our planned accelerated leasing program and drill the holes in the course of exploring their tracts acquired at regular lease sales.

One other major company stated a preference if one of the programs had to be adopted. Their view was that if data must be made public, the government may as well drill the wells, and so they opted for alternative 3. All the other companies, majors and independents, did not favor any of the proposed programs.

One independent company was fearful that such exploration programs could destroy the independents' offshore business since the government may as a result be selling known oil deposits. This would favor the integrated companies and bring in large end users who would simply outbid the independents. The company argued that the independents make their money by finding and selling crude oil.

The representatives of the environmental organizations did not have very firm opinions on the programs. To the extent that preferences were stated, they favor

- an exploratory drilling program financed and operated by the government over any company-financed program;
- delaying the ten million acre leasing program until the results of the government exploration program are known;
- baseline studies before any lease sales take place, or at least before production begins, followed by a comprehensive monitoring program.

Question 2: Would a stratigraphic drilling program in frontier areas be useful in guiding lease sales toward the most promising structures? In particular, are you going to participate in the stratigraphic program of the "Sun group?"

There was no agreement on the merits of stratigraphic drilling. Most of the majors indicated that stratigraphic data would not add much to geophysical information. "Stratigraphic data is of minimal value if one has good geophysical data. The latter will indicate where the structures are and that's where we will drill." It was apparent that they would prefer less commonly available information before lease sales rather than more. As one of them put it, publicly available data just drives up bid prices.

Three of the independent companies argued that stratigraphic data for frontier areas would be quite useful since we lack definite knowledge about sedimentary structures. In their view, stratigraphic information can be used to guide lease sales toward the most promising tested structures. One large independent company would join the Sun group although they think it is a waste of time and money, because "the positive indications don't prove anything and the negative indications don't downgrade expectations." One of the majors stated that they would join the Sun group merely to protect themselves, while another definitely would not. The other companies did not commit themselves.

Question 3: Are there significant advantages, particularly with respect to rig-years saved, in unitizing the exploration efforts in frontier areas?

Most companies were either mildly for or mildly against unitization. Some believed that unitization would result in considerable savings in the number of exploratory wells drilled and, given the shortages of rigs, drilling pipes, casings, etc., significantly increase the rate of development in frontier areas. All companies, however, would prefer voluntary to imposed unitization, saying that far more voluntary units would exist if the government had not practiced checkerboard leasing in the past. Unitization [illegible] to entail problems with respect to allocating exploration costs fairly among the participants, and agreeing on the drilling plan and the drilling operator.

Question 4: What are your views about the Department's planned accelerated leasing program?

The companies, large and small, universally approved of accelerated leasing. Some stated that the oil industry has a large spare capacity to explore and develop much more acreage than in the past. Some believed that the industry can respond to sales of 10-15 million acres per year, while others suggested smaller numbers. All companies emphasized the importance of announcing sales frequently and regularly as far into the future as possible; this would make their planning efforts and those of their contractors far easier.

Almost all companies--majors and independents--took the opportunity to make the following points:

- They like the present bidding system and do not want any significant changes. Except for two independents, no company likes royalty bidding. The two companies favor some form of royalty bidding to ease the front money problem. Many of the companies prefer to see a general reduction in the level of bonuses paid, but "although a bonus bidding system has a front money problem, the other alternatives have worse disadvantages."

  Two of the independent companies stated that a royalty bidding system would encourage speculative land acquisitions, and bring in such end users as utilities and airlines who would simply outbid all but the very largest of the independents. They favor the current bidding system and a large-scale leasing program because "this would satiate the majors and leave a lot of good acreage for the smaller companies."

  Four companies, while acknowledging that such a system would probably not be feasible in the U.S., stressed the desirability of the British system in which tracts are allocated on the basis of work commitments and fixed profit sharing.

- They would like us to establish clear guidelines about our bid rejection system so that all participants know which criteria are being used. "Why doesn't the government state the minimum bid it will accept for each tract in advance of a lease sale?" Some companies are quite upset about any bid rejections. "We can't understand why you reject bids. After all, we are bidding in an auction."

- With respect to our proposed ban on joint bidding by the largest companies, some of the majors
  1. wanted to know how we arrived at the cutoff point of 5 billion barrels, and
  2. did not think it was desirable to prohibit joint bidding by the majors.

  One major company suggested that instead of a ban against joint bidding, the government might impose an upper bound on the number of tracts a company can acquire in any one sale.

  All of the independent companies favored joint bidding "but if joint bidding has to be limited, then the largest companies should be prohibited from bidding jointly."

- Bright spot analysis was said to be an important new tool in geophysical exploration, primarily in locating and identifying gas deposits. "Bright spot techniques may increase confidence to as much as 75 percent on existence of hydrocarbons, but we still will not know volumes."

Although we talked to only a relatively small number of companies, we believe that we did have a representative sample and that the answers would not change much if more companies were canvassed. In appraising the responses of the companies to our questions, we must remember that they basically are satisfied with the terms and conditions of offshore leases, and will therefore reject any modifications which are going to change the familiar pattern of doing business unless the modifications are clearly in the best interests of the industry. Despite this recognized bias, it is doubtful whether any of the exploration programs which had been proposed would add much to our accelerated leasing program. Notwithstanding the somewhat negative attitude of the majors toward the Sun Oil stratigraphic drilling program, there is no good reason why we should not approve this project. We are presently examining all aspects of unitization and will have a staff paper on this topic in the near future.

Darius W. Gaskins, Jr.

Question 2:

You indicated that the Department had not decided to conduct profit sharing experiments because there might be a legal challenge. Do you object to being given the expressed authority to conduct such an experiment as S.3221 would provide?

Answer:

At the time of the May 6, 1974 testimony, the Department was concerned that a profit sharing leasing experiment could not be conducted under the existing provisions of the OCS Lands Act without being subject to legal challenge. We now have a Solicitor's opinion which states that the existing Act offers sufficient flexibility to allow a profit sharing experiment. Therefore, as stated earlier under the discussion of delay problems of S.3221, the Department is attempting to formulate a profit sharing test. It is expected that the experiment can be held no later than January 1975. We do not now see a need for specific legislation to grant authority to conduct such an experiment.

Question 3:

You indicated that the Department was establishing an environmental monitoring and/or baseline study program in the Mississippi-Alabama-Florida area leased recently. Please describe this program in some detail. What is the nature and scope of the information being sought? How long will the studies be conducted? What level of funding and manpower is allocated to these studies?

Answer:

In May 1974, a Bureau of Land Management (BLM) contract was signed with the State University System of Florida Institute of Oceanography (SUSIO). The terms of this contract provide for the initial sampling of a baseline environmental survey of the Outer Continental Shelf (OCS) areas that were leased in the December 1973, Mississippi-Alabama-Florida lease sale. Field sampling began in mid-May, and will be completed for this first sample by the end of June after which time laboratory analysis will commence. Results of this baseline study will be finalized by March 15, 1975. Some of the environmental aspects to be studied include: background levels of hydrocarbons in water, sediment and organisms; background levels of trace metals in water, sediments and organisms; characteristization of benthic and planktonic communities; description of sediments and relationships between organisms and abiotic parameters; and standard oceanographic measurements such as salinity, temperature, micronutrients, dissolved oxygen.

The aim of the program is to establish a pre-operational baseline of those critical parameters in the OCS environment which may be affected by oil and gas development activities. Future measurements to be made on the

same stations, both inside the leased areas and outside on the control stations, will provide time series data which can be compared with previously collected information for the purpose of determining significant changes.

It is anticipated that these baseline/monitoring studies in the MAFLA area will continue for at least five years, and will be funded at $10-15 million. By the end of FY '74 the BLM will have added 9 new staff positions to develop study plans, review proposals, coordinate the efforts of all contractors, oversee contract activity, and liaison with Federal, State, and local agencies and institutions. An additional eleven positions will be open in FY '75. No manpower is being added to perform the actual sampling and analytical work.

Besides the baseline/monitoring program in the MAFLA area, BLM has requested funds to conduct similar studies in four other OCS areas: The Gulf of Alaska, Southern California, South Texas, and the Atlantic Coast. Study plans for these four additional areas are in various stages of development. The National Oceanic and Atmospheric Administration, in conjunction with the U.S. Geological Survey, the Bureau of Sport Fisheries and Wildlife, and the University of Alaska has submitted a proposal entitled "Environmental Assessment of the Northwestern Gulf of Alaska-First Year Program." This study plan represents a first step in the assessment of the marine environment in the Gulf of Alaska.

Question 4:

You indicated that the coastal states have the right to refuse to allow a pipeline from the Federal Outer Continental Shelf to cross the State owned submerged lands. Has the Department Solicitor or the Attorney General made a formal ruling on this question? If so, please furnish it to the Committee. If no formal ruling has been made, what is the basis for your opinion? It appears to me that your position is inconsistent with the provisions of Section 6 of the Submerged Lands Act (43 USC 1314) which reserves certain rights to the United States over the submerged lands.

Answer:

The question of coastal States right to refuse to allow a pipeline from the OCS to cross State owned submerged lands arose during preparation of legislation to license deepwater ports on the OCS. The Solicitor's opinion is that coastal States do have the power to restrict pipelines from crossing submerged lands beneath State territorial waters. A copy of this opinion, dated September 20, 1973, is attached.

38-533 O - 74 - 4

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

Memorandum

SEP 20 1973

To: Deputy Under Secretary Carter

From: Assistant Solicitor - Minerals
Division of Energy and Resources

Subject: Pipeline rights-of-way across submerged lands of a State

The Solicitor has asked me to respond to your memorandum of August 14, 1973, on "Deepwater Port Legislation". The specific question is whether a State could prohibit pipelines from crossing the submerged lands beneath State territorial waters in what Senator Johnston referred to as the "three mile zone" (or three league zone in the Gulf of Mexico off Texas and Florida) lying between the coast and the Outer Continental Shelf.

We conclude that coastal States presently have this power and that for Congress to overcome it would require new Federal legislation.

The Submerged Lands Act (43 U.S.C. §§ 1301-1315) granted title to these lands beneath territorial waters to the respective coastal States. Consequently, the coastal States, and not the United States, have proprietary rights in this area. Neither the Submerged Lands Act nor the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1331-1343) grants the Federal Government authority with respect to pipelines crossing the three mile zone. A right-of-way across State lands can be granted only by the State.

Although section 3 of the Submerged Lands Act (43 U.S.C. § 1311) grants title to the submerged lands within the three mile zone to the coastal States, section 6 (43 U.S.C. § 1314) retains for the United States

> "all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to,

> but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act."

The statutory authority in § 6(a) of the Submerged Lands Act quoted above does give the United States some authority in the three mile zone, but a mere retention of rights in, and powers of regulation and control of, lands for the constitutional purpose of commerce does not provide adequate statutory authority for the exercise of the right of eminent domain to obtain a right-of-way for a pipeline.

I find no authority in the Outer Continental Shelf Lands Act to authorize the Federal Government to condemn a right-of-way across State lands in order to develop the Federal resources of the Outer Continental Shelf. In any event that Act pertains to the resources of the United States Outer Continental Shelf and would not extend to oil imported from a foreign country. So far the coastal States have been willing to cooperate with Federal lessees and the need to acquire rights-of-way in the face of State opposition has not arisen.

Frederick N. Ferguson

Frederick N. Ferguson

cc:
Secretary's Files
Mr. Allen (OL)
Mr. Findlay (OL)
Mr. Ferguson
Miss Wagner
DER Reading File
Docket Section

FNFerguson:bar:9-20-73

Question 5:

You indicated that in order to lease ten million acres in 1975 as directed by the President, the Department would probably offer between 12 and 15 million acres. In light of the experience in the Department's most recent sale, when less than 50 percent of the acreage offered was actually leased, isn't it likely that the Department might have to offer 20 million acres in 1975?

Answer:

A decline in the amount of acreage leased as compared to the total offered was not unexpected by the Department. It was recognized that to maintain a high level of leasing, attractive prospects must be selected and offered for sale. This is becoming more of a problem because nearly all of the successful offshore leasing has taken place off Louisiana and East Texas and the amount of favorable acreage remaining in this area is limited. Secondly, it was anticipated that industry would be more selective in their leasing practices and in committing available capital when they were aware that plans were being prepared to expand leasing to new areas.

The proposed schedule for leasing ten million acres annually will concentrate heavily on leasing in new frontier areas. Moreover, industry has indicated that they will strongly support initial leasing in new frontier areas because of the potential involved. Therefore, if expansion of leasing into new areas is not delayed because of environmental or other problems, it is still the belief of the Department that ten million acres can be leased during 1975 by offering for sale up to 15 million acres. We will, however, continually monitor the individual lease sales as the accelerated leasing program progresses. If it appears that the amount of acreage leased of the total offered does decline, we will increase the acreage offered in

the sales in an attempt to lease the ten million acres annually.

To assist the Department in selecting the most promising areas for leasing, a Federal Register notice of February 20, 1974, requested industry to designate their preference of areas to be offered for leasing. The notice also asked for a rating of areas based upon environmental concern. A report of the responses to the Federal Register notice is enclosed.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 26 1974

Dear Mr. Chairman:

In accordance with Secretary Morton's July 16 letter on Committee Print No. 1 of S. 3221, relating to the energy resources of the Outer Continental Shelf (OCS) this letter sets forth the Interior Department's analysis of Committee Print No. 1 and our position concerning its major provisions. We previously expressed our views on S. 3221 as originally introduced by letter dated May 4, 1974.

We oppose amending the Outer Continental Shelf Lands Acts at this time, because it would disrupt current efforts to achieve full utilization of these resources. The specific problems that enactment of S. 3221 would cause are discussed below.

Leasing program. Title II of the bill purports to establish a national policy of use of OCS resources and the criteria for a leasing program. Taken together these provisions are so general for the most part that they contribute little or nothing to a sound program. Our present policy and actions are easily comprehended by these provisions which are at best unnecessary and at worst confusing and productive of controversy and litigation. Where these provisions are more specific, they are in several instances either superfluous or harmful. We believe it is undesirable at this time to require development of a ten-year leasing program as contemplated by the bill, since this would divert scarce funds and manpower from more pressing matters in the OCS, and other programs. For any leasing program, however, it is standard governmental operating procedure to prepare at the appropriate time the budget and manpower estimates called for in new section 18(c) of the OCS Lands Act which the bill would add (page 6, line 20 through page 7, line 5). New section 18(d) mentions some factors which must be included in the environmental impact statement on the leasing program. These are factors which obviously will be included whether or not section 18(d) becomes law, but we oppose on principle this amendment to the National Environmental Policy Act. New section 18(e) requires the Secretary of the Interior to establish procedures for a leasing tract-nomination system--something we have already done under the present OCS Lands Act, as indicated in our May 4 letter.

Likewise, sections 18(f) through (j) would have a minimal practical effect, except perhaps in two respects. First, section 18(h) requires the Secretary to review and reapprove the leasing program at least once each year. This intrusion of executive discretion may, on the one hand, require needless paperwork and establish an unenforceable requirement or, on the other hand, compel too much review and reapproval of leasing programs. Second, section 18(i) confers broad authority on the Secretary to obtain information needed to prepare environmental impact statements with little regard for recently enacted energy data and information provisions, the need for limiting governmental authority or providing appropriate protection of private interests.

OCS oil and gas survey program. To a large degree the bill's provisions adding a new section 19 to the OCS Lands Act (page 9, line 1 through page 11, line 18) are unnecessary, but to the extent they are likely to have an actual effect, they could impact quite heavily and perhaps undesirably on our OCS program. The bill would require that a survey of all OCS oil and gas resources be conducted and that the Secretary maintain a current series of detailed topographic, geological and geophysical maps of and reports about the OCS. Maps would be required no later than six months prior to the last day for submission of bids for OCS areas scheduled for lease on or after July 1, 1977; and in no case later than ten years after enactment of all other areas.

Under these provisions a plan for conducting the prescribed survey and mapping programs would have to be submitted to Congress within six months after enactment. A progress report to Congress, including a summary of initial data compiled, would be due within 20 months after enactment, and progress reports would be required on an annual basis thereafter. Conducting such an extensive mapping and survey effort would be extremely difficult, especially within the time frame set forth, and would not likely produce results justifying the effort. Carrying out the mapping and survey requirements (including surveys on a spacing no greater than two kilometers) would require large expenditures of money, possibly on the order of several billion dollars. Again, our present program undertaken pursuant to existing authority and modified as needs change, should be satisfactory.

Moreover, since the bill's provisions would exempt all actions other than the drilling of exploratory wells from classification as a major Federal action for the purposes of section 102(2)(C) of the National Environmental Policy Act, it would seem that exploratory wells must therefore be considered major Federal actions. Requiring an environmental impact statement could significantly delay the drilling of exploratory wells that are important to the conduct and completion of the survey and mapping programs prescribed under S. 3221 and could result in unnecessary delays in the preparation and publication of the prescribed maps and in the development of information important to an effective and expeditious leasing program for OCS lands.

Research and development. A strong research and development program with respect to both energy and environmental aspects of OCS mineral development is being accomplished under existing law. New section 20 of the Act (page 11, line 20 through page 13, line 7) is superfluous.

Safety. As pointed out in our May 4 letter, a recent OCS study by the Council on Environmental Quality has concluded that leasing can be carried out in OCS areas if appropriate safety and environmental requirements are adhered to and we intend to require of industry whatever measures are needed to assure a safe and environmentally sound program. In this regard, we are meeting the concerns underlying the new section 21 which the bill would add to the OCS Lands Act, including inspection, accident investigation and reporting measures

Liability for oil spills. The Administration currently has under consideration comprehensive legislation relating to oil spill and other OCS liability. We recommend that the Committee defer action in this area until the Administration proposal is developed. The Council on Environmental Quality has previously commented on new section 22 (page 15, line 23 through page 17, line 19).

Negotiation with States and boundary determinations. New sections 23 and 24 of the OCS Lands Act (page 17, line 20 through page 18, line 8) provide no new authority for the Executive Branch and merely call for actions pertaining to the matters with which we are already dealing.

Coastal State Fund. We are opposed to provisions of the bill which would create a new program of grants to adjacent coastal States and thereby divert revenues from the U.S. Treasury. Receipts under the OCS Lands Act from OCS oil and gas leases belong to the Federal Government and curently make a substantial contribution to Federal income. If such revenues were diverted to coastal States, as new section 25 of the Act would provide (page 18, line 10 through page 19, line 20), the Federal Government would need to increase its income from other sources. In effect, the bill increases Federal expenditures outside the normal budget and appropriation process, which is both bad managment and inflationary. It results in an inflexible allocation of funds to such States without regard to need or resources and also fractionates efforts to address the environmental, social and enconmic problems of OCS energy development.

Lease terms. The provisions of the present OCS Lands Act are sufficiently flexible for institution of the most desirable alternative leasing systems to promote competition while serving the public's interest in receiving a fair return for its resources and using those resources in the most responsible manner. Different methods of bidding for OCS leases are under constant consideration. Bonus bidding has historically been used for Federal OCS leasing, but the Department is committed to a test royalty bid offering not later than the September 1974 OCS lease sale. Although this experiment is a royalty bid experiment, we believe that the information developed will tell us enough about both bonus and royalty bidding to indicate whether further consideration of other possible bidding methods is justified. We are also examining the feasibility of a number of other systems such as profit sharing, installment or contingency bonus payments We are opposed to mandating any single system which would result in a loss of the flexibility which the present Act provides.

Section 203 of the bill would revise setion 8 of the OCS Lands Act to specify that bidding for OCS leases on a "net profit" basis is allowed, in addition to bonus bidding, but royalty bidding would be excluded. The Committee Print modified the original bill to specify that not less than 30% of net profit must be paid to the United States, instead of requiring a 55% payment. Section 204 of the bill would also permit the Secretary to sell Federal royalty oil by competitive bidding and would prohibit him from continuing leases which would otherwise terminate, unless there is a reasonable assurance of production from such leases within the period of an extension. Additional provisions are included in section 206 to assure full development and maximum production from OCS leases, Secretarial unitization or cooperation or pooling agreements, and review authority for development plans. In our view "net profit" bidding is permitted under the present Act subject to certain non-objectionable limitations. We are continuing to evaluate the desirability of "net profit" and other forms of bidding.

Miscellaneous. Sections 301 and 302 of the bill require several investigations and studies as to which attention is already being directed. The authority conferred is redundant and poses the potential of confusing current authorities and efforts.

In regard to section 302, we have been studying and monitoring shut-in and flaring wells under the OCS Lands Act and have furnished information to the Congress on this subject.

Sincerely yours,

Royston C. Hughes

Assistant Secretary of the Interior

Honorable Henry M. Jackson
Chairman, Committee on
Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

STATEMENT OF THE HONORABLE RUSSELL W. PETERSON,
CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY
BEFORE THE SUBCOMMITTEE ON MINERALS, MATERIALS,
AND FUELS OF THE SENATE COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS

May 10, 1974

Mr. Chairman and Members of the Committee:

I am pleased to appear here today to discuss the study on Outer Continental Shelf oil and gas which the Council on Environmental Quality has recently completed and how that study relates to the legislation on this subject pending before the Committee.

On April 18, 1974, the Council submitted to the President the results of a one-year study which had been prepared at his request. Although we have made the report OCS OIL AND GAS - AN ENVIRONMENTAL ASSESSMENT available to the committee, I would like to submit a copy of the report for the record.

In my April 24, 1974 testimony before the Senate Commerce Committee's hearings on National Oceans Policy, I summarized the findings and recommendations of CEQ's report. I understand that the Committee on Interior and Insular Affairs is participating in that study so there is no need for me to repeat that summary here. I have attached a

summary of detailed findings of CEQ's study to my statement for the record.

This report was intended to advise the President on the relative risks of oil and gas development in the Atlantic and Gulf of Alaska outer continental shelves (OCS) and to suggest ways in which the risks can be minimized or prevented.

To carry out this assessment, the Council undertook studies in a number of areas. Both offshore and onshore impacts of oil spills and discharges and of other OCS-related activities were studied. Statistical analyses of oil spill data were performed to identify specific problem areas. The movement of oil in the oceans was determined using computer modeling techniques. The ability of OCS technology and practices to perform safely under hostile weather and seismic conditions was assessed. Estimates of potential oil and gas resources which may be found in the various OCS areas were reviewed. The potential benefits of OCS oil and gas production from those areas in satisfying regional energy demand were investigated. Finally, the effectiveness of Federal regulatory and enforcement processes and the broader issues of intergovernmental coordination and planning were examined.

As a result of the study, the Council developed the following ranking of relative environmental risks, ranging from lowest to highest, associated with potential oil and gas operations in the Atlantic and Gulf of Alaska outer continental shelves:

- Eastern Georges Bank (East of 68° W; EDS 1 and 2)
- Southern Baltimore Canyon (South of 37° N; EDS 9)
- Western Georges Bank (West of 68° W; EDS 3 and 4)
- Central Baltimore Canyon (Between 37° and 39.5° N; EDS 6,7, and 8)
- Northern Baltimore Canyon (North of 39.5° N; EDS 5)
- Southeast Georgia Embayment (EDS 10,11,12,13, and 14)
- Western Gulf of Alaska (West of 150° W; ADS 7,8, and 9)
- Eastern Gulf of Alaska (East of 150° W; ADS 1,2,3, 4,5, and 6).

The hypothetical development locations are identified in Figures 1 and 2 which are attached.

The ranking is CEQ's best estimate of the overall relative degree of risk to the marine, coastal, and human environment; it is based on an integration of the study's findings with respect to the effects of development onshore as well as of oil spills offshore, incidence of severe weather and seismic phenomena in potential development areas, the state of technology, and projections of regional energy needs.

The Council also concluded that the Federal Government must be guided by and committed to a set of essential principles in choosing areas to lease and in administering environmentally safe offshore operations.

Now I would like to turn to the relationship between the CEQ study and the legislation pending before the Committee. As Under Secretary Whitaker indicated before the Committee on May 6, the Administration recommends against enactment of the bills before the Committee at this time. The Council agrees with many of the objectives of the bills, recognizing as they do the need for environmental protection of our marine, coastal, and onshore resources. It does not appear necessary or desirable, however, to enact these bills in order to ensure that the environmental risks of OCS oil and gas operations be made acceptable.

Progress has been made by the offshore oil and gas industry in improving technology and work practices since 1969 Santa Barbara accident. In addition, more stringent Federal regulations for OCS operations have been issued and enforcement of these regulations has been strengthened.

Santa Barbara, it is argued by some, was a critical step in catalyzing general public reaction to the many environmental problems we face. Although the Outer Continental Shelf Lands Act of 1953 was passed long before the environmental awareness of the past few years, the Act has effectively been "amended" by recent legislation. The National Environmental Policy Act of 1969 sponsored by this Committee and three 1972 laws -- the Coastal Zone Management Act, the Federal Water Pollution Control Act Amendments, and the Marine Protection, Research and Sanctuaries Act -- have required incorporation of more responsive environmental objectives, procedures, and practices into the administration of the Outer Continental Shelf Lands Act.

The CEQ study found that consistent application of several guiding principles in OCS leasing and development can significantly reduce the risk to every element of the environment. These principles which interpret and amplify principles implicit in the environmental legislation recently enacted include:

- Exploration and development of the OCS must take place under a policy which puts very high priority on environmental protection.

- The location and phasing of OCS leasing should be designed to achieve the energy supply objectives of the leasing program at minimum environmental risk.

- The best commercially available technology must be used to minimize environmental risks in new OCS areas.

- Regulatory authorities available to Federal agencies must be fully implemented and requirements strictly enforced to minimize environmental risks in new OCS areas.

- Planning at all phases of OCS oil and gas operations must respect the dynamic relationship between initial Federal leasing decisions and subsequent state and local community action. The states and the communities affected must be given complete information as early as possible so that planning can precede and channel the inevitable development pressures. Experience must be continuously integrated into the management process.

The Council strongly encourages the Department of Interior and other Federal agencies with responsibilities in the OCS to fully consider these principles in their policies and program.

I would now like to comment on some of the specific provisions in the proposed bills and point out sections of our report relating to the provisions.

Leasing Program Goals

Two findings of the CEQ study strongly emphasize the need for a well-planned leasing OCS program. First, the significant differences in relative environmental risks among

the several OCS areas we studied strongly recommends that these differences be fully recognized in the evolution of an OCS leasing program. Second, the recent revision of oil and natural gas resource estimates to lower values adds to the growing recognition that we must plan now to use our limited petroleum resources more carefully in the future.

For any type of resource development, the risks and costs must be balanced with the benefits to be gained. The Council believes that when the risk of developing OCS oil and gas -- based on our current state of knowledge and technology -- is greater than that of an available alternative, then we should not move ahead until we know more and can do better.

Most of the bills before this Committee do recognize the need to incorporate environmental factors into our OCS leasing goals. Some place more emphasis on avoidance of oil and gas operations in environmentally hazardous OCS areas than others. Some seem to place primary emphasis on accelerated development of the OCS with environmental protection added as an afterthought.

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The Council strongly recommends a balanced approach -- one where measures for expanded energy supply are balanced with measures for environmental protection. If the risk from OCS development is acceptable, the Council believes that we should proceed with caution and with a commitment to prevent or minimize damage.

Our recommendations to the President and the affected Federal agencies were designed to bring about such a balance. This balance can be accomplished within the existing legislative framework. We will be working with the Department of Interior and other Federal agencies to see that it is achieved.

Alternative Leasing Arrangements

The Council did not conduct a detailed study of alternative OCS leasing arrangements. During the seven public hearings which we conducted last September and October, we heard testimony from a number of witnesses on a number of proposed modifications to the existing leasing system. In our analyses we could not identify significant differences in environmental effects resulting from different leasing arrangements. Therefore we felt that, while consideration of these issues in the evolution of national energy policy is essential, they did fall outside of the scope of our mandate.

CEQ is working with the Department of Interior and other Federal agencies to determine if there are environmental benefits and costs which derive from specific features of alternative leasing arrangements and, if negative impacts may occur, how they can be kept at acceptable levels.

Federal OCS Responsibility

In OCS OIL AND GAS - AN ENVIRONMENTAL ASSESSMENT, we pointed out that in the past the industry has in effect determined the information needs for OCS leasing. We indicated that

> "Industry's incentives, however, are not always sufficient to generate all the data necessary for effective environmental regulation. Prior to a lease sale, industry understandably concentrates on obtaining and analyzing data that locate petroleum deposits. The unavailability of high-resolution seismic data to USGS before completing the final environmental impact statement is due in part to the fact that the companies have little economic incentive to acquire such costly data until after tracts are finally selected. After the lease sale, moreover, there is little economic incentive for industry to acquire data solely for assessment of environmental risks.

Numerous suggestions have been made in various studies and in our public hearings for making more information and analyses available to the Government and public .

In our report, the Council recommended that the Department of the Interior determine the kinds of information and analyses necessary for adequate assessment of environmental factors at all stages of leasing and development. The Department should take appropriate measures to obtain such information, including acquisition and analysis of high-resolution, near-surface seismic reflection data for the purpose of determining the nature and magnitude of geologic hazards prior to tract selection.

The Council also recommends that the Department of Interior consider the competitive consequences, at different stages in the process, of requiring disclosure of certain industry data and analyses. The department should weigh those consequences against the benefits to be obtained and develop standards for governing such disclosure. In making that balance, it should consider particularly the need for informed public participation in the NEPA process.

As Under Secretary Whitaker pointed out on Monday, the OCS Lands Act allows the Department of Interior to require lessees to provide the Secretary with copies of all data obtained during exploration. The Department will soon publish proposed rulemaking on this matter in the Federal Register.

Studies of seismic and bottom conditions soon to be undertaken in the Gulf of Alaska by the U.S. Geological Survey are directly responsive to the Council's concern with the potential impacts of geological hazards on offshore operations in that area.

Adequacy of OCS Technology and Practices

As I stated above, the offshore oil and gas industry and Federal regulatory agencies have made real progress in the past several years. However, our report has found that operations in both frontier OCS regions would confront harsher conditions than have been previously faced in other United States offshore areas and that conditions in the Gulf of Alaska are more severe than the industry has yet experienced anywhere in the world.

Storm conditions in parts of the Atlantic may be more severe than in the Gulf of Alaska or the North Sea. Average weather conditions generally will be worse, though, in the Gulf of Alaska.

Earthquakes and tidal waves also present serious problems in the Gulf of Alaska with large (Richter magnitude 7) earthquakes expected every 3 to 5 years and giant (Richter magnitude 8) earthquakes expected every 25 years in the area where oil and gas development has been proposed.

Based on our evaluation of OCS technology to meet the conditions which would be confronted, the Council made a number of recommendations to the Federal agencies responsible for establishing standards and procedures for OCS operations.

The recommendations are grouped in three major areas -- improved consideration of the human element in OCS equipment design and operating practices, improved technology to meet the harsher conditions of the Atlantic and Gulf of Alaska OCS, and improved technology and practices to minimize the impacts in virgin OCS areas. The specific recommendations are detailed in the attached summary. The Council believes that adoption of these recommendations would substantially reduce the risk of operations in the new OCS areas.

The Council recognizes the important role of research and development in bringing into use more environmentally protective OCS technologies. We have purposely called for the development of performance requirements which will encourage the development and early adoption of safer equipment and facilities, rather than lock the industry into a static technology. Specifically, we have called for the use of the best commercially available technology in critical OCS operation and, and at the same time, we encourage the industry to do better.

The technology assessment and technical recommendations in our report cover most of the research and development topics identified in S.3221.

The Council feels that its recommended actions can be accomplished under the existing legislative framework. If technology R&D and performance testing are required in carrying out the recommendations as we anticipate they will, then we believe that the industry should bear the cost of the R&D with the Federal government conducting independent evaluation of equipment and facility performance.

Oil Spill Liability

In its assessment of oil spill liability coverage, the Council found that there was no private party recovery under Federal law for pollution damage from non-vessel or non-oil-vessel pollution sources. Interior Department regulations issued under the OCS Lands Act make lessees financially responsible for total removal of pollution from drilling and production operations. If the lessee does not take necessary cleanup measures, the Geological Survey's area supervisor is authorized to do so at the lessee's expense.

Similarly, the Federal Water Pollution Control Act prohibits certain discharges of oil and hazardous substances and authorizes Federal Government cleanup at the operator's expense unless the operator does so properly. These provisions do not apply, however, to offshore facilities beyond 3 miles of the coast or to any pollution damage beyond 12 miles.

At least three states -- Maine, Massachusetts, and Florida -- have enacted legislation providing for oil pollution liability. Unlike the Federal measures, all three allow private parties recovery for pollution damage within state jurisdiction (i.e., within 3 miles of the coast). But most states have not provided for oil spill liability. Although additional state action may be useful, the Council believes economic and administrative considerations in ensuring adequate compensation and financially responsible defendants make uniformity desirable.

The Council in its report recommended that a comprehensive Federal liability system for OCS-related oil spill cleanup and damages be established through new legislation. CEQ believes the Federal Government should carefully consider the full economic and environmental implications of various types of liability -- fault or no-fault -- and various means of ensuring adequate compensation such as liability insurance for operators or a revolving fund financed through charges on operators. The Trans-Alaska Pipeline Authorization Act is one precedent which certainly bears close study.

Because of the scope of the oil spill liability issue and the inadvisability of dealing with the complex subject piecemeal, the Council does not believe that it is necessary or advisable to amend the OCS Lands Act to add a liability section. The Administration is now studying the liability issue in a broad context and will carefully assess the merits of alternative approaches including the possibility of comprehensive Federal liability legislation to cover oil pollution from vessels as well as from offshore oil operations.

Citizen Suit

The Council's report stated that citizen suit provisions, which allow interested persons to sue to remedy violation of Federal regulations or permit conditions, can provide a useful compliance mechanism. The Council recommended that the Secretary of the Interior seek the establishment of such a right under the OCS Lands Act.

As you know, the Administration opposes amending the OCS Lands Act at this time. This position includes the citizen suit provision. The Council, however, believes that a citizen suit provision is a beneficial feature for several reasons.

First, such a provision provides a clear channel for remedying violations. Second, such a provision can serve to improve administrative effectiveness in developing regulations and ensuring compliance by keeping Federal regulators on their toes. Third, citizen suit provisions would reduce challenges based on complicated legal theories.

Other Federal agencies are opposed to citizen suit provisions because they believe that citizen suits could lead to unacceptable delays in accelerating leasing and development in the Outer Continental Shelf. Some believe that there are currently available means for legal redress and there is no need to broaden the basis of standing to sue to enforce OCS regulations.

OCS Revenue Sharing

The Council's report did not address the issue of OCS revenue sharing. We did recognize the critical need for close cooperation between the Federal Government and the coastal states to minimize the adverse impacts of onshore development induced by OCS oil and gas operations. The Council recommended expanded use of the NEPA process and the Coastal Zone Management Act and future use of a land use planning act as three mechanisms for facilitating the required coordination.

The Coastal Zone Managment Act may be the best mechanism for routing Federal assistance to the states to undertake advanced planning for onshore development. In addition, as our report points out, states can strengthen their coastal zone management programs by developing special technical expertise on all phases of OCS development and its onshore and offshore impacts. Funding for such efforts can come from general revenue sharing, specialized Federal assistance, or increased tax and other economic benefits accruing from onshore development.

The Council hopes that its report and the companion volumes detailing the study of onshore impacts can be of assistance to states and local communities in anticipating planning needs. Through long-range and dynamic planning, we believe that states and local communities can avoid unbearable sudden increases in planning and implementation costs.

Summary

The Council believes that these hearings are very useful in opening for public scrutiny the important public policy questions surrounding the development of OCS resources. I hope that this discussion of the relationship between our report and the bills pending before the Committee has been of assistance.

Summary of Specific Findings

Probability and Fate of Oil Spills

A comprehensive analysis of oil spill data for offshore platforms, pipelines, and tankers was performed by ECO, Inc., and the Massachusetts Institute of Technology. This analysis indicated that, for a given size of oil field, oil spills are highly likely during the life of an oil field. For example, if a medium sized field (two billion barrels in place) is discovered and produced, it is likely that one large platform spill (over 1,000 barrels) and either one large pipeline spill if pipeline transportation is used or nearly two large tanker spills if tanker transportation is used will occur during the life of the field. More spills would likely occur in large fields; fewer spills would occur in smaller fields. Smaller spills are likely to occur more frequently, e.g., although during the life of a medium-sized field only one large platform spill is likely to occur, over 33,000 barrels -- mostly from small spills -- are likely to be released from platforms during the same period.

The potential impacts of OCS operations on the ocean and coastal environment depends in part on where oil released in the ocean travels and how it weathers. The movement of oil spilled into the ocean was determined by the Massachusetts Institute of Technology using computer modeling techniques. This model calculates the probability of oil coming ashore from hypothetical oil and gas resource locations (see section on OCS Resources) and, to test the sensitivity of results to specific spill location, from various points closer to and farther from the coast. Wind and current data are used so results could be presented in terms of the percentage of the time that an oil spill would beach during the "best" and "worst" seasons. For all sites considered, spring and summer tend to be the worst seasons. The results of the modeling for the Atlantic are presented in Table 6-1. Similar results are given in the report for the Gulf of Alaska.

The results presented below are based on hypothetical oil spills released from platforms, pipelines, and tankers in or near potential oil fields. Further, it is assumed, in these examples, that oil spill containment and cleanup systems are not deployed to mitigate the impact of the spills.

For the Georges Bank area, the probability of oil spills reaching shore from the hypothetical sites in the eastern Bank (EDS 1 and 2) is low -- 15 to 20 percent in spring, the worst season. Closer to shore in the western Bank (EDS 3 and 4) the probability reaches 35 to 50 percent in the spring.

For the Baltimore Canyon area, the probability of oil beaching varies widely. In the southern part of the area (EDS 9), the probability is nearly zero in all seasons. In the central part (EDS 6,7,and 8), it reaches 20 percent in the spring. In the northern part (northof EDS 5), it increased dramatically as the release site was moved closer to Long Island, especially during the summer. At the site 50 miles from shore, the probability is only 10 percent; at 25 miles it has increased to 75 percent, and at 10 miles it has risen to 95-100 percent.

For the Southeast Georgia Embayment, a similar pattern was found for oil releases from all sites -- in the spring, there is a 95-100 percent probability of oil reaching shore from all of the sites.

Two different patterns of oil spill behavior emerged in the Gulf of Alaska. In the western Gulf (ADS 7,8, and 9), the probability of oil coming ashore was relatively low -- 5 to 10 percent in summer, the worst season, except for release sites near to shore in the vicinity of ADS 7. During other seasons, the probability of oil going ashore from these sites is near zero. In the eastern Gulf, however, the probability is 95-100 percent in the summer for all sites and 40-75 percent even in winter, the best season.

Because of uncertainty in wind and current data, these modeling results should not be interpreted as exact predictions of the movement of oil in the marine areas studied. The results do indicate reliable trends which are adequate for identifying problem areas. The computer modeling does not consider the use of oil spill containment and clean-up equipment.

Offshore Impacts of OCS Development

The Council found that significant adverse ecological impacts can result from accidental oil spills, continuous discharges of oil from platforms and ships, and construction activities. Significant impacts can be mitigated or eliminated, however, by proper siting, stringent environmental controls; careful construction and operation, and adequate baseline studies and monitoring to identify areas to be avoided and additional measures needed.

The study found that there are two major types of causes of impacts on marine and coastal biology. There are transient causes such as (a) impacts of oil spills, and (b) impacts of platform construction and pipelaying. Equally important, though, are operational causes such as (a) discharge of oil from platforms; (b) discharge of drilling muds, cuttings, etc., and (c) discharge of oily ballast from tankers.

To analyze the ecological effects of oil spills and discharges and construction activities, CEQ contracted the Massachusetts Institute of Technology. In predicting the impact of oil spills and discharges on marine organisms, MIT considered both initial impacts and population recovery. Five types of effects were identified -- direct lethal toxicity, sublethal effects, coating, tainting, and habitat changes.

An important consideration is the persistence of oil in the marine or coastal environment. Although previous estimates of oil persistence in different environments have not been based on careful, quantitative analysis, they do indicate that oil probably persists much longer in salt marshes with soft sediments (up to 10 years) than on rocky shores or coarse sediments (a few months). The degradation and weathering of the oil depends on a number of factors such as temperature, turbulence, sunlight, etc. It does appear that oil would persist longer in the Gulf of Alaska than in the Atlantic.

The study found that oil spills can be a "considerable potential threat" to breeding flocks or other aggregations of birds. Birds are most susceptible to coating with oil which increases heat losses from the body and often leads to death because of exposure. Both Atlantic and Gulf of Alaska coastal areas provide wintering, breeding, and feeding grounds for thousands of species of birds. In the Gulf of Alaska, over 200 species are found along the coast, including whole populations of some species such as the endangered Dusky Canada goose.

Oil spills and discharges can also threaten fish populations MIT found that finfish and shellfish in the larval stages are particularly susceptible if oil, even at low concentrations, enters spawning or nursery areas. The presence of oil can also inhibit or prevent homing or spawning behavior in anadromous species such as salmon. The report identifies a number of potentially threatened fish species in each of the potential OCS areas.

The study discusses recovery from the effects of oil spills and concludes that some biological populations, including some species of birds and anadromous fish, may require many years to recover from the results of a spill.

Oil spills can threaten not only biologically productive coastal wetlands and salt marshes but also beaches and recreational areas.

Effects of pipeline construction through coastal wetlands were also considered. Measures to minimize the physical and biological impacts were suggested; avoidance of pipeline corridors in environmentally sensitive areas was recommended.

To support the study of the biological effects of oil, environmental resource inventories in the OCS areas studied were compiled and assessed. Providing the inventories to MIT were the Research Institute of the Gulf of Maine (TRIGOM), the University of Rhode Island, the Virginia Institute of Marine Sciences (VIMS) and the University of Alaska. Many important data were not available such as data on species life histories, effects of oil at various stages in the life cycles, and wildlife, bird, and commercial fisheries, especially for the Gulf of Alaska.

Onshore Impacts of OCS Development

The Council found that there were two major causes of onshore impacts induced by OCS oil and gas operations in coastal communities: construction and service for offshore operations, and industrialization based on the landing of the oil and gas (oil storage and refining, gas process, and petrochemical processing). The induced onshore activities can have both positive and negative effects on the coastal communities affected. These effects include demographic, economic (jobs and value of output), physical (water demand, electrical requirements, houses and offices), social (schools, hospitals, police, etc.), and environmental (air and water pollution, solid waste disposal, land use).

The nature and magnitude of the impacts depend on many factors -- the level and location of OCS oil and gas production, the nature of the area where induced development is located, the extent of state and local planning efforts to cope with the development. Based upon a number of necessary assumptions which are described in the report, the Council analyzed the impacts upon sample areas along the Atlantic, the Gulf of Alaska, and the west coast. In particular, four sample areas were chosen along the Atlantic: Bristol County, Mass.; Cape May and Cumberland Counties, N.J.; Charleston, S.C., and Jacksonville, Fla. Two areas -- Cordova and Valdez -- were chosen in Alaska and two -- Puget Sound and San Francisco -- were chosen on the west coast.

In general, the Council found that local impacts were much more substantial than regional impacts. Economic impacts range widely. For example, by the year 2000, as many as 75,000 jobs could be created in the Charleston sample area while only 20,000 could be created in Bristol County, Mass., assuming high levels of OCS production. Significant shifts in the size and nature of the local population could occur from larger economic impacts. The areas studied in Alaska and Charleston, S.C, could be subjected to greater economic and demographic impacts as a result of OCS-related activities.

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The study indicates that impacts on the social infrastructure of the sample areas may be significant. The demand for services -- hospitals, schools, housing, transportation, sewage treatment, and public utilities -- may be difficult to meet. The sample areas with greatest water supply problems are San Francisco and Southern New Jersey, although Charleston would also have significant problems.

Land suitable for primary industrial development appears adequate along the Atlantic. Such land may not be widely available in the Alaskan, San Francisco, and Puget Sound areas because of environmental, locational, and topographical constraints. Even along the Atlantic, wetlands, national parks and seashores, and coastal recreational areas significantly reduce the land available for both primary industrial and general development. Without careful planning and controls, land development could significantly impact wetlands, parks, and recreational areas as well as destroy important pristeen ecosystems.

The study indicated that air and water pollution are not generally expected to be significant because of increased use of emission and effluent control technologies. In selected locations, hydrocarbon emissions and BOD levels may rise due to concentration of refineries and petrochemical industries. In these areas, decreased hydrocarbon emissions as a result of auto emission controls would be offset by new sources of hydrocarbons, especially from refineries. Where significant increases in population are anticipated, as in Charleston, auto emissions may also be a factor.

Status of Technology

The Council found that the performance of the offshore oil and gas industry has improved substantially since Santa Barbara. In addition, more stringent Federal regulations for OCS operations have been issued and Federal enforcement of these regulations has been strengthened.

Operations in the two frontier OCS areas, however, will confront harsher conditions than have been previously faced in other areas. The study points out that storm conditions in parts of the Atlantic may be more severe than in the Gulf of Alaska or the North Sea. Weather conditions generally will be worse, though, in the Gulf of Alaska. Earthquakes and tidal waves also present serious problems in the Gulf of Alaska with large (Richter magnitude 7) earthquakes expected every 3 to 5 years and giant (Richter magnitude 8) earthquakes expected every 25 years in the area where oil and gas development has been proposed.

As indicated in the section on Probability and Fate of Oil Spills, oil spills are highly likely during the life of an oil field unless significant improvements are made in OCS technology and practices.

The Council made recommendations in three major areas -- improved consideration of the human element in OCS equipment design and operating practices, improved technology to meet the harsher conditions of the Atlantic and Gulf of Alaska OCS, and improved technology and practices to minimize the impacts in virgin OCS areas. These recommendations are summarized below:

1. Improved consideration of the human element in OCS equipment design and operating practices

   -- Incorporation of human factors engineering into OCS equipment design

   -- Certification of critical OCS operating personnel

2. Improved technology to meet harsher conditions

   -- Detailed performance requirements for drilling platforms

   -- Detailed performance requirements for production platforms

   -- Detailed performance requirements for offshore oil storage facilities

   -- Use of subsea production equipment where environmental protection would be enhanced

   -- Detailed performance requirements for surface-actuated subsurface safety valves

   -- Requirement that improved methods of downhole pressure measurement be used

   -- Detailed performance requirements for workover and servicing operations on OCS platforms

   -- Detailed performance requirements for OCS pipeline protection

   -- Requirement that tankers transporting OCS oil employ segregated ballast capacity preferably with double bottoms

3. Improved technology and practices to minimize impacts in virgin OCS areas

   -- Identification of critical environmental areas and incorporation of appropriate measures in National Oil Pollution Contingency Plan

   -- Establishment of effluent standards for waste water discharge from OCS facilities, including installation of best commercially available control technology to minimize oil discharge

   -- Development of detailed guidelines for disposal of drilling muds, cuttings, etc.

   -- Continuation of efforts to improve oil spill containment and cleanup capability

   -- Advanced planning for pipeline corridor siting and designation of corridors which minimize intrusion into environmentally sensitive

Institutional and Legal Mechanisms for Managing OCS Development

The Council found that OCS development will vitally affect important state interests, and state regulatory authorities can significantly shape OCS development and related nearshore and onshore activities. Federal-state coordination is therefore urgently needed. The Council recommended that affected states strengthen their coastal zone management agencies, and that Federal agencies cooperate with them on an ongoing basis. Federal-state cooperative efforts should focus on development of state coastal zone plans prior to OCS development. The National Environmental Policy Act (NEPA) process can be another important means for Federal-state coordination.

Within the Federal government, OCS responsibilities are fragmented and there is no formal coordinating mechanism. Establishment of the Department of Energy and Natural Resources could improve coordination. The Council believes that NEPA is the best planning tool for the near term. Impact statements concerning OCS activites should discuss alternative uses of specific OCS, nearshore, and onshore areas; and all Federal agencies proposing major OCS actions should prepare programmatic impact statements on a regional basis.

The Department of Interior has primarily acquired data in the past with a view to locating productive tracts and has treated industry data as proprietary. The Council recommended that Interior obtain the data necessary to assess environmental and safety factors at all stages of leasing and development, and develop standards to govern public disclosure of such information.

The effectiveness of OCS inspections was criticized in a recent GAO report, and an in-house Interior study has found existing enforcement sanctions inadequate to deter violations. The Council recommended that Interior propose more stringent sanctions and establish and train inspection teams as necessary to verify compliance.

The major gap in the liability system concerns private party recovery of damages from non-vessel-source pollution. The Council recommended that establishment of a comprehensive Federal liability system for OCS-related oil spill cleanup and damages through new legislation.

OCS Resources

Although the presence of oil and gas in the Atlantic and Gulf of Alaska OCS has not been confirmed by exploratory drilling, geological and geophysical investigations indicate that conditions favorable to the accumulation of large reservoirs of oil and gas exist in parts of the Atlantic and Gulf of Alaska. Exceptionally thick sediment beds (potential sources of hydrocarbons) and potential geological traps occur in the Baltimore Canyon and Georges Bank. Some extremely large potential geological traps and thick sediments occur in the Gulf of Alaska.

Recent estimates by the U.S. Geological Survey indicate that the Atlantic OCS may contain 10 to 20 billion barrels of undiscovered economically recoverable petroleum liquids (crude oil and natural gas liquids). The Atlantic OCS may also contain 55 to 110 trillion cubic feet of natural gas. Estimates of oil and gas resources in the Gulf of Alaska are not as well characterized as those in the Atlantic, with petroleum liquid resources estimates ranging from three to 25 billion barrels and natural gas from 15 to 30 trillion cubic feet. The recent U.S.G.S. estimates (March 1974) are substantially lower than those quoted earlier by the Geological Survey.

For purposes of modeling environmental and economic impacts, hypothetical locations of potential oil and gas accumulations were developed. The locations, indicated by a circle of 25-mile radius, are shown in Figures 1 and 2. The circles are located in areas where the sediments are thicker than 10,000 feet and cover one or more attractive geological traps. The locations were developed using publicly available information only.

Perspectives on Energy Growth

Three energy growth scenarios are examined for the nation, and for the New England, Middle Atlantic, South Atlantic and West Coast Regions. For all three scenarios including the low growth* case, existing domestic oil and gas sources will have to be supplemented by imports, synthetic oil and gas produced from coal and shale, and oil and gas produced in new areas.

On the East Coast, OCS oil and gas could replace imported oil and gas and domestic coal in the primary fuel mix. Assuming medium energy demand growth and average Georges Bank production estimates, the New England region may obtain 30 percent of its crude petroleum and 70 percent of its gas from the Georges Bank by 1985. The Baltimore Canyon may provide 13 percent of the oil and 10 percent of the gaseous fuel requirements for the Mid-Atlantic by 1985. Production from the Southeast Georgia Embayment may provide 15 percent of the South Atlantic region's oil requirements and 13 percent of its gas requirements by 1985.

Pacific Coast requirements for additional oil can be met from the Alaskan North Slope. Production from the Gulf of Alaska could not be absorbed by the Pacific Coast; Alaskan oil would shift to other parts of the country, particularly the Midwest.

An analysis of the environmental tradeoffs between OCS oil and gas and increased imports or increased domestic coal indicates that oil and gas development on the OCS could lead to lower oil pollution levels in the oceans than from imported oil. Environmental impacts -- both offshore and onshore -- from OCS oil and gas development must be balanced against the impacts resulting from increased coal use such as strip mining and increased air pollution.

*CEQ's Half and Half Plan is based on growth in net per capita energy consumption of 0.7 percent per year and on a continuing conservation effort which would, through improved efficiency and elimination of waste, save energy at a rate of 0.7 percent per year. This program -- half growth and half conservation -- would provide an effective increase in usable energy of 1.4 percent per year, equal to the average rate of growth experienced from 1947 to 1972.

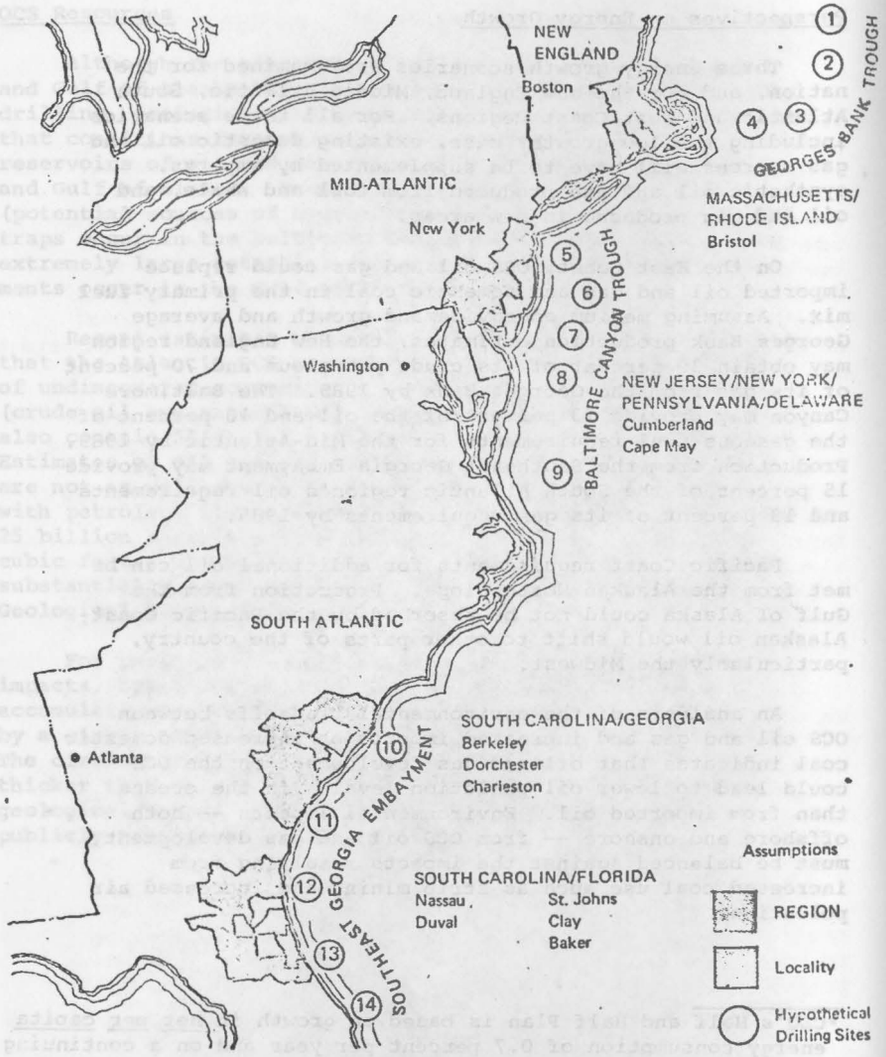

Figure 1-1. Atlantic Hypothetical Drilling Sites and Hypothetical Onshore Development Areas

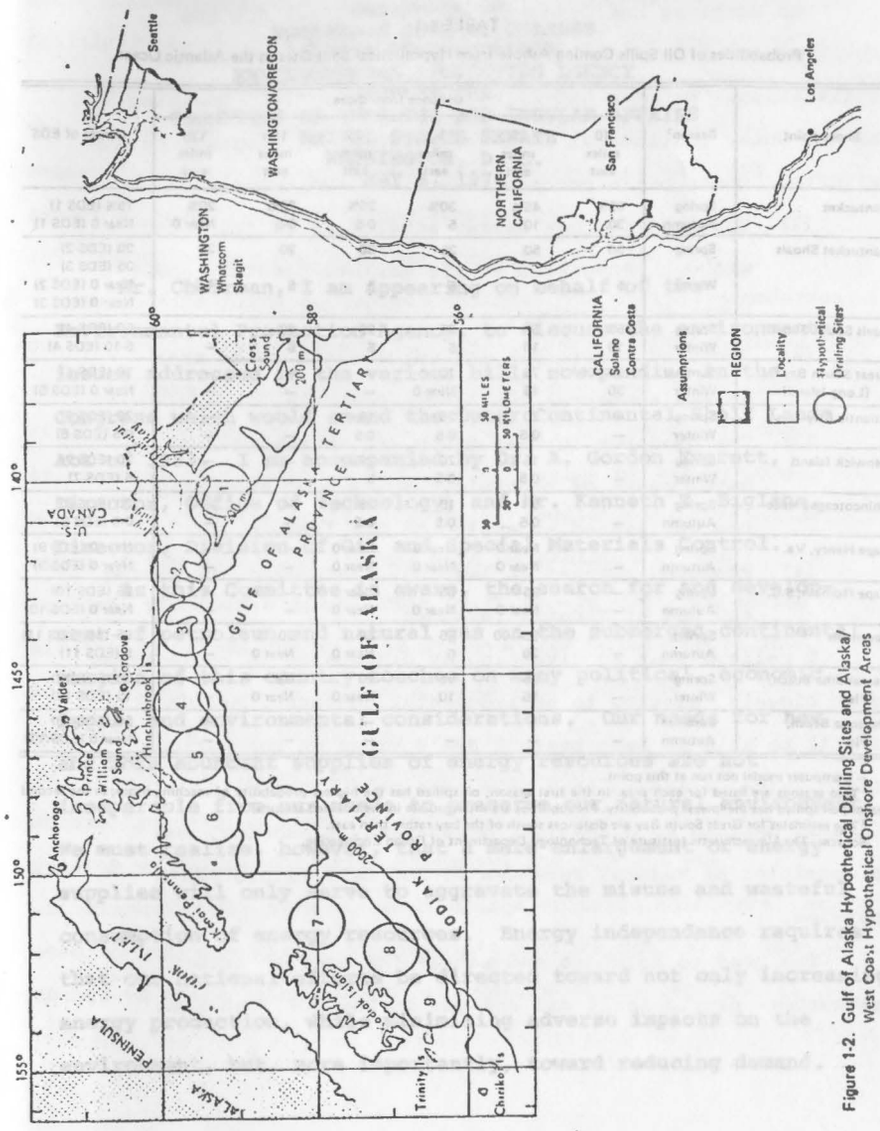

Figure 1-2. Gulf of Alaska Hypothetical Drilling Sites and Alaska/
West Coast Hypothetical Onshore Development Areas

TABLE 6-1

Probabilities of Oil Spills Coming Ashore from Hypothetical Spill Sites in the Atlantic Ocean

Shore point	Season[1]	Distance from shore						Center of EDS
		10 miles east	25 miles east	50 miles east	75 miles east	100 miles east	125 miles east	
Nantucket	Spring	65%	45%	30%	25%	20%	20%	15% (EDS 1)
	Autumn	30	10	5	0-5	0-5	Near 0	Near 0 (EDS 1)
Nantucket Shoals	Spring	50	50	35	30	20	20	20 (EDS 2) 35 (EDS 3)
	Winter	5	5	5	5	5	4-5	Near 0 (EDS 2) Near 0 (EDS 3)
Davis South Shoal	Spring	55	50	35	25	20	–	50 (EDS 4)
	Winter	10	10	5	5	5	–	5-10 (EDS 4)
Great South Bay[2] (Long Island)	Summer	95-100	75	10	–	–	–	10 (EDS 5)
	Winter	30	15	Near 0	–	–	–	Near 0 (EDS 5)
Atlantic City	Spring	–	20	25	15	–	–	20 (EDS 6)
	Winter	–	0-5	0-5	0-5	–	–	0-5 (EDS 6)
Fenwick Island	Spring	–	15	20	20	–	–	20 (EDS 7)
	Winter	–	0-5	0-5	5	–	–	5 (EDS 7)
Chincoteague Inlet	Spring	–	5	15	25	–	–	20 (EDS 8)
	Autumn	–	0-5	0-5	0-5	–	–	0-5 (EDS 8)
Cape Henry, Va.	Spring	–	Near 0	Near 0	Near 0	–	–	Near 0 (EDS 9)
	Autumn	–	Near 0	Near 0	Near 0	–	–	Near 0 (EDS 9)
Cape Romain, S.C.	Spring	–	95	65	Near 0	–	–	95 (EDS 10)
	Autumn	–	Near 0	Near 0	Near 0	–	–	Near 0 (EDS 10)
Savannah	Spring	–	95-100	95	80	20	–	95-100 (EDS 11)
	Autumn	–	20	5	Near 0	Near 0	–	5 (EDS 11)
Fernandina Beach, Fla.	Spring	–	95	55	20	0-5	–	90 (EDS 12)
	Winter	–	15	10	Near 0	Near 0	–	15 (EDS 12)
Daytona Beach, Fla.	Summer	–	–	–	–	–	–	50 (EDS 13)
	Autumn	–	–	–	–	–	–	Near 0 (EDS 13)

– Computer model not run at this point.

[1] Two seasons are listed for each area. In the first season, oil spilled has the highest probability of reaching shore; in the second season, oil spilled has the lowest probability. Probabilities are intermediate in the unlisted seasons.

[2] The estimates for Great South Bay are distances south of the bay rather than east.

Source: The Massachusetts Institute of Technology Department of Ocean Engineering.

STATEMENT OF
HONORABLE JOHN R. QUARLES
DEPUTY ADMINISTRATOR
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
WASHINGTON, D. C.
MAY 6, 1974

Mr. Chairman, I am appearing on behalf of the Environmental Protection Agency, to discuss the environmental issues addressed in the various bills now pending in the Congress which would amend the Outer Continental Shelf Lands Act of 1953. I am accompanied by Dr. A. Gordon Everett, Director, Office of Technology, and Mr. Kenneth E. Biglane, Director, Division of Oil and Special Materials Control.

As this Committee is aware, the search for and development of petroleum and natural gas on the submerged continental margins of this country touches on many political, economic, legal, and environmental considerations. Our needs for new and more abundant supplies of energy resources are not inseparable from our needs to preserve our natural environment. We must realize, however, that a mere enlargement of energy supplies will only serve to aggravate the misuse and wasteful consumption of energy resources. Energy independence requires that our national efforts be directed toward not only increasing energy production, while minimizing adverse impacts on the environment, but, more importantly, toward reducing demand.

The Congress has demonstrated its concern for the development of resources on the OCS through hearings and legislation. We have before us today seven bills focusing on the Outer Continental Shelf as examples of Congressional efforts. These bills embrace several common themes:

(1) The need for new energy sources to be recovered without undue risk to the marine, coastal, and human environments.

(2) Proposed alteration and adjustments to be made in environmental regulatory controls.

(3) The need for further study and accelerated development of technology which must accompany the envisioned expansion of OCS leasing.

(4) Proposed changes in leasing, management, financing, and use of Federal revenues.

I believe that by directing my discussion to those areas most closely relating to environmental concerns, Mr. Chairman, I will be able to best present EPA's views on the various legislative proposals that have been made. The bills specifically dealing with leasing, management, financing, and disposition of Federal revenues do not fall within EPA's purview.

The need to regulate and manage the uses of natural resources--particularly oil and gas on the OCS, but also

other marine resources found in the leasing areas--requires full implementation and strict enforcement of the requirements and authorities available to Federal agencies. In this regard EPA has important environmental regulatory responsibilities under existing law that have significant impact on the OCS and adjacent shore areas.

The Clean Air Act requires that the States submit implementation plans to achieve national air quality standards. Our authority under the Act will oblige States through their plans to take full account of new energy-related facilities. Particular attention will have to be paid to concentrations of new onshore facilities for the processing of oil and gas production from the Shelf. Under our regulations, concentrations of new pollution sources must be assessed at the earliest planning stages. This is to ensure that the ambient air quality standards will be achieved and maintained. The Act requires that the best available technology be used for new sources of air pollution.

Under the Federal Water Pollution Control Act and the Marine Protection, Research and Sanctuaries Act, a Federal program of marine pollution abatement and control was established. EPA sets ocean discharge criteria which are then used to evaluate permit applications for the dumping or discharge of waste material into the waters of the territorial

sea, the contiguous zone, and the oceans. We are now promulgating effluent limitations under the Federal Water Pollution Control Act requiring use of the best practicable control technology by 1977 and best available control technology by 1983 for discharges into the navigable waters, including coastal waters and from offshore facilities.

One of our continuing concerns is the responsiblity we hold under the Federal Water Pollution Control Act for the control of oil and hazardous substances spills. Response to oil spill incidents and marine disasters creating potential pollution hazards, which occur upon the navigable waters of the United States, adjoining shorelines and the waters of the contiguous zone is governed by section 311(c)(2). The National Oil and Hazardous Substances Contingency Plan prepared pursuant to that section delineates procedures, techniques, and responsibilities of the various Federal, State, and local agencies. The Environmental Protection Agency and the United States Coast Guard have shared the lead in spill control programs in this country's navigable waters. With respect to the Outer Continental Shelf, the Department of the Interior, U. S. Geological Survey, is the lead agency and provides the expertise for oil pollution control programs connected with exploration, drilling, and production operations. In the event of a Shelf oil spill episode, all three agencies act pursuant to the National Contingency Plan, in a pre-designated

and coordinated fashion to control, contain and mitigate the adverse effects of the spill on the ocean and shoreside environments.

The potential danger of environmental damage is inextricably associated with increased production activity on the OCS and serves to underscore the importance of safety and environmental protection programs. Several of the bills we are now considering give particular attention to this area. The solution they envision is to be largely accompanied by the transfer or partial assignment of many of the authorities just described to other Federal agencies. Not only would these assignments lead to needless duplication of effort but in many instances such readjustment or diversification of responsiblity would lessen the comprehensive treatment now received under existing authority.

EPA was given the primary Federal responsibility for coming to grips with the complex problems of protecting our natural environment. Our Agency experience, motivation, and competence in handling this duty are not further encumbered by other responsibilities. With respect to the OCS, we see no reason for a departure from the present system.

We cannot agree that these alterations are necessary for the accelerated development of the Outer Continental Shelf. As indicated earlier in our discussion of the National Contingency Plan, EPA has established a good working

relationship with other agencies and the changes contemplated would tend to create a confusion over respective areas of responsibility detrimental not only to our advances in energy production but also to the environment.

EPA's activities have not been solely confined to the development of response programs or implementation plans. We are also pursuing a variety of research projects concerning oil pollution effects in our Office of Research and Development.

In fiscal year 1973, EPA conducted a $2.14 million-dollar research and development program in oil spill containment, removal and recovery, approximately 30 percent of the budget was allocated to the completion of an advance testing and evaluation facility, for oil spill control equipment.

EPA has also supported a National Academy of Sciences workshop on Input, Fates and Effects of Petroleum in the Marine Environment. This report is now in the process of being published and will provide an up-to-date overview of the results of recent research in this area.

The importance and availability of adequate baseline and resources management data prior to commencement of production activities which may alter the existing conditions cannot be overemphasized. Such data should include food-chain effects, geological data, physical, meteorological, and oceanographic information.

EPA is actively working with other Federal agencies to identify in order of rank recognizable research needs and to initiate an integrated approach to achieve these research goals. Through discussions with the Department of the Interior and the National Oceanic and Atmospheric Administration we have helped to lay the groundwork for the establishment of an interagency team to develop the resources management data necessary to the responsibilities that each agency has for the OCS. In this effort considerable progress is being made. The Environmental Protection Agency is also participating as a member of the OCS Resource Management Advisory Board which was set up through the Bureau of Land Management.

We are pleased to see the bills proposed recognize this important research-gathering need. New legislation is not required because existing authority is currently adequate.

We at EPA believe that the end product of the organization, planning, and study already a part of the existing Outer Continental Shelf development program will be an improvement in the quality and scope of management of both renewable and non-renewable resources. Such data will also improve the quality of environmental impact statements and should do much to aid the progress of energy development by removing the problem areas and gaps in information prior to the review and evaluation stages.

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In summary, Mr. Chairman, we would recommend that the present environmental regulatory scheme and assignment of authority be kept intact. The legislative remedies suggested fail to consider the existing framework of environmental authorities and responsibilities now established. The experience and progress being made today in the administration of the Outer Continental Shelf Lands Act as well as the application of other authorities held by the various agencies argue strongly against restructuring the present mechanisms. We have good working relationships with the Department of the Interior, the National Ocean and Atmospheric Administration, and the Coast Guard. Should these relationships be realigned as a result of amendments and alterations to the present law, the possibility for confusion, delay of present efforts and even possible cross-purposes between regulations exercised by one agency and permit requirements issued by another is a most likely consequence. As we are committed to maximizing protection of the environment while pursuing increases in energy production, our goal must not be endangered or delayed by needless reorganization.

The Environmental Protection Agency agrees that new energy sources must be found and developed to meet this country's growing demands for energy. The balance must be struck with the dual need to ensure that the development

proceeds in an environmentally sound manner. We agree that continuing research and monitoring activities are necessary but again the authorities presently available should be expanded rather than readjusted.

This concludes my prepared statement, Mr. Chairman. My colleagues and I will be pleased to answer any questions the Committee might have.

Thank you.

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

MAY 9 1974

Honorable Henry M. Jackson
Chairman, Committee on Interior and Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

We would like to take this opportunity to offer the views of the Department of Transportation on S. 3221, a bill

> "To increase the supply of energy in the United States from the Outer Continental Shelf; to amend the Outer Continental Shelf Lands Act; and for other purposes."

and S. 2858 and S. 2922, similar bills entitled the "Outer Continental Shelf Safety Act of 1974" and the "Outer Continental Shelf Lands Act Amendments of 1974" respectively. The purpose of these bills is to make oil and natural gas resources in the Outer Continental Shelf (OCS) available as rapidly as possible, consistent with the need for orderly resource development and protection of the environment.

The Department of Transportation objects to enactment of the bills, particularly with regard to the application of environmental protection and marine safety regulations to the OCS, due to their failure to reflect and conform with the established responsibilities of this Department for: (1) pipeline safety; (2) prevention, containment, and removal of oil spills; and, (3) marine safety and navigational aids.

With regard to pipeline safety, we are opposed to any provision which would remove from this Department the responsibility for safety of oil and gas pipelines and storage facilities which are consistent with existing laws.

The bills S. 2858, S. 2922, and S. 3221 would assign responsibility for the removal of oil spills on the OCS to the National Oceanic and Atmospheric Administration (NOAA), the Environmental Protection Agency (EPA), and the Department of Interior (DOI) respectively. DOT and DOI have agreed on their respective responsibilities on the OCS in a Memorandum of Understanding dated August 16, 1971. This Department has the expertise and capability for coordination and direction in respect to measures

to contain and remove pollutants. This arrangement has worked well and we see no reason to change existing responsibilities for the containment, removal, and investigation of oil spills on the OCS. We presently have this responsibility for the territorial sea and the contiguous zone under section 311 of the Federal Water Pollution Control Act (FWPCA), and Title I of the Ports and Waterways Safety Act. We also have the experience and expertise in, as well as the personnel and resources available for, oil spill containment, and removal for the coastal marine environment generally. (See, for example, the Intervention on the High Seas Act, and the Oil Pollution Act of 1961.)

We are also concerned about the personnel safety aspects of offshore drilling operations. The regulation of oil production facilities themselves belongs within the expertise of the U. S. Geological Survey in DOI. However, we must be assured that we will have adequate authority to inspect facilities for fire safety, evacuation, and other maritime related personnel safety interests consistent with the authority established in the OCS Lands Act. Similarly, our aids-to-navigation authority under that Act and under title 14, United States Code, must remain undisturbed.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there would be no objection to the submission of this report to the Committee.

Sincerely,

Rodney E. Eyster
General Counsel

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 16 1974

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
3106 New Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your requests for the views of the Office of Management and Budget on the following bills:

1. S. 2389, a bill "To authorize certain revenues from leases on the Outer Continental Shelf to be made available to coastal and other States" (requested March 28, 1974);

2. S. 2672, a bill "To create a Marine Resources Conservation and Development Fund; to provide for the distribution of revenues from Outer Continental Shelf lands; and for other purposes" (requested March 28, 1974);

3. S. 2858, a bill "To amend the Outer Continental Shelf Lands Act for the purpose of increasing the safety of offshore drilling and production" (requested February 9, 1974 and March 28, 1974);

4. S. 2922, a bill entitled the "Outer Continental Shelf Lands Act Amendments of 1974" (requested March 7, 1974 and March 28, 1974);

5. S. 3221, a bill entitled the "Energy Supply Act of 1974" (requested March 28, 1974);

6. S. 3185, a bill "To amend the Outer Continental Shelf Lands Act with respect to payments to be made under oil and gas leases pursuant to such Act" (requested March 28, 1974); and,

7. S. 3346, a bill "To amend certain provisions of law relating to the leasing of oil and gas deposits of the United States, and for other purposes" (requested April 17, 1974).

The Office of Management and Budget concurs in the views of the Department of the Interior in its reports on these bills, and accordingly recommends against enactment of the seven bills.

Sincerely,

Wilfred H. Rommel

Wilfred H. Rommel
Assistant Director for
Legislative Reference

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

JUL 15 1974

OFFICE OF THE ADMINISTRATOR

The Honorable Henry M. Jackson
Chairman, Interior and Insular Affairs
New Senate Office Building, Room 3110
Washington, D.C. 20510

Dear Mr. Chairman:

I have recently learned that your Committee is planning to consider S3321, which would amend the Outer Continental Shelf Lands Act of 1953. As Duke Ligon testified in early May, (copy attached) it is the opinion of the Administration that no amendments are necessary or desirable at this time since many of the matters contained within the proposed amendments can be handled more effectively and expeditiously under existing laws.

The Outer Continental Shelf Lands Act is broad and flexible. Changes and adjustments to existing policy can by carried out by virtue of authority contained in that Act. As a matter of fact, the Interior Department is pursuing that course through changes in leasing regulations, additional proposed changes, and by some experimental lease sales planned for execution beginning later this year.

In light of the above and in the hope that we can avoid confusion in this matter, I would appreciate your reconsidering the desirability of proceeding with any amendments to the Outer Continental Shelf Lands Act at this time.

Sincerely,

John C. Sawhill
Administrator

Attachment

cc: The Honorable Paul J. Fannin
United States Senate

Statement by
Robert M. White
Administrator, National Oceanic
and Atmospheric Administration
Department of Commerce

before the

Senate Interior and Insular Affairs Committee

May 6, 1974

Mr. Chairman, I wish to thank you and members of the Committee for the invitation and opportunity to comment on S. 3221, the "Energy Supply Act of 1974," and other bills pending before the Committee which would amend the "Outer Continental Shelf Act of 1953."

The Department of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), has broad responsibilities which are affected by the bills being considered by this Committee. While we recognize that the basic intent of the bills is to accelerate the development of oil and gas on our continental shelves, we believe that enactment would result in a duplication of authorities, programs and capabilities that already exist in part within the National Oceanic and Atmospheric Administration of the Department of Commerce and in part in other agencies. I propose only to comment on those aspects of the bill which overlap NOAA, deferring comment on other provisions to other Administration witnesses. In particular, I would like to discuss the provisions of the bill which relate to Coastal Zone Management, Environmental Assessment, and Marine Mapping and Charting.

Coastal Zone Management

The Coastal Zone Management Act of 1972 is now being implemented by NOAA. This Act lays the basis for rational and balanced management of our

coastal zone. Such management must anticipate the near-shore and onshore problems that accompany outer continental shelf oil and gas development. Under the Act, the Federal Government will provide funding to the coastal States to help in this management process, so that they can deal effectively with the secondary and supporting activities that will be associated with offshore oil and gas production.

S. 3221, however, would amend the Outer Continental Shelf Lands Act to provide a Coastal State Fund, into which 5% of the Federal revenues from the resources of the shelf would be paid. The Secretary of the Interior would be authorized to make matching grants to the coastal states from this Fund to "ameliorate adverse environmental effects and control secondary social and economic impacts" caused by the development of energy resources on the continental shelf. Such grants may be used for "planning, construction of public facilities and provision of public services, and such other activities as the Secretary may prescribe."

To the extent such grants are used for planning and management, they overlap the functions already provided for and funded with matching grants under the Coastal Zone Management Act. This Act refers particularly to the demands upon our lands and waters of the coastal zone arising, in part, from "extraction of mineral resources and fossil fuels." Cooperation with the Federal Government in developing land and water use programs "of more than local significance" is specifically stressed. The stated goal is "the wise use of land and water resources of the coastal zone giving full consideration to ecological, cultural, historic and esthetic values as well as to needs for economic development." The overlap with S. 3221 is apparent.

Achievement of a satisfactory coastal zone plan does not stop with the planning itself but requires implementation over a period of years, and the Coastal Zone Management Act makes provision for this by a program of grants that would be of special importance where difficult questions of energy siting are concerned.

It would seem logical that funds to the coastal States come through the Coastal Zone Management Act so that Federal funding to the States can be used and developed in a comprehensive way.

The Coastal Zone Management Act is being rapidly implemented. Although the first funding for the program became available only last December, Federal program development grants have already been given to six coastal States in the last 45 days. We expect to have almost all the coastal States involved in the grants phase of the Program by June 30 of this year.

In my judgment, the coastal States are ready and willing to join with the Federal Government in planning for OCS development. They want effective involvement from the earliest moment in planning for this development. This cooperation and financial assistance can be provided within the Coastal Zone Management Act.

Environmental Assessment

I understand that a representative of the Council on Environmental Quality will testify on the impact of OCS oil and gas development on the environment. My own concern is that, as we move to develop the oil and gas resources of the shelf, we take timely steps to acquire, in a cost-effective manner, the scientific and technical information needed to anticipate and minimize environmental impacts.

NOAA is the principal oceanic agency of the Federal Government with a network of biological and physical laboratories in all our coastal areas, and with a large research and survey fleet. The National Marine Fisheries Service of NOAA is the repository of the basic knowledge of the fishery resources of shelf areas and is charged under the Fish and Wildlife Coordination Act for assessing the effects of pollution on fisheries and recommending means of alleviating dangerous or undesirable effects of such pollution including petroleum pollution. The marine weather forecasting capabilities of the National Weather Service, and the ocean and atmospheric data centers of the Environmental Data Service add to NOAA's comprehensive environmental capabilities. These capabilities are now being brought to bear in work with the Bureau of Land Management (BLM) on studies of the potential environmental impact of Outer Continental Shelf oil and gas development, particularly in the eastern Gulf of Mexico and the Gulf of Alaska. We expect to continue to cooperate closely with BLM in the design and implementation of needed studies in other areas as well. We also are participating actively in the Department of the Interior's Outer Continental Shelf Research Advisory Board, which is advising on the design and conduct of baseline studies in potential lease areas.

Even prior to the recent interest in baseline studies of the Outer Continental Shelf, we had initiated studies on the fate and effect of oil on marine ecosystems. These include studies of Prince William Sound, Alaska, and the New York Bight. Several of our National Marine Fisheries Service Laboratories are undertaking detailed studies of the effects of oil on specific marine organisms; this is proving to be a crucial issue in understanding the environmental impact of Outer Continental Shelf development. Massachusetts Institute of Technology, supported through NOAA's Sea Grant Program, has made an initial assessment of the potential environmental effects of oil and gas drilling on Georges Bank, which provided a base for the further analyses done in connection with the recent Council on Environmental Quality report on offshore oil and gas drilling. These are only examples of our efforts being made under existing authorities to understand the impact of oil and gas development upon the living resources of the marine environment.

Marine Mapping and Charting

In our opinion, the combined capabilities of NOAA and the Geological Survey of the Department of Interior essentially represent the civil marine mapping capabilities of the Federal government, and are in a position to perform this work.

Through our National Ocean Survey and its predecessor organization, the Coast and Geodetic Survey, our agency has had a long history of operations, and more importantly, an expertise in the mapping and charting of the waters off our coasts. We have completed bathymetric and geophysical surveys for 22 of some 154 map units required to map our continental shelves at a scale of 1:250,000. From these surveys we have produced to date 18 bathymetric, 7 magnetic and 3 gravity maps at that scale. In addition, we have produced from existing sources of data 23 additional bathymetric maps at different scales.

We are now working to the requirements of the Department of Interior to produce urgently needed bathymetric maps for their use in resource assessment in the Gulf of Mexico, and are developing plans to assist them in other areas as the leasing program increases.

NOAA, in coordination with the Department of Justice and the Department of State, has been active in the determination of marine boundaries. Parties heretofore involved in legal proceedings concerning boundary determinations, be they private or governmental, have turned to NOAA for technical assistance. As a normal consequence of our charting the nation's coastal waters, we have been involved in the development of the legal aspects of coastal boundaries. The courts, as well as participants involved in litigation of this highly technical area of law, have consistently looked to us as the principle repository of expertise to settle boundary disputes. NOAA has been traditionally consulted by the States regarding the seaward extension of their own boundaries. The Congress, also, solicits technical comments from us prior to its approval of compacts between states concerning seaward lateral boundaries. In the international area, we established in 1972, in collaboration with the Department of State and the Mexican government, the

demarcation of the lateral seaward boundaries between the United States and Mexico.

We fully concur that seaward boundary determinations are important elements in the management and development of our outer continental shelf seaward resources; however, necessary authorities and agency responsibilities are available and new authority is not required.

Thank you, Mr. Chairman, I would be pleased to answer any questions for the Committee.

X. Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, S. 3221, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

1. Section 201 of S. 3221 would amend Section 3 of the Outer Continental Shelf Lands Act as follows:

Sec. 3. Jurisdiction Over Outer Continental Shelf.—(a) It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

(b) This Act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

(c) It is hereby declared that the Outer Continental Shelf is a vital national resource reserve held by the Federal Government for all the people, which should be made available for orderly development, subject to environmental safeguards, consistent with and when necessary to meet national needs.

2. Section 202 of S. 3221 would add the following new sections to the Outer Continental Shelf Lands Act:

DEVELOPMENT OF OUTER CONTINENTAL SHELF LEASING PROGRAM

Sec. 18. (a) Congress declares that it is the policy of the United States that Outer Continental Shelf lands determined to be both geologically favorable for the accumulation of oil and gas and capable of supporting oil and gas development without undue environmental hazard or damage should be made available for leasing as soon as practicable in accordance with subsection (b) of this section.

(b) The Secretary is authorized and directed to prepare and maintain a leasing program to implement the policy set forth in subsection (a). The leasing program shall indicate as precisely as possible the size, timing, and location of leasing activity that will best meet national energy needs for the ten-year period following its approval or reapproval in a manner consistent with subsection (a) above and with the following principles:

(1) management of the Outer Continental Shelf in a manner which considers all its resource values and the potential impact of oil and gas exploration and development on other resource values of the Outer Continental Shelf and the marine environment;

(2) timing and location of leasing so as more evenly to distribute exploration, development, and production of oil and gas among various areas of the Outer Continental Shelf, considering:

(A) existing information concerning their geographical, geological, and ecological characteristics;

(B) their location with respect to, and relative needs of, regional energy markets;

(C) interest by potential oil and gas producers in exploration and development as indicated by tract nominations and other representations;

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

(3) receipt of fair market return for public resources,

(c) The program shall include estimates of the appropriations and staffing required to prepare the necessary environmental impact statements, obtain resource data and any other information needed to decide the order in which areas are to be scheduled for lease, to make the analyses required prior to offering tracts for lease, and to supervise operations under every lease in the manner necessary to assure compliance with the requirements of the law, the regulations, and the lease.

(d) The environmental impact statement on the leasing program prepared in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, shall include, but shall not be limited to, an assessment by the Secretary of the relative significance of the probable oil and gas resources of each area proposed to be offered for lease in meeting national demands, the most likely rate of exploration and development that is expected to occur if the areas are leased, and the relative environmental hazard of each area. Such environmental impact statement shall be based on consideration of the following factors, without being limited thereto: geological and geophysical conditions, biological data on existing animal, marine, and plant life, and commercial and recreational uses of nearby land and water areas.

(e) The Secretary shall, by regulation, establish procedures for receipt and consideration of nominations for areas to be offered for lease or to be excluded from leasing, for public notice of and participation in development of the leasing program, for review by State and local governments which may be impacted by the proposed leasing, and for coordination of the program with management programs established pursuant to the Coastal Zone Management Act of 1972. These procedures will be applicable to any revision or reapproval of the leasing program.

(f) The Secretary shall publish a proposed leasing program in the Federal Register and submit it to the Congress within two years after enactment of this section.

(g) After the leasing program has been approved by the Secretary or after January 1, 1978, whichever comes first, no leases under this Act may be issued unless they are for areas included in the approved leasing program.

(h) The Secretary may revise and reapprove the leasing program at any time and he must review and reapprove the leasing program at least once each year.

(i) The Secretary is authorized to obtain from public sources, or to purchase from private sources, any surveys, data, reports, or other information (excluding interpretations of such data, surveys, reports, or other information) which may be necessary to assist him in preparing environment impact statements and making other evaluations

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required by this Act. The Secretary shall maintain the confidentiality of all proprietary data or information for such period of time as is agreed to by the parties.

(j) The heads of all Federal departments or agencies are authorized and directed to provide the Secretary with any nonproprietary information he requests to assist him in preparing the leasing program.

FEDERAL OUTER CONTINENTAL SHELF OIL AND GAS SURVEY PROGRAM

SEC. 19. (a) The Secretary is authorized and directed to conduct a survey program regarding oil and gas resources of the Outer Continental Shelf. This program shall be designed to provide information about the probable location, extent, and characteristics of such resources in order to provide a basis for (1) development and revision of the leasing program required by section 18 of this Act, (2) greater and better informed competitive interest by potential producers in the oil and gas resources of the Outer Continental Shelf, (3) more informed decisions regarding the value of public resources and revenues to be expected from leasing them, and (4) the mapping program required by subsection (c) of this section.

(b) The Secretary is authorized to contract for, or purchase the results of or, where the required information is not available from commercial sources, conduct seismic, geomagnetic, gravitational, geophysical, or geochemical investigations, and to contract for or purchase the results of stratigraphic drilling, needed to implement the provisions of this section.

(c) The Secretary is directed to prepare and publish and keep current a series of detailed topographic, geological, and geophysical maps of and reports about the Outer Continental Shelf, based on nonproprietary data, which shall include, but not necessarily be limited to, the results of seismic, gravitationdl, and magnetic surveys on an appropriate grid spacing to define the general topography, geology, and geophysical characteristics of the area. Such maps shall be prepared and published no later than six months prior to the last day for submission of bids for any areas of the Outer Continental Shelf scheduled for lease on or after January 1, 1978.

(d) Within six months after enactment of this section, the Secretary shall develop and submit to Congress a plan for conducting the survey and mapping programs required by this section. This plan shall include an identification of the areas to be surveyed and mapped during the first five years of the programs and estimates of the appropriations and staffing required to supplement them.

(e) The Secretary shall include in the annual report required by section 15 of this Act, information concerning the carrying out of his duties under this section, and shall include as a part of each such report a summary of the current data for the period covered by the report.

(f) No action taken to implement this section shall be considered a major Federal action for the purposes of section 102(2)(C) of the National Environmental Policy Act of 1969.

(g) There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section during fiscal years 1975 and 1976.

(h) The Secretary shall, by regulation, require that any person holding a lease issued pursuant to this Act for oil or gas exploration or development on the Outer Continental Shelf shall provide the Secretary wtih any existing data (excluding interpretation of such data) about the oil or gas resources in the area subject to the lease. The Secretary shall maintain the confidentiality of all proprietary data or information until such time as he determines that public availability of such proprietary data or information would not damage the competitive position of the lessee.

RESEARCH AND DEVELOPMENT

SEC. 20. (a) The Secretary is authorized and directed to carry out a research and development program designed to improve technology related to development of the oil and gas resources of the Outer Continental Shelf where he determines that such research and development is not being adequately conducted by any other public or private entity including but not limited to—

(1) downhole safety devices,

(2) methods for reestablishing control of blowing out or burning wells,

(3) methods for containing and cleaning up oil spills,

(4) improved drill bits,

(5) improved flaw detection systems for undersea pipelines,

(6) new or improved methods of development in water depths over six hunderd meters, and

(7) subsea production systems.

(b) The Secretary shall, after review and comment by the Administrator of the Environmental Protection Agency, establish safety and environmental performance standards for all pieces of equipment, that are pertinent to public health, safety, or environmental protection, used in exploration, development, and production of oil and gas from the Outer Continental Shelf. To achieve the purposes of this subsection, such standards shall require the use of best available technology when the potential effect on public health, safety, or the environment would be substantial.

(c) The Secretary, with the concurrence of the Secretary of the department in which the Coast Guard is operating, shall establish equipment and performance standards for oil spill cleanup plans and operations. Such standards shall be coordinated with the National Oil and Hazardous Substances Pollution Contingency Plan, and reviewed by the Administrator of the Environmental Protection Agency, and the Administrator of the National Oceanic and Atmospheric Administration.

(d) The Secretary, in cooperation with the Secretary of the Navy and the Director of the National Institutes of Health, shall conduct studies of underwater diving techniques and equipment suitable for protection of human safety at depths greater than those where such diving now takes place.

ENFORCEMENT OF SAFETY REGULATIONS; INSPECTIONS

SEC. 21. (a)(1) The Secretary shall regularly inspect all operations authorized pursuant to this Act and strictly enforce safety regulations

promulgated pursuant to this Act and other applicable laws and regulations relating to public health, safety, or environmental protection. All holders of leases under this Act shall allow promptly access at the site of any operations subject to safety regulations to any inspector, and provide such documents and records that are pertinent to public health, safety, or environmental protection, as the Secretary or his designee may request.

(2) The Secretary shall promulgate regulations within ninety days of the enactment of this section to provide for—

(A) physical observation at least once each year by an inspector of the installation or testing of all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

(B) periodic onsite inspection without advance notice to the lessee to assure compliance with public health, safety, or environmental protection regulations.

(3) The Secretary shall make an investigation and public report on all major fires and major oil spillage occurring as a result of operations pursuant to this Act. For the purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil over a period of thirty days: Provided, That the Secretary may, in his discretion, make an investigation and report of lesser oil spillages. All holders of leases under this Act shall cooperate with the Secretary in the course of such investigations.

(4) For the purposes of carrying out his responsibilities under this section, the Secretary may by agreement utilize with or without reimbursement the services, personnel, or facilities of any Federal agency.

(b) The Secretary shall include in his annual report to Congress required by section 15 of this Act the number of violations of safety regulations found, the names of the violators, and the action taken thereon.

(c) The Secretary shall consider any allegation from any person of the existence of a violation of any safety regulations issued under this Act. The Secretary shall answer such allegation no later than ninety days after receipt thereof, stating whether or not such alleged violations exist and, if so, what action has been taken.

LIABILITY FOR OIL SPILLS

SEC. 22. (a) Any person in charge of any operations in the Outer Continental Shelf, as soon as he has knowledge of a discharge or spillage of oil from an operation, shall immediately notify the appropriate agency of the United States Government of such discharge.

(b)(1) Notwithstanding the provisions of any other law, the holder of a lease or right-of-way issued or maintained under this Act and the Offshore Oil Pollution Settlements Fund (hereinafter referred to as "the fund") established by this subsection shall be strictly liable without regard to fault and without regard to ownership of any adversely affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by any damaged party for subsistence or economic purposes, in accordance with the provisions of this subsection for all damages, sustained by any person as a result of discharges of oil or gas from any operation authorized under this Act if such damages occurred (A) within the territory of the United States, Canada,

or Mexico or (B) in or on waters within two hundred nautical miles of the baseline of the United States, Canada, or Mexico from which the territorial sea of the United States, Canada, or Mexico is measured, or (C) within one hundred nautical miles of any operation authorized under this Act. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Strict liability shall not be imposed under this subsection on the holder or the fund if the holder or the fund proves that the damage was caused by an act of war. Strict liability shall not be imposed under this subsection on the holder if the holder proves that the damage was caused by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged person if the holder or the fund proves that the damage was caused by the negligence or intentional act of such person.

(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The holder shall be liable for the first $7,000,000 of such claims that are allowed. The fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

(4) In any case where liability without regard to fault is imposed pursuant to this subsection, the rules of subrogation shall apply in accordance with the laws of the State in which such damages occurred: Provided, however, That in the event such damages occurred outside the jurisdiction of any State, the rules of subrogation shall apply in accordance with the laws applicable pursuant to section 4 of this Act.

(5) The offshore Oil Pollution Settlements Fund is hereby established as a nonprofit corporate entity that may sue and be sued in its own name. The fund shall be administered by the holders of leases issued under this Act under regulations prescribed by the Secretary. The fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress. Claims allowed against the fund shall be paid only from moneys deposited in the fund.

(6) There is hereby imposed on each barrel of oil produced pursuant to any lease issued or maintained under this Act of a fee of 2½ cents per barrel. The fund shall collect the fee from the lessees or their assignees. Costs of administration shall be paid from the money collected by the fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income producing securities approved by the Secretary. Income from such securities shall be added to the principal of the fund.

(7) Subject to the limitation contained in subparagraph (3) of this subsection, if the fund is unable to satisfy a claim asserted and finally determined under this subsection, the fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to the approval of the Secretary.

(8) No compensation shall be paid under this subsection unless notice of the damage is given to the Secretary within three years following the date on which the damage occurred.

(9) Payment of compensation for any damage pursuant to this subsection shall be subject to the holder or the fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

(10) The collection of amounts for the fund shall cease when $100,000,000 has been accumulated, but shall be renewed when the accumulation in the fund falls below $85,000,000. The fund shall insure that collections are equitable to all holders of a lease or right-of-way.

(11) The several district courts of the United States shall have jurisdiction over claims against the fund.

(c) If any area within or without a lease granted or maintained under this Act is polluted by any discharge or spillage of oil from operations conducted by or on behalf of the holder of such lease, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and removal of the pollutant shall be at the expense of such holder, including administrative and other costs incurred by the Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of the holder.

(d) The Secretary shall establish requirements that all holders of leases issued or maintained under this Act shall establish and maintain evidence of financial responsibility of not less than $7 million. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the Secretary: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(e) The provisions of this section shall not be interpreted to supersede section 311 of the Federal Water Pollution Control Act Amendments of 1972 or preempt the field of strict liability or to enlarge or diminish the authority of any State to impose additional requirements.

NEGOTIATIONS WITH STATES

SEC. 23. The Secretary is authorized and directed to negotiate with those coastal States which are asserting jurisdiction over the Outer Continental Shelf with a review to developing interim agreements which will allow energy resource development prior to final judicial resolution of the dispute.

DETERMINATION OF BOUNDARIES

SEC. 24. Within one year following the date of enactment of this section, the President may establish procedures for settling any outstanding boundary disputes, including international boundaries between the United States and Canada and between the United States and Mexico, and establish boundaries between adjacent States, as directed in section 4 of this Act.

COASTAL STATE FUND

SEC. 25. (a) There is hereby established in the Treasury of the United States the Coastal States Fund (hereinafter referred to as the "fund"). The Secretary shall make grants from the fund to the coastal States impacted by anticipated or actual oil and gas production to assist them to ameliorate adverse environmental effects and control secondary social and economic impacts associated with the development of Federal energy resources in, or on the Outer Continental Shelf adjacent to the submerged lands of such States. Such grants may be used for planning, construction of public facilities, and provision of public services, and such other activities as the Secretary may prescribe by regulations. Such regulations shall, at a minimum, (1) provide that such activities be directly related to such environmental effects and social and economic impacts; and (2) require each coastal State, as a requirement of eligibility for grants from the fund, to establish pollution containment and clean up systems for pollution from oil and gas development activities on the submerged lands of each such State.

(b) The Secretary, in accordance with the provisions of subsection (a), shall, by regulation, establish requirements for grant eligibility: Provided, That it is the intent of this section that grants shall be made to impacted coastal States to the maximum extent permitted by subsecion (c) of this section and that grants shall be made to impacted coastal States in proportion to the effects and impacts of offshore oil and gas exploration, development and production on such States. Such grants shall not be on a matching basis but shall be adequate to compensate impacted coastal States for the full costs of any environmental effects and social and economic impacts of offshore oil and gas exploration, development, and production. The Secretary shall coordinate all grants with management programs established pursuant to the Coastal Zone Management Act of 1972.

(c) Notwithstanding any other provision of law, 10 per centum of the Federal revenues from the Outer Continental Shelf Lands Act, as amended by this Act, shall be paid into the fund: Provided, That the total amount paid into the fund shall not exceed $200,000,000 per year.

(d) There is hereby authorized to be appropriated to the fund $100,000,000.

(e) For the purpose of this section, "coastal State" means a State or territory of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, or Long Island Sound.

CITIZEN SUITS

SEC. 26. (a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf—

(1) against any person including—

(A) the United States, and

(B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution who is alleged to be in violation of the provisions of this Act or the regulation promulgated thereunder, or any permit or lease issued by the Secretary; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary.

(b) No action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to sixty days after the plaintiff has given notice in writing under oath of the violation (i) to the Secretary, and (ii) to any alleged violator of the provisions of this Act or any regulations promulgated thereunder, or any permit or lease issued thereunder;

(B) if the Secretary has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the provisions of this Act or the regulations thereunder, or the lease, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) Under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice in writing under oath of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation complained of, constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) In any action under this section, the Secretary, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action, brought pursuant to subsection (a) of this section, may award costs of litigation including reasonable attorneys fees to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person or class of persons may have under this or any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief, including relief against the Secretary.

PROMOTION OF COMPETITION

SEC. 27. Within one year after the date of enactment of this section, the Secretary shall prepare and publish a report with recommendations for promoting competition and maximizing production and revenues from the leasing of Outer Continental Shelf lands, and shall include a plan for implementing recommended administrative changes and drafts of any proposed legislation. Such report shall include consideration of the following—

(1) other competitive bidding systems permitted under present law as compared to the bonus bidding system;

(2) evaluation of alternative bidding systems not permitted under present law;

(3) measures to ease entry of new competitors; and

(4) measures to increase supply to independent refiners and distributors.

ENFORCEMENT AND PENALTIES

SEC. 28. (a) At the request of the Secretary, the Attorney General may institute a civil action in the district court of the United States for the district in which the affected operation is located for a restraining order or injunction or other appropriate remedy to enforce any provision of this Act or any regulation or order issued under the authority of this Act.

(b) If any person shall fail to comply with any provision of this Act, or any regulation or order issued under the authority of this Act, after notice of such failure and expiration of any period allowed for corrective action, such person shall be liable for a civil penalty of not more than $5,000 for each and every day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation shall have been given an opportunity for a hearing on such charge.

(c) Any person who knowingly and willfully violates any provision of this Act, or any regulation or order issued under the authority of this Act designed to protect public health, safety, or the environment or conserve natural resources or knowingly and willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act, or who knowingly and willfully falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act or knowingly and willfully reveals any data or information required to be kept confidential by this Act, shall, upon conviction, be punished by a fine of not more than $100,000, or by imprisonment for not more than one year, or both. Each day that a violation continues shall constitute a separate offense.

(d) Whenever a corporation or other entity violates any provision of this Act, or any regulation or order issued under the authority of this Act, any officer, or agent to such corporation or entity who authorized, ordered, or carried out such violation shall be subject to the same fines or imprisonment as provided for under subsection (c) of this section.

(e) The remedies prescribed in this section shall be concurrent and cumulative and the exercise of one does not preclude the exercise of the others. Further, the remedies prescribed in this section shall be in addition to any other remedies afforded by any other law or regulation.

ENVIRONMENTAL BASELINE AND MONITORING STUDIES

SEC. 29. (a) Prior to permitting oil and gas drilling on any area of the Outer Continental Shelf not previously leased under this Act, the Secretary, in consultation with the Administrator of the National Oceanic and Atmospheric Administration of the Department of Commerce, shall make a study of the area involved to establish a baseline

of those critical parameters of the Outer Continental Shelf environment which may be affected by oil and gas development. The study shall include, but need not be limited to, background levels of hydrocarbons in water, sediment, and organisms; background levels of trace metals in water, sediments, and organisms; characterization of benthic and planktonic communities; description of sediments and relationships between organisms and abiotic parameters; and standard oceanographic measurements such as salinity, temperature, micronutrients, dissolved oxygen.

(b) Subsequent to development of any area studied pursuant to subsection (a) of this section, the Secretary shall monitor the areas involved in a manner designed to provide time-series data which can be compared with previously collected data for the purpose of identifying any significant changes.

(c) In carrying out the provisions of this section, the Secretary is directed to give preference to the use of Government owned and Government operated vessels, to the maximum extent practicable, in contracting for work in connection with such environmental baseline and monitoring studies. In order to avoid needless duplications, the Secretary shall coordinate all such activities with the Administrator of the National Oceanic and Atmospheric Administration and shall, whenever possible, utilize existing Government owned and Government operated marine research laboratories in conducting research authorized by this section.

3. Section 203 of S. 3221 would amend Subsections (a) and (b) of Section 8 of the Outer Continental Shelf Lands Act as follows:

SEC. 8. LEASING OF OUTER CONTINENTAL SHELF.—[(a) In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis of a cash bonus with a royalty fixed by the Secretary at not less than 12½ per centum in amount or value of the production saved, removed or sold, or on the basis of royalty, but at not less than the per centum above mentioned, with a cash bonus fixed by the Secretary.]

[(b) An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, (2) be for a period of five years and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, (3) require the payment of a royalty of not less than 12½ per centum, in the amount or value of the production saved, removed, or sold from the lease, and (4) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.]

(a) The Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the Outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be by sealed bids and, at the discretion of the Secretary, shall be either (1) on the basis of a cash bonus bid with a royalty fixed by the Secretary at not less than 12½ per centum in amount or value of the production saved, removed, or sold, (2) on the basis of a cash bonus bid with a fixed share of the net profits derived from operation of the tract of no less than 30 per centum reserved to the United States, or (3) on the basis of a fixed cash bonus with the net profit share reserved to the United States as the bid variable. The United States net profit share shall be calculated on the basis of the value of the production saved, removed, or sold, less those capital and operating costs directly assignable to the development and operation (but not acquisition) of all oil and gas leases issued under this Act to the lessee under a net profit sharing arrangement. No capital or operating charges for materials or labor services not actually used on an area leased for oil or gas under this Act under a net profit-sharing arrangement; allocation of income taxes; or expenditure for materials or labor services used prior to lease acquisition shall be permitted as a deduction in the calculation of net income. The Secretary shall by regulation establish accounting procedures and standards to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits, the burden of proof shall be on the lessee. That part of the net profit share due the United States which is attributable to oil production may be taken in kind in the form of oil and disposed of as provided in subsection (k) of this section. That part of the net profits share due in kind shall be determined by dividing the net profit due the United States attributable to the product or products taken in kind by the fairmarket value at the wellhead of the oil and/or gas (as the case may be) saved, removed or sold. In determining the attribution of profits as between oil and gas, costs shall be allocated proportionately to the value of their respective shares of production.

(b) An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, (2) be for a period of (i) in five years or (ii) for up to ten years where the Secretary deems such longer period necessary to encourage exploration and development in areas of unusually deep water or adverse weather conditions, and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, and (3) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.

4. Section 204 of S. 3221 would amend Section 8 of the Outer Continental Shelf Lands Act by adding the following new subsection (k):

(k) Upon commencement of production of oil from any lease, issued after the effective date of this subsection, the Secretary shall offer to the public and sell by competitive bidding for not less than its fair market value, in such amounts and for such terms as he determines, that proportion of the oil produced from said lease which is due to the United States as royalty or net profit share oil. The Secretary

shall limit participation in such sales where he finds such limitation necessary to assure adequate supplies of oil at equitable prices to independent refiners. In the event that the Secretary limits participation in such sales, he shall sell such oil at an equitable price. The lessee shall take any such royalty oil for which no acceptable bids are received and shall pay to the United States a cash royalty equal to its fair market value, but in no event shall such royalty be less than the highest bid.

5. Section 205 of S. 3221 would amend Section 15 of the Outer Continental Shelf Lands Act as follows:

[SEC. 15. REPORT BY SECRETARY.—As soon as practicable after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing the amounts of all moneys received and expended in connection with the administration of this Act during the preceding fiscal year.]

ANNUAL REPORT BY SECRETARY TO CONGRESS

SEC. 15. Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report on the leasing and production program in the Outer Continental Shelf during such fiscal year, including a detailing of all moneys received and expended, and of all leasing, development, and production activities; a summary of management, supervision, and enforcement activities; a summary of grants made from the Coastal State Fund; and recommendations to the Congress for improvements in management, safety and amount of production in leasing and operations in the Outer Continental Shelf and for resolution of jurisdictional conflicts or ambiguities.

6. Section 206 of S. 3221 would add the following new subsections to Section 5 of the Outer Continental Shelf Lands Act:

Insuring Maximum Production From Oil and Gas Leases

(d) (1) After enactment of this section no oil and gas lease may be issued pursuant to this Act unless the lease requires that development be carried out in accordance with a development plan which has been approved by the Secretary, and provides that failure to comply with such development plan will terminate the lease.

(2) The development plan will set forth, in the degree of detail established in regulations issued by the Secretary, specific work to be performed, environmental protection and health and safety standards to be met, and a time schedule for performance. The development plan may apply to all leases included within a production unit.

(3) With respect to permits and leases outstanding on the date of enactment of this section, a proposed development plan must be submitted to the Secretary within six months after the date of enactment of this section. Failure to submit a development plan or to comply with an approved development plan shall terminate the permit or lease.

(4) The Secretary may approve revisions of development plans if he determines that revision will lead to greater recovery of the oil and gas, improve the efficiency of the recovery operation, or is the only means available to avoid substantial economic hardship on the lessee or permittee.

(e) After the date of enactment of this section, holders of oil and gas leases issued pursuant to this Act shall not be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to obtain production or to conduct testing or workover operations without flaring.

7. Section 207 of S. 3221 would amend Section 11 of the Outer Continental Shelf Lands Act as follows:

[SEC. 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.]

GEOLOGICAL AND GEOPHYSICAL EXPLORATION

SEC. 11. No person shall conduct any type of geological or geophysical explorations in the Outer Continental Shelf without a permit issued by the Secretary. Each such permit shall contain terms and conditions designed to (1) prevent interference with actual operations under any lease maintained or granted pursuant to this Act; (2) prevent or minimize environmental damage; and (3) require the permittee to furnish the Secretary with copies of all data (including geological, geophysical, and geochemical data, well logs, and drill core analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased under this Act or until such time as he determines that making the data available to the public would not damage the competitive position of the permittee, whichever comes later.

8. Section 208 of S. 3221 would amend paragraph (2) of Subsection 5(a) of the Outer Continental Shelf Lands Act as follows:

(2) [Any person who knowingly and willfully violates any rule or regulation prescribed by the Secretary for the prevention of waste, the conservation of the natural resources, or the protection of correlative rights shall be deemed guilty of a misdemeanor and punishable by a fine of not more than $2,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, and each day of violation shall be deemed to be a separate offense.] The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease under the provisions of this Act shall be conditioned upon compliance with the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or with the regulations issued under the provisions of section 6(b), clause (2), hereof if the lease is maintained under the provisions of section 6 hereof.

9. Section 209 of S. 3221 would amend paragraph (2) of Subsection 4(a) of Outer Continental Shelf Lands Act as follows:

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each

adjacent State [as of the effective date of this Act] are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the Outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the Outer Continental Shelf.

MINORITY VIEWS OF SENATORS FANNIN, HANSEN, BUCKLEY, McCLURE, AND BARTLETT

Summary of Minority Views

We strongly oppose S. 3221 and voted against reporting it for the following reasons:

1. The bill, while purporting to increase oil and gas production on the Outer Continental Shelf, would in fact decrease production.
2. The bill is totally undesirable and unnecessary according to the testimony of a majority of the witnesses and continued reiteration of these and other repudiations of the bill by correspondence received from the Administration which was ignored by the Committee.
3. The geological data disclosure authority granted by the bill is confiscatory, anti-competitive, would discourage OCS exploratory efforts and in combination with the mapping program required by the bill could encourage "fly by night" speculators to seek OCS leasing rights.
4. The first essential steps toward the formulation of a Federal Oil and Gas Corporation would be taken under the broad authority and punitive provisions created by the bill.
5. Many problems posed by various provisions of the bill, while troublesome individually, taken in the aggregate would cause serious delays and inequities in expanding OCS leasing, exploration, and production programs thereby frustrating, rather than expediting, the achievement of domestic energy self-sufficiency.
6. The coastal state fund created by the bill would implement an unconscionable bribery of coastal states not to resist OCS leasing programs on federal lands adjacent to their coasts at the expense of all U.S. taxpayers and particularly to the detriment of the citizens of inland states.

These objections and others are set forth in detail below.

1. The bill, while purporting to increase oil and gas production on the Outer Continental Shelf, would in fact decrease production

The findings section of the bill recognizes the need for increased domestic production of oil and gas and the purposes section states that the bill is intended to "increase domestic production of oil and natural gas in order to assure material security, reduce dependence on unreliable foreign sources, and assist in maintaining a favorable balance of payments . . ." The substantive contents of the bill, however, would have the effect of achieving just the opposite. The manifold disincentives created by the bill, hereinafter discussed at length would impair rather than increase domestic production on the OCS thereby frustrating material prosperity and national security, increasing dependence on unreliable foreign sources, and contributing to an increasingly infavorable balance of payments.

cumbered by other responsibilities. With respect to the OCS, we see no reason for a departure from the present system.

John C. Whitaker, on Monday, May 6, 1974, stated:

> In conclusion, Mr. Chairman, we are expanding, our OCS leasing and we are convinced that this expanded program will be conducted under terms and conditions that protect our environment and our land based communities from unacceptable adverse impacts.
>
> We believe that the flexibility provided by the current legislation is extremely desirable and that legislative changes are unnecessary at this time.

Robert B. Kruger, Attorney-at-Law, on Tuesday, May 7, 1974 testified:

> In 1968, I was the project director for the Study of the Outer Continental Shelf Lands of the United States, prepared by my law firm for the Public Land Law Review Commission.
>
> We made a comprehensive study of the operation of the leasing system created under the Outer Continental Shelf Lands Act.
>
> Our basic conclusion at that time was that the leasing system, itself, was a viable and competitive one which contained no major structural defects.

Eugene H. Luntey, on Friday, May 10, 1974, emphasized:

> * * * We are not convinced that a revision of the OCS Act is necessary, or would be the most expeditious route to pursue such changes.
>
> We believe it may be possible for the bidding procedure to be modified by the Secretary of the Interior under the present Act so as to provide greater encouragement for exploration and development.

Russell Petersen, on Friday, May 10, 1974, said:

> Because of the scope of the oil spill liability issue and the inadvisability of dealing with the complex subject piecemeal, the Council does not believe that it is necessary or advisable to amend the OCS Lands Act to add a liability section. . . .

Eugene H. Luntey, on Friday, May 10, 1974, remarked:

> * * * due process under existing law would seem to offer reasonable safeguards and new legislation is not necessary to ensure adequate accountability.

Despite the Administration's continuous and patient efforts to offer written comments on a timely basis during the hearing and mark-up stages of the Committee's consideration of the bill, nearly all such communications were largely ignored. Five examples of such correspondence are included in relevant part below:

LETTER TO CHAIRMAN HENRY M. JACKSON FROM UNDER SECRETARY OF THE INTERIOR JOHN C. WHITAKER OF MAY 4, 1974

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department concerning several bills which deal with the energy resources of the Outer Continental Shelf, S. 3221, S. 2762, S. 2858, S. 2922, S. 2389 and S. 3185.

We recommend that none of these bills be enacted, since appropriate action with respect to OCS energy resources can be taken under existing law.

The bills

S. 3221 would require the Secretary of the Interior to undertake a program of promoting petroleum production from the Outer Continental Shelf subject to new environmental and safety requirements. The Outer Continental Shelf Lands Act would be amended to declare that United States policy is to make available for leasing prior to 1985 all OCS lands determined to have geologically favorable potential and be capable of development without undue environmental harm. To carry out this policy the Secretary would be required to develop a leasing program, specifying the size, timing and location of leasing activity that will best meet energy needs for the ten year period following approval, subject to certain criteria directed toward overall resource management, geographic decentralization of leasing and receipt of fair market value for public resources. An open nomination procedure would be established for areas to be leased or excluded from leasing. The bill specifies matters to be included in the environmental impact statement for leased areas and authorizes the Secretary to obtain all information from public or private sources necessary to make evaluations required by the Act.

The bill would also require the Secretary to undertake a major OCS oil and gas survey, including geologic investigations and drilling, and a mapping program. No part of the survey and mapping program would be considered a major Federal action under the National Environmental Policy Act of 1969 except drilling exploratory wells. Persons holding leases or permits for oil or gas exploration or development on the OCS would be required to provide the Secretary with pertinent information concerning the area which the lease or permit covers. In addition, the Secretary would be required to carry out a research and development program to improve technology related to development of OCS oil and gas resources.

The bill provides for a safety and environmental protection program which would include (i) safety and environmental standards for equipment used in OCS exploration, development and production, (ii) equipment and performance standards for oil spill cleanup plans and operations, and (iii) a safety regulation enforcement program

which includes specified Federal inspection of OCS operations. Issuance and continuance of leases would be conditioned upon compliance with such regulations. A standard of strict liability for oil spill damages would be imposed on leaseholders except where damage is caused by war or the damaged party.

Section 8 of the Outer Continental Shelf Lands Act would be revised to specify that bidding for OCS leases on a "net profit" basis is allowed, in addition to bonus bidding, but royalty bidding would be excluded. The bill would also permit the Secretary to sell Federal royalty oil by competitive bidding and would prohibit him from continuing leases which would otherwise terminate, unless there is a reasonable assurance of production from such leases within the period of an extension. Additional provisions are included to assure full development and maximum production from OCS leases, including a General Accounting Office audit of shut-in wells, Secretarial unitization or cooperation or pooling agreements, and review authority for development plans.

Five percent of OCS revenues would be paid into a newly created Coastal States Fund, subject to a $200 million per year maximum. The Secretary would be authorized to make grants from the Fund to coastal States to ameliorate adverse environmental effects and control secondary social and economic impacts associated with development of Federal OCS energy resources. Secretarial regulations for administration of the Fund would include requirements for grant eligibility, with the proviso that no grant could be made for more than ninety percent of the cost of activities to be conducted under the grant. The Secretary would also be authorized to negotiate with a view to developing interim agreements to permit energy resource development prior to final judicial resolution of disputes relating to such resources. The President would be authorized to establish procedures for resolution of international or interstate boundary disputes.

Discussion.—We agree generally with many of the essential objectives of these bills, but recommend against their enactment at this time. The existing Outer Continental Shelf Lands Act permits substantial latitude for adjustment to changing circumstances and our program for development of the OCS can be fully carried out under the present law. Significant changes in that law could seriously delay achievement of the degree of national energy independence which we believe is vital.

Discussed more specifically below are some of the more important respects in which we believe provisios of these bills are either unnecessary or undesirable.

Scope of leasing program.—Provisions limiting or otherwise modifying the scope of the OCS leasing program are undesirable. For example, the goal stated in S. 3221 of leasing all available prospectively productive OCS lands by 1985 is unrealistic and implies a rapid rate of development which may involve undesirable environmental or other effects and which is far in excess of that presently planned. Our best estimate of the next appropriate change in the scope of the OCS program is to lease some 10 million acres in calendar year 1975. We believe that the rate of leasing implicit in S. 3221 would dispose of vast OCS acreages without increasing petroleum exploration and production beyond that achievable under the current program. The current leasing

program is sufficiently large that availability of drilling rigs will be the main limiting constraint rather than availability of unexplored leases. * * *

Furthermore, the CEQ study has concluded that leasing can be carried out in the areas included in that study if appropriate safety and environmental requirements are adhered to in each area. We intend to require of the industry whatever design criteria and practices are necessary to meet the CEQ concerns.

In contrast, the present law provides sufficient flexibility for an appropriate balancing of energy and environmental factors. Our concern is to improve the leasing system within the present framework and in this connection the Department recently has adopted a two-tier system for designating tracts to be leased. Under it industry nominates promising areas and the public at large is invited to comment on environmental and other considerations bearing on tract selection. Based on this and its own independent review, the Department then specifies areas to be leased. A related consideration is the specific study or other requirements found in several of the bills which are prerequisites to leasing. * * *

We concur in the need for adequate study of areas to be leased. Present law adequately provides for this through the National Environmental Policy Act and the Outer Continental Shelf Lands Act, and our policy is to expand our capability rapidly for determining all the facts necessary to a balanced leasing program. We also agree that consultation with coastal States is appropriate but requiring consent of their governors is unwise in view of the broader national aspects of the OCS program.

Lease offering and conditions—competition and other economic considerations.—The OCS Lands Act provide that leasing of OCS lands shall be by competitive sealed bidding on the basis of a cash bonus bid with a fixed royalty on a bid royalty with a fixed bonus, but in no instance can the royalty be less than 12.5 percent. The leases are for a five year term. These provisions are sufficiently flexible for institution of the most desirable alternative leasing systems to promote competition while serving the public's interest in receiving a fair return for its resources and using those resources in the most responsible manner.

Different methods of bidding for OCS leases are under constant consideration. Bonus bidding has historically been used for Federal OCS leasing, but the Department is committed to a test royalty bid offering not later than the September 1974 OCS lease sale. Although this experiment is a royalty bid experiment, we believe that the information developed will tell us enough about both bonus and royalty bidding to indicate whether further consideration of other possible bidding methods is justified. We are also examining the feasibility of a number of other systems such as profit sharing, installment or contingency bonus payments.

We are opposed to mandating any single system which would result in a loss of the flexibility which the present Act provides. * * *

Safety and environmental programs.—The need for constantly improving our environmental protection and safety programs is clear and we concur in the broad objective of several of the bills to achieve this end.

The Interior Department is, however, implementing the present OCS Lands Act in accordance with the National Environmental Policy Act to insure that these considerations are adequately taken into account. Provisions such as those contained in * * *

S. 3221 are unnecessary as the actions are authorized under existing laws. Also such provisions might be detrimental if transitional problems of complying with their provisions delay current studies or other actions we are currently undertaking to improve environmental protection and other requirements. * * *

The Department is undertaking preparation of a full environmental impact statement on the new 10 million acre leasing program pursuant to the National Environmental Policy Act. The Council on Environmental Quality has recently completed a study of OCS leasing, which includes a number of recommendations which we believe will improve our administration of the OCS program. These and other actions will, we submit, appropriately serve the objective of insuring safety and environmental protection.

Research and Development.—A strong research and development program is essential both with respect to energy and environmental aspects of OCS mineral development. It is, however, being accomplished under existing law and several provisions in the bills under consideration might, if enacted, actually adversely affect the R&D effort. Mandating a wide range of studies by different agencies, as does S. 3221, may preclude desirable coordination and executive flexibility. * * *

Public information and participation in OCS decisions.—Assuring that the public has access to information needed to make intelligent decisions with respect to OCS energy resources and an adequate opportunity to participate in OCS program decisions is essential. Equally important is the desirability of developing a more extensive resource information base.

The Interior Department presently has the necessary authority to pursue these objectives. Consultations with industry representatives, environmentalists and others are presently underway concerning the advisability of an exploratory program. The present OCS Lands Act permits the Department to require that permittee furnish us with data obtained during exploration and we expect to reach conclusions about what should be done in this regard shortly.

It would not be appropriate to amend the OCS Lands Act at this time to require the development of specific informational programs. To illustrate, the survey and mapping program required by section 202 of S. 3221 would impact quite heavily and perhaps undesirably on our OCS program. If enacted, this provision would require that a survey of OCS oil and gas resources be conducted and that the Secretary maintain a current series of detailed topographic, geological, and geophysical maps of and reports about the OCS. Maps for all areas under lease or proposed for leasing prior to July 1, 1977, would have to be prepared and published prior to July 1, 1976; maps of areas proposed for leasing after July 1, 1977; would have to be prepared and published not later than six months prior to the last day for submitting bids for the areas offered for lease; the maps of all prospective areas must be prepared and published not later than ten years after the date of enactment.

Under these provisions a plan for conducting the prescribed survey and mapping programs would have to be submitted to Congress within six months after enactment. A progress report to Congress, including a summary of initial data compiled, would be due within 20 months after enactment, and progress reports would be required on an annual basis thereafter. Conducting such an extensive mapping and survey effort would be extremely difficult, especially within the time frame set forth, and would not likely produce results justifying the effort. Again, our present program undertaken pursuant to existing authority and modified as needs change, should be satisfactory.

Moreover, since the bill's provisions would exempt all actions other than the drilling of exploratory wells from classification as a major Federal action for the purposes of Section 102(2)(C) of NEPA, it would seem that exploratory wells must therefore be considered major Federal actions. Requiring an EIS could significantly delay the drilling of exploratory wells that are important to the conduct and completion of the survey and mapping programs prescribed under S. 3221 and could result in unnecessary delays in the preparation and publication of the prescribed maps and in the development of information important to an effective and expeditious leasing program for OCS lands.

Similar objections appear in several of the other bills. S. 2922 imposes several data gathering requirements in section 3 (adding a new section 15 to the OCS Lands Act) which are costly and may be virtually impossible to obtain within the time frame set forth. The impact of the study requirement is particularly serious because of the bill's requirement that no leasing be conducted in any area for which the study has not been completed.

Distribution of OCS revenues * * *

S. 3221, * * * would divert revenues from the U.S. Treasury to adjacent coastal and other states and we oppose such provisions. Receipts under the Outer Continental Shelf Lands Act from OCS oil and gas leases belong to the Federal Government and currently make a substantial contribution to Federal income. In such revenues were diverted to coastal and other States, as the bills provide, the Federal Government would need to increase its income from other sources. Also the bills adopt inflexible allocations of funds to such States without regard to need or resources.

To summarize, the bills before the Committee deal with the major issues relating to use of the energy resources of the Outer Continental Shelf. To meet our present energy needs, however, we believe that the present OCS Lands Act provides a satisfactory framework and that further legislation such as that before the Committee is undesirable or unnecessary.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN C. WHITAKER,
Under Secretary of the Interior.

LETTER TO SUBCOMMITTEE CHAIRMAN LEE METCALF FROM LEGISLATIVE COUNSEL OF THE INTERIOR DEPARTMENT, KEN M. BROWN OF JULY 1, 1974

Hon. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials, and Fuels,
U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: In response to your letter regarding Under Secretary Whitaker's May 6 testimony on S. 3221 and other legislation dealing with S. 3221, please find enclosed our comments on specific provisions of S. 3221 which could create serious delays in achieving the degrees of energy self-sufficiency for the nation which is so necessary.

Generally, while many features of the bill are apparently directed at improving OCS leasing procedures, there is little to encourage early exploration and optimum production from OCS leases. Much of the authority proposed concentrates heavily on geological and geophysical investigation and reporting. The bill requires minerals fact finding studies with obligations to report to Congress, without reference to authority to implement findings and recommendations.

Responses are also provided to the five specific questions you asked. We will be glad to provide any further information you desire.

Sincerely yours,

KEN M. BROWN, *Legislative Counsel.*

Enclosures.

EXAMPLES OF SPECIFIC PROVISIONS OF S. 3221 WHICH COULD DELAY ENERGY SELF-SUFFICIENCY

Section 202, 18(d).—This subsection is interpreted to call for an environmental impact statement on the leasing program which would include an oil and gas resource assessment of each area to be offered for leasing.

Past lease program schedules prepared by the Department have not required impact statements. Instead, environmental statements were prepared for individual sales scheduled. The Department is now preparing a programmatic impact statement for the proposed accelerated program to lease ten million acres annually, and presumably a separate impact statement will continue to be prepared for each lease sale under that schedule. None of these statements would satisfy the language of the bill as it is now written.

The time frame for completion of an impact statement in accordance with NEPA and a resource assessment as required in the bill could be restrictive. Preparation of a statement covering all areas to be included in the program could require two to three years to complete. It probably would be more complex than the trans-Alaska pipeline and oil shale statements and much more comprehensive than the CEQ environmental assessment of OCS development on the Atlantic and Gulf of Alaska, which was completed in one year.

Section 19.—The proposed legislation would increase the Department's obligation for gathering, mapping and publishing data on OCS resources. Geophysical maps and other data would be required to be prepared and published by July 1, 1976, for OCS areas under lease or scheduled for lease on or before June 30, 1977.

Preparation and mapping for publication of such data would be costly in manpower and time; and because of the time lag for preparing and releasing the mapped data, the information supplied would be of questionable value to industry. Industry itself collects and continually updates data on potential OCS prospects well ahead of scheduled lease sales and in many instances ahead of the initial data gathered by the Government.

This data publication provision may not significantly delay energy development from the OCS. However, it will divert technical expertise away from data evaluation for selection of tracts to be offered for leasing. Identification of favorable prospects will be a critical factor in the success of an accelerated leasing program, especially in new frontier areas.

Section 27.—This section requires completion of a study of methods to promote competition and maximize revenue, and presumably production, from leasing OCS lands. The study would include a plan for implementing recommended administrative changes and drafts of proposed legislation.

The Department has evaluated these points in the past and is continually investigating procedures for improving OCS leasing. Therefore, completing a study of these specified points within one year would prove to be only an exercise since there is no provision in the Act to incorporate further changes in leasing methods without additional legislation.

Section 203, 8.—Under revision of the lease terms, OCS leasing would be restricted to bonus bidding—royalty bidding would be eliminated. The Department is committed to hold a test of royalty bidding at the September 1974, OCS lease sale. Also, the Department is investigating the possibility of conducting a test of profit sharing at a future lease sale (possibly September 1974 or January 1975).

The proposed legislation, as written, would prevent such lease tests or adoption of other leasing practices, if they are found to be desirable. The only exception to cash bonus bidding with a fixed royalty is a cash bonus with profit sharing fixed at 55 percent. It should be recognized that the profit sharing method would provide no royalty oil for distribution under subsection (k) of this section.

Section 206, 5.—Subsection (g) would require each lease issued after enactment of this section to require an approved development plan. Approving a development plan prior to any drilling could be complex and could delay both exploration and production. Because of unique operating conditions encountered on the OCS and the diverse ownership patterns that could exist, a separate plan probably would be necessary for each lease issued or unit formed. Requests for approval for revised plans (allowed under the bill) would be continuous. For instance, a successful OCS lease program of ten million acres annually could involve up to 2,000 development plans.

It would be preferable for the Act to authorize the Secretary, at his discretion, to require exploratory wells to be drilled within specified periods and if production were established, to file an approved development plan within a given time—possibly six months. This approach would not delay exploratory drilling, which would be carried out under existing stipulations and orders.

LETTER TO CHAIRMAN HENRY M. JACKSON FROM THE SECRETARY OF THE INTERIOR, ROGERS C. B. MORTON, OF JULY 15, 1974

DEAR MR. CHAIRMAN: In view of your Committee's plan to mark-up S. 3221, I wish to reiterate the Administration's strong opposition to enactment of this legislation which would amend the Outer Continental Shelf Lands Act. Our letter of May 4, 1974, expressed the reasons for this position in detail.

We now have a sound program for the development of Outer Continental Shelf energy resources which we believe will achieve substantially the same objectives as S. 3221. Extensive environmental protection and safety measures are incorporated in our program to assure Outer Continental Shelf development is conducted with the minimum acceptable environmental costs and with the greatest possible safety for workers. New bidding systems are being evaluated and test sales will be conducted to make certain these valuable energy resources are leased in a manner which will guarantee a fair return to the citizens of the United States and enhance fair competition among bidders.

The present Outer Continental Shelf Lands Act can fully accommodate these objectives and will permit a substantial degree of latitude for adjustment to future changing circumstances, conditions and technology. Enactment of S. 3221 at this time would disrupt these efforts resulting in serious delays in meeting the President's goal of energy self-sufficiency. I urge your support for the present program, which I believe best serves national energy needs, and for retaining the present legislative framework governing the Outer Continental Shelf.

Sincerely yours,

ROGERS MORTON,
Secretary of the Interior.

LETTER TO CHAIRMAN HENRY M. JACKSON FROM ADMINISTRATOR OF THE FEDERAL ENERGY ADMINISTRATION, JOHN C. SAWHILL, OF JULY 15, 1974

Hon. HENRY M. JACKSON,
Chairman, Interior and Insular Affairs, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I have recently learned that your Committee is planning to consider S. 3221, which would amend the Outer Continental Shelf Lands Act of 1953. As Duke Ligon testified in early May (copy attached), it is the opinion of the Administration that no amendments are necessary or desirable at this time since many of the matters contained within the proposed amendments can be handled more effectively and expeditiously under existing laws.

The Outer Continental Shelf Lands Act is broad and flexible. Changes and adjustments to existing policy can be carried out by virtue of authority contained in that Act. As a matter of fact, the Interior Department is pursuing that course through changes in leasing regulations, additional proposed changes, and by some experimental lease sales planned for execution beginning later this year.

In light of the above and in the hope that we can avoid confusion

in this matter, I would appreciate your reconsidering the desirability of proceeding with any amendments to the Outer Continental Shelf Lands Act at this time.

Sincerely,

JOHN C. SAWHILL, *Administrator.*

LETTER TO CHAIRMAN HENRY M. JACKSON FROM ASSISTANT SECRETARY OF THE INTERIOR, ROYSTON C. HUGHES, OF JULY 26, 1974

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Secretary Morton's July 16 letter on Committee Print No. 1 of S. 3221, relating to the energy resources of the Outer Continental Shelf (OCS) this letter sets forth the Interior Department's analysis of Committee Print No. 1 and our position concerning its major provisions. We previously expressed our views on S. 3221 as originally introduced by letter dated May 4, 1974.

We oppose amending the Outer Continental Shelf Lands Acts at this time, because it would disrupt current efforts to achieve full utilization of these resources. The specific problems that enactment of S. 3221 would cause are discussed below.

Leasing program.—Title II of the bill purports to establish a national policy of use of OCS resources and the criteria for a leasing program. Taken together these provisions are so general for the most part that they contribute little or nothing to a sound program. Our present policy and actions are easily comprehended by these provisions which are at best unnecessary and at worst confusing and productive of controversy and litigation. Where these provisions are more specific, they are in several instances either superfluous or harmful. We believe it is undesirable at this time to require development of a ten-year leasing program as contemplated by the bill, since this would divert scarce funds and manpower from more pressing matters in the OCS, and other programs. For any leasing program, however, it is standard governmental operating procedure to prepare at the appropriate time the budget and manpower estimates called for in new section 18(c) of the OCS Lands Act which the bill would add (page 6, line 20 through page 7, line 5). New section 18(d) mentions some factors which must be included in the environmental impact statement on the leasing program. These are factors which obviously will be included whether or not section 18(d) becomes law, but we oppose on principle this amendment to the National Environmental Policy Act. New section 18(e) requires the Secretary of the Interior to establish procedures for a leasing tract-nomination system—something we have already done under the present OCS Lands Act, as indicated in our May 4 letter.

Likewise, sections 18(f) through (j) would have a minimal practical effect, except perhaps in two respects. First, section 18(h) requires the Secretary to review and reapprove the leasing program at least once each year. This intrusion of executive discretion may, on the one hand, require needless paperwork and establish an unenforceable

requirement or, on the other hand, compel too much review and reapproval of leasing programs. Second, section 18(i) confers broad authority on the Secretary to obtain information needed to prepare environmental impact statements with little regard for recently enacted energy data and information provisions, the need for limiting governmental authority or providing appropriate protection of private interests.

OCS oil and gas survey program.—To a large degree the bill's provisions adding a new section 19 to the OCS Lands Act (page 9, line 1 through page 11, line 18) are unnecessary, but to the extent they are likely to have an actual effect, they could impact quite heavily and perhaps undesirably on our OCS program. The bill would require that a survey of all OCS oil and gas resources be conducted and that the Secretary maintain a current series of detailed topographic, geological and geophysical maps of and reports about the OCS. Maps would be required no later than six months prior to the last day for submission of bids for OCS areas scheduled for lease on or after July 1, 1977; and in no case later than ten years after enactment of all other areas.

Under these provisions a plan for conducting the prescribed survey and mapping programs would have to be submitted to Congress within six months after enactment. A progress report to Congress, including a summary of initial data compiled, would be due within 20 months after enactment, and progress reports would be required on an annual basis thereafter. Conducting such an extensive mapping and survey effort would be extremely difficult, especially within the time frame set forth, and would not likely produce results justifying the effort. Carrying out the mapping and survey requirements (including surveys on a spacing no greater than two kilometers) would require large expenditures of money, possibly on the order of several billion dollars. Again, our present program undertaken pursuant to existing authority and modified as needs change, should be satisfactory.

Moreover, since the bill's provisions would exempt all actions other than the drilling of exploratory wells from classification as a major Federal action for the purposes of section 102(2)(C) of the National Environmental Policy Act, it would seem that exploratory wells must therefore be considered major Federal actions. Requiring an environmental impact statement could significantly delay the drilling of exploratory wells that are important to the conduct and completion of the survey and mapping programs prescribed under S. 3221 and could result in unnecessary delays in the preparation and publication of the prescribed maps and in the development of information important to an effective and expeditious leasing program for OCS lands.

Research and development.—A strong research and development program with respect to both energy and environmental aspects of OCS mineral development is being accomplished under existing law. New section 20 of the Act (page 11, line 20 through page 13, line 7) is superfluous.

Safety.—As pointed out in our May 4 letter, a recent OCS study by the Council on Environmental Quality has concluded that leasing can be carried out in OCS areas if appropriate safety and environmental requirements are adhered to and we intend to require of industry whatever measures are needed to assure a safe and environmentally

sound program. In this regard, we are meeting the concerns underlying the new section 21 which the bill would add to the OCS Lands Act, including inspection, accident investigation and reporting measures.

Liability for oil spills.—The Administration currently has under consideration comprehensive legislation relating to oil spill and other OCS liability. We recommend that the Committee defer action in this area until the Administration proposal is developed. The Council on Environmental Quality has previously commented on new section 22 (page 15, line 23 through page 17, line 19).

Negotiation with States and boundary determinations.—New sections 23 and 24 of the OCS Lands Act (page 17, line 20 through page 18, line 8) provide no new authority for the Executive Branch and merely call for actions pertaining to the matters with which we are already dealing.

Coastal State Fund.—We are opposed to provisions of the bill which would create a new program of grants to adjacent coastal States and thereby divert revenues from the U.S. Treasury. Receipts under the OCS Lands Act from OCS oil and gas leases belong to the Federal Government and currently make a substantial contribution to Federal income. If such revenues were diverted to coastal States, as new section 25 of the Act would provide (page 18, line 10 through page 19, line 20), the Federal Government would need to increase its income from other sources. In effect, the bill increases Federal expenditures outside the normal budget and appropriation process, which is both bad management and inflationary. It results in an inflexible allocation of funds to such States without regard to need or resources and also fractionates efforts to address the environmental, social and economic problems of OCS energy development.

Lease terms.—The provisions of the present OCS Lands Act are sufficiently flexible for institution of the most desirable alternative leasing systems to promote competition while serving the public's interest in receiving a fair return for its resources and using those resources in the most responsible manner. Different methods of bidding for OCS leases are under constant consideration. Bonus bidding has historically been used for Federal OCS leasing, but the Department is committed to a test royalty bid offering not later than the September 1974 OCS lease sale. Although this experiment is a royalty bid experiment, we believe that the information developed will tell us enough about both bonus and royalty bidding to indicate whether further consideration of other possible bidding methods is justified. We are also examining the feasibility of a number of other systems such as profit sharing, installment or contingency bonus payments. We are opposed to mandating any single system which would result in a loss of the flexibility which the present Act provides.

Section 203 of the bill would revise section 8 of the OCS Lands Act to specify that bidding for OCS leases on a "net profit" basis is allowed, in addition to bonus bidding, but royalty bidding would be excluded. The Committee Print modified the original bill to specify that not less than 30% of net profit must be paid to the United States, instead of requiring a 55% payment. Section 204 of the bill would also permit the Secretary to sell Federal royalty oil by competitive bidding and would prohibit him from continuing leases which would otherwise terminate, unless there is a reasonable assurance of production

from such leases within the period of an extension. Additional provisions are included in section 206 to assure full development and maximum production from OCS leases, Secretarial unitization or cooperation or pooling agreements, and review authority for development plans. In our view "net profit" bidding is permitted under the present Act subject to certain non-objectionable limitations. We are continuing to evaluate the desirability of "net profit" and other forms of bidding.

Miscellaneous.—Sections 301 and 302 of the bill require several investigations and studies as to which attention is already being directed. The authority conferred is redundant and poses the potential of confusing current authorities and efforts.

In regard to section 302, we have been studying and monitoring shut-in and flaring wells under the OCS Lands Act and have furnished information to the Congress on this subject.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

In summary, the Outer Continental Shelf Lands Act of 1953 has been and remains a landmark legislative measure which provides an ample statutory foundation for the orderly management of the oil and gas resources of the federal offshore area. The administration has repeatedly emphasized, and we agree, that tampering with an Act that has steadfastly served the nation for over twenty years is unnecessary, undesirable, and counterproductive. S. 3221 is unnecessary, undesirable, and counterproductive to the rapid attainment of energy self-sufficiency.

3. The geological data disclosure authority granted by the bill is confiscatory, anticompetitive, would discourage OCS exploratory efforts and in combination with the mapping program required by the bill could encourage "fly by night" speculators to seek OCS leasing rights

Section 18(i) authorizes the Secretary of the Interior to obtain unlimited "data" and "other information" from public and private sources concerning potential oil and gas reserves for use in preparing Environmental Impact Statements; and

Section 19(h) directs the Secretary to require lessees and exploration permit holders to disclose "any data about the oil or gas resources in the area subject to the lease" in order to conduct a mapping program.

Section 207 amends Section 11 of the existing Act and requires, as a condition for the issuance of an exploration permit, that the permittee turn over to the government all data obtained (including well logs and the actual drill cores) during exploration.

A. Such authority is CONFISCATORY in nature and could lead to an unconstitutional "taking of proprietary information".

Although OCS lessees have, by regulation, traditionally been required to transmit raw data to the USGS resulting from drilling and production operations, they have not been required to disclose either raw data or proprietary interpretative information resulting from exploratory efforts conducted pursuant to an exploration permit for unleased areas. Requiring such disclosure could result in the confiscation of proprietary information.

Even though the bill requires that the Secretary shall maintain the confidentiality of all such proprietary data or information so received, these requirements have been qualified by vague clauses pertaining to the amount of time such information or data shall remain confidential.

It is likely that use of the data in the published maps and surveys required by the Act and in the environmental impact statements required by The National Environmental Policy Act, let alone the high probability of "leaks", will result in disclosure of proprietary information.

B. Such disclosure of proprietary information and subsequent publication as part of the Environmental Impact Statements or as part of the mapping publications required by the act would be ANTI-COMPETITIVE.

Such publication of proprietary information would alleviate or substantially reduce competition as between present or prospective OCS lessees. Regarding the disclosure of raw data as well as interpretative information, this anticompetitive effect is most severe in areas on the OCS not under lease. Exploration permits convey no exclusive rights to the holder to explore any area of the OCS. Each potential lessee has an equal right to explore any unleased area of the OCS and in turn an incentive to do so in order to acquire sufficient information to enable him competitively to identify promising tracts. To require him to disclose either data or interpretative information resulting from such exploratory initiatives cuts at the heart of the competitive system.

The very backbone of competitive free enterprise in the development of the OCS is the fact that private companies maintain and build their competitive positions on the strength of their own proprietary information. For such information to be given out by the Federal Government would destroy that free competition and therefore severely delay development of the OCS resource.

C. Rather than increasing the ease of entry into OCS production operations and thereby providing for increased competition, the data and information disclosure requirements in combination with the requirement that the Secretary publish such data and information would discourage private efforts to obtain such exploratory data and information on the OCS.

A company would object to using its own capital to finance exploratory efforts if the results of such efforts would automatically be turned over to the government, which, through publication of such information in the form of maps and environmental impact statements would in turn be making it available to competing companies. The result would be a substantial lessening of private exploration forcing an increased level of federal exploration and a subsequent dependence upon such federal exploratory information by all companies wishing to obtain OCS leases. Thus, by virtue of the fact that the principal, if not exclusive, source of exploratory information will be that collected by the federal government greater uncertainty on the part of the companies concerning the interpretation of such data and reluctance by the companies to rely upon the exploratory informa-

tion collected by the government would serve as a disincentive to responsible companies to submit bids at future OCS lease sales.

D. Instead, "FLY BY NIGHT" SPECULATORS would be encouraged to try to make a "fast buck" by utilizing the data published by the federal government as a basis for submitting bids at future OCS sales.

The Interior Department has already been troubled by speculators (in one case, Fats Domino) submitting bids at OCS lease sales. This problem would be seriously magnified if the data provisions of the bill became law.

4. The first essential steps toward the formulation of a Federal oil and gas corporation would be taken under the broad authority and punitive provisions created by the bill

Section 19(b) authorizes the Interior Department to obtain information by itself conducting, contracting for or purchasing the results of, surveys and investigations.

Section 19(h) requires the industry to share its data about "the oil or gas resources" as a condition precedent for retaining a lease.

Section 207 requires disclosure to the Interior Department of data obtained pursuant to exploration permits.

Section 19(c) directs the Interior Department to map the OCS and to a degree of detail suitable for actually drilling for oil and gas and that no area may be leased until such maps are published.

A. Such authorities, if exercised, would cause the Interior Department to compete directly with private enterprise.

The enormity of the mapping requirements creates a huge informational need which can be filled only by government entering the data business in competition with private enterprise. Oil exploration and geophysical companies which normally sell their information to oil companies, will not want to supply geo-scientific data if they know it would be made public, since its value stems from its remaining confidential. There is, thus a strong disincentive to the industry which could be overcome only by government exercising its authority to perform the surveys on its own account. Because of government's market impact, not only would the geo-data industry lose a major customer, but it would face a new, all powerful competitor which would obtain, compile and publish the data at a fraction of its cost.

The need for increased drilling, caused by the mapping requirements, given the shortage of drilling rigs, would encourage the creation of a drilling fleet which also would compete with the drilling industry. Finally, the sections of the Act which authorize the collection of industry's raw data creates a distinct competitive disadvantage and an exploratory disincentive to private enterprise. The results of such a situation would be uncertainty, court battles, and delay. Industry would be forced out of business or out of the country in an effort to seek opportunities, thus increasing the delay in OCS development and increasing costs to the consumer.

B. Given all the elements of a "business" opportunity, the urge of the government to seize it would be irresistable.

Once private industry has been throughly discouraged and delays in OCS development are apparent, the availability of massive amounts of high quality information, trained survey, drilling and geological personnel and modern, sophisticated equipment, would dictate the use of it all "in the public interest". When all the above elements are present, we would have a federal oil and gas exploration company, complete with an unlimited supply of prospects, a captive market and the ability to control prices. Short of such a result, the government could easily be inclined to nationalize or partially nationalize the U.S. petroleum industry as the British government has already announced its intention to do in the North Sea area.

Such a temptation should never be presented to the government in a nation whose economic strength is the result of its protection of free enterprise.

5. Many problems posed by various provisions of the bill, while troublesome individually, taken in the aggregate would cause serious delays and inequities in expanding OCS leasing, exploration, and production programs thereby frustrating, rather than expediting the achievement of domestic energy self-Sufficiency

A. Section 18(f), (g) and (h) prohibit leasing any OCS area after January 1, 1978, not included in a published leasing program.

This requirement is not only unnecessarily cumbersome and rigid, but would also cause leasing delays by preventing practical and needed adjustments in areas to be included in individual lease sales. This intrusion into reasonable executive discretion may, on the one hand, require needless paperwork and establish and unenforceable requirement or, on the other hand, compel too much review and reapproval of leasing programs.

B. Section 18(d), which amends NEPA, lists factors which need to be included in environmental impact statements which although inflexibly restrictive in parts is also too broad to be properly applied regarding all future OCS lease sales, including those in virgin areas. It is not only unnecessary but would also cause delays in expediting the Interior Department's already expanded leasing program.

C. Section 19(d) requires the Secretary within six months to submit to Congress a survey and mapping plan.

This subsection would require delays in both mapping and leasing programs by virtue of the fact that manpower needed for action programs would be taken away from their work to prepare a planning document of questionable utility.

D. Section 21 of the bill calls for an arbitrarily expanded and detailed safety program.

This is one of the bill's most classic examples of "overkill". The Interior Department in its letter to the Chairman of May 4th pointed out that:

> * * * a recent OCS study by the Council on Environmental Quality has concluded that leasing can be carried out in OCS areas if appropriate safety and environmental requirements are adhered to and the Interior Depart-

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ment is already requiring of industry whatever measures are needed to assure a safe and environmentally sound program. In fact it is already meeting the concerns underlying the new section 21 which the bill would add to the OCS Lands Act, including inspection, accident investigation and reporting measures.

There is no way for the Congress to be able to generalize and prescribe for all future individual platforms in the Gulf of Mexico, the Atlantic, the Pacific and off Alaska, safety standards as all inclusive as those contained in Section 21. Implementing these safety requirements would cause serious delays not only because of expanded manpower and cost requirements, but also because of litigation which would result seeking to enjoin further OCS leasing, exploration, and production until all safety standards had been complied with.

E. Section 26 of the bill authorizes citizen suits.

It thereby, in addition to citizen suits already encouraged by NEPA, creates broader standing for many new and separate causes of action to be brought against both the Interior Department and any person alleged to be violating any part of the Act. In light of the experience of the trans-Alaska pipeline litigation and numerous suits already brought under NEPA to enjoin OCS lease sales, this section would constitute an express invitation to each U.S. citizen to initiate lawsuits to slow down and otherwise delay the entire OCS program.

The citizens' suit provision of S. 3221 is one more step toward "government by combat between attorneys".

Under this provision any citizen with an interest which is or may be adversely affected may commence a civil action to enforce the law. Any citizen may intervene as a matter of right in a suit being diligently prosecuted by the government.

By providing a forum for private citizens to share in or become the dominant partner in the Executive Branch's Constitutional responsibility to execute and enforce the laws of the land, the Congress is frustrating and thwarting the goal of orderly development of the Outer Continental Shelf.

Our system of jurisprudence has traditionally provided relief to persons when direct injury is involved. The language of this section, however, would substitute "interest" for "injury". It then goes one step further and attempts to create the interest by the trust concept of Section 201 which states that "is a vital national resource held in trust by the Federal Government for all people". Under such a concept all citizens would have a justifiable interest under the bill even though the interest is shared in common with all other citizens and there is no injury to the party bringing the suit. This is an abdication of government. Enforcement of the law of the land, insofar as the Outer Continental shelf is concerned, would be placed in the hands of citizens without regard to the diligence with which the government is performing its responsibilities. The net result will be a government by vigilantes.

In any action taken by the Federal Government different lawyers may have several different views which may or may not coincide with the governments. The sole basis for permitting this divergence of opinion to be argued in court should be whether or not a party has standing and is being injured. To provide otherwise, as this section does, will encourage a proliferation of law suits. The resultant effect will be lucrative attorneys' fees and delay.

Statutes should encourage obedience to orderly process and respect for lawful authority. This provision of S. 3221 does neither. Section 26 would not only constitute an express invitation to citizens to initiate law suits to delay any or all parts of the expanded OCS program and thereby frustrate the early attainment of energy self sufficiency, but would additionally substitute government by individual extremist groups for government by organized representation.

The impact on attainment of energy self sufficiency is incalculable. Each suit could result in delay. Since continuing action is required of the Secretary (annual revision or reapproval of the leasing plan, coastal state grants, revision of lease terms etc.) there is no end to the delay that can be encountered if suits are filed every time the Secretary is required to act.

Some measure of the type of delay this type of litigation can cause is illustrated by the nation's experience with the Alaska pipeline. The five year delay was ended only by an act of Congress at a time when due to severe petroleum shortages many were waiting in long lines to obtain gasoline.

The citizen suit concept had its origin, presumably, in instances where the government agencies responsible for enforcing the law were failing to perform their duty. Suits by private citizens were a means of correcting that governmental dereliction. Section 26 assumes that the Secretary and other agencies of government will totally fail-to-perform their respective duties. It's almost anomalous that the functions assigned to the Secretary would be spelled out, and then, in effect, provide that if any citizen who doesn't agree with the Secretary can bring the matter up in litigation and let the Court decide whether the Secretary was right or wrong. A person who is injured should have "his day in court" and he does without citizen suit provisions. The citizen suit provision seems to encourage any person—who may not be injured—to bring policy determinations into the courthouse.

NEPA already presents sufficient opportunity for citizens to participate in the OCS decision making process; in fact, too much opportunity.

The Courts have become more and more liberal in recent years in granting "standing" to sue. The liberalized standing concept was somewhat narrowed by the Supreme Court in the Mineral King case (Sierra Club v. Morton). In that case the Court held that the goal is to put the right to litigate in the hands of those who have a direct stake in the outcome, not those who seek to do no more than vindicate their own value preferences through the judicial process. This decision still permits suit by any individual

who has in fact suffered an injury or by an organization as a representative of members who have in fact suffered an injury.

In *Natural Resources Defense Council v. Morton* several organizations sought and were granted an injunction barring lease sale of oil and gas on OCS because the NEPA statement failed to discuss in detail alternatives to the sale. This resulted in a delay of one year.

The following is a list of suits which could be brought, and in all likelihood would be brought, under the provisions of Section 26. The delays which could result from such litigation are evident.

Citizen v. Secretary--challenging 10 year plan

18(b)(1) 1. Management does not consider *all* resources values properly.
18(b)(1) 2. Management does not consider potential impact oil and gas exploration on other resource values of OCS.
18(b)(2) 3. Timing and location doesn't properly distribute and decentralize exploration and development among various areas of OCS under (A), (B), (C) and (D).
18(b)(3) 4. Doesn't provide for receipt of "fair market value."
18(c) 5. Estimates of required appropriations and staffing improper.
18(d) 6. Environmental statement improperly assesses oil and gas resources of each area.
18(d) 7. Environmental statement improperly assesses rates of expected exploration and development.
18(d) 8. Environmental statement improperly assesses: geological and geophysical conditions, biological data, commercial and recreational uses of "nearby land and water areas."
18(e) 9. Challenge Secretary's regulations on procedures for receipt and consideration of nominations, public notice, participation of State and local governments and coordination program with programs under Coastal Zone Management Act.
18(h) 10. Every revision by Secretary subject to same attacks.

Company v. Secretary—challenging 10 year plan

18(i) 1. Challenging right of government under 18(b) and (i) to obtain private data about location of oil and gas reserves.
18(j) 2. Challenging right of government agencies to disclose data given in confidence.

Citizen and/or Company v. Secretary

19(h) 1. Challenge requirement that holder of lease or permit give Secretary any data about oil or gas resources subject to lease or permit.

Company v. Secretary—challenge research by Secretary

20(a) 1. Challenge finding that research not being conducted by other public or private entity.
(*a*) Safety devices.
(*b*) Controlling blowouts.

(*c*) Cleanup oil spills.
(*d*) Drilling bits.
(*e*) Flaw detection for undersea pipelines.
(*f*) Development of wells in deep water.
(*g*) Subsea production.

20(b) *Citizen and/or Company and or Union v. Secretary.*—Safety and environmental standards. 1. Almost certain challenges to safety and environmental standards for OCS exploration and production equipment.

20(c) *Citizen and Company v. Secretary.*—
1. Cleanup and Performance standards of oil spill cleanup too rigid.
2. Cleanup and Performance standards of oil spill cleanup too loose.

21(a) *Citizen and/or Union v. Secretary.*—All types of litigation—safety too loose, inspection not made or too lax, challenge continuation of lease.

21(b) *Company v. Secretary.*—All types litigation—safety regulations too rigid.

Citizen v. Company

22(c) Where differences between environmentalists and Secretary over whether pollution threaten aquatic or wildlife citizens will sue.

Citizen v. Secretary

29 1. Various challenges on Baseline and Monitoring Studies.
203 2. Leasing and accounting challenges.
204.3. Disposition of royalty oil.
206(d) 4. Litigation over extension of leases—waiver development requirements.

Citizen and/or Company v. Secretary

23. Challenging any interim agreements between the U.S. and coastal states allowing energy resources development in disputed areas.

Citizen and/or Company v. Secretary

25 Challenging v. Federal grants made to coastal states to assist in ameliorating adverse environmental effects and control of secondary social and economic impacts associated with OCS National energy resources development.

Citizen v. Secretary

203(a) Challenging accounting procedures and standards governing the calculation of net profits and the actual calculation of net profits.

F. Section 28 additionally authorizes the Attorney General to bring suits against persons subject to the Act and imposes criminal and civil penalties for violations of the Act.

This section is another case of "overkill" apparently designed to cause more delays. Its inclusion suggests that OCS permittees and lessees have been acting in bad faith. No such reports have been received by the Committee substantiating such a notion. We conclude therefore that the inclusion of this section was intended to seek public favor by attacking U.S. petroleum companies in order to distract attention away from the dismal legislative record of the Ninety-third Congress regarding energy legislation.

G. Section 204 which amends Section 8 of the OCS Lands Act commands the Secretary to dispose of its share of the oil by competitive bid for not less than its fair market value.

There are no guidelines concerning how the Secretary will determine value. This becomes particularly important when an independent refuses to purchase as provided in Subsection (k) and the lessee is obligated to purchase for not less than the highest bid. Presumably, an independent could bid a high amount of a small quantity of oil, thus compelling the lessee to purchase the remaining portion at such amount, even though it be higher than fair market value.

This is a discriminatory and highly inequitable burden to place on the lessee. If he cannot have the opportunity to bid on the royalty oil he should not be forced to pay a price higher than fair market value.

The provision is inconsistent with its title in that it attempts to legislate the sale of net profit oil as well, which oil will be a continually indeterminate amount, depending on the profitability of operations for a given period. The provision as drawn precludes a lessee from having access to a considerable portion of the oil derived from his lease as opposed to a fixed amount in a strict royalty situation which permits proper economic planning. The inability of a lessee to have access to net profits oil under his lease will thus have a negative effect on the valuation of an area and thus be reflected in his bids.

The basic right to dispose of royalty oil is spelled out at the outset. However, the provision goes on to attempt to legislate the Secretary's right to discriminate against other than "independent refiners", by limiting participation in such sales should the Secretary deem it appropriate. The authority of the Secretary to restrict the right of any parties to bid is highly questionable.

H. Under Section 22, there is established strict liability for damages subject to a $100,000,000 limit for each incident and unlimited liability for a clean-up and removal. A liability fund is established through collection of 2½ cents for each barrel of oil produced in the Outer Continental Shelf.

The Federal Water Pollution Control Act Amendments of 1972 and well-established tort law provide full and adequate protection for damages and clean-up. To now establish new liability laws in this area is redundant and unnecessary. It is also counter to accelerating development of our domestic supplies. This results from requiring the diversion of $100,000,000 into a fund which could be more beneficially used to explore for and develop oil and gas.

In addition to the concept being ill-conceived, Section 22 is deficient in the following ways:

(1) A lessee is liable for damages to any person who is effected "(a) within the territory of the United States, Canada or Mexico; (b) in or on waters within two hundred nautical miles of the baseline of the United States, Canada or Mexico from which the territorial sea of the United States, Canada or Mexico is measured; or (c) within one hundred nautical miles of any operations authorized under this Act." It is inconceivable that in this bill dealing with development of our Outer Continental Shelf that we are trying to establish international law on damages due to persons in foreign countries. This is the purpose and intent of numerous international conventions and conferences, which are now underway, e.g., Law of the Sea Conference in Caracas, Venezuela. The scope of any liability section at this time should be limited to damages resulting in spills on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.

(2) Strict liability is imposed for damages even if the damages that occur are caused by an "Act of God". This has been a well-accepted defense to strict liability and should be included as such under Section 22(b)(2). This is particularly true when there is an absolute requirement to clean-up any spills regardless of cause.

(3) There is a limit of $100,000,000 for each incident with respect to damages but not clean-up. The $100,000,000 limit should be applied to both damages and clean-up. A $7,000,000 threshold liability for the lessee and a $100,000,000 limit is more than adequate to instill incentives to operate safetly and protect those damaged and affected by a spill.

I. Section 203. Revision of Lease Terms, provides that bidding shall be at the discretion of the Secretary on the basis of a cash bonus with a fixed royalty or not less than 12½% or on the basis of a cash bonus with a share of the net profits derived from operation of the tract of no less than 30% reserved to the United States or on the basis of a cash bonus with a variable net profit bid.

The method of bidding on leases should be retained as presently written in the existing Act, but there should be a study and report to Congress on all reasonable alternatives as called for in Section 27. The Department of the Interior and the Federal Energy Administration both oppose changing the law in this area. Further, it is illogical to call for a study of all alternatives and then mandate what ones are to be used.

One of the alternatives is a "net profit" concept. If implemented this would severely reduce if not retard OCS development. A development program under a net profits sharing system would necessitate the recovery of substantially more reserves to economically justify the required expenditures to develop. Under this type of arrangement the lessee must recoup the tremendous costs of dry holes, lease acquisitions and other exploratory costs of non-productive leases from which there is no profit. This format will thus

result in the elimination of any prospective tracts from bid consideration with the accompanying depression of production and reserves.

Under the existing bidding system, a bidder's evaluation of the reserve potential is the principal factor in determining the amount of bonus bid for a given tract. Under the proposed net profits sharing system, it is possible that the level of bidding will be keyed more to a minimum earning requirement and minimum expenditure level. This could result in less development at a slower pace. The goal for the Outer Continental Shelf is to maximize production through full and accelerated development.

Many tracts awarded under a net profits leasing format would not be fully developed and would be abandoned earlier in their producing life in view of added cost burdens, resulting in a waste of natural resources.

The recognized problem areas associated with a net profit system leasing format both at a fixed and variable bid rate fully warrants a detailed and complete review by the Department of the Interior and that the results be keenly analyzed before this applicable section of the OCS Lands Act is further considered for amendment. For the same reasons other alternative methods of bidding should be reviewed and a report thereon filed with Congress.

J. Failure to comply with the development plans prescribed in Section 206 would result in termination of the lease, regardless of whether such failure was caused by events beyond the control of the lessee.

In the event of the termination of a lease, no provision in this section is made for notice or a hearing for the lessee or for a rebate of any part of the payments made for the leases.

The ten problems described in detail above are but a few of the many provisions of the bill which would cause serious delays and inequities in expanding OCS leasing, exploration and production programs, thereby frustrating rather than expediting the achievement of domestic energy self-sufficiency.

6. The coastal State fund created by the bill would implement an unconscionable bribery of coastal States not to resist OCS leasing programs on Federal lands adjacent to their coast at the expense of all U.S. taxpayers and particularly to the detriment of the citizens of inland States

The creation of a program for granting OCS revenues to adjacent coastal states under Section 25 is an unwarranted diversion of revenues from the U.S. Treasury. Such a diversion of funds would be inflationary, inequitable, and constitute a poor budgetary practice. In addition, OCS receipts belong to all the people of the country who currently receive benefits through congressional appropriation from the Treasury. Diverting these revenues for coastal states only, without requirement for need, would give coastal stataes windfalls and would require increased taxation to make up for diverted revenues.

Senator Dewey F. Bartlett, aware of this inequity, wrote to the Office of Management and Budget on August 14 to solicit Administration views specifically on this section. His letter and the reply he

received from the Director of the Office of Management and Budget, along with supporting documentation, are reprinted below:

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., August 14, 1974.

Mr. FRANK ZARB,
Deputy Director, Office of Management and Director, Executive Office Building, Washington, D.C.

DEAR FRANK: As you know, the Senate Interior & Insular Affairs Committee has reported S. 3221, the so-called Energy Supply Act which deals with Outer Continental Shelf (OCS).

Section 25 (Committee Print 2 attached) calls for a creation of a Coastal State Fund which would provide for 200 million dollars per year for payment to coastal states which are adjacent to the Federal OCS on which oil and gas exploration and production activities are to be conducted.

This fund is little more than another form of the OCS revenue sharing concept. It is my understanding that the current administration, and for that matter, every administration since the Outer Continental Shelf Lands Act of 1953 was passed, has been opposed to a revenue sharing measure. The false premise for a Coastal State Fund is that activities of oil and gas companies conducted on the outer continental shelf constitutes an adverse economic or social impact on the adjacent coastal state. It does not appear to me that such activities are in fact detrimental to the economy of the adjacent coastal state.

Furhermore, I question if as a matter of public policy the U.S. Government should "buy" the acceptance of leasing activities to be implemented in the federal offshore areas. It is unfair for land-locked states to subsidize the coastal states, especially since coastal states have already been allowed jurisdiction over and revenue of adjacent coastal water inside the Federal OCS.

To my regret, the Committee chose to ignore the position expressed by the Department of Interior on behalf of the Administration. As quoted on Page 24, Committee Print 2, the Department of Interior wrote:

"Coastal State Fund. We are opposed to provisions of the bill which would create a new program of grants to adjacent coastal States and thereby divert revenues from the U.S. Treasury. Receipts under the OCS Lands Act from OCS oil and gas leases belong to the Federal Government and currently make a substantial contribution to Federal income. If such revenues were diverted to coastal States, as new section 25 of the Act would provide, the Federal Government would need to increase its income from other sources. In effect, the bill increases Federal expenditures outside the normal budget and appropriation process, which is both bad management and inflationary. It results in an inflexible allocation of funds to such States without regard to need or resources and also fractionates efforts to address the environmental, social and economic problems of OCS energy development."

I propose to offer an amendment on the Senate floor which would delete Section 25. The bill is likely to be called up for floor action

early next week. If you agree with my position on this issue, could you furnish me with additional information to be circulated to my colleagues in an effort to obtain their support of this amendment?

Sincerely,

DEWEY F. BARTLETT,
U.S. Senator, Oklahoma.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., August 16, 1974.

Hon. DEWEY F. BARTLETT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BARTLETT: I certainly appreciate your proposal to offer an amendment to delete section 25 of S. 3221. We agree with your position on this issue and are happy to provide you with additional information on why we strongly oppose earmarking OCS receipts. The Office of Management and Budget also agrees with the viewpoint of the Department of the Interior as quoted in your letter.

We are providing you with two papers. The first, which should be useful for your general circulation, gives in abbreviated form the reasons for opposing payments to coastal States from OCS receipts. The second is a copy of part of a paper prepared by a work group studying OCS problems, chaired by Dr. William A. Vogely and prepared in 1972. This paper presents the counter arguments to the reasons usually presented by those who propose sharing OCS receipts with coastal States.

We have not had an opportunity to examine the bill as reported by the Committee, but will do so as soon as it is available. If we can be of further help, please feel free to call on Frank Zarb or myself.

Sincerely,

ROY L. ASH, *Director.*

Enclosures.

REASONS FOR OPPOSING SHARING OCS RECEIPTS WITH COASTAL STATES

The OCS recepts are from Federal lands and therefore belong to all the American people, not just those living in the coastal States.

Payments to coastal States would be inflationary by adding to Government outlays or would force the Government to either raise taxes and other revenue or reduce expenditures of priority programs.

Legislation of this kind violates the spirit of the just passed Congressional Budget and Impoundment Control Act of 1974. In doing so it reduces the ability in future years of the Executive and the Congress in allocating funds to the highest needs.

It is doubtful that there are serious adverse economic impacts on the States from OCS leasing activities. Employees working on energy development are highly paid and thus bring a larger than average share of revenues through State income and other taxes. In addition, the OCS related businesses with high values will be subject to State and local taxes and will provide a large contribution to the tax base.

Should any Federal assistance be needed, the existing programs for community development provided by Commerce, HEW, HUD, Agriculture, Labor and EPA should be used rather than establishing overlapping and conflicting new programs.

Regarding environmental damage from potential oil spills, it does not appear equitable for the Federal Government to provide compensation when spills do not occur. When accidents do occur, the companies are liable for proven environmental damages. Only companies that can bear this liability are permitted to lease. In addition, the possibility of spills is reduced by providing strict regulations and then enforcing them.

CHAPTER 6.[1] SHARING OCS REVENUES WITH ADJACENT STATES

INTRODUCTION

This paper examines the possibility of sharing Federal collection from Outer Continental Shelf (OCS) mineral production with adjacent states. It considers various justifications which have been advanced for such sharing, examining the evidence in support of each, the type(s) of sharing each suggests, and the adjacent states for which a rationale seems to be particularly appropriate. The paper also considers the effect of different means on Federal revenues.

JUSTIFICATIONS FOR SHARING OCS REVENUES WITH ADJACENT STATES

Sharing OCS revenues with adjacent states has been supported for the following three reasons: (1) to compensate adjacent states for the adverse fiscal impact of OCS activity; (2) to compensate adjacent states for the adverse environmental impact of OCS activity; and (3) to mitigate state opposition to OCS activity. Each of these rationales is considered below.

(1) The argument has been made that OCS activity has an adverse fiscal impact on the adjacent state(s). Mineral production from the OCS does not yield any royalties or severance taxes to state governments. Yet the governments of adjacent states and localities must provide public services to OCS workers and their families. To help pay for these services, OCS revenues should be shared with adjacent states.

This argument, while making the accurate point that OCS mineral production does not yield any royalties or severance taxes to adjacent states, ignores the fact that OCS activity currently provides considerable revenues to adjacent states at present. Employees engaged in the various aspects of OCS activity are subject to state income tax, state general and selective sales taxes, state license fees, and state and local property taxes. Businesses located onshore serving offshore facilities are subject to state corporate income taxes, state sales taxes, and state and local property taxes.

The question thus become one of determining whether the additional state and local revenues attributable to OCS activity exceed or

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[1] Reproduced from "Report of the Economic Working Group Outer Continental Shelf Task Force," May 1972 by Dr. William A. Vogley, Chairman, OSC Economic Work Group.

are equal to additional state and local expenditures because of OCS activity, and, if not, whether this provides a rationale for sharing OCS revenues to make up the difference. For the average state, it is likely that revenues will exceed or equal expenditures for the following reasons. Offshore workers and onshore workers in support of offshore facilities have incomes at average to above-average levels compared to average per capita and family income in the adjacent states off which OCS activity has occurred. Subsequently, they, on average, pay more capita in state sales and income taxes than the average resident of the state (these taxes accounted for 84% of all state tax collections in 1970). They will, also on average, pay more personal property tax to local governments. Onshore facilities serving OCS activity are major components of the property tax base of the communities where they are located. Hence, OCS activity provides, in most cases, greater than average shares of state and local revenues.

The expenditure picture on the whole is more cloudy since the impact of OCS activity on various state and local function varies widely. Additional expenditures per capital for education for OCS-associated employees and their families are likely to be slightly greater than the statewide average, given a preponderance of OCS-associated employees with children of school age. Additional expenditures per capita for transportation for OCS activities could be more or less depending on location. With the exception of most of the Alaskan OCS areas, the OCS areas of the nation having a high potential for oil and gas production have well-developed transportation networks in the coastal regions of the adjacent states. Additional expenditure per capita for welfare programs attributable to OCS activity is likely to be substantially less than the statewide average. Additional total expenditures per capita attributable to OCS activity is therefore not likely to be significantly greater than average state expenditure per capita.

On average, OCS activity would therefore not be likely to impose a net fiscal burden upon adjacent states. The likely single exception to this would come in those states which depend upon royalties and severance taxes for substantial proportions of state revenue. States adjacent to current or potential OCS activity in this category are Louisiana, Texas, and Alaska (once North Slope production begins). Since tax collections attributable to OCS activities would not include royalties and severance taxes, the additional revenues may be less than additional expenditures. If this situation occurs and is attributable to state dependence upon royalties and severance taxes, it does not seem to be a strong argument for sharing OCS revenues. Those states which by the good fortune of natural endowment have substantial mineral production on which they can levy royalties and severance taxes have a source of revenue not available to most states. This enables them to have either greater expenditures with identical sales, income, and property taxes per $1,000 of personal income (a typical measure of revenue effort) or the same amount of expenditures with lower sales, income, and property taxes per $1,000 of personal income than those states which by reason of natural endowment cannot levy a severance tax. On the basis of equal revenue efforts on those tax sources available to all states for similar levels of expenditure, there would be little empirical evidence for a net fiscal burden resulting from OCS activity.

In particular circumstances, states may be able to prove a net burden. If so, payments corresponding to the net burden could be paid to affected states and localities. This, however, does not provide any argument to sharing a fixed percentage of OCS revenues with adjacent states.

(2) The argument has been made that OCS production poses the threat of potential environmental damage to adjacent states. OCS revenues should therefore be shared with adjacent states to provide compensation for these damages.

This argument only supports impact payments as needed. It does not provide a rationale for regular sharing of a fixed percentage of OCS revenues. OCS production poses only a threat, not a certainty, of environmental damage. Compensation for damages is made only after damages have occurred, not whether they occur or not occur.

However, it is doubtful whether compensatory impact payments for enviornmental damage to adjacent states from OCS revenues is the appropriate means to handle potential problems here. Payments to states only are not likely to compensate all parties suffering damages. Moreover, if the liability for damages is borne by the Federal government, the incentives to operating companies to minimize the probability of occurrence of damage-causing accidents would be reduced.

An alternative approach to the problem would be to concentrate on minimizing the possibility of damage-causing accidents occurring by maintaining strict, adequately enforced Federal regulation of OCS exploration and production and by permitting only companies which can demonstrate an adequate technical and financial capability to explore and operate OCS leases. When accidents do occur, the company responsible should be liable for proven damages. Only those companies which have the capability to bear such liabilities should be permitted to lease OCS lands.

(3) The argument has been made that sharing of OCS revenues with adjacent states is necessary to overcome political objections to OCS exploration and production. Current or proposed OCS activity has occasioned state suits for a variety of reasons. Sharing is seen as a way of overcoming these.

The impact of sharing here depends on the sources and direction of state objections. States have gone into court with the Federal government claiming rights to OCS production. But, this has not been a source of opposition to OCS exploration and production, only to the sharing of revenues from it. This question is amenable to settlement, in the courts with OCS revenues held in escrow while exploration and production continue.

Several adjacent states (particularly Alaska, Louisiana, and Texas) have feared that offshore exploration and production will draw capital away from onshore exploration and production, thus having a long-term negative impact on state severance tax income. From the point of view of the nation as a whole, it is desirable that investment in exploration goes where it is likely to be most profitable (which, in the petroleum industry, generally means where production is likely to be most prolific). Moreover, given the substantial revenues which

these states still receive from onshore activity, this is not likely to provide a substantial source of opposition.

State and groups within states have objected to OCS activity for fear of environmental damage. This has been the major reason for opposition to OCS exploration and production, particularly off the Atlantic Coast and off the California coast. It may also prove to be a source of opposition for Gulf of Alaska exploration as well. It is unknown whether the sharing of OCS revenues with adjacent states could overcome this opposition. Essentially, it depends on the characteristics of the political coalition opposing OCS leasing. Such a measure is not likely to sway conservationist groups. It may produce some changes in position among state and local office-holders, probably in inverse proportion to the size of the opposing coalition. Alternative measures, such as those suggested under the discussion of the second argument, plus the establishment of a record of several years of exploration and production free from major accidents is likely to be more effective in overcoming opposition from this quarter.

In short, revenue sharing for this purpose may not be effective or may be less effective than other means. Moreover, unlike criteria based on need, this purpose offers no guidelines for selecting the appropriate percentage of OCS revenues to be shared with the adjacent states.

MEANS OF SHARING AND THEIR EFFECTS

The preceding discussion has indicated two basic means of sharing OCS revenues: compensatory impact payments and sharing a fixed proportion of OCS revenues. If compensatory impact payments were to be made, their overall impact on Federal revenues is likely to be relatively insignificant. Since compensatory payments would be only for net fiscal burdens and for damages not covered by company liability, they would not likely be more than 5% on average of Federal revenues from OCS activity.

Any program to share a fixed proportion (ranging from 5% to 50%) of OCS revenues with the adjacent states would have proportionally greater effects on Federal revenues. Such methods of sharing with adjacent states would encounter some problems in defining what constitutes the adjacent state. For OCS areas off Alaska, the Pacific Coast states, and the states bordering the Gulf of Mexico (with the possible exception of Louisiana-Mississippi-Alabama), this presents no problem. For the states on the Atlantic Coast north of Chesapeake Bay, the whole matter is highly problematical. The extension of state boundaries seaward results in many intersections in potential OCS areas (such as the Georges Bank and the Baltimore Canyon Trough). In some cases, three states could legitimately make a claim to be the adjacent state. Unless some distributive formula were developed which was acceptable to all parties (such as equal shares where multiple claims can be established), sharing programs based on the premise of automatic sharing with the adjacent state are likely to occasion considerable litigation.

For the reasons set forth in the above correspondence and supporting documentation, we question the wisdom, practicality and equity of Section 26.

CONCLUSION

The six major arguments detailed above, while too numerous and lengthy to repeat here, should present our colleagues with a compelling rationale to cast their vote against S. 3221.

PAUL FANNIN.
CLIFFORD P. HANSEN.
JAMES BUCKLEY.
JAMES MCCLURE.
DEWEY BARTLETT.

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The Department should weigh those consequences against the benefits to be obtained and develop standards for governing such disclosure.

The Council also endorsed the performance regulations and safety standards in S. 3221 as follows:.

We have purposely called for the development of performance requirements which will encourage the development and early adoption of safer equipment and facilities, rather than lock the industry into a static technology.

Specifically, we have called for the use of the best commercially available technology in critical Outer Continental Shelf operation and, at the same time, we encourage the industry to do better.

The technology assessment and technical recommendations in our report cover most of the research and development topics identified in S. 3221.

CEQ also supported a Federal liability system for Outer Continental Shelf oil spills and damages and expressly endorsed inclusion of a citizen suit provision in the Outer Continental Shelf Lands Act.

I was disappointed that the minority's opening statement on the floor continued to employ misleading quotations. For example, they cited objections raised by the administration to provisions of S. 3221 which are no longer in the bill. They also cited administration objections which were specifically directed at other bills before the committee which contain provisions which are not now and have never been in S. 3221.

All this seems, Mr. President, to be a desperate effort by the industry, the administration, and my Republican friends to maintain the status quo. Those of us who support S. 3221 believe that the status quo tips the scales heavily in favor of the oil industry and against the interest of the American people who own these resources. Mr. President, we believe that the time has come to tip the scales in the other direction and to help the people regain control of their resources. We believe that S. 3221 balances the scales.

The PRESIDING OFFICER. Is all time yielded back?

Mr. JOHNSTON. I yield back my time.

Mr. JACKSON. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time is yielded back. The question is, Shall the bill pass. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Michigan (Mr. HART), the Senator from Indiana Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Rhode Island (Mr. PASTORE) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Rhode Island (Mr. PASTORE), would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from New York (Mr. BUCKLEY), the Senator from Kentucky (Mr. COOK), the Senator from Nebraska (Mr. CURTIS), the Senator from Colorado (Mr. DOMINICK), and the Senator from Maryland (Mr. MATHIAS) are necessarily absent.

I also announce that the Senator from Illinois (Mr. PERCY) is absent on official business.

The result was announced—yeas 64, nays 23, as follows:

[No. 412 Leg.]

YEAS—64

Abourezk	Hathaway	Nelson
Allen	Hollings	Nunn
Beall	Huddleston	Packwood
Bible	Hughes	Pell
Biden	Humphrey	Proxmire
Brooke	Inouye	Randolph
Burdick	Jackson	Ribicoff
Byrd, Harry F., Jr.	Javits	Roth
Byrd, Robert C.	Johnston	Schweiker
Cannon	Long	Scott, Hugh
Case	Magnuson	Sparkman
Church	Mansfield	Stafford
Clark	McClellan	Stennis
Cranston	McGee	Stevenson
Eagleton	McGovern	Symington
Eastland	McIntyre	Talmadge
Ervin	Metcalf	Thurmond
Fulbright	Metzenbaum	Tunney
Gravel	Mondale	Weicker
Haskell	Montoya	Williams
Hatfield	Moss	Young
	Muskie	

NAYS—23

Aiken	Domenici	Hruska
Baker	Fannin	McClure
Bartlett	Fong	Pearson
Bellmon	Goldwater	Scott, William L.
Brock	Griffin	Stevens
Chiles	Gurney	Taft
Cotton	Hansen	Tower
Dole	Helms	

NOT VOTING—13

Bayh	Curtis	Kennedy
Bennett	Dominick	Mathias
Bentsen	Hart	Pastore
Buckley	Hartke	Percy
Cook		

So the bill (S. 3221) was passed, as follows:

S. 3221

An act to increase the supply of energy in the United States from the Outer Continental Shelf; to amend the Outer Continental Shelf Lands Act; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Energy Supply of 1974".

TABLE OF CONTENTS

TITLE I—FINDINGS AND PURPOSES

FINDINGS

SEC. 101. The Congress finds and declares that—

(1) the demand for energy in the United States is increasing and will continue to increase for the foreseeable future;

(2) domestic production of oil and gas has declined in recent years;

(3) the United States has become increasingly dependent upon imports of oil from foreign nations to meet domestic energy demand;

(4) increasing reliance on imported oil is not inevitable, but is rather subject to significant reduction by increasing domestic sources of energy supply;

(5) consumption of natural gas in the United States has greatly exceeded additions to domestic reserves in recent years, so that currently available supplies are less than demand;

(6) technology is or can be made available which will allow sufficient production and consumption of domestic energy supply to meet demands consistent with national environmental policies;

(7) the Outer Continental Shelf contains significant quantities of petroleum and natural gas, which are a vital national reserve that must be carefully managed in the public interest; and

(8) there presently exists a variety of technological, economic, environmental, administrative, and legal problems which tend to retard the development of the oil and natural gas resources of the Outer Continental Shelf;

(9) it is the national policy to preserve, protect, and develop the resources of this Nation's coastal zone, and to provide for the orderly siting of energy facilities therein;

(10) the development, processing, and distribution of the oil and gas resources of the Outer Continental Shelf, and the siting of related energy facilities, may cause adverse impacts on the coastal zones of the various coastal States; and

(11) the Coastal Zone Management Act of 1972 provides policy, procedures, and programs designed to anticipate such adverse impacts and in part prevent them by appropriate planning and management of land and water resources in the costal zone.

PURPOSES

SEC. 102. The purposes of this Act are to—

(1) increase domestic production of oil and natural gas in order to assure material prosperity and national security, reduce dependence on unreliable foreign sources, and assist in maintaining a favorable balance of payments;

(2) make oil and natural gas resources in the Outer Continental Shelf available as rapidly as possible consistent with the need for orderly resources development, and protection of the environment, in a manner consistent with the Mining and Mineral Policy Act of 1970 and designed to insure the public a fair market return on disposition of public resources;

(3) encourage development of new and improved technology for energy resource production that will increase human safety and eliminate or reduce risk of damage to the environment; and

(4) provide States which are directly impacted by Outer Continental Shelf oil and gas exploration and development with comprehensive assistance in order to assure adequate protection of the onshore social, economic, and environmental conditions of the coastal zone.

TITLE II—INCREASED PRODUCTION OF OUTER CONTINENTAL SHELF ENERGY RESOURCES

NATIONAL POLICY FOR OUTER CONTINENTAL SHELF

SEC. 201. Section 3 of the Outer Continental Shelf Lands Act is revised by adding the following new subsection (c) and (d):

"(c) It is hereby declared that the Outer Continental Shelf is a vital national resource reserve held by the Federal Government for all the people, which should be made available for orderly development, subject to environmental safeguards, consistent with and when necessary to meet national needs.

"(d) It is hereby recognized that development of the oil and gas resources of the Outer Continental Shelf will have significant impact on coastal zone areas of adjacent States and that, in view of the national interest in the effective management of the coastal zone, such States may require assistance in protecting their coastal zone insofar as possible from the adverse effects of such impact.".

NEW SECTIONS OF OUTER CONTINENTAL SHELF LANDS ACT

SEC. 202. The Outer Continental Shelf Lands Act is hereby amended by adding the following new sections:

"DEVELOPMENT OF OUTER CONTINENTAL SHELF LEASING PROGRAM

"SEC. 18. (a) Congress delares that it is the policy of the United States that Outer Continental Shelf lands determined to be both geologically favorable for the accumulation of oil and gas and capable of supporting oil and gas development without undue environmental hazard or damage should be made available for leasing as soon as practicable in accordance with subsection (b) of this section.

"(b) The Secretary is authorized and directed to prepare and maintain a leasing program to implement the policy set forth in subsection (a). The leasing program shall indicate as precisely as possible the size, timing, and location of leasing activity that will best meet national energy needs for the ten-year period following its approval or reapproval in a manner consistent with subsection (a) above and with the following principles:

"(1) management of the Outer Continental Shelf in a manner which considers all its resource values and the potential impact of oil and gas exploration and development on other resource values of the Outer Continental Shelf and the marine environment;

"(2) timing and location of leasing to distribute exploration, development, and production of oil and gas among various areas of the Outer Continental Shelf, considering:

"(A) existing information concerning their geographical, geological, and ecological characteristics;

"(B) their location with respect to, and relative needs of, regional energy markets;

"(C) their location with respect to other uses of the sea and seabed including but not limited to fishing areas, access to ports by vessels, and existing or proposed sea lanes;

"(D) interest by potential oil and gas producers in exploration and development as indicated by tract nominations and other representations;

"(E) an equitable sharing of developmental benefits and environmental risks among various regions of the United States;

"(3) timing and location of leasing so that to the maximum extent practicable areas with less environmental hazard are leased first; and

"(4) receipt of fair market return for public resources,

"(c) The program shall include estimates of the appropriations and staffing required of all existing Federal programs necessary to prepare the required environmental impact statements, obtain resource data and any other information needed to decide the order in which areas are to be scheduled for lease, to make the analyses required prior to offering tracts for lease, and to supervise operations under every lease in the manner necessary to assure compliance with the requirements of the law, the regulations, and the lease.

"(d) The environmental impact statement on the leasing program prepared in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, shall include, but shall not be limited to, an assessment by the Secretary of the relative significance of the probable oil and gas resources of each area proposed to be offered for lease in meeting national demands, the most likely rate of exploration and development that is expected to occur if the areas are leased, and the relative environmental hazard of each area. Such environmental impact statement shall be based on consideration of the following factors, without being limited thereto: geological and geophysical conditions, biological data on existing animal, marine, and plant life, and commercial and recreational uses of nearby land and water areas.

"(e) The Secretary shall, by regulation, establish procedures for receipt and consideration of nominations for areas to be offered for lease or to be excluded from leasing, for public notice of and participation in development of the leasing program, for review by State and local governments which may be impacted by the proposed leasing, and for coordination of the program with management program being developed by any State for approval pursuant to section 305 of the Coastal Zone Management Act of 1972 and with the management program of any State which has been approved pursuant to section 306 of such Act. These procedures shall be applicable to any revision or reapproval of the leasing program.

"(f) The Secretary shall publish a proposed leasing program in the Federal Register and submit it to the Congress within two years after enactment of this section.

"(g) After the leasing program has been approved by the Secretary or after January 1, 1978, whichever comes first, no leases under this Act may be issued unless they are for areas included in the approved leasing program.

"(h) The Secretary may revise and reapprove the leasing program at any time and he must review and reapprove the leasing program at least once each year.

"(i) The Secretary is authorized to obtain from public sources, or to purchase from private sources, any surveys, data, reports, or other information (excluding interpretations of such data, surveys, reports, or other information) which may be necessary to assist him in preparing environment impact statements and making other evaluations required by this Act. The Secretary shall maintain the confidentiality of all proprietary data or information for such period of time as is agreed to by the parties.

"(j) The heads of all Federal departments or agencies are authorized and directed to provide the Secretary with any nonproprietary information he requests to assist him in preparing the leasing program. In addition, the Secretary is authorized and directed to utilize the existing capabilities and resources of other Federal departments and agencies by appropriate agreement.

"(k) The program developed pursuant to this section shall include the reservation of an appropriate area or areas as a National Strategic Energy Reserve. The Secretary shall confer with appropriate Federal officials to determine the extent and locations of such reserves. The Secretary shall study the most appropriate means of developing and maintaining such reserves in the national interest. The Secretary shall consult with other Federal agencies and departments and nongovernmental authorities in conducting such study. The Secretary shall report to the Congress by January 1, 1976 the results of such study.

"FEDERAL OUTER CONTINENTAL SHELF OIL AND GAS SURVEY PROGRAM

"SEC. 19. (a) The Secretary is authorized and directed to conduct a survey program regarding oil and gas resources of the Outer Continental Shelf. This program shall be designed to provide information about the probable location, extent, and characteristics of such resources in order to provide a basis for (1) development and revision of the leasing program required by section 18 of this Act, (2) greater and better informed competitive interest by potential producers in the oil and gas resources of the Outer Continental Shelf, (3) more informed decisions regarding the value of public resources and revenues to be expected from leasing them, and (4) the mapping program required by subsection (c) of this section.

"(b) The Secretary is authorized to contract for, or purchase the results of or, where the required information is not available from commercial sources, conduct seismic, geomagnetic, gravitational, geophysical, or geochemical investigations, and to contract for or purchase the results of stratigraphic drilling, needed to implement the provisions of this section.

"(c) The Secretary, in cooperation with the Secretary of Commerce, is directed to prepare and publish and keep current a series of detailed bathymetric, geological, and geophysical maps of and reports about the Outer Continental Shelf, based on nonproprietary data, which shall include, but not necessarily be limited to, the results of seismic, gravitational, and magnetic surveys on an appropriate grid spacing to define the general bathymetry, geology, and geophysical characteristics of the area. Such maps shall be prepared and published no later than six months prior to the last day for submission of bids for any areas of the Outer Continental Shelf scheduled for lease on or after January 1, 1978.

"(d) Within six months after enactment of this section, the Secretary shall develop and submit to Congress a plan for conducting the survey and mapping programs required by this section. This plan shall include an identification of the areas to be surveyed and mapped during the first five years of the programs and estimates of the appropriations and staffing required to implement them.

"(e) The Secretary shall include in the annual report required by section 15 of this Act, information concerning the carrying out of his duties under this section, and shall include as a part of each such report a summary of the current data for the period covered by the report.

"(f) No action taken to implement this section shall be considered a major Federal action for the purposes of section 102(2)(C) of the National Environmental Policy Act of 1969.

"(g) There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section during fiscal years 1975 and 1976, to the Secretary and to appropriate Federal agencies having responsibilities under this section.

"(h) The Secretary shall, by regulation, require that any person holding a lease issued pursuant to this Act for oil or gas exploration or development on the Outer Continental Shelf shall provide the Secretary with any existing data (excluding interpretation of such data) about the oil or gas resources in the area subject to the lease. The Secretary shall maintain the confidentiality of all proprietary data or information until such time as he determines that public availability of such proprietary data or information would not damage the competitive position of the lessee.

"SAFETY REGULATIONS FOR OIL AND GAS OPERATIONS

"SEC. 20. (a) POLICY.—It is the policy of this section to insure, through improved techniques, maximum precautions, and maximum use of the best available technology by well-trained personnel, the safest possible operations in the Outer Continental Shelf. Safe operations are those which minimize the likelihood of blowouts, loss of well control, fires, spillages, or other occurrences which may cause damage to the environment, or to property, or endanger human life or health.

"(b) REGULATIONS; STUDY.—(1)(A) The Secretary, with the concurrence and advice of the Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating, shall develop, from time to time revise, and promulgate safety regulations for operations in the Outer Continental Shelf, to implement as fully as possible the policy of subsection (a) of this section. Within one year after the enactment of this section, the Secretary shall complete a review of existing safety regulations, consider the results and recommendations of the study authorized in paragraph (2) of this subsection, and promulgate a complete set of safety regulations (which may include Outer Continental Shelf orders) applicable to operations in the Outer Continental Shelf or any region thereof. Any safety regulations in effect on the date of enactment of this section which the Secretary finds should be retained shall be repromulgated according to the terms of this section, but shall remain in effect until so repromulgated. No safety regulations (other than field orders) promulgated pursuant to this subsection shall reduce the degree of safety or protection to the environment afforded by safety regulations previously in effect.

"(B) In promulgating regulations under this section, the Secretary shall require on all new drilling and production operations and, wherever practicable on already existing operations, the use of the best available technology wherever failure of equipment would have a substantial effect on public health, safety, or the environment.

"(2) Upon the enactment of this section, the National Academy of Engineering shall conduct a study of the adequacy of existing safety regulations and technology, equipment, and techniques for operations in the Outer Continental Shelf, including but not limited to the subjects listed in subsection (a) of this section. Not later than nine months after the enactment of this section, the results of the study and recommendations for improved safety regulations shall be submitted to the Congress and to the Secretary.

"RESEARCH AND DEVELOPMENT

"SEC. 21. (a) The Secretary is authorized and directed to carry out a research and development program designed to improve technology related to development of the oil and gas resources of the Outer Continental Shelf where similar programs are not presently being conducted by any Federal department or agency and where he determines that such research and development is not being adequately conducted by any other public or private entity including but not limited to—

"(1) downhole safety devices,

"(2) methods for reestablishing control of blowing out or burning wells,

"(3) methods for containing and cleaning up oil spills,

"(4) improved drilling bits,

"(5) improved flaw detection systems for undersea pipelines,

"(6) new or improved methods of development in water depths over six hundred meters, and

"(7) subsea production systems.

"(b) The Secretary, with the concurrence of the Secretary of the department in which the Coast Guard is operating, shall establish equipment and performance standards for oil spill cleanup plans and operations. Such standards shall be coordinated with the National Oil and Hazardous Substances Pollution Contingency Plan, and reviewed by the Administrator of the Environemental Protection Agency, and the Administrator of the National Oceanic and Atmospheric Administration.

"(c) The Secretary of Commerce, in cooperation with the Secretary of the Navy, the Secretary of the department in which the Coast Guard is operating, and the Director of the National Institutes of Occupational Safety and Health, shall conduct studies of underwater diving techniques and equipment suitable for protection of human safety.

"ENFORCEMENT OF SAFETY REGULATIONS; INSPECTIONS

"SEC. 22. (a) (1) The Secretary and the Secretary of the department in which the Coast Guard is operating shall jointly enforce the safety and environmental protection regulations promulgated under this Act. They shall regularly inspect all operations authorized pursuant to this Act and strictly enforce safety regulations promulgated pursuant to this Act and other applicable laws and regulations relating to public health, safety, or environmental protection. All holders of leases under this Act shall allow promptly access at the site of any operations subject to safety regulations to any inspector, and provide such documents and records that are pertinent to public health, safety, or environmental protection, as such Secretaries or their designees may request.

"(2) The Secretary, with the concurrence of the Secretary of the department in which the Coast Guard is operating, shall promulgate regulations within ninety days of the enactment of this section to provide for—

(A) physical observation at least once each year by an inspector of the installation or testing of all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

"(B) periodic on site inspection without advance notice to the lessee to assure compliance with public health, safety, or environmental protection regulations.

"(3) The Secretary of the department in which the Coast Guard is operating shall make an investigation and public report on all major fires and major oil spillage occurring as a result of operations pursuant to this Act. For the purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil over a period of thirty days: *Provided*, That he may, in his discretion, make an investigation and report of lesser oil spillages. All holders of leases under this Act shall cooperate with him in the course of such investigations.

"(4) For the purposes of carrying out their responsibilities under this section, the Secretary or the Secretary of the department in which the Coast Guard is operating may by agreement utilize with or without reimbursement the services, personnel, or facilities of any Federal agency.

"(b) The Secretary shall include in his annual report to Congress required by section 15 of this Act the number of violations of safety regulations found, the names of the violators, and the action taken thereon.

"(c) The Secretary shall consider any allegation from any person of the existence of a violation of any safety regulations issued under this Act. The Secretary shall answer such allegation no later than ninety days after receipt thereof, stating whether or not such alleged violations exist and, if so, what action has been taken.

"(d) In any investigation directed by this section the Secretary or the Secretary of the department in which the Coast Guard is operating shall have power to summon before them or their designees witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process as in the United States district court. In addition, they or their designees shall administer all necessary oaths to any witnesses summoned before said investigation.

"LIABILITY FOR OIL SPILLS

"SEC. 23. (a) Any person in charge of any operations in the Outer Continental Shelf, as soon as he has knowledge of a discharge or spillage of oil from an operation, shall immediately notify the appropriate agency of the United States Government of such discharge.

"(b)(1) Notwithstanding the provisions of any other law, the holder of a lease or right-of-way issued or maintained under this Act and the Offshore Oil Pollution Settlements Fund (hereinafter referred to as "the fund") established by this subsection shall be strictly liable without regard to fault and without regard to ownership of any adversely affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by any damaged party for subsistence or economic purposes, in accordance with the provisions of this subsection for all damages, sustained by any person as a result of discharges of oil or gas from any operation authorized under this Act if such damages occurred (A) within the territory of the United States, Canada, or Mexico or (B) in or on waters within two hundred nautical miles of the baseline of the United States, Canada, or Mexico from which the territorial sea of the United States, Canada, or Mexico is measured, or (C) within one hundred nautical miles of any operation authorized under this Act. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

"(2) Strict liability shall not be imposed under this subsection on the holder or the fund if the holder or the fund proves that the damage was caused by an act of war. Strict liability shall not be imposed under this subsection on the holder if the holder proves that the damage was caused by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged person if the holder or the fund proves that the damage was caused by the negligence or intentional act of such person.

"(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The holder shall be liable for the first $7,000,0000 of such claims that are allowed. The fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

"(4) In any case where liability without regard to fault is imposed pursuant to this subsection, the rules of subrogation shall apply in accordance with the laws of the State in which such damages occurred: *Provided, however*, That in the event such damages occurred outside the jurisdiction of any State, the rules of subrogation shall apply in accordance with the laws applicable pursuant to section 4 of this Act.

"(5) The Offshore Oil Pollution Settlements Fund is hereby established as a nonprofit corporate entity that may sue and be sued in its own name. The fund shall be administered by the holders of leases issued under this Act under regulations prescribed by the Secretary. The fund shall be subject to an annual audit by the Comptroller Gen-

eral, and a copy of the audit shall be submitted to the Congress. Claims allowed against the fund shall be paid only from moneys deposited in the fund.

"(6) There is hereby imposed on each barrel of oil produced pursuant to any lease issued or maintained under this Act a fee 2½ of cents per barrel. The fund shall collect the fee from the lessees or their assignees. Costs of administration shall be paid from the money collected by the fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income producing securities approved by the Secretary. Income from such securities shall be added to the principal of the fund.

"(7) Subject to the limitation contained in subparagraph (3) of this subsection, if the fund is unable to satisfy a claim asserted and finally determined under this subsection, the fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to the approval of the Secretary.

"(8) No compensation shall be paid under this subsection unless notice of the damage is given to the Secretary within three years following the date on which the damage occurred.

"(9) Payment of compensation for any damage pursuant to this subsection shall be subject to the holder or the fund acquiring by subrogation all rights of the claimant to recover from such damages from any other person.

"(10) The collection of amounts for the fund shall cease when $100,000,000 has been accumulated, but shall be renewed when the accumulation in the fund falls below $85,000,000. The fund shall insure that collections are equitable to all holders of a lease or right-of-way.

"(11) The several district courts of the United States shall have jurisdiction over claims against the fund.

"(c) If any area within or without a lease granted or maintained under this Act is polluted by any discharge or spillage of oil from operations conducted by or on behalf of the holder of such lease, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and removal of the pollutant shall be at the expense of such holder, including administrative and other costs incurred by the Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of the holder.

"(d) The Secretary shall establish requirements that all holders of leases issued or maintained under this Act shall establish and maintain evidence of financial responsibility of not less than $7 million. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the Secretary: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

"(e) The provisions of this section shall not be interpreted to supersede section 311 of the Federal Water Pollution Control Act Amendments of 1972 or preempt the field of strict liability or to enlarge or diminish the authority of any State to impose additional requirements.

"NEGOTIATIONS WITH STATES

"SEC. 24. The Secretary is authorized and directed to negotiate with those coastal States which are asserting jurisdiction over the Outer Continental Shelf with a view to developing interim agreements which will allow energy resource development prior to final judicial resolution of the dispute.

"DETERMINATION OF BOUNDARIES

"SEC. 25. Within one year following the date of enactment of this section, the President may establish procedures for settling any outstanding boundary disputes, including international boundaries between the United States and Canada and between the United States and Mexico, and establish boundaries between adjacent States, as directed in section 4 of this Act.

"COASTAL STATE FUND

"SEC. 26. (a) There is hereby established in the Treasury of the United States the Coastal State Fund (hereinafter referred to as the 'fund'). The Secretary shall manage and make grants from the fund according to the regulations established pursuant to subsections (b) and (c) to the coastal States impacted by anticipated or actual oil and gas production.

"(b) The purpose of such grants shall be to assist coastal States impacted by anticipated or actual oil and production to ameliorate adverse environmental effects and control secondary social and economic impacts associated with the development of Federal energy resources in, or on the Outer Continental Shelf adjacent to the submerged lands of such States. Such grants may be used for planning, construction of public facilities, and provision of public services, and such other activities as may be prescribed by regulations promulgated pursuant to subsection (c) of this section. Such regulations shall, at a minimum, (1) provide that such regulations be directly related to such environmental effects and social and economic impacts; (2) take into consideration the acreage leased or proposed to be leased and the volume of production of oil and gas from the Outer Continental Shelf off the adjacent coastal State; and (3) require each coastal State, as a requirement of eligibility for grants from the fund, to establish pollution containment and clean-up systems for pollution from oil and gas development activities on the submerged lands of each such State.

"(c) The Secretary of Commerce, in accordance with the provisions of subsection (b), and this subsection, shall, by regulation, establish requirements for grant eligibility: *Provided*, That it is the intent of this section that grants shall be made to impacted coastal States to the maximum extent permitted by subsection (d) of this section and that grants shall be made to impacted coastal States in proportion to the effects and impacts of offshore oil and gas exploration, development and production on such States. Such grants shall not be on a matching basis but shall be adequate to compensate impacted coastal States for the full costs of any environmental effects and social and economic impacts of offshore oil and gas exploration, development, and production. The Secretary shall coordinate all grants with management programs established pursuant to the Coastal Zone Management Act of 1972.

"(d) Notwithstanding any other provision of law, 10 per centum of the Federal revenues from the Outer Continental Shelf Lands Act, as amended by this Act, or the equivalent of forty ($.40) cents per barrel from the Federal revenues from the Outer Continental Shelf Act, whichever is greater, shall be paid into the fund: *Provided*, That the total amount paid into the fund shall not exceed $200,000,000 per year for fiscal 1976 and 1977.

"(e) There is hereby authorized to be appropriated to the fund $100,000,000.

"(f) For the purpose of this Act, 'coastal State' means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, or Long Island Sound, including Puerto Rico, the Virgin Islands, Guam, and American Samoa.

"CITIZEN SUITS

"SEC. 27. (a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf—

"(1) against any person including—

"(A) the United States, and

"(B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution who is alleged to be in violation of the provisions of this Act or the regulation promulgated thereunder, or any permit or lease issued by the Secretary; or

"(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary.

"(b) No action may be commenced—

"(1) under subsection (a)(1) of this section—

"(A) prior to sixty days after the plaintiff has given notice in writing under oath of the violation (i) to the Secretary, and (ii) to any alleged violator of the provisions of this Act or any regulations promulgated thereunder, or any permit or lease issued thereunder;

"(B) if the Secretary has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the provisions of this Act or the regulations thereunder, or the lease, but in any such action in a court of the United States any person may intervene as a matter of right; or

"(2) Under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice in writing under oath of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation complained of, constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

"(c) In any action under this section, the Secretary, if not a party, may intervene as a matter of right.

"(d) The court, in issuing any final order in any action, brought pursuant to subsection (a) of this section, may award costs of litigation including reasonable attorneys fees to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(e) Nothing in this section shall restrict any right which any person or class of persons may have under this or any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief, including relief against the Secretary.

"PROMOTION OF COMPETITION

"SEC. 28. Within one year after the date of enactment of this section, the Secretary shall prepare and publish a report with recommendations for promoting competition and maximizing production and revenues from the leasing of Outer Continental Shelf lands, and shall include a plan for implementing recommended administrative changes and drafts of any proposed legislation. Such report shall include consideration of the following—

"(1) other competitive bidding systems permitted under present law as compared to the bonus bidding system;

"(2) evaluation of alternative bidding systems not permitted under present law;

"(3) measures to ease entry of new competitors; and

in the degree of detail established in regulations issued by the Secretary, specific work to be performed, environmental protection and health and safety standards to be met, and a time schedule for performance. The development plan may apply to all leases included within a production unit.

"(3) With respect to permits and leases outstanding on the date of enactment of this section, a proposed development plan must be submitted to the Secretary within six months after the date of enactment of this section. Failure to submit a development plan or to comply with an approved development plan shall terminate the permit or lease.

"(4) The Secretary may approve revisions of development plans if he determines that revision will lead to greater recovery of the oil and gas, improve the efficiency of the recovery operation, or is the only means available to avoid substantial economic hardship on the lessee or permittee.

"(e) After the date of enactment of this section, holders of oil and gas leases issued to this Act shall not be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to obtain production or to conduct testing or workover operations without flaring.".

GEOLOGICAL AND GEOPHYSICAL EXPLORATION

SEC. 207. Section 11 of the Outer Continental Shelf Lands Act is hereby amended to read as follows:

"SEC. 11. No person shall conduct any type of geological or geophysical explorations in the Outer Continental Shelf without a permit issued by the Secretary. Each such permit shall contain terms and conditions designed to (1) prevent interference with actual operations under any lease maintained or granted pursuant to the Act; (2) prevent or minimize environmental damage; and (3) require the permittee to furnish the Secretary with copies of all data (including geological, geophysical, and geochemical data, well logs, and drill core analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased under this Act or until such time as he determines that making the data available to the public would not damage the competitive position of the permittee, whichever comes later.".

ENFORCEMENT

SEC. 208. Subsection 5(a)(2) of the Outer Continental Shelf Lands Act is hereby amended by deleting the first sentence.

LAWS APPLICABLE TO OUTER CONTINENTAL SHELF

SEC. 209. Paragraph (2) of subsection (a) of section 4 of the Outer Continental Shelf Lands Act is amended by deleting the following words: "as of the effective date of this Act".

AUTHORITY OF GOVERNOR OF ADJACENT STATE TO REQUEST POSTPONEMENT OF LEASE SALES

SEC. 210. Section 8 of the Outer Continental Shelf Lands Act, as amended by this Act, is further amended by inserting at the end thereof the following:

"(i)(1) The Secretary shall give notice of the sale of each lease pursuant to this Act to the Governor of the adjacent State. At any time prior to such sale the Governor may request the Secretary to postpone such sale for a period of not to exceed three years following the date proposed in such notice if he determines that such sale will result in adverse environmental or economic impact or other damage to the State or the residents thereof. In the event of any such request, the Secretary shall postpone the sale until proceedings under this subsection are completed.

"(2) The Secretary shall, not later than thirty days from the receipt of such request:

"(A) grant the request for postponement;

(B) provide for a shorter postponement than requested provided that such period of time is adequate for study and provision to ameliorate any adverse economic or environmental effects or other damage and for controlling secondary social or economic impact associated with the development of Federal energy resources in, or on, the Outer Continental Shelf adjacent to the submerged lands of such State; or

"(C) deny the request for postponement if he finds that such postponement would not be consistent with the national policy as expressed in section 3 of this Act.

"(3) The Governor of a State aggrieved by the action of the Secretary shall have ten days to appeal directly to the National Coastal Resources Appeals Board established pursuant to paragraph (4) of this subsection. Such Board shall hear the appeal within fifteen days of its receipt and shall render a final decision within forty-five days of such hearing. The Board shall overrule the action of the Secretary if it finds that (A) the State is not adequately protected from adverse environmental and economic impacts and other damages pursuant to subparagraph (3) of paragraph (2) of this subsection; or (B) the request of the Governor for postponement is consistent with the national policy as expressed in section (3) of this Act.

"(4)(a) There is hereby established, in the Executive Office of the President, the National Coastal Resources Appeals Board (hereinafter called the 'Board'), which shall be composed of the following, or their designees—the Vice President, who shall be Chairman of the Board, the Secretary of the Interior, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Chairman of the Council on Environmental Quality.

"(b) The Board shall—

"(1) transmit a written report to the appropriate committees of Congress as to the basis for any decision rendered; and

"(2) conduct such hearings pursuant to section 554 of title 5, United States Code.

"(5) For the purposes of this section, an aggrieved State is defined as being one which has requested a postponement of a lease sale but has been denied such postponement or provided a shorter period of time in which to ameliorate adverse impacts associated with development of the Outer Continental Shelf and the Governor has determined that such period of time is not adequate.

"(6) This section shall take effect immediately upon enactment of this Act.".

TITLE III—MISCELLANEOUS PROVISIONS

PIPELINE SAFETY AND OPERATION

SEC. 301. (a) The Secretary of Transportation, in cooperation with the Secretary of the Interior, is authorized and directed to report to the Congress within sixty days after enactment of this Act on appropriations and staffing needed to monitor pipelines on Federal lands and the Outer Continental Shelf so as to assure that they meet all applicable standards for construction, operation, and maintenance.

(b) The Secretary of Transportation, in cooperation with the Secretary of the Interior, is authorized and directed to review all laws and regulations relating to the construction, operation, and maintenance of pipelines on Federal lands and the Outer Continental Shelf and report to Congress within one year after enactment of this Act on administrative changes needed and recommendations for new legislation.

(c) One year after the date of the enactment of this Act, the Interstate Commerce Commission and the Secretary of Transportation shall submit to the President and the Congress a report on the adequacy of existing transport facilities and regulations to facilitate distribution of oil and gas resources of the Outer Continental Shelf. The report shall include recommendations for changes in existing legislation or regulations to facilitate such distribution.

REVIEW OF SHUT-IN OR FLARING WELLS

SEC. 302. (a) Within six months after enactment of this Act the Secretary shall submit a report to Comptroller General and the Congress listing all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act. The report shall indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production or order cessation of flaring.

(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the reasons for allowing the wells to be shut-in or to flare natural gas and submit his findings and recommendations to the Congress.

OIL SPILL LIABILITY STUDY

SEC. 303. (a) The Attorney General, in consultation with the Administrative Conference of the United States and the Office of Technology Assessment, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for damage from oil spills from Outer Continental Shelf operations, tankers, deepwater ports, and other sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

(b) The Attorney General shall report the results of his study to the Congress within six months after the date of enactment of this Act.

FUEL STAMP STUDY

SEC. 304. The Administrator of the Federal Energy Administration and the Secretary of the Department of Health, Education, and Welfare are authorized and directed to carry out a study to determine the feasibility of establishing a fuel stamp program. The program would utilize coupons to assist those on low and fixed incomes in purchasing home heating fuels in the winter months. The Administrator of the Federal Energy Administration and the Secretary of Health, Education, and Welfare are directed to report to the Congress the results of such study, together with their recommendations with respect thereto, within sixty days of the effective date of this Act.

RELATIONSHIP TO EXISTING LAW

SEC. 305. Except as otherwise expressly provided herein, nothing in this Act shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972.

SEVERABILITY

SEC. 306. If any provision of this Act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRIBUTE TO SENATOR JOHNSTON

Mr. MANSFIELD. Mr. President, with the passage of the Outer Continental Shelf measure, the Senate has witnessed as superb and skillful a job of legislative ability as has ever been performed in the Senate. It is to Senator BENNETT JOHNSTON that I pay this tribute and to the

"(4) measures to increase supply to independent refiners and distributors.

"ENFORCEMENT AND PENALTIES

"SEC. 29. (a) At the request of the Secretary, the Attorney General may institute a civil action in the district court of the United States for the district in which the affected operation is located for a restraining order or injunction or other appropriate remedy to enforce any provision of this Act or any regulation or order issued under the authority of this Act.

"(b) If any person shall fail to comply with any provision of this Act, or any regulation or order issued under the authority of this Act, after notice of such failure and expiration of any period allowed for corrective action, such person shall be liable for a civil penalty of not more than $5,000 for each and every day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation shall have been given an opportunity for a hearing on such charge.

"(c) Any person who knowingly and willfully violates any provision of this Act, or any regulation or order issued under the authority of this Act designed to protect public health, safety, or the environment or conserve natural resources or knowingly and willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act, or who knowingly and willfully falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act or knowingly and willfully reveals any data or information required to be kept confidential by this Act, shall, upon conviction, be punished by a fine of not more than $100,000, or by imprisonment for not more than one year, or both. Each day that a violation continues shall constitute a separate offense.

"(d) Whenever a corporation or other entity violates any provision of this Act, or any regulation or order issued under the authority of this Act, any officer, or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out such violation shall be subject to the same fines or imprisonment as provided for under subsection (c) of this section.

"(e) The remedies prescribed in this section shall be concurrent and cumulative and the exercises of one does not preclude the exercise of the others. Further, the remedies prescribed in this section shall be in addition to any other remedies afforded by any other law or regulation.

"ENVIRONMENTAL BASELINE AND MONITORING STUDIES

"SEC. 30. (a) Prior to permitting oil and gas drilling on any area of the Outer Continental Shelf not previously leased under this Act, the Secretary, in consultation with the Administrator of the National Oceanic and Atmospheric Administration of the Department of Commerce, shall make a study of the area involved to establish a baseline of those critical parameters of the Outer Continental Shelf environment which may be affected by oil and gas development. The study shall include, but need not be limited to, background levels of hydrocarbons in water, sediment, and organisms; background levels of trace metals in water, sediments, and organisms; characterization of benthic and planktonic communities; description of sediments and relationships between organisms and abiotic parameters; and standard oceanographic measurements such as salinity, temperature, micronutrients, dissolved oxygen.

"(b) Subsequent to development of any area studied pursuant to subsection (a) of this section, the Secretary shall monitor the areas involved in a manner designed to provide time-series data which can be compared with previously collected data for the purpose of identifying any significant changes.

"(c) In carrying out the provisions of this section, the Secretary is directed to give preference to the use of Government owned and Government operated vessels, to the maximum extent practicable, in contracting for work in connection with such environmental baseline and monitoring studies. In order to avoid needless duplications, the Secretary shall coordinate all such activities with the Administrator of the National Oceanic and Atmospheric Administration and shall, whenever possible, utilize existing Government owned and Government operated marine research laboratories in conducting research authorized by this section.".

REVISION OF LEASE TERMS

SEC. 203. Section 8 of the Outer Continental Shelf Lands Act is amended by revising subsections (a) and (b) to read as follows:

"(a) The Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the Outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be by sealed bids and, at the discretion of the Secretary, shall be either (1) on the basis of a cash bonus bid with a royalty fixed by the Secretary at not less than 12½ per centum in amount or value of the production saved, removed, or sold, (2) on the basis of a cash bonus bid with a fixed share of the net profits derived from operation of the tract of no less than 30 per centum reserved to the United States, or (3) on the basis of a fixed cash bonus with the net profit share reserved to the United States as the bid variable. The United States net profit share shall be calculated on the basis of the value of the production saved, removed, or sold, less those capital and operating costs directly assignable to the development and operation (but not acquisition) of each individual oil and gas lease issued under this Act to the lessee under a net profit sharing arrangement. No capital or operating charges for materials or labor services not actually used on an area leased for oil or gas under this Act under a net profit-sharing arrangement; allocation of income taxes; or expenditure for materials or labor services used prior to lease acquisition shall be permitted as a deduction in the calculation of net income. The Secretary shall by regulation establish accounting procedures and standards to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits, the burden of proof shall be on the lessee. That part of the net profit share due the United States which is attributable to oil production may be taken in kind in the form of oil and disposed of as provided in subsection (k) of this section. That part of the net profit share due in kind shall be determined by dividing the net profit due the United States attributable to the product or products taken in kind by the fair market value at the wellhead of the oil and/or gas (as the case may be) saved, removed or sold. In determining the attribution of profits as between oil and gas, costs shall be allocated proportionately to the value of their respective shares of production.

"(b) An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, (2) be for a period of (i) in five years or (ii) for up to ten years where the Secretary deems such longer period necessary to encourage exploration and development in areas of unusually deep water or adverse weather conditions, and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, and (3) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.".

DISPOSITION OF FEDERAL ROYALTY OIL

SEC. 204. Section 8 of the Outer Continental Shelf Lands Act as amended by this Act as amended by this Act is further amended by adding a new subsection (k) to read as follows:

"(k) Upon commencement of production of oil from any lease, issued after the effective date of this subsection, the Secretary shall offer to the public and sell by competitive bidding for not less than its fair market value, in such amounts and for such terms as he determines, that proportion of the oil produced from said lease which is due to the United States as royalty or net profit share oil. The Secretary shall limit participation in such sales where he finds such limitation necessary to assure adequate supplies of oil at equitable prices to independent refiners. In the event that the Secretary limits participation in such sales, he shall sell such oil at an equitable price. The lessee shall take any such royalty oil for which no acceptable bids are received and shall pay to the United States a cash royalty equal to its fair market value, but in no event shall such royalty be less than the highest bid.".

ANNUAL REPORT

SEC. 205. Section 15 of the Outer Continental Shelf Lands Act is amended to read as follows:

"ANNUAL REPORT BY SECRETARY TO CONGRESS

"SEC. 15. (a) Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report on the leasing and production program in the Outer Continental Shelf during such fiscal year, including a detailing of all moneys received and expended, and of all leasing, development, and production activities; a summary of management, supervision, and enforcement activities; a summary of grants made from the Coastal State Fund; and recommendations to the Congress for improvements in management, safety and amount of production in leasing and operations in the Outer Continental Shelf and for resolution of jurisdictional conflicts or ambiguities.

"(b) Section 313(a) of the Coastal Zone Management Act of 1972 (86 Stat. 1280) is amended by striking the word 'and' after the word 'priority' in subsection (8); renumbering existing subsection (9) as subsection (10); and inserting the following new subsection (9): 'an assessment of the onshore social, economic, and environmental impacts in those coastal areas affected by Outer Continental Shelf oil and gas exploration and exploitation; and'.".

INSURING MAXIMUM PRODUCTION FROM OIL AND GAS LEASES

SEC. 206. Section 5 of the Outer Continental Shelf Lands Act is amended by adding the following new subsections:

"Insuring Maximum Production From Oil and Gas Leases

"(d)(1) After enactment of this section no oil and gas lease may be issued pursuant to this Act unless the lease requires that development be carried out in accordance with a development plan which has been approved by the Secretary, and provides that failure to comply with such development plan will terminate the lease.

"(2) The development plan will set forth,