H.R. 5156, TO AMEND THE OUTER CONTINENTAL SHELF LANDS ACT TO PROTECT THE ECONOMIC AND LAND USE INTERESTS OF THE FEDERAL GOVERNMENT

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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C O N T E N T S

LEGISLATIVE HEARING ON H.R. 5156, ″TO AMEND THE OUTER CONTINENTAL SHELF LANDS ACT TO PROTECT THE ECONOMIC AND LAND USE INTERESTS OF THE FEDERAL GOVERNMENT IN THE MANAGEMENT OF OUTER CONTINENTAL SHELF LANDS FOR ENERGY-RELATED AND CERTAIN OTHER PURPOSES, AND FOR OTHER PURPOSES.″

Thursday, July 25, 2002
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to call, at 2 p.m., in room 1334, Longworth House Office Building, Hon. Barbara Cubin [Chairman of the Subcommittee] presiding.H.R. 5156

STATEMENT OF THE HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. CUBIN. The legislative hearing will come to order. The Subcommittee on Energy and Mineral Resources meets today to hear testimony on H.R. 5156, legislation on energy-related uses of the Outer Continental Shelf.

This bill addresses issues associated with permitting future nontraditional energy and energy-related projects on the Outer Continental Shelf (OCS). Such projects would include alternative energy projects such as wind, wave, and solar power production, as well as ancillary projects to oil and gas development on the Shelf, such as emergency medical facilities and supply facilities that would support deepwater exploration and development projects.

There is presently no statutory authority to permit such projects. Earlier this year, I was contacted by the administration about the need for legislation that would clarify the permitting process for these innovative projects on the OCS. Working with the administration, I have introduced a bill that gives the Secretary of the Interior the authority to permit and oversee energy-related activities under the OCS Lands Act.

This legislation is needed because no authority currently exists to permit alternative energy projects and ancillary projects to support oil and gas development on the OCS. Clearly, our Nation faces a growing energy supply and demand challenge that calls for innovative solutions.

Two innovative ways that will meet that challenge are through increased production and the use of renewable energy and through production of oil and gas in deep water. H.R. 5156 facilitates both of these solutions. The bill clarifies the jurisdiction for these projects so that private sector entities wanting to develop alternative energy resources offshore will know which agencies to approach for permitting. It is crucial for the development of any alternative or traditional energy project to have certainty in the permitting and regulatory process that this bill provides. This bill also ensures that future projects on the OCS will be performed in a safe and environmentally sensitive manner, and that a proper abandonment in the site clearance process will exist for each project.

H.R. 5156 enables the Department of Interior to inform and work with other relevant Federal agencies that will be involved in the project permitting process. It is my understanding that the legislative language in H.R. 5156 has gone through an extensive discussion and approval process amongst all Federal agencies that have an interest in the OCS, and the legislative language has been agreed to by those agencies and the OMB. This bill will not supersede or modify any exiting authority of any other agency responsible for permitting or regulating offshore energy projects. It is designed to complement existing statutes and ensure that all innovative offshore energy projects have a clear permitting process.

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

It is my understanding that offshore wind energy projects are now being developed in Northern Europe and numerous projects with significant generation capacity are on the drawing board. This appears to be sound use of public resources for energy production. We need innovative alternative and traditional energy solutions in order to meet our future energy needs. I believe this bill will facilitate these solutions.

[The prepared statement of Mrs. Cubin follows:]

Statement of Hon. Barbara Cubin, Chairman, Subcommittee on Energy & Mineral Resources

The Subcommittee on Energy and Mineral Resources meets today to hear testimony about H.R. 5156, legislation on energy related uses of the Outer Continental Shelf. This bill addresses issues associated with permitting future non-traditional energy and energy-related projects on the OCS. Such projects would include alternative energy projects—such as wind, wave and solar power production—as well as ancillary projects to oil and gas development on the Shelf—such as emergency medical facilities and supply facilities that would support deepwater exploration and development projects.

There is presently no statutory authority to permit such projects. Earlier this year, I was contacted by the Administration about the need for legislation that would clarify the permitting process for these innovative projects on the OCS. Working with the Administration, I have introduced a bill that gives the Secretary of the

Interior the authority to permit and oversee energy related activities under the OCS Lands Act.

This legislation is needed because no authority currently exists to permit alternative energy projects and ancillary projects to support oil and gas development on the OCS. Clearly our nation faces a growing energy supply and demand challenge that calls for innovative solutions.

Two innovative ways that we will meet that challenge are through increased production and use of renewable energy and through production of oil and gas in deep water. H.R. 5156 facilitates both of these solutions. The bill clarifies the jurisdiction for these projects so that private sector entities, wanting to develop alternative energy resources offshore will know which agencies to approach for permitting. It is crucial for the development of any alternative or traditional energy project to have certainty in the permitting and regulatory process. This bill would provide such certainty. It also ensures that future projects on the OCS will be performed in a safe and environmentally sensitive manner and that a proper abandonment and site clearance process will exist for each project.

H.R. 5156 enables the Department of Interior to inform and work with other relevant Federal agencies that will be involved in the project permitting process. It is my understanding that the legislative language in H.R. 5156 has gone through an extensive discussion and approval process amongst all Federal agencies that have an interest in the OCS, and that the legislative language has been agreed to by those agencies and the OMB. This bill will not supercede or modify any existing authority of any other agency responsible for permitting or regulating offshore energy projects. It is designed to complement existing statutes and ensure that all innovative offshore energy projects have a clear permitting process.

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Mrs. CUBIN. I have been asked to submit for the record written testimony for Environmental Defense. And since there is no one here to object, I so order.

[The information referred to follows:]

e
environmental defense
finding the ways that work

July 24, 2002

Representative Barbara Cubin, Chair
Subcommittee on Energy and Mineral Resources
1626 Longworth House Office Building
Washington, DC 20515

Re: For inclusion in the July 25, 2002 Subcommittee Hearing Record on HR 5156

Dear Chairman Cubin and Members of the Subcommittee:

We are writing to express our strong concerns about HR 5156, as recently introduced, which proposes to grant unprecedented jurisdictional authority to the Minerals Management Service (MMS) over future permitting and rights-of-way for Liquefied Natural Gas (LNG) terminals, conversion plants, and pipelines, as well as for all wind and wave energy installations in federal waters.

Our concerns about this proposed legislation are multifold, but focus primarily on its implications for precluding an orderly review of major industrial projects in our marine environment and on the inadequacy of the legislative process by which it is being considered for adoption:

Regarding the content of the bill, there has been no emergent need, and there is no valid justification, for this kind of streamlining and centralization of permitting and right-of-way authority over either LNG facilities or alternative energy installations offshore. Absent any clear rationale for this centralization of authority, we question the purpose for which this legislation is being considered.

The bill appears, in the near term, to primarily benefit the petroleum industry by providing LNG project sponsors with a shortcut mechanism by which to circumvent existing federal jurisdictions and to sidestep a longstanding track record of appropriate environmental review of the full range of energy projects in the marine environment. The present jurisdictional authority over projects involving LNG, and wind and wave energy has not been shown to be flawed and in need of repair. The federal government presently has clear authority to review, permit, and provide appropriate regulatory oversight for projects of this kind. There has been no evidence of demonstrable flaws in the current permitting system.

In addition to failing to provide any evidence of a need for the type of consolidated jurisdiction being proposed by HR 5156, it is clear that MMS has had no tangible experience with either wind or wave energy, and that this agency has exhibited a longstanding tradition of actively debunking the potential of these alternative energy resources as an achievable substitute for conventional offshore oil and gas development. For Congress to arbitrarily assign unilateral jurisdiction over promising energy

alternatives such as offshore wind and wave energy to an agency with a clear conflict of interest in preferentially promoting hydrocarbon fuels seems to be an attempt to *derail* emergent renewable energy resources. Should MMS, if it obtains authority over offshore wind development, decide to meter the wind resource and collect escalating royalties from its exploitation as anticipated, the vast potential of at-sea wind development would be placed at an unfair economic disadvantage in relation to onshore wind energy installations, which are already less costly to construct.

Considered alone, or in concert with a recently proposed rulemaking by NOAA which would diminish the authority of coastal states to assert consistency determinations over so-called "far offshore" federal projects affecting states' coastal zones (15 CFR Part 930), this bill would also significantly contribute to the erosion of states' rights. The Coastal Zone Management Act provides a thirty-year example of successful partnerships between the federal government and affected coastal states, and HR 5156 would clearly unbalance this heretofore-exemplary track record of cooperation.

We are also gravely concerned about the hasty manner in which consideration of HR 5156 is proceeding, absent adequate legislative review. It is our understanding that efforts are already underway to incorporate HR 5156 into House-Senate conference committee deliberations on the Energy Bill. HR 5156 clearly has substantial implications for interfering with future renewable energy applications, for glossing over the well-known adverse environmental consequences of LNG development, and for undermining states' rights. Such radical proposals deserve to be fully vetted by the House and the Senate. The broad and diverse range of energy resources affected by HR 5156 is evidence that all committees of jurisdiction should be heard through sequential referral, and that current rushed attempts to circumvent the orderly consideration of this bill are without merit and will prove destructive to the public interest.

In summary, while HR 5156 attempts to adopt the banner of renewable energy resources as its surface rationale, the bill appears instead to be aimed primarily at minimizing the participation of coastal states and local communities in decisions about siting of major LNG facilities. Issues related to siting of LNG conversion plants and terminals have, for decades, attracted keen interest from coastal states and communities because of the extremely significant explosive potential of such facilities. Corporate proponents of specific LNG projects currently being proposed for the Bahamas/Eastern Florida region, for Oxnard and the San Francisco Bay Area in California, and for other major West and East Coast port cities would appear to be the primary beneficiaries of HR 5156, should it be adopted. Coastal states and affected communities will be the losers, should HR 5156 go forward.

LNG facilities, and even wind and wave energy installations, have a range of documented impacts on the shoreline, the sea and the seabed, and on economically important biological resources. Project-associated cable and pipeline landfalls are "jetted in" as they come ashore, often through environmentally sensitive intertidal habitats. While preferred routing alternatives and site-specific mitigation measures are sometimes available, protection of living marine resources must be a key component of permitting of

such installations. Such projects must not be encouraged to circumvent existing procedures for ensuring protection of coastal habitats and living marine resources.

We urge the Subcommittee on Energy and Mineral Resources to carefully consider these issues, to incorporate these comments into the record as it conducts its July 25 hearing on HR 5156, and to defer any markup of this controversial bill until such time as its profound implications can be evaluated as part of a methodical and comprehensive consideration before the appropriate committees of jurisdiction of both legislative bodies.

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

Sincerely,

Richard Charter

Marine Conservation Advocate
Environmental Defense

Elizabeth Thompson

Director of Legislative Affairs
Environmental Defense

Mrs. CUBIN. This testimony opposes H.R. 5156. Environmental Defense asserts that the purpose of this bill is to enact a short-term mechanism—or, excuse me—a shortcut mechanism for permitting liquefied natural gas facilities that sidesteps environmental review. These assertions, however, are absolutely incorrect. In fact, the language in H.R. 5156 excludes activities authorized in the Deepwater Ports Act.

The Port Security Bill, which is currently in conference, would amend the Deepwater Ports Act to give the Transportation Department jurisdiction over LNG facilities. I understand that the administration supports those amendments, but we will specifically ask our administration witnesses to testify about that.

So, without further delay, I would like to recognize Panel Number One, Ms. Johnnie Burton, the Director of the Minerals Management Service of the U.S. Department of Interior, a longtime friend and a former colleague in the Wyoming State legislature. I can honestly tell you Johnnie Burton is the most knowledgeable person I know about mineral development and severance taxes, royalties, the whole thing. She was the Director of Revenue at the Department in the State of Wyoming. And we are very, very blessed to have her as the Director.

Mrs. CUBIN. So, without other delay, the witness is recognized to testify.

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

Ms. BURTON. Thank you very much, Madam Chairman. I appreciate the opportunity to appear before you today to discuss the administration's legislative proposal to facilitate energy-related uses on the Outer Continental Shelf (OCS). Madam Chairman, I would also like to take this opportunity to thank you personally for introducing the administration proposal as H.R. 5156. We look forward to working with you and members of your Subcommittee and others to begin to consider both the need and the merits of this bill.

The administration strongly supports enactment of H.R. 5156. We believe that this legislation is both timely and necessary, and has the potential to encourage innovative energy projects on the OCS. The bill directly supports the President's National Energy Policy initiative to simplify permitting for energy production in an environmentally sensitive manner, and also supports the Secretary of the Interior's goal of facilitating renewable energy projects on the OCS. Hopefully, my testimony today will help shed some light on several parts of the bill and on the goals of the administration, and why the Department of the Interior is given the lead role in this particular issue.

Over the past 18 months, we have been approached at the Department of the Interior by both the oil and gas industry and other segments of the private sector concerning ideas and plans for various initiative energy-related projects offshore. In an effort to help address the issues raised by the private sector, we began to examine the authorities and mechanisms currently in place to permit such projects. What we found is that, generally speaking, there currently exists no clear authority for the Federal Government to comprehensively review, permit, and provide appropriate regulatory oversight of those projects, with a few exceptions. The exceptions are minerals activity, which the Department of the Interior manages and oversees; the oil terminals, which are under the Deepwater Ports Act and are implemented by the Department of Transportation; and then the projects that would be permitted under the Ocean Thermal Energy Conversion Act under the Department of Commerce, although there are no such projects at this time.

This means that a diverse array of OCS energy-related projects that either are contemplated or may be contemplated in the future by the private sector have no clearly defined permitting process. Instead, various Federal agencies with different responsibilities are responsible for different parts of the permitting process. We think that there are drawbacks to this. It is fragmented—and this process because it is fragmented—cannot ensure that the Federal Government's myriad of interests are fully considered. We would like to ensure that the land use management interests of the Federal Government are well protected.

The second drawback to the current situation is that the private sector, which must make the tough investment decisions concerning whether to proceed or not with those energy-related projects, is now forced to go to many agencies and to find out on their own where they should go, what they should do, and hope they don't miss something. That is because down the road it could

have a negative impact on their project, something they didn't plan for, didn't know they had to plan for.

So, clearly, this situation as it exists today in our mind and in the mind of the Secretary of the Interior does not encourage innovation in the energy arena. In fact, it might be a deterrent.

H.R. 5156 is designed to rectify those problems. It will provide the Secretary of the Interior with the authority to grant an easement or right-of-way for various energy-related activity on the OCS, and that would include renewable energy projects such as wave energy, wind energy, solar energy, perhaps even biomass. We are not sure what is going to come out there in the future.

It will also include a project to support the existing production and exploration of oil and gas and various minerals on the OCS. It will also help us understand how you can convert something that is there today and may have to be decommissioned because of, let's say, an oil platform. And the fuel becomes exhausted. And technically today we have to tell the owner of that platform, which is the recordholder of the lease, that he has 1 year to get everything out of there. Well, what if another use can be found for that platform? We need to have somebody have the authority to review the application and decide whether or not it makes sense and be able to do it. Right now, we can't.

So we want to protect the public's interest to capture the fair value for the use of the Federal OCS by authorizing the Secretary to require an appropriate form of payment for use of those lands, and this bill would give the Secretary this authority.

It would also grant the Secretary the authority to issue easements or rights-of-way, either on a competitive or non-competitive basis, as appropriately determined by the Secretary.

It will give the Secretary the authority to oversee all activities associated with a project through regulation and inspection activities to ensure safety, the safety of people, the safety of the environment. Right now, there is nothing comprehensive on this front.

It will also grant the Secretary the authority to pursue appropriate enforcement actions if they are needed.

And finally, and maybe very importantly, it will require—it will give the Secretary the authority to require some kind of financial surety, to make sure that when those facilities are no longer needed there is money there to decommission them.

It appears to the administration that there should be a regulatory regime that gives the tools for the Department to act as a land manager with respect to these projects. So this would help ensure that the full array of Federal interests in the permitting of offshore energy-related uses can be addressed, and also give the private sector certainty. They know where to go, they know what to do. There is no question. And that would help them make their decisions.

Another important aspect of the legislation is that one Federal agency is given the lead role in administering the provisions of the bill. There ought to be one place where people can go and get all the answers. Although these answers may come from different departments eventually, but you need someone to coordinate. The administration determined that this new authority contained in H.R. 5156 should be vested in the Department of the Interior, since his-

torically that Department has been the Federal Government's land manager and is the primary agency to oversee energy development on Federal land through its various bureaus—BLM onshore and various other bureaus. MMS has been doing it for mineral exploration offshore. So we have quite a bit of experience in dealing with submerged lands.

It is important to note, however, that while the bill gives the Department the lead role in coordinating the permitting of energy-related uses on the OCS, it also specifically recognizes the important role of other Federal agencies in the permitting process. In fact, the bill makes it clear that this legislation does not supercede or modify the current authority of any other Federal or State agency under existing Federal law. Nothing else will change.

Within the Department of the Interior, as you know, MMS has many years of experience in overseeing oil, gas, and mineral activities on the OCS. It is this experience that led the task force of Federal agencies to the conclusion that the primary responsibility for offshore energy-related activities should be invested in the Department of the Interior.

To summarize the experience that we have acquired over the years, I would like to tell you some of the areas that it covers:

Environmental expertise. Research which is used to make informed decisions with regard to leasing and operations on the offshore.

Engineering expertise. Research regarding emerging offshore technologies used to develop oil/gas resources and various safety issues associated with those activities.

Regulatory expertise in overseeing OCS oil and gas activities to ensure human safety and environmental protection.

And, finally, a trained offshore inspection work force. In addition to enforcing MMS regulations, this work force today conducts offshore inspections both for the Coast Guard and for the EPA. We work together with other agencies, but we have the expertise. It is resident within the Department of the Interior.

In closing, Madam Chairman, I would again like to thank you for your interest in this important legislation. The administration firmly believes that this bill will provide numerous and immediate benefits, and it has the potential to expand both our sources and supplies of energy that will be so critical to our Nation in the future.

The administration feels strongly that we must encourage new and innovative technologies to help our Nation meet its increasing need for energy. Enactment of this legislation will be one important step in getting us ready to support and manage the development and the new energy sources that might come up on the OCS.

Madam Chairman, this concludes my oral testimony. However, I would be pleased to answer questions you have.

[The prepared statement of Ms. Burton follows:]

Statement of Johnnie Burton, Director, Minerals Management Service, U.S. Department of the Interior

Madam Chairman, thank you for the opportunity to appear before the Subcommittee today to discuss the Administration's legislative proposal to help facilitate energy-related uses on the Outer Continental Shelf (OCS). The Department is excited about H.R. 5156 and its potential to encourage innovative energy projects

on the OCS. Furthermore, the legislation directly supports the President's National Energy Policy initiative to simplify permitting for energy production in an environmentally sensitive manner and also supports the Secretary of the Interior's goal of facilitating renewable energy projects. We look forward to working closely with the Committee as it further considers both the need for and merits of this proposal. Hopefully, my testimony today will help shed additional light on why the Administration submitted a legislative proposal; some highlights of H.R. 5156; and why the Department of the Interior is given the lead role in this legislative initiative.

As you are aware, this legislative proposal was officially transmitted to Congress on June 20, 2002, and introduced by Chairman Cubin, as H.R. 5156. The Bill represents the results of more than six months of extensive discussions and collaboration with all Federal agencies having permitting responsibilities on the OCS, as well as the President's Task Force on Energy Project Streamlining. More important, H.R. 5156 was developed in a consensus with our sister agencies and reflects the best efforts of the Administration to address the array of issues associated with permitting various OCS energy-related projects that are not currently covered under existing statutes.

These projects include renewable energy projects such as wind, wave and solar energy. In addition, the oil and gas industry is contemplating ancillary projects offshore that would directly support OCS oil and gas development, particularly in the deep water areas of the OCS. These projects include developing offshore staging facilities, emergency medical facilities, and supply facilities. Since there currently is no legal authority to permit these types of projects, H.R. 5156 would give the Secretary of the Interior the authority to permit and oversee energy-related activities in the OCS under the OCS Lands Act.

Why New Legislative Authority is Needed

Centralizing the overall responsibility for permitting energy-related uses under one statute and within one agency will have two significant benefits. First, it will clarify the regulatory process considerably. When the private sector initiates a specific project, it will know where to start the permitting process, and in turn, the Department would inform the applicant of other Federal permits that may be required. Likewise, the Department will be able to inform other relevant Federal agencies of the proposal, thus better facilitating its timely review and consideration. This approach has worked well for OCS oil and gas activities, in which MMS serves as the one-stop starting point for a coordinated review and approval process.

Second, it will clearly provide one agency within the Federal government with the full array of tools needed to comprehensively manage non-traditional OCS energy-related uses. In short, it will give the Department the ability to act as a "land manager" with respect to the permitting and oversight of energy-related uses of Federal submerged lands.

In considering the Administration's proposal, a logical question to ask is whether legislation is necessary to site and oversee energy-related uses on the OCS, or can it be handled under existing authorities. In fact, we asked ourselves that same question as we began to consider how to best address issues associated with the siting of such uses. After careful analysis of the mechanisms currently in place to handle requests for innovative, non-traditional energy-related projects on the Federal offshore lands, it became clear to us that—with limited exceptions—currently there exists no clear authority within the Federal government to comprehensively review, permit, and provide appropriate regulatory oversight for such projects. The exceptions to this general rule include oil, gas and other mineral activities permitted under the OCS Lands Act (43 U.S.C. 1301 et seq., Department of the Interior); offshore oil terminals permitted under the Deep Water Ports Act (33 U.S.C. 1501 et seq., Department of Transportation); and projects permitted under the Ocean Thermal Energy Conversion Act (42 U.S.C. 9101 et seq., Department of Commerce).

This means that the vast majority of OCS alternate energy-related projects that are or may be contemplated in the future by the private sector have no clearly defined permitting process. There is no single agency with an overarching role to coordinate that process. Instead, various Federal agencies with different responsibilities are responsible for permitting a specific part of a proposed project.

There are two obvious drawbacks to the current situation. First, this fragmented process cannot ensure that the Federal government's myriads of interests in such projects are fully considered nor can it ensure that its economic and land use interests are adequately protected. This obstacle can be best overcome by giving a single Federal agency the overall authority to coordinate and permit these projects—while acknowledging the important role that other Federal agencies play (and will continue to play) with respect to the permitting process. The proposed legislation does just this by investing in the Department of the Interior the primary regulatory re-

sponsibility while explicitly noting that the legislation will not supercede or modify the current authority of any other Federal or State agency under existing Federal law.

A second drawback to the current situation is that the private sector, which must make the tough investment decisions regarding whether to proceed with new energy-related projects—is now forced to "agency shop" in an attempt to identify an authority that will allow them to move forward on a creative new venture. Otherwise, their only alternatives are to wait for clarified authority before proceeding, or to proceed—with the possibility that a new statute will establish new authority with new restrictions. Clearly, this situation stifles innovation in the energy arena and, in fact, acts as a deterrent to critical investment decisions associated with offshore energy-related projects.

Already, the oil and gas industry has expressed interest in developing offshore projects that support OCS oil and gas operations in the Gulf of Mexico, such as offshore staging areas and hospitals, and has approached the Department and others to discuss these ideas. However, to date, they have not proceeded with such plans due, in part, to a lack of clear authority on the Federal level. In another case, the private sector is actively pursuing a proposed wind energy project offshore Massachusetts. This proposal is being coordinated by the Army Corps of Engineers (COE) under its authority under the Rivers and Harbors Act since one of the permits the project must receive is a COE section 10 permit certifying that it will not be a hazard to navigation.

In sum, due to the absence of clear statutory authority for permitting the range of various energy-related uses currently being proposed or that may be proposed in the future for areas offshore, the Administration is firmly convinced that new legislation is needed in order to provide a clear and predictable regulatory regime and to fully protect the Federal government's interests in such projects.

Highlights of the Administration's Legislative Proposal

In general, the Administration's legislative proposal sets up a comprehensive framework for permitting energy-related uses on the OCS not already covered by existing statutes by amending the OCS Lands Act—specifically, it will add a new subsection (p) to section 8 of the Act. Placing this authority under the OCS Lands Act, which already provides the regulatory framework for OCS oil, gas, and mineral activities, will allow the Department to build on many of the regulatory provisions already embodied in that Act while still allowing us the flexibility to tailor those provisions to more non-traditional energy-related uses.

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

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

Rationale for Designating the Department of the Interior as "Lead" Permitting Agency

As the Administration began to actively consider the best approach for addressing issues associated with siting energy-related uses on the OCS, it became clear early on that the Department of the Interior should be given the lead role in the permitting of such projects and the proposed legislation reflects that consensus. While there are numerous Federal agencies with permitting responsibilities on the OCS, historically the Department has been the Federal government's "land manager." The Department manages more than 500 million surface acres of land, with the MMS managing approximately 1.76 billion acres of offshore Federal lands and mineral estate. BLM manages 262 million surface acres and more than 700 million subsurface acres of Federal mineral estate.

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

Also, the Department is the primary agency in the Federal government to oversee development of our Nation's energy resources through BLM (onshore) and MMS (offshore). Since the proposed legislation pertains to the permitting and oversight of energy uses on offshore Federal lands, it is only logical that any new legislative authority that may be enacted remains with the Department already entrusted with that overall responsibility.

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

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

In closing, I would again like to thank the Subcommittee for its interest in this issue and express our sincere desire to work with you on this important legislation. The Administration firmly believes that this bill will provide numerous and immediate benefits. First, it will provide for the sound management of offshore public lands by ensuring that principles of safety, environmental protection, multiple use, fair compensation, and conservation of resources are all addressed before a project is initiated. It will also provide the private sector, which desires to invest in offshore energy-related projects with certainty and predictability. Finally, the bill has the potential to help increase both our sources and supplies of energy that will be so critical to our Nation in the future. We have already seen that interest and expect to see more once a statutory framework is in place.

The Department believes strongly that we must encourage new and innovative technologies to help us meet our increasing energy needs enactment of this legislation will be one important step in helping us meet those needs.

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

Mrs. CUBIN. Thank you, Director Burton. And, Deborah—is it correct—that there are statements that the Minority has that now will be ordered to be entered into the record.

[The prepared statement of Mr. Kind follows:]

Statement of Hon. Ron Kind, a Representative in Congress from the State of Wisconsin

I recognize the short-term need to increase environmentally sound, domestic fossil fuel production. But in the long term we should be focusing on the development of renewable energy sources such as wind, solar and biomass. That makes sense for both economic and national security reasons: the United States has only 3 percent of the world's remaining oil reserves, but consumes nearly 25 percent.

Constructive ways to boost more domestic alternative energy sources so that we can break oil dependency from unstable regions of the world should be encouraged.

Therefore, I was initially heartened by the Administration's announcement that they were transmitting legislation, incorporated in H.R. 5156, to specify that alternate energy projects may be permitted by the Minerals Management Service on the Outer Continental Shelf of the United States.

Unfortunately, while H.R. 5156 would grant this authority to MMS, the bill would also expand DOI's authority to permit the siting of Liquefied Natural Gas - LNG - terminals, conversion plants and pipelines, in the OCS. The prospect of LNG facilities off the coastlines of States like California, Florida, New Jersey or North Carolina, is controversial in those States to say the least.

Further, as you may know, the Bush Administration has recently published an advance notice of proposed rulemaking under the Coastal Zone Management Act that could greatly diminish the authority of coastal States to assert that Federal consistency applies to "far offshore" federal projects affecting their coastal zones.

Should H.R. 5156, as introduced, become law, and should NOAA proceed to complete its ill-advised rulemaking, permitting LNG facilities in the OCS would not be subject to the consistency provisions of the Coastal Zone Management Act.

This possibility alone will make it very difficult to gain the necessary support from Members representing coastal states, which include Great Lakes States, to pass this bill.

H.R. 5156 will require a good deal more consideration before it should be brought to a vote in Subcommittee. I would hope that the Subcommittee hold at least one more hearing on this bill so that we may hear from representatives of coastal states as well as others with a vested interest in the bill. We have a number of other questions and concerns about the bill that will be addressed in our questions to the witnesses.

In conclusion, while we appreciate the stated intent to facilitate the development of alternative energy projects in the OCS, the bill would have to significantly rewritten to limit its scope to that end. As it stands, the bill would give MMS the authority to permit just about anything on the OCS, and that is unacceptable.

[The prepared statement of Mr. Markey follows:]

Statement of Hon. Edward J. Markey, a Representative in Congress from the State of Massachusetts

Thank you, Madam Chairwoman. I appreciate your calling this hearing today.

Proper management of the Outer Continental Shelf is extremely important for our country—a country with over 12,000 miles of coastline. It is especially important to Massachusetts" economic vitality. Many of our industries—from fishing to shipping to tourism—depend on the health and management of the outer continental shelf and coastal areas. I agree with the chairwoman that the current gaps in federal laws need to be filled and that if there are jurisdictional issues, they need to be solved as well.

I am concerned, however, that the legislation before us is too broad. If it is passed in its current form, OCS would no longer stand for "Outer Continental Shelf." Instead, OCS would stand for "Open to Corporate Sale." Just asserting the jurisdiction of the federal government, without a sound policy to guide the use of federal lands and a commitment to a clear process by which innovative individual proposals will be judged will not solve our current problems. That clear policy is lacking in H.R. 5156. Specifically, I am concerned that there is no explicit protection of the States" right to consistency review as established under the Coastal Zone Management Act. I cannot support legislation that does not maintain the rights of states to review projects that impact the health and safety of their people and economy.

I am disappointed that this hearing does not include a broader spectrum of panelists. I think the National Oceans and Atmospheric Administration would have valuable insight to add to this policy discussions, in particular comments from the Commission on Oceans Policy on this legislation would be greatly appreciated. Recently my colleague, Rep. Delahunt, has asked them to comment on this bill, which could seriously affect his district, and I hope that their comments will be considered before HR 5156 moves forward.

Furthermore, I would like to hear from other industries about their current and future proposals for new ways of using the outer continental shelf. What plans does the aquaculture industry have? Or the liquefied natural gas industry? We will hear from a portion of the renewable industry today but I believe we need to be better informed about possible types of projects in order to develop a sound policy about how to deal with their use of federal waters.

The frontier days are over. We can no longer just hand over public land for industry to use. We must carefully balance the economic and environmental impacts of all energy projects anywhere on federal land or water, without usurping the right of States to comment on federal projects that impact them.

Mrs. CUBIN. I want to start out by making a statement. Ranking Member Kind has been very active in this Subcommittee and has rarely missed a Subcommittee hearing. And also this is a very busy

time of the year for us. We are trying to get through all of the bills that we need to get through before we take our August district work period. But I have to—and I understand that, and I am sure that Mr. Kind is at some place that is very important.

I want to respond—I want to make an observation, though, about the rest of the Committee. I have heard nothing but harping about the President's energy plan from the other side, that it does nothing to protect the environment, or it doesn't do enough to protect the environment, and that renewables, renewables, renewables, renewables is the only answer. And I have to express my deep disappointment that there is no one on the other side here to work with us in bringing forward this bill that will enable the development of renewable energy sources in the short term as opposed to having to postpone it and postpone it and postpone it.

So it is very disappointing that no one sees fit to be here for what they have been denouncing the administration for not providing. I can't help but think that there could be a political reason that they are not here. I could be wrong, but it is the way it appears to me.

So the first question I want to ask you, Director Burton, is would you agree with me that this bill is all about protecting the environment?

Ms. BURTON. Absolutely, Madam Chairman. If we don't have the comprehensive regulatory regime in place, we have no way to see and make sure that all the safeguards are observed, and that whatever industry does is designed in such a way that is as safe as possible to the marine environment. We have a lot of scientists on our staff that do nothing but study marine environment and make sure that what is done on the OCS is as sensitive as it can be to that environment.

So this would ensure that there is a thorough, complete review of the environmental issues before anything is permitted.

Mrs. CUBIN. Recently I had the opportunity to go out on a platform, producing platform 100 miles out in the Gulf, and then we came back into a 30-mile-out platform that was a drilling platform and a production platform. And in both places, I asked about the MMS and their enforcement of the regulations and how well they regulated, and all of the workers—I didn't ask the bosses of the companies, the people who were taking us on the tour. I asked the people who were working on the platforms, I asked the workmen, the laborers on the platform how MMS—how important MMS was. And to a person, they said that MMS is very knowledgeable. And they come out and they make inspections and they are very picky in their inspections, which they consider to be good because it is about their safety and about the safety of the environment. So I don't think there is anyone that could argue the point that the MMS is far and away the most qualified agency to deal with environmental issues on the Outer Continental Shelf.

You did discuss this in your testimony, but would you like to expand in any way on how MMS recognized the need for this legislative language, and why we are pursuing the legislation?

Ms. BURTON. Certainly, Madam Chairman. You know, one of the initiatives of the President's National Energy Policy was to find a way to simplify and to streamline the regulatory review process for

future energy projects. This legislative proposal was the offshoot, if you will, of the work that the Department of the Interior wants to do to support the President's agenda. We viewed this as a way to streamline, to simplify, but also a way to make sure that the Federal Government's interests were protected and well managed. So that was one of the reasons this legislation came to be.

The other reason was what we heard. And, like you, I went offshore after I took this job because I wanted to see what we were doing out there and how well our people were working with industry to regulate them and to manage what they do.

I heard some interesting things. Such as, when we are drilling in ultra deep water—and as you know, we are drilling more and more in ultra deep water, which means 100, 150 miles away from shore. For example, if we have an accident, either a work-related or medical accident to some of the staff, by the time they fly to shore, which may be a 2-hour flight by helicopter, plus an ambulance ride, it may be too late to save somebody's life. And they were talking to me about the possibility of building medical facilities offshore that would be just a few miles from various platforms, and they could all use it and they would be a few minutes by helicopter ride. I thought that was a wonderful idea. But right now, no one has authority to permit and regulate such an activity. It is to support the oil and gas industry, but it is not directly drilling or production, and so the OCSLA does not cover that. So that would be helpful.

Then we have the wind project off Nantucket Sound that folks were looking to see how to work. Right now they are working with the Corps Of Engineers. But, again, the Corps of Engineers is trying to cover a lot of ground it is not used to covering, because no one seems to be the point agency.

So all of these things put together brought the administration to the conclusion that they needed to propose some scheme that would take care of this regulation and this management issue, and that is how this came about.

Mrs. CUBIN. I have had conversations with other Members specifically about the wind project that is proposed for the Nantucket area. And it was expressed to me that hurricanes come along the eastern coast, and that there are times when that area is hit by hurricanes. And their concern was that if it was not built far enough out—basically, they didn't want it to be built at all. But the reason they were opposing it was they said if a hurricane comes and one of those wind farms is there and the hurricane blows it down, then, you know, people wouldn't be safe there on the land.

And could you respond to that? Like, I am not asking you—because I think it requires some study—I am not asking for your opinion on it. But wouldn't the MMS in their studies have to take that into consideration, those sorts of things, before they could permit under this bill, before they could permit that wind farm to be built?

Ms. BURTON. Absolutely. These are the issues that would come up on a case-by-case basis, depending on what the project is. We don't have any involvement in that project at this point. So you are correct; I can't answer this question specifically. But this is what the agency does whenever a project comes to the point where they

have to ask for permits; then we do a very comprehensive review of all the aspects of a project, and that would be studied also. I am not sure anybody is studying that right now. I am not sure anybody is watching this particular issue.

Mrs. CUBIN. You covered in your testimony that MMS has approached other agencies about the jurisdictional details of permitting alternative energy projects. Have the concerns of those agencies been met in this language?

Ms. BURTON. I believe so, Madam Chairman. We worked with other agencies for about 6 months and went through—you know, we have a collaborative process with a lot of agencies. For example, we work very closely with the Coast Guard, we work very closely with the EPA, with the Defense Department, with the Navy, et cetera. We have taken this language and have modified it as we met with all of those agencies, and the end result is that we had the support of all of those agencies for us to bring this language forward. So everyone has been contacted.

Mrs. CUBIN. The submitted testimony from Environmental Defense asserts that the primary purpose of this bill is to grant MMS unprecedented jurisdiction over LNG terminals. How do you respond to that?

Ms. BURTON. Well, unless I am mistaken, Madam Chairman, the LNG terminal language is not at all in this bill; it is in the Deepwater Port Act and it is under the Department of Transportation's jurisdiction at this point. And we are perfectly satisfied with that. This bill says very clearly that it will not address any activity that is already covered in other Federal statutes. So, if LNG is in the transportation bill, that is who is going to take care of it, and we won't have a thing to do with it.

Mrs. CUBIN. I think that is obvious if one reads the bill, but I wanted to have that on the record very, very clearly.

If this bill should be enacted, how will the jurisdictions, requirements, and industry standards be defined for projects that are covered by the bill?

Ms. BURTON. At this point, Madam Chairman, it is hard for me to answer that question because I don't think one size fits all. I think that every project that will come along in new—particularly renewable energy, so new technologies will have to be studied on their own merit. Again, we are used to undertaking a very collaborative process in order to arrive at all the standards we require for various projects. We will continue to do that. So we will consult with an awful lot of people before we arrive at setting standards for a particular project.

Mrs. CUBIN. Another thing that I think is extremely important is the role of the adjacent coastal States addressed in this bill. And what role will the States play?

Ms. BURTON. The role of the States is not really addressed in this bill per se, because this bill doesn't change any existing scheme that exists for States as well as Federal statutes today. Nothing is going to abridge or change or modify the role of the States. We consult the States now for anything of the OCS that may have an impact on their coastal zone. We will continue to do that regardless of what the project is. So that does not impact them.

Mrs. CUBIN. Another assertion that was made in the Environmental Defense testimony is that the purpose of this bill is really to derail emergent new renewable energy resources through escalating royalties. Would you comment on that?

Ms. BURTON. My comment on that is that the bill doesn't give us any such authority. We do not contemplate any kind of royalty regime at this point. We are concerned with how we protect the environment and how we manage the submerged lands that are our responsibility. The MMS basically is charged within the Department of the Interior to take care of 1.76 billion acres of land. But in order to take care of that, we have to have the tools. Right now we have tools that are limited to only mineral production. We need to make sure those tools can apply to ancillary types of projects to support that production and to renewable energy projects.

Renewable energy is one of the priorities of this Secretary. She has worked diligently with the Department of Energy to put together a conference, I believe it was last October or November, I am not sure exactly when, I was still in Wyoming. It had a very good attendance. And BLM followed through in the winter, I think January or February, with another conference. The report is going to come out pretty shortly, put out by both Secretaries of Energy and Interior, addressing renewables. She is very intent on doing anything we can to foster renewable energies development. This legislation is part of it.

Mrs. CUBIN. Under this legislation, what I am speaking of here are rights of way. How would the MMS coordinate with FERC, another agency, to provide those rights of way for offshore energy development as well as the transmission of the energy that is produced?

Ms. BURTON. Well, today, we communicate with FERC quite a bit on those issues, and we will continue to do so. And there won't be any change there. But we have to remember that MMS is only interested in managing the land, and that is the right of way, the right of way on that land, not in managing the actual transmission of energy.

Today, for example, we work with FERC on pipelines. We worry about the right of way. But they monitor the pipeline, and they regulate what is transmitted through those pipelines when there is still regulation. We know this is largely deregulated today.

If there are lines that transmit energy, for example electricity—it could be another form of energy besides oil and gas, obviously; it could be electricity off the wind farm, for example—FERC keeps its sole authority over the transmission line itself. We would only be involved in the right of way. That is all. So that doesn't change. This is already in statute. It will be the same.

Mrs. CUBIN. Well, I thank you very much for your informative testimony and answers to the questions. We will keep the record open for—5 days—10 days for other members to submit questions in writing, and would ask that you respond to those questions if there are any forthcoming. And I want to thank you very much for being here, and I look forward to seeing you again.

Ms. BURTON. Thank you very much for your time. And we would be more than happy to answer any questions of any member of the Committee. Thank you.

Mrs. CUBIN. Thank you.

Mrs. CUBIN. Now I would like to invite the second panel, Mr. Jaime Steve, American Wind Energy Association.

STATEMENT OF JAIME STEVE, LEGISLATIVE DIRECTOR, AMERICAN WIND ENERGY ASSOCIATION

Mr. STEVE. Thank you, Madam Chairman. My name is Jaime Steve, and I am the Legislative Director for the American Wind Energy Association based here in Washington D.C. Wind companies that I represent include GE Wind Power, FPL Energy, American Electric Power, PacifiCorp, Vestas American, Cape Wind, and Arcadia Wind Power.

Increased use of clean, domestic wind energy on both private and public lands is a bipartisan issue with broad support in the Congress and from the Bush administration. For example, in March of this year, Congress extended the wind energy production tax credit through the end of 2003. An additional extension of this tax credit is contained in H.R. 4, the wide-ranging energy policy bill passed by the House earlier this year, also passed by the Senate in different form, and under consideration in conference committee. This provision was also contained in the Bush energy plan.

Let me give you a little background on wind energy on land before I jump over to the offshore. In the early 1980's, wind energy development was essentially a one-State business, California. That was it. Today, utility-scale wind power facilities are in 29 States. All these projects are either on private or Federal land. Currently, there are no operating offshore wind developments in U.S. waters. This is in contrast to Europe, where at least 10 offshore projects are operating in shallow waters offshore in waters near Denmark, Sweden, England, and the Netherlands. Europe has already moved to offshore development because of the scarcity of land. Here in the U.S., we have lots of available land particularly in the West. There, heavy population, not a lot of open land, that is why they moved to offshore.

The earliest European offshore project was built in 1990, and it is off the Swedish coast. These European projects range in size from .25 megawatts to as large as 40 megawatts in capacity. That is a lot of power. Together these European projects total over 90 megawatts of capacity, and the distance from shoreline of these projects ranges from about five-eighths of a mile to about 6 miles. Near term, there are currently 18 new offshore projects planned throughout Europe totaling 1,500 megawatts of energy capacity. Long term, Germany alone is looking at 25,000 megawatts of power. That is a significant amount of power just for one country.

While it is somewhat more expensive to develop wind offshore, there are some simple reasons for doing so.

The first reason is to gain access to much higher, more sustained winds. Therefore, your wind turbines are operating a greater percentage of time and you are producing more power.

The second reason is that these projects can be located closer to population centers, therefore reducing the need to transmit power long distances over transmission lines. And that raises questions if you lose some of the power the further you have to transmit it. And also in some areas of the U.S., we don't have the existing trans-

mission capacity to move the power from where it is to where it is needed.

I would like to address two specific issues involving H.R. 5156 and the ability to develop wind along the Outer Continental Shelf.

No. 1 is what we call transitional issues. The industry asks that any rules that may flow from this legislation be sensitive to the financial investments and potential—of potential offshore projects made prior to enactment of the legislation. Specifically, we are concerned that companies now working to develop sites offshore Massachusetts, which we spoke about just recently, and offshore Long Island as well, are not disadvantaged by new rules. Essentially, we feel these projects should not be unnecessarily delayed by requiring developers who have already put in significant amounts of money, time, and effort over the last 2 to 3 years. We don't want those folks to have to go back to square No. 1 under a new process and start all over again.

Next is interconnection. And again, I think we were just discussing the fact that this is really more of an issue for the Federal Energy Regulatory Commission than it is for the Department of Interior. But that is important to us as well. We are concerned that if a current or future project gains approval and begins construction, we want to be sure that there is an orderly process to ensure that the project can actually connect to the mainland; otherwise, there is no sense in building the project in the first place. And that is a concern, because those that want to stop a project, if they don't win on stopping the project itself, they can then block the transmission access. And that is another way to stop a development.

In conclusion, I just want to say that offshore wind may be a new concept here in America, but the Europeans have been at it for more than 10 years with numerous projects. Expanding U.S. wind development into appropriate parts of the Outer Continental Shelf will allow environmentally responsible development and help our country meet its pressing energy needs with a clean, nonpolluting, domestically produced source that creates high-tech jobs while also paying significant revenues either to individuals; but, if we are offshore, we are assuming that there would be some level of revenue paid to the Federal Government as well.

Thank you, Madam Chairman.

[The prepared statement of Mr. Steve follows:]

Statement of Jaime Steve, Legislative Director, American Wind Energy Association

Chairman Cubin and members of the subcommittee, my name is Jaime Steve. I am Legislative Director for the American Wind Energy Association based here in Washington, D.C. Wind energy companies that I represent include GE Wind Power, FPL Energy, Inc., AEP (American Electric Power) based in Cincinnati, Ohio, PacifiCorp, Vestas American, Cape Wind and Arcadia Windpower.

Increased use of clean, domestic wind energy on both private and public lands is a bipartisan issue with broad support in Congress and from the Bush Administration. For example, in March of this year Congress extended the wind energy Production Tax Credit (PTC) through the end of 2003. This item was contained within the Job Creation and Worker Assistance Act of 2002 (H.R. 3090, P.L. 107–104). An additional three-year extension of this tax credit is contained in H.R. 4, the wide-ranging energy policy bill passed by the House earlier this year and currently under consideration in conference. This provision was also contained in the Bush–Cheney energy plan.

The wind tax credit, coupled with more than 80 percent reductions in wind power costs since the 1980's has enabled wind to compete almost head-to-head with conventional energy sources in regions with good wind resources. In 2001 alone, Texas saw more than 900 megawatts (MW) of wind power come on line. This translates into more than $1 billion in economic activity and roughly the amount of electricity needed to power 200,000 homes. At the same time, hard-pressed Texas farmers and ranchers leasing small portions of their land for wind development are gaining annual payments of about $3,000 per windmill, per year, for at least twenty years. In addition, these wind developments are contributing to the tax base of local governments. The simple point is that wind energy is real and it is spurring significant economic development in rural America.

In the early 1980's wind energy development was essentially in only one state—California. Today, utility-scale wind power facilities are in 29 states. All these projects are on either private or federal land. Currently, there are no operating offshore wind developments within U.S. waters. This is in contrast to Europe, where at least ten offshore projects are operating in shallow waters near Denmark, Sweden, England and the Netherlands. Europe has already moved to offshore development because of the scarcity of available land.

The earliest European offshore project was built in 1990 (Norgersund off the Swedish coast). The European projects range in size from 0.25 MW to 40 MW in capacity. Together these European projects total over 90 MW. The distance from shoreline ranges from 5/8 of a mile to 6 miles. Near term, there are currently 18 new offshore projects planned throughout Europe totaling 1,500 MW. Long term, Germany alone is planning for 25,000 MW of offshore wind power by the year 2025.

While it is somewhat more expensive to develop offshore wind, there are some simple reasons for doing so. The first reason is to gain access to higher, more sustained winds, producing up to 40 percent more energy per wind turbine. The second reason it that these projects can be located closer to population centers where the power is needed, therefore reducing the need to build new long-distance power transmission lines to get the power to customers.

I would like to address two issues specifically involving H.R. 5156 and the ability to develop wind along the outer continental shelf (OCS).

Transitional issues

The industry asks that any rules that may flow from passage of H.R. 5156 be sensitive to the financial investments in potential offshore projects made prior to enactment of the legislation. Specifically, we are concerned that companies now working to develop sites offshore Massachusetts and New York's Long Island are not disadvantaged by new rules and requirements. Essentially, we feel that these projects should not be unnecessarily delayed by requiring developers—who have already put in years of preparation—to start all over again under a new application process.

Interconnection

We are also concerned that if a current or future project gains approval and begins construction that there be an orderly process to ensure the project can connect to electric substations and distribution lines on the mainland. Simply stated, there is little point in constructing an offshore wind farm if it becomes too expensive or difficult to transmit power from the wind turbines to the users on land.

Conclusion

Offshore wind may be a new concept in America, but the Europeans have more than ten years of experience with these projects. Expanding U.S. wind development into appropriate parts of the outer continental shelf will allow environmentally responsible development and help our country meet its pressing energy needs with a clean, non-polluting, domestically produced resource that creates new high-tech jobs while also generating revenue for the federal government. Thank you.

Mrs. CUBIN. Thank you, Mr. Steve. In your testimony you describe the offshore wind farms in Europe. Is offshore wind energy beginning to make a significant contribution? Now, you said it is 25—.

Mr. STEVE. Twenty-five thousand megawatts is planned for Germany.

Mrs. CUBIN. Oh, it is planned. OK. So it is beginning, then, to make a major contribution to the electricity needs of Europe.

Mr. STEVE. Right. Yeah.

Mrs. CUBIN. Are you hearing of increased interest from energy companies about offshore projects in the United States?

Mr. STEVE. Definitely.

Mrs. CUBIN. Other than the Nantucket?

Mr. STEVE. Right now, the only two that are under consideration are the one offshore Nantucket Sound and one offshore Long Island as well. The Long Island Power Authority is looking into this. Part of the problem is, it is kind of a practical issue to deal with here. It is very difficult in the New York area to get power to Long Island. Again, we come to this transmission issue. And if you can develop an offshore wind farm, then you don't have to run the power all the way through Manhattan or from Connecticut, you know, from other areas into Long Island. You can have it right there at Long Island, and then you are just running essentially a giant extension cord from the wind power facility directly to the mainland on Long Island.

Mrs. CUBIN. You made a point that I think is really significant. That is how, as energy, as the electrons travel through the wire or the fiber or whatever, they diminish.

Mr. STEVE. Right.

Mrs. CUBIN. And so placing them in places like off of Long Island and Nantucket would certainly prove to serve electricity to a lot of people. And what I am thinking about right now is that not-in-my-backyard stuff.

Mr. STEVE. Yes.

Mrs. CUBIN. So what kind of unique challenges have you had, or do you know of those kinds of challenges in Europe? And how did they deal with those? How did they get more public acceptance of that?

Mr. STEVE. I think you are referring to what most people call NIMBY. Right? Not In My Backyard. But the best one I have heard recently is NOPE, N-O-P-E, which stands for Not On Planet Earth.

Mrs. CUBIN. Right.

Mr. STEVE. Don't do it anywhere on Planet Earth.

Here is one way to deal with that. In Europe—I don't know if everyone can see the image up here; I passed out some copies. I don't have enough copies for everybody else, for the press. But the image here is of a wind farm offshore Denmark. And a couple members of the Subcommittee and the full Committee were there recently last summer, and I was fortunate enough to go there myself, as well.

But what you see here is about 5 miles off the coast of Denmark, of Copenhagen, are these windmills. Most days, you can't even see them, No. 1. It is very shallow water, so it is not a shipping channel. But interestingly, what the developer did in that case was they allowed folks who lived along the coastline to actually invest in the project. They received some revenue. The objections kind of melted away at that point.

Mrs. CUBIN. Funny how that happens.

Mr. STEVE. Yeah. I mean, there are always going to be some folks who—you know, some folks like windmills; there are always going to be some folks that don't. What we are finding is that most folks do, because it is a clean power source; there is no pollution. And one of the great things about wind power, which is unlike fos-

sil fuels, is that with wind power or other renewables as well, you sign a 20-year contract with the utility for the power. What you are paying at the beginning of the 20-year contract is the exact same price you are paying at the end of the 20-year contract because there is no fuel cost; the wind is free. All your costs are up front. And you levelize those costs over the 20 years.

So we can come in at a rate of, say, 5, 6 cents per kilowatt hour, whereas natural gas may currently be in the range—it may be cheaper than us right now, but I think anybody in the room who has—Mr. Inslee—anybody in the room who has an electric bill or has a home powered by natural gas saw some pretty significant price spikes about a year and a half ago. And what wind brings and other renewables bring is this kind of price stability.

Mrs. CUBIN. I consider the potential offshore wind farms in the United States, Nantucket, the incentive that occurred in Europe to share in the revenues. Nantucket might not be quite as good a partner in that, since the area that we are talking about is—you know, a place where probably the people in the top 1 percent of income in the country live there—and so they might not have the financial needs to offset having to look at what they would consider to be an offensive wind farm. But I think we have to keep looking for ways to get the public to buy into this. Certainly in my opinion, the fact that it is clean, consistent, predictable, renewable, ought to be enough; but obviously there are other things that have to be dealt with.

What other unique challenges are there that offshore wind energy producers face?

Mr. STEVE. Producing wind energy offshore is somewhat more extensive than doing it on land. Just the process itself, the specialized cranes that you need to get these facilities placed. And essentially the way this is done is with large concrete pads. Again, we are operating in shallow water, so you will have a concrete pad which is filled with sand as well, and then kind of sinks right into the—below the surface of the water. So all these processes create a higher expense, but that is balanced out by the fact that you can actually put a larger windmill or wind turbine offshore—and we are talking in the range of—the biggest ones on land right now would be considered 1.5, say, to maybe 2 megawatts. And these get very big. I mean, to the tip of the blade, we are talking about higher than the Capitol building. That is pretty tall. But you can do a 3-megawatt machine offshore, which you couldn't do on land. It is kind of difficult. So in addition to that, so the cost is going up; however, at the same time, you have, as we said before, a much more sustained wind, stronger winds as well, so you can actually produce more power out of each windmill, meaning you need fewer of them.

Mrs. CUBIN. How important is certainty to the industry in permitting other—in permitting and other regulatory issues that developers face?

Mr. STEVE. That is very good question. The certainty is absolutely vital. A developer needs to know as much as they can about the requirements, both environmental and safety as well, when they are going into this up front, because it can change the whole economics of a project later on. So it is very important to know that up front. And it also goes to the issue—which I didn't delve into

too much. But the wind energy tax credit is another issue where we are always looking for certainty, because investors want to know, if I put my money down today, is that tax credit going to be there to help me out a year and a half from now?

We are already facing it. We just got extended for 2 years, and we are already facing another deadline coming up. So we are hoping that the energy bill passes and that it contains an additional 3-year extension of that provision. Certainty is crucial.

Mrs. CUBIN. Just overall in terms of acceptance of the wind energy industry in the United States and financial capabilities, bonding, just in general, what is the state of the wind energy industry in the United States?

Mr. STEVE. I would say we are doing pretty darn well right now. What we are seeing is, as I said before, in the early 1980's, it was in one State and today we are in 29 States, to varying degrees. But the best thing that we are seeing is that throughout the whole Midwest there is significant development.

One of the most important things that happened to spur wind energy development was when President Bush was Governor of Texas, he signed a renewable energy requirement called the Renewable Energy Portfolio Standard into law in the State of Texas. That, coupled with the existing tax credit, has resulted in a significant increase in wind energy development in Texas. Last year, Texas alone saw over 900 megawatts—915 megawatts, to be exact—of brand-new wind power going in. That is over 1 billion—with a B—$1 billion of economic investment in the State of Texas.

Mrs. CUBIN. Pretty good.

Mr. STEVE. Yeah.

Mrs. CUBIN. Are you working with the Interior Department to develop a process to facilitate onshore wind energy projects on Federal lands?

Mr. STEVE. Yes. Actually, we have been working very closely with the Bureau of Land Management, who—most people come to Washington and they criticize the government. I can tell you that our developers have been working very closely with folks at the Bureau of Land Management who have been terrific to work with. And that doesn't mean that they roll over and do what we ask them to do; it means that they are looking for what—if we do this, what is the practical effect of it? So that folks don't have to come back later and change rules because somebody did something that doesn't work out in reality.

It is a very good process. And what we are finding is that the give and take of information has resulted—is resulting in better rules which will probably be proposed for development on Federal lands. And that is, again, something that the Secretary put forward, Secretary Norton put forward, and folks in the Department are acting on expeditiously.

Mrs. CUBIN. So, other than the obvious issues, like birds nesting and the Endangered Species Act and all of those things, what sort of regulations are you expecting to have applied to the industry in siting?

Mr. STEVE. Specifically, two things. The first one is, you want to avoid something that happened. You remember when all these Internet Web sites were coming up and people were buying up—

speculators were buying up the names of Internet Web sites, and then they would sell them later on for large amounts of money? We don't want the same thing to happen with parcels of Federal land, where nobody who has no serious interest in developing wind power on Federal land buys up all these sites and then sells them at a very high cost to developers. We want to pay what is reasonable for them, but we don't essentially want to pay ransom.

So essentially what is happening is that the Bureau of Land Management is setting up the process where they say, stage one is you pay a fee to actually monitor the winds on the land. You don't have the rights to develop on that land yet, but you are paying a reasonable fee for that.

Second, if you decide you want to gain access to those lands, you have to pay a fee which is higher, perhaps something in the range of $2,000 per parcel per year, and it may be higher.

In addition to that, once a project goes in, the Federal Government would gain revenues by not just payments for access to the land, but also by essentially getting a cut of the production of the energy as well.

Mrs. CUBIN. One last question. What about decommissioning these farms? Are you talking about bonding? Do you think that will happen? I mean, what is the status on that?

Mr. STEVE. Yeah. I think the Bureau of Land Management for on-land development is looking at those kind of issues, the bonding issues. Because certainly you don't—you wouldn't want a developer to walk away from a property and then leave it looking scarred. I mean, one would have to remove the bases or whatnot. So that is an important consideration as well.

But what we usually find in the industry is people don't walk away from the property, and they take very good care of it. And essentially where you have older machines, what ends up happening is people are knocking down the older, smaller machines and replacing them with maybe one newer machine where there had been 12 existing. So for those that don't like the windmills, you are kind of reducing that visual aspect as well.

Mrs. CUBIN. And as Director Burton testified, the decommissioning of—or, this bill covers decommissioning of any project that might be put out there as well.

Mr. STEVE. Right. And we look forward to the same kind of process with the Minerals Management Service that we have been going through with BLM, Bureau of Land Management.

Mrs. CUBIN. Well, thank you very much, Mr. Steve. I now would like to recognize Mr. Inslee for questioning.

Mr. INSLEE. Thank you very much. I want to show my appreciation to the Chairwoman for holding this hearing. I really appreciate her leadership and looking into this issue. So thank you very much. I look forward to working with you on this.

It is great to see you here, and I am very happy to see your continued success and am very excited about moving forward on wind throughout the country. And you may have talked about some of these—I came in late; my apologies if I missed a couple things. But why don't you brag a little bit about what is happening in the State of Washington just for a minute?

Mr. STEVE. Certainly.

Mr. INSLEE. Just so everybody will know.

Mr. STEVE. Well, we just had our biggest convention, actually, annual convention. Over 2,000 people, believe it or not, showed up for a wind convention. Unfortunately, it was in Portland, Oregon, but it wasn't in Washington.

Mr. INSLEE. We were close.

Mr. STEVE. What we did do, though, is a lot of folks ended up getting on buses and driving to the Columbia River Gorge where the largest wind development really in the world is taking place along the Columbia River Gorge. And it is referred to as the State Line Project. Very profitable not only for wind energy developers, but for landowners as well. Landowners are getting in the range of 2- to $3,000 of rental payments from developers per windmill per year for about 20 years. So a lot of folks say—farmers ranchers—they say wait a minute, this is a giant 401(k) on my property.

Mr. INSLEE. We need those right now.

Mr. STEVE. Yeah. I did hear somebody last night who said 401(k)s have turned into 201(k)s. But essentially this is a real economic development tool for rural America and it provides clean energy as well. There is very little downside, except for the few folks who are going to say, hey, I just don't like them.

Mr. INSLEE. Tell me your thoughts about the necessity of a specific legislative piece such as this bill that brings us here today, as opposed to using existing statutory permitting systems, existing statutory frame works. Do we need for sure another piece to allow this to move forward? And, if so, what are the most important aspects of that?

Mr. STEVE. The two folks that are looking to do development currently are working under existing law. But as we heard earlier from Minerals Management Service, it is hard to jump into a new area. Essentially, this is a new animal, offshore windmills, and folks haven't looked at this before, so I think it is important for the Federal Government to have some kind of outline for how they are going to deal with these issues.

The one thing that we ask that I mentioned in my testimony, please don't prejudice the folks who have been working on this for 2, 3 years already, so if we have new requirements and rules we don't send them back to square one after years and many dollars investment. That is our biggest concern.

Mr. INSLEE. There has been some thoughts expressed, or concerns, about this legislation, that if we do move forward with a separate piece, that we need to flush this out quite a bit more in a variety of issues. Privatization of siting I think is one issue we need to talk about on a national basis; ability of input of local citizens. There are visual issues, of course. People want some aspect of concern about fisheries issues that probably at least need to be addressed.

Have you got any thought of how to put that in this legislation specifically, or are we that far along yet?

Mr. STEVE. I am not sure we are quite that far along, but you put your finger on things that I hope all come up within the process with the Minerals Management Service or whichever agency ends up gaining authority over this area. I had described the situation where we are currently working with the Bureau of Land

Management and we are finding that to be a very good process. And they are not giving us everything we want. We didn't expect that. But they are being very reasonable with us and they are being sensitive to kind of learn our industry and learn our concerns. So I am hoping to see the same thing in this other agency. I am confident that we will.

Mrs. CUBIN. Will the gentleman yield? I would like to follow that because I agree those are very important issues. I would like to have a follow-up question. Do you think that the legislation needs to reflect dealing with those issues, or should those issues be dealt with better by the MMS or by the agency that this legislation would grant jurisdiction to?

Mr. STEVE. If I understand you, are you asking specifically about the concern about the transitional issues for existing companies or the other issues as well?

Mrs. CUBIN. No, the issues Mr. Inslee just discussed, which all are very legitimate concerns. In your opinion, would it be better to address those concerns in the legislation or to have those concerns be dealt with by the MMS as they are now in the Outer Continental Shelf, and by the BLM as they are now on land?

Mr. STEVE. I think my gut reaction would be—I will see what the poll of my folks—but my gut reaction is I think we are better off going through the process with the Agency so we can kind of educate them as to what our concerns are, the same way we have been doing with the Bureau of Land Management.

Mrs. CUBIN. Thank you, Mr. Inslee, for yielding. Please proceed.

Mr. INSLEE. By the way, this is kind of an editorial comment. I just want to tell you how much I appreciate in general what your industry is doing. And the reason is, in the last year—in fact we were on one research project in this regard—I saw such a need for development of this resource where we have this huge drought in the West that is associated or could be associated with global warming. We have tundra melting in the Arctic. We have research showing that the glaciers are retreating in Alaska twice as fast as anybody thought. The glaciers in Glacier National Park may be gone in 100 to 150 years.

We have a real global warming issue, and I just want to thank you for the leadership your industry is showing in finding one piece of the puzzle in how to do that. I want to give you encouragement in this regard, and that is why I think this is important legislation to deal with.

Just one last question. As far as new breakthroughs in technology in your industry, what are we looking at? Incremental changes? Is there another plateau to hit?

Mr. STEVE. There is definitely another plateau. What we have seen is the cost of wind power come down by almost 90 percent since the early 1980's, to the point where at one point it was about 45 cents a unit of energy a kilowatt hour. Now we are in the range, with the production tax credit of, say, 5 to 6 cents per kilowatt hour, even less at the better wind sites. So what we are constantly doing is we are constantly trying to bring down the cost of that power even further, working with the Department of Energy to do that. So that is why research and development dollars are really important.

The one most important thing we are working on with the Department of Energy is this concept of a lower-speed wind turbine. Sounds kind of wonky, but the idea is if you can put windmills or wind turbines in areas that aren't the highest wind speed areas, what you can do is you can certainly get to other parts of the country and you can get closer to where the power is needed.

Right now, for example, the States of North Dakota and South Dakota, tremendous potential to produce wind energy, tremendous potential. North Dakota—the top 20 States for wind power potential, North Dakota is number 1, Texas is number 2, South Dakota number 3. Why is it happening in Texas and not North Dakota and South Dakota? Because of what President Bush did as Governor with the renewable portfolio standard in the State that really busted open the market in Texas, plus the tax credit. North Dakota and South Dakota don't have the transmission capability to move the power where it is, or where it can be generated, to where it is needed. If you can do a lower wind speed turbine, you can get into other areas that are closer to what they call ″load centers″ or essentially where the power is needed— .

Mr. INSLEE. Is it the transmission cost or just the lack of previously developed transmission capacity?

Mr. STEVE. Lack of transmission capacity. And that is a problem not just for wind, but for all generation—coal, nuclear, demand keeps growing.

Mr. INSLEE. Where are we in potential big wind development in the Dakotas where the big new distribution system coupled with it? Is anybody really thinking in those terms or not.

Mr. STEVE. There are a lot of folks thinking about it and starting to work on it now, but this is not something that is going to have a 6- or 12-month fix. This is going to be a multiyear fix because it affects everybody. And talk about ″not in my back yard,″ people like windmills a heck of a lot more then they like giant transmission lines. So there is other technology involved there. 3M is experimenting with—they have a product actually which is a higher-tech transmission line. Essentially you can get more water through the hose so you can restring existing lines, but this is not in wide use today. So it is a partial fix, but you still have to do more building of lines as well. It is a long-term problem but a lot of folks are working on it.

Mr. INSLEE. Thank you very much. Thank you, Madam Chair.

Mrs. CUBIN. Thank you. Another thing I think is really essential that we are going to need to do as leaders is figure out how we can convince one another and our constituents to limit consumption as well, because as we face all of these problems like, you know, we are talking about not in my back yard, transmission lines, turbines and whatnot, our consumption is excessive as well. So that is another part of the educational process we have to take.

Mr. Steve, thank you for your testimony and answers to your questions. And thank you, Mr. Inslee, for being here. Before you arrived, I expressed my disappointment that no one from your side was here. So I appreciate your participation.

So, since there is no more business in front of the Subcommittee, the Subcommittee on Energy and Minerals is adjourned.

[Whereupon, at 3:10 p.m., the Subcommittee was adjourned.]

[Additional statements submitted for the record follow:]

Statement of Douglas Yearley, Executive Director on Behalf of The Alliance to Protect Nantucket Sound

Ms. CHAIRWOMAN.

Thank you for the opportunity to submit these comments on H.R. 5156. I am Douglas Yearley, Executive Director of the Alliance to Protect Nantucket Sound, a recently-formed coalition with the objective of protecting the important environmental, scenic, cultural and economic values of Nantucket Sound. The Sound includes offshore areas owned both by the Commonwealth of Massachusetts and the federal government. The Alliance is composed of a diverse mix of business, local government, fishing, environmental and other interests, with the common purpose of ensuring that development does not occur in the Sound that would destroy the unique values and natural beauty of this national treasure. Indeed, the Sound is a designated "marine protected area" under Massachusetts law and the Executive Order issued by President Clinton, and subsequently endorsed by President Bush.

The Cape Wind Project

While the interests of the Alliance are long-term and broad-based, an immediate threat has galvanized our organization. Specifically, this is the Cape Wind Project, which proposes to construct what would be the largest wind energy plant in the world in the middle of the Nantucket Sound. It is important for this Committee to have a sense of the scale of this project and how serious its impacts will be. Cape Wind's industrial facility would consume 28 square miles of the outer continental shelf (OCS) in Nantucket Sound. The project would include 170 wind towers, each of which would be 425 feet tall. We believe this project has significant potential to cause serious damage to the most basic values of the Sound. This includes adverse affects on endangered species, migrating birds, marine mammals, and commercially valuable fish; creates threats to navigation and air traffic, including national security flights; threatens significant declines in property values, tourism, and tax revenue; and harms recreational activities and scenic values. All of these adverse impacts would be caused by a project for which there is no clear energy demand in the region, and for which a variety of public subsides would be required.

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

This proposed project intersects with H.R. 5156 in the following way. The Administration and the Chairwoman of this subcommittee have correctly recognized that no legal authority exists to convey the federal property rights which are mandatory to allow this project to be developed. Equally important is the complete lack of a comprehensive federal program to articulate standards for decision making, to set environmental rules, to impose rent, or even to designate a lead agency. In the meantime, in addition to Cape Wind, other wind energy projects are being proposed in this region. Thus, the need for Congressional guidance is clear.

Despite this absence of legal authority, Cape Wind is proceeding to move the project forward with the assistance of one federal agency in particular, the Army Corps of Engineers (COE). Cape Wind intends to build this huge energy project in an offshore area owned by the federal government simply on the basis of two permits under Section 10 of the Rivers and Harbors Act, which has the important but narrow role of permitting potential obstructions to navigation. One permit application is for a single scientific data gathering tower, and a second permit application, believe it or not, is for the entire 170-tower wind energy project.

Remarkably, even with the admitted knowledge that no federal authority exists to build the project on the federal OCS, and that a Section 10 permit conveys no property rights whatsoever, the COE has moved expeditiously to process the permits, including undertaking the preparation of a major environmental impact statement under NEPA for the 170-tower project. The COE explanation, conveyed directly to me and other Alliance representatives is, to paraphrase - "We get a permit application; we process it." Such a single-minded approach by the COE ignores the larger and more difficult issues that are presented by the lack of legal authority, or the existence of any federal program, for such a huge energy project in our valuable offshore waters. While the COE has expressed its own doubts about processing the permits (at the recent hearings of the U.S. Commission on Ocean Policy), and

makes clear that no property rights whatever are conveyed in a Section 10 permit, it nonetheless overcame its institutional misgivings, and undertook a full EIS process for 170 wind towers, despite the fact that the federal government has no authority for this project.

The Need for a Comprehensive Program and a Moratorium

Those larger questions of law and policy have now been framed even more vividly by the appearance of numerous additional wind energy projects that are proposed for the OCS off the southwest coast of Nantucket Island. If the COE follows its narrow "receive a permit; process a permit" approach for one or more additional projects, which cannot be built under present law, it will have contributed to the creation of an "open to entry" approach to the use of federal offshore resources for energy development. And it will have done so without adequate review, without meaningful standards, and without revenue return to the federal government.

Such an applicant-driven program, called an "over-the-counter" program in some states, puts the federal government, the adjacent state, and all affected interests, including local and regional regulatory bodies already strapped for resources, in the position of always responding to the initiative and pressures of a project sponsor, one at a time. Such sponsors relentlessly press for quick decisions on a specific location of their choice which, as in the case of Nantucket Sound, may not be an appropriate place to develop such a project at all. This "open-to-entry" pressure is just what is happening with Cape Wind. Such project-driven programs to commit public land or other resources to private development may work for selected, unique, and smaller projects, like a single offshore platform for a support function, or a right of way for an underwater transmission line. Congress has recognized previously, however, that such a "permit on demand" approach does not work for larger nationwide programs like geothermal or oil and gas, which require vast tracts, in different regions, and which, because of the presence of rich resources in certain locations, should involve competition for a site. Clearly, the permit by permit approach is the wrong one for the large-scale wind energy projects which are proliferating. A comprehensive federal program is essential, rather than an open to entry land rush.

A comprehensive program for developing federal resources or for using federal offshore tracts is proactive, positive, and best protects the public interest. A good program should, among other purposes, encourage wise and needed energy development, guarantee a fair return for the taxpayers, set uniform standards for environmental protection, and provide extensive state, local and public participation in the process. Moreover, because of the importance of these public policy objectives, there is a real need to put a hold on all such development until a comprehensive program is enacted. If this is not done, important resources, such as Nantucket Sound, could be sacrificed.

We recognize and appreciate that H.R. 5156 addresses the reality that no authorization now exists under which any federal agency may grant and condition legal rights to develop resources on the OCS, other than those already authorized under the Outer Continental Shelf Lands Act (OCSLA). The new offshore uses which are being proposed are currently without federal legal authorization, despite their extensive and significant impacts, and the value of the taxpayer owned resources they will use. These unauthorized uses include not only the wind energy projects I described, but also the construction of platforms and transmission systems for liquid natural gas (LNG) gasification projects, electric transmission lines, pipelines and cables, oil storage platforms, and other offshore industrial facilities. Without a doubt, such intensive uses of the federal OCS call for a comprehensive and thoughtful program. Specifically, there should be a leasing program for certain uses, for which the best general model available in our current system of laws is the OCSLA itself.

H.R. 5156 and the OCSLA Model

For these reasons, the Alliance applauds the intent of H.R. 5156 to provide much needed authority for new energy-related uses of the federal OCS. The Alliance cannot, however, support passage of the bill unless it is substantially amended to provide for the sort of overall program and standards that are included in the OCSLA and its legislative history. The OSCLA is a law that has evolved since 1953 to provide a balanced federal program intended to encourage the development of federal oil and gas, and mineral resources on the OCS. Because of the OCSLA, this development has proceeded on terms that ensure the balanced protection of the public interest, affected local governments, and the significant participation of states, which, after all, are the owners of offshore land up to three miles from shore. As introduced, H.R. 5156 amends only Section 8 (43 U.S.C. § 1337) of the Outer Continental Shelf Lands Act. Beyond this, H.R. 5156 makes no reference to the OCSLA, almost as if the application of the OCSLA principles is being avoided. To the contrary, H.R.

5156 would be a significantly more credible bill if it included many OCSLA provisions.

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

While H.R. 5156 is well intended in its creation of authority for the Secretary of Interior, the problem is that, because of the generality of the delegation of authority in the bill as introduced, the Secretary is given too little guidance as to the details of the program to be created. In addition, H.R. 5156 fails to give a proper role to agencies with responsibility over marine resources, such as the National Oceanic and Atmospheric Administration.

The following specific areas must be addressed if H.R. 5156 is to provide a credible foundation for new offshore energy development, as it appears intended to do.

Recommendations

Although this testimony does not include specific language for amendments to H.R. 5156, the following points should be covered by amendments if the legislation is to provide a level of authority, guidance and protection of the public interest, similar to the OCSLA.

First, it is essential that any new authorization, such as H.R. 5156, that would allow a broad range of new, energy uses on the OCS, is based, at least in large part, on a programmatic approach relying on leases, rather than a permit-to-permit, "open-to-entry" approach to the commitment of federal property interests for project development. Where 28 square miles, or more, of the OCS is committed to intensive permanent energy development, the federal government should not be permitting one project at a time. Rather, it must develop a serious and comprehensive program that applies to all projects.

Descriptions of such a program are scattered throughout the OCSLA and other federal laws, but the central description of the OCS program is in 43 U.S.C. § 1344. Section 1344 directs the Secretary to prepare, periodically revise, and maintain a leasing program for offshore oil and gas, and minerals that implements the policies set out in the Act. The program is specified to be conducted in a manner that considers economic, social and environmental values of both renewable and non-renewable resources contained in the OCS, as well as the potential impact of oil and gas exploration on other resource values including the marine, coastal and human environments. The program is based on a broad range of existing information regarding developmental benefits and environmental risks among regions of the country, so that the risks and benefits may be equitably shared. The program must also fully consider other uses of the sea and seabed, including conservation, fisheries, and navigation.

Such a programmatic approach can give full and fair attention to corporate project sponsors by comprehensively studying various areas for the significance of their resources, including wind resources, and seeking nominations for those areas that are most favored by industry. It also should allow for certain areas to be excluded, where for a variety of reasons, development would not be appropriate. Any nominations can be balanced against other factors that would include competing resource and economic values in the area, the nature of federal or state protection of the marine resources in the area, the opinions of the adjacent state and local governments, and other factors. Such a process is intended ultimately to make available for development those areas which have high potential for energy production, but which present few conflicts for enabling the development to occur. This is exactly the sort of program that has evolved with respect to offshore oil and gas development. It is also the sort of program that led to the decision not to lease and develop some areas off of Alaska, Florida, California and New England, despite the industry's belief, that promising resources were there. It is essential that a similar program be instituted for the new offshore energy uses authorized by H.R. 5156.

Second, this program should not be vested exclusively in the Department of the Interior. These projects will dramatically affect marine resources, and joint authority should be shared with the Department of Commerce through NOAA.

Third, such a program must have respect for, and provide for the substantive involvement of states, local governments and the public, in each area for which new offshore energy development is proposed. Among other provisions, 43 U.S.C. § 1344 and § 1345 set out important standards directing that the federal program be fully cooperative with adjacent states. These provisions include not only coastal zone management planning, but also involve the states in the federal offshore develop-

ment planning process. They establish the right of states to submit recommendations to the Secretary regarding the size, timing or location of a proposed project or lease sale. The Act also permits a state to recommend areas that should not be eligible for leasing. In essence, much of the success of the offshore oil and gas leasing program is due to the fact that the consultative process eliminates areas where state-federal conflict is likely to forestall development, even if leases are issued. H.R. 5156, in contrast, provides only general direction for state consultation and fails to detail a role for states, local governments or the public.

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

Fourth, a fair return for taxpayers is addressed only in the most general terms in H.R. 5156. The bill, as introduced, directs the Secretary only to establish "reasonable forms of annual or one-time payments for any easement or right-of-way granted." It also authorizes negotiated arrangements with the party to whom the easement or right-of-way is granted. The one-time payment and negotiated arrangement approach is typical of right-of-way and easement grants, for single facilities or for very defined and limited land-uses. Such a one-time fee payment approach is, however, totally unsatisfactory for large projects that consume a great deal of land or resources, and for which the taxpayers deserve a market value return and a marketplace approach. In contrast, under the OCSLA, federal leases are sold competitively to the highest bidder, an approach which is made possible by the fact that leasing of tracts occurs only after a plan has been developed that identifies high priority areas in which more than one bidder will be interested. This is far preferable to a "first come, first served, let's make a deal" approach. 43 U.S.C. § 1337. A fair return for taxpayers can be accomplished for alternative energy development, but not under the open-to-entry approach that H.R. 5156 presents. At the very minimum, H.R. 5156, or any bill intending to provide authorization for new energy-related uses of the OCS, should direct that competitive bidding be treated as a preferred approach to be used, unless there is justification not to do so. High resource value areas, either for industrial wind projects or pipeline rights of way, should be competitive where possible. Otherwise, public resources will be negotiated away, and sold for single payments at levels that do not return to the taxpayers the fair market value of the valuable resource rights that are conferred. The development of alternative or renewable energy resources is a good objective, but not at any price, particularly considering the other subsidies that are provided.

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

Fifth, H.R. 5156 fails to provide for specific environmental standards. As the Cape Wind Project demonstrates, these projects have the potential to be very damaging to the environment. Any authorization for such a program must establish detailed standards for environmental review, including prohibitions on locating any such project in areas designated as sanctuaries or protected zones under state or federal law.

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

- The authorization should contain provisions, such as those in 43 U.S.C. § 1347, providing for safety and health regulations including the use of best available and safest economically feasible technologies. No such provision exists in H.R. 5156, in spite of the potential for such problems in LNG operations, oil storage and even wind energy facilities.
- The authorization should incorporate 43 U.S.C. § 1349, to provide rules for citizen suits challenging program decisions and dealing with significant jurisdictional issues. No such provision exists in H.R. 5156.
- The issue of separating leasing and development decisions, as OCSLA does with respect to OCS oil and gas, should be fully considered and applied where appro-

priate. H.R. 5156 contains no such provisions, and in the limited hearings afforded to this legislation, there was no way in which this option could be explored. The point is that the separation of leasing and development into two phases makes sense in certain situations, and it affords states an added opportunity to review the specific plans for development before it proceeds.

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

Perhaps no element of the OCSLA demonstrates the differences between the approach of H.R. 5156, and the approach taken by the Congress for the offshore oil and gas program than does 43 U.S.C. § 1332. This section is an impressive declaration of policy by the Congress with regard to petroleum and mineral development on the federal OCS, and confirms that it will occur only in balance with other significant interests, including environmental protection and state and local government involvement. It is unclear why H.R. 5156 did not incorporate such a declaration of policy or reference Section 1332 at all.

Comments on Other Testimony

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

First, this testimony asks that any rules that may flow from passage of H.R. 5156 "be sensitive" to the financial investments in potential offshore projects made prior to enactment of the legislation. The Association is concerned, as it said, about projects that have already begun being "disadvantaged by new rules and requirements" or "unnecessarily delayed" by whatever system Congress ultimately chooses to put in place to manage these new uses of the outer continental shelf.

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

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

Essentially, what the Association appears to have in mind here is a totally federalized program for alternative energy projects that preempts legitimate state and local prerogatives. That kind of federal overreaching should not be tolerated by this Congress. In essence, any bill that is passed to establish a new program for granting and conditioning rights for alternative energy development on the OCS should be fully applicable to all proposals, whether underway or not, and should be deeply respectful of the prerogatives of state and local governments, avoiding federal preemption in all cases. Those who invest prior to the existence of such authority should do so at their own risk.

Conclusion

The Alliance to Protect Nantucket Sound recognizes, as do the sponsors of H.R. 5156, that no authority currently exists for the federal government to grant property rights for the OCS to develop alternative energy, or for other energy activities, which are not already authorized by the OCSLA. We have already learned from the emerging wind energy project proposals that these developments can be of immense scale and impact. Fully recognizing the general and long-term value of alternative or renewable energy, offshore projects of this type must be undertaken. But they will be most successful if done through a comprehensive program incorporating vir-

tually all of the elements that are already delineated in the OCSLA. This is the approach, not the "give me my project now," approach, that will truly get renewable energy institutionalized over the long-term.

If the motivation for introducing H.R. 5156 at this late point in the 107th Congress is simply to get the issue on the table and to pave the way in the next Congress for the comprehensive committee consideration which is necessary to enact such authority, then we applaud the sponsors for their foresight. However, if the intent is to ask this Congress to pass hastily a very general authorization that allows these new uses of the OCS to occur without any of the safeguards and process that are applied to federal oil and gas leasing and development, we think every coastal state, local government, business or interest group should be concerned. The Alliance clearly opposes such an approach. All who care about the manner in which the offshore areas of our country are developed should oppose this legislation until it is amended to cover the points that are outlined in this testimony. The Alliance will work constructively with the Congress to achieve legislation that provides for the development of new offshore energy resources in balance with all of the other factors which are involved. We trust that such a program, properly administered, is more likely than not, to determine that a site such as Nantucket Sound should never be chosen for a project like Cape Wind. The outcome on this authorization raises issues which go well beyond one project and one location. Thank you again for this opportunity to submit comments.

Statement of Dennis J. Duffy, Vice President, Regulatory Affairs, Cape Wind Associates, LLC

1. Introduction of Cape Wind.

Cape Wind Associates is developing the nation's first offshore wind farm, which will be located in waters subject to Federal jurisdiction some five miles off the coast of Massachusetts. It will be capable of generating 420 mw of clean and renewable energy. The Cape Wind project has been under development at considerable effort and expense, and the applicable permit application under existing Federal law was filed with the Army Corps of Engineers (ACE) last fall. A protocol for coordinated review of the Project by Federal and State agencies has been agreed upon and a comprehensive joint review process is now well underway. The project has received strong support from the region's leading environmental and ratepayer advocates (including MASSPIRG, Greenpeace, Union of Concerned Scientists, Cape Clean Air, the Massachusetts Energy Consumers Alliance and the Massachusetts Climate Action Network), as well as endorsements from the editorial pages of The Boston Globe, The Boston Herald, and The Providence Journal. (More comprehensive project information is available on our website at www.capewind.org.) As other commentators on H.R. 5156 have noted, offshore wind energy represents a tremendous potential for enhancing the Nation's supply of clean and renewable energy, and we welcome any initiative to streamline and expedite the necessary approval process.

2. General Comments on H.R. 5156.

We very much appreciate the initiative of the Minerals Management Services in sponsoring legislation with the stated purpose of "to simplify permitting for energy production in an environmentally sensitive manner" consistent with the Secretary of Interior's goal of facilitating renewable energy projects. We think that MMS could add meaningful expertise and experience to the current regulatory process, and applaud all efforts to expedite clean energy projects. As noted below, however, we do have several particular concerns with the Bill and thus propose revisions that would preclude any potential for inadvertently adverse effects upon ongoing offshore renewable projects.

3. The Current Process for Permitting Offshore Wind Projects.

As an initial matter, consideration of H.R. 5156 requires a clear understanding of the current regulatory treatment of renewable energy projects on the outer continental shelf (OCS), a matter on which there is often some confusion. Under current International and Federal law, any such project requires the affirmative prior authorization of the United States. Such authorization is given in the form of a permit from the Army Corps of Engineers under Section 10 of Rivers and Harbors Act. The ACE's powers under Section 10 have been held to constitute the "affirmative authorization" of proposed structures pursuant to delegated Congressional authority. Pursuant to such provisions, ongoing OCS wind energy projects are subjected to comprehensive review under the regulations of the ACE and require the preparation of a Federal Environmental Impact Statement pursuant to the NEPA. Indeed, the fol-

lowing provisions of the ACE's regulations (33 CFR § 325.3(c)) confirm the comprehensive scope of the currently required permit proceedings:

> The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. (Emphasis added.)

Id. The recently issued scoping order of the Massachusetts Secretary of Environmental Affairs confirms the comprehensive range of issues now under review in Cape Wind's ongoing permit proceeding, and such order concludes that "Cape Wind holds out the prospect of making Massachusetts a worldwide leader in renewable energy production" and that "the project represents the hope for a cleaner and more sustainable energy supply through application of innovative and simple technology.

There is, however, no express provision under current law for the payment of royalties or other fees to the Federal government in connection with non-extractive renewable energy projects on the OCS. In contrast, in the case of the extraction of undersea oil, gas and minerals, the Outer Continental Shelf Lands Act (OCSLA) provides for royalty payments to the Federal government pursuant to "mineral leases" for the extraction, purchase and sale of submerged deposits. In this regard, current law treats offshore wind energy projects in a manner more comparable to the treatment of offshore thermal energy projects. In recognition of the special policy benefits and challenges of developing new renewable energy sources, the Ocean Thermal Energy Conversion Act (42 USC 9101) provides for the Federal permitting of thermal energy projects on the OCS, but does not require any lease payments or royalties to the Federal government. To the contrary, such act makes available certain financial assistance for the construction and operation of ocean thermal energy facilities.

4. This Bill Should Include Transitional Recognition of Pre–Enactment Offshore Investment.

While we support the initiative to streamline the current process, we are concerned that, in its current form, the proposed amendment to the OCSLA could introduce uncertainty and inadvertently delay the development and financing of those ongoing renewable energy projects that have already made major investments and that have permit applications pending in compliance with current law. Accordingly, we believe that the legislation should include some provision for the recognition and transitional treatment of such ongoing projects so as to avoid the possibility of such an unintended adverse result. Federal and international law have in the past afforded recognition and transitional treatment of investment in offshore developments undertaken prior to the effective date of new regulatory and legislative regimes. For example, when the United Nations Law of the Sea Conference adopted new protocols for minerals mining operations beneath the high seas, it included specific transitional protections for "preparatory investment in pioneer activities," i.e., development activities undertaken prior to the effectiveness of the new protocols. See, UNCLOS, Art. 308, Sec. 5. Further, when Congress adopted corresponding provisions in the Deep Seabed Hard Mineral Resources Act (P.L. 96–283, 30 U.S.C. 1401, et seq., the "Act"), it similarly included specific recognition of offshore developments and investments that had been undertaken by United States citizens, and articulated the following Federal policy objective of assuring the "security of tenure" of such pre-enactment activities:

> It is the intent of Congress [that]...any international agreement to which the United States becomes a party should, in addition to promoting other national oceans objectives—,...provide security of tenure by recognizing the rights of United States citizens who have undertaken exploration or commercial recovery under title 1 [30 U.S.C. §§ 1411, et seq.] before such agreement enters into force with respect to the United States, to continue their operations under terms, conditions, and restrictions which do not impose significant new economic burdens upon such citizens with respect to such

> operations with the effect of preventing the continuation of such operations on a viable economic basis...

30 U.S.C. 1441 (emphasis added).

Pursuant to such statutory provisions, the National Oceanic and Atmospheric Administration ("NOAA") subsequently adopted regulations that provide transitional protections and "priorities of right" for offshore projects commenced before the effective date of the Act. See, 15 CFR Part 970, Subpart C ("Procedures for Applications Based on Exploration Commenced Before June 28, 1980"). Such regulations established a procedure whereby a United States citizen who had engaged in substantial offshore mineral development before the effective date of the Act "qualifies as a pre-enactment explorer" and is thereby allowed to continue to engage in such exploration, with procedures "to receive a pre-enactment explorer priority of right" for the issuance of a mining license pursuant to the Act. See, Id. at § 970.301. Such regulations also provided a specific window within which pre-enactment developers are afforded a "priority of right" to the area of such development, as follows:

> Effect on Priority for New Entrants. (1) A pre-enactment explorer is entitled to a priority of right over a new entrant for any area in which the pre-enactment explorer has engaged in exploration prior to June 28, 1980 if, with respect to that area, the pre-enactment explorer files an application in accordance with this part on or after January 25, 1982 and on or before the closing date for pre-enactment explorer applications established under § 970.301(b).

15 CFR § 907.302(m). The rationale for such transitional provisions applies with equal force to any proposed amendment of the OCSLA under H.R. 5156 respecting renewable energy projects. The addition of comparable transitional provisions to H.R. 5156 would also avoid potential delays and financial uncertainties and thus be consistent with Federal policy as reflected in Executive Order 13212, "Actions to Expedite Energy–Related Projects," as well as the general charge of the White House Task Force for Energy Project Streamlining.

5. If New Fees and Charges for Wind Energy Projects are Assessed Pursuant to H.R. 5156, They Should Not be so Large as to Counteract Current Economic Incentives for Renewable Energy Projects.

We also think it very important that, if any new fees for wind energy projects are to be payable to the government under H.R. 5156, they should not be set so high as to discourage investment in this new and developing industry, which still has levels of introductory risk and uncertainty that do not exist in the well-established oil and gas industries. It would also seem reasonable to assure that any new fees do not unduly offset the economic incentives provided by the production tax credit and other current programs, and do not put offshore wind at a disadvantage to other generating technologies. As noted above the Ocean Thermal Energy Conversion Act provides for the Federal permitting and financial assistance of offshore facilities without the requirement of royalties or fees.

6. Conclusion.

For the foregoing reasons, we applaud initiatives to expedite and facilitate offshore renewable energy in areas of the OCS that are subject to the jurisdictions of the United States. It is important, however, that any proposed legislation contain provisions for the recognition and transitional treatment of pre-enactment investments undertaken pursuant to current law, with particular emphasis on avoiding any cloud of uncertainty that could impede project financing. Finally, if new fees are to be assessed to ongoing OCS renewable energy projects pursuant to some legislative change, it is critical that the amount be (i) determinable as soon as possible and (ii) not so large as to offset the currently effective economic incentives for the developing offshore renewable energy industry.

Thank you for your consideration and please feel free to call if you should have any questions or comments.

[An Email communication from Captain Wayne Genther follows:]

Sent: Thursday, July 25, 2002 11:20 AM
To: Mail_Energy
Subject: HR 5156

Representative Barbara Cubin, Chair
Subcommittee on Energy and Mineral Resources
1626 Longworth House Office Building
Washington, DC 20515

Re: For inclusion in the July 25, 2002 Subcommittee Hearing Record on HR 5156

Dear Chairman Cubin and Members of the Subcommittee:

A am a resident of coastal Florida, a concerned citizen and a candidate for Congressional district 13. I have been studying HR 5156 and after careful scrutiny I find little constructive merit in this proposal as is presently stands.

As a matter of process, it seems to me that this bill is being rushed through the House without due consideration for substantive discussion or affected party testimony. I request that the current effort to enact this legislation be tabled until a comprehensive vetting of the bill is completed.

As a proponent of decentralized authority I must argue that if implemented, HR 5156 would act as a mechanism to erode states rights by undermining the constructive ability of local and regional government to respond to their respective constituency's opinions in regard to energy exploitation and its related environmental considerations.

Furthermore, I object to the obvious conflict of interest represented by folding the authority of a historically well established and efficient regulatory and permitting system known as The Coastal Zone Management Act into the de-facto control of the Mineral Management Service, an organization which functions as nothing more than a thinly veiled hydrocarbon energy lobby.

I request that your discussions today include the substance of this concerned citizen's opinion and that the entirety of this communication be entered into the permanent record of that discussion.

Sincerely,

Captain Wayne Genthner
Republican Candidate for Fl Dist. 13

NATIONAL OCEAN INDUSTRIES ASSOCIATION

American Petroleum Institute

US Oil & Gas Association

Domestic Petroleum Council

August 5, 2002

The Honorable Barbara Cubin
Chairman, Subcommittee on Energy
and Mineral Resources
U.S. House of Representatives
Washington, DC 20515

Dear Madam Chairwoman:

As representatives of the Nation's natural gas and oil industry, the American Petroleum Institute, the Domestic Petroleum Council, the Independent Petroleum Association of America, the International Association of Drilling Contractors, the National Ocean Industries Association, the Natural Gas Supply Association, and the US Oil & Gas Association are writing to express our general support for H.R. 5156, and to provide comments and recommendations the subcommittee may want to consider as you address the bill. Our seven national trade associations represent thousands of companies, both majors and independents, engaged in all sectors of the U.S. oil and natural gas industry, including exploration, production, refining, distribution, marketing, equipment manufacture and supply, and other diverse offshore support services.

As an industry, we are well acquainted with the Federal processes required of companies operating on the outer continental shelf (OCS). Current natural gas and oil operations would be directly affected by any approvals granted under the proposed legislation, whether the new approvals were to support our own existing offshore operations or for alternative energy projects. Our interest in H.R. 5156 is, therefore, substantial.

We commend the Administration for its efforts in transmitting this proposed legislation to Congress in support of the National Energy Policy Initiative, and thank you for sponsoring the bill. Currently, clear mechanisms do not exist for an applicant to obtain approval from the Federal government to use the OCS for certain non-oil and gas related energy activities, and there is no Federal agency designated with the authority to authorize and regulate such activities. This legislation would address those gaps in jurisdiction by authorizing the Secretary of the Interior to grant easements or rights-of-way for energy-related projects that are not currently covered under other legislation, including but not limited to, renewable energy projects such as wind, wave and solar energy. In addition, it would allow the agency to authorize projects to support development in deep water areas of the OCS, including offshore staging facilities, emergency medical

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

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

There are several areas of H.R. 5156 that we think could be clarified through amendment. We ask that the subcommittee consider the following recommendations:

1) Subsection 1(a) of H.R. 5156 identifies six purposes to the legislation. We support the stated purposes, but recommend that another item be added. The Executive Order of May 18, 2001 directed Federal agencies to take actions to expedite energy-related projects, and identified a policy of taking appropriate actions to expedite projects to increase the production, transmission or conservation of energy. We believe this policy should be incorporated into the purposes of the bill.

2) Subsection 1(b)(1) requires that the Secretary consult with the U.S. Coast Guard and other relevant departments and agencies of the Federal government. In our experience, such consultations require a structure, including deadlines. Without such a structure, they can cause gridlock in the Federal approval process. We recommend that the bill be amended to require that the DOI enter into a Memorandum of Understanding (MOU) within a fixed time period with the U.S. Coast Guard and other relevant departments and agencies. The MOU should clearly define the jurisdictions and requirements of the agencies, and set a fixed time limit for consultations.

3) Subsection 1(b)(2)(A) directs the Secretary to establish reasonable forms of payment for the easements or rights-of-way that would be granted under the legislation, and authorizes the Secretary to establish the fees through a rulemaking process. We recommend that the language be amended to allow full public participation in the establishment of the fee structure. This could be accomplished by changing the legislation to direct that any fees or payments be imposed through the promulgation of rules. In addition, the language should be amended to clarify that fees would be annual or one-time payments, such as payments charged for oil and gas rights-of-way, and not royalties based upon throughput.

4) Subsection 1(b)(2)(B) directs the Secretary to consult with the Secretary of Defense concerning issues related to national security and navigational obstruction. We recommend that this language be amended to include other agencies that may have national security responsibilities, such as the anticipated Department of Homeland Security. In addition, we again recommend that the agencies be required to conduct the consultations within a fixed time period.

5) Subsection 1(b)(2)(C) authorizes the Secretary to issue easements or rights-of-way on a competitive or non-competitive basis. A competitive process would create great uncertainty. We recommend that this subsection be deleted from the bill, and replaced with factors the Secretary should consider in determining whether to issue the right-of-way. Such factors are currently absent from the bill. We further ask that the subcommittee make one of those factors a consideration of whether the requested easement or right-of-way would interfere with existing natural gas and oil drilling and production activities. Without such a consideration of correlative rights, competing uses of the same acreages could lead to major conflicts and dangerous situations.

We appreciate the opportunity to provide the subcommittee with our comments on H.R. 5156. If you have any questions or need additional information, please contact Kim Harb of the National Ocean Industries Association at (202)347-6900.

Sincerely,

National Ocean Industries Association

American Petroleum Institute

Independent Petroleum Association of America

US Oil & Gas Association

International Association of Drilling Contractors

Domestic Petroleum Council

Natural Gas Supply Association

CAPE WIND SUPPORTERS*

MASSPIRG

Conservation Law Foundation

Massachusetts Maritime Academy

Cape & Islands Self Reliance

Buzzards Bay Action Committee

Union of Concerned Scientists

Cape Clean Air

Cape and Islands Renewable Energy Collaborative

Coalition for Environmentally Responsible Economies

Greenpeace

American Lung Association-Massachusetts Chapter

Northeast Sustainable Energy Association

Toxics Action Center

Commonwealth of Massachusetts Climate Action Network

Massachusetts Energy Consumers Alliance

Clean Water Action

Healthlink

Woods Hole Group

Thompson Island Outward Bound Education Center

Competitive Power Coalition of New England, Inc.

Mystic Matters Community Taskforce

Full Circle Energy Project, Inc., Falmouth

Gil Newton, Coastal Ecology Professor-Cape Cod Community College

Harlyn O. Halverson, Director of Policy Center for Marine Bioscience and Technology-University of Massachusetts, Amherst

Dr. James Manwell, Renewable Energy Resource Laboratory-University of Massachusetts, Amherst

George Woodwell, Global Climate Expert-Woods Hole Research Center

Richard Payne, PhD, Oceanographer Emeritus-Woods Hole Oceanographic Institution

Rob Garrison-Nantucket Aquaculture

* Partial list based upon written comments filed in pending regulatory proceedings.

Mary Jane Curran, Environmental Technology Coordinator-Cape Cod Community College

Daniel E. Bosley, Chair-Massachusetts House Committee on Government Regulations

Michael W. Morrissey, Chair-Massachusetts Senate Committee on Government Regulations

John J. Binienda, Chair-Massachusetts House Committee on Energy

Susan C. Fargo, Chair-Massachusetts Senate Committee on Energy

Paul Demakis-Massachusetts State Representative, 8th Suffolk District

Matthew Patrick-Massachusetts State Representative, 3rd Barnstable District

Robert Koczera-Massachusetts State Representative, 11th Bristol District

Frank Smizik-Massachusetts State Representative, 15th Norfolk District