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SENATE

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**OUTER CONTINENTAL SHELF REFORM ACT**

JULY 28, 2010.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

**R E P O R T**

[To accompany S. 3516]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 3516) to amend the Outer Continental Shelf Lands Act to reform the management of energy and mineral resources on the Outer Continental Shelf, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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The amendments are as follows:

Beginning on page 3, strike line 13 and all that follows through page 4, line 5, and insert the following:

(1) by striking paragraph (3) and inserting the following:

“(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be managed in a manner that—

“(A) recognizes the need of the United States for domestic sources of energy, food, minerals, and other resources;

“(B) minimizes the potential impacts of development of those resources on the marine and coastal environment and on human health and safety; and  
 “(C) acknowledges the long-term economic value to the United States of the balanced and orderly management of those resources that safeguards the environment and respects the multiple values and uses of the outer Continental Shelf;”;

On page 7, line 23, insert “peer-reviewed” after “independent”.

On page 16, line 8, strike “body of evidence” and replace with “complete set of safety documentation”.

On page 16, line 25, strike “bond amounts” and insert “financial responsibility requirements”.

On page 17, lines 1 and 2, strike “set any bonds, surety, or other evidence of financial responsibility required in amounts adequate” and insert “adjust for inflation based on the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, and recommend to Congress any further changes to existing financial responsibility requirements necessary”.

On page 17, line 10, strike “3” and insert “4”.

On page 18, line 7, strike “2 years” and insert “1 year”.

On page 18, line 9, strike “5” and insert “4.”

On page 18, line 14, insert “income taxes and other significant financial elements,” after “taxes”.

On page 19, between lines 21 and 22, insert the following:

“(E) COMBINED REPORT.—The Secretary may combine the reports required by paragraphs (1) and (2)(D) into 1 report.

On page 20, line 15, insert “prior public” after the word “after”.

On page 22, line 14, strike “potential” and insert “expected”.

On page 22, line 23, strike “necessary” and insert “to be used”.

On page 25, line 18, strike “engineering”.

On page 25, line 19, strike “system, including a” and insert “system by not less than 2 agency engineers, including a written”.

On page 26, lines 4 and 5, strike “degrade” and insert “compromise”.

On page 41, line 9, strike “The” and insert “To the extent necessary to fund the inspections described in this paragraph, the”.

On page 45, between lines 12 and 13, insert the following:

(I) CONFLICTS OF INTEREST.—Section 29 of the Outer Continental Shelf Lands Act (43 U.S.C. 1355) is amended to read as follows:

**“SEC. 29. CONFLICTS OF INTEREST.**

“(a) RESTRICTIONS ON EMPLOYMENT.—No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act shall—

“(1) within 2 years after his employment with the Department has ceased—

“(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

“(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

“(C) knowingly aid, advise, or assist in—

“(i) representing any other person (except the United States) in any formal or informal appearance before; or

“(ii) making, with the intent to influence, any oral or written communication on behalf of any other person (except the United States) to, any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, regulation, order lease, permit, rule-making, inspection, enforcement action, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee;

“(2) within 1 year after his employment with the Department has ceased—

“(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

“(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

“(C) knowingly aid, advise, or assist in—

“(i) representing any other person (except the United States in any formal or informal appearance before, or

“(ii) making, with the intent to influence, any oral or written communication on behalf of any other person (except the United States) to, the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, inspection, enforcement action, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest; or

“(3) accept employment or compensation, during the 1-year period beginning on the date on which employment with the Department has ceased, from any person (other than the United States) that has a direct and substantial interest—

“(A) that was pending under the official responsibility of the employee as an officer or employee of the Department during the 1-year period preceding the termination of the responsibility; or

“(B) in which the employee participated personally and substantially as an officer or employee.

“(b) **PRIOR EMPLOYMENT RELATIONSHIPS.**—No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act shall participate personally and substantially as a Federal officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, inspection, enforcement action, or other particular matter in which, to the knowledge of the officer or employee—

“(1) the officer or employee or the spouse, minor child, or general partner of the officer or employee has a financial interest;

“(2) any organization in which the officer or employee is serving as an officer, director, trustee, general partner, or employee has a financial interest;

“(3) any person or organization with whom the officer or employee is negotiating or has any arrangement concerning prospective employment has a financial interest; or

“(4) any person or organization in which the officer or employee has, within the preceding 1-year period, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.

“(c) **GIFTS FROM OUTSIDE SOURCES.**—No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act shall, directly or indirectly, solicit or accept any gift in violation of subpart B of part 2635 of title X, Code of Federal Regulations (or successor regulations).

“(d) **EXEMPTIONS.**—The Secretary may, by rule, exempt from this section clerical and support personnel who do not conduct inspections, perform audits, or otherwise exercise regulatory or policy making authority under this Act.

“(e) **PENALTIES.**—

“(1) **CRIMINAL PENALTIES.**—Any person who violates paragraph (1) or (2) of subsection (a) or subsection (b) shall be punished in accordance with section 216 of title 18, United States Code.

“(2) **CIVIL PENALTIES.**—Any person who violates subsection (a)(3) or (c) shall be punished in accordance with subsection (b) of section 216 of title 18, United States Code.”.

On page 45, between lines 13 and 14, insert the following:

**SEC. 7. STUDY ON THE EFFECT OF THE MORATORIA ON NEW DEEPWATER DRILLING IN THE GULF OF MEXICO ON EMPLOYMENT AND SMALL BUSINESSES.**

(a) **IN GENERAL.**—The Secretary of Energy, acting through the Energy Information Administration, shall publish a monthly study evaluating the effect of the moratoria resulting from the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment, on employment and small businesses.

(b) **REPORT.**—Not later than 60 days after the date of enactment of this Act and at the beginning of each month thereafter during the effective period of the moratoria described in subsection (a), the Secretary of Energy, acting through the Energy Information Administration, shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report regarding the results of the study conducted under subsection (a), including—

(1) a survey of the effect of the moratoria on deepwater drilling on employment in the industries directly involved in oil and natural gas exploration in the Outer Continental Shelf;

(2) a survey of the effect of the moratoria on employment in the industries indirectly involved in oil and natural gas exploration in the Outer Continental Shelf, including suppliers of supplies or services and customers of industries directly involved in oil and natural gas exploration;

(3) an estimate of the effect of the moratoria on the revenues of small business located near the Gulf of Mexico and, to the maximum extent practicable, throughout the United States; and

(4) any recommendations to mitigate possible negative effects on small business concerns resulting from the moratoria.

On page 46, strike lines 3 through 11 and insert the following:

**SEC. 8. SAFER OIL AND GAS PRODUCTION.**

(a) PROGRAM AUTHORITY.—Section 999A of the Energy Policy Act of 2005 (42 U.S.C. 16371) is amended—

(1) in subsection (a)—

(A) by striking “ultra-deepwater” and inserting “deepwater”; and

(B) by inserting “well control and accident prevention,” after “safe operations,”;

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

“(1) Deepwater architecture, well control and accident prevention, and deepwater technology, including drilling to deep formations in waters greater than 500 feet”; and

(B) by striking paragraph (4) and inserting the following:

“(4) Safety technology research and development for drilling activities aimed at well control and accident prevention performed by the Office of Fossil Energy of the Department.”; and

(3) in subsection (d)—

(A) in the subsection heading, by striking “NATIONAL ENERGY TECHNOLOGY LABORATORY” and inserting “OFFICE OF FOSSIL ENERGY OF THE DEPARTMENT”; and

(B) by striking “National Energy Technology Laboratory” and inserting “Office of Fossil Energy of the Department”.

(b) DEEPWATER AND UNCONVENTIONAL ONSHORE NATURAL GAS AND OTHER PETROLEUM RESEARCH AND DEVELOPMENT PROGRAM.—Section 999B of the Energy Policy Act of 2005 (42 U.S.C. 16372) is amended—

(1) in the section heading, by striking “**ULTRADEEPWATER AND UNCONVENTIONAL ONSHORE NATURAL GAS AND OTHER PETROLEUM**” and inserting “**SAFE OIL AND GAS PRODUCTION AND ACCIDENT PREVENTION**”;

(2) in subsection (a), by striking “, by increasing” and all that follows through the period at the end and inserting “and the safe and environmentally responsible exploration, development, and production of hydrocarbon resources.”;

(3) in subsection (e)(1)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

(B) by inserting after subparagraph (C) the following:

“(D) projects will be selected on a competitive, peer-reviewed basis.”; and

(4) in subsection (d)—

(A) in paragraph (6), by striking “ultradeepwater” and inserting “deepwater”;

(B) in paragraph (7)—

(i) in subparagraph (A)—

(I) in the subparagraph heading, by striking “ULTRA-DEEPWATER” and inserting “DEEPWATER”;

(II) by striking “development and” and inserting “research, development, and”; and

(III) by striking “as well as” and all that follows through the period at the end and inserting “aimed at improving operational safety of drilling activities, including well integrity systems, well control, blowout prevention, the use of non-toxic materials, and integrated systems approach-based management for exploration and production in deepwater.”;

(ii) in subparagraph (B), by striking “and environmental mitigation” and inserting “use of non-toxic materials, drilling safety, and environmental mitigation and accident prevention”;

(iii) in subparagraph (C), by inserting “safety and accident prevention, well control and systems integrity,” after “including”; and

(iv) by adding at the end the following:

“(D) SAFETY AND ACCIDENT PREVENTION TECHNOLOGY RESEARCH AND DEVELOPMENT.—Awards from allocations under section 999H(d)(4) shall be expended on areas including—

- “(i) development of improved cementing and casing technologies;
- “(ii) best management practices for cementing, casing, and other well control activities and technologies;
- “(iii) development of integrity and stewardship guidelines for—
  - “(I) well-plugging and abandonment;
  - “(II) development of wellbore sealant technologies; and
  - “(III) improvement and standardization of blowout prevention devices.”; and

(C) by adding at the end the following:

“(8) STUDY; REPORT.—

“(A) STUDY.—As soon as practicable after the date of enactment of this paragraph, the Secretary shall enter into an arrangement with the National Academy of Sciences under which the Academy shall conduct a study to determine—

- “(i) whether the benefits provided through each award under this subsection during calendar year 2011 have been maximized; and
- “(ii) the new areas of research that could be carried out to meet the overall objectives of the program.

“(B) REPORT.—Not later than January 1, 2012, the Secretary shall submit to the appropriate committees of Congress a report that contains a description of the results of the study conducted under subparagraph (A).

“(C) OPTIONAL UPDATES.—The Secretary may update the report described in subparagraph (B) for the 5-year period beginning on the date described in that subparagraph and each 5-year period thereafter.”;

(5) in subsection (e)—

(A) in paragraph (2)—

- (i) in the second sentence of subparagraph (A), by inserting “to the Secretary for review” after “submit”; and
- (ii) in the first sentence of subparagraph (B), by striking “Ultra-Deepwater” and all that follows through “and such Advisory Committees” and inserting “Program Advisory Committee established under section 999D(a), and the Advisory Committee”; and

(B) by adding at the end the following:

“(6) RESEARCH FINDINGS AND RECOMMENDATIONS FOR IMPLEMENTATION.—The Secretary, in consultation with the Secretary of the Interior and the Administrator of the Environmental Protection Agency, shall publish in the Federal Register an annual report on the research findings of the program carried out under this section and any recommendations for implementation that the Secretary, in consultation with the Secretary of the Interior and the Administrator of the Environmental Protection Agency, determines to be necessary.”;

(6) in subsection (i)—

(A) in the subsection heading, by striking “UNITED STATES GEOLOGICAL SURVEY” and inserting “DEPARTMENT OF THE INTERIOR”; and

(B) by striking “, through the United States Geological Survey,”; and

(7) in the first sentence of subsection by striking “National Energy Technology Laboratory” and inserting “Office of Fossil Energy of the Department”.

(c) ADDITIONAL REQUIREMENTS FOR AWARDS.—Section 999C(b) of the Energy Policy Act of 2005 (42 U.S.C. 16373(b)) is amended by striking “an ultra-deepwater technology or an ultra-deepwater architecture” and inserting “a deepwater technology”.

(d) PROGRAM ADVISORY COMMITTEE.—Section 999D of the Energy Policy Act of 2005 (42 U.S.C. 16374) is amended to read as follows:

“SEC. 999D. PROGRAM ADVISORY COMMITTEE.

“(a) ESTABLISHMENT.—Not later than 270 days after the date of enactment of the Safe and Responsible Energy Production Improvement Act of 2010, the Secretary shall establish an advisory committee to be known as the ‘Program Advisory Committee’ (referred to in this section as the ‘Advisory Committee’).

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Advisory Committee shall be composed of members appointed by the Secretary, including—

“(A) individuals with extensive research experience or operational knowledge of hydrocarbon exploration and production;

“(B) individuals broadly representative of the affected interests in hydrocarbon production, including interests in environmental protection and safety operations;

“(C) representatives of Federal agencies, including the Environmental Protection Agency and the Department of the Interior;

“(D) State regulatory agency representatives; and

“(E) other individuals, as determined by the Secretary.

“(2) LIMITATIONS.—

“(A) IN GENERAL.—The Advisory Committee shall not include individuals who are board members, officers, or employees of the program consortium.

“(B) CATEGORICAL REPRESENTATION.—In appointing members of the Advisory Committee, the Secretary shall ensure that no class of individuals described in any of subparagraphs (A), (B), (D), or (E) of paragraph (1) comprises more than  $\frac{1}{3}$  of the membership of the Advisory Committee.

“(c) SUBCOMMITTEES.—The Advisory Committee may establish subcommittees for separate research programs carried out under this subtitle.

“(d) DUTIES.—The Advisory Committee shall—

“(1) advise the Secretary on the development and implementation of programs under this subtitle; and

“(2) carry out section 999B(e)(2)(B).

“(e) COMPENSATION.—A member of the Advisory Committee shall serve without compensation but shall be entitled to receive travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

“(f) PROHIBITION.—The Advisory Committee shall not make recommendations on funding awards to particular consortia or other entities, or for specific projects.”

(e) DEFINITIONS.—Section 999G of the Energy Policy Act of 2005 (42 U.S.C. 16377) is amended—

(1) in paragraph (1), by striking “200 but less than 1,500 meters” and inserting “500 feet”;

(2) by striking paragraphs (8), (9), and (10);

(3) by redesignating paragraphs (2) through (7) and (11) as paragraphs (4) through (9) and (10), respectively;

(4) by inserting after paragraph (1) the following:

“(2) DEEPWATER ARCHITECTURE.—The term ‘deepwater architecture’ means the integration of technologies for the exploration for, or production of, natural gas or other petroleum resources located at deepwater depths.

“(3) DEEPWATER TECHNOLOGY.—The term ‘deepwater technology’ means a discrete technology that is specially suited to address 1 or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at deepwater depths.”; and

(5) in paragraph (10) (as redesignated by paragraph (3)), by striking “in an economically inaccessible geological formation, including resources of small producers”.

(f) FUNDING.—Section 999H of the Energy Policy Act of 2005 (42 U.S.C. 16378) is amended—

(1) in the first sentence of subsection (a) by striking “Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund” and inserting “Safe and Responsible Energy Production Research Fund”;

(2) in subsection (d)—

(A) in paragraph (1), by striking “35 percent” and inserting “21.5 percent”;

(B) in paragraph (2), by striking “32.5 percent” and inserting “21 percent”;

(C) in paragraph (4)—

(i) by striking “25 percent” and inserting “30 percent”;

(ii) by striking “complementary research” and inserting “safety technology research and development”; and

(iii) by striking “contract management,” and all that follows through the period at the end and inserting “and contract management.”; and

(D) by adding at the end the following:

“(5) 20 percent shall be used for research activities required under sections 20 and 21 of the Outer Continental Shelf Lands Act (43 U.S.C. 1346, 1347).”; and

(3) in subsection (f), by striking “Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund” and inserting “Safer Oil and Gas Production and Accident Prevention Research Fund”.

(g) CONFORMING AMENDMENT.—Subtitle J of title IX of the Energy Policy Act of 2005 (42 U.S.C. 16371 et seq.) is amended in the subtitle heading by striking “Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources” and inserting “Safer Oil and Gas Production and Accident Prevention”.

On page 46, between lines 11 and 12, insert the following:

**SEC. 8. NATIONAL COMMISSION ON OUTER CONTINENTAL SHELF OIL SPILL PREVENTION.**

(a) **ESTABLISHMENT.**—There is established in the Legislative branch the National Commission on Outer Continental Shelf Oil Spill Prevention (referred to in this section as the “Commission”).

(b) **PURPOSES.**—The purposes of the Commission are—

(1) to examine and report on the facts and causes relating to the Deepwater Horizon explosion and oil spill of 2010;

(2) to ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the incident;

(3) to build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Committees on Energy and Natural Resources and Commerce, Science, and Transportation of the Senate;

(B) the Committee on Natural Resources and the Subcommittee on Oversight and Investigations of the House of Representatives; and

(C) other Executive branch, congressional, or independent commission investigations into the Deepwater Horizon incident of 2010, other fatal oil platform accidents and major spills, and major oil spills generally;

(4) to make a full and complete accounting of the circumstances surrounding the incident, and the extent of the preparedness of the United States for, and immediate response of the United States to, the incident; and

(5) to investigate and report to the President and Congress findings, conclusions, and recommendations for corrective measures that may be taken to prevent similar incidents.

(c) **COMPOSITION OF COMMISSION.**—

(1) **MEMBERS.**—The Commission shall be composed of 10 members, of whom—

(A) 1 member shall be appointed by the President, who shall serve as Chairperson of the Commission;

(B) 1 member shall be appointed by the majority or minority (as the case may be) leader of the Senate from the Republican Party and the majority or minority (as the case may be) leader of the House of Representatives from the Republican Party, who shall serve as Vice Chairperson of the Commission;

(C) 2 members shall be appointed by the senior member of the leadership of the Senate from the Democratic Party;

(D) 2 members shall be appointed by the senior member of the leadership of the House of Representatives from the Republican Party;

(E) 2 members shall be appointed by the senior member of the leadership of the Senate from the Republican Party; and

(F) 2 members shall be appointed by the senior member of the leadership of the House of Representatives from the Democratic Party.

(2) **QUALIFICATIONS; INITIAL MEETING.**—

(A) **POLITICAL PARTY AFFILIATION.**—Not more than 5 members of the Commission shall be from the same political party.

(B) **NONGOVERNMENTAL APPOINTEES.**—An individual appointed to the Commission may not be a current officer or employee of the Federal Government or any State or local government.

(C) **OTHER QUALIFICATIONS.**—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience and expertise in such areas as—

(i) engineering;

(ii) environmental compliance;

(iii) health and safety law (particularly oil spill legislation);

(iv) oil spill insurance policies;

(v) public administration;

(vi) oil and gas exploration and production;

(vii) environmental cleanup; and

(viii) fisheries and wildlife management.

(D) **DEADLINE FOR APPOINTMENT.**—All members of the Commission shall be appointed on or before September 15, 2010.

(E) **INITIAL MEETING.**—The Commission shall meet and begin the operations of the Commission as soon as practicable after the date of enactment of this Act.

(3) **QUORUM; VACANCIES.**—

(A) **IN GENERAL.**—After the initial meeting of the Commission, the Commission shall meet upon the call of the Chairperson or a majority of the members of the Commission.

- (B) QUORUM.—6 members of the Commission shall constitute a quorum.
- (C) VACANCIES.—Any vacancy in the Commission shall not affect the powers of the Commission, but shall be filled in the same manner in which the original appointment was made.
- (d) FUNCTIONS OF COMMISSION.—
- (1) IN GENERAL.—The functions of the Commission are—
- (A) to conduct an investigation that—
- (i) investigates relevant facts and circumstances relating to the Deepwater Horizon incident of April 20, 2010, and the associated oil spill thereafter, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and
- (ii) may include relevant facts and circumstances relating to—
- (I) permitting agencies;
- (II) environmental and worker safety law enforcement agencies;
- (III) national energy requirements;
- (IV) deepwater and ultradeepwater oil and gas exploration and development;
- (V) regulatory specifications, testing, and requirements for offshore oil and gas well explosion prevention;
- (VI) regulatory specifications, testing, and requirements offshore oil and gas well casing and cementing regulation;
- (VII) the role of congressional oversight and resource allocation; and
- (VIII) other areas of the public and private sectors determined to be relevant to the Deepwater Horizon incident by the Commission;
- (B) to identify, review, and evaluate the lessons learned from the Deepwater Horizon incident of April 20, 2010, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, and the private sector, relative to detecting, preventing, and responding to those incidents; and
- (C) to submit to the President and Congress such reports as are required under this section containing such findings, conclusions, and recommendations as the Commission determines to be appropriate, including proposals for organization, coordination, planning, management arrangements, procedures, rules, and regulations.
- (2) RELATIONSHIP TO INQUIRY BY CONGRESSIONAL COMMITTEES.—In investigating facts and circumstances relating to energy policy, the Commission shall—
- (A) first review the information compiled by, and any findings, conclusions, and recommendations of, the committees identified in subparagraphs (A) and (B) of subsection (b)(3); and
- (B) after completion of that review, pursue any appropriate area of inquiry, if the Commission determines that—
- (i) those committees have not investigated that area;
- (ii) the investigation of that area by those committees has not been completed; or
- (iii) new information not reviewed by the committees has become available with respect to that area.
- (e) POWERS OF COMMISSION.—
- (1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member of the Commission, may, for the purpose of carrying out this section—
- (A) hold such hearings, meet and act at such times and places, take such testimony, receive such evidence, and administer such oaths; and
- (B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials;
- as the Commission or such subcommittee or member considers to be advisable.
- (2) SUBPOENAS.—
- (A) ISSUANCE.—
- (i) IN GENERAL.—A subpoena may be issued under this paragraph only—
- (I) by the agreement of the Chairperson and the Vice Chairperson; or
- (II) by the affirmative vote of 6 members of the Commission.
- (ii) SIGNATURE.—Subject to clause (i), a subpoena issued under this paragraph—



(I) shall bear the signature of the Chairperson or any member designated by a majority of the Commission;

(II) and may be served by any person or class of persons designated by the Chairperson or by a member designated by a majority of the Commission for that purpose.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under subparagraph (A), the United States district court for the district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring the person to appear at any designated place to testify or to produce documentary or other evidence.

(ii) JUDICIAL ACTION FOR NONCOMPLIANCE.—Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(iii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this subsection, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes (2 U.S.C. 192 through 194).

(3) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge the duties of the Commission under this section.

(4) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission may secure directly from any Executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Federal Government, information, suggestions, estimates, and statistics for the purposes of this section.

(B) COOPERATION.—Each Federal department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairperson, the Chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(C) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall be received, handled, stored, and disseminated only by members of the Commission and the staff of the Commission in accordance with all applicable laws (including regulations and Executive orders).

(5) ASSISTANCE FROM FEDERAL AGENCIES.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the functions of the Commission.

(B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in subparagraph (A), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as are determined to be advisable and authorized by law.

(6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property, including travel, for the direct advancement of the functions of the Commission.

(7) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(f) PUBLIC MEETINGS AND HEARINGS.—

(1) PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.—The Commission shall—

(A) hold public hearings and meetings, to the extent appropriate; and

(B) release public versions of the reports required under paragraphs (1) and (2) of subsection (j).

(2) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of proprietary or sensitive information provided to or developed for or by the Commission as required by any applicable law (including a regulation or Executive order).

(g) STAFF OF COMMISSION.—

- (1) IN GENERAL.—
- (A) APPOINTMENT AND COMPENSATION.—
- (i) IN GENERAL.—The Chairperson, in consultation with the Vice Chairperson and in accordance with rules agreed upon by the Commission, may, without regard to the civil service laws (including regulations), appoint and fix the compensation of a staff director and such other personnel as are necessary to enable the Commission to carry out the functions of the Commission.
- (ii) MAXIMUM RATE OF PAY.—No rate of pay fixed under this subparagraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.
- (B) PERSONNEL AS FEDERAL EMPLOYEES.—
- (i) IN GENERAL.—The staff director and any personnel of the Commission who are employees shall be considered to be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.
- (ii) MEMBERS OF COMMISSION.—Clause (i) shall not apply to members of the Commission.
- (2) DETAILEES.—
- (A) IN GENERAL.—An employee of the Federal Government may be detailed to the Commission without reimbursement.
- (B) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.
- (3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.
- (h) COMPENSATION AND TRAVEL EXPENSES.—
- (1) COMPENSATION OF MEMBERS.—
- (A) NON-FEDERAL EMPLOYEES.—A member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.
- (B) FEDERAL EMPLOYEES.—A member of the Commission who is an officer or employee of the Federal Government shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government.
- (2) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.
- (i) SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.—
- (1) IN GENERAL.—Subject to paragraph (2), the appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the members and staff of the Commission appropriate security clearances, to the maximum extent practicable, pursuant to existing procedures and requirements.
- (2) PROPRIETARY INFORMATION.—No person shall be provided with access to proprietary information under this section without the appropriate security clearances.
- (j) REPORTS OF COMMISSION; ADJOURNMENT.—
- (1) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of members of the Commission.
- (2) FINAL REPORT.—Not later than 180 days after the date of the enactment of this Act, the Commission shall submit to the President and Congress a final report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of members of the Commission.
- (3) TEMPORARY ADJOURNMENT.—
- (A) IN GENERAL.—The Commission, and all the authority provided under this section, shall adjourn and be suspended, respectively, on the date that

is 60 days after the date on which the final report is submitted under paragraph (2).

(B) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in subparagraph (A) for the purpose of concluding activities of the Commission, including—

- (i) providing testimony to committees of Congress concerning reports of the Commission; and
- (ii) disseminating the final report submitted under paragraph (2).

(C) RECONVENING OF COMMISSION.—The Commission shall stand adjourned until such time as the President or the Secretary of Homeland Security declares an oil spill of national significance to have occurred, at which time—

- (i) the Commission shall reconvene in accordance with subsection (c)(3); and
- (ii) the authority of the Commission under this section shall be of full force and effect.

(k) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

- (A) \$10,000,000 for the first fiscal year in which the Commission convenes; and
- (B) \$3,000,000 for each fiscal year thereafter in which the Commission convenes.

(2) AVAILABILITY.—Amounts made available to carry out this section shall be available—

- (A) for transfer to the Commission for use in carrying out the functions and activities of the Commission under this section; and
- (B) until the date on which the Commission adjourns for the fiscal year under subsection (j)(3).

(l) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

On page 46, strike line 12 and insert the following:

**SEC. 8. CLASSIFICATION OF OFFSHORE SYSTEMS.**

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior and the Secretary of the Department in which the Coast Guard is operating shall jointly issue regulations requiring systems (including existing systems) used in the offshore exploration, development, and production of oil and gas in the outer Continental Shelf (as defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331) to be constructed, maintained, and operated so as to meet classification, certification, rating, and inspection standards that are necessary—

- (A) to protect the health and safety of affiliated workers; and
- (B) to prevent environmental degradation.

(2) THIRD-PARTY VERIFICATION.—The standards established by regulation under paragraph (1) shall be verified through certification and classification by independent third parties that—

- (A) have been preapproved by both the Secretary of the Interior and the Secretary of the Department in which the Coast Guard is operating; and
- (B) have no financial conflict of interest in conducting the duties of the third parties.

(3) MINIMUM SYSTEMS COVERED.—At a minimum, the regulations issued under paragraph (1) shall require the certification and classification by an independent third party who meets the requirements of paragraph (2) of—

- (A) mobile offshore drilling units;
- (B) fixed and floating drilling or production facilities;
- (C) drilling systems, including risers and blowout preventers; and
- (D) any other equipment dedicated to the safety systems relating to offshore extraction and production of oil and gas.

(4) EXCEPTIONS.—The Secretary of the Interior and the Secretary of the Department in which the Coast Guard is operating may waive the standards established by regulation under paragraph (1) for an existing system only if—

- (A) the system is of an age or type where meeting such requirements is impractical; and
- (B) the system poses an acceptably low level of risk to the environment and to human safety.

(b) AUTHORITY OF COAST GUARD.—Nothing in this section preempts or interferes with the authority of the Coast Guard.

**SEC. 9. SAVINGS PROVISIONS.**

On page 47, strike line 7 and insert the following:

**SEC. 10. BUDGETARY EFFECTS.**

## PURPOSE

The purposes of the measure are: to improve the management, oversight, accountability, safety, and environmental protection of all the resources on the Outer Continental Shelf; to provide independent development and enforcement of safety and environmental laws governing energy development and mineral extractions activities on the Outer Continental Shelf and related offshore activities; and to ensure a fair return to the taxpayer from, and independent management of, royalty and revenue activities from mineral and energy resources.

## SUMMARY OF MAJOR PROVISIONS

*National Policy for the Outer Continental Shelf*

Section 4 clarifies U.S. policy to be applied in all management decisions regarding the Outer Continental Shelf. That policy provides that the vital resources of the U.S. Outer Continental Shelf are to be managed in a way that recognizes and balances the value of all of the resources, minimizes the impact of development on the environment, and acknowledges the long term economic value of balanced and orderly management. It further provides that it is national policy to allow energy and mineral development activities only when there is reasonable assurance of adequate protection from harm to life, health, the environment, property, or to other users of the waters, seabed, or subsoil.

*Structural Reform of Outer Continental Shelf Program Management*

Section 5 reforms the organizational structure of the OCS in several major ways. It requires reorganization of the agency so that the revenue collection functions are kept separate from the other functions; that no more than two other bureaus are to be designated to carry out the leasing, safety, and environmental functions in a way that minimizes the potential for conflicts of interest; and that the heads of the bureaus or offices created be appointed by the President and confirmed by the Senate. It provides the Secretary with new hiring and compensation authorities for a certain number of employees as necessary to ensure that the agency has the technical expertise required to carry out its safety and environmental functions. Finally, it creates a new Outer Continental Shelf Safety and Environmental Advisory Board made up of a balanced and unbiased group of experts identified through consultation with the National Academies of Science and Engineering to reflect a range of disciplines related to safe and environmentally compliant energy and mineral development activities. This Board is to provide independent peer reviewed scientific and technical advice for use by the agency in carrying out its safety and environmental responsibilities.

*Safety, Environmental, and Financial Reform*

Section 6 amends various aspects of the Outer Continental Shelf Lands Act to strengthen the planning, safety, and environmental requirements involved in offshore energy development to prevent future accidents and to create a culture of excellence that governs both the regulators and the industry. In addition to mandating more stringent regulatory activity, it provides the Department of the Interior with additional scientific and technical capability and some new resources to help in the exercise of adequate oversight over the industry through development of regulations, inspections, and enforcement.

Key components of this system include: requirements for exploration plans, separate deepwater operations plans, and drilling permits for individual wells that focus on review of the system of operations as a whole and as related to the offshore conditions in which the system will operate; required use of best available technology; full review of the systems by qualified engineers; an evidentiary demonstration of the safety of the system and any modifications; and new requirements to ensure that containment systems and oil spill response plans are adequate in advance of the start of operations.

An operations plan is also required that will demonstrate that the industry employees who work on offshore facilities are adequately trained and experienced, and training requirements are established for all employees engaged in offshore operations. Time limits currently applicable to review of exploration plans are extended to ensure that the Secretary has adequate time for complete review of the plans.

The Department of the Interior is required to establish independent internal programs for research and development of environmental and safety issues that must be used to inform the regulatory activity, so that science will always be transparent and an essential part of both areas. Existing research funding is redirected to this research to reflect its high priority status. This research, as well as data from required investigations of all accidents, must be made public. The Secretary is required to maximize the value of this information, in part by the exchange of technical information domestically and internationally to ensure widespread understanding of best practices. The Department is also required to seek the views of other agencies and to make public those views and the Department's analysis of them to the extent the Department disagrees.

The bill also will provide for a qualified independent third party classification and certification utilizing a technical and engineering review of key systems for each operation based on standards to be developed jointly by the Department of the Interior and the Coast Guard. This process is modeled on the certification and classification systems currently required for ocean-going vessels engaged in shipping operations, and will provide an additional level of oversight with the goal of safety and environmental protection.

Enforcement of the law is strengthened in a number of respects. Inspection fees are established at a level that will fully fund all inspections, so that increased numbers of highly trained inspectors will be available to oversee compliance with these rules. Operators who are found to be not meeting diligence, safety, or environmental

requirements on other leases, or who have failed to meet their obligations for oil spill-related damages, are disqualified from bidding on new leases after public notice prior to the lease sale and opportunity for a hearing. The Secretary is required to review financial responsibility requirements to adjust the requirements for Consumer Price Index and make recommendations to Congress to ensure that they are adequate to permit lessees to fulfill obligations, including oil spill-related obligations. The National Transportation Safety Board is authorized to perform independent investigations of any accident at the Secretary's request. Civil and criminal penalties for violations of any legal requirements are increased. New ethics requirements are established to prevent conflicts of interest and eliminate industry influence of regulators.

To ensure a fair return to the taxpayer, the Secretary is required to periodically review royalty rates and to complete a comparative review of all components of relevant fiscal systems for oil and gas resources with periodic reports to Congress.

#### *Research for Safer Oil and Gas Production*

Section 9 amends section 999 of the Energy Policy Act of 2005 to ensure research on the highest priority needs for safety and environmental protection in offshore oil and gas production; and to redirect a portion of the funding to the Department of the Interior to assist in carrying out its new research responsibilities as required by this Act.

### BACKGROUND AND NEED

The Department of the Interior is charged with the management of the energy and mineral resources contained on the Outer Continental Shelf—numerous and varied resources that all are vital to our national well-being. Between January 19, 1982 and June 18, 2010, this responsibility was delegated by the Secretary to the Minerals Management Service (MMS). While the MMS was a small agency that was not well-known to the public, it was tasked with an increasingly complex and wide-ranging set of responsibilities which in some cases have a perceived or real potential for conflict.

MMS had management responsibilities that determined the uses of portions of the Outer Continental Shelf. It had regulatory responsibilities that directly impacted the design and operation of complex systems of offshore energy production. It had planning responsibilities that significantly impacted the marine and coastal environment. These same planning decisions in some cases determined the level of federal revenue received from offshore operations. It also had responsibility for the collection of revenue that makes up a significant portion of the federal budget from both offshore and onshore mineral development on public lands.

The issues over which MMS had oversight became vastly more complicated as offshore oil and gas operations moved into deeper water and used deeper wells. The industry developed increasingly sophisticated and complex technology for these undertakings. For example, between 1992–2006, 2493 wells were drilled at water depths greater than 1,000 feet. Wells are now routinely drilled to depths of 10,000 feet below the sea floor and often to 20,000 to 25,000 feet deep.

In such operations the potential impacts can be extremely high, should there be a regulatory or operational failure. Containment of wells and control of oil discharges in deepwater can be much more complex than in shallow water or onshore. In addition, marine research has provided better data about the complexities of the ocean environment and its resources that must be considered in planning efforts, making these efforts much more sophisticated undertakings if done correctly. At the same time, the MMS budget did not keep pace with other agencies in terms of research capabilities. MMS had to become increasingly reliant on industry for understanding of the industry's technology and for understanding safety mechanisms applicable to key components of the well design and operation.

The primary statute governing offshore oil and gas development is the Outer Continental Shelf Lands Act (67 Stat.29), which originally was enacted in 1953 and last amended by the Energy Policy Act of 2005 (Public Law 109-58; 119 Stat.594). Some significant safety and environmental provisions have remained unchanged since 1978. Provisions of that Act suggest that the primary responsibility of the agency carrying out the Act is to provide national energy resources. Knowledge of the other resources in the marine environment—both economic and otherwise—has evolved significantly since initial enactment, as has the technological capability of the industry to locate and develop oil and gas in the outer continental shelf.

In this legislative and regulatory context, on April 20, 2010 a loss of well control occurred and resulted in an explosion and fire on the semisubmersible Mobile Offshore Drilling Unit Deepwater Horizon about 50 miles off the coast of Louisiana. Eleven lives were lost in this incident and the vessel subsequently sank.

This drilling operation was in a water depth of 4,993 feet and the well itself was at a depth of nearly 18,000 feet below the seabed. As of the date of Committee consideration of this bill, the well was not contained. Millions of gallons of oil had been discharged into the Gulf, with dire consequences for the people and wildlife of the Gulf coast, the regional marine and coastal environment, and the fishing and tourism industries.

The exact causes of the accident are as yet unknown and several investigations are ongoing. However, testimony provided during the Committee's hearings on the issue has demonstrated that, at a minimum, there were multiple technical failures as well as multiple regulatory failures. For example, the regulatory system failed to require adequate demonstrations of safety in well design, blow-out prevention, containment capability, and oil spill response planning. Questions exist about the permitting of modifications to the well design, adequacy and frequency of required inspections, and balanced consideration generally of areas to be leased and risks associated with leasing in those areas.

Even before the accident, in recognition of the increasing complexity and volume of MMS's responsibilities, the Department of the Interior had requested that Congress consider enactment of an "organic act" for the MMS as well as budget increases to fund more personnel, including inspectors, for offshore operations. Following the accident, the Secretary requested, among other things, that Congress eliminate the statutory time constraints applicable to the

agency's review of lessee's exploration plans, the first plans in which the agency receives specific, place-based design for the exploration process from a lessee for review.

On May 19, 2010, in light of the Deepwater Horizon accident, the Secretary announced a plan to fundamentally restructure MMS and divide its responsibilities among three separate offices: a Bureau of Ocean Energy Management; a Bureau of Safety and Environmental Enforcement; and an Office of Natural Resources Revenue. On June 18, 2010, the Secretary renamed MMS the Bureau of Ocean Energy Management, Regulation, and Enforcement pending further reorganization. He has been and is still in the process of establishing additional safety requirements applicable to the areas of concern in the loss of well control, and has hired additional rig inspectors.

However, it is clear that administrative changes alone cannot ultimately be sufficient to the challenges that are demonstrated by the Deepwater Horizon accident. Legislation will ensure that the necessary safety and environmental requirements can be developed, enforced and maintained regardless of changes in the leadership of the Department; that the agency always has the scientific and technical resources to lead instead of follow advances in technology of well design, containment and oil spill response; and that agency organization avoids conflicts of interest that can and have arisen due to its multiple responsibilities. Legislation is needed to create and embed an enduring culture of excellence in the regulatory agency that in turn can ensure the same level of excellence in industry operations.

#### LEGISLATIVE HISTORY

S. 3516 was introduced by Senator Bingaman on June 21, 2010, and is cosponsored by Senators Murkowski, Dorgan and Stabenow. The Committee on Energy and Natural Resources held a hearing on environmental stewardship on November 19, 2009, four oversight hearings on offshore oil and gas development and the Deepwater Horizon Accident (May 11, May 18, May 25, and June 9, 2010), and a legislative hearing on S. 3516 and related legislation on June 24, 2010. At its business meeting on June 30, 2010, the Committee on Energy and Natural Resources ordered S. 3516 to be favorably reported with amendments.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 30, 2010, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 3516, if amended as described herein.

#### COMMITTEE AMENDMENTS

During its consideration of S. 3516, the Committee adopted seven amendments as follows:

1. An amendment (#1) offered by Senator Shaheen to section 4 of S. 3516, which in turn amends section 3 of the Outer Continental Shelf Lands Act relating to the national policy for the OCS. The amendment requires that the OCS be managed in a way that "minimizes" rather than "recognizes" the potential impacts of the



development of energy, food, mineral, and other OCS resources on the marine and coastal environment and on human health and safety.

2. An amendment (#2–17) offered by Senators Bingaman and Murkowski, to make a series of 16 minor, technical, or clarifying amendments to the bill.

3. An amendment (#18) offered by Senators Bingaman and Wyden, which adds a new subsection (1) to section 6 of the bill. The amendment amends section 29 of the Outer Continental Shelf Lands Act to strengthen the post-employment restrictions currently found in the Act, to add new conflict-of-interest restrictions, and to prescribe civil and criminal penalties for violations of the restrictions.

4. An amendment (#19) offered by Senator Landrieu, which adds a new section 7 to the bill, to require that the Secretary of Energy, acting through the Energy Information Administration, publish a monthly study evaluating the effect of the moratoria which followed the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010. The amendment also requires that not later than 60 days after the date of enactment of this Act and at the beginning of each month thereafter during the effective period of the moratoria, the Secretary of Energy submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding the results of the study.

5. An amendment (#20) offered by Senator Udall, which adds a new section 9 to the bill and amends title IX, subtitle J of the Energy Policy Act of 2005, relating to ultra-deepwater and unconventional natural gas and other petroleum resources. The amendment refocuses the ultra-deepwater research and development program on deepwater, redefines “deepwater” to apply to depths of 500 feet or greater, and expands the scope of the program to include deepwater well control and accident prevention, improved safety and blowout prevention technologies, and best practices. The amendment also changes the name of the Fund established by section 999H of the Energy Policy Act of 2005 and changes how the Fund is allocated among program elements. It provides some of the funding to the Department of the Interior for priority research required by the bill.

6. An amendment (#21) offered by Senator Barrasso, which adds a new section 10 to the bill, to establish a National Commission on Outer Continental Shelf Oil Spill Prevention in the Legislative branch to be comprised of 10 members to be appointed by both political parties before September 15, 2010. Functions of the Commission include: conducting an investigation relating to the facts and circumstances of the Deepwater Horizon incident of April 20, 2010 and the associated oil spill; identifying, reviewing, and evaluating the lessons learned from the Deepwater Horizon incident regarding structure, coordination, management policies, and procedures of the Federal Government and, if appropriate, State and local governments, non-governmental entities, and the private sector; and submitting to the President and the Congress reports containing the Commission’s findings, conclusions, and recommendations, including a final report 180 days after enactment. The Commission is given subpoena power and is authorized at a level of \$10,000,000

for the first fiscal year and \$3,000,000 for each fiscal year thereafter in which the Commission convenes. It will adjourn 60 days after filing its final report, with the authority to reconvene upon declaration of any oil spill of national significance.

7. An amendment (#22) offered by Senator Cantwell, which adds a new section 11 to the bill, to require that not later than 2 years after the date of enactment, the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating jointly issue regulations requiring drilling systems used in the off-shore exploration, development, and production of oil and gas in the OCS to be constructed, maintained, and operated so as to meet classification, certification, rating, and inspection standards that are necessary to protect the health and safety of workers and prevent environmental degradation. The standards established by the regulations are to be verified through certification and classification by qualified independent third parties that have been preapproved by the Secretaries and have no financial conflict of interest. The Secretaries may waive the standards for an existing system only if the system is of an age or type where meeting such requirements is impractical and the system poses an acceptably low level of risk to the environment and human safety.

The amendments are explained in further detail in the section-by-section analysis that follows.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title; table of contents*

This section sets forth the short title and table of contents.

##### *Section 2. Purposes*

This section sets forth the purposes of the legislation.

##### *Section 3. Definitions*

This section sets forth definitions.

##### *Section 4. National policy for the outer Continental Shelf*

This section amends the section 3 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1332), pertaining to the national policy for the outer Continental Shelf (OCS).

Paragraph (1) adds a new paragraph (3) to section 3 of the OCSLA that provides that the outer Continental Shelf (OCS) is a vital national resource reserve to be managed to recognize the need for domestic sources of energy, food, minerals, and other resources; minimizes the potential impacts of development of those resources on the marine and coastal environment and on human health and safety; and acknowledges the long-term economic value to the United States of the balanced and orderly management of those resources that safeguards the environment and respects the multiple values and uses of the OCS.

Paragraphs (2), (3), and (4) make conforming changes.

Paragraph (5) adds a new paragraph (6) to section 3 of the OCSLA that provides that it is the policy of the United States that energy exploration, development, and production on the OCS should be allowed only when it can be done in a manner that provides reasonable assurance of adequate protection against harm to

life, health, the environment, property or other users of the waters, seabed or subsoil.

Paragraphs (6) and (7) are self-explanatory.

*Section 5. Structural reform of Outer Continental Shelf program management*

Section 5(a) amends the OCSLA by adding a new section 32 pertaining to structural reform of OCS program management.

New OCSLA section 32(a) provides that the Secretary of the Interior shall establish not more than two bureaus to carry out the leasing, permitting, safety and environmental regulatory functions vested in the Secretary by this Act and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, et seq.) related to the OCS. The Secretary is required to ensure to the maximum extent practicable that any potential organizational conflicts of interest are eliminated. The bureau or bureaus established pursuant to this subsection are to be headed by a Director appointed by the President by and with the advice and consent of the Senate. The remaining provisions of new subsection (a) pertaining to compensation and qualifications are self-explanatory.

New OCSLA section 32(b) requires the Secretary to establish within the Department of the Interior an office to carry out the royalty and revenue management functions vested in the Secretary by the OCSLA and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, et seq.). The office established pursuant to this subsection is to be headed by a Director appointed by the President by and with the advice and consent of the Senate. The remaining provisions of new subsection (b) pertaining to compensation and qualifications are self-explanatory.

New OCSLA section 32(c) requires the Secretary of the Interior to establish an Outer Continental Shelf Safety and Environmental Advisory Board to provide the Secretary and the bureau Directors with independent scientific and technical advice on safe and environmentally compliant energy and mineral resource exploration, development and production activities. Paragraphs (2) through (5) address membership, meetings, reports, and travel expenses, and are self-explanatory.

New OCSLA section 32(d) provides special personnel authorities for the direct hiring of critical personnel, including highly qualified accountants, scientists, engineers, or critical technical personnel. The authorities include critical pay authority and authority to re-employ civilian retirees. The section imposes certain limitations on the terms of employment for the employees hired under these special authorities. The section also provides for continuity of authorities and conforming amendments.

Section 5(b) makes conforming changes.

*Section 6. Safety, environmental, and financial reform of the Outer Continental Shelf Lands Act*

This section amends several sections of the OCSLA to modify safety, environmental, and financial requirements.

Section 6(a) amends section 2 of the OCSLA (43 U.S.C. 1331) by adding a new subsection (r) setting forth the definition of "safety case".

Section 6(b) amends section 5(a) of the OCSLA (43 U.S.C. 1334(a)) by requiring the Secretary to prescribe and amend rules and regulations to provide for operational safety and the protection of marine and coastal environment.

Section 6(c) amends section 6 of the OCSLA (43 U.S.C. 1335) by adding new subsections (f) and (g). New OCSLA section 6(f) requires the Secretary to review, periodically, minimum financial responsibility requirements and adjust for inflation and recommend to Congress any further changes to existing financial responsibility requirements necessary to permit lessees to fulfill all obligations under the OCSLA and the Oil Pollution Act of 1990 (33 U.S.C. 2701, et seq.). New OCSLA section 6(g)(1) requires a periodic review of rental and royalty rates for leases under the OCSLA. New OCSLA section 6(g)(2) requires a periodic comparative review of fiscal systems of the United States and other resource owners, including states and foreign nations, for offshore oil and gas, including requirements for bonus bids, royalties, rentals, fees, oil and gas taxes, income taxes and other significant financial elements. The Secretary may combine the reports required under paragraphs (1) and (2)(D) into one report.

Section 6(d) amends section 8 of the OCSLA (43 U.S.C. 1337) by striking subsection (d) and inserting a new subsection (d) which provides that no bid for a lease may be submitted by any entity that the Secretary finds, after prior public notice and an opportunity for a hearing, is not meeting due diligence, safety, or environmental requirements on other leases, or is a responsible party for a vessel or facility from which oil is discharged for purposes of section 1002 of the Oil Pollution Act of 1990 and has failed to meet the obligations of the responsible party under that Act to provide compensation for covered removal costs and damages. It is the Committee's intention that prior public notice of any such non-compliance occur at the time of the lease sale announcement.

Section 6(e)(1) amends section 11(c) of the OCSLA (43 U.S.C. 1340(c)) to replace the requirement that the Secretary approve an exploration plan within 30 days with a requirement that the approval take place by the deadline described in new paragraph (5).

Section 6(e)(1) further amends the OCSLA by adding a new section 11(c)(3) that specifies certain requirements for the exploration plan, including: a complete description and schedule of exploration activities; a description of the equipment to be used for exploration activities, including a description of the drilling unit; a statement of the design of major safety-related equipment; a statement demonstrating the equipment meets the best available technology requirements; a map showing the location of each well; a scenario for the potential blowout of the well involving the highest expected volume of liquid hydrocarbons; and a description of the response plan to control the blowout and manage the accompanying discharge of hydrocarbons. Before conducting exploration activities in water depths greater than 500 feet, the lessee must submit to the Secretary for approval a deepwater operations plan prepared by the lessee, which must be based on best available technology to carry out the exploration activity and blowout response plan. The Secretary shall not approve the plan unless it includes a technical systems analysis as specified, including blowout prevention technology and blowout and spill response plans.

Section 6(e)(1) further amends the OCSLA by adding a new section 11(c)(5) that provides that for leases issued under a sale held after March 17, 2010, the deadline for approval of an exploration plan is 90 days, except that an additional 180 days may be taken if the Secretary makes a finding that additional time is necessary to complete any environmental, safety, or other reviews. The Secretary may extend the 30 day deadline with the consent of the lessee for leases issued under a sale held on or before March 17, 2010. March 17, 2010 is the date of the last lease sale held prior to the Deepwater Horizon accident.

Section 6(e)(2) makes conforming changes.

Section 6(e)(3) amends section 11(d) of the OCSLA (43 U.S.C. 1340(d)) by striking subsection (d) and inserting a new subsection that provides that the Secretary require that the lessee obtain a drilling permit prior to drilling a well under an exploration plan and before significantly modifying a well design originally approved by the Secretary. The Secretary may not grant any drilling permit until the date of completion of a full review of the well system by not less than 2 agency engineers, including a written determination that critical safety systems will use best available technology and blowout preventions systems will include redundancy and remote triggering capability. The Secretary may not approve any modification of a permit without a determination, after an additional engineering review, that the modification will not compromise the safety of the well system previously approved. The Secretary may not grant any drilling permit or modification of a permit until the date of completion and approval of a safety and environmental management plan that specifies the expertise and experience level of crew members who will be present on the rig and that requires that not later than May 1, 2012, all employees on the rig meet certain training and experience requirements.

Section 6(e)(3) further amends section 11 by adding a new subsection (e) which requires that the Secretary disapprove an exploration plan if the Secretary makes certain determinations as specified. New OCSLA section 11(e) applies the Act's provisions relating to compensation if an exploration plan is disapproved under the subsection.

Section 6(f)(1) amends section 18(a) of the OCSLA (43 U.S.C. 1344(a)) to include the consideration of protection of marine and coastal environment and resources in developing the schedule for leasing on the OCS, and to require that equal consideration is given to certain factors in developing the oil and gas leasing program. The remaining provision is self-explanatory.

Section 6(f)(2) amends section 18(b) of the OCSLA (43 U.S.C. 1344(b)) to require that additional items be considered in estimating the appropriations and staff needed to carry out the leasing program.

Section 6(f)(3) amends section 18(d)(2) of the OCSLA (43 U.S.C. 1344(d)(2)) to require the submission by the Secretary under that paragraph to indicate why any specific recommendation of the head of a Federal agency with respect to a proposed leasing program was not accepted.

Section 6(f)(4) amends section 18(g) of the OCSLA (43 U.S.C. 1344(g)) to list additional information that may be obtained by the

Secretary in preparing an environmental impact statement and other evaluations required by the section.

Section 6(f)(5) amends section 18 of the OCSLA (43 U.S.C. 1344) by adding a new subsection (i) that requires the Secretary to carry out a program of research and development to ensure the continued improvement of methodologies for characterizing resources of the OCS and conditions that may affect the ability to develop and use those resources in a safe, sound, and environmentally responsible manner. This may include activities to provide accurate resource estimates. These activities are not to be considered leasing or pre-leasing activities. This section is not intended to alter other provisions of the Act related to activities for characterizing the resources of the OCS including environmental permitting requirements.

Section 6(g) amends section 20 of the OCSLA (43 U.S.C. 1346) by making conforming changes and by inserting a new subsection (a) that requires the Secretary to carry out programs for the collection, evaluation and dissemination of environmental and other resource data relevant to carrying out the OCSLA. New OCSLA section 20(a) sets forth the scope of the research and the use of the data. The subsection requires that the program be carried out in a manner that is programmatically separate and distinct from the leasing program and provides for external scientific review of studies. Section 6(g) amends redesignated section 20(b) of the OCSLA to require an environmental study every three years of any area or region included in any oil and gas lease sale.

Section 6(h)(1) amends section 21(a) of the OCSLA (43 U.S.C. 1347(a)) to require not later than May 1, 2011, and every three years thereafter, a study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of minerals on the OCS.

Section 6(h)(2) amends section 21 of the OCSLA by striking subsection (b) and inserting a new subsection. New OCSLA subsection 21(b)(1) requires on all new drilling and production operations and, to the maximum extent practicable, on existing operations, the use of the best available and safest technologies and practices, if the failure of the equipment would have a significant effect on safety, health, or the environment. New OCSLA section 21(b)(2) requires the Secretary to identify and publish not later than every three years an updated list of best available technologies for key areas of well design and operation. It is the Committee's intention that this list be maintained to reflect developing technologies and not preclude the use of improved equipment developed between updates. New OCSLA section 21(b)(3) requires that the Secretary promulgate regulations requiring a safety case to be submitted along with each new application for a permit to drill.

New OCSLA section 21(b)(4) requires the Secretary to issue regulations no later than May 1, 2011, setting standards for training for all workers on offshore facilities conducting energy and mineral resource exploration, development, and production operations on the OCS. The standards shall require that any worker who has less than 5 years of applied experience pass a certification requirement after receiving appropriate training. The new section sets forth additional requirements regarding employee training that are self-explanatory.

Section 6(h)(3) amends section 21 of the OCSLA by adding a new subsection (g) that requires the Secretary to carry out a program of research, development, and risk assessment to address technology and development issues associated with OCS energy and mineral resource activities. New OCSLA section 21(g)(2) sets for the specific areas of focus for the program and is self-explanatory. New OCSLA section 21(g)(3) requires the Secretary to carry out programs to facilitate the exchange and dissemination of scientific and technical information and best practices. The Secretary is further directed to carry out programs to cooperate with international organizations and foreign governments to share information and best practices related to management of safety and environmental issues associated with energy and mineral resource exploration, production and development on the OCS.

New OCSLA section 21(g)(4) sets forth reporting requirements and is self-explanatory. New OCSLA section 21(g)(5) requires the Secretary to create a program within the appropriate bureau that shall be programmatically separate and distinct from the leasing program to carry out these studies and activities, to provide for external scientific review, and to make certain information available to the public.

Section 6(i)(1) amends section 22(d)(1) of the OCSLA (43 U.S.C. 1348(d)(1)) to require investigations of accidents that presented a serious risk to human or environmental safety, including: each loss of well control, blowout, and activation of a blowout preventer. Section 22(d)(1) is further amended to provide that the lessee shall cooperate with the investigation as a condition of the lease.

Section 6(i)(2) amends section 22(e) of the OCSLA (43 U.S.C. 1348(e)) by redesignating the existing text as paragraph (1) and adding a new paragraph (2) that requires the Secretary to investigate any allegation of the existence of a violation of a safety regulation issued under the OCSLA from an employee of a lessee or a subcontractor.

Section 6(i)(3) amends Section 22 of the OCSLA by adding a new subsection (g) authorizing the National Transportation Safety Board to conduct, at the request of the Secretary of the Interior, an independent investigation of certain accidents occurring on the OCS and involving activities under the OCSLA. New subsection (g) further provides that for purposes of an investigation under this subsection, the accident that is the subject of the request by the Secretary shall be determined to be a transportation accident within the meaning of that term in chapter 11 of title 49 of the United States Code.

Section 6(i)(3) further amends section 22 of the OCSLA by adding a new subsection (h) that requires the Secretary to make available to lessees and the public in a public database technical information about the causes and corrective actions taken for all incidents investigated under this section.

Section 6(i)(3) further amends section 22 of the OCSLA by adding a new subsection (i) that requires, to the extent necessary to fund the inspections described in this paragraph, the Secretary to collect from the designated operator for facilities subject to inspection under subsection (c), a non-refundable inspection fee which shall be deposited in the Ocean Energy Enforcement Fund. The Secretary shall establish the fee by regulation at a level necessary

to offset the annual expenses of the inspections using a schedule that reflects differences in complexity among the classes of facilities to be inspected. Monies from the Fund may be expended only for inspections and shall be subject to appropriation. The subsection further provides that the Secretary is required to prepare a report on the operation of the Fund and to submit the report to the Congress, and need not collect the fee if inspections are adequately funded. The remaining provisions in new OCSLA section 22(i) are self-explanatory.

Section 6(j)(1) amends section 24 of the OCSLA (43 U.S.C. 1350) by striking subsection (b) and inserting a new subsection (b). Section 24(b)(1) increases civil administrative penalties to \$75,000 per day of the continuance of the violation. New OCSLA section 24(b)(2) provides that the Secretary may assess, collect, and compromise any penalty under paragraph (1). New OCSLA section 24(b)(3) provides that no penalty shall be assessed until the person charged with a violation has been given the opportunity for a hearing. New OCSLA section 24(b)(4) provides that the civil penalty amount shall increase annually to reflect any increases in the Consumer Price Index for All Urban Consumers.

Section 6(j)(2) amends section 24(c) of the OCSLA (43 U.S.C. 1350(c)) to increase the corresponding criminal penalty from not more than \$100,000 per violation to not more than \$10,000,000. The subsection is further amended to provide that the penalty amount shall increase each year to reflect any increases in the Consumer Price Index for All Urban Consumers.

Section 6(j)(3) amends section 24(d) of the OCSLA (43 U.S.C. 1350(d)) to establish an additional basis for criminal liability for officers and agents of a corporation or other entity for authorizing, ordering, or carrying out proscribed activities with reckless disregard.

Section 6(k) amends section 25 of the OCSLA (43 U.S.C. 1351) to delete exceptions from certain requirements for the Gulf of Mexico.

Section 6(l) amends section 29 of the OCSLA (43 U.S.C. 1355) to strengthen the employment restrictions currently found in section 29, add conflict of interest restrictions, and stiffen penalties for violations of the restrictions.

Under current law, section 29 imposes two sets of employment restrictions on any full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under the OCSLA and who was at any time during the 12 months preceding the termination of his employment with the Department compensated under the Executive Schedule or at or above the GS-16 level of the General Schedule. One set applies for two years after the employee's employment with the Department ends and restricts appearances before, communications to, and aiding and assisting in appearances before federal agencies, officers, and employees in any particular matter involving a specific party in which the United States is a party or has a direct and substantial interest, and which was actually pending under the employee's official responsibility within one year before his or her termination or in which he or she participated personally and substantially. The second set applies for one year after the employee's employment ends and restricts appearances before and communica-



tions to the Department of the Interior or any officer or employee on any particular matter that is pending before the Department or in which the Department has a substantial interest.

Subsection (l) redesignates the existing section 29 as subsection (a) of an expanded section 29. It eliminates the current language limiting the restrictions to senior officials and employees, thereby making the restrictions applicable to all full-time officers and employees discharging duties or responsibilities under the OSCLA. It expands the two-year restrictions by expressly including advising (in addition to aiding and assisting) in the list of restricted activities in paragraph (1)(C), and by banning aiding, advising, or assisting others in making prohibited communications as well as in making prohibited appearances in paragraph (1)(C). It expands the one-year restrictions by adding a new paragraph (2)(C) that bans aiding, advising or assisting others in making prohibited appearances or prohibited communications.

In addition, subsection (l) adds a new paragraph (3) to the redesignated section 29(a), which prohibits all officers and employees discharging duties or responsibilities under the OSCLA from accepting employment or compensation within one year after his or her employment has ceased from any person that has a direct and substantial interest which was actually pending under his or her official responsibility during the year prior to his or her termination or in which he participated personally and substantially.

Subsection (l) also adds 4 new subsections to section 29. Subsection (b) prohibits any full-time officer or employee of the Department of the Interior who directly or indirectly discharges duties or responsibilities under the OSCLA from participating personally and substantially in any particular matter in which—

(1) the officer or employee or his or her spouse, minor child, or general partner has a financial interest;

(2) any organization in which the officer or employee is serving as an officer, director, trustee, or general partner, or employee has a financial interest;

(3) any person or organization with whom the officer or employee is negotiating or has arranged future employment has a financial interest; or

(4) any person or organization in which the officer or employee, during the preceding year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee has a financial interest.

Section 29 of the OSCLA currently contains no comparable provision, though the federal criminal code and the Standards of Ethical Conduct for Employees of the Executive Branch do. Section 208 of title 18 of the United States Code already makes it a felony for an officer or employee of the executive branch to participate in particular matters covered by items (1), (2), and (3) above. In addition, section 502 of the Standards of Ethical Conduct prohibit a federal employee from participating in any particular matter described in item (4). 5 C.F.R. 2635.502(b)(iv).

Subsection (c) prohibits any full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under the OSCLA from soliciting or accepting any gifts in violation of the gift ban in the Standards of

Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2635, subpart B.

Subsection (d) authorizes the Secretary to exempt, by rule, clerical or support personnel who would otherwise be covered by section 29, as amended, if they do not conduct inspections, perform audits, or otherwise exercise regulatory or policy making authority under the OCSLA.

Subsection (e) prescribes penalties for violations of section 29, as amended. As it now stands, section 29 itself does not contain penalties for its violation. The federal criminal code, however, provides that a violation of the post-employment restrictions in 18 U.S.C. 207, which are similar to those in paragraphs (1) and (2) of the amended section 29(a), and the conflict-of-interest restrictions in 18 U.S.C. 208, which are similar to those in paragraphs (1), (2), and (3) of the amended section 29(b), is a felony, punishable by imprisonment for up to one year, or up to five years if the violation is willful, criminal fines of up to \$250,000, and civil penalties of up to \$50,000 or the amount of compensation which the person received for the prohibited conduct. 18 U.S.C. 216; 18 U.S.C. 3571. Violations of the provisions of the Standards of Ethical Conduct similar to subsections (a)(3), (b)(4), and (c) of the amended section 29 are not criminal, and are punishable by disciplinary employment actions, such as reprimand, suspension, demotion, or removal, rather than civil or criminal penalties.

Subsection (e) prescribes penalties for violations of section 29 that are generally comparable to the penalties for similar violations of federal law. Paragraph (1) provides that any person who violates the post-employment restrictions in paragraphs (1) or (2) of the amended section 29(a), which are comparable to restrictions in 18 U.S.C. 207, or the conflict-of-interest restrictions in subsection (b), which are comparable to restrictions in 18 U.S.C. 208, shall be punishable in accordance with 18 U.S.C. 216, which provides for imprisonment for up to one year, or up to five years if the violation is willful, criminal fines of up to \$250,000, and civil penalties of up to \$50,000 or the amount of compensation which the person received for the prohibited conduct. 18 U.S.C. 216; 18 U.S.C. 3571. Paragraph (2) provides that any person who violates the post-employment restriction in section 29(a)(3) or the gift ban in subsection (c) shall be punishable in accordance with subsection (b) of 18 U.S.C. 216, which provides for a civil penalty of up to \$55,000 (\$50,000 adjusted for inflation in accordance with the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990). 28 C.F.R. 85.3(c). The penalty for violating the post-employment restriction in section 29(a)(3) is comparable to the penalty for violating the similar post-employment restriction on federal procurement officers by the Procurement Integrity Act, 41 U.S.C. 423. The penalties for violating the conflict-of-interest restriction in section 29(b)(4) and the gift ban in section 29(c) are harsher than those provided by current law, which are now limited to disciplinary employment actions.

The Committee notes that section 24(c) of the OCSLA provides that “any person” who fails to comply with “any provision” of the OCSLA is subject to a civil penalty of up to \$20,000 for each day of failure, and that any person who knowingly and willfully violates any provision of the OCSLA may be punished by a fine of up to \$100,000 or imprisoned for up to 10 years, or both. Section 6(j) of

S. 3516 amends section 24 of the OCSLA to increase the maximum civil penalty from \$20,000 to \$75,000 per day of violation, and to increase the maximum criminal fine from \$100,000 to \$10,000,000. While the broad language of section 24(c) could be read to apply to section 29, the Committee is not aware of any instance in which section 24(c) penalties have been imposed on an officer or employee of the Department for violating the employment restrictions of section 29. The Department has informally advised the Committee that “there is some ambiguity as to whether section 24 would be applicable to section 29.” Accordingly, the Committee chose to prescribe specific penalties for violating section 29 in section 29 itself, rather than rely on section 24(c).

Subsection (l) does not define key terms already used in section 29 of the OCSLA, such as “particular matter”, “specific party”, “direct and substantial interest”, “official responsibility”, and “personal and substantial participation.” The Committee believes that the meaning of these terms have long been established by federal ethics laws and the Standards of Ethical Conduct for Employees of the Executive Branch, and does not intend to alter their established meaning.

The Committee intends the amendments to section 29 of the OCSLA made by subsection (l) to operate prospectively. Section 29(a), as amended, by its terms can apply only to any “full-time officer or employee of the Department of the Interior who directly or indirectly discharges duties or responsibilities under” the OCSLA on or after the date of enactment of the Outer Continental Shelf Reform Act of 2010. The amendments made to the post-employment restrictions are intended to apply to officers or employees who leave the Department on or after the effective date of the Act, and under ordinary rules of statutory construction, do not affect the substantive rights of officers or employees who leave the Department prior to the effective date of the Act.

*Section 7. Study on the effect of the moratoria on new deepwater drilling in the Gulf of Mexico on employment and small businesses*

Section 7(a) provides that the Secretary of Energy, acting through the Energy Information Administration, shall publish a monthly study evaluating the effect of the moratoria which followed the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010.

Section 7(b) provides that not later than 60 days after the date of enactment of this Act and at the beginning of each month thereafter during the effective period of the moratoria, the Secretary of Energy shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report regarding the results of the study conducted under subsection (a). The subsection further specifies the contents of the report and is self-explanatory.

*Section 8. Reform of Other Law*

Section 8 amends section 388(b) of the Energy Policy Act of 2005 (43 U.S.C. 1337 note) to add a new paragraph (4) that requires that with respect to the coordinated mapping initiative provided for by that subsection, any head of a Federal agency is required, on the

request of the Secretary of the Interior, to provide data and information that the Secretary determines is necessary to the mapping initiative, except the agency head is not required to provide privileged or confidential information.

#### *Section 9. Safer Oil and Gas Production*

Section 9(a)(1) amends section 999A(a) of the Energy Policy Act of 2005 (42 U.S.C. 16371(a)) to broaden the focus of the research and development program from “ultra-deepwater” (defined in section 999G(8) of the Energy Policy Act of 2005 (42 U.S.C. 16377(8)) as 1,500 meters or greater) to “deepwater” (redefined by section 9(e)(1) as 500 feet or greater). Paragraph (1) also adds research, development, demonstration, and commercial application of technologies for deepwater well control and accident prevention to the program’s mission. Paragraph (2) makes changes in two of the program elements in section 999A(b) to reflect the program’s new focus. Paragraphs (2)(B) and (3) changes references to the National Energy Technology Laboratory in subsections (b)(4) and (d) of section 999A of the Energy Policy Act of 2005 to the Office of Fossil Energy.

Section 9(b) amends section 999B of the Energy Policy Act of 2005 (42 U.S.C. 16372) to refocus the program on developing improved safety and blowout prevention technologies and best practices associated with the drilling of deepwater oil and gas wells. Paragraph (3) requires the program consortium to select research and development projects on a competitive, peer-reviewed basis. Paragraph (4)(D) requires the Secretary of Energy to commission the National Academy of Sciences to review the research program and its projects to determine the programs effectiveness. Paragraph (5)(B) requires the Secretary of Energy, in consultation with the Secretary of the Interior and the Administrator of the Environmental Protection Agency, to annually report on the research findings of the program and any recommendations.

Section 9(c) amends section 999C(b) of the Energy Policy Act of 2005 (42 U.S.C. 16373(b)) to change a reference to “ultra-deepwater technology or . . . architecture” to “deepwater technology.”

Section 9(d) amends section 999D of the Energy Policy Act of 2005 (42 U.S.C. 16374) to eliminate the Ultra-Deepwater Advisory Committee and establish in its place a Program Advisory Committee to advise the Secretary on the development and implementation of the deepwater research and development program.

Section 9(e) amends section 999G of the Energy Policy Act of 2005 (42 U.S.C. 16375) by amending the definition of deep-water in paragraph (1) from 200 to 1,500 meters to any water depth greater than 500 feet deep, striking definitions relating to ultra-deepwater, adding new definitions for “deepwater architecture” and “deepwater technology,” and by renumbering the remaining definitions.

Section 9(f) amends section 999H of the Energy Policy Act of 2005 (42 U.S.C. 16378) to change the name of the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund to the Safe and Responsible Energy Production Research Fund, to modify how the Fund is allocated among program elements, as those program elements are modified by section 9(a), and to provide a new allocation of 20 percent of the Fund for environ-

mental and safety research required by sections 20 and 21 of the OCSLA (43 U.S.C. 1346 and 1347), as amended by sections 9(g) and 9(h).

Section 9(g) amends the subtitle heading to reflect the program's new focus.

*Section 10. National Commission on Outer Continental Shelf Oil Spill Prevention*

Section 10(a) establishes in the Legislative branch the National Commission on Outer Continental Shelf Oil Spill Prevention.

Section 10(b) sets forth the purposes of the Commission and is self-explanatory.

Section 10(c) requires that the Commission be composed of 10 members and sets forth who shall appoint each member. Subsection (c) sets forth qualification for commission members and is self-explanatory. Subsection (c) provides that all members of the Commission shall be appointed on or before September 15, 2010, and requires that the initial Commission meeting be as soon as practicable. Subsection (c) further addresses quorum requirements and vacancies.

Section 10(d) sets forth the functions of the Commission, including: conducting an investigation relating to the facts and circumstances of the Deepwater Horizon incident of April 20, 2010 and the associated oil spill thereafter; identifying, reviewing, and evaluating the lessons learned from the Deepwater Horizon incident regarding structure, coordination, management policies and procedures of the Federal Government and if appropriate, State and local governments, non-governmental entities, and the private sector; and submit to the President and the Congress reports as are required by the section containing such findings, conclusions, and recommendations as the Commission finds appropriate. Section 10(d) sets forth the relationship of the Commission to the inquiry by congressional committees and is self-explanatory.

Section 10(e) describes the powers of the Commission with respect to: hearings and evidence; the issuance and enforcement of subpoenas; contracting; securing and handling information from Federal agencies; obtaining assistance from Federal agencies; gifts; and postal services.

Section 10(f) requires the Commission to hold public hearings and meetings, to the extent appropriate and to release public versions of the Commission's interim and final reports required under paragraphs (1) and (2) of subsection (j). Public meetings are required to be conducted in a manner consistent with the protection of proprietary or sensitive information.

Section 10(g) addresses the appointment and compensation of Commission staff, the treatment of Commission staff as Federal employees, and employees detailed to the Commission.

Section 10(h) addresses compensation and travel expenses for Commission members and is self-explanatory.

Section 10(i) sets forth requirements relating to security clearances for Commission members and staff and is self-explanatory.

Section 10(j) addresses the reports of the Commission and requirements relating to adjournment of the Commission and is self-explanatory. Section 10(j)((3)(C) provides that after adjourning upon completion of the final report on the Deepwater Horizon inci-

dent, the Commission is to reconvene at such time as the President or the Secretary of Homeland Security declares an oil spill of national significance to have occurred.

Section 10(k) authorizes appropriations of \$10,000,000 for the first fiscal year in which the Commission convenes and \$3,000,000 for each fiscal year thereafter in which the Commission convenes.

Section 10(l) provides that the Federal Advisory Committee Act shall not apply to the Commission.

#### *Section 11. Classification of Offshore Systems*

Section 11(a) requires that not later than 2 years after the date of enactment, the Secretary and the Secretary of the department in which the Coast Guard is operating shall jointly issue regulations requiring systems used in the offshore exploration, development and production of oil and gas in the OCS to be constructed, maintained, and operated so as to meet classification, certification, rating, and inspection standards that are necessary to protect the health and safety of workers and prevent environmental degradation. The standards established by the regulations are to be verified through certification and classification by independent third parties that have been preapproved by the Secretaries and have no financial conflict of interest. Section 11(a) further describes the minimum systems covered. The Secretaries may waive the standards for an existing system only if the system is of an age or type where meeting such requirements is impractical and the system poses an acceptably low level of risk to the environment and human safety.

Section 11(b) provides that nothing in section 11 preempts or interferes with the authority of the Coast Guard.

#### *Section 12. Savings Provisions*

Section 12(a) provides that all regulations, rules, standards, determinations, contracts and agreements, memoranda of understanding, certifications, or any other actions issued, made or taken by or pursuant to the authority of any law that resulted in the assignment of functions to the Secretary, the Director of the Minerals Management Service or the Department, that were in effect on the date of enactment of this Act, remain in full force and effect after the date of enactment of this Act unless previously scheduled to expire or until otherwise modified or rescinded by this Act or any other Act.

Section 12(b) provides that this Act does not amend or alter the provisions of other applicable laws, unless otherwise noted.

#### *Section 13. Budgetary Effects*

Section 13 addresses the determination of budgetary effects of the legislation.

### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the cost estimate is available it will be posted on the Congressional Budget Office's website [www.cbo.gov](http://www.cbo.gov).

## REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 3516.

The bill strengthens the safety, environmental, and financial regulation of companies exploring for, developing, and producing federal oil and natural gas resources on the Outer Continental Shelf, and is expected to impose some additional regulatory burdens on such companies.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Additional paperwork would result from the enactment of S. 3516, as ordered reported, due to increased requirements for safety and environmental regulatory compliance, application, planning, review, and documentation.

## CONGRESSIONALLY DIRECTED SPENDING

S. 3516, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

## EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 3516 are included in the testimony of the Secretary of the Interior received by the Committee at its June 24, 2010, hearing, which is set forth below:

STATEMENT OF KEN SALAZAR, SECRETARY OF THE INTERIOR,  
JUNE 24, 2010

Chairman Bingaman, Ranking Member Murkowski, and Members of the Committee, I want to thank you for holding this hearing today as we continue to address the issues and challenges associated with the continuing reform of the Department of the Interior's offshore energy program.

Before we begin, I want to introduce Michael R. Bromwich, the new Director of the Bureau of Ocean Energy Management, Regulation, and Enforcement. His impressive background includes time as the Inspector General of the U.S. Department of Justice, as an Assistant U.S. Attorney, and since 1999, as an attorney in private practice. His extensive experience in government and the private sector in improving the way organizations work make him an ideal choice to lead the restructuring and reform of the Department's offshore energy program.

For the same reasons I chose Michael Bromwich for this position, I chose Wilma Lewis who oversees the Department's energy bureaus as the Assistant Secretary for Land and Minerals Management. A former U.S. Attorney for the District of Columbia and Inspector General at the Department, Wilma has played a central leadership role in some of the most significant reforms during my tenure as Secretary. She has helped shape reforms ranging from our

new approach to offshore oil and gas leasing and a new emphasis on renewable energy development on the Outer Continental Shelf, to ethics reform, to the enhancement of leasing programs and the development of renewable energy programs onshore, to support for our study of policies designed to ensure fair return to American taxpayers for the development of public oil and gas resources. I have also appointed her to chair the Safety Oversight Board in the aftermath of the Deepwater Horizon oil spill, and to help spearhead the reorganization of MMS toward a new future.

#### OFFSHORE ENERGY REFORMS COMPLETED

Although this unprecedented disaster, which resulted in the tragic loss of life and many injuries, is commanding our time and resources, it has also strengthened our resolve to continue reforming the OCS program.

The reforms we have embarked on over the last 17 months, and upon which we will continue to build, are substantive and systematic, not cosmetic. The kind of fundamental changes we are making do not come easily and many of the changes we have already made have raised the ire of industry. Our efforts at reform have been characterized by some as impediments and roadblocks to the development of domestic oil and gas resources. We believe, however, that they are crucial to ensuring that we carry out our responsibilities effectively, without compromise, and in a manner that facilitates the balanced, responsible, and sustainable development of the resources entrusted to us.

To review the reforms we have undertaken:

*First*, we focused our efforts on ethics and other concerns that had been raised in the revenue collection side of the MMS. We began changing the way the bureau does business and took concrete action to:

- upgrade and strengthen ethics standards throughout MMS and for all political and career employees;
- terminate the Royalty-in-Kind program to reduce the likelihood of fraud or collusion with industry in connection with the collection of royalties; and
- aggressively pursue continued implementation of the recommendations to improve the royalty collection program that came from the Department's Inspector General, the Government Accountability Office, and a committee chaired by former Senators Bob Kerrey and Jake Gam.

*Second*, we started reforms of the offshore oil and gas regulatory program, which included actions to:

- initiate in Fall 2009 an independent study by an arm of the National Academy of Engineering to examine how we could upgrade our inspection program for offshore rigs;
- procure substantial increases in the MMS budget for FY 2010 and FY 2011, including a ten percent in-



crease in the number of inspectors for offshore facilities; and

- develop a new approach to on-going oil and gas activities on the OCS aimed at promoting the responsible, environmentally sound, and scientifically grounded development of oil and gas resources on the Outer Continental Shelf.

In that effort, we cancelled the upcoming Beaufort and Chukchi lease sales, removed Bristol Bay altogether from leasing under the current 5 year plan, and removed the Pacific Coast and the Northeast entirely from any drilling under a new 5 year plan. We made clear that we will require full environmental analysis through an Environmental Impact Statement prior to any decision to lease in any additional areas, such as the mid and south Atlantic, and launched a scientific evaluation, led by the Director of USGS, to analyze issues associated with drilling in the Arctic.

*Third*, we laid the groundwork for expanding the mission of MMS beyond conventional oil and gas by devoting significant attention and infusing new resources into the renewable energy program, thereby providing for a more balanced energy portfolio that reflects the President's priorities for clean energy. Toward that end, we took action to:

- finalize long-stalled regulations that define a permitting process for off-shore wind—cutting through jurisdictional disputes with FERC in the process and ultimately approving the Cape Wind project;
- announce the establishment of a regional renewable energy office, located in Virginia, which will coordinate and expedite, as appropriate, the development of wind, solar, and other renewable energy resources on the Atlantic Outer Continental Shelf; and
- commence discussions and enter into an MOU with governors of East Coast states, which formally established an Atlantic Offshore Wind Energy Consortium to promote the efficient, orderly, and responsible development of wind resources on the Outer Continental Shelf through increased Federal-State cooperation.

#### OFFSHORE ENERGY REFORMS AND RELATED ACTIVITIES UNDERWAY

Since the Deepwater Horizon explosion and oil spill, the reforms and associated efforts have continued with urgency, with particular focus on issues raised by, and lessons being learned from, the circumstances surrounding the event. We are aggressively pursuing actions on multiple fronts, including:

- inspecting all deepwater oil and gas drilling operations in the Gulf of Mexico and issuance of a safety notice to all rig operators;
- implementing the 30 day safety report to the President, including issuing notices to lessees on new

safety requirements, and developing new rules for safety and environmental protection; defending the moratorium on new deepwater drilling, which is currently the subject of litigation; and

- implementing new requirements that operators submit information regarding blowout scenarios in their exploration plans—reversing a long standing exemption that resulted from too much reliance on industry to self-regulate.

Additional reforms will be influenced by several ongoing investigations and reviews, including the Deepwater Horizon Joint Investigation currently underway by the Bureau of Ocean Energy Management, Regulation and Enforcement, and the United States Coast Guard. In addition, at my request, a separate investigation is being undertaken by the National Academy of Engineering to conduct an independent, science-based analysis of the root causes of the oil spill. I also requested that the Inspector General's Office undertake an investigation to determine whether there was a failure of MMS personnel to adequately enforce standards or inspect the Deepwater Horizon.

Further, on April 30th I announced the formation of the Outer Continental Shelf Safety Oversight Board to identify, evaluate and implement new safety requirements. The Board, which consists of Assistant Secretary for Land and Minerals Management Wilma A. Lewis, who serves as Chair, Assistant Secretary for Policy, Management and Budget Rhea Suh, and Acting Inspector General Mary Kendall, will develop recommendations designed to strengthen safety, and improve overall management, regulation, and oversight of operations on the Outer Continental Shelf.

Finally, the President established the independent bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling tasked with providing options on how we can prevent and mitigate the impact of any future spills that result from offshore drilling. The Commission will be focused on the environmental and safety precautions we must build into our regulatory framework in order to ensure an accident like this never happens again, taking into account the other investigations concerning the causes of the spill.

#### SUPPLEMENTAL LEGISLATION

The Administration will make sure that BP and other responsible parties are held accountable, that they will pay the costs of the government in responding to the spill, and compensation for loss or damages that arise from the spill. We will do everything in our power to make our affected communities whole. As a part of the response efforts, we expect to spend a total of \$27 million through June 30, 2010 for Interior's response activities.

As part of our reforms, we are also building on the efforts we undertook in the last sixteen months to strengthen the OCS budget. As I already mentioned, the 2011

budget includes a ten percent increase in the number of inspectors. Our restructuring of the OCS program will require additional resources to aggressively pursue the reforms I outlined earlier, to implement the 30 day report to the President, and to potentially address the results of on-going investigations and the President's Commission. We are currently hiring an additional twelve inspectors, six more than we proposed in the 2011 budget, and we are taking other actions that are outlined in the 30 day report to the President. Over the course of the next several years, our restructuring of a more robust OCS regulatory and enforcement program will dictate the need for engineering, technical, and other specialized staff.

The President's supplemental request of May 12, 2010 includes \$29 million that will fund the near term resources we need for these activities. I appreciate the Senate's prompt action in passing the supplemental on May 27. As you know, it is critically needed to support our full and relentless reforms—to bolster inspections of offshore oil and gas platforms, draft enforcement and safety regulations, and carry out environmental and engineering studies. The President's request included a proposal to extend the time allowed by statute for review and approve of oil and gas exploration plans from 30 to 90 days—this is also needed and I hope Congress will include it in the final version of the supplemental.

#### REORGANIZATION OF THE MINERALS MANAGEMENT SERVICE

On June 15, I appointed Michael R. Bromwich as the Director of the Bureau of Ocean Energy Management, Regulation and Enforcement. Michael will lead us through the reorganization—the foundation for the reforms we have underway. He will lead the changes in how the agency does business, implement the reforms that will raise the bar for safe and environmentally sound offshore oil and gas operations, and help our Nation transition to a clean energy future.

Michael will join the team that has been working out the details of the reorganization. In a May 19 Secretarial Order I tasked Rhea Suh, the Assistant Secretary for Policy, Management and Budget, Wilma Lewis, the Assistant Secretary for Land and Minerals Management, and Chris Henderson, one of my senior advisors, to develop a reorganization plan in consultation with others within the Administration and with Congress. The report will provide the plan to restructure the Bureau of Ocean Energy Management, Regulation and Enforcement in order to responsibly address sustained development of the Outer Continental Shelf's conventional and renewable energy resources, including resource evaluation, planning, and other activities related to leasing; comprehensive oversight, safety, and environmental protection in all offshore energy activities; and royalty and revenue management including the collection and distribution of revenue, auditing and compliance, and asset management.

The Deepwater Horizon tragedy and the massive spill have made the importance and urgency of a reorganization of this nature ever more clear, particularly the creation of a separate and independent safety and environmental enforcement entity. We will responsibly and thoughtfully move to establish independence and separation for this critical mission so that the American people know they have a strong and independent organization ensuring that energy companies comply with their safety and environmental protection obligations.

The restructuring will also address any concerns about the incentives related to revenue collections. The OCS currently provides nearly 30 percent of the Nation's domestic oil production and almost 11 percent of its domestic natural gas production and is one of the largest sources of non-tax and non-trust revenue for the Treasury. The MMS collected an average of more than \$13 billion annually for the past 5 years. There will be clear separation between the entities that collect and manage revenue and those that are responsible for the management of the OCS exploration and leasing activities.

#### SUSTAINED RESPONSE EFFORTS IN THE GULF

Of utmost importance to us is the oil spill containment and clean up of the Gulf. I have returned to the Gulf Region numerous times to witness the work Departmental staff and volunteers are carrying out to protect the coasts, wetlands, and wildlife threatened by this spill. We have deployed approximately 1,000 employees to the Gulf and they are directing actions to contain the spill; cleaning up affected coastal and marine areas under our jurisdiction; and assisting Gulf Coast residents with information related to the claims process, health and safety information, volunteer opportunities, and general information on the efforts being carried out in the region.

Under the direction of National Incident Commander Admiral Thad Allen, the Flow Rate Technical Group, which is led by U.S. Geological Survey Director Dr. Marcia McNutt, and a scientific team led by Energy Secretary Steven Chu recently announced an improved estimate of how much oil is flowing from the leaking well. That estimate, suggests that the flow rate is at least 35,000 barrels per day, based on the improved quality and quantity of data that are now available.

The Department's senior staff continues to offer coordination and guidance to the effort. Deputy Secretary David J. Hayes is devoting his time to coordinating the many Gulf-related response activities we are undertaking. Assistant Secretary for Fish, Wildlife and Parks Tom Strickland has been leading the Department's efforts for onshore and near shore protection. National Park Service Director Jon Jarvis and Acting Director of the Fish and Wildlife Service Rowan Gould continue to supervise incident management personnel and activities that their bureaus are taking to respond to the spill and clean up oil impacts. To

protect the eight national parks and 36 wildlife refuges and the numerous wildlife, birds, and historic structures they are responsible for in the Gulf of Mexico, the NPS and FWS dispatched approximately 590 employees.

Representatives from the FWS also participated with the U.S. Coast Guard, the Environmental Protection Agency, and state and local governments in a series of public meetings with local residents to answer questions and offer information on a variety of topics related to the spill and response activities.

Finally, there are many, many people in the Department who are devoting significant time and energy to this event; to the various investigations and inquiries, both within the Administration and in Congress, that are being carried out; and to the ongoing reorganization and reform. I want to acknowledge their work and let them know their efforts are appreciated and are not going unnoticed.

In the last 60 days we have also seen what the employees in the Bureau of Ocean Energy Management, Regulation and Enforcement are capable of, their professionalism, their dedication to the Department, and their enthusiasm for the reforms underway. With Michael's help we will be able to cast aside the shadow on the many dedicated employees that has been left by an errant few, and by previous policies that have prioritized production over ethics, safety, and environmental protection.

#### LEGISLATIVE EFFORTS AT REFORM

All four of the bills before you today address reform of the Department's offshore energy and mineral resource development program. I would like to provide you some general comments on each of these bills and a few provisions in particular.

Your legislation, Mr. Chairman, S. 3516, the "Outer Continental Shelf Reform Act," would provide general organic authority for the restructuring of the offshore energy and minerals program in the Department and would make additional changes reforming some of the underlying laws governing management of these resources.

I have previously testified in support of organic legislation for the functions performed by MMS, noting that an organization with such important responsibilities should be governed by a thoughtfully considered organic act. It is important for organic legislation to provide the Secretary with the discretion to implement the details of a reorganization as complicated as this.

The provisions in S. 3516 authorizing the creation of the three new entities are consistent with the changes I have directed in my Secretarial Order. The report and schedule for implementation that I will receive on July 9 will provide a detailed roadmap for this reorganization and will greatly inform the process. The Administration would like to continue discussion with the Committee regarding the specifics in this legislation of the appointment and confirmation of the new bureau and office directors.

A number of the changes contained in this bill highlight the need for increased safety of operations and consideration of the marine and coastal environment, including the need for integrated programs for both environmental research and technological research and development. In this same vein, S. 3509, the “Safer Oil and Gas Production Research and Development Act”, would amend certain research and development provisions contained in the Energy Policy Act of 2005 to provide an additional focus on research and development on safety and reduced environmental impacts from development of these resources.

A focus on strengthened safety and oversight and the environmental impacts of offshore oil and gas operations are priorities of the Administration. These issues, and several others in the bills before you today, will require the Department to work closely with the Committee and other relevant federal agencies to ensure a coordinated approach to attaining these important objectives.

S. 3516 also includes new planning requirements, including a requirement for detailed descriptions of equipment and plans to address potential well blowouts. S. 3497, the “Oil Spill Prevention and Mitigation Improvement Act,” includes a similar focus, amending the Outer Continental Shelf Lands Act to require that leases entered into under that Act include a plan for containment and termination of discharges of oil, and a timeline for accomplishing those actions.

Recognizing the importance of this information, on June 18, 2010, the Department issued a Notice to Lessees (NTL) requiring that new filings for drilling permits, exploration plans, or development plans to contain information specifically addressing the possibility of a blowout and the detailed steps that lessees or operators would take to prevent blowouts. This reverses a 2003 policy and a 2008 NTL that exempted many offshore oil and gas operations in the Gulf from submitting certain information about such a scenario and is consistent with the requirements contained in these bills.

S. 3516 would also extend the deadline for the Department to review and approve exploration plans; require that lessees obtain a drilling permit after approval of an exploration plan; and require that, prior to approval of such a permit, an engineering review of the well system be completed and reviewed. The Administration supports authority to provide for longer review time and for stronger reviews of exploration plans prior to drilling. We would like to work with the Committee on this important issue.

We are also supportive of the changes in S. 3516 intended to strengthen civil and criminal penalties contained in the OCSLA. These provisions are generally consistent with the support for increasing these penalties that Deputy Secretary Hayes expressed before this Committee on May 25th.

It is also important to provide the Department with the tools necessary to appropriately staff critical and hard-to-

fill positions in these new entities. We look forward to continuing the dialog on this issue, as well.

#### STRENGTHENING THE WAY WE DO BUSINESS

Over the past several weeks I have talked about the many ways we have changed the direction of the MMS, both programmatically and structurally. S. 3431 would change laws governing ethical standards and fraudulent statements by MMS employees.

I have already mentioned the actions in this regard that I ordered last year. I am also pleased to have two former Inspectors General, in Michael Bromwich and Wilma Lewis, to help lead our reform efforts. But my interest in strengthened ethics standards isn't limited to employees of the MMS. President Obama made it clear from the earliest days of this Administration that ethical behavior, among both political and career employees, was to be held to a premium standard. On January 26, 2009, I issued a memorandum to all employees regarding the high ethical standards with which we were all expected to carry out our duties. I also directed the Department's Ethics Office to review Department-specific regulations and recommend areas where improvements could be made. On August 19, 2009, I issued a Secretarial Order laying out additional clarifications to enhance and promote a stronger ethical culture at the Department.

S. 3431 would codify portions of the new standards made applicable to MMS employees in January 2009. The Department's Ethics Office is currently preparing updates to statutory language, including updates to provisions applicable to Departmental offices and to lands and energy and mineral development programs. I look forward to working with you and the sponsor as we move to modernize these important obligations.

#### CONCLUSION

Much of my time as Secretary of the Interior has been spent working to promote reform of prior practices in the Minerals Management Service and to advance the President's vision of a new energy future that will help us to move away from spending hundreds of billions of dollars each year on imported oil. A balanced program of safe and environmentally responsible offshore energy development is a necessary part of that future. We are also involved in a multi-agency process to develop a new national ocean policy that is intended to look ahead in the long term to help the United States think comprehensively about how we make better informed management decisions regarding the use and conservation of ocean, coastal, and Great Lakes resources.

As we evaluate new areas for potential exploration and development on the OCS, we will conduct thorough environmental analysis and scientific study, gather public input and comment, and carefully examine the potential safety and spill risk considerations. The findings of the

Joint Investigation and the independent National Academy of Engineering will provide us with the facts and help us understand what happened on the Deepwater Horizon. Those findings, the work of the Outer Continental Shelf Safety Oversight Board, the OIG investigation and review, and the findings of the Presidential Commission will help inform the implementation of the Administration's comprehensive energy strategy for the OCS.

We are taking responsible action to address the safety of other offshore oil and gas operations, further tightening our oversight of industry's practices through a package of reforms, and taking a careful look at the questions this disaster is raising. We will also work with you on legislative reforms and the finalization of a reorganization that will ensure that the OCS program is effectively managed to achieve these goals.

Lastly, let me assure you this Administration will continue its relentless response to the Deepwater Horizon tragedy. Our team is committed to help the people and communities of the Gulf Coast region persevere through this disaster, to protect our important places and resources, and to take actions based on the valuable lessons that will help prevent similar spills in the future.



CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill H.R. 2741, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TABLE OF EXISTING LAWS PROPOSED TO BE CHANGED**

- 1. Outer Continental Shelf Lands Act, Act of August 7, 1953, as amended
- 2. Title 5, United States Code
- 3. Energy Policy Act of 2005, Public Law 109-58, as amended

**OUTER CONTINENTAL SHELF LANDS ACT**

**ACT OF AUGUST 7, 1953, AS AMENDED**

AN ACT To provide for the jurisdiction of the United States over the submerged lands of the outer Continental Shelf, and to authorize the Secretary of the Interior to lease such lands for certain purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Outer Continental Shelf Lands Act."*

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

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

\* \* \* \* \*

(r) *SAFETY CASE.*—The term "safety case" means a complete set of safety documentation that provides a basis for determining whether a system is adequately safe for a given application in a given environment.

SEC. 3. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.—It is hereby declared to be the policy of the United States that—

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;

\* \* \* \* \*

[(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which

should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;】

*(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be managed in a manner that—*

*(A) recognizes the need of the United States for domestic sources of energy, food, minerals, and other resources;*

*(B) minimizes the potential impacts of development of those resources on the marine and coastal environment and on human health and safety; and*

*(C) acknowledges the long-term economic value to the United States of the balanced and orderly management of those resources that safeguards the environment and respects the multiple values and uses of the outer Continental Shelf;*

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts;

(B) the distribution of a portion of the receipts from the leasing of mineral resources of the outer Continental Shelf adjacent to State lands, as provided under section 1337(g) of this title, will provide affected coastal States and localities with funds which may be used for the mitigation of adverse economic and environmental effects related to the development of such resources; and

(C) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf【.】;

(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized【; and】;

*(6) exploration, development, and production of energy and minerals on the outer Continental Shelf should be allowed only when those activities can be accomplished in a manner that provides reasonable assurance of adequate protection against harm to life, health, the environment, property, or other users of the waters, seabed, or subsoil; and*

【(6)】 (7) operations in the outer Continental Shelf 【should be】 *shall be* conducted in a safe manner by well-trained per-

sonnel using *best available* technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blow-outs, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. **【The Secretary may at any time】** *The Secretary shall* prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for *operational safety, the protection of the marine and coastal environment*, the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition. In considering any regulations and in preparing any such views the Attorney General shall consult with the Federal Trade Commission. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

\* \* \* \* \*

SEC. 6. MAINTENANCE OF LEASES ON OUTER CONTINENTAL SHELF.—(a) The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his duly authorized agent within ninety days from the effective date of this Act, or within such further period or periods as provided in section 7 hereof or as may be fixed from time to time by the Secretary;

\* \* \* \* \*

(e) In the event any lease maintained under this section covers lands beneath navigable waters, as that term is used in the Submerged Lands Act, as well as lands of the outer Continental Shelf, the provisions of this section shall apply to such lease only insofar as it covers lands of the outer Continental Shelf.

(f) *REVIEW OF BOND AND SURETY AMOUNTS.*—*Not later than May 1, 2011, and every 5 years thereafter, the Secretary shall—*

(1) review the minimum financial responsibility requirements for mineral leases under subsection (a)(11); and

(2) adjust for inflation based on the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, and recommend to Congress any further changes to existing financial responsibility requirements necessary to permit lessees to fulfill all obligations under this Act or the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

(g) PERIODIC FISCAL REVIEWS AND REPORTS.—

(1) ROYALTY RATES.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection and every 4 years thereafter, the Secretary shall carry out a review of, and prepare a report that describes—

(i) the royalty and rental rates included in new offshore oil and gas leases and the rationale for the rates;

(ii) whether, in the view of the Secretary, the royalty and rental rates described in subparagraph (A) would yield a fair return to the public while promoting the production of oil and gas resources in a timely manner; and

(iii) whether, based on the review, the Secretary intends to modify the royalty or rental rates.

(B) PUBLIC PARTICIPATION.—In carrying out a review and preparing a report under subparagraph (A), the Secretary shall provide to the public an opportunity to participate.

(2) COMPARATIVE REVIEW OF FISCAL SYSTEM.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection and every 4 years thereafter, the Secretary in consultation with the Secretary of the Treasury, shall carry out a comprehensive review of all components of the Federal offshore oil and gas fiscal system, including requirements for bonus bids, rental rates, royalties, oil and gas taxes, income taxes and other significant financial elements, and oil and gas fees.

(B) INCLUSIONS.—The review shall include—

(i) information and analyses comparing the offshore bonus bids, rents, royalties, taxes, and fees of the Federal Government to the offshore bonus bids, rents, royalties, taxes, and fees of other resource owners (including States and foreign countries); and

(ii) an assessment of the overall offshore oil and gas fiscal system in the United States, as compared to foreign countries.

(C) INDEPENDENT ADVISORY COMMITTEE.—In carrying out a review under this paragraph, the Secretary shall convene and seek the advice of an independent advisory committee comprised of oil and gas and fiscal experts from States, Indian tribes, academia, the energy industry, and appropriate nongovernmental organizations.

(D) REPORT.—The Secretary shall prepare a report that contains—

(i) the contents and results of the review carried out under this paragraph for the period covered by the report; and

(ii) any recommendations of the Secretary and the Secretary of the Treasury based on the contents and results of the review.

(E) COMBINED REPORT.—The Secretary may combine the reports required by paragraphs (1) and (2)(D) into 1 report.

(3) REPORT DEADLINE.—Not later than 30 days after the date on which the Secretary completes each report under this subsection, the Secretary shall submit copies of the report to—

(A) the Committee on Energy and Natural Resources of the Senate;

(B) the Committee on Finance of the Senate;

(C) the Committee on Natural Resources of the House of Representatives; and

(D) the Committee on Ways and Means of the House of Representatives.

\* \* \* \* \*

SEC. 8. LEASES, EASEMENTS, AND RIGHTS-OF-WAY ON THE OUTER CONTINENTAL SHELF.—(a)(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

\* \* \* \* \*

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

(d) DISQUALIFICATION FROM BIDDING.—No bid for a lease may be submitted by any entity that the Secretary finds, after prior public notice and opportunity for a hearing—

(1) is not meeting due diligence, safety, or environmental requirements on other leases; or

(2)(A) is a responsible party for a vessel or a facility from which oil is discharged, for purposes of section 1002 of the Oil Pollution Act of 1990 (33 U.S.C. 2702); and

(B) has failed to meet the obligations of the responsible party under that Act to provide compensation for covered removal costs and damages.

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

with and give due consideration to the views of the Attorney General.

\* \* \* \* \*

SEC. 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—(a)(1) Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.

\* \* \* \* \*

(c)(1) Except as otherwise provided in the Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, **within thirty days of its submission** *by the deadline described in paragraph (5)*, except that the Secretary shall disapprove such plan if he determines that (A) any proposed activity under such plan would result in any condition described in section 5(a)(2)(A)(i) of this Act, and (B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding sentence, he may, subject to section 5(a)(2)(B) of this Act, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 5(a)(2)(C) (i) or (ii) of this Act.

(2) The Secretary shall not grant any license or permit for any activity described in detail in an exploration plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B) (i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act.

[(3) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

- [(A) a schedule of anticipated exploration activities to be undertaken;
- [(B) a description of equipment to be used for such activities;
- [(C) the general location of each well to be drilled; and
- [(D) such other information deemed pertinent by the Secretary.]

(3) *MINIMUM REQUIREMENTS.*—

(A) *IN GENERAL.*—An exploration plan submitted under this subsection shall include, in such degree of detail as the Secretary by regulation may require—

(i) a complete description and schedule of the exploration activities to be undertaken;

(ii) a description of the equipment to be used for the exploration activities, including—

(I) a description of the drilling unit;

(II) a statement of the design and condition of major safety-related pieces of equipment;

(III) a description of any new technology to be used;

and

(IV) a statement demonstrating that the equipment to be used meets the best available technology requirements under section 21(b);

(iii) a map showing the location of each well to be drilled;

(iv)(I) a scenario for the potential blowout of the well involving the highest expected volume of liquid hydrocarbons; and

(II) a complete description of a response plan to control the blowout and manage the accompanying discharge of hydrocarbons, including—

(aa) the technology and timeline for regaining control of the well; and

(bb) the strategy, organization, and resources to be used to avoid harm to the environment and human health from hydrocarbons; and

(v) any other information determined to be relevant by the Secretary.

(B) *DEEPWATER WELLS.*—

(i) *IN GENERAL.*—Before conducting exploration activities in water depths greater than 500 feet, the holder of a lease shall submit to the Secretary for approval a deepwater operations plan prepared by the lessee in accordance with this subparagraph.

(ii) *TECHNOLOGY REQUIREMENTS.*—A deepwater operations plan under this subparagraph shall be based on the best available technology to ensure safety in carrying out the exploration activity and the blowout response plan.

(iii) *SYSTEMS ANALYSIS REQUIRED.*—The Secretary shall not approve a deepwater operations plan under this subparagraph unless the plan includes a technical systems analysis of—

(I) the safety of the proposed exploration activity;

(II) the blowout prevention technology; and

(III) the blowout and spill response plans.

(4) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

(5) *DEADLINE FOR APPROVAL.*—

(A) *IN GENERAL.*—In the case of a lease issued under a sale held after March 17, 2010, the deadline for approval of an ex-

ploration plan referred to in the fourth sentence of paragraph (1) is—

(i) the date that is 90 days after the date on which the plan or the modifications to the plan are submitted; or

(ii) the date that is not later than an additional 180 days after the deadline described in clause (i), if the Secretary makes a finding that additional time is necessary to complete any environmental, safety, or other reviews.

(B) *EXISTING LEASES.*—In the case of a lease issued under a sale held on or before March 17, 2010, the Secretary, with the consent of the holder of the lease, may extend the deadline applicable to the lease for such additional time as the Secretary determines is necessary to complete any environmental, safety, or other reviews.

[(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.]

(d) *DRILLING PERMITS.*—

(1) *IN GENERAL.*—The Secretary shall, by regulation, require that any lessee operating under an approved exploration plan obtain a permit—

(A) before the lessee drills a well in accordance with the plan; and

(B) before the lessee significantly modifies the well design originally approved by the Secretary.

(2) *ENGINEERING REVIEW REQUIRED.*—The Secretary may not grant any drilling permit until the date of completion of a full review of the well system by not less than 2 agency engineers, including a written determination that—

(A) critical safety systems (including blowout prevention) will use best available technology; and

(B) blowout prevention systems will include redundancy and remote triggering capability.

(3) *MODIFICATION REVIEW REQUIRED.*—The Secretary may not approve any modification of a permit without a determination, after an additional engineering review, that the modification will not compromise the safety of the well system previously approved.

(4) *OPERATOR SAFETY AND ENVIRONMENTAL MANAGEMENT REQUIRED.*—The Secretary may not grant any drilling permit or modification of the permit until the date of completion and approval of a safety and environmental management plan that—

(A) is to be used by the operator during all well operations; and

(B) includes—

(i) a description of the expertise and experience level of crew members who will be present on the rig; and

(ii) designation of at least 2 environmental and safety managers that—

(I) are employees of the operator;

(II) would be present on the rig at all times; and

(III) have overall responsibility for the safety and environmental management of the well system and spill response plan; and



(C) not later than May 1, 2012, requires that all employees on the rig meet the training and experience requirements under section 21(b)(4).

(e) **DISAPPROVAL OF EXPLORATION PLAN.**—

(1) **IN GENERAL.**—The Secretary shall disapprove an exploration plan submitted under this section if the Secretary determines that, because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that—

(A) implementation of the exploration plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, mineral deposits, national security or defense, or the marine, coastal or human environments;

(B) the threat of harm or damage would not disappear or decrease to an acceptable extent within a reasonable period of time; and

(C) the advantages of disapproving the exploration plan outweigh the advantages of exploration.

(2) **COMPENSATION.**—If an exploration plan is disapproved under this subsection, the provisions of subparagraphs (B) and (C) of section 25(h)(2) shall apply to the lease and the plan or any modified plan, except that the reference in section 25(h)(2)(C) to a development and production plan shall be considered to be a reference to an exploration plan.

[(e)] (f)(1) If a significant revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

(2) All exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.

[(f)] (g)(1) Exploration activities pursuant to any lease for which a drilling permit has been issued or for which an exploration plan has been approved, prior to ninety days after the date of enactment of this subsection, shall be considered in compliance with this section, except that the Secretary may, in accordance with section 5(a)(1)(B) of this Act, order a suspension or temporary prohibition of any exploration activities and require a revised exploration plan.

(2) The Secretary may require the holder of a lease described in paragraph (1) of this subsection to supply a general statement in accordance with subsection (c)(4) of this section, or to submit other information.

(3) Nothing in this subsection shall be construed to amend the terms of any permit or plan to which this subsection applies.

[(g)] (h) Any permit for geological explorations authorized by this section shall be issued only if the Secretary determines, in accordance with regulations issued by the Secretary that—

(1) the applicant for such permit is qualified;

(2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this Act; and

(3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe

conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance.

[(h)] (i) The Secretary shall not issue a lease or permit for, or otherwise allow, exploration, development, or production activities within fifteen miles of the boundaries of the Point Reyes Wilderness as depicted on a map entitled "Wilderness Plan, Point Reyes National Seashore", numbered 612-90,000-B and dated September 1976, unless the State of California issues a lease or permit for, or otherwise allows, exploration, development, or production activities on lands beneath navigable waters (as such term is defined in section 2 of the Submerged Lands Act) of such State which are adjacent to such Wilderness.

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirement of applicable laws and regulations, and with the terms of the lease<sup>1</sup>; and

(5) provide technical review and oversight of the exploration plan and a systems review of the safety of the well design and other operational decisions;

(6) conduct regular and thorough safety reviews and inspections, and;

(7) enforce all applicable laws (including regulations).

\* \* \* \* \*

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

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

\* \* \* \* \*

(g) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act, including existing inventories and mapping of marine resources previously undertaken by the Department of the Interior and the National Oceanic and Atmospheric Administration, information provided by the Department of Defense, and other available data regarding energy or mineral resource potential, navigation uses, fisheries, aquaculture uses, recreational uses, habitat, conservation, and military uses on the outer Continental Shelf. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.

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

dition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

(i) *RESEARCH AND DEVELOPMENT.*—

(1) *IN GENERAL.*—*The Secretary shall carry out a program of research and development to ensure the continued improvement of methodologies for characterizing resources of the outer Continental Shelf and conditions that may affect the ability to develop and use those resources in a safe, sound, and environmentally responsible manner.*

(2) *INCLUSIONS.*—*Research and development activities carried out under paragraph (1) may include activities to provide accurate estimates of energy and mineral reserves and potential on the outer Continental Shelf and any activities that may assist in filling gaps in environmental data needed to develop each leasing program under this section.*

(3) *LEASING ACTIVITIES.*—*Research and development activities carried out under paragraph (1) shall not be considered to be leasing or pre-leasing activities for purposes of this Act.*

\* \* \* \* \*

SEC. 20. ENVIRONMENTAL STUDIES.—(a) *Comprehensive and Independent Studies*—

(1) *IN GENERAL.*—*The Secretary shall develop and carry out programs for the collection, evaluation, assembly, analysis, and dissemination of environmental and other resource data that are relevant to carrying out the purposes of this Act.*

(2) *SCOPE OF RESEARCH.*—*The programs under this subsection shall include—*

(A) *the gathering of baseline data in areas before energy or mineral resource development activities occur;*

(B) *ecosystem research and monitoring studies to support integrated resource management decisions; and*

(C) *the improvement of scientific understanding of the fate, transport, and effects of discharges and spilled materials, including deep water hydrocarbon spills, in the marine environment.*

(3) *USE OF DATA.*—*The Secretary shall ensure that information from the studies carried out under this section—*

(A) *informs the management of energy and mineral resources on the outer Continental Shelf including any areas under consideration for oil and gas leasing; and*

(B) *contributes to a broader coordination of energy and mineral resource development activities within the context of best available science.*

(4) *INDEPENDENCE.*—*The Secretary shall create a program within the appropriate bureau established under section 32 that shall—*

(A) *be programmatically separate and distinct from the leasing program;*

(B) *carry out the environmental studies under this section;*

(C) *conduct additional environmental studies relevant to the sound management of energy and mineral resources on the outer Continental Shelf;*

*(D) provide for external scientific review of studies under this section, including through appropriate arrangements with the National Academy of Sciences; and*

*(E) subject to the restrictions of subsections (g) and (h) of section 18, make available to the public studies conducted and data gathered under this section.*

[(a)] (b)(1) The Secretary shall conduct *every 3 years* a study of any area or region included in any oil and gas lease sale or other lease in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas or other mineral development in such area or region.

(2) Each study required by paragraph (1) of this subsection shall be commenced not later than six months after the date of enactment of this section with respect to any area or region where a lease sale has been held or announced by publication of a notice of proposed lease sale before such date of enactment, and not later than six months prior to the holding of a lease sale with respect to any area or region where no lease sale has been held or scheduled before such date of enactment. In the case of an agreement under section 8(k)(2), each study required by paragraph (1) of this subsection shall be commenced not later than 6 months prior to commencing negotiations for such agreement or the entering into the memorandum of agreement as the case may be. The Secretary may utilize information collected in any study prior to such date of enactment.

(3) In addition to developing environmental information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota which may result from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

[(b)] (c) Subsequent to the leasing and developing of any area or region, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

[(c)] (d) The Secretary shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary may also utilize information obtained from any State or local government, or from any

person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

[(d)] (e) The Secretary shall consider available relevant environmental information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

[(e)] (f) As soon as practicable after the end of every 3 fiscal years, the Secretary shall submit to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this Act on the human, marine, and coastal environments.

[(f)] (g) In executing his responsibilities under this section, the Secretary shall, to the maximum extent practicable, enter into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements, the Secretary of Commerce is authorized to enter into contract or grants with any person, organization, or entity with funds appropriated to the Secretary of the Interior pursuant to this Act.

SEC. 21. SAFETY REGULATIONS.—(a) [Upon the date of enactment of this section,] *Not later than May 1, 2011, and every 3 years thereafter,* the Secretary and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and, as appropriate, with the heads of other Federal departments and agencies, promptly commence a joint study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of the minerals of the outer Continental Shelf. The results of such study shall be submitted to the President who shall submit a plan to the Congress of his proposals to promote safety and health in the exploration, development, and production of the minerals of the outer Continental Shelf.

[(b) In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 4(a)(1) of this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.]

(b) *BEST AVAILABLE TECHNOLOGIES AND PRACTICES.*—

(1) *IN GENERAL.*—*In exercising respective responsibilities under this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, to the maximum extent practicable, on existing operations, the use of the best available and safest technologies and practices, if the fail-*

ure of equipment would have a significant effect on safety, health, or the environment.

(2) *IDENTIFICATION OF BEST AVAILABLE TECHNOLOGIES.*—Not later than May 1, 2011, and not later than every 3 years thereafter, the Secretary shall identify and publish an updated list of best available technologies for key areas of well design and operation, including blowout prevention and blowout and oil spill response.

(3) *SAFETY CASE.*—Not later than May 1, 2011, the Secretary shall promulgate regulations requiring a safety case be submitted along with each new application for a permit to drill on the outer Continental Shelf.

(4) *EMPLOYEE TRAINING.*—

(A) *IN GENERAL.*—Not later than May 1, 2011, the Secretary shall promulgate regulations setting standards for training for all workers on offshore facilities (including mobile offshore drilling units) conducting energy and mineral resource exploration, development, and production operations on the outer Continental Shelf.

(B) *REQUIREMENTS.*—The training standards under this paragraph shall require that employers of workers described in subparagraph (A)—

(i) establish training programs approved by the Secretary; and

(ii) demonstrate that employees involved in the offshore operations meet standards that demonstrate the aptitude of the employees in critical technical skills.

(C) *EXPERIENCE.*—The training standards under this section shall require that any offshore worker with less than 5 years of applied experience in offshore facilities operations pass a certification requirement after receiving the appropriate training.

(D) *MONITORING TRAINING COURSES.*—The Secretary shall ensure that Department employees responsible for inspecting offshore facilities monitor, observe, and report on training courses established under this paragraph, including attending a representative number of the training sessions, as determined by the Secretary.

(c) The Secretary of the Department in which the Coast Guard is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the Outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary of the Department in which the Coast Guard is operating may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the Outer Continental Shelf.

\* \* \* \* \*

(f)(1) In administering the provisions of this section, the Secretary shall consult and coordinate with the heads of other appropriate Federal departments and agencies for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed.

(2) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are pre-

pared and promulgated by any Federal department or agency and applicable to activities on the Outer Continental Shelf. Such compilation shall be revised and updated annually.

(g) *TECHNOLOGY RESEARCH AND RISK ASSESSMENT PROGRAM.*—

(1) *IN GENERAL.*—*The Secretary shall carry out a program of research, development, and risk assessment to address technology and development issues associated with outer Continental Shelf energy and mineral resource activities, with the primary purpose of informing the role of research, development, and risk assessment relating to safety, environmental protection, and spill response.*

(2) *SPECIFIC AREAS OF FOCUS.*—*The program under this subsection shall include research, development, and other activities related to—*

(A) *risk assessment, using all available data from safety and compliance records both within the United States and internationally;*

(B) *analysis of industry trends in technology, investment, and interest in frontier areas;*

(C) *analysis of incidents investigated under section 22;*

(D) *reviews of best available technologies, including technologies associated with pipelines, blowout preventer mechanisms, casing, well design, and other associated infrastructure related to offshore energy development;*

(E) *oil spill response and mitigation;*

(F) *risks associated with human factors; and*

(G) *renewable energy operations.*

(3) *INFORMATION SHARING ACTIVITIES.*—

(A) *DOMESTIC ACTIVITIES.*—*The Secretary shall carry out programs to facilitate the exchange and dissemination of scientific and technical information and best practices related to the management of safety and environmental issues associated with energy and mineral resource exploration, development, and production.*

(B) *INTERNATIONAL COOPERATION.*—*The Secretary shall carry out programs to cooperate with international organizations and foreign governments to share information and best practices related to the management of safety and environmental issues associated with energy and mineral resource exploration, development, and production.*

(4) *REPORTS.*—*The program under this subsection shall provide to the Secretary, each Bureau Director under section 32, and the public quarterly reports that address—*

(A) *developments in each of the areas under paragraph (2); and*

(B)(i) *any accidents that have occurred in the past quarter; and*

(ii) *appropriate responses to the accidents.*

(5) *INDEPENDENCE.*—*The Secretary shall create a program within the appropriate bureau established under section 32 that shall—*

(A) *be programmatically separate and distinct from the leasing program;*



(B) carry out the studies, analyses, and other activities under this subsection;

(C) provide for external scientific review of studies under this section, including through appropriate arrangements with the National Academy of Sciences; and

(D) make available to the public studies conducted and data gathered under this section.

(6) *USE OF DATA.*—The Secretary shall ensure that the information from the studies and research carried out under this section inform the development of safety practices and regulations as required by this Act and other applicable laws.

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

\* \* \* \* \*

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

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

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

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

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

[(e) The] (e) *REVIEW OF ALLEGED SAFETY VIOLATIONS.*—

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

(2) *INVESTIGATION.*—The Secretary shall investigate any allegation from any employee of the lessee or any subcontractor of the lessee made under paragraph (1).

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

(g) *INDEPENDENT INVESTIGATION.*—

(1) *IN GENERAL.*—At the request of the Secretary, the National Transportation Safety Board may conduct an independent investigation of any accident, occurring in the outer Continental Shelf and involving activities under this Act, that does not otherwise fall within the definition of an accident or major marine casualty, as those terms are used in chapter 11 of title 49, United States Code.

(2) *TRANSPORTATION ACCIDENT.*—For purposes of an investigation under this subsection, the accident that is the subject of the request by the Secretary shall be determined to be a transportation accident within the meaning of that term in chapter 11 of title 49, United States Code.

(h) *INFORMATION ON CAUSES AND CORRECTIVE ACTIONS.*—

(1) *IN GENERAL.*—For each incident investigated under this section, the Secretary shall promptly make available to all lessees and the public technical information about the causes and corrective actions taken.

(2) *PUBLIC DATABASE.*—All data and reports related to an incident described in paragraph (1) shall be maintained in a database that is available to the public.

(i) *INSPECTION FEE.*—

(1) *IN GENERAL.*—To the extent necessary to fund the inspections described in this paragraph, the Secretary shall collect a non-refundable inspection fee, which shall be deposited in the Ocean Energy Enforcement Fund established under paragraph (3), from the designated operator for facilities subject to inspection under subsection (c).

(2) *ESTABLISHMENT.*—The Secretary shall establish, by rule, inspection fees—

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

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

(3) *OCEAN ENERGY ENFORCEMENT FUND.*—There is established in the Treasury a fund, to be known as the ‘Ocean Energy Enforcement Fund’ (referred to in this subsection as the ‘Fund’), into which shall be deposited amounts collected under paragraph (1) and which shall be available as provided under paragraph (4).

(4) *AVAILABILITY OF FEES.*—Notwithstanding section 3302 of title 31, United States Code, all amounts collected by the Secretary under this section—

(A) shall be credited as offsetting collections;

(B) shall be available for expenditure only for purposes of carrying out inspections of outer Continental Shelf facilities (including mobile offshore drilling units) and the administration of the inspection program;

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

(D) shall remain available until expended.

(5) *ANNUAL REPORTS.*—

(A) *IN GENERAL.*—Not later than 60 days after the end of each fiscal year beginning with fiscal year 2011, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report on the operation of the Fund during the fiscal year.

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

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

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

(iii) Recommendations for additional authorities to fulfill the purpose of the Fund.

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

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SEC. 24. REMEDIES AND PENALTIES.—(a) At the request of the Secretary, the Secretary of the Army, or the Secretary of the Department in which the Coast Guard is operating, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under this Act, or any term of a lease, license, or permit issued pursuant to this Act.

[(b)(1) Except as provided in paragraph (2), if any person fails to comply with any provision of this Act, or any term of a lease, or permit issued pursuant to this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$20,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an

opportunity for a hearing. The Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor.

[(2) If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.]

(b) *CIVIL PENALTY*—

(1) *IN GENERAL*.—*Subject to paragraphs (2) through (3), if any person fails to comply with this Act, any term of a lease or permit issued under this Act, or any regulation or order issued under this Act, the person shall be liable for a civil administrative penalty of not more than \$75,000 for each day of continuance of each failure.*

(2) *ADMINISTRATION*.—*The Secretary may assess, collect, and compromise any penalty under paragraph (1).*

(3) *HEARING*.—*No penalty shall be assessed under this subsection until the person charged with a violation has been given the opportunity for a hearing.*

(4) *ADJUSTMENT*.—*The penalty amount specified in this subsection shall increase each year to reflect any increases in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.*

(c) Any person who knowingly and willfully (1) violates any provision of this Act, any term of a lease, license, or permit issued pursuant to this Act, or any regulations or order issued under the authority of this Act designed to protect health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (4) reveals any data or information required to be kept confidential by this Act shall, upon conviction, be punished by a fine of not more than ~~[\$100,000]~~ \$10,000,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation. *The penalty amount specified in this subsection shall increase each year to reflect any increases in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.*

(d) Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully, or *with reckless disregard*, authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

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

SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a)(1) Prior to development and production pursuant to an oil and gas lease issued after the date of enactment of this section in any area of the outer Continental Shelf~~], other than the Gulf of Mexico,~~ or issued or maintained prior to such date of enactment in any area of the outer Continental Shelf, other than the Gulf of Mexico, with respect to which no oil or gas has been discovered in paying quantities prior to such date of enactment, the lessee shall submit a development and production plan (hereinafter in this section referred to as a “plan”) to the Secretary, for approval pursuant to this section.

\* \* \* \* \*

(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act in any region of the outer Continental Shelf~~], other than the Gulf of Mexico,~~ unless such lease requires that development and production activities be carried out in accordance with a plan which complies with the requirements of this section.

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(e)(1) At least once the Secretary shall declare the approval of a development and production plan in any area or region (as defined by the Secretary) of the outer Continental Shelf~~], other than the Gulf of Mexico,~~ to be a major Federal action.

(2) The Secretary may require lessees of tracts for which development and production plans have not been approved, to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

\* \* \* \* \*

**[SEC. 29. RESTRICTIONS ON EMPLOYMENT.—**No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act, and who was at any time during the twelve months preceding the termination of his employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS–16 of the General Schedule shall—

**[(1)** within two years after his employment with the Department has ceased—

**[(A)** knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

**[(B)** with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

**[(C)** knowingly aid or assist in representing any other person (except the United States) in any formal or informal appearance before,

any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, regulation, order, lease, permit, rulemaking, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee; or

(2) within one year after his employment with the Department has ceased—

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before; or

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to,

the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest.]

**SEC. 29. CONFLICTS OF INTEREST.**

(a) *RESTRICTIONS ON EMPLOYMENT.*—No full-time officer or employee of the department of the Interior who directly or indirectly discharged duties or responsibilities under this Act shall—

(1) within 2 years after his employment with the Department has ceased—

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

(C) knowingly aid, advise, or assist in—

(i) representing any other person (except the United States) in any formal or informal appearance before; or

(ii) making, with the intent to influence, any oral or written communication on behalf of any other person (except the United States) to,

any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, regulation, order lease, permit, rulemaking, inspection, enforcement action, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee;

(2) *within 1 year after his employment with the Department has ceased—*

(A) *knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;*

(B) *with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or*

(C) *knowingly aid, advise, or assist in—*

(i) *representing any other person (except the United States) in any formal or informal appearance before, or*

(ii) *making, with the intent to influence, any oral or written communication on behalf of any other person (except the United States) to,*

*the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, inspection, enforcement action, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest; or*

(3) *accept employment or compensation, during the 1-year period beginning on the date on which employment with the Department has ceased, from any person (other than the United States) that has a direct and substantial interest—*

(A) *that was pending under the official responsibility of the employee as an officer or employee of the Department during the 1-year period preceding the termination of the responsibility; or*

(B) *in which the employee participated personally and substantially as an officer or employee.*

(b) **PRIOR EMPLOYMENT RELATIONSHIPS.**—*No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act shall participate personally and substantially as a Federal officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, inspection, enforcement action, or other particular matter in which, to the knowledge of the officer or employee—*

(1) *the officer or employee or the spouse, minor child, or general partner of the officer or employee has a financial interest;*

(2) *any organization in which the officer or employee is serving as an officer, director, trustee, general partner, or employee has a financial interest;*

(3) *any person or organization with whom the officer or employee is negotiating or has any arrangement concerning prospective employment has a financial interest; or*

(4) *any person or organization in which the officer or employee has, within the preceding 1-year period, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee has a financial interest.*

(c) **GIFTS FROM OUTSIDE SOURCES.**—*No full-time officer or employee of the Department of the Interior who directly or indirectly*

discharged duties or responsibilities under this Act shall, directly or indirectly, solicit or accept any gift in violation of subpart B of part 2635 of title V, Code of Federal Regulations (or successor regulations).

(d) **EXEMPTIONS.**—The Secretary may, by rule, exempt from this section clerical and support personnel who do not conduct inspections, perform audits, or otherwise exercise regulatory or policy making authority under this Act.

(e) **PENALTIES.**—

(1) **CRIMINAL PENALTIES.**—Any person who violates paragraph (1) or (2) of subsection (a) or subsection (b) shall be punished in accordance with section 216 of title 18, United States Code.

(2) **CIVIL PENALTIES.**—Any person who violates subsection (a)(3) or (c) shall be punished in accordance with subsection (b) of section 216 of title 18, United States Code.

\* \* \* \* \*

**SEC. 31. COASTAL IMPACT ASSISTANCE PROGRAM.**

\* \* \* \* \*

**SEC. 32. STRUCTURAL REFORM OF OUTER CONTINENTAL SHELF PROGRAM MANAGEMENT.**

(a) **LEASING, PERMITTING, AND REGULATION BUREAUS.**—

(1) **ESTABLISHMENT OF BUREAUS.**—

(A) **IN GENERAL.**—Subject to the discretion granted by Reorganization Plan Number 3 of 1950 (64 Stat. 1262; 43 U.S.C. 1451 note), the Secretary shall establish in the Department of the Interior not more than 2 bureaus to carry out the leasing, permitting, and safety and environmental regulatory functions vested in the Secretary by this Act and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) related to the outer Continental Shelf.

(B) **CONFLICTS OF INTEREST.**—In establishing the bureaus under subparagraph (A), the Secretary shall ensure, to the maximum extent practicable, that any potential organizational conflicts of interest related to leasing, revenue creation, environmental protection, and safety are eliminated.

(2) **DIRECTOR.**—Each bureau shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(3) **COMPENSATION.**—Each Director shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(4) **QUALIFICATIONS.**—Each Director shall be a person who, by reason of professional background and demonstrated ability and experience, is specially qualified to carry out the duties of the office.

(b) **ROYALTY AND REVENUE OFFICE.**—

(1) **ESTABLISHMENT OF OFFICE.**—Subject to the discretion granted by Reorganization Plan Number 3 of 1950 (64 Stat. 1262; 43 U.S.C. 1451 note), the Secretary shall establish in the



*Department of the Interior an office to carry out the royalty and revenue management functions vested in the Secretary by this Act and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.).*

(2) *DIRECTOR.*—*The office established under paragraph (1) shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.*

(3) *COMPENSATION.*—*The Director shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.*

(4) *QUALIFICATIONS.*—*The Director shall be a person who, by reason of professional background and demonstrated ability and experience, is specially qualified to carry out the duties of the office.*

(c) *OCS SAFETY AND ENVIRONMENTAL ADVISORY BOARD.*—

(1) *ESTABLISHMENT.*—*The Secretary shall establish, under the Federal Advisory Committee Act (5 U.S.C. App.), an Outer Continental Shelf Safety and Environmental Advisory Board (referred to in this subsection as the ‘Board’), to provide the Secretary and the Directors of the bureaus established under this section with independent peer-reviewed scientific and technical advice on safe and environmentally compliant energy and mineral resource exploration, development, and production activities.*

(2) *MEMBERSHIP.*—

(A) *SIZE.*—

(i) *IN GENERAL.*—*The Board shall consist of not more than 12 members, chosen to reflect a range of expertise in scientific, engineering, management, and other disciplines related to safe and environmentally compliant energy and mineral resource exploration, development, and production activities.*

(ii) *CONSULTATION.*—*The Secretary shall consult with the National Academy of Sciences and the National Academy of Engineering to identify potential candidates for membership on the Board.*

(B) *TERM.*—*The Secretary shall appoint Board members to staggered terms of not more than 4 years, and shall not appoint a member for more than 2 consecutive terms.*

(C) *CHAIR.*—*The Secretary shall appoint the Chair for the Board.*

(3) *MEETINGS.*—*The Board shall—*

(A) *meet not less than 3 times per year; and*

(B) *at least once per year, shall host a public forum to review and assess the overall safety and environmental performance of outer Continental Shelf energy and mineral resource activities.*

(4) *REPORTS.*—*Reports of the Board shall—*

(A) *be submitted to Congress; and*

(B) *made available to the public in an electronically accessible form.*

(5) *TRAVEL EXPENSES.*—*Members of the Board, other than full-time employees of the Federal Government, while attending a meeting of the Board or while otherwise serving at the request*

*of the Secretary or the Director while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Federal Government serving without pay.*

*(d) SPECIAL PERSONNEL AUTHORITIES.—*

*(1) DIRECT HIRING AUTHORITY FOR CRITICAL PERSONNEL.—*

*(A) IN GENERAL.—Notwithstanding sections 3104, 3304, and 3309 through 3318 of title 5, United States Code, the Secretary may, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, recruit and directly appoint highly qualified accountants, scientists, engineers, or critical technical personnel into the competitive service, as officers or employees of any of the organizational units established under this section.*

*(B) REQUIREMENTS.—In exercising the authority granted under subparagraph (A), the Secretary shall ensure that any action taken by the Secretary—*

*(i) is consistent with the merit principles of chapter 23 of title 5, United States Code; and*

*(ii) complies with the public notice requirements of section 3327 of title 5, United States Code.*

*(2) CRITICAL PAY AUTHORITY.—*

*(A) IN GENERAL.—Notwithstanding section 5377 of title 5, United States Code, and without regard to the provisions of that title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 of that title (relating to classification and pay rates), the Secretary may establish, fix the compensation of, and appoint individuals to critical positions needed to carry out the functions of any of the organizational units established under this section, if the Secretary certifies that—*

*(i) the positions—*

*(I) require expertise of an extremely high level in a scientific or technical field; and*

*(II) any of the organizational units established in this section would not successfully accomplish an important mission without such an individual; and*

*(ii) exercise of the authority is necessary to recruit an individual exceptionally well qualified for the position.*

*(B) LIMITATIONS.—The authority granted under subparagraph (A) shall be subject to the following conditions:*

*(i) The number of critical positions authorized by subparagraph (A) may not exceed 40 at any 1 time in either of the bureaus established under this section.*

*(ii) The term of an appointment under subparagraph (A) may not exceed 4 years.*

*(iii) An individual appointed under subparagraph (A) may not have been an employee of the Department of the Interior during the 2-year period prior to the date of appointment.*

(iv) Total annual compensation for any individual appointed under subparagraph (A) may not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3, United States Code.

(v) An individual appointed under subparagraph (A) may not be considered to be an employee for purposes of subchapter II of chapter 75 of title 5, United States Code.

(C) NOTIFICATION.—Each year, the Secretary shall submit to Congress a notification that lists each individual appointed under this paragraph.

(3) REEMPLOYMENT OF CIVILIAN RETIREES.—

(A) IN GENERAL.—Notwithstanding part 553 of title 5, Code of Federal Regulations (relating to reemployment of civilian retirees to meet exceptional employment needs), or successor regulations, the Secretary may approve the reemployment of an individual to a particular position without reduction or termination of annuity if the hiring of the individual is necessary to carry out a critical function of any of the organizational units established under this section for which suitably qualified candidates do not exist.

(B) LIMITATIONS.—An annuitant hired with full salary and annuities under the authority granted by subparagraph (A)—

(i) shall not be considered an employee for purposes of subchapter III of chapter 83 and chapter 84 of title 5, United States Code;

(ii) may not elect to have retirement contributions withheld from the pay of the annuitant;

(iii) may not use any employment under this paragraph as a basis for a supplemental or recomputed annuity; and (iv) may not participate in the Thrift Savings Plan under subchapter III of chapter 84 of title 5, United States Code.

(C) LIMITATION ON TERM.—The term of employment of any individual hired under subparagraph (A) may not exceed an initial term of 2 years, with an additional 2-year appointment under exceptional circumstances.

(e) CONTINUITY OF AUTHORITY.—Subject to the discretion granted by Reorganization Plan Number 3 of 1950 (64 Stat. 1262; 43 U.S.C. 1451 note), any reference in any law, rule, regulation, directive, or instruction, or certificate or other official document, in force immediately prior to the date of enactment of this section—

(1) to the Minerals Management Service that pertains to any of the duties and authorities described in this section shall be deemed to refer and apply to the appropriate bureaus and offices established under this section;

(2) to the Director of the Minerals Management Service that pertains to any of the duties and authorities described in this section shall be deemed to refer and apply to the Director of the bureau or office under this section to whom the Secretary has assigned the respective duty or authority; and

(3) to any other position in the Minerals Management Service that pertains to any of the duties and authorities described in this section shall be deemed to refer and apply to that same or equivalent position in the appropriate bureau or office established under this section.

**UNITED STATES CODE**

**TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**Subpart D—Pay and Allowances**

\* \* \* \* \*

**CHAPTER 53—PAY RATES AND SYSTEMS**

\* \* \* \* \*

**Subchapter II—Executive Schedule Pay Rates**

\* \* \* \* \*

**§ 5316. Positions at level V**

Level V of the Executive Schedule applies to the following positions, for which the Annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

\* \* \* \* \*

**[Director, Bureau of Mines, Department of the Interior.]**  
*Bureau Directors, Department of the Interior (2).*  
*Director, Royalty and Revenue Office, Department of the Interior.*

\* \* \* \* \*

**ENERGY POLICY ACT OF 2005**

**PUBLIC LAW 109–58, AS AMENDED**

AN ACT To ensure jobs for our future with secure, affordable, and reliable energy.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Energy Policy Act of 2005”.

\* \* \* \* \*

**TITLE III—OIL AND GAS**

\* \* \* \* \*

**Subtitle G—Miscellaneous**

\* \* \* \* \*

**SEC. 388. ALTERNATE ENERGY-RELATED USES ON THE OUTER CONTINENTAL SHELF.**

\* \* \* \* \*

(b) COORDINATED OCS MAPPING INITIATIVE.—

(1) IN GENERAL.—The Secretary of the Interior, in cooperation with the Secretary of Commerce, the Commandant of the Coast Guard, and the Secretary of Defense, shall establish an interagency comprehensive digital mapping initiative for the outer Continental Shelf to assist in decisionmaking relating to the siting of activities under subsection (p) of section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) (as added by subsection (a)).

\* \* \* \* \*

(4) FEDERAL AGENCIES.—Any head of a Federal department or agency shall, on request of the Secretary, provide to the Secretary all data and information that the Secretary determines to be necessary for the purpose of including the data and information in the mapping initiative, except that no Federal department or agency shall be required to provide any data or information that is privileged or proprietary.

\* \* \* \* \*

**TITLE IX—RESEARCH AND DEVELOPMENT**

\* \* \* \* \*

**Subtitle J—[Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources] *Safer Oil and Gas Production and Accident Prevention***

\* \* \* \* \*

**SEC. 999A. PROGRAM AUTHORITY.**

(a) IN GENERAL.—The Secretary shall carry out a program under this subtitle of research, development, demonstration, and commercial application of technologies for [ultra-deepwater] deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology challenges for small producers, safe operations, well control and accident prevention, and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon).

(b) PROGRAM ELEMENTS.—The program under this subtitle shall address the following areas, including improving safety and minimizing environmental impacts of activities within each area:

[(1) Ultra-deepwater architecture and technology, including drilling to formations in the Outer Continental Shelf to depths greater than 15,000 feet.]

(1) *Deepwater architecture, well control and accident prevention, and deepwater technology, including drilling to deep formations in waters greater than 500 feet.*

(2) Unconventional natural gas and other petroleum resource exploration and production technology.

(3) The technology challenges of small producers.

[(4) Complementary research performed by the National Energy Technology Laboratory for the Department.]

(4) *Safety technology research and development for drilling activities aimed at well control and accident prevention performed by the Office of Fossil Energy of the Department.*

(c) LIMITATION ON LOCATION OF FIELD ACTIVITIES.—Field activities under the program under this subtitle shall be carried out only—

(1) in—

(A) areas in the territorial waters of the United States not under any Outer Continental Shelf moratorium as of September 30, 2002;

(B) areas onshore in the United States on public land administered by the Secretary of the Interior available for oil and gas leasing, where consistent with applicable law and land use plans; and

(C) areas onshore in the United States on State or private land, subject to applicable law; and

(2) with the approval of the appropriate Federal or State land management agency or private land owner.

(d) ACTIVITIES AT THE [NATIONAL ENERGY TECHNOLOGY LABORATORY] OFFICE OF FOSSIL ENERGY OF THE DEPARTMENT.—The Secretary, through the [National Energy Technology Laboratory] Office of Fossil Energy of the Department, shall carry out a program of research and other activities complementary to and supportive of the research programs under subsection (b).

(e) CONSULTATION WITH SECRETARY OF THE INTERIOR.—In carrying out this subtitle, the Secretary shall consult regularly with the Secretary of the Interior.

**SEC. 999B. [ULTRA-DEEPWATER AND UNCONVENTIONAL ONSHORE NATURAL GAS AND OTHER PETROLEUM] SAFE OIL AND GAS PRODUCTION AND ACCIDENT PREVENTION RESEARCH AND DEVELOPMENT PROGRAM.**

(a) IN GENERAL.—The Secretary shall carry out the activities under section 999A, to maximize the value of natural gas and other petroleum resources of the United States[, by increasing the supply of such resources, through reducing the cost and increasing the efficiency of exploration for and production of such resources, while improving safety and minimizing environmental impacts.] *and the safe and environmentally responsible exploration, development, and production of hydrocarbon resources.*

(b) ROLE OF THE SECRETARY.—The Secretary shall have ultimate responsibility for, and oversight of, all aspects of the program under this section.

(c) ROLE OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall contract with a corporation that is structured as a consortium to administer the

programmatic activities outlined in this chapter. The program consortium shall—

(A) administer the program pursuant to subsection (f)(3), utilizing program administration funds only;

(B) issue research project solicitations upon approval of the Secretary or the Secretary's designee;

(C) make project awards to research performers upon approval of the Secretary or the Secretary's designee;

(D) *projects will be selected on a competitive, peer-reviewed basis;*

[(D)] (E) disburse research funds to research performers awarded under subsection (f) as directed by the Secretary in accordance with the annual plan under subsection (e); and

[(E)] (F) carry out other activities assigned to the program consortium by this section.

(2) LIMITATION.—The Secretary may not assign any activities to the program consortium except as specifically authorized under this section.

\* \* \* \* \*

(d) SELECTION OF THE PROGRAM CONSORTIUM.—

(1) IN GENERAL.—The Secretary shall select the program consortium through an open, competitive process.

\* \* \* \* \*

(6) ELIGIBILITY.—To be eligible to be selected as the program consortium, an applicant must be an entity whose members have collectively demonstrated capabilities and experience in planning and managing research, development, demonstration, and commercial application programs for [ultra-deepwater] *deepwater* and unconventional natural gas or other petroleum exploration or production.

(7) FOCUS AREAS FOR AWARDS.—

(A) [ULTRA-DEEPWATER] *DEEPWATER RESOURCES*.—Awards from allocations under section 999H(d)(1) shall focus on the [development and] *research, development, and demonstration* of individual exploration and production technologies [as well as integrated systems technologies including new architectures for production in ultra-deepwater.] *aimed at improving operational safety of drilling activities, including well integrity systems, well control, blowout prevention, the use of non-toxic materials, and integrated systems approach-based management for exploration and production in deepwater.*

(B) UNCONVENTIONAL RESOURCES.—Awards from allocations under section 999H(d)(2) shall focus on areas including advanced coalbed methane, deep drilling, natural gas production from tight sands, natural gas production from gas shales, stranded gas, innovative exploration and production techniques, enhanced recovery techniques, [and environmental mitigation] *use of non-toxic materials, drilling safety, and environmental mitigation and accident prevention* of unconventional natural gas and other petroleum resources exploration and production.

(C) **SMALL PRODUCERS.**—Awards from allocations under section 999H(d)(3) shall be made to consortia consisting of small producers or organized primarily for the benefit of small producers, and shall focus on areas including *safety and accident prevention, well control and systems integrity*, complex geology involving rapid changes in the type and quality of the oil and gas reservoirs across the reservoir; low reservoir pressure; unconventional natural gas reservoirs in coalbeds, deep reservoirs, tight sands, or shales; and unconventional oil reservoirs in tar sands and oil shales.

(D) **SAFETY AND ACCIDENT PREVENTION TECHNOLOGY RESEARCH AND DEVELOPMENT.**—Awards from allocations under section 999H(d)(4) shall be expended on areas including—

(i) *development of improved cementing and casing technologies;*

(ii) *best management practices for cementing, casing, and other well control activities and technologies;*

(iii) *development of integrity and stewardship guidelines for—*

(I) *well-plugging and abandonment;*

(II) *development of wellbore sealant technologies;*  
and

(III) *improvement and standardization of blow-out prevention devices.*

(8) **STUDY; REPORT.**—

(A) **STUDY.**—As soon as practicable after the date of enactment of this paragraph, the Secretary shall enter into an arrangement with the National Academy of Sciences under which the Academy shall conduct a study to determine—

(i) *whether the benefits provided through each award under this subsection during calendar year 2011 have been maximized; and*

(ii) *the new areas of research that could be carried out to meet the overall objectives of the program.*

(B) **REPORT.**—Not later than January 1, 2012, the Secretary shall submit to the appropriate committees of Congress a report that contains a description of the results of the study conducted under subparagraph (A).

(C) **OPTIONAL UPDATES.**—The Secretary may update the report described in subparagraph (B) for the 5-year period beginning on the date described in that subparagraph and each 5-year period thereafter.

(e) **ANNUAL PLAN.**—

(1) **IN GENERAL.**—The program under this section shall be carried out pursuant to an annual plan prepared by the Secretary in accordance with paragraph (2).

(2) **DEVELOPMENT.**—

(A) **SOLICITATION OF RECOMMENDATIONS.**—Before drafting an annual plan under this subsection, the Secretary shall solicit specific written recommendations from the program consortium for each element to be addressed in the plan, including those described in paragraph (4). The



program consortium shall submit *to the Secretary for review* its recommendations in the form of a draft annual plan.

(B) SUBMISSION OF RECOMMENDATIONS; OTHER COMMENT.—The Secretary shall submit the recommendations of the program consortium under subparagraph (A) to the **【Ultra-Deepwater Advisory Committee established under section 999D(a) and to the Unconventional Resources Technology Advisory Committee established under section 999D(b), and such Advisory Committees】** *Program Advisory Committee established under section 999D(a), and the Advisory Committee* shall provide to the Secretary written comments by a date determined by the Secretary. The Secretary may also solicit comments from any other experts.

(C) CONSULTATION.—The Secretary shall consult regularly with the program consortium throughout the preparation of the annual plan.

(3) PUBLICATION.—The Secretary shall transmit to Congress and publish in the Federal Register the annual plan, along with any written comments received under paragraph (2)(A) and (B).

(4) CONTENTS.—The annual plan shall describe the ongoing and prospective activities of the program under this section and shall include—

(A) a list of any solicitations for awards to carry out research, development, demonstration, or commercial application activities, including the topics for such work, who would be eligible to apply, selection criteria, and the duration of awards; and

(B) a description of the activities expected of the program consortium to carry out subsection (f)(3).

(5) ESTIMATES OF INCREASED ROYALTY RECEIPTS.—The Secretary, in consultation with the Secretary of the Interior, shall provide an annual report to Congress with the President's budget on the estimated cumulative increase in Federal royalty receipts (if any) resulting from the implementation of this subtitle. The initial report under this paragraph shall be submitted in the first President's budget following the completion of the first annual plan required under this subsection.

(6) *RESEARCH FINDINGS AND RECOMMENDATIONS FOR IMPLEMENTATION.*—*The Secretary, in consultation with the Secretary of the Interior and the Administrator of the Environmental Protection Agency, shall publish in the Federal Register an annual report on the research findings of the program carried out under this section and any recommendations for implementation that the Secretary, in consultation with the Secretary of the Interior and the Administrator of the Environmental Protection Agency, determines to be necessary.*

\* \* \* \* \*

(i) ACTIVITIES BY THE **【UNITED STATES GEOLOGICAL SURVEY】** *DEPARTMENT OF THE INTERIOR.*—The Secretary of the Interior**【,** through the United States Geological Survey,**】** shall, where appropriate, carry out programs of long-term research to complement the programs under this section.

(j) PROGRAM REVIEW AND OVERSIGHT.—The [National Energy Technology Laboratory] *Office of Fossil Energy of the Department*, on behalf of the Secretary, shall (1) issue a competitive solicitation for the program consortium, (2) evaluate, select, and award a contract or other agreement to a qualified program consortium, and (3) have primary review and oversight responsibility for the program consortium, including review and approval of research awards proposed to be made by the program consortium, to ensure that its activities are consistent with the purposes and requirements described in this subtitle. Up to 5 percent of program funds allocated under paragraphs (1) through (3) of section 999H(d) may be used for this purpose, including program direction and the establishment of a site office if determined to be necessary to carry out the purposes of this subsection.

**SEC. 999C. ADDITIONAL REQUIREMENTS FOR AWARDS.**

(a) DEMONSTRATION PROJECTS.—An application for an award under this subtitle for a demonstration project shall describe with specificity the intended commercial use of the technology to be demonstrated.

(b) FLEXIBILITY IN LOCATING DEMONSTRATION PROJECTS.—Subject to the limitation in section 999A(c), a demonstration project under this subtitle relating to [an ultra-deepwater technology or an ultra-deepwater architecture] *a deepwater technology* may be conducted in deepwater depths.

\* \* \* \* \*

**[SEC. 999D. ADVISORY COMMITTEES.**

**[(a) ULTRA-DEEPWATER ADVISORY COMMITTEE.—**

**[(1) ESTABLISHMENT.—**Not later than 270 days after the date of enactment of this Act, the Secretary shall establish an advisory committee to be known as the Ultra-Deepwater Advisory Committee.

**[(2) MEMBERSHIP.—**The Advisory Committee under this subsection shall be composed of members appointed by the Secretary, including—

**[(A)** individuals with extensive research experience or operational knowledge of offshore natural gas and other petroleum exploration and production;

**[(B)** individuals broadly representative of the affected interests in ultra-deepwater natural gas and other petroleum production, including interests in environmental protection and safe operations;

**[(C)** no individuals who are Federal employees; and

**[(D)** no individuals who are board members, officers, or employees of the program consortium.

**[(3) DUTIES.—**The Advisory Committee under this subsection shall—

**[(A)** advise the Secretary on the development and implementation of programs under this subtitle related to ultra-deepwater natural gas and other petroleum resources; and

**[(B)** carry out section 999B(e)(2)(B).

**[(4) COMPENSTATION.—**A member of the Advisory Committee under this subsection shall serve without compensation but shall receive travel expenses in accordance with applicable pro-

visions under subchapter I of chapter 57 of title 5, United States Code.

**[(b) UNCONVENTIONAL RESOURCES TECHNOLOGY ADVISORY COMMITTEE.—**

**[(1) ESTABLISHMENT.—**Not later than 270 days after the date of enactment of this Act, the Secretary shall establish an advisory committee to be known as the Unconventional Resources Technology Advisory Committee.

**[(2) MEMBERSHIP.—**The Secretary shall endeavor to have a balanced representation of members on the Advisory Committee to reflect the breadth of geographic areas of potential gas supply. The Advisory Committee under this subsection shall be composed of members appointed by the Secretary, including—

**[(A)** a majority of members who are employees or representatives of independent producers of natural gas and other petroleum, including small producers;

**[(B)** individuals with extensive research experience or operational knowledge of unconventional natural gas and other petroleum resource exploration and production;

**[(C)** individuals broadly representative of the affected interests in unconventional natural gas and other petroleum resource exploration and production, including interests in environmental protection and safe operations;

**[(D)** individuals with expertise in the various geographic areas of potential supply of unconventional onshore natural gas and other petroleum in the United States;

**[(E)** no individuals who are Federal employees; and

**[(F)** no individuals who are board members, officers, or employees of the program consortium.

**[(3) DUTIES.—**The Advisory Committee under this subsection shall—

**[(A)** advise the Secretary on the development and implementation of activities under this subtitle related to unconventional natural gas and other petroleum resources; and

**[(B)** carry out section 999B(e)(2)(B).

**[(4) COMPENSTATION.—**A member of the Advisory Committee under this subsection shall serve without compensation but shall receive travel expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

**[(c) PROHIBITION.—**No advisory committee established under this section shall make recommendations on funding awards to particular consortia or other entities, or for specific projects.】

**SEC. 999D. PROGRAM ADVISORY COMMITTEE.**

*(a) ESTABLISHMENT.—Not later than 270 days after the date of enactment of the Safe and Responsible Energy Production Improvement Act of 2010, the Secretary shall establish an advisory committee to be known as the Program Advisory Committee’ (referred to in this section as the Advisory Committee’).*

*(b) MEMBERSHIP.—*

*(1) IN GENERAL.—The Advisory Committee shall be composed of members appointed by the Secretary, including—*

(A) individuals with extensive research experience or operational knowledge of hydrocarbon exploration and production;

(B) individuals broadly representative of the affected interests in hydrocarbon production, including interests in environmental protection and safety operations;

(C) representatives of Federal agencies, including the Environmental Protection Agency and the Department of the Interior;

(D) State regulatory agency representatives; and

(E) other individuals, as determined by the Secretary.

(2) LIMITATIONS.—

(A) IN GENERAL.—The Advisory Committee shall not include individuals who are board members, officers, or employees of the program consortium.

(B) CATEGORICAL REPRESENTATION.—In appointing members of the Advisory Committee, the Secretary shall ensure that no class of individuals described in any of subparagraphs (A), (B), (D), or (E) of paragraph (1) comprises more than 13 of the membership of the Advisory Committee.

(c) SUBCOMMITTEES.—The Advisory Committee may establish subcommittees for separate research programs carried out under this subtitle.

(d) DUTIES.—The Advisory Committee shall—

(1) advise the Secretary on the development and implementation of programs under this subtitle; and

(2) carry out section 999B(e)(2)(B).

(e) COMPENSATION.—A member of the Advisory Committee shall serve without compensation but shall be entitled to receive travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(f) PROHIBITION.—The Advisory Committee shall not make recommendations on funding awards to particular consortia or other entities, or for specific projects.

\* \* \* \* \*

**SEC. 999G. DEFINITIONS.**

In this subtitle:

(1) DEEPWATER.—The term “deepwater” means a water depth that is greater than [200 but less than 1,500 meters] 500 feet.

(2) DEEPWATER ARCHITECTURE.—The term “deepwater architecture” means the integration of technologies for the exploration for, or production of, natural gas or other petroleum resources located at deepwater depths.

(3) DEEPWATER TECHNOLOGY.—The term “deepwater technology” means a discrete technology that is specially suited to address 1 or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at deepwater depths.

[(2)] (4) INDEPENDENT PRODUCER OF OIL OR GAS.—

(A) IN GENERAL.—The term “independent producer of oil or gas” means any person that produces oil or gas other than a person to whom subsection (c) of section 613A of

the Internal Revenue Code of 1986 does not apply by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d) of such Code.

(B) RULES FOR APPLYING PARAGRAPHS (2) AND (4) OF SECTION 613A(d).—For purposes of subparagraph (A), paragraphs (2) and (4) of section 613A(d) of the Internal Revenue Code of 1986 shall be applied by substituting “calendar year” for “taxable year” each place it appears in such paragraphs.

[(3)] (5) PROGRAM ADMINISTRATION FUNDS.—The term “program administration funds” means funds used by the program consortium to administer the program under this subtitle, but not to exceed 10 percent of the total funds allocated under paragraphs (1) through (3) of section 999H(d).

[(4)] (6) PROGRAM CONSORTIUM.—The term “program consortium” means the consortium selected under section 999B(d).

[(5)] (7) PROGRAM RESEARCH FUNDS.—The term “program research funds” means funds awarded to research performers by the program consortium consistent with the annual plan.

[(6)] (8) REMOTE OR INCONSEQUENTIAL.—The term “remote or inconsequential” has the meaning given that term in regulations issued by the Office of Government Ethics under section 208(b)(2) of title 18, United States Code.

[(7)] (9) SMALL PRODUCER.—The term “small producer” means an entity organized under the laws of the United States with production levels of less than 1,000 barrels per day of oil equivalent.

[(8)] (8) ULTRA-DEEPWATER.—The term “ultra-deepwater” means a water depth that is equal to or greater than 1,500 meters.

[(9)] (9) ULTRA-DEEPWATER ARCHITECTURE.—The term “ultra-deepwater architecture” means the integration of technologies for the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.

[(10)] (10) ULTRA-DEEPWATER TECHNOLOGY.—The term “ultra-deepwater technology” means a discrete technology that is specially suited to address one or more challenges associated with the exploration for, or production of, natural gas or other petroleum resources located at ultra-deepwater depths.]

[(11)] (10) UNCONVENTIONAL NATURAL GAS AND OTHER PETROLEUM RESOURCE.—The term “unconventional natural gas and other petroleum resource” means natural gas and other petroleum resource located onshore [in an economically inaccessible geological formation, including resources of small producers].

**SEC. 999H. [42 U.S.C. 16378] FUNDING.**

(a) OIL AND GAS LEASE INCOME.—For each of fiscal years 2007 through 2017, from any Federal royalties, rents, and bonuses derived from Federal onshore and offshore oil and gas leases issued under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and the Mineral Leasing Act (30 U.S.C. 181 et seq.) which are deposited in the Treasury, and after distribution of any such funds as described in subsection (c), \$50,000,000 shall be deposited into the [Ultra-Deepwater and Unconventional Natural Gas and Other

Petroleum Research Fund] *Safe and Responsible Energy Production Research Fund* (in this section referred to as the “Fund”). For purposes of this section, the term “royalties” excludes proceeds from the sale of royalty production taken in kind and royalty production that is transferred under section 27(a)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1353(a)(3)).

\* \* \* \* \*

(d) ALLOCATION.—Amounts obligated from the Fund under subsection (a)(1) in each fiscal year shall be allocated as follows:

(1) **[35 percent]** *21.5 percent* shall be for activities under section 999A(b)(1).

(2) **[32.5 percent]** *21 percent* shall be for activities under section 999A(b)(2).

(3) *7.5 percent* shall be for activities under section 999A(b)(3).

(4) **[25 percent]** *30 percent* shall be for **[complementary research]** *safety technology research and development* under section 999A(b)(4) and other activities under section 999A(b) to include program direction funds, overall program oversight, **[contract management, and the establishment and operation of a technical committee to ensure that in-house research activities funded under section 999A(b)(4) are technically complementary to, and not duplicative of, research conducted under paragraphs (1), (2), and (3) of section 999A(b).]** *and contract management.*

(5) *20 percent shall be used for research activities required under sections 20 and 21 of the Outer Continental Shelf Lands Act (43 U.S.C. 1346, 1347).*

(e) AUTHORIZATION OF APPROPRIATIONS.—In addition to other amounts that are made available to carry out this section, there is authorized to be appropriated to carry out this section \$100,000,000 for each of fiscal years 2007 through 2016.

(f) FUND.—There is hereby established in the Treasury of the United States a separate fund to be known as the **[“Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund”]** *“Safer Oil and Gas Production and Accident Prevention Research Fund”*.