

## BRIEFING ON MARINE SPATIAL PLANNING

The Interagency Ocean Policy Task Force (OPTF), chaired by the White House Council on Environmental Quality (CEQ) and composed of senior policy-level officials across Federal government agencies, issued an interim report September 10, 2009. The interim report articulated a draft national policy and implementation strategy for a regional public process to regulate marine spatial planning. The Pacific Council, and other Regional Fishery Management Councils, provided verbal input during public hearings and conference calls during the subsequent open comment period. On July 19, 2010, The CEQ issued a Final Recommendations report of the OPTF. A cornerstone component to the Final Recommendations report is the Framework for Effective Coastal and Marine Spatial Planning (Agenda Item G.1.a, Attachment 1). The West Coast is one of twelve regions where an authoritative body would be established.

Also on July 19, 2010, President Obama signed Executive Order 13547, establishing a National Policy for the Stewardship of the Ocean, Coasts, and Great Lakes (Agenda Item G.1.a, Attachment 2). That Executive Order adopts the final recommendations of the OPTF and directs Federal agencies to take the appropriate steps to implement them.

Mr. Sam Rauch, Deputy Assistant Administrator for Regulatory Programs for the National Marine Fisheries Service, will provide an update and briefing on marine spatial planning from the national and federal perspective. Ms. Jessica Keys, Office of Oregon Governor Kulongoski, will provide an update and briefing on marine spatial planning from a regional perspective in relation to the West Coast Governors Agreement on Ocean Health and other State actions.

Related to this agenda item is House Bill HR 3534, the Consolidated Land, Energy, and Aquatic Resources Act, which contains sections on regional coordination and strategic planning in a context of and marine spatial planning. Agenda Item G.1.a Attachment 3 contains Title IV: Coordination and Planning (excerpt from House Bill 3534).

### Reference Materials:

- a. Agenda Item G.1.a, Attachment 1: Framework for Effective Coastal and Marine Spatial Planning (Part Four of the Final Recommendations of the Interagency Ocean Policy Task Force).
- b. Agenda Item G.1.a, Attachment 2: Executive Order 13547.
- c. Agenda Item G.1.a; Attachment 3: Title IV: Coordination and Planning (excerpt from House Bill 3534).

### Agenda Order:

- a. Agenda Item Overview
- b. Marine Spatial Planning from the national perspective
- c. Marine Spatial Planning on the West Coast
- d. Reports and Comments of Advisory Bodies and Management Entities
- e. Public Comment
- f. Council Discussion

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## PART FOUR. THE FRAMEWORK FOR EFFECTIVE COASTAL AND MARINE SPATIAL PLANNING

### I. Introduction

Coastal and marine spatial planning is one of the nine priority objectives in the recommendations. This framework for CMSP in the United States provides a definition of CMSP, identifies the reasons for engaging in CMSP, and describes its geographic scope. It articulates national CMSP goals and guiding principles that would be adhered to in CMSP efforts and the eventual development and implementation of coastal and marine spatial plans. In addition, this framework describes how CMSP and CMS Plans would be regional in scope and developed cooperatively among Federal, State, tribal, local authorities, and regional governance structures, with substantial stakeholder and public input.

### II. What is Coastal and Marine Spatial Planning?

CMSP is a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas. CMSP identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental,



security, and social objectives. In practical terms, CMSP provides a public policy process for society to better determine how the ocean, coasts, and Great Lakes are sustainably used and protected - now and for future generations.

### III. Why Coastal and Marine Spatial Planning?

The Nation's interests in the ocean, our coasts, and the Great Lakes support a growing number of significant and often competing uses and activities, including commercial, recreational, cultural, energy, scientific, conservation, and homeland and national security activities. Combined, these activities profoundly influence and benefit coastal, regional, and national economies and cultures. However, human uses of our ocean, coasts, and the Great Lakes are expanding at a rate that challenges our ability to plan and manage them under the current sector-by-sector approach. While many existing permitting processes include aspects of cross-sectoral planning (through, for example, the process governed by the National Environmental Policy Act), most focus solely on a limited range of management tools and outcomes (e.g., oil and gas leases, fishery management plans, and marine protected areas). Missing from this picture is a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to planning and managing these uses and activities. This new approach would be national in scope to address national interests, but also scalable and specific to regional and local needs. Without such an improved approach, we risk an increase in user conflicts, continued planning and regulatory inefficiencies with their associated costs and delays, and the potential loss of critical economic, ecosystem, social, and cultural services for present and future generations.

Recent scientific and ocean policy assessments have demonstrated that a fundamental change in our current management system is required to achieve the long-term health of our ocean, coasts, and Great Lakes in order to sustain the services and benefits they provide to society. The present way we

#### **Traditional, New, and Expanding Ocean, Coastal, And Great Lakes Uses**

*The ocean, our coasts, and the Great Lakes are home to and support myriad important human uses. CMSP provides an effective process to better manage a range of social, economic, and cultural uses, including:*

- Aquaculture (fish, shellfish, and seaweed farming)
- Commerce and Transportation (e.g., cargo and cruise ships, tankers, and ferries)
- Commercial Fishing
- Environmental/Conservation (e.g., marine sanctuaries, reserves, national parks, and wildlife refuges)
- Maritime Heritage and Archeology
- Mining (e.g., sand and gravel)
- Oil and Gas Exploration and Development
- Ports and Harbors
- Recreational Fishing
- Renewable Energy (e.g., wind, wave, tidal, current, and thermal)
- Other Recreation (e.g., boating, beach access, swimming, surfing, nature and whale watching, and diving)
- Scientific Research and Exploration
- Security, Emergency Response, and Military Readiness Activities
- Subsistence Uses
- Tourism
- Traditional Hunting, Fishing, and Gathering
- Working Waterfronts

manage these areas cannot properly account for cumulative effects, sustaining multiple ecosystem services, and holistically and explicitly evaluating the tradeoffs associated with proposed alternative human uses.

Scientific understanding and information are central to achieving an integrated and transparent planning process. Natural and social sciences can inform decisions about how to achieve societal objectives from the Nation's ocean, coastal, and Great Lakes waters, both now and into the future, while maintaining ecosystem integrity. Built on this foundation of sound science, this new system for planning should facilitate maintenance of essential ecosystem services, encourage compatible uses, minimize conflicts, evaluate tradeoffs in an open and transparent manner, and include significant and meaningful stakeholder involvement.

### *The Benefits of CMSP*

As recommended in this framework, CMSP is intended to yield substantial economic, ecological, and social benefits. To do so, it must fully incorporate the principles of sound science for ecosystem-based and adaptive management, be transparent, and be informed by stakeholders and the public. Many have raised concerns regarding whether CMSP would result in additional layers of regulatory review or delays in decision-making. To the contrary, CMSP is intended to build upon and significantly improve existing Federal, State, tribal, local, and regional decision-making and planning processes. Thus, while the development of CMSP would require significant initial investments of both human and financial resources, these investments are expected to result in substantial benefits. Several States, regions, and other nations have already recognized the many advantages of marine spatial planning, undertaken the planning process, and are eager to take positive steps to realize those advantages.

### **CMSP can facilitate sustainable economic growth. For instance:**

#### ***In the Netherlands-***

A “preferred sand mining area” has been identified within its territorial sea. This use allocation through marine spatial planning will allow sand extraction closer to shore at less cost to both the private sector and the government, especially in the next 20 years when it is used for coastal adaptation to anticipated climate change.

#### ***In Germany-***

An environmental assessment for a wind farm permit costs about €1 million (US\$1.5 million) to prepare. Because the federal government has already prepared a Strategic Environmental Assessment for its marine spatial plan that includes priority areas for wind farms, costs of preparing and reviewing an environmental assessment for every permit proposed in a “Priority Wind Farm Area” will be reduced or avoided.

*Examples Courtesy of Dr. Charles Ehler, UNESCO*



CMSP is intended to facilitate sustainable economic growth in coastal communities by providing transparency and predictability for economic investments in coastal, marine, and Great Lakes industries, transportation, public infrastructure, and related businesses. CMSP could promote national objectives such as enhanced national energy security and trade and provide specific economic incentives (e.g., cost savings and more predictable and faster project implementation) for commercial users.

CMSP is intended to improve ecosystem health and services by planning human uses in concert with the conservation of important ecological areas, such as areas of high productivity and biological diversity; areas and key species that are critical to ecosystem function and resiliency; areas of spawning, breeding, and feeding; areas of rare or functionally vulnerable marine resources; and migratory corridors. Enhanced ecosystem services and benefits can be attained through CMSP because they are centrally incorporated into the CMS Plan as desired outcomes of the process and not just evaluated in the context of individual Federal or State agency action. CMSP allows for a comprehensive look at multiple sector demands which would provide a more complete evaluation of cumulative effects. This ultimately is intended to result in protection of areas that are essential for the resiliency and maintenance of healthy ecosystem services and biological diversity, and to maximize the ability of marine resources to continue to support a wide variety of human uses.

**CMSP allows proactive planning to integrate a wide range of ecosystem services. For instance:**

*Provisioning*

Energy, Seafood, Biomedical

*Regulating and Supporting*

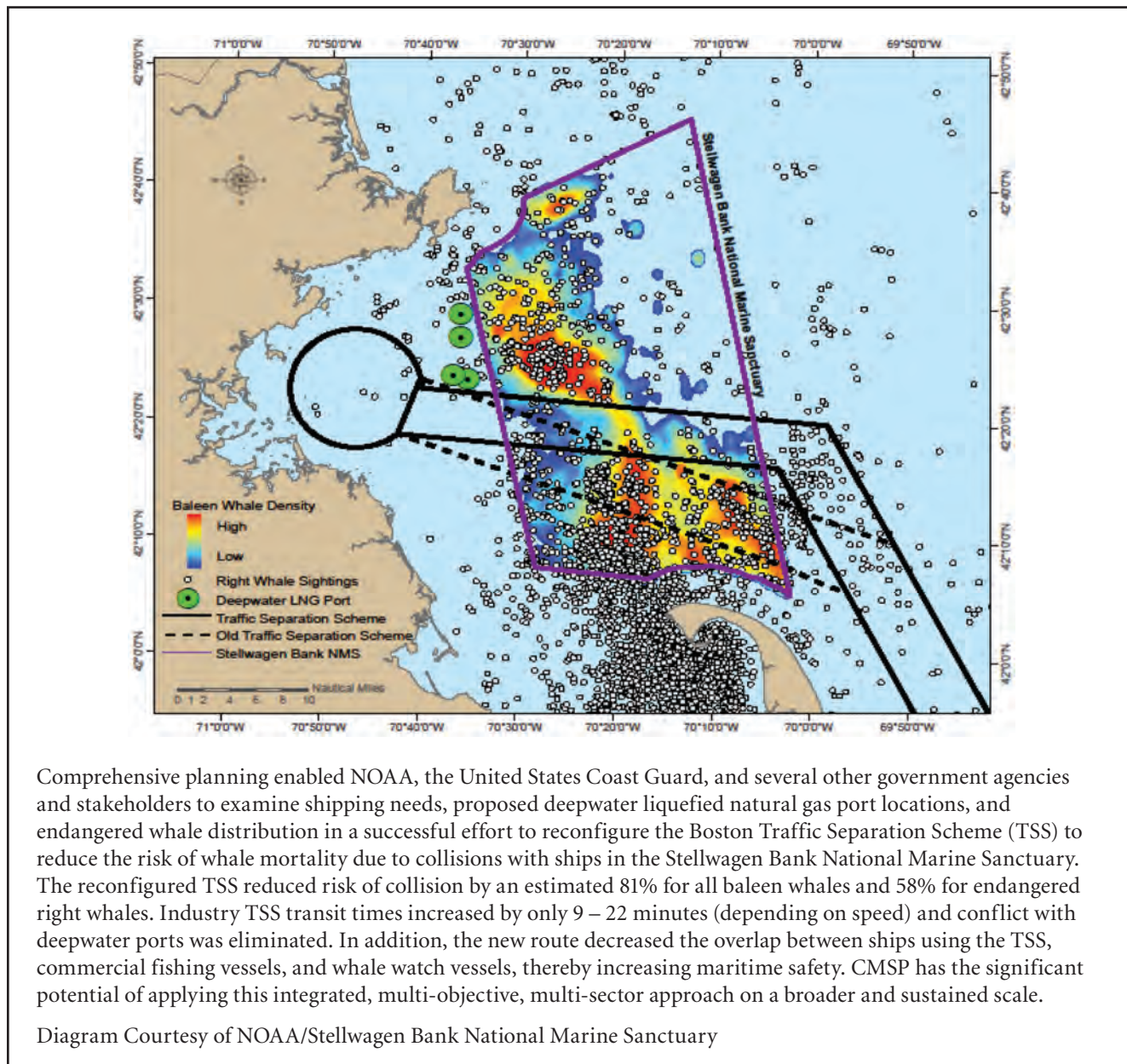
Flood Prevention, Biological Diversity Maintenance, Climate Regulation, Erosion Control, Control of Pests and Pathogens, Nutrient Recycling, and Primary Production

*Cultural Services*

Education, Recreational, Heritage, and Spiritual



## Example of the Potential Benefits of CMSP: Stellwagen Bank National Marine Sanctuary



From a societal perspective, CMSP would improve opportunities for community and citizen participation in open planning processes that would determine the future of the ocean, our coasts, and the Great Lakes. For example, the CMSP process would recognize the social, economic, public health, and conservation benefits of sustainable recreational use of ocean, coastal, and Great Lakes resources (e.g., fishing, boating, swimming, and diving), by providing improved coordination with recreational users to ensure consideration of continued access and opportunities to experience and enjoy these activities consistent with safety and conservation goals. Integrated engagement and coordination should result in stronger and more diverse ocean, coastal, and Great Lakes stewardship, economies, and communities. Moreover, CMSP can assist managers in planning activities to sustain cultural and recreational uses, human health and safety, and the continued security of the United States. For

instance, CMSP would help to ensure that planning areas identified as important for public use and recreation are not subject to increased risk of harmful algal blooms, infectious disease agents, chemical pollution, or unsustainable growth of industrial uses.

### IV. Integration, Cooperation, and Coordination

Strong partnerships among Federal, State, tribal, and local authorities, and regional governance structures would be essential to a truly forward-looking, comprehensive CMSP effort. One of the significant benefits of CMSP is to improve the ability of these authorities to seamlessly coordinate their objectives with broader planning efforts by participating in the CMSP process for areas within and beyond their jurisdictional waters. Many States and regional governance structures have already engaged in some form of comprehensive marine planning and CMSP would build upon and incorporate these efforts. Also, the United States has a unique legal relationship with federally-recognized American Indian and Alaska Native tribal governments. These tribal governments, and the indigenous populations in Hawaii and the United States Commonwealths and Territories, are integrally linked to the maritime realm and would play an important role in CMSP.

The United States shares maritime and Great Lakes boundaries with a number of countries and has the world's largest EEZ and an extensive Continental Shelf. The development of CMSP provides opportunities for engagement with other countries, in coordination with the Department of State and other relevant agencies. The views and decisions of relevant international fora should be taken into account, where appropriate, in CMSP and the development of CMS Plans.

The ability for States and tribes to participate in the CMSP process for areas within and beyond their respective jurisdictions can afford the following potential opportunities and incentives:

- Encourage and inform the Federal government to better manage resources or address processes that transcend jurisdictional boundaries;
- Define local and regional objectives and develop and implement CMSP in a way that is meaningful to regionally specific concerns;
- Leverage, strengthen, and magnify local planning objectives through integration with regional and national planning efforts;
- Proactively address concerns over proposed activities impacting State and tribal interests and minimize use conflicts before they escalate;
- Leverage support from the Federal government to build CMSP capacity, access CMSP data, and acquire scientific, technical, and financial assistance;
- Access data through CMSP portal(s) and utilize science tools developed, established, and maintained for CMSP efforts;
- Benefit from sustained Federal participation on the regional planning bodies that consist of representatives empowered to make decisions and commitments on behalf of their respective agencies, in turn helping to integrate and improve decision-making;
- Provide a clearer and easier point of access for all Federal agencies with regard to ocean, coastal, and Great Lakes issues; and
- Achieve regulatory efficiencies, reduction in administrative delays, and cost savings.



Similarly, as the United States is a leader in various international fora that deal with marine issues, the United States should introduce relevant aspects of CMSP for consideration by such bodies.

### **V. Public and Stakeholder Engagement**

In addition to coordination and cooperation among all levels of government, robust public and stakeholder engagement is integral to a successful CMSP process. Given the multi-objective nature of CMSP it is critical to ensure there are numerous opportunities for a broad range of input to gain a better understanding of the human uses and influences on the planning area, and expectations, interests, and requirements for the future. Including a broad range of interests throughout the planning and implementation of CMSP is necessary to strengthen mutual and shared understanding about relevant problems and opportunities and will better inform the process and its outcomes.

### **VI. The Authority for Coastal and Marine Spatial Planning**

Federal statutes often include authorizing language that explicitly gives agencies the responsibility to plan and implement the objectives of the statutes. Moreover, several Federal statutes specifically authorize agency planning with respect to the ocean, coastal, and Great Lakes environments. Federal agencies and departments also administer a range of statutes and authorized programs that provide a legal basis to implement CMSP. These statutory and regulatory authorities may govern the process for making decisions (e.g., through Administrative Procedure Act rulemaking and adjudications) and not just the ultimate decisions made. The processes and decision-making CMSP envisions would be carried out consistent with and under the authority of these statutes. State, tribal, and local authorities also have a range of existing authorities to implement CMSP, although this will vary among and within regions. This framework for CMSP is to provide all agencies with agreed upon principles and goals to guide their actions under these authorities, and to develop mechanisms so that Federal, State, tribal, and local authorities, and regional governance structures can proactively and cooperatively work together to exercise their respective authorities.

An agency or department's capacity to internalize the elements of any particular CMS Plan would vary depending on the nature of applicable statutes. CMSP is intended to provide a better framework for application of these existing laws and agency authorities, but is not intended to supersede them. Where pre-existing legal constraints, either procedural or substantive, are identified for any Federal agency, the NOC would work with the agency to evaluate necessary and appropriate legislative solutions or changes to regulations to address the constraints. In the interim, agencies would comply with existing legal requirements but should endeavor, to the maximum extent possible, to integrate their actions with those of other partners to a CMS Plan.

### **VII. The National Goals of Coastal and Marine Spatial Planning**

For CMSP to be successful, it must be based on clear, broad-based goals that define the desired outcomes to be achieved. CMSP in the United States would be developed and implemented to further the following goals:

## FINAL RECOMMENDATIONS OF THE INTERAGENCY OCEAN POLICY TASK FORCE

1. Support sustainable, safe, secure, efficient, and productive uses of the ocean, our coasts, and the Great Lakes, including those that contribute to the economy, commerce, recreation, conservation, homeland and national security, human health, safety, and welfare;
2. Protect, maintain, and restore the Nation's ocean, coastal, and Great Lakes resources and ensure resilient ecosystems and their ability to provide sustained delivery of ecosystem services;
3. Provide for and maintain public access to the ocean, coasts, and Great Lakes;
4. Promote compatibility among uses and reduce user conflicts and environmental impacts;
5. Improve the rigor, coherence, efficiency, and consistency of decision-making and regulatory processes;
6. Increase certainty and predictability in planning for and implementing new investments for ocean, coastal, and Great Lakes uses; and
7. Enhance interagency, intergovernmental, and international communication and collaboration.

### **VIII. The National Guiding Principles for Coastal and Marine Spatial Planning**

In order to achieve the national goals of CMSP, planning efforts are to be guided by the following principles:

1. CMSP would use an ecosystem-based management approach that addresses cumulative effects to ensure the protection, integrity, maintenance, resilience, and restoration of ocean, coastal, and Great Lakes ecosystems, while promoting multiple sustainable uses.
2. Multiple existing uses (e.g., commercial fishing, recreational fishing and boating, subsistence uses, marine transportation, sand and gravel mining, and oil and gas operations) and emerging uses (e.g., off-shore renewable energy and aquaculture) would be managed in a manner that reduces conflict, enhances compatibility among uses and with sustained ecosystem functions and services, provides for public access, and increases certainty and predictability for economic investments.
3. CMSP development and implementation would ensure frequent and transparent broad-based, inclusive engagement of partners, the public, and stakeholders, including with those most impacted (or potentially impacted) by the planning process and with underserved communities.
4. CMSP would take into account and build upon the existing marine spatial planning efforts at the regional, State, tribal, and local level.
5. CMS Plans and the standards and methods used to evaluate alternatives, tradeoffs, cumulative effects, and sustainable uses in the planning process would be based on clearly stated objectives.
6. Development, implementation, and evaluation of CMS Plans would be informed by



sound science and the best available information, including the natural and social sciences, and relevant local and traditional knowledge.

7. CMSP would be guided by the precautionary approach as reflected in Principle 15 of the Rio Declaration, “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”
8. CMSP would be adaptive and flexible to accommodate changing environmental conditions and impacts, including those associated with global climate change, sea-level rise, and ocean acidification; and new and emerging uses, advances in science and technology, and policy changes.
9. CMSP objectives and progress toward those objectives would be evaluated in a regular and systematic manner, with public input, and adapted to ensure that the desired environmental, economic, and societal outcomes are achieved.
10. The development of CMS Plans would be coordinated and compatible with homeland and national security interests, energy needs, foreign policy interests, emergency response and preparedness plans and frameworks, and other national strategies, including the flexibility to meet current and future needs.
11. CMS Plans would be implemented in accordance with customary international law, including as reflected in the Law of the Sea Convention, and with treaties and other international agreements to which the U.S. is a party.
12. CMS Plans would be implemented in accordance with applicable Federal and State laws, regulations, and Executive Orders.

### **IX. Geographic Scope of Coastal and Marine Spatial Planning**

The geographic scope of the planning area for CMSP in the United States includes the territorial sea, the EEZ, and the Continental Shelf. The geographic scope of the planning area would extend landward to the mean high-water line. The geographic scope for the Great Lakes would extend from the ordinary high-water mark and include the lakebed, subsoil, and water column to the limit of the United States and Canada international boundary, as maintained by the International Boundary Commission, and includes Lake St. Clair and the connecting channels between lakes. Privately owned lands as defined by law would be excluded from the geographic scope.

The geographic scope would include inland bays and estuaries in both coastal and Great Lakes settings. Inclusion of inland bays and estuaries is essential because of the significant ecological, social, and economic linkages between these areas with offshore areas. Additional inland areas may be included in the planning area as the regional planning bodies, described in Section X of this Part, deem appropriate. Regardless, consideration of inland activities would be necessary to account for the significant interaction between upstream activities and ocean, coastal, and Great Lakes uses and ecosystem health. Likewise, consideration would also be given to activities occurring beyond the EEZ and continental shelf that may influence resources or activities within the planning area.

### *The Great Lakes and CMSP*

Great Lakes resources are governed in part by a body of law, treaties, and regional policy that is distinct from our ocean and other coastal areas. Of paramount significance is the Great Lakes Water Quality Agreement (GLWQA) with Canada and its implementation under various Federal laws that commit each country to restore and maintain the chemical, physical, and biological integrity of the Great Lakes through use of ecosystem-based management. However, while various Federal regulatory authorities apply in the United States Great Lakes, the submerged lands underlying them are largely under the jurisdiction and ownership of the Great Lakes States.



CMSP efforts in the Great Lakes would be complementary to and closely coordinated with the GLWQA and other Great Lakes initiatives and authorities, such as the President's Great Lakes Restoration Initiative and Executive Order 13340, which established a cabinet-level Great Lakes Interagency Task Force, its Regional Working Group, and a multi-stakeholder Great Lakes Regional Collaboration.

### *Land-based Activities and Their Relation to CMSP*

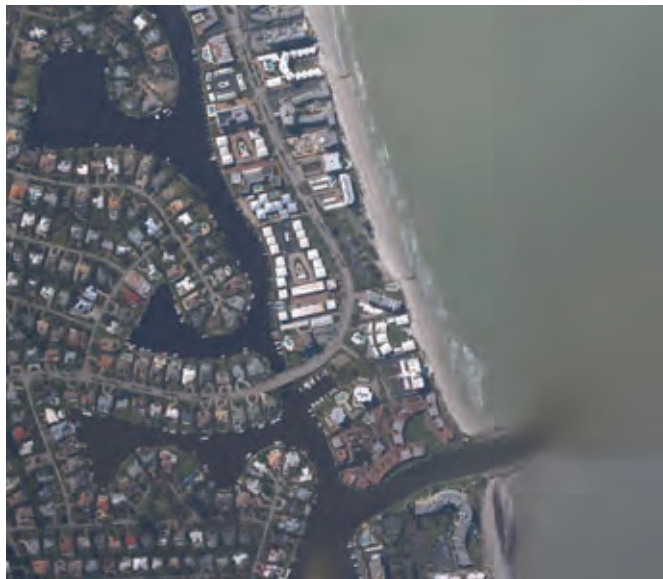
Although the geographic scope of the CMSP area in the United States would not include upland areas unless a regional planning body determines to include them, the health and well-being of the ocean, our coasts, and the Great Lakes are in large part the result of the interrelationships among land, water, air, and human activities. Effective management of environmental health and services, maritime economies, commerce, national and homeland security interests, and public access necessitate connecting land-based planning efforts with ocean, coastal, and Great Lakes planning. Thus, successful implementation of CMSP would ultimately depend upon a better integration of coastal planning that considers influences from, and activities within, coastal watersheds and other contributing land areas. Land-based watershed planning efforts (e.g., components of the Great Lakes Restoration Initiative Action Plan) should inform and influence CMSP within each region. Similarly, ocean, coastal, and Great Lakes activities that affect land-based ecosystems should be considered and accounted for during CMSP efforts using the existing State and Federal programs including the Coastal Zone Management Act (CZMA), Clean Water Act, Clean Air Act, and other relevant authorities. It is the intent of the CMSP process to better understand how current mandates and programs interact towards the common goals of CMSP and, in doing so, to better coordinate, and where appropriate, strengthen their collective

benefits. In addition, watershed monitoring, terrestrial observation activities, and ocean, coastal, and Great Lakes observation systems should be linked to provide the necessary information on interactions and impacts across the land-sea boundary.

### **X. Development and Implementation of Coastal and Marine Spatial Planning**

CMSP would be developed and implemented using a regional approach to allow for the variability of economic, environmental, and social aspects among different areas of the United States. This section describes the regional approach, recommended steps, and the essential elements to be included in the development and implementation of CMSP.

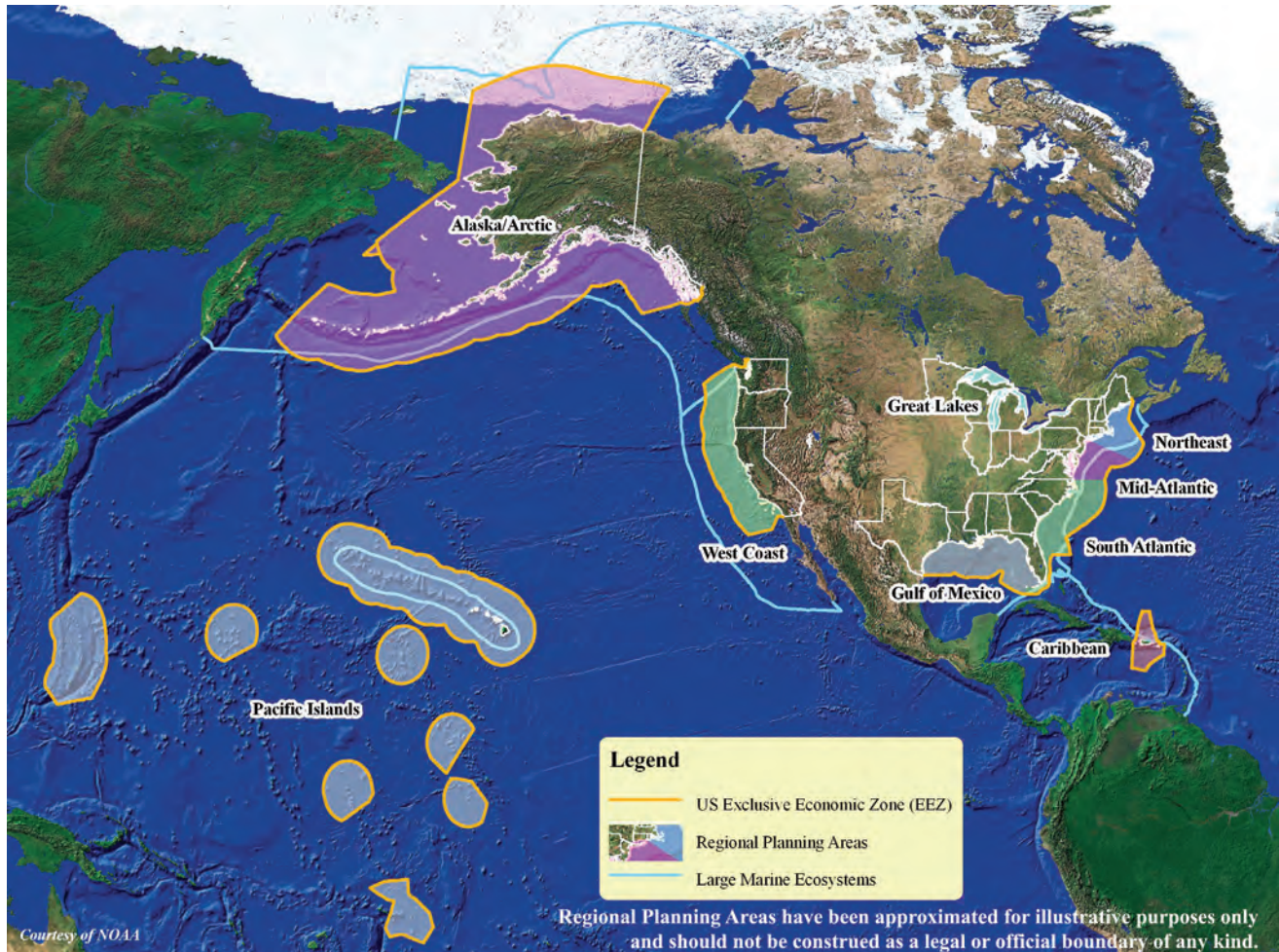
Given the importance of conducting CMSP from an ecosystem-based perspective, combined with the likely involvement of existing regional governance structures in developing plans, a consistent planning scale with which to initiate CMSP is at the large marine ecosystem (LME) scale.<sup>7</sup> These recognized LMEs were defined on the basis of consistent ecological conditions and other factors. Overall, the boundaries of regional governance structures for the Northeast, Mid-Atlantic, South Atlantic, Gulf Coast, and West Coast lie within LME boundaries. This regional approach, consistent with the LMEs, would also be applied to the Great Lakes, Alaska, the Pacific Islands, and the Caribbean. Therefore, for CMSP purposes, the United States would be subdivided into nine regional planning areas based on LMEs, with modifications as necessary to ensure inclusion of the entire U.S. EEZ and Continental Shelf and to allow for incorporation of existing state or regional ocean governance bodies. The NOC would facilitate the development of regional CMS Plans for those areas.



<sup>7</sup> The U.S. ocean and coastal waters hold all or parts of eleven LMEs: the West Bering Sea, East Bering Sea, Chukchi Sea, Beaufort Sea, Gulf of Alaska, California Current, Gulf of Mexico, Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Insular Pacific-Hawaiian, and the Caribbean Sea. For representational purposes only, the five Alaskan LMEs are depicted as a single complex in the map on page 52. Although, as a large fresh-water system, the Great Lakes are not usually considered an LME, they do represent a large regional ecosystem of similar scale and are considered as such for this framework. Further detail on LMEs can be found at: <http://www.lme.noaa.gov>.



## Large Marine Ecosystems and Regional Planning Areas



### *Regional Planning Body*

The NOC would work with the States<sup>8</sup> and federally-recognized tribes, including Alaska Native Villages, to create regional planning bodies – coinciding with the regional planning areas – for the development of regional CMS Plans. The membership of each of the nine regional planning bodies would consist of Federal, State, and tribal authorities relevant to CMSP for that region (e.g., resource management, including coastal zone management and fisheries management, science, homeland and national security, transportation, and public health). Members would be of an appropriate level of responsibility within their respective governing body to be able to make decisions and commitments throughout the process. Each regional planning body would identify Federal and non-Federal co-leads.<sup>9</sup> Appropriate State and tribal representation would be determined by applicable States and tribes, consistent with the types of representation described by the NOC per Section XVI of this Part. Regional planning bodies would develop a mechanism to engage other indigenous community representatives

<sup>8</sup> For purposes of this framework, “States” also include the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

<sup>9</sup> Each regional planning body would have one Federal co-lead, one State co-lead, and, as appropriate, one tribal co-lead. The co-leads would be responsible for guiding and facilitating the timely progress of the CMSP process, but would not have final decision-making authority.

with jurisdictional responsibilities or interests relevant to CMSP, as well as coordinate with appropriate local authorities throughout the CMSP process. In addition, the regional planning bodies would provide a formal mechanism for consultation with the Regional Fishery Management Councils (RFMCs) across their respective regions on fishery related issues given their unique statutory responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and quasi-regulatory role in fisheries management.<sup>10</sup> The NOC would prepare guidance for regional planning bodies in meeting these consultative process requirements in order to ensure consistency across regions. In the future, if other statutorily-mandated or quasi-regulatory groups are identified, the NOC would determine whether a formal mechanism for consultation should be developed for such groups and, if necessary, provide guidance for regional planning bodies on the development of such a process.

Each regional planning body<sup>11</sup> should make every effort to ensure representation from all States within a region, ideally through, or as part of, the existing regional governance structures created by or including the States to address cross-cutting issues, including regional planning. Given that activities that happen outside of the planning area of each regional planning body may affect CMSP decisions in that area, ex officio membership on these bodies could be extended to adjacent coastal States to help integrate and enhance consistency among regions. Inland States may also be afforded membership, as determined appropriate by the regional planning body. It is also recognized that the United States shares maritime boundaries with other nations (e.g., Canada and Mexico) and the regional planning bodies for those respective areas may include ex officio representatives or observers from these nations.

### Nine Proposed Regional Planning Areas and Corresponding Minimum State Representation

1. **Alaska /Arctic Region:** Alaska
2. **Caribbean Region:** Puerto Rico and U.S. Virgin Islands
3. **Great Lakes Region:** Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin
4. **Gulf of Mexico Region:** Alabama, Florida, Louisiana, Mississippi, and Texas
5. **Mid-Atlantic Region:** Delaware, Maryland, New Jersey, New York, Pennsylvania, and Virginia
6. **Northeast Region:** Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
7. **Pacific Islands Region:** Hawaii, Commonwealth of the Northern Mariana Islands, American Samoa, and Guam
8. **South Atlantic Region:** Florida, Georgia, North Carolina, and South Carolina
9. **West Coast Region:** California, Oregon, and Washington

<sup>10</sup> There are no Regional Fishery Management Councils in the Great Lakes Region, but the Great Lakes regional planning body should work with the Great Lakes Fishery Commission and other relevant entities, as appropriate.

<sup>11</sup> The Task Force based the State membership of the nine regional planning areas in part on the membership of the existing regional governance structures, where they exist, with the following one exception: Pennsylvania was added to the Mid-Atlantic Region, in addition to the Great Lakes Region, because Pennsylvania has a coastline on the Delaware River that would, under the defined geographic scope, be included in the CMSP regional planning area.



Furthermore, there would be flexibility to develop sub-regional plans provided that these plans are encompassed in an overarching regional CMS Plan and overseen by the regional planning body. This construct may be particularly useful in the Alaska/Arctic and Pacific Islands Regions given the geographic breadth, the logistical constraints of coordinating resources across a region that spans the international dateline, and that multiple LMEs are encompassed by the Alaska/Arctic Region.

### *CMSP Development Agreement*

The members of each regional planning body (the “partners”) would prepare and execute a CMSP Development Agreement, a model of which the NOC would develop as described in Section XVI of this Part. The Development Agreement would be an express commitment to work cooperatively to engage in CMSP and develop eventual CMS Plans, identify the regional planning body members for each of the partners, and define ground rules, roles, and responsibilities of the partners.

### *Dispute Resolution Process*

CMSP would provide a process for resolving conflicts should members of the regional planning bodies disagree during the development or modification of CMS Plans and in the interpretation of NOC-certified CMS Plans. The NOC would develop this process, in cooperation with the GCC, to ensure consistency from region to region. This process would be designed in a way to ensure that most disputes would be resolved at the regional level. If a conflict cannot be resolved at the regional level, the regional planning body leads would elevate the issue to the NOC for resolution, via the NOC resolution process outlined earlier. In those instances in which such a conflict reflects a dispute between Federal and non-Federal members at the regional level, the NOC would consult with the GCC as part of this process. Disputes regarding a specific agency’s decisions pursuant to its statutory authority would be addressed through the various procedures and mechanisms available under that authority or other relevant authorities (e.g., Administrative Procedure Act).

### *Work Plan*

Each regional planning body would develop a formal regional work plan that describes the agreed-upon process for CMSP and development of CMS Plans (including all essential elements), specifies members, identifies co-leads, establishes key milestones, identifies resources, specifies time frames, and addresses the essential elements required for the planning process, as defined below. The work plan would allow flexibility to account for the particular circumstances of a given region (e.g., if a region has existing State plans). In addition, each work plan would specify a formal mechanism for consultation to engage the RFMCs within the region as well as a mechanism to engage the indigenous community representatives. The work plan should also describe how the regional planning body would coordinate with appropriate local authorities. The NOC would review and approve each regional work plan prior to its implementation.

## *Essential Elements of the CMSP Process*

### Essential Elements of the CMSP Process

- Identify Regional Objectives
- Identify Existing Efforts that Should Help Shape the Plan throughout the Process
- Engage Stakeholders and the Public at Key Points throughout the Process
- Consult Scientists and Technical and Other Experts
- Analyze Data, Uses, Services, and Impacts
- Develop and Evaluate Alternative Future Spatial Management Scenarios and Tradeoffs
- Prepare and Release for Public Comment a Draft CMS Plan with Supporting Environmental Impact Analysis Documentation
- Create a Final CMS Plan and Submit for NOC Review
- Implement, Monitor, Evaluate, and Modify (as needed) the NOC-certified CMS Plan

The CMSP process consists of a series of steps that would eventually lead to the development of a comprehensive, multi-sectoral, and multi-objective CMS Plan. Although the CMSP process envisions optimum flexibility among and within regions, the following essential elements – and how the partners plan to accomplish them – would need to be addressed in the work plan in order to ensure a level of national consistency across regions. The process would be adaptive and refined as regions gain experience with CMSP.

- **Identify Regional Objectives:** Each region would define and agree upon a set of specific and measurable regional objectives that provide clear direction, outcomes, and timeframes for completion. These regional objectives would be consistent with the national goals and principles identified in this framework and with any national objectives the NOC has articulated for purposes of CMSP. These objectives would serve as a statement of purpose and need for action to guide the planning process and eventual development of an ecosystem-based, comprehensive, integrated CMS Plan.
- **Identify Existing Efforts that Should Help Shape the Plan throughout the Process:** The regional planning body would identify existing efforts (e.g., State and Federal ocean plans, data management efforts, and CMSP decision products) that would allow the regional plan to build on existing work. This work should be leveraged and expanded to enable a more



organic and holistic approach that would advance the region as a whole while not duplicating or hindering existing and ongoing efforts. These existing efforts can include those that are region-wide, State focused, or more site-specific marine spatial plans or efforts (e.g., Great Lakes Restoration Initiative Action Plan, Massachusetts Ocean Plan, Rhode Island Ocean Special Area Management Plan, or National Marine Sanctuary management plans), as well as issue-specific plans that seek to incorporate some aspects of CMSP approaches and principles (e.g., ocean energy and fishery management plans), as appropriate.

- **Engage Stakeholders and the Public at Key Points throughout the Process:** The regional planning body would ensure there is frequent and regular stakeholder engagement throughout all phases of the CMSP process, including development, adoption, implementation, evaluation, and adaptive management phases. To better ensure all concerns and ideas are considered, stakeholder engagement should be emphasized with those most impacted (or potentially impacted) by the planning process. Considerations should also be given to ensuring inclusion of underserved communities. Regions would establish an inclusive and transparent process for stakeholder participation (or, if applicable, utilizing an existing process) that ensures engagement with a representative balance of major social, cultural, economic, environmental, recreational, human health, and security interests. The regional planning body should also identify previous stakeholder input to regional or State CMSP efforts including the existing documentation on their input and needs. Stakeholder and public participation would be sought through a variety of robust participatory mechanisms that may include, but are not limited to, workshops, town halls, public hearings, public comment processes, and other appropriate means. Stakeholder and public engagement would be consistent with existing requirements for public notice and input under applicable laws. Additionally, regional planning bodies would operate with the maximum amount of transparency, participation, and collaboration to the extent permissible by law. The NOC would provide guidance on such operating procedures including methods that ensure effective public and stakeholder participation, encourage diversity of opinions, and contribute to the accountability of the CMSP process (e.g., public meetings, document availability, and timely public notification).
- **Consult Scientists and Technical and Other Experts:** The regional planning body would consult scientists, technical experts, and those with traditional knowledge of or expertise in coastal and marine sciences and other relevant disciplines throughout the process to ensure that CMSP is based on sound science and the best available information. To this end, the regional planning body would establish regional scientific participation and consultation mechanisms to ensure that the regional planning body obtains relevant information. Such consultation could take the form of regional private-public technology and science partnerships. In addition, the regional planning bodies would work with existing science and technical entities, such as the regional ocean observation organizations, and other organizations with relevant physical, biological, ecological, and social science expertise. Scientific participation and consultation mechanisms would provide scientific and technical oversight and support to the regional planning body throughout the CMS Plan development, implementation, and evaluation phases.



## FINAL RECOMMENDATIONS OF THE INTERAGENCY OCEAN POLICY TASK FORCE

- **Analyze Data, Uses, Services, and Impacts:** With assistance from scientific and technical experts, the regional planning body would investigate, assess, forecast, and analyze the following:



- Important physical and ecological patterns and processes (e.g., basic habitat distributions and critical habitat functions) that occur in the planning area, including their response to changing conditions;
- The ecological condition and relative ecological importance or values of areas within the planning area, including identification of areas of particular ecological importance, using regionally-developed evaluation and prioritization schemes that are consistent with national guidance provided by the NOC;
- The economic and environmental benefits and impacts of ocean, coastal, and Great Lakes uses in the region;
- The relationships and linkages within and among regional ecosystems, including neighboring regions both within and outside the planning area, and the impacts of anticipated human uses on those connections;
- The spatial distribution of, and conflicts and compatibilities among, current and emerging ocean uses in the area;
- Important ecosystem services in the planning area and their vulnerability or resilience to the effects of human uses, natural hazards, and global climate change;
- The contributions of existing placed-based management measures and authorities; and
- Future requirements of existing and emerging ocean, coastal, and Great Lakes uses.

This analysis would form the basis of the Regional Assessment described in the Essential Elements of the CMS Plan below. The regional planning body would identify and leverage existing approaches and efforts to collect information as well as clearly identify where there are gaps in data and information and what assumptions are made in the assessments, forecasts, and analyses to 'compensate' for lack of information and data.

- **Develop and Evaluate Alternative Future Spatial Management Scenarios and Tradeoffs:** The regional planning body would identify a range of alternative future spatial management scenarios based upon the information gathered on current, emerging, and proposed human uses, ecosystem conditions, and ecosystem services. Comparative analyses would assess, forecast, and analyze the tradeoffs and cumulative effects and benefits among multiple human use alternatives. The alternatives and the supporting analyses would provide the basis for a draft CMS Plan.
- **Prepare and Release for Public Comment a Draft CMS Plan with Supporting Environmental Impact Analysis Documentation:** Once a draft CMS plan and supporting environmental impact analyses, including alternatives, are completed, the regional planning body would release it for



appropriate public review and comment. During the development of a CMS Plan and before formal adoption of a final CMS Plan, regional planning bodies would also have the flexibility to move forward with CMSP efforts and agreements to address ongoing issues and regional coordination. It is recognized that these agreements would likely become part of the final CMS Plan. In drafting the CMS Plan, the regional planning body would resolve disputes using the process developed by the NOC, as discussed above in this Section.

- **Create a Final CMS Plan and Submit for NOC Review:** Based on public review of the draft plan and alternatives, the regional planning body would develop the final CMS Plan and environmental impact analysis that includes elements detailed in the Essential Elements of the Plan. The regional planning body would submit the final CMS Plan to the NOC for national consistency certification, as described in Section XII of this Part. Certification by the NOC would not occur until after release of the final CMS Plan for 30 days of public notice. These CMS Plans are intended to be iterative and are expected to be modified through the adaptive process described below.
- **Implement, Monitor, Evaluate, and Modify (as needed) the NOC-Certified CMS Plan:** The regional planning body would have an ongoing responsibility to monitor and assess the effectiveness of the CMS Plan. The regional planning body would adapt the CMS Plan, as necessary, based on relevant changes in ecological, economic, human health, safety, security, or social conditions and information. During implementation, each region would integrate new data and scientific findings to refine regional objectives and their respective goals. As new technologies are developed to observe and monitor ocean, coastal, and Great Lakes environments and their uses, they would be considered for application in regional CMSP monitoring and evaluation efforts.

### *Essential Elements of the CMS Plan*

#### **Essential Elements of the CMS Plan**

- Regional Overview and Scope of Planning Area
- Regulatory Context
- Regional Assessment
- Objectives, Strategies, Methods, and Mechanisms for CMSP
- Compliance Mechanisms
- Monitoring and Evaluation Mechanisms
- Incorporation of the Dispute Resolution Process

CMS Plans are expected to vary from region to region according to the specific needs, capacity, and issues particular to each region. A completed CMS Plan would contain the following essential elements in order to ensure national consistency across regions and certification by the NOC. Scientific data, information, and knowledge, as well as relevant traditional knowledge would underpin each of these essential elements.



## FINAL RECOMMENDATIONS OF THE INTERAGENCY OCEAN POLICY TASK FORCE

- **Regional Overview and Scope of Planning Area:** The CMS Plan would include a regional overview of the planning area. This overview would include a description of the planning area's ecosystems and their biological, chemical, and physical environments; social, recreational, human health, safety, security, and economic uses; ecological and conservation considerations, including identification of important ecological areas, habitats, flora, and fauna; and other concerns of the region. The overview would describe how the CMS Plan relates to and furthers the National Policy, CMSP national goals and principles, any national objectives developed by the NOC, regional objectives, and other relevant national, regional, State, and other policies. The CMS Plan would also define the geographic scope of the planning area.
- **Regulatory Context:** The CMS Plan would describe the statutes, rules, and regulations relevant to implementing CMSP throughout all levels of government. It would also describe, as appropriate, the principal existing planning processes (e.g., Great Lakes Restoration Initiative Action Plan or State marine spatial plans) that may be relied on or incorporated as part of the regional CMS Plan.
- **Regional Assessment:** The CMS Plan would include a regional assessment, based on environmental, social, economic, and other necessary data and knowledge, describing the existing and predicted future conditions, uses, and characteristics of the ocean, coastal, or Great Lakes areas covered in the CMS Plan. The regional assessment would include: relevant biological, chemical, ecological, physical, cultural, and historical characteristics of the planning area; ecologically important or sensitive species/habitats/ecosystems; and areas of human activities. The assessment would also include an analysis of ecological condition or health and of cumulative risks as well as forecasts and models of cumulative impacts. The regional assessment would explain the information obtained and analyses conducted during the planning process and how they were used to help determine management decisions and plan alternatives.
- **Objectives, Strategies, Methods, and Mechanisms for CMSP:** This section would describe the regional objectives and proposed strategies, methods, and mechanisms for CMSP for the region. It would provide the analysis, evaluation of options, and the basis for the conclusions made in the CMS Plan. It would describe the spatial determinations for conservation and uses, at the appropriate scale, and include any necessary visual representations. The CMS Plan would describe the strategies, methods, and mechanisms for integrated or coordinated decision-making, including addressing use conflicts. The CMS Plan would further describe the continuing processes by which implementation would proceed, including mechanisms to ensure that individual partner and collaborative decision-making are reviewed for consistency with plan priorities and objectives. The CMS Plan would describe continued opportunities for stakeholder and public engagement. It would provide the flexibility needed to accommodate activities and operations in preparation for and response to disasters, emergencies, and similar incidents. The CMS Plan would also consider a regional process for requesting variances and amendments.
- **Compliance Mechanisms:** The CMS Plan would specify mechanisms to enhance coordination and cooperation among decision-makers and promote consistency in each agency's interpretation and application of its respective existing laws and regulations used for implementation and enforcement of CMS Plans.
- **Monitoring and Evaluation Mechanisms:** The CMS Plan would specify the monitoring and evaluation mechanisms, including a reporting mechanism, to be employed to assess the effectiveness of the CMS Plan and identify where and when changes need to be considered. As part of monitoring and evaluation, regional planning bodies would define a clear set of regional performance measures to be used to assess whether or not the region is meeting national and regional objectives and goals.

Additionally, regional planning bodies would participate in the periodic execution of regional ecosystem assessments to evaluate impacts of management actions from economic, ecological, and social perspectives in order to inform the CMS Plan. Monitoring and evaluation will follow from and build upon the original regional assessment, consistent with national guidance provided by the NOC.

- **Incorporation of the Dispute Resolution Process:** The CMS Plan would incorporate the dispute resolution process, as described in Section X of this Part.

### **XI. The Nature of the Planning Process and National Ocean Council-Certified Coastal and Marine Spatial Plans**

CMSP is intended to provide Federal, State, tribal, and regional bodies, stakeholders, and the public with a meaningful forum within which to develop a plan to better manage multiple sustainable uses, resolve conflicts, and support ecosystem-based management of the ocean, coasts, and Great Lakes in accordance with shared goals, guiding principles, and applicable legal authorities. In this way, regional objectives and national objectives, goals, and guiding principles can be considered in a single, comprehensive, and integrated process. In order to be successful, the outcome of CMSP would have to result in meaningful improvements in the way that Federal, State, tribal, local, and regional bodies, stakeholders, and the public participate in the use and conservation of these areas.

While the goal of this framework is to move toward comprehensive, integrated, flexible, proactive, ecosystem-based CMSP, this would not happen instantaneously. CMSP must be initiated and developed thoughtfully, allowing for time to address the myriad complexities and challenges that would undoubtedly arise as the process moves forward. Moreover, while this framework identifies some of the incentives and benefits for a coordinated Federal, State, tribal, and regional effort and envisions a fully coordinated planning process, there would be substantial flexibility to determine how best to develop and implement CMSP for each particular region. In the event that a particular State or tribe opts not to participate in the development or implementation of a CMS Plan, the development or implementation of the CMS Plan would continue. While this is not optimal because it would not result in a fully integrated CMS Plan, the benefits of coordinated planning among the participating partners warrant its completion.

Development and implementation of CMS Plans would be an iterative process leading to a comprehensive, multi-objective, multi-sectoral plan within the first five years. Since each region may have different drivers and capabilities for CMSP, regions may choose to prioritize initial development and implementation steps. While CMSP should help resolve many use conflicts, it is not realistic to expect that all such conflicts would be resolved. Further, partners might agree not to resolve certain issues in a CMS Plan at a particular time, but rather to acknowledge these issues and indicate how the parties would continue to work on them as part of the iterative CMSP process. Such issues may be resolved as data gaps are filled, new information is developed, or as State or Federal legal authorities are enacted, changed, or updated.



To ensure that CMSP is effective and has a positive overall impact, each partner participating in CMSP would need to commit in good faith to: (1) a cooperative, open, and transparent CMSP process leading to the development and implementation of CMS Plans, acknowledging that each partner may have different authorities and non-discretionary mission objectives that must be fully addressed; (2) ensure that consideration of the National Policy, national CMSP goals, objectives, and principles, and regional CMSP objectives are incorporated into the decision-making process of all the partners consistent with existing statutory, regulatory, and other authorities, and the critical needs of emergency response, and homeland and national security activities; and (3) dispute resolution processes that enable concerns and issues not resolved through the cooperative planning process to be resolved quickly, rationally, and fairly.

Signing onto the CMS Plan would be an express commitment by the partners to act in accordance with the CMS Plan, within the limits of applicable statutory, regulatory, and other authorities, and respecting critical emergency response and homeland and national security needs. Thus, State and Federal regulatory authorities would adhere to, for example, the processes for improved and more efficient permitting, environmental reviews, and other decision-making identified in the CMS Plan to the extent these actions do not conflict with existing legal obligations. State and Federal authorities with programs relevant to the CMS Plan would in a timely manner review and modify programs, as appropriate, to ensure their respective activities, including discretionary spending (e.g., grants and cooperative agreements), adhere to the CMS Plan to the extent possible. State and Federal agencies

would also be expected to formally incorporate relevant components of the CMS Plan into their ongoing operations or activities consistent with existing law. This may be implemented in a variety of ways. For example, agencies could enter into memoranda of understanding (MOUs) to coordinate or unify permit reviews and decision-making processes. Where existing regulatory or statutory requirements impose constraints on the ability of an agency to fully implement the CMS Plan, the agency would seek, as appropriate, regulatory or legislative changes to fully implement the CMS Plan.

### *Relationship of CMSP to Existing Authorities*

CMSP under this framework would not vest the NOC or regional planning bodies with new or independent legal authority to supersede existing Federal, State, or tribal authorities. Rather, the NOC would facilitate the development of CMSP and provide national context and guidance within which bottom-up, flexible, regionally-based CMS Plans would be developed and implemented. Regional planning bodies would function as convening and planning bodies that comprise Federal, State, and tribal representatives responsible for implementing existing authorities to create a process, and ultimately a plan, to better apply such existing authorities to achieve agreed upon regional goals and objectives.

In and of themselves, CMS Plans, would not be regulatory or necessarily constitute final agency decision-making. However, they are intended to guide agency decision-making and agencies would adhere to the final CMS Plans to the extent possible, consistent with existing authorities, as described in Section XIV of this Part. Adherence to and implementation of the CMS Plan would be the result of a multi-year planning process by which regional planning body members would openly discuss their respective legal authorities, requirements, and processes and how they can be better applied in the CMSP context. Once a CMS Plan is approved, Federal, State, and tribal authorities would implement them through their respective legal authorities. Thus, for example, State permitting decisions remain within the purview and are the responsibility of the relevant State agency, not the NOC, regional planning body, or any of its other members. Also, as described earlier, disputes regarding a specific agency's decisions pursuant to its statutory authority would be addressed through the various procedures and mechanisms available under that authority or other relevant authorities (e.g., Administrative Procedure Act).

One example of the potential relationship between CMSP and existing authorities is the application of CZMA Federal consistency. Since there will be multiple Federal agencies and States involved in any one CMS Plan, the Federal agencies would need to determine how CZMA review would occur as





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Federal agencies adopt the plan. For example, if a State works with the Federal agencies to develop a CMS Plan, the CMS Plan could include measures to ensure that it is consistent to the maximum extent practicable with the enforceable policies of a State's CZMA program. The relevant State could consider potential changes to the State's enforceable policies to achieve agreed upon regional CMSP objectives. Also, a CMS Plan might include CZMA Federal consistency administrative efficiencies so that CZMA review would not be needed for some activities. Finally, if a State incorporates a CMS Plan into its federally approved CZMA program, then it is likely that the CMS Plan would not need a CZMA Federal consistency review.

### *Relationship of CMSP to Existing Regional Entities*

As mentioned above, the regional planning bodies would build upon the efforts of the existing regional governance structures. The regional planning bodies in conjunction with the NOC and the GCC would establish formal mechanisms or consultative processes to engage entities with statutorily-mandated or quasi-regulatory bodies that have an express role in the management and regulation of ocean, coastal, and Great Lakes resources. Specifically, as discussed earlier in Section X, a formal mechanism for consultation with the RFMCs would be incorporated into the CMSP process. In addition, regional planning bodies would coordinate with other existing regional entities and bodies such as Harbor Safety Committees, Regional Aquatic Nuisance Species Panels, and Area Maritime Security Committees, as appropriate.

### *Relationship of CMSP to Existing Plans and Projects*

CMSP is not meant to delay or halt existing or pending plans and projects related to marine and Great Lakes environments or their uses. However, those responsible for making decisions on such plans and projects would be expected to take into account the national CMSP goals and principles, national policies, and any identified national and regional CMSP objectives in future decision-making to the extent possible under existing law. Once a CMS Plan is put into effect following NOC certification, its implementation would be phased in to avoid undue disruption or delay of projects with pending permits or other applications. The NOC would provide additional guidance on how best to accomplish this phased-in approach.

## **XII National Consistency**

### *Certification by the NOC for National Consistency*

The NOC would review each regional CMS Plan to ensure it is consistent with the National Policy, CMSP goals and principles as provided in this framework, any national objectives, performance measures, or guidance the NOC has articulated, and any other relevant national priorities. The NOC's review would ensure that the CMS Plans include all the essential elements described in this framework. The NOC would also consider the CMS Plan's compatibility with an adjacent region's CMS plan regarding issues that cross regional boundaries. Certification by the NOC would not occur until after release of the final CMS Plan for 30 days of public notice. The NOC would review and make a



decision on certification within six months of receipt of the CMS Plan. If a regional CMS Plan does not meet certification requirements, the NOC would work with the regional planning body to address issues with the CMS Plan and could allow for approval of those parts of a CMS Plan that do meet such requirements. Upon certification by the NOC, a decision document adopting the CMS Plan would be co-signed by senior State officials (e.g., Governors), tribal representatives, as appropriate, and senior officials of the Federal agencies represented on the regional planning body. Upon signature by the partners, the CMS Plan would be considered “in effect” and implementation would begin.<sup>12</sup>

### *National CMSP Objectives, Performance Measures, and Guidance*

The NOC would establish national objectives, national outcome-based performance measures, and guidance to promote national consistency in the development and implementation of CMS Plans. Because the intent of CMSP is integration across sectors, the NOC would develop a range of national objectives. These may include: economic, conservation, security, and social objectives. The NOC would also develop national performance measures to evaluate, monitor, and report on progress towards implementing national CMSP objectives. As specified in the *Essential Elements of the CMSP Process* and



the *Essential Elements of the Plan*, regional planning bodies would develop region-specific objectives and associated performance measures, as part of the regional CMSP process. Regional performance measures developed by the regional planning bodies would be used to track improvements towards stated CMS Plan objectives. These regional measures and objectives would be consistent with the nationally established objectives and measures.

Regional and national performance measures should directly relate to the stated national and regional objectives established in the CMSP process. Performance measures would assess both conservation and socio-economic objectives of the CMS Plan. Measures of conservation may include, but are not limited to, indicators of ecosystem health such as the status of native species diversity and abundance, habitat diversity and connectivity, and key species (*i.e.*, species known to drive the structure and function of ecosystems). In addition, socio-economic measures would be developed and may include, but are not limited to: the economic value or productivity of certain economic sectors, such as commercial and recreational fisheries, aquaculture, and offshore energy; the number of recreation days; and the time

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<sup>12</sup> If the NOC does not certify a plan, it would provide to the regional planning body the specific reasons for its decision. The regional planning body would then have continued opportunity to address the NOC’s reasons and resubmit the plan.

required for permit applications to complete the regulatory process. Performance measures would provide a means of demonstrating results of and provide accountability for the CMSP process to stakeholders, the general public, and decision-makers.

The NOC would develop guidance in conjunction with the regional planning bodies for regional objectives and concomitant performance measures to ensure that they are cost-effective, measurable, interpretable, grounded in theory, responsive, and specific. The NOC would develop consistent guidance for these ecological and socio-economic approaches and tools to assist regional planning bodies in these efforts in order to provide for nationally applicable common scales of assessment. This will ensure that regional planning bodies are given the independence and flexibility to develop regionally meaningful objectives and measures, but also assure that regional measures and reporting are consistent with a national CMSP performance system.

### **XIII. Consistency with International Law**

CMS Plans would be implemented in accordance with customary international law, including as reflected in the Law of the Sea Convention, and with treaties and other international agreements to which the United States is a party. Seaward of the baseline, development and implementation of CMS Plans are to be consistent with the extent to which the United States exercises its rights and jurisdiction and performs duties in its territorial sea, EEZ, and Continental Shelf. CMS Plans would not change the rights, duties, and jurisdiction of the United States under international law, including with respect to navigational rights and freedoms. Nothing in this document or in CMS Plans developed pursuant to it would create private rights of action or other enforceable individual legal rights regarding the meaning and applicability of international law.

### **XIV. Adherence to and Compliance with National Ocean Council-Certified Coastal and Marine Spatial Plans**

Signatories and all NOC member agencies would adhere to a NOC-certified CMS Plan, within the limits of their existing statutory and regulatory authorities. If a signatory intends to take an action that does not substantially adhere to a certified CMS Plan, it would need to provide advance notice to the regional planning body and the NOC, including justification (e.g., new statutory requirement) for the non-adherence. The CMS Plan signatories and the NOC would periodically evaluate the reasons requiring deviation from a NOC-certified CMS Plan, and, as appropriate, develop recommendations for minimizing these deviations in the future, including CMS Plan modification or underlying regulatory or statutory changes. Disputes regarding agency interpretation of a CMS Plan would be resolved according to the dispute resolution process developed by the NOC, as described above.

Agencies would incorporate components of the CMS Plan into their respective regulations to the extent possible. Adherence with CMSP would be achieved through Federal and State agencies and tribal authorities incorporating CMS Plans into their pre-planning, planning, and permitting processes, to the extent consistent with existing laws and regulations. The CMS Plan signatories would periodically

review these processes, and where legal constraints are identified, would seek to remedy these constraints, including by working with the NOC to evaluate whether a legislative solution or changes to regulations are necessary and appropriate.

The effectiveness of the CMSP process depends, in-part, on the willingness and the ability of Federal, State, and tribal authorities to ensure that activities of third-parties are in compliance with relevant laws and regulations. The Nation would not achieve the benefits of comprehensive and integrated CMSP if there were inconsistent use or violation of the applicable laws and regulations. Successful enforcement, carried out by agencies exercising their individual enforcement authorities and responsibilities, must be based upon clear, concise, and easily understood requirements that reflect the practical realities of compliance and enforcement.

CMS Plans would provide a framework for improved coordination and cooperation among Federal, State, tribal, and local enforcement agencies as they work together to enforce existing regulations in accordance with their respective authorities in support of regional goals that often extend beyond individual agency jurisdictions. To the extent permitted by existing laws and regulations, this cooperative regional approach should build productive partnerships that encourage sharing of information and best practices, help foster mutually agreed upon enforcement priorities and strategies, and make more effective use of scarce enforcement resources by focusing those resources on the highest regional enforcement priorities. A cooperative enforcement approach for Federal, State, and tribal CMSP-related laws could also facilitate more consistent interpretation and application of regulations across agencies and jurisdictions, resulting in greater certainty and understanding for ocean, coastal, and Great Lakes users, which in turn could foster improved compliance and overall effectiveness. The NOC and CMS Plan signatories would periodically review enforcement effectiveness and seek to remedy any conflicts or gaps in existing Federal-State-tribal coordinated enforcement mechanisms.

### **XV. Scientific Knowledge and Data Integration, Research, Management, and Access**

CMSP is fundamentally science-based and adaptive in response to new evidence, technology, and understanding. Essential to CMSP are scientific knowledge and data, collectively referred to here as *information*. Information is necessary to comprehensively, consistently, and continually investigate, assess, forecast, and analyze human uses, ecosystem conditions, management alternatives, information and data gaps, and CMS Plan effectiveness. Reflecting our long history of ocean science and exploration, the United States holds vast stores of natural and social science information about ocean, coastal, and Great Lakes ecosystems and their uses which can immediately be used to begin informing CMS Plan development. However, data and knowledge gaps, particularly regarding the complexities of these ecosystems, human use patterns, and the relationship between the two, indicate the need for continuing research to supplement existing information, especially in the context of changing environmental conditions and societal needs. Additional CMSP research will provide new information, including on specific and cumulative effects, ecosystems processes and resiliency, and the assessment and valuation of ecosystem services.

Relevant and credible information is critical for successful planning and, in turn, must be accessible to Federal, State, and local managers, tribes, academics, the private sector, and the public. A robust national information management system dedicated to coastal and marine scientific data and information products is required to meet the diverse data and application requirements of CMSP, and the varying technical capabilities of users. The NOC, working with the regional planning bodies, would create a system that is compatible with existing Federal information systems, captures relevant Federal information resources, has effective governance and accountability across agencies, and preserves data confidentiality, where appropriate. The NOC would leverage and build upon existing national data systems and initiatives (e.g., ocean observation), where appropriate. Within this construct, Federal agencies and the other regional partners would make relevant data, metadata, and derived products available and web accessible using recognized national and international standards and protocols to the extent permitted by law and regulation. In addition, State agencies, tribes, academia, the private sector, stakeholders, and other non-governmental sources would be encouraged to make their relevant information and knowledge, including local and traditional knowledge, available through this system. Exceptions would include sensitive but unclassified information that cannot be synthesized and modified into a format that is appropriate for broader distribution, pursuant to CMSP needs and information that is proprietary, statutorily confidential, or classified information.

### **Principles to Manage and Disseminate CMSP Information**

- CMSP information is a national strategic asset and must be developed and managed on an ongoing basis to meet planning needs.
- CMSP information would be made available and accessible with nationally compliant “information about information” (i.e., metadata) to stakeholders.
- Federal agencies would improve metadata to make information easier to discover, retrieve, use, and manage.
- CMSP information that is collected, produced, or disseminated by Federal agencies, including information obtained from non-Federal sources, would meet government-wide information quality standards, and any other additional minimum standards adopted by the NOC.

To provide easy user access to agency CMSP-related information, a national information management system with either a central portal or regional portals that connect to CMSP information would be developed. The NOC would identify a Federal lead agency or collaborative entity to manage, implement, and update the CMSP portal(s) and components of the information management system. System interoperability, information exchange, and information and application technologies are intrinsically linked and would be developed and implemented together within the CMSP portal(s). To ensure national consistency, minimum data standards for CMSP information would be adopted and include standards for information quality. All information management and provision activities would be developed and updated with participation from existing and appropriate Federal data centers and initiatives. The NOC would ensure that the information is publicly available and easy-to-access

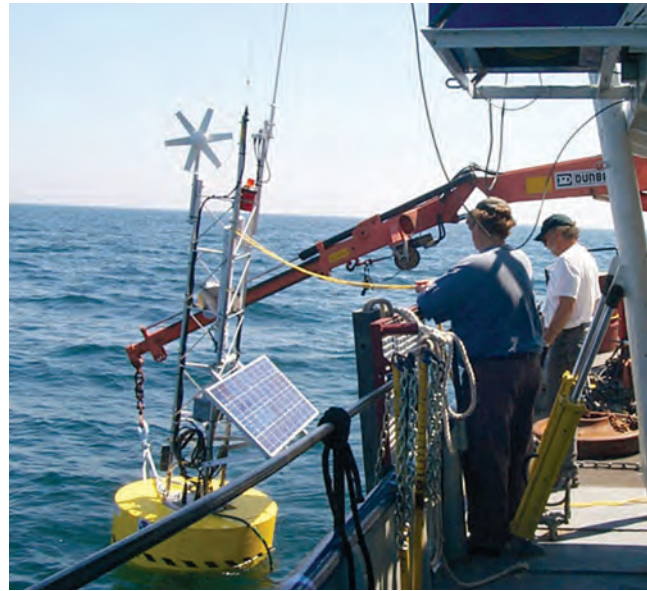


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through computer readable files and web service formats that support a variety of CMSP and user needs. This could include web browsers, geospatial web services, and other web-based collaborative resources. The CMSP portal would leverage emerging web technologies, including private sector partnerships, to increase transparency and promote public engagement.

In order to build upon the existing CMSP scientific foundation, the NOC would establish mechanisms to identify and address priority CMSP science needs. This would include identification of priority CMSP research, data acquisition and information synthesis gaps, and new tools that would be required to apply science more effectively in the CMSP process. Identification of data, information, and research needs would be conducted on a regular basis as part of the adaptive and iterative process to improve the development and application of CMSP over time.

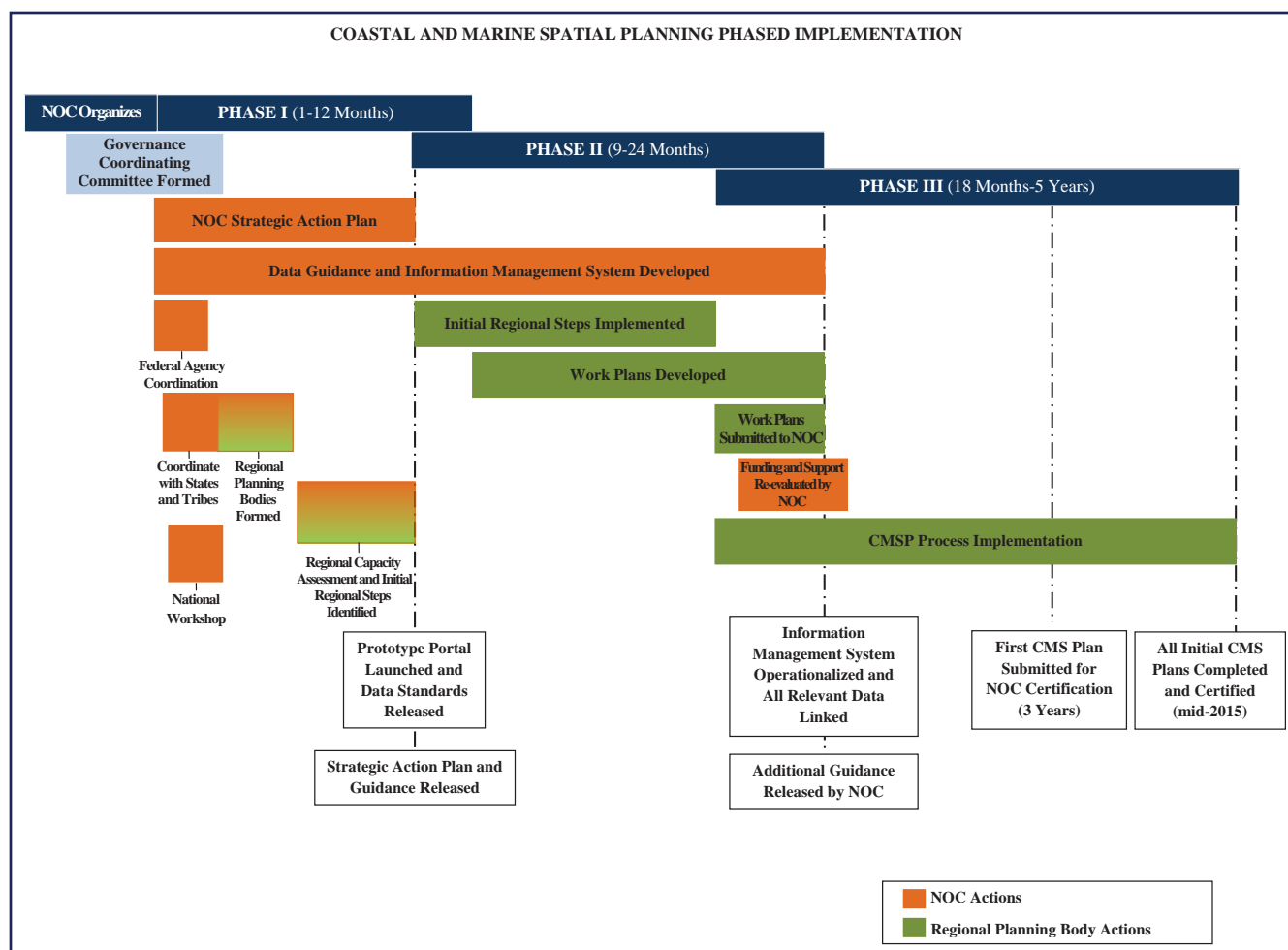
Additionally, nationally consistent, derived data products, ranging from consistent habitat maps as data layers to specialized decision-support tools, would be developed to provide a consistent framework for regional assessments and alternative future spatial management scenarios. The NOC may provide further guidance for using such information in decision-making, for example, how to decide which areas are of particular ecological importance or value. Designed or adapted specifically for CMSP, these science-based decision-support tools, including models, assessments, and visualization capabilities,



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would enable the regional planning bodies to synthesize information most relevant to CMSP decisions in ways that produce robust comprehensive CMS Plans. These tools would offer a shared knowledge base for meaningful stakeholder engagement, objective assessment of alternative and future scenarios, identification of the types of uses that are consistent with societal objectives, and regular evaluation of CMS Plans. They would be developed and made accessible in a way that regional and State efforts could build upon or add regional specific data and information to leverage these efforts and analyze the regionally-specific aspects of their planning within the broader national framework.

### XVI. Implementation



Implementation of this framework would occur in multiple phases through the NOC and among the regions. As a first step, the NOC would undertake initial actions to develop and build a foundation for the national CMSP efforts. Concurrently, the NOC would directly engage States and tribes to discuss cooperative strategies to move forward with CMSP. Recognizing the extensive scope of the task of developing and implementing CMSP, it is important for Federal, State, tribal, and other partners to prioritize efforts in this initial implementation period. Each of the regions could have different priorities and be at varying stages in the development of the data, analyses, and the relevant issues for

policy-makers. With these differences in mind, the phased approach outlined below would enable the NOC and the regions sufficient time to develop capacity, build on existing efforts, and leverage and gain efficiencies from lessons learned. In order to best achieve the completion of CMS Plans in all regions by 2015, the NOC would have the flexibility to make minor adjustments or modifications to this implementation schedule.

### ***Phase I (1-12 months)***

Many of the actions the NOC and State, tribal, and regional representatives commence in Phase I would serve as the foundation to implement CMSP on a national scale.

#### Develop NOC Internal Organization and Begin Strategic Action Plan (Months 1-9)

In the first month of Phase I, building on the initial establishment and organization period of the NOC, the NOC would determine how best to incorporate CMSP into the NOC governance structure (e.g., establish a CMSP Interagency Policy Sub-Committee), decide on the roles of individual agencies in implementing specific elements of the CMSP framework, including identification of a lead Federal agency for each regional planning body that would serve with non-Federal co-lead(s), and assess resource needs including personnel, financial, and technical CMSP support.

The NOC would then begin development of a strategic action plan to address specific areas that require additional consideration, analysis, and elaboration. The strategic action plan would be released in six to nine months and include: national objectives; national performance measures; guidance regarding the development of a national information management system, including identification of additional CMSP information and research needs; legal analysis and recommendations for legislative changes, if necessary; description of a dispute resolution mechanism, as described previously; and any additional guidance the NOC deems appropriate for CMSP. The NOC would also further assess the relationship between RFMCs and regional planning bodies and determine the most effective mechanism for engagement in the CMSP process, including whether representation on the regional planning bodies is the best method for such engagement. The NOC would ensure opportunity for the GCC, existing regional governance organizations, and public participation as it develops the strategic action plan for coastal and marine spatial planning. The NOC, in cooperation with the GCC, would provide for a mechanism for resolving disputes if they occur among the members of the regional planning bodies during the development of CMS Plans, as described in Section X of this Part.

#### *Develop and Implement Public and Stakeholder Engagement*

Early and meaningful steps to facilitate public and stakeholder outreach and education regarding CMSP and its implementation are vital to advance national CMSP efforts. As discussed above, the NOC would ensure substantial opportunity for public participation as it develops all nine strategic action plans, including the strategic action plan for coastal and marine spatial planning. Also, to better inform all participants and the public, the NOC would work with Federal agencies and the regional planning bodies, when established, to guide the drafting and production of educational materials, guidebooks,

## FINAL RECOMMENDATIONS OF THE INTERAGENCY OCEAN POLICY TASK FORCE

manuals, and other materials. These materials would be developed keeping in mind that the content should reflect the issues, language, and methods that would be meaningful in a particular region. These materials would include a glossary of key CMSP terms in order to reduce potential misunderstandings that could result in an inconsistent or ineffective CMSP process. The NOC, in coordination with the regional planning bodies, when established, would hold additional informational workshops for stakeholders to discuss the CMSP process and potential ways stakeholder participation would take place. Additional stakeholder engagement would be conducted by the regional planning bodies throughout the CMSP process.

### *National Objectives and National Performance Measures*

As part of the strategic action plan, the NOC would establish national objectives for CMSP consistent with, and in furtherance of, the National Policy, CMSP goals and principles, and other relevant national goals and priorities. These national objectives would serve as additional direction for the development of regional objectives and to help to maintain national and regional consistency of CMSP. Along with these objectives, national outcome-based performance measures would be established to help define success and measure results.

### *Guidance Regarding the Development of a National Information Management System*

While overarching objectives and measures would help direct CMSP efforts, guidance on data, technology, and tools would also be developed. During the first six to nine months, initial actions to coordinate, integrate, and manage data would be necessary. The NOC would begin development of a national information management system and CMSP portal(s), adopt minimum data standards consistent with government-wide information quality standards, identify a Federal lead agency or entity to manage, implement, and update the CMSP portal(s), identify and begin development of any new standard tools or models needed for CMSP in all regions, and identify additional CMSP information and research needs. At the end of nine months, guidance on these fundamentals would be released as part of the strategic action plan and a prototype CMSP portal(s) would be operational. However, building the information management system and linking the relevant data may take up to two years and would be ongoing as new information becomes available.

### *Legal Analysis and Recommendations of Legislative Changes, if Necessary*

Also, as part of the strategic action plan, the NOC would oversee efforts to identify gaps and conflicts in Federal authorities and recommend potential steps to reconcile them. This effort would examine how various statutory authorities of particular agencies can be harmonized in order to support comprehensive, integrated CMSP. Further, the NOC would consider how legal authorities of Federal, State, tribal, and local entities might collectively be used to support implementation of regional CMSP efforts. In doing so, the NOC should identify objective priorities and existing grant or other assistance programs that can support CMSP, consistent with relevant authorities.



## FINAL RECOMMENDATIONS OF THE INTERAGENCY OCEAN POLICY TASK FORCE

### Convene and Organize Federal Agency Representatives in the Regions (Months 1-2)

National and regional Federal agency representatives would convene to discuss current and improved methods for communicating, sharing data and products, exploring regulatory efficiencies, and determining how best to work with State and tribal partners to achieve a CMS Plan. Due diligence is necessary on the part of the Federal community to self organize and coordinate among agencies before engaging State and tribal partners to ensure that a service is being provided in a way that meets considerations unique to each region.

### Develop Model Agreement (Months 1-3)

During the first three months of Phase I, the NOC would create and make available a model development agreement to be used by the regional planning bodies. This model would be used to foster efficiency and consistency in forming the regional planning bodies. As described in Section X of this Part, the development agreement would be an express commitment to work cooperatively to engage in CMSP and develop eventual CMS Plans, identify the lead representatives for each of the partners, and define ground rules, roles, and responsibilities of the partners.

### Organize and Convene a National Workshop(s) and CMSP Simulation Exercise (Months 2-4)

Within the initial two to four months of Phase I, the NOC would also organize and convene, with input from the GCC, one or more workshops and a CMSP process simulation exercise for potential regional planning body representatives. The workshop(s) would be a forum to directly engage Federal, State, and tribal representatives, to give an overview of CMSP and the national framework, to demonstrate and test how this framework would work in a planning exercise, and to discuss collaborative strategies to move forward. The NOC would identify lessons learned and additional operational issues that were brought to light from the workshop(s) and exercise within two months of workshop completion.

### Determine Composition of and Establish Regional Planning Bodies (Months 4-6)

After the workshop and exercise are held, the NOC, with advice from the GCC, would determine the additional types of representation needed for the composition of the regional planning bodies. Once the composition of the regional planning bodies is determined, the NOC would coordinate with the appropriate State authorities (e.g., Governors) and tribal representatives to establish regional planning bodies for each of the nine regions, identify specific members, and enter into a development agreement.

### Capacity Assessment and Identification of Initial Regional Steps (Months 6-12)

During the latter six to twelve months of Phase I, the regional planning bodies would conduct a regional CMSP capacity assessment. The assessment would evaluate capabilities, expertise, and resources in each region available to develop and implement CMSP. In addition, the assessment would help to identify and prioritize initial regional steps described below in Phase II. The NOC, in coordination with the regional planning bodies, would make a determination on how best to meet the needs identified in the capacity assessment and to support the initial regional steps through existing mechanisms, and possibly new resources and/or funding mechanisms.

# FINAL RECOMMENDATIONS OF THE INTERAGENCY OCEAN POLICY TASK FORCE

## Develop Stakeholder and Scientific Participation Process (Months 6-18)

During Phase I, each regional planning body would begin to identify key stakeholders, scientific and technical experts, non-governmental organizations, and other partners to engage in the CMSP process. A formal mechanism for regular stakeholder, scientific, and technical input would be established and incorporated into the process. Additionally, regional planning bodies, in conjunction with the NOC, would establish procedures and methods to ensure transparency, participation, and collaboration in the planning process, such as public meetings, document availability, and timely public notification.



## ***Phase II (9-24 months)***

Building on Phase I's initial foundational steps of CMSP implementation, Phase II focuses on building capacity and testing specific issues or elements of the process.

## Initial Regional Steps (Months 9-18) and Work Plan Development (Months 12-24)

During Phase II, the NOC would enable the regions to focus during the initial work plan development period on those issues that are of highest regional priority. In this way, these early steps in each region can serve as a test for the other regions for specific issues. For example, a region may select to begin CMSP efforts by organizing, gathering, and analyzing data, whereas another region may select to focus on developing regional CMS Plan objectives. The focus for each region's initial steps should be agreed upon after the capacity assessment is completed at the end of Phase I. After the initial regional steps are underway, the regional planning bodies would begin development of a full CMSP work plan, as detailed in Section X of this Part. In development of its work plan, each regional planning body should integrate the lessons learned from its and other regions' initial steps and also consider how to best integrate relevant ongoing regional planning initiatives.

## Work Plan Submittal and Planning Process Preparation (Months 18-24)

Once initial regional steps are completed or in tandem with their completion, the regional planning bodies would submit to the NOC a package consisting of the proposed work plan. Once the work plan is submitted, the NOC would re-evaluate how best to support the regional CMSP effort through existing mechanisms, and possibly new resources or funding mechanisms to build on the lessons learned from the initial regional CMSP steps. For example, support might involve individual agencies

contributing staff or technical expertise to efforts coordinated through the NOC, or identifying existing grant programs to help support CMSP and achieve mutually agreed upon outcomes.

### ***Phase III (18 months to 5 years)***

While continuing to advance the actions and steps of Phases I and II, regional planning bodies would build out and scale up their efforts to establish a comprehensive CMSP process during Phase III to develop, multi-objective, multi-sectoral CMS Plans in all regions.

#### Develop and Carry Out CMSP Process and Provide Feedback from Initial Regional Steps (Months 18 and beyond)

After the initial regional steps are undertaken by each region, the regional planning bodies would transition into Phase III, developing and carrying out a CMSP process using the initial regional steps and the work of the NOC as a foundation. There is recognition that some regions' planning processes might be longer or more complicated than others. The timeframes for completion of the CMSP process are intended to be flexible to account for differing levels of resources, capacity, and other factors. During this process, regional planning bodies, in coordination with the NOC, would develop a mechanism for providing feedback and status reports to the NOC and appropriate State and tribal leadership to share lessons learned, best practices, and ensure routine and frequent communication nationally and among the regions. The regional planning bodies, in coordination with the NOC, would also ensure consistency, address questions and concerns, and adaptively manage the effort as appropriate. Although there would be flexibility in the framework to allow for variable CMSP process timeframes, regional planning bodies are encouraged to have final CMS Plans completed in three years and all regions would be expected to have final CMS Plans certified and implementation started by mid-2015. These final CMS Plans are intended to be iterative and are expected to be modified through the adaptive process beyond 2015.

## **XVII. Priorities for Financial and Other Support**

Recognizing the reality of the limited availability of new resources, each of the Federal agencies engaged in this bold mission of developing and implementing CMSP would re-evaluate how resources are allocated in light of their statutory and regulatory mandates. Agencies would use the implementing actions of the President to recommend adjustments to their respective agency priorities to better align with the approved National Policy and CMSP goals. As CMSP is developed and implemented over time, the NOC would consider any additional resource needs through the budget prioritization process described earlier. Various Federal agencies would have differing roles to support the scientific basis and governance structures necessary to develop and implement CMSP. The following four areas should receive initial priority consideration for financial and other support for CMSP.

### **1. National Workshop(s) and Simulation Exercise**

Priority: Hold a national workshop(s) and simulation exercise.

## FINAL RECOMMENDATIONS OF THE INTERAGENCY OCEAN POLICY TASK FORCE

Rationale: The first step towards a constructive process for CMSP would be for the participants to engage in a forum that creates a common vision for implementing CMSP, to identify challenges and solutions for regional CMSP development, and to enhance the capacity of regions to implement CMSP. This priority also would include support to ensure widespread involvement of Federal, State, and tribal representatives.

### 2. Initial Support for Regional CMSP Processes

Priority: Support the development of regional CMSP, including the capacity for regional planning bodies and the NOC to carry out initial CMSP activities.

Rationale: A comprehensive and inclusive approach for regional CMSP planning processes would be based on each region engaging Federal, State, and tribal representatives to form the regional planning bodies. An effective process to sustain initial CMSP activities would necessitate regional planning bodies to organize and establish the necessary CMSP coordination (e.g., partnerships, interagency teams, and technical support staffing). To attain national and regional objectives, regional planning bodies would assess capacities, target resources, and begin implementing initial regional steps (e.g., stakeholder engagement, information acquisition, and CMS Plan development). This priority would also include support for the NOC to establish and carry out the necessary national CMSP steps (e.g., national objectives, national guidance, and building regional capacities), as described in Section XVI of this Part.

### 3. National Data and Information Management System, Prototype CMSP Portal(s) and Initial Development of Science and Information Needs

Priority: Improve and integrate the information (i.e., data and knowledge) used to inform CMSP; and identify additional scientific research to support CMSP information needs.

Rationale: Effective CMSP would utilize the best available data and objective analyses. Such information would be nationally consistent, publicly available, and easily accessible to promote public engagement and allow for a consistent framework for regional implementation. Priority would be given to developing the national information management system and a prototype CMSP data portal(s). Subsequent efforts would identify and fill key national information needs,<sup>13</sup> and develop CMSP decision-support tools and derived data products, including visualization tools, forecasting, and routine integrated ecosystem assessments. Additionally, scientific understanding is central to make informed CMSP decisions that reflect an integrated and transparent planning framework. To achieve this end would require a robust research foundation.

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<sup>13</sup> Identification and filling information gaps, as previously presented in the framework, is an ongoing and iterative process. This framework recognizes that the acquisition of data and knowledge would proceed in tandem with developing CMS Plans using sound science and the best available information.



### 4. Public Outreach and Stakeholder Engagement

Priority: Build the knowledge, skills, and understanding of CMSP through regional planning bodies and stakeholder workshops, blogs, webinars, and other outreach methods.

Rationale: An informed and engaged public and stakeholder community is critical to the effective implementation of the CMS Plans. Effective CMSP is predicated on the building of knowledge, skills, and understanding of CMSP through a range of robust outreach approaches.





# Federal Register

**Thursday,  
July 22, 2010**

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## **Part VI**

## **The President**

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**Executive Order 13547—Stewardship of  
the Ocean, Our Coasts, and the Great  
Lakes**

**Memorandum of July 19, 2010—The  
Presidential POWER Initiative: Protecting  
Our Workers and Ensuring  
Reemployment**



# Presidential Documents

Title 3—

Executive Order 13547 of July 19, 2010

The President

## Stewardship of the Ocean, Our Coasts, and the Great Lakes

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. Purpose.** The ocean, our coasts, and the Great Lakes provide jobs, food, energy resources, ecological services, recreation, and tourism opportunities, and play critical roles in our Nation's transportation, economy, and trade, as well as the global mobility of our Armed Forces and the maintenance of international peace and security. The Deepwater Horizon oil spill in the Gulf of Mexico and resulting environmental crisis is a stark reminder of how vulnerable our marine environments are, and how much communities and the Nation rely on healthy and resilient ocean and coastal ecosystems. America's stewardship of the ocean, our coasts, and the Great Lakes is intrinsically linked to environmental sustainability, human health and well-being, national prosperity, adaptation to climate and other environmental changes, social justice, international diplomacy, and national and homeland security.

This order adopts the recommendations of the Interagency Ocean Policy Task Force, except where otherwise provided in this order, and directs executive agencies to implement those recommendations under the guidance of a National Ocean Council. Based on those recommendations, this order establishes a national policy to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests.

This order also provides for the development of coastal and marine spatial plans that build upon and improve existing Federal, State, tribal, local, and regional decisionmaking and planning processes. These regional plans will enable a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to planning and managing sustainable multiple uses across sectors and improve the conservation of the ocean, our coasts, and the Great Lakes.

**Sec. 2. Policy.** (a) To achieve an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured so as to promote the well-being, prosperity, and security of present and future generations, it is the policy of the United States to:

- (i) protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;
- (ii) improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies;
- (iii) bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;
- (iv) use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity's capacity to understand, respond, and adapt to a changing global environment;



- (v) support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;
  - (vi) respect and preserve our Nation's maritime heritage, including our social, cultural, recreational, and historical values;
  - (vii) exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;
  - (viii) increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;
  - (ix) improve our understanding and awareness of changing environmental conditions, trends, and their causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and
  - (x) foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.
- (b) The United States shall promote this policy by:
- (i) ensuring a comprehensive and collaborative framework for the stewardship of the ocean, our coasts, and the Great Lakes that facilitates cohesive actions across the Federal Government, as well as participation of State, tribal, and local authorities, regional governance structures, nongovernmental organizations, the public, and the private sector;
  - (ii) cooperating and exercising leadership at the international level;
  - (iii) pursuing the United States' accession to the Law of the Sea Convention; and
  - (iv) supporting ocean stewardship in a fiscally responsible manner.

**Sec. 3. Definitions.** As used in this order:

(a) "Final Recommendations" means the *Final Recommendations of the Interagency Ocean Policy Task Force* that shall be made publicly available and for which a notice of public availability shall be published in the *Federal Register*.

(b) The term "coastal and marine spatial planning" means a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas. Coastal and marine spatial planning identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives. In practical terms, coastal and marine spatial planning provides a public policy process for society to better determine how the ocean, our coasts, and Great Lakes are sustainably used and protected—now and for future generations.

(c) The term "coastal and marine spatial plans" means the plans that are certified by the National Ocean Council as developed in accordance with the definition, goals, principles, and process described in the Final Recommendations.

**Sec. 4. Establishment of National Ocean Council.** (a) There is hereby established the National Ocean Council (Council).

(b) The Council shall consist of the following:

- (i) the Chair of the Council on Environmental Quality and the Director of the Office of Science and Technology Policy, who shall be the Co-Chairs of the Council;
- (ii) the Secretaries of State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget,

the Under Secretary of Commerce for Oceans and Atmosphere (Administrator of the National Oceanic and Atmospheric Administration), the Administrator of the National Aeronautics and Space Administration, the Director of National Intelligence, the Director of the National Science Foundation, and the Chairman of the Joint Chiefs of Staff;

(iii) the National Security Advisor and the Assistants to the President for Homeland Security and Counterterrorism, Domestic Policy, Energy and Climate Change, and Economic Policy;

(iv) an employee of the Federal Government designated by the Vice President; and

(v) such other officers or employees of the Federal Government as the Co-Chairs of the Council may from time to time designate.

(c) The Co-Chairs shall invite the participation of the Chairman of the Federal Energy Regulatory Commission, to the extent consistent with the Commission's statutory authorities and legal obligations, and may invite the participation of such other independent agencies as the Council deems appropriate.

(d) The Co-Chairs of the Council, in consultation with the National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism, shall regularly convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to address particular subject matters, establish and direct committees of the Council that shall consist exclusively of members of the Council.

(e) A member of the Council may designate, to perform committee functions of the member, any person who is within such member's department, agency, or office and who is (i) an officer of the United States appointed by the President, (ii) a member of the Senior Executive Service or the Senior Intelligence Service, (iii) a general officer or flag officer, or (iv) an employee of the Vice President.

(f) Consistent with applicable law and subject to the availability of appropriations, the Office of Science and Technology Policy and the Council on Environmental Quality shall provide the Council with funding, including through the National Science and Technology Council or the Office of Environmental Quality. The Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative support necessary to implement this order.

(g) The day-to-day operations of the Council shall be administered by a Director and a Deputy Director, who shall supervise a full-time staff to assist the Co-Chairs in their implementation of this order.

**Sec. 5. Functions of the Council.** (a) The Council shall have the structure and function and operate as defined in the Final Recommendations. The Council is authorized, after the Council's first year of operation, to make modifications to its structure, function, and operations to improve its effectiveness and efficiency in furthering the policy set forth in section 2 of this order.

(b) To implement the policy set forth in section 2 of this order, the Council shall provide appropriate direction to ensure that executive departments', agencies', or offices' decisions and actions affecting the ocean, our coasts, and the Great Lakes will be guided by the stewardship principles and national priority objectives set forth in the Final Recommendations, to the extent consistent with applicable law. The Council shall base its decisions on the consensus of its members. With respect to those matters in which consensus cannot be reached, the National Security Advisor shall coordinate with the Co-Chairs and, as appropriate, the Assistants to the President for Energy and Climate Change, and Economic Policy, and the employee of the United States designated by the Vice President, subject to the limitations set forth in section 9 of this order, to present the disputed issue or issues for decision by the President.

**Sec. 6. *Agency Responsibilities.*** (a) All executive departments, agencies, and offices that are members of the Council and any other executive department, agency, or office whose actions affect the ocean, our coasts, and the Great Lakes shall, to the fullest extent consistent with applicable law:

(i) take such action as necessary to implement the policy set forth in section 2 of this order and the stewardship principles and national priority objectives as set forth in the Final Recommendations and subsequent guidance from the Council; and

(ii) participate in the process for coastal and marine spatial planning and comply with Council certified coastal and marine spatial plans, as described in the Final Recommendations and subsequent guidance from the Council.

(b) Each executive department, agency, and office that is required to take actions under this order shall prepare and make publicly available an annual report including a concise description of actions taken by the agency in the previous calendar year to implement the order, a description of written comments by persons or organizations regarding the agency's compliance with this order, and the agency's response to such comments.

(c) Each executive department, agency, and office that is required to take actions under this order shall coordinate and contribute resources, as appropriate, to assist in establishing a common information management system as defined in the Final Recommendations and shall be held accountable for managing its own information assets by keeping them current, easily accessible, and consistent with Federal standards.

(d) To the extent permitted by law, executive departments, agencies, and offices shall provide the Council such information, support, and assistance as the Council, through the Co-Chairs, may request.

**Sec. 7. *Governance Coordinating Committee.*** The Council shall establish a Governance Coordinating Committee that shall consist of 18 officials from State, tribal, and local governments in accordance with the Final Recommendations. The Committee may establish subcommittees chaired by representatives of the Governance Coordinating Committee. These subcommittees may include additional representatives from State, tribal, and local governments, as appropriate to provide for greater collaboration and diversity of views.

**Sec. 8. *Regional Advisory Committees.*** The lead Federal department, agency, or office for each regional planning body established for the development of regional coastal and marine spatial plans, in consultation with their nonfederal co-lead agencies and membership of their regional planning body, shall establish such advisory committees under the Federal Advisory Committee Act, 5 U.S.C. App., as they deem necessary to provide information and to advise the regional planning body on the development of regional coastal and marine spatial plans to promote the policy established in section 2 of this order.

**Sec. 9. *General Provisions.*** (a) Nothing in this order, the establishment of the Council, and the Final Recommendations shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department or agency or the head thereof; or

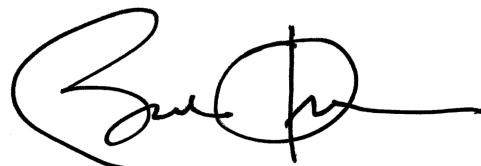
(ii) functions assigned by the President to the National Security Council or Homeland Security Council (including subordinate bodies) relating to matters affecting foreign affairs, national security, homeland security, or intelligence.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) In carrying out the provisions of this order and implementing the Final Recommendations, all actions of the Council and the executive departments, agencies, and offices that constitute it shall be consistent with applicable international law, including customary international law, such as that reflected in the Law of the Sea Convention.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Sec. 10. Revocation.** Executive Order 13366 of December 17, 2004, is hereby revoked.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a horizontal line extending to the right.

THE WHITE HOUSE,  
*July 19, 2010.*



111TH CONGRESS  
2D SESSION

# H. R. 3534

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## AN ACT

To provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior, and for other purposes.



1 any other penalties to which the owner or operator of the  
2 facility is subject, including those under section 311.”.

3 (2) EFFECTIVE DATE.—The amendment made  
4 by paragraph (1) takes effect on April 1, 2010.

## 5 **TITLE VI—COORDINATION AND** 6 **PLANNING**

### 7 **SEC. 601. REGIONAL COORDINATION.**

8 (a) IN GENERAL.—The purpose of this title is to pro-  
9 mote—

10 (1) better coordination, communication, and  
11 collaboration between Federal agencies with authori-  
12 ties for ocean, coastal, and Great Lakes manage-  
13 ment; and

14 (2) coordinated and collaborative regional plan-  
15 ning efforts using the best available science, and to  
16 ensure the protection and maintenance of marine  
17 ecosystem health, in decisions affecting the sustain-  
18 able development and use of Federal renewable and  
19 nonrenewable resources on, in, or above the ocean  
20 (including the Outer Continental Shelf) and the  
21 Great Lakes for the long-term economic and envi-  
22 ronmental benefit of the United States.

23 (b) OBJECTIVES OF REGIONAL EFFORTS.—Such re-  
24 gional efforts shall achieve the following objectives:

1           (1) Greater systematic communication and co-  
2           ordination among Federal, coastal State, and af-  
3           fected tribal governments concerned with the con-  
4           servation of and the sustainable development and  
5           use of Federal renewable and nonrenewable re-  
6           sources of the oceans, coasts, and Great Lakes.

7           (2) Greater reliance on a multiobjective,  
8           science- and ecosystem-based, spatially explicit man-  
9           agement approach that integrates regional economic,  
10          ecological, affected tribal, and social objectives into  
11          ocean, coastal, and Great Lakes management deci-  
12          sions.

13          (3) Identification and prioritization of shared  
14          State and Federal ocean, coastal, and Great Lakes  
15          management issues.

16          (4) Identification of data and information need-  
17          ed by the Regional Coordination Councils established  
18          under section 602.

19          (c) REGIONS.—There are hereby designated the fol-  
20          lowing Coordination Regions:

21               (1) PACIFIC REGION.—The Pacific Coordination  
22               Region, which shall consist of the coastal waters and  
23               Exclusive Economic Zone adjacent to the States of  
24               Washington, Oregon, and California.



1           (2) GULF OF MEXICO REGION.—The Gulf of  
2 Mexico Coordination Region, which shall consist of  
3 the coastal waters and Exclusive Economic Zone ad-  
4 jacent to the States of Texas, Louisiana, Mississippi,  
5 and Alabama, and the west coast of Florida.

6           (3) NORTH ATLANTIC REGION.—The North At-  
7 lantic Coordination Region, which shall consist of  
8 the coastal waters and Exclusive Economic Zone ad-  
9 jacent to the States of Maine, New Hampshire, Mas-  
10 sachusetts, Rhode Island, and Connecticut.

11          (4) MID ATLANTIC REGION.—The Mid Atlantic  
12 Coordination Region, which shall consist of the  
13 coastal waters and Exclusive Economic Zone adja-  
14 cent to the States of New York, New Jersey, Penn-  
15 sylvania, Delaware, Maryland, and Virginia.

16          (5) SOUTH ATLANTIC REGION.—The South At-  
17 lantic Coordination Region, which shall consist of  
18 the coastal waters and Exclusive Economic Zone ad-  
19 jacent to the States of North Carolina, South Caro-  
20 lina, Georgia, the east coast of Florida, and the  
21 Straits of Florida Planning Area.

22          (6) ALASKA REGION.—The Alaska Coordination  
23 Region, which shall consist of the coastal waters and  
24 Exclusive Economic Zone adjacent to the State of  
25 Alaska.

1           (7) PACIFIC ISLANDS REGION.—The Pacific Is-  
2       lands Coordination Region, which shall consist of the  
3       coastal waters and Exclusive Economic Zone adja-  
4       cent to the State of Hawaii, the Commonwealth of  
5       the Northern Mariana Islands, American Samoa,  
6       and Guam.

7           (8) CARIBBEAN REGION.—The Caribbean Co-  
8       ordination Region, which shall consist of the coastal  
9       waters and Exclusive Economic Zone adjacent to  
10      Puerto Rico and the United States Virgin Islands.

11          (9) GREAT LAKES REGION.—The Great Lakes  
12      Coordination Region, which shall consist of waters of  
13      the Great Lakes in the States of Illinois, Indiana,  
14      Michigan, Minnesota, New York, Ohio, Pennsyl-  
15      vania, and Wisconsin.

16   **SEC. 602. REGIONAL COORDINATION COUNCILS.**

17      (a) IN GENERAL.—Within 180 days after the date  
18      of enactment of this Act, the Chairman of the Council on  
19      Environmental Quality, in consultation with the affected  
20      coastal States and affected Indian tribes, shall establish  
21      or designate a Regional Coordination Council for each of  
22      the Coordination Regions designated by section 601(c).

23      (b) MEMBERSHIP.—

24          (1) FEDERAL REPRESENTATIVES.—Within 90  
25      days after the date of enactment of this Act, the

Chairman of the Council on Environmental Quality shall publish the titles of the officials of each Federal agency and department that shall participate in each Council. The Councils shall include representatives of each Federal agency and department that has authorities related to the development of ocean, coastal, or Great Lakes policies or engages in planning, management, or scientific activities that significantly affect or inform the use of ocean, coastal, or Great Lakes resources. The Chairman of the Council on Environmental Quality shall determine which Federal agency representative shall serve as the chairperson of each Council.

(2) COASTAL STATE REPRESENTATIVES.—

(A) NOTICE OF INTENT TO PARTICIPATE.—The Governor of each coastal State within each Coordination Region designated by section 601(c) shall within 3 months after the date of enactment of this Act, inform the Chairman of the Council on Environmental Quality whether or not the State intends to participate in the Regional Coordination Council for the Region.

(B) APPOINTMENT OF RESPONSIBLE STATE OFFICIAL.—If a coastal State intends to

1           participate in such Council, the Governor of the  
2           coastal State shall appoint an officer or em-  
3           ployee of the coastal State agency with primary  
4           responsibility for overseeing ocean and coastal  
5           policy or resource management to that Council.

6           (C) ALASKA REGIONAL COORDINATION  
7           COUNCIL.—The Regional Coordination Council  
8           for the Alaska Coordination Region shall in-  
9           clude representation from each of the States of  
10          Alaska, Washington, and Oregon, if appointed  
11          by the Governor of that State in accordance  
12          with this paragraph.

13          (3) REGIONAL FISHERY MANAGEMENT COUNCIL  
14          REPRESENTATION.—A representative of each Re-  
15          gional Fishery Management Council with jurisdiction  
16          in the Coordination Region of a Regional Coordina-  
17          tion Council (who is selected by the Regional Fish-  
18          ery Management Council) and the executive director  
19          of the interstate marine fisheries commission with  
20          jurisdiction in the Coordination Region of a Regional  
21          Coordination Council shall each serve as a member  
22          of the Council.

23          (4) REGIONAL OCEAN PARTNERSHIP REP-  
24          RESENTATION.—A representative of any Regional  
25          Ocean Partnership that has been established for any



1 part of the Coordination Region of a Regional Co-  
2 ordination Council may appoint a representative to  
3 serve on the Council in addition to any Federal or  
4 State appointments.

5 (5) TRIBAL REPRESENTATION.—An appropriate  
6 tribal official selected by affected Indian tribes situ-  
7 ated in the affected Coordination Region may elect  
8 to appoint a representative of such tribes collectively  
9 to serve as a member of the Regional Coordination  
10 Council for that Region.

11 (6) LOCAL REPRESENTATION.—The Chairman  
12 of the Council on Environmental Quality shall, in  
13 consultation with the Governors of the coastal States  
14 within each Coordination Region, identify and ap-  
15 point representatives of county and local govern-  
16 ments, as appropriate, to serve as members of the  
17 Regional Coordination Council for that Region.

18 (c) ADVISORY COMMITTEE.—Each Regional Coordi-  
19 nation Council shall establish advisory committees for the  
20 purposes of public and stakeholder input and scientific ad-  
21 vice, made up of a balanced representation from the en-  
22 ergy, shipping, transportation, commercial and rec-  
23 reational fishing, and recreation industries, from marine  
24 environmental nongovernmental organizations, and from  
25 scientific and educational authorities with expertise in the

1 conservation and management of ocean, coastal, and  
2 Great Lakes resources to advise the Council during the  
3 development of Regional Assessments and Regional Stra-  
4 tegic Plans and in its other activities.

5 (d) COORDINATION WITH EXISTING PROGRAMS.—

6 Each Regional Coordination Council shall build upon and  
7 complement current State, multistate, and regional capac-  
8 ity and governance and institutional mechanisms to man-  
9 age and protect ocean waters, coastal waters, and ocean  
10 resources.

11 **SEC. 603. REGIONAL STRATEGIC PLANS.**

12 (a) INITIAL REGIONAL ASSESSMENT.—

13 (1) IN GENERAL.—Each Regional Coordination  
14 Council, shall, within one year after the date of en-  
15 actment of this Act, prepare an initial assessment of  
16 its Coordination Region that shall identify defi-  
17 ciencies in data and information necessary to in-  
18 formed decisionmaking by Federal, State, and af-  
19 fected tribal governments concerned with the con-  
20 servation of and management of the oceans, coasts,  
21 and Great Lakes. Each initial assessment shall to  
22 the extent feasible—

23 (A) identify the Coordination Region's re-  
24 newable and non renewable resources, including  
25 current and potential energy resources, except

1 for the assessment for the Great Lakes Coordi-  
2 nation Region, for which the Regional Coordi-  
3 nation Council for such Coordination Region  
4 shall only identify the Great Lakes Coordina-  
5 tion Region's renewable energy resources, in-  
6 cluding current and potential renewable energy  
7 resources;

8 (B) identify and include a spatially and  
9 temporally explicit inventory of existing and po-  
10 tential uses of the Coordination Region, includ-  
11 ing fishing and fish habitat, recreation, and en-  
12 ergy development;

13 (C) document the health and relative envi-  
14 ronmental sensitivity of the marine ecosystem  
15 within the Coordination Region, including a  
16 comprehensive survey and status assessment of  
17 species, habitats, and indicators of ecosystem  
18 health;

19 (D) identify marine habitat types and im-  
20 portant ecological areas within the Coordination  
21 Region;

22 (E) assess the Coordination Region's ma-  
23 rine economy and cultural attributes and in-  
24 clude regionally-specific ecological and socio-  
25 economic baseline data;

1 (F) identify and prioritize additional sci-  
2 entific and economic data necessary to inform  
3 the development of Strategic Plans; and

4 (G) include other information to improve  
5 decision making as determined by the Regional  
6 Coordination Council.

7 (2) DATA.—Each initial assessment shall—

8 (A) use the best available data;

9 (B) collect and provide data in a spatially  
10 explicit manner wherever practicable and pro-  
11 vide such data to the interagency comprehensive  
12 digital mapping initiative as described in section  
13 2 of Public Law 109–58 (42 U.S.C. 15801);  
14 and

15 (C) make publicly available any such data  
16 that is not classified information.

17 (3) PUBLIC PARTICIPATION.—Each Regional  
18 Coordination Council shall provide adequate oppor-  
19 tunity for review and input by stakeholders and the  
20 general public during the preparation of the initial  
21 assessment and any revised assessments.

22 (b) REGIONAL STRATEGIC PLANS.—

23 (1) REQUIREMENT.—Each Regional Coordina-  
24 tion Council shall, within 3 years after the comple-  
25 tion of the initial regional assessment, prepare and



1 submit to the Chairman of the Council on Environ-  
2 mental Quality a multiobjective, science- and eco-  
3 system-based, spatially explicit, integrated Strategic  
4 Plan in accordance with this subsection for the  
5 Council's Coordination Region.

6 (2) OBJECTIVE AND GOALS.—The objective of  
7 the Strategic Plans under this subsection shall be to  
8 foster comprehensive, integrated, and sustainable de-  
9 velopment and use of ocean, coastal, and Great  
10 Lakes resources, while protecting marine ecosystem  
11 health and sustaining the long-term economic and  
12 ecosystem values of the oceans, coasts, and Great  
13 Lakes.

14 (3) CONTENTS.—Each Strategic Plan prepared  
15 by a Regional Coordination Council shall—

16 (A) be based on the initial regional assess-  
17 ment and updates for the Coordination Region  
18 under subsections (a) and (c), respectively;

19 (B) foster the sustainable and integrated  
20 development and use of ocean, coastal, and  
21 Great Lakes resources in a manner that pro-  
22 tects the health of marine ecosystems;

23 (C) identify areas with potential for siting  
24 and developing renewable and nonrenewable en-  
25 ergy resources in the Coordination Region cov-

1           ered by the Strategic Plan, except for the Stra-  
2           tegic Plan for the Great Lakes Coordination  
3           Region which shall identify only areas with po-  
4           tential for siting and developing renewable en-  
5           ergy resources in the Great Lakes Coordination  
6           Region;

7           (D) identify other current and potential  
8           uses of the ocean and coastal resources in the  
9           Coordination Region;

10          (E) identify and recommend long-term  
11          monitoring needs for ecosystem health and so-  
12          cioeconomic variables within the Coordination  
13          Region covered by the Strategic Plan;

14          (F) identify existing State and Federal  
15          regulating authorities within the Coordination  
16          Region covered by the Strategic Plan and meas-  
17          ures to assist those authorities in carrying out  
18          their responsibilities;

19          (G) identify best available technologies to  
20          minimize adverse environmental impacts and  
21          use conflicts in the development of ocean and  
22          coastal resources in the Coordination Region;

23          (H) identify additional research, informa-  
24          tion, and data needed to carry out the Strategic  
25          Plan;

1 (I) identify performance measures and  
2 benchmarks for purposes of fulfilling the re-  
3 sponsibilities under this section to be used to  
4 evaluate the Strategic Plan's effectiveness;

5 (J) define responsibilities and include an  
6 analysis of the gaps in authority, coordination,  
7 and resources, including funding, that must be  
8 filled in order to fully achieve those perform-  
9 ance measures and benchmarks; and

10 (K) include such other information at the  
11 Chairman of the Council on Environmental  
12 Quality determines is appropriate.

13 (4) PUBLIC PARTICIPATION.—Each Regional  
14 Coordination Council shall provide adequate oppor-  
15 tunities for review and input by stakeholders and the  
16 general public during the development of the Stra-  
17 tegic Plan and any Strategic Plan revisions.

18 (c) UPDATED REGIONAL ASSESSMENTS.—Each Re-  
19 gional Coordination Council shall update the initial re-  
20 gional assessment prepared under subsection (a) in coordi-  
21 nation with each Strategic Plan revision under subsection  
22 (e), to provide more detailed information regarding the re-  
23 quired elements of the assessment and to include any rel-  
24 evant new information that has become available in the  
25 interim.

1 (d) REVIEW AND APPROVAL.—

2 (1) COMMENCEMENT OF REVIEW.—Within 10  
3 days after receipt of a Strategic Plan under this sec-  
4 tion, or any revision to such a Strategic Plan, from  
5 a Regional Coordination Council, the Chairman of  
6 the Council of Environmental Quality shall com-  
7 mence a review of the Strategic Plan or the revised  
8 Strategic Plan, respectively.

9 (2) PUBLIC NOTICE AND COMMENT.—Imme-  
10 diately after receipt of such a Strategic Plan or revi-  
11 sion, the Chairman of the Council of Environmental  
12 Quality shall publish the Strategic Plan or revision  
13 in the Federal Register and provide an opportunity  
14 for the submission of public comment for a 90-day  
15 period beginning on the date of such publication.

16 (3) REQUIREMENTS FOR APPROVAL.—Before  
17 approving a Strategic Plan, or any revision to a  
18 Strategic Plan, the Chairman of the Council on En-  
19 vironmental Quality must find that the Strategic  
20 Plan or revision—

21 (A) complies with subsection (b); and

22 (B) complies with the purposes of this title  
23 as identified in section 601(a) and the objec-  
24 tives identified in section 601(b).

1           (4) DEADLINE FOR COMPLETION.—Within 180  
2       days after the receipt of a Strategic Plan, or a revi-  
3       sion to a Strategic Plan, the Chairman of the Coun-  
4       cil of Environmental Quality shall approve or dis-  
5       approve the Strategic Plan or revision. If the Chair-  
6       man disapproves the Strategic Plan or revision, the  
7       Chairman shall transmit to the Regional Coordina-  
8       tion Council that submitted the Strategic Plan or re-  
9       vision, an identification of the deficiencies and rec-  
10      ommendations to improve it. The Council shall sub-  
11      mit a revised Strategic Plan or revision to such plan  
12      with 180 days after receiving the recommendations  
13      from the Chairman.

14      (e) PLAN REVISION.—Each Strategic Plan shall be  
15      reviewed and revised by the relevant Regional Coordina-  
16      tion Council at least once every 5 years. Such review and  
17      revision shall be based on the most recently updated re-  
18      gional assessment. Any proposed revisions to the Strategic  
19      Plan shall be submitted to the Chairman of the Council  
20      on Environmental Quality for review and approval pursu-  
21      ant to this section.

22   **SEC. 604. REGULATIONS AND SAVINGS CLAUSE.**

23      (a) REGULATIONS.—The Chairman of the Council on  
24      Environmental Quality may issue such regulations as the



1 Chairman considers necessary to implement sections 601  
2 through 603.

3 (b) SAVINGS CLAUSE.—Nothing in this title shall be  
4 construed to affect existing authorities under Federal law.

5 **SEC. 605. OCEAN RESOURCES CONSERVATION AND ASSIST-**  
6 **ANCE FUND.**

7 (a) ESTABLISHMENT.—

8 (1) IN GENERAL.—There is established in the  
9 Treasury of the United States a separate account to  
10 be known as the Ocean Resources Conservation and  
11 Assistance Fund.

12 (2) CREDITS.—The ORCA Fund shall be cred-  
13 ited with amounts as specified in section 9 of the  
14 Outer Continental Shelf Lands Act (43 U.S.C.  
15 1338), as amended by section 207 of this Act.

16 (3) ALLOCATION OF THE ORCA FUND.—Of the  
17 amounts appropriated from the ORCA Fund each  
18 fiscal year—

19 (A) 70 percent shall be allocated to the  
20 Secretary, of which—

21 (i) one-half shall be used to make  
22 grants to coastal States and affected In-  
23 dian tribes under subsection (b); and

1                   (ii) one-half shall be used for the  
2                   ocean, coastal, and Great Lakes grants  
3                   program established by subsection (c);

4                   (B) 20 percent shall be allocated to the  
5                   Secretary to carry out the purposes of sub-  
6                   section (c); and

7                   (C) 10 percent shall be allocated to the  
8                   Secretary to make grants to Regional Ocean  
9                   Partnerships under subsection (d) and the Re-  
10                  gional Coordination Councils established under  
11                  section 602.

12               (4) PROCEDURES.—The Secretary shall estab-  
13               lish application, review, oversight, financial account-  
14               ability, and performance accountability procedures  
15               for each grant program for which funds are allo-  
16               cated under this subsection.

17               (b) GRANTS TO COASTAL STATES.—

18               (1) GRANT AUTHORITY.—The Secretary may  
19               use amounts allocated under subsection  
20               (a)(3)(A)(I)(I) to make grants to—

21                   (A) coastal States pursuant to the formula  
22                   established under section 306(c) of the Coastal  
23                   Zone Management Act of 1972 (16 U.S.C.  
24                   1455(c)); and

1 (B) affected Indian tribes based on and  
2 proportional to any specific coastal and ocean  
3 management authority granted to an affected  
4 tribe pursuant to affirmation of a Federal re-  
5 served right.

6 (2) ELIGIBILITY.—To be eligible to receive a  
7 grant under this subsection, a coastal State or af-  
8 fected Indian tribe must prepare and revise a 5-year  
9 plan and annual work plans that—

10 (A) demonstrate that activities for which  
11 the coastal State or affected Indian tribe will  
12 use the funds are consistent with the eligible  
13 uses of the Fund described in subsection (f);  
14 and

15 (B) provide mechanisms to ensure that  
16 funding is made available to government, non-  
17 government, and academic entities to carry out  
18 eligible activities at the county and local level.

19 (3) APPROVAL OF STATE AND AFFECTED TRIB-  
20 AL PLANS.—

21 (A) IN GENERAL.—Plans required under  
22 paragraph (2) must be submitted to and ap-  
23 proved by the Secretary.

24 (B) PUBLIC INPUT AND COMMENT.—In de-  
25 termining whether to approve such plans, the

1 Secretary shall provide opportunity for, and  
2 take into consideration, public input and com-  
3 ment on the plans from stakeholders and the  
4 general public.

5 (5) ENERGY PLANNING GRANTS.—For each of  
6 the fiscal years 2011 through 2015, the Secretary  
7 may use funds allocated for grants under this sub-  
8 section to make grants to coastal States and affected  
9 tribes under section 320 of the Coastal Zone Man-  
10 agement Act of 1972 (16 U.S.C. 1451 et seq.), as  
11 amended by this Act.

12 (6) USE OF FUNDS.—Any amounts provided as  
13 a grant under this subsection, other than as a  
14 grants under paragraph (5), may only be used for  
15 activities described in subsection (f).

16 (c) OCEAN AND COASTAL COMPETITIVE GRANTS  
17 PROGRAM.—

18 (1) ESTABLISHMENT.—The Secretary shall use  
19 amounts allocated under subsection (a)(3)(A)(I)(II)  
20 to make competitive grants for conservation and  
21 management of ocean, coastal, and Great Lakes eco-  
22 systems and marine resources.

23 (2) OCEAN, COASTAL, AND GREAT LAKES RE-  
24 VIEW PANEL.—

1           (A) IN GENERAL.—The Secretary shall es-  
2           tablish an Ocean, Coastal, and Great Lakes Re-  
3           view Panel (in this subsection referred to as the  
4           “Panel”), which shall consist of 12 members  
5           appointed by the Secretary with expertise in the  
6           conservation and management of ocean, coastal,  
7           and Great Lakes ecosystems and marine re-  
8           sources. In appointing members to the Council,  
9           the Secretary shall include a balanced diversity  
10          of representatives of relevant Federal agencies,  
11          the private sector, nonprofit organizations, and  
12          academia.

13          (B) FUNCTIONS.—The Panel shall—

14               (i) review, in accordance with the pro-  
15               cedures and criteria established under  
16               paragraph (3), grant applications under  
17               this subsection;

18               (ii) make recommendations to the  
19               Secretary regarding which grant applica-  
20               tions should be funded and the amount of  
21               each grant; and

22               (iii) establish any specific require-  
23               ments, conditions, or limitations on a grant  
24               application recommended for funding.



1           (3) PROCEDURES AND ELIGIBILITY CRITERIA  
2           FOR GRANTS.—

3           (A) IN GENERAL.—The Secretary shall es-  
4           tablish—

5                   (i) procedures for applying for a grant  
6                   under this subsection and criteria for eval-  
7                   uating applications for such grants; and

8                   (ii) criteria, in consultation with the  
9                   Panel, to determine what persons are eligi-  
10                  ble for grants under the program.

11           (B) ELIGIBLE PERSONS.—Persons eligible  
12           under the criteria under subparagraph (A)(ii)  
13           shall include Federal, State, affected tribal, and  
14           local agencies, fishery or wildlife management  
15           organizations, nonprofit organizations, and aca-  
16           demic institutions.

17           (4) APPROVAL OF GRANTS.—In making grants  
18           under this subsection the Secretary shall give the  
19           highest priority to the recommendations of the  
20           Panel. If the Secretary disapproves a grant rec-  
21           ommended by the Panel, the Secretary shall explain  
22           that disapproval in writing.

23           (5) USE OF GRANT FUNDS.—Any amounts pro-  
24           vided as a grant under this subsection may only be  
25           used for activities described in subsection (f).

1 (d) GRANTS TO REGIONAL OCEAN PARTNERSHIIPS.—

2 (1) GRANT AUTHORITY.—The Secretary may  
3 use amounts allocated under subsection (a)(3)(A)(iii)  
4 to make grants to Regional Ocean Partnerships.

5 (2) ELIGIBILITY.—In order to be eligible to re-  
6 ceive a grant, a Regional Ocean Partnership must  
7 prepare and annually revise a plan that—

8 (A) identifies regional science and informa-  
9 tion needs, regional goals and priorities, and  
10 mechanisms for facilitating coordinated and col-  
11 laborative responses to regional issues;

12 (B) establishes a process for coordinating  
13 and collaborating with the Regional Coordina-  
14 tion Councils established under section 602 to  
15 address regional issues and information needs  
16 and achieve regional goals and priorities; and

17 (C) demonstrates that activities to be car-  
18 ried out with such funds are eligible uses of the  
19 funds identified in subsection (f).

20 (3) APPROVAL BY SECRETARY.—Such plans  
21 must be submitted to and approved by the Sec-  
22 retary.

23 (4) PUBLIC INPUT AND COMMENT.—In deter-  
24 mining whether to approve such plans, the Secretary  
25 shall provide opportunity for, and take into consider-

1       ation, input and comment on the plans from stake-  
2       holders and the general public.

3           (5) USE OF FUNDS.—Any amounts provided as  
4       a grant under this subsection may only be used for  
5       activities described in subsection (f).

6       (e) LONG-TERM OCEAN AND COASTAL OBSERVA-  
7       TIONS.—

8           (1) IN GENERAL.—The Secretary shall use the  
9       amounts allocated under subsection (a)(3)(A)(ii) to  
10      build, operate, and maintain the system established  
11      under section 12304 of Public Law 111–11 (33  
12      U.S.C. 3603), in accordance with the purposes and  
13      policies for which the system was established.

14          (2) ADMINISTRATION OF FUNDS.—The Sec-  
15      retary shall administer and distribute funds under  
16      this subsection based upon comprehensive system  
17      budgets adopted by the Council referred to in section  
18      12304(c)(1)(A) of the Integrated Coastal and Ocean  
19      Observation System Act of 2009 (33 U.S.C.  
20      3603(c)(1)(A)).

21      (f) ELIGIBLE USE OF FUNDS.—Any funds made  
22      available under this section may only be used for activities  
23      that contribute to the conservation, protection, mainte-  
24      nance, and restoration of ocean, coastal, and Great Lakes  
25      ecosystems in a manner that is consistent with Federal

1 environmental laws and that avoids environmental deg-  
2 radation, including—

3           (1) activities to conserve, protect, maintain, and  
4       restore coastal, marine, and Great Lakes ecosystem  
5       health;

6           (2) activities to protect marine biodiversity and  
7       living marine and coastal resources and their habi-  
8       tats, including fish populations;

9           (3) the development and implementation of  
10      multiobjective, science- and ecosystem-based plans  
11      for monitoring and managing the wide variety of  
12      uses affecting ocean, coastal, and Great Lakes eco-  
13      systems and resources that consider cumulative im-  
14      pacts and are spatially explicit where appropriate;

15          (4) activities to improve the resiliency of those  
16      ecosystems;

17          (5) activities to improve the ability of those eco-  
18      systems to become more resilient, and to adapt to  
19      and withstand the impacts of climate change and  
20      ocean acidification;

21          (6) planning for and managing coastal develop-  
22      ment to minimize the loss of life and property asso-  
23      ciated with sea level rise and the coastal hazards re-  
24      sulting from it;

1           (7) research, education, assessment, monitoring,  
2           and dissemination of information that contributes to  
3           the achievement of these purposes;

4           (8) research of, protection of, enhancement to,  
5           and activities to improve the resiliency of culturally  
6           significant areas and resources; and

7           (9) activities designed to rescue, rehabilitate,  
8           and recover injured marine mammals, marine birds,  
9           and sea turtles.

10          (g) DEFINITIONS.—In this section:

11           (1) ORCA FUND.—The term “ORCA Fund”  
12           means the Ocean Resources Conservation and As-  
13           sistance Fund established by this section.

14           (2) SECRETARY.—Notwithstanding section 3,  
15           the term “Secretary” means the Secretary of Com-  
16           merce.

17          **SEC. 606. WAIVER.**

18           The Federal Advisory Committee Act (5 U.S.C. App.)  
19           shall not apply to the Regional Coordination Councils es-  
20           tablished under section 602.





The background of the slide is a photograph of a beach. On the left, there is a wide expanse of dark, wet sand. On the right, the ocean waves are breaking, creating white foam and spray. The waves are moving from the right towards the left, onto the beach.

# National Ocean Policy

Agenda Item G.1.b  
Supplemental NOAA PowerPoint (Rauch)  
September 2010

*A National Policy for the Stewardship of the  
Oceans, Our Coasts and the Great Lakes –  
Established by Presidential Executive Order  
on July 19, 2010*



# Healthy Oceans Matter

## SERVICE CATEGORIES

PROVISIONING

REGULATING

CULTURAL

SUPPORTING

## SERVICES

Seafood, medicines, fuel

Climate, flood, and disease regulation; water purification; coastal protection

Aesthetic, spiritual, educational, recreational

Nutrient cycling, primary production



# Ocean Feast...or Famine

Approximately 60%  
of the planet's  
ecosystem services  
are degraded

At risk:  
Food  
security  
water  
health





# The National Ocean Policy

## Changing How We Do Business

**Over 140 statutes, regulations, & policies govern use of our oceans, coasts & Great Lakes**



**The National Ocean Policy will help agencies:**

- c Coordinate instead of Isolate
- c Cooperate instead of Compete



# The President's National Ocean Policy

## Shared Values

Balance Ocean Health and  
Community Prosperity

Level the Playing Field for All  
Stakeholders

Make Decisions Based on the  
Best Available Science

Respect the Unique Character of  
Each U.S. Region





# The President's National Ocean Policy

# Building Blocks



THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

*Final Recommendations  
Of The  
Interagency Ocean Policy  
Task Force  
July 19, 2010*

National Ocean Council

National Priority Objectives

Framework for Coastal and  
Marine Spatial Planning

Regional Planning Bodies

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## National Ocean Council

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The ocean, our coasts, and the Great Lakes provide jobs, food, energy resources, ecological services, recreation, and tourism opportunities, and play critical roles in our Nation's transportation, economy, and trade, as well as the global mobility of our Armed Forces and the maintenance of international peace and security.

— President Barack Obama





# National Ocean Policy

## Nine Priority Objectives

### HOW WE DO BUSINESS

Ecosystem-Based Management

Coastal & Marine Spatial Planning

Inform Decisions & Improve Understanding

Coordinate & Support

### AREAS OF SPECIAL EMPHASIS

Resiliency & Adaptation to Climate Change & Ocean Acidification

Regional Ecosystem Protection & Restoration

Water Quality & Sustainable Practices on Land

Changing Conditions in the Arctic

Ocean, Coastal, & Great Lakes Observation, Mapping & Infrastructure

# Moving Toward Implementation

## Coastal & Marine Spatial Planning (CMSP)

Fair and Objective

Regional and community focused

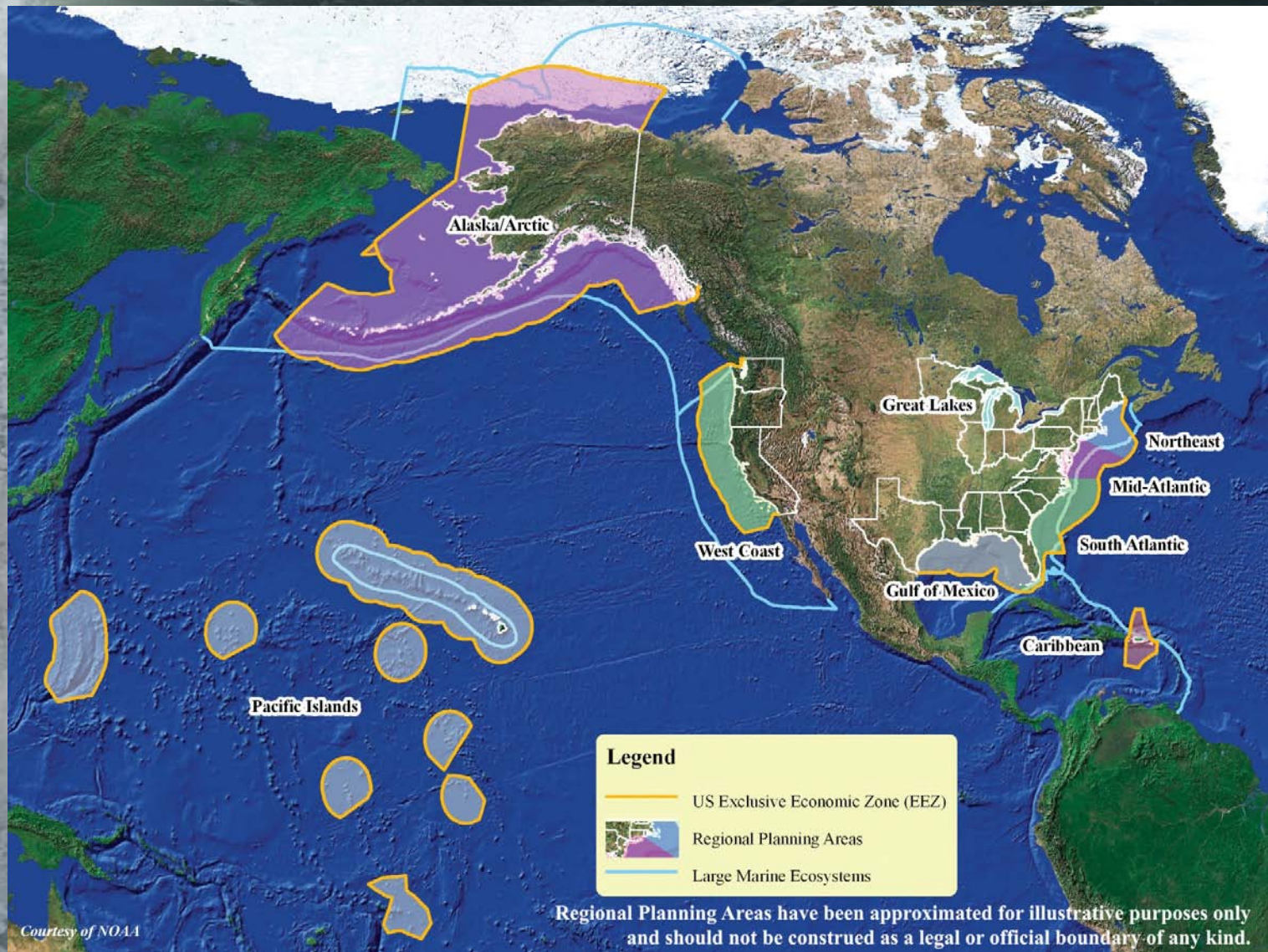
Ecosystem Based Management

Transparency

**NOT an added layer of  
regulation or bureaucracy**



# Regional Focus





# Steps Toward Better Management

## Successful CMSP will:

- c Restore focus to regions and communities, away from Washington, DC
- c Allow all stakeholders to have an equal voice
- c Make decisions based on the best available science





# Cooperation...not Competition



Preserve current uses

Embrace new uses

Grow relationships of trust and mutual respect





# Respect for Local Authority



The National Ocean Policy rests on existing legal authority

Builds upon and informs current plans, projects and decision-making

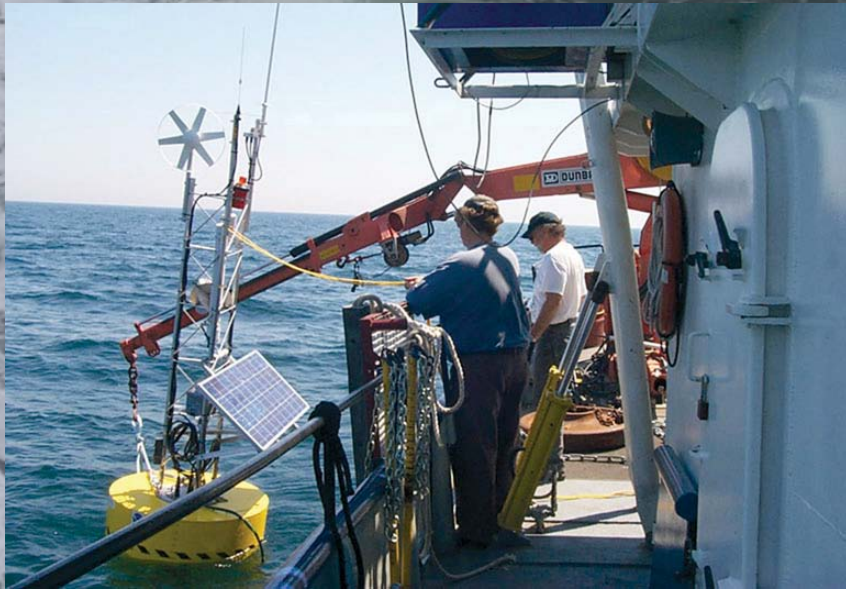
Cooperation with State, local, and tribal governments



# Science: Common Ground for Stakeholders

Science-based Decision Making needs:

- A clear understanding of a communities ecosystems
- Objective measures of ocean, coast, and Great Lakes health
- Scientists who are effective communicators





# Role of Fishery Management Councils

Regional Fisheries Management Councils will play an important role in Regional CMSP

**Experience** — bringing their expertise from decades of involvement in the science- and ecosystem-based management of fisheries.

**Science** — providing research on fisheries biology and a wealth of economic data to support management goals.

**Constituents** — representing commercial and recreational fishing interests.

**Management responsibilities** — have authority to develop management and protection measures for fisheries, habitat, and deep-sea corals




# Commercial and Recreational Fishing Community

Commercial and recreational fishery interests will have the opportunity to engage in CMSP in two ways through:

- Regional Fishery Management Council consultations with RPBs
- RPB Stakeholder Engagement Processes



# Toward a New Ocean Ethic



Responsibility to  
both our  
communities  
and our oceans,  
coasts, and  
Great lakes

## LEGISLATIVE MATTERS

The Pacific Fishery Management Council's (Council's) Legislative Committee (Committee) is scheduled to meet Friday, September 10th at 2:30 p.m. to review a variety of legislative matters of interest to the Council. Council staff has provided a summary of legislation introduced in the 111<sup>th</sup> U.S. Congress (Agenda Item G.2.a, Attachment 1) to update the Council on items previously discussed and to highlight legislation for review at the September Council meeting.

Among the bills to be discussed is H.R. 5180 (Agenda Item G.2.a, Attachment 2), the *National Marine Fisheries Service Ombudsman Act of 2010* introduced in the U.S. House of Representatives to establish an Office of the Ombudsman in the National Marine Fisheries Service (NMFS) which shall be under the direction of the Ombudsman of NMFS, who shall be appointed by the Administrator of the National Oceanic and Atmospheric Administration (NOAA). The NMFS Ombudsman would oversee regional Ombudsmen assigned to each Regional Fishery Management Council and together they would act as a neutral third party who conducts informal, impartial investigations, identifies and mitigates points of conflict or contention between the fishing industry and NMFS, and serves as a point of contact for local fishermen and businesses regulated by NMFS.

The Committee is also anticipated to review the following three bills as time allows:

H.R. 4914/S. 3528, the *Coastal Jobs Creation Act of 2010* introduced in the U.S. House and Senate to implement a Coastal Jobs Creation Grant Program which would include: (1) cooperative research to collect and compile data related to fisheries management; (2) establishment and implementation of state recreational fishing registry programs; (3) training and deploying observers authorized or required under the Magnuson-Stevens Fishery Conservation and Management Act; (4) preservation or restoration of coastal resources; (5) redevelopment of deteriorating and underutilized working waterfronts and ports; (6) research to develop, test, and deploy innovations and improvements in coastal and ocean observation technologies; and (7) cooperative research to collect data to improve, supplement, or enhance fishery and marine mammal stock assessments.

The U.S. House Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 5180 and H.R.4914 on July 27, 2010. Written statements submitted by the hearing panelists, including the NOAA, Assistant Administrator for Fisheries, Mr. Eric Schwaab, are included for reference as Agenda Item G.2.a, Attachment 4).

H.R.3534, the *Consolidated Land, Energy, and Aquatic Resources Act of 2010* is a large bill intended to "provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior." Title VI of the bill (Agenda Item G.2.a, Attachment 5) aims to improve coordination and regional planning effort between Federal agencies with authorities for ocean, coastal, and Great Lakes management, in part, through Regional Coordination Councils (RCC). Each regional fishery

management council would have one seat on their respective RCC as would the executive director of the appropriate interstate marine fisheries commission. Title VI implements concepts similar to those put forward under previous bills and aims to create greater reliance on multi-objective, science- and ecosystem-based, spatially explicit management approaches (see related matter, Agenda Item G.1, Briefing on Marine Spatial Planning).

S.3594, the *Fishery Conservation Transition Act* (Agenda Item G.2.a, Attachment 6) would amend the Magnuson-Stevens Fishery Conservation and Management Act to mitigate the economic impact of the transition to sustainable fisheries on fishing communities.

As time allows, the Committee may discuss other Federal legislation of interest to the Council.

### **Council Action:**

#### **1. Consider the recommendations of the Legislative Committee.**

##### **Reference Materials:**

1. Agenda Item G.2.a, Attachment 1: Staff Summary of Federal Legislation in the 111th U.S. Congress.
2. Agenda Item G.2.a, Attachment 2: H.R. 5180, the *National Marine Fisheries Service Ombudsman Act of 2010*.
3. Agenda Item G.2.a, Attachment 3: H.R. 4914, the *Coastal Jobs Creation Act of 2010*.
4. Agenda Item G.2.a, Attachment 4: Written Statements from the July 27, 2010 Hearing of the U.S. House of Representatives Subcommittee on Insular Affairs, Oceans and Wildlife.
5. Agenda Item G.2.a, Attachment 5: H.R.3534, the *Consolidated Land, Energy, and Aquatic Resources Act of 2010, Title VI – Coordination and Planning* (entire bill available on the Briefing Book CD).
6. Agenda Item G.2.a, Attachment 6: S.3594, the *Fishery Conservation Transition Act*.
7. Agenda Item G.2.b, Supplemental Legislative Committee Report.

##### **Agenda Order:**

- a. Agenda Item Overview
- b. Legislative Committee Report
- c. Reports and Comments of Management Entities and Advisory Bodies
- d. Public Comment
- e. **Council Action:** Consider Legislative Committee Recommendations

**Mike Burner**  
**Dave Hanson**

PFMC  
08/20/10

## STAFF SUMMARY OF FEDERAL LEGISLATION IN THE 111<sup>TH</sup> U.S. CONGRESS

This summary is intended as a general overview for discussion purposes. Full text of these bills, additional summary and background information, and current status can be found by entering the bill number in the search engine at the THOMAS web site of the Library of Congress (<http://thomas.gov>). Portions of this report are derived from summaries provided by the Congressional Research Service of the Library of Congress.

### Status of Recently Reviewed Legislation

The following three bills were reviewed by the Legislative Committee (Committee) at their April 2010 meeting and their comments were adopted by the Pacific Fishery Management Council (Council) (see Agenda Item K.1.c, Supplemental Legislative Committee Report, April 2010 on the Council's Briefing Book archive web page).

**S. 2870 - International Fisheries Stewardship and Enforcement Act.** A bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes including implement the Antigua Convention.

Introduced December 10, 2009 by Senator Inouye, Hawaii and referred to the U.S. Senate Committee on Commerce, Science, and Transportation. On March 24, 2010, the bill was ordered to be reported to the U.S. Senate without amendment favorably where it is pending.

In addition to establishing uniform administrative and enforcement procedures and penalties, this bill would amend existing legislation by implementing the technical corrections regarding U.S. representation to the Western and Central Pacific Fisheries Commission (WCPFC) and the appropriate criteria specified under the U.S./Canada agreement on Pacific Whiting and, implement the Antigua Convention.

In April, the Council and the Committee noted that the technical corrections on implementation of the WCPFC and the U.S./Canada agreement on Pacific Whiting under Title III are non-controversial, overdue, and the sole purpose of related legislation (S.2871, see below). Also, implementation of the Antigua Convention took place in August 2010 and, although the U.S. is signatory to this agreement, legislation similar to that under Title IV is needed to invoke the required instruments of U.S. ratification for full U.S. participation. The Committee and the Council agreed that S.2870 addresses too broad a range of issues and recommended that Title III and Title IV under S.2870 be removed and treated expeditiously under separate legislation.

**S. 2871** – This bill would make the same technical corrections regarding U.S. representation to the WCPFC and the U.S./Canada agreement on Pacific Whiting as those specified under Title III of S.2870, but as a stand-alone bill. The Committee and the Council remain supportive of these corrections and the Council Executive Director conveyed this support in a May 12, 2010 letter to Senator Maria Cantwell as requested.



S. 2871 was introduced December 10, 2009 by Senator Inouye, Hawaii and referred to the U.S. Senate Committee on Commerce, Science, and Transportation. On March 24, 2010, the bill was ordered to be reported to the U.S. Senate without amendment favorably where it is pending.

**H.R. 4363 - National Sustainable Offshore Aquaculture Act of 2009.** A bill to establish a regulatory system and research program for sustainable offshore aquaculture in the United States exclusive economic zone, and for other purposes.

Introduced December 16, 2009 by Congresswoman Capps, California and referred to the U.S. House Subcommittee on Insular Affairs, Oceans and Wildlife on January 4, 2010.

The Council and Committee comments on this bill in April 2010 focused on guidelines for placement and permitting of aquaculture operations, restrictions on the types of fish stocks that could be reared or used as feed, and ensuring that the coastal States would have to “opt-in” to offshore aquaculture activities off their coastlines prior to the permitting of any proposed aquaculture activities.

There has not been a recent Congressional request for Council input on legislative matters, including input on H.R. 4363. Therefore, the April 2010 Committee comments were approved by Council to provide recommendations that could be submitted in response to future Congressional inquiries at the discretion of the Council or the Council’s Executive Director.

#### Recently Introduced Legislation for Committee Review in September

#### **H.R.5180 - the National Marine Fisheries Service Ombudsman Act of 2010**

H.R. 5180, was introduced on April 29, 2010 by Congresswoman Carol Shea-Porter of New Hampshire to establish an Office of the Ombudsman in the National Marine Fisheries Service which shall be under the direction of the Ombudsman of the National Marine Fisheries Service, who shall be appointed by the Administrator of the National Oceanic and Atmospheric Administration (NOAA). Specifically, H.R. 5180:

- Requires the Ombudsman to maintain a regional Ombudsman for each of the Regional Fishery Management Councils.
- Requires the Ombudsman to report solely to, and be under the general supervision of, the Administrator and allows the removal of the Ombudsman only by the Administrator for neglect of duty, misconduct, or inability to perform the duties of the office of the Ombudsman.
- Sets forth the duties of the Ombudsman, including: (1) to act as a neutral third party who conducts informal, impartial fact finding and investigations; (2) to identify points of conflict or contention (and to mitigate such points of conflict or contention) between the fishing industry and the National Marine Fisheries Service with respect to the implementation and enforcement of regulations; (3) through each regional ombudsman, to serve as a point of contact for local fishermen and businesses that are regulated by the National Marine Fisheries Service; and (4) to maintain a public Internet site that includes contact information for each regional office.

## **H.R.4914 and S.3528 - the Coastal Jobs Creation Act of 2010**

Introduced on March 23, 2010 in the U.S. House of Representatives by Congressman Frank Pallone of New Jersey and in the U.S. Senate by Senator Olympia Snowe of Maine.

Directs the Secretary of Commerce to implement a Coastal Jobs Creation Grant Program which shall include: (1) cooperative research to collect and compile economic and social data related to recreational and commercial fisheries management; (2) establishment and implementation of state recreational fishing registry programs; (3) training and deploying observers authorized or required under the Magnuson-Stevens Fishery Conservation and Management Act; (4) preservation or restoration of coastal resources identified for their conservation, recreational, ecological, historic, or aesthetic values; (5) redevelopment of deteriorating and underutilized working waterfronts and ports; (6) research to develop, test, and deploy innovations and improvements in coastal and ocean observation technologies; (7) cooperative research to collect data to improve, supplement, or enhance fishery and marine mammal stock assessments; and (8) other specified activities.

Amends the Magnuson-Stevens Fishery Conservation and Management Act to require the Secretary of Commerce to enter into contracts with, or provide grants to, states for the purpose of establishing and implementing a registry program to meet the requirements for the exemption from registration of a regional standardized fishing vessel registration and information management system program for state licensed recreational fishermen and charter fishing vessels when the Secretary determines that information from the state program is suitable for the Secretary's use in completing marine recreational fisheries statistical surveys or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.

The U.S. House Subcommittee on Insular Affairs, Oceans, and Wildlife held a hearing on H.R. 5180 and H.R.4914 on July 27, 2010. Written testimony submitted at the hearing by the NOAA, Assistant Administrator for Fisheries, Mr. Eric Schwaab and others is included in the September briefing materials as Agenda Item G.2.a, Attachment 5).

## **H.R.3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2010, Title VI – Coordination and Planning**

Introduced on September 8th, 2009 in the U.S. House of Representatives by Congressman Nick Rahall of West Virginia. H.R.3534 passed the U.S. House on July 31, 2010 and was introduced in the U.S. Senate for consideration on August 3, 2010.

H.R.3534 is a large bill intended to “provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior.” Title VI of the bill aims to improve coordination and regional planning effort between Federal agencies with authorities for ocean, coastal, and Great Lakes management, in part, through Regional Coordination Councils (RCC). Each regional fishery management council would have one seat on their respective RCC as would the executive director of the appropriate interstate marine fisheries commission. Title VI implements concepts similar to those put

forward under previous bills and aims to create greater reliance on multiobjective , science- and ecosystem-based, spatially explicit management approaches.

### **S.3594, the Fishery Conservation Transition Act**

Introduced on July 15th, 2010 in the U.S. Senate by Senator Bill Nelson of Florida and was referred to the Committee on Commerce, Science, and Transportation.

S.3594 would amend the Magnuson-Stevens Fishery Conservation and Management Act to mitigate the economic impact of the transition to sustainable fisheries on fishing communities. The bill would require the Secretary to review FMPs that contain fisheries with a complete prohibition on the retention of stocks subject to overfishing for an entire fishing season and determine whether the prohibition is sufficient to prevent or end overfishing for the stocks. If the Secretary determines that the prohibition contained in such a fishery management plan is not sufficient to prevent or end overfishing for the stocks to which it applies, the Secretary may authorize retention of fish that are not undergoing overfishing within that fishery, notwithstanding that discard mortality of stocks for which retention is prohibited may be inconsistent with provisions on ending or preventing overfishing.

PFMC

08/19/10

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111TH CONGRESS  
2D SESSION

# H. R. 5180

To establish an Ombudsman Office within the National Marine Fisheries Service, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2010

Ms. SHERRA-PORTER (for herself, Ms. PINGREE of Maine, Mr. FRANK of Massachusetts, Mr. TIERNEY, Ms. BORDALLO, and Mr. PALLONE) introduced the following bill; which was referred to the Committee on Natural Resources

---

## A BILL

To establish an Ombudsman Office within the National Marine Fisheries Service, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Marine Fish-  
5 eries Service Ombudsman Act of 2010”.

6 **SEC. 2. NATIONAL MARINE FISHERIES SERVICE OMBUDS-**  
7 **MAN OFFICE.**

8 (a) IN GENERAL.—



1           (1) ESTABLISHMENT.—There is established an  
2       Office of the Ombudsman in the National Marine  
3       Fisheries Service.

4           (2) OMBUDSMAN.—

5           (A) IN GENERAL.—The Office shall be  
6       under the direction of the Ombudsman of the  
7       National Marine Fisheries Service, who shall be  
8       appointed by the Administrator of the National  
9       Oceanic and Atmospheric Administration—

10           (i) in the case of the first Ombuds-  
11       man, within 180 days after the date of en-  
12       actment of this Act; and

13           (ii) in the case of an individual ap-  
14       pointed to serve as Ombudsman subse-  
15       quent to the expiration of the term of a  
16       sitting Ombudsman, by not later than the  
17       date the term expires.

18           (B) TERM.—An individual appointed as  
19       Ombudsman shall serve a term of 4 years, and  
20       may be reappointed.

21           (C) VACANCIES.—In the event of a va-  
22       cancy in the position of Ombudsman the Ad-  
23       ministrator shall appoint an individual as Om-  
24       budsman by not later than 120 days after the  
25       date the vacancy occurs.

1 (3) REGIONAL OMBUDSMEN.—

2 (A) IN GENERAL.—The Ombudsman shall  
3 maintain a regional ombudsman in each of the  
4 regions for which a Regional Fishery Manage-  
5 ment Council is established under section 302  
6 of the Magnuson-Stevens Fishery Conservation  
7 and Management Act (16 U.S.C. 1852).

8 (B) APPOINTMENT.—The regional om-  
9 budsmen shall be appointed by and serve at the  
10 discretion of the Ombudsman.

11 (C) ACTING OMBUDSMAN.—In the event of  
12 a vacancy in the office of the Ombudsman, the  
13 Administrator shall appoint a regional ombuds-  
14 man to serve as the acting Ombudsman until  
15 an Ombudsman is appointed.

16 (4) QUALIFICATIONS.—A person may not be  
17 appointed—

18 (A) as the Ombudsman, unless the person  
19 has—

20 (i) demonstrated expertise in the field  
21 of fisheries management and significant  
22 experience and knowledge of regulations  
23 that are enforced by the National Marine  
24 Fisheries Service; and

1                   (ii) significant experience working in  
2                   or with the commercial or recreational fish-  
3                   ing industries; or

4                   (B) as a regional ombudsman, unless the  
5                   person—

6                   (i) satisfies the requirements in sub-  
7                   paragraph (A); and

8                   (ii) is a resident of a State in the re-  
9                   gion for which appointed.

10               (5) NOTIFICATION OF APPOINTMENT AND RE-  
11               MOVAL.—The Administrator shall notify Congress  
12               of—

13                   (A) the intent of the Administrator to ap-  
14                   point an individual as Ombudsman, by not later  
15                   than 60 days before the effective date of the ap-  
16                   pointment;

17                   (B) whether or not the Administrator will  
18                   reappoint an individual who is serving as Om-  
19                   budsman, by not later than 120 days before the  
20                   expiration of the term of the individual; and

21                   (C) the intent of the Administrator to re-  
22                   move a person from the position of Ombuds-  
23                   man, by not later than 60 days before the effec-  
24                   tive date of the such removal, including the rea-  
25                   sons for such removal.

1           (6) ENSURING INDEPENDENCE OF OMBUDS-  
2       MAN.—

3           (A) IN GENERAL.—The Ombudsman—

4                 (i) shall report solely to and be under  
5                 the general supervision of the Adminis-  
6                 trator; and

7                 (ii) may only be removed by the Ad-  
8                 ministrator for neglect of duty, mis-  
9                 conduct, or inability to perform the duties  
10                of the office of the Ombudsman.

11          (B) MAINTENANCE OF INDEPENDENT  
12       COMMUNICATIONS.—Each office under the ad-  
13       ministrative jurisdiction of the Ombudsman  
14       shall maintain a telephone, facsimile, and other  
15       means of electronic communication access, and  
16       a post office address, that is separate from  
17       those maintained by the National Marine Fish-  
18       eries Service and from all other components of  
19       the National Oceanic and Atmospheric Admin-  
20       istration.

21          (C) IG'S AUTHORITY TO CONDUCT INVES-  
22       TIGATIONS NOT AFFECTED.—Nothing in this  
23       Act shall prevent or prohibit any Inspector Gen-  
24       eral from initiating, carrying out, or completing  
25       any investigation.



1 (b) FUNCTIONS.—The Ombudsman shall—

2 (1) act as a neutral third party who conducts  
3 informal, impartial fact finding and investigations;

4 (2) identify points of conflict or contention be-  
5 tween the fishing industry and the National Marine  
6 Fisheries Service with respect to the implementation  
7 and enforcement of regulations;

8 (3) mitigate points of conflict or contention  
9 identified under paragraph (2);

10 (4) through each regional ombudsman—

11 (A) serve as a point of contact for local  
12 fishermen and businesses that are regulated by  
13 the National Marine Fisheries Service;

14 (B) receive complaints from persons regu-  
15 lated by the National Marine Fisheries Service  
16 regarding regulatory actions initiated by the  
17 Service;

18 (C) initiate informal, impartial fact finding  
19 and investigations;

20 (D) work with the Service and local fisher-  
21 men and businesses to resolve such complaints;  
22 and

23 (E) conduct community outreach, including  
24 by assisting the National Marine Fisheries  
25 Service in the dissemination of any new regula-

1           tions or requirements and providing information  
2           and guidance to the public; and

3           (5) maintain a public Internet site that includes  
4           contact information for each regional office.

5           (c) ANNUAL REPORT.—

6           (1) IN GENERAL.—The Ombudsman shall re-  
7           port no later than September 30 each year to the  
8           Administrator, the Committee on Natural Resources  
9           Committee of the House of Representatives, and the  
10          Committee on Commerce, Science, and Transpor-  
11          tation of the Senate on the actions taken by each of  
12          the regional offices over the preceding year and the  
13          objectives of those actions.

14          (2) CONTENTS.—Each such report shall in-  
15          clude—

16                (A) full and substantive analysis, in addi-  
17                tion to statistical information;

18                (B) recommendations the Office of the  
19                Ombudsman has made on improving services  
20                and responsiveness of the National Marine  
21                Fisheries Service;

22                (C) a summary of the most pervasive and  
23                serious points of conflict or contention encoun-  
24                tered by fishermen and businesses, including a  
25                description of the nature thereof;

1 (D) an inventory of the items described in  
2 subparagraphs (B) and (C) for which action  
3 has been taken, and the result of such action;

4 (E) an inventory of the items described in  
5 subparagraphs (B) and (C) for which action re-  
6 mains to be completed;

7 (F) recommendations to resolve points of  
8 conflict or contention encountered by fishermen  
9 and businesses;

10 (G) information the Ombudsman considers  
11 appropriate regarding the independence and ef-  
12 fectiveness of the Ombudsman's office; and

13 (H) such other information as the Om-  
14 budsman considers relevant.

15 (3) REPORT TO BE SUBMITTED DIRECTLY.—

16 Each report under this subsection shall be provided  
17 directly to the committees described in paragraph  
18 (1) without any prior comment or amendment from  
19 the Administrator or any from any other officer or  
20 employee of the National Oceanic and Atmospheric  
21 Administration, the National Marines Fisheries  
22 Service, or the Office of Management and Budget.

23 (4) OTHER REPORTS.—Nothing in this sub-  
24 section shall be construed to preclude the Ombuds-

- 1 man from issuing other reports on the activities of
- 2 the Office of the Ombudsman.

○



111TH CONGRESS  
2D SESSION

# H. R. 4914

To promote coastal jobs creation, promote sustainable fisheries and fishing communities, revitalize waterfronts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2010

Mr. PALLONE (for himself, Ms. SHERRA-PORTER, and Ms. PINGREE of Maine) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To promote coastal jobs creation, promote sustainable fisheries and fishing communities, revitalize waterfronts, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coastal Jobs Creation  
5 Act of 2010”.

1 **SEC. 2. PURPOSE.**

2       The purpose of this Act is to provide employment op-  
3 portunities for coastal communities by increasing support  
4 for—

- 5           (1) cooperative research and monitoring;
- 6           (2) the revitalization of coastal infrastructure;
- 7           (3) recreational fishing registry programs;
- 8           (4) marine debris removal; and
- 9           (5) restoration of coastal resources.

10 **SEC. 3. COASTAL JOBS CREATION GRANT PROGRAM.**

11       (a) ESTABLISHMENT.—The Secretary of Commerce  
12 (in this Act referred to as the “Secretary”) shall use funds  
13 made available under this Act to implement a Coastal Jobs  
14 Creation Grant Program using the authorities listed in  
15 subsection (b). The Secretary shall expend such funds as  
16 quickly as possible consistent with prudent management.

17       (b) AUTHORITIES.—The authorities referred to in  
18 subsection (a) are authorities under the following laws:

- 19           (1) Section 306A of the Coastal Zone Manage-  
20 ment Act of 1972 (16 U.S.C. 1455a).
- 21           (2) Section 315(e) of the Coastal Zone Manage-  
22 ment Act (16 U.S.C. 1461(e)).
- 23           (3) Section 204 of the Coral Reef Conservation  
24 Act (16 U.S.C. 6403).

1           (4) Section 12304 of the Integrated Coastal  
2           and Ocean Observation System Act of 2009 (33  
3           U.S.C. 3603).

4           (5) Section 318 of the Magnuson-Stevens Fish-  
5           ery Conservation and Management Act (16 U.S.C.  
6           1867).

7           (6) Section 401(g) of the Magnuson-Stevens  
8           Fishery Conservation and Management Act (16  
9           U.S.C. 1881(g)).

10          (7) Section 3 of the Marine Debris Research,  
11          Prevention, and Reduction Act (33 U.S.C. 1952).

12          (8) Section 408 of the Marine Mammal Protec-  
13          tion Act of 1972 (16 U.S.C. 1421f-1).

14          (9) Section 311 of the National Marine Sane-  
15          tuaries Act (16 U.S.C. 1442).

16          (10) Section 205 of the National Sea Grant  
17          College Program Act (33 U.S.C. 1124).

18          (c) ACTIVITIES.—Activities funded under the Coastal  
19          Jobs Creation Grant Program shall include the following:

20               (1) Cooperative research to collect and compile  
21               economic and social data related to recreational and  
22               commercial fisheries management.

23               (2) Cooperative research to identify habitat  
24               areas of particular concern and for habitat restora-  
25               tion and conservation.

1           (3) Improving the quality and accuracy of infor-  
2           mation generated by the Marine Recreational Fish-  
3           ery Statistics Survey.

4           (4) Establishment and implementation of State  
5           recreational fishing registry programs.

6           (5) Training and deploying observers authorized  
7           or required under the Magnuson-Stevens Fishery  
8           Conservation and Management Act (16 U.S.C. 1801  
9           et seq.).

10          (6) Preservation or restoration of coastal re-  
11          sources identified for their conservation, rec-  
12          reational, ecological, historic, or aesthetic values.

13          (7) Redevelopment of deteriorating and under-  
14          utilized working waterfronts and ports.

15          (8) Research and monitoring within the Na-  
16          tional Estuarine Research Reserve System, the Na-  
17          tional Marine Sanctuary System, and coral reef eco-  
18          systems, and under the National Sea Grant College  
19          Program.

20          (9) Implementation of local strategies developed  
21          by State or Federal agencies to conserve coral reef  
22          ecosystems.

23          (10) Research to develop, test, and deploy inno-  
24          vations and improvements in coastal and ocean ob-  
25          servation technologies.



1           (11) Cooperative research to collect data to im-  
2       prove, supplement, or enhance fishery and marine  
3       mammal stock assessments.

4           (12) Cooperative research to assess the amount  
5       and type of bycatch and to engineer gear types de-  
6       signed to reduce bycatch.

7           (13) Reducing and preventing the occurrence  
8       and adverse impacts of marine debris on the marine  
9       environment and navigation safety.

10       (d) FUNDING CRITERIA.—The Secretary may not  
11   make funds available under this Act for a proposed project  
12   unless the project, to the maximum extent practicable—

13           (1) provides the greatest employment opportu-  
14       nities for coastal communities and benefits commer-  
15       cial and recreational fishing industries;

16           (2) replicates or builds upon a successful local,  
17       State, Federal, or tribal project;

18           (3) utilizes existing fishing community infra-  
19       structure, including idled fishing vessels;

20           (4) supports research and monitoring that im-  
21       proves science-based management decisions; or

22           (5) contributes to restoring, protecting, or pre-  
23       serving coastal and ocean ecosystems.

24       (e) GUIDELINES.—Within 30 days after the date of  
25   enactment of this Act, the Secretary shall develop guide-

1 lines necessary to implement the Coastal Jobs Creation  
2 Grant Program.

3 **SEC. 4. AMENDMENT OF MAGNUSON-STEVENSON FISHERY**  
4 **CONSERVATION AND MANAGEMENT ACT.**

5 Section 401(g) of Magnuson-Stevens Fishery Con-  
6 servation and Management Act (16 U.S.C. 1881(g)) is  
7 amended by redesignating paragraph (4) as paragraph  
8 (5), and by inserting after paragraph (3) the following new  
9 paragraph:

10 “(4) FUNDING.—The Secretary, subject to the  
11 availability of appropriations, shall enter into con-  
12 tracts with, or provide grants to, States for the pur-  
13 pose of establishing and implementing a registry  
14 program to meet the requirements for exemption  
15 under paragraph (2).”.

16 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

17 To carry out the Coastal Jobs Creation Grant Pro-  
18 gram there is authorized to be appropriated to the Sec-  
19 retary of Commerce \$80,000,000 for each of fiscal years  
20 2011 through 2015, of which no more than 5 percent may  
21 be used each fiscal year for administrative expenses of  
22 such program.

○

**WRITTEN STATEMENT OF  
ERIC C. SCHWAAB  
ASSISTANT ADMINISTRATOR FOR FISHERIES AND DIRECTOR  
NATIONAL MARINE FISHERIES SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE**

**HEARING ON  
FIVE BILLS INCLUDING THE COASTAL JOBS CREATION ACT OF 2010 AND THE  
NATIONAL MARINE FISHERIES SERVICE OMBUDSMAN ACT OF 2010**

**BEFORE THE  
SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

**July 27, 2010**

My name is Eric C. Schwaab and I am Assistant Administrator of the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS). Thank you, Chairwoman Bordallo and Members of the Subcommittee, for the opportunity to testify on H.R. 4914, the Coastal Jobs Creation Act of 2010, H.R. 5180, the National Marine Fisheries Service Ombudsman Act of 2010, and H.R. 3910 the Longline Catcher Processor Subsector Single Fishery Cooperative Act. I will begin by providing some context on our role in living marine resource stewardship and supporting coastal jobs.

NOAA's mission is to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. NOAA is dedicated to the stewardship of living marine resources through science-based conservation and management policies that support healthy, resilient ecosystems. NOAA conserves, protects, and manages living marine resources to ensure their continuation as functioning components of marine ecosystems, afford economic opportunities, and enhance the quality of life for the American public.

Using tools provided under the Magnuson-Stevens Fishery Conservation and Management Act, NOAA assesses and predicts the status of fish stocks, and ensures compliance with fisheries regulations. NOAA works with eight Regional Fishery Management Councils to manage 532 stocks and stock complexes included under 46 federal fishery management plans. Over three-quarters of the Nation's fish stocks are managed sustainably, and almost all overfished stocks are rebuilding. Marine commercial and recreational fishing contribute over \$187 billion in combined sales annually to the U.S. economy.

***H.R. 5180, the National Marine Fisheries Service Ombudsman Act of 2010***

The National Marine Fisheries Service Ombudsman Act of 2010 creates an Office of the Ombudsman. The Ombudsman would be appointed for a 4-year term by the NOAA

Administrator. Under the bill, a regional Ombudsman (appointed at the discretion of the Ombudsman) would be maintained in each region for which a Council is established. The national and regional ombudsmen would serve as points of contact, investigators, and referees in addressing conflicts between NOAA and its constituencies. Toward that end, the ombudsman would make recommendations, prepare reports, serve as third parties, and conduct issue-specific informal fact-finding investigations.

Building trust and ensuring good communication between the agency and the regulated community is a huge challenge but NOAA has many avenues by which to accomplish this. Under Dr. Lubchenco's leadership as the Under Secretary of Commerce for Oceans and Atmosphere, NOAA has renewed its commitment to improving the agency's relationship and communications with fishermen and enhancing their understanding of fisheries science, regulations and enforcement activities on the local, regional and national scale.

NOAA is working to improve and increase our communications with fishermen and other stakeholders. We are employing or developing the following communications and outreach methods and tools:

- **Fishermen Forums:** In conjunction with regularly held Fishery Management Council meetings, NMFS regional leaders hold question and answer forums. Such forums are currently conducted in the South Atlantic, Gulf of Mexico, and Western Pacific, and have helped to establish a dialogue with these fishing communities in those regions. Typically informal and without agenda, these forums focus on responding to questions, but they also provide an opportunity for proactive outreach.
- **Web-Portal and Repository:** Webpages facilitate easy public access to the regulatory compliance criteria for each region serving as a portal to the regulations and compliance criteria unique to each region. NOAA is considering a pilot project modeled after the NOAA National Weather Service "point and click" weather forecasts, where fishermen and the public could "point and click" to areas where they fish or enjoy marine recreation to access the appropriate regulations in that region.
- **Compliance Guides:** Under the Regulatory Flexibility Act, NOAA produces compliance guides to accompany each regulation, primarily designed to assist small businesses with compliance. NOAA is working to make these easier to read and accessible on the web, as well as available in hard-copy. Those that are produced in a more user-friendly format have become valuable communication tools.
- **E-mail ListServ:** A listserve is an effective way to either "push" information out to constituents or, if moderated, serve as a discussion forum or a means to answer questions. NMFS already has FishNews, which is an automated, e-mail-based national weekly product that provides electronic notification of important actions, rules, policies and programs. Regional e-mailed news letters also exist and could be further utilized to enhance communications.

- **Social Media Tools:** As the use of social media tools becomes approved and integrated into NOAA's communications operations, the use of Twitter and other push technologies could be used to communicate with fishermen about quick regulatory updates. Blogs could also be incorporated as another platform.

As the complexity of regulations accumulates over time, the need for easy access to the agency and facilitated communication with the regulated community has gained importance. We note that an Ombudsman is a person who acts as a trusted intermediary between an organization and some internal or external constituency while representing the broad scope of constituent interests. On May 11, 1999, then Secretary of Commerce William Daley announced the appointment of Sebastian O'Kelly as NOAA's Fisheries Ombudsman. The position terminated when Sebastian O'Kelly resigned on January 20, 2001 and was not reinstated by the next administration and NOAA has determined that this was not a particularly successful program.

The agency's regulatory actions and scientific determinations can be highly controversial and at times inadequately understood or perceived as unfair. However, creating an additional layer of review by placing an Ombudsman and attendant staff in every FMC is unlikely to improve that situation. In addition to the more informal tools described above there are currently many formal means for stakeholders to participate in the management process and avail themselves of opportunities for input and appeals of the outcomes. It is important that an Ombudsman not confound clear lines of communication between the public and NOAA on fishery management issues. Instead of participating fully in the existing Council process, or in the opportunities for public comment during Secretarial review of fishery management plans and amendments and the promulgation of implementing regulations, the Ombudsman's Office would create a separate channel for people to express their concerns. The existing executive, legislative and judicial oversight of fisheries could be weakened, and a great deal of confusion could be created, if an Ombudsman works independently from, and not in coordination with, the established fishery management process.

By law, NOAA is required to take into account comments on proposed rules and National Environmental Policy Act documents when making a decision. We are concerned that significant confusion could arise regarding the role of the Ombudsman in this process. For example, if a member of the public were to provide comments to the Ombudsman, they may think they have commented on the record with NOAA when in reality they have not. Such confusion could lead to important public comments not being captured or responded to as part of the administrative process. The established fishery management process ensures that future NOAA Assistant Administrators for Fisheries and I have the benefit of receiving public input on all issues before making a decision.

Under current law and regulatory practice, individuals and entities regulated by NMFS and those with a general interest in fishery conservation and management may pose questions, offer comments, and recommend views and solutions through a number of formal avenues, including:

- (a) meetings of the Regional Fishery Management Councils;
- (b) proposals to participants of Marine Fishery Advisory Committee and Atlantic highly migratory species advisory panels;



- (c) comments on *Federal Register* notices; and
- (d) NMFS-administered appeals processes.

Further, the scientific or regulatory process can also be examined through a variety of other oversight means, including:

- (a) Congressional oversight hearings;
- (b) Special studies by the Congressional Research Service;
- (c) Government Accountability Office studies;
- (d) National Science Foundation reports;
- (e) Peer review of agency science, as required in the Magnuson-Stevens Fishery Conservation and Management Act; and
- (f) Commerce Department Inspector General reports.

NOAA is committed to improving the agency's relationship and communications with the regulated community, but we have significant concerns with the approach laid out in H.R. 5180.

#### ***H.R. 4914, the Coastal Jobs Creation Act of 2010***

This bill creates a Coastal Jobs Creation Grant Program using existing grant programs under the Coastal Zone Management Act; the Coral Reef Conservation Act; the Integrated Coastal and Ocean Observation Act; the Magnuson-Stevens Fishery Conservation and Management Act; the Marine Debris Research, Prevention, and Reduction Act; the Marine Mammal Protection Act; the National Marine Sanctuaries Act; and the National Sea Grant College Program Act. H.R. 4914 would allow funding for a variety of activities to support cooperative research, marine recreational statistics, observer training and deployment, preservation of coastal resources, research and monitoring, coral reef conservation, coastal ocean observation, and marine debris mitigation.

Under the existing grant programs that H.R. 4914 seeks to use, and through existing efforts under the Magnuson-Stevens Fishery Conservation and Management Act, the Coastal Zone Management Act, and NOAA's Marine Debris Program, NOAA currently provides millions of dollars annually through grants that benefit coastal states and their economies. Currently, grant programs make up approximately one third of the NMFS annual budget.

NOAA activities also support sustainable coastal, onshore, and offshore marine shellfish and finfish farming. A moderate expansion of sustainable domestic marine aquaculture could yield tens of thousands of jobs and inject hundreds of millions of dollars into local economies within the next 10 to 15 years.

In February 2009, the President signed the American Recovery and Reinvestment Act, a bill intended to create and sustain jobs throughout the American economy. As part of this effort, NOAA received \$167 million to invest in coastal habitat restoration and help jumpstart the Nation's economy by supporting thousands of jobs. Using a competitive evaluation process, NOAA selected a diverse set of habitat restoration projects which are restoring wetlands,

shellfish beds and coral reefs, and opening fish passage through dam removals. When complete, these projects will boost the health and resiliency of our Nation's coastal environment while creating direct and indirect jobs for coastal communities, including jobs for out-of-work fisherman. This restoration initiative demonstrates the importance of coastal investments to supporting jobs and strengthening coastal communities.

Under the Coastal Zone Management Act, NOAA provides assistance to states and territories for the purposes of redeveloping deteriorating and underutilized waterfronts, preserving public access and other coastal-dependent uses, enhancing maritime commerce, and restoring coastal features. These activities, along with NOAA's programs that rebuild wild stocks and increase domestic aquaculture, present numerous opportunities for economic growth that are well-suited to struggling constituents within the coastal population, such as out-of-work fishermen. These opportunities include the creation of jobs in such sectors as seafood processing, aquaculture, transportation, energy development, marine debris removal, tourism, and recreation.

Given today's fiscal challenges and the importance of marine and coastal resources to our Nation's economic well-being, NOAA supports the goal to create jobs and economic opportunities in coastal communities. Coastal areas generate billions of dollars annually from fisheries, recreation, tourism, ports, and other marine businesses. Working waterfronts and sustainable marine and coastal resources are a critical component of vibrant, sustainable coastal communities. A significant concern with the legislation is that the \$80 million annual appropriation authorized by this bill beginning in fiscal year 2011.

NOAA has four main objectives that are used to track progress: protect, restore and manage the use of coastal and ocean resources, advance understanding of climate variability and change, provide accurate and timely weather and water information, and support safe, efficient, and environmentally sound commercial navigation. It is important to recognize that successfully implementing these objectives supports job creation. For example, sustainable fisheries are more profitable and lead to higher full-time employment.

Cooperative research has been cited as one of the most important components of NOAA's outreach to the fishing community. Cooperative research allows industry members to become involved with the science that informs fishery management. It has not been intended as a tool for supplementing fishermen's income. However, those individuals who have qualified for, and participated in, the cooperative research projects have benefited from the funding. It is important that we continue to execute these cooperative research programs in accordance with rigorous scientific standards.

H.R. 4914 would authorize use of grant funds for training and deploying observers authorized or required under the Magnuson-Stevens Fishery Conservation and Management Act. This authorization could conflict with current observer activities. NOAA currently trains (in-house or under contract) and deploys observers through the regulatory process. In this way, NOAA ensures the integrity of the data and information incorporated into fishery science and management plans. For this reason, NOAA prefers to manage and fund observer programs through existing authorities.

In summary, NOAA recognizes the importance of strengthening coastal communities and is working to do so through existing programs. NOAA has several concerns with H.R. 4914. First, NOAA has the necessary authorities to support all of the programs identified in the bill. Second, the bill is inconsistent with the President's budget request, and therefore could redirect funds from existing programs. Finally, NOAA should measure its performance based on healthy, sustainable marine and coastal resources, not strictly the number of jobs created in the process.

### ***H. R. 3910, Longline Catcher Processor Subsector Single Fishery Cooperative Act***

Thank you for the opportunity to briefly comment on the Longline Catcher Processor Subsector Single Fishery Cooperative Act. This act would provide an opportunity for members of the longline catcher processor subsector to establish a fishery cooperative to better manage their allocation of the Bering Sea and Aleutian Islands (BSAI) Pacific cod annual catch limit. The longline catcher processor subsector comprises approximately 36 vessels that harvest 50 to 55 percent of the annual catch limit of BSAI Pacific cod, currently valued at approximately \$55 million. The bill establishes clear criteria for determining how much of the annual catch limit would be assigned to a cooperative. Once catch is assigned to a fishery cooperative, the cooperative would receive an exclusive catch share, thereby ending a competitive "race for fish." Those participants who do not join the cooperative would continue to participate in a race for fish for that portion of the annual catch limit not assigned to the fishery cooperative. Many fisheries in the North Pacific are managed through the use of fishery cooperatives that receive exclusive catch shares.

Past experience has demonstrated that fishery cooperatives, such as the one authorized under this bill result in more efficient and profitable use of fishery resources, reduced bycatch, improved communication with managers reducing the risk of exceeding annual catch limits, and reduced incentives to engage in dangerous fishing practices. The greatest benefit of the bill is likely to be the elimination of a race for fish resulting in slower paced fishing and processing operations, improved product quality, and greater profitability for the fleet. These changes in fishing patterns could also reduce the bycatch of halibut that is incidentally caught in the Pacific cod fishery. Overall, this bill would likely improve the management of the longline catcher processor subsector, and BSAI Pacific cod and halibut resources. NMFS supports the intent of this bill, but does not support the bill itself. The North Pacific Fishery Management Council already has the authority to recommend cooperative management for this fishery, and NMFS believes that it is preferable for such a change in fishery management policy be developed and implemented through the open and collaborative processes mandated by the Magnuson-Steven Fishery Management Act rather than imposed by statute.

### ***Closing***

Thank you for the opportunity to provide testimony on H.R. 4914 and H.R. 5180, and H.R. 3910. We welcome the opportunity to work with the Committee as the bills move forward. I am happy to answer any questions.

**Testimony of  
William P. Angrick II  
Former Iowa Citizens/ Aide/Ombudsman  
On behalf of the United States Ombudsman Association**

**before a hearing of the**

**Subcommittee on Insular Affairs, Oceans and Wildlife  
Committee on Natural Resources,  
House of Representatives**

*Tuesday, July 27, 2010*

***The National Oceanic and Atmospheric Administration's  
Fisheries Enforcement Programs and Operations***

Madam Chair Bordallo, Ranking Member Brown, and other members of the Subcommittee.

My name is William P. Angrick II. On behalf of the United States Ombudsman Association (USOA) I want to thank you and the Subcommittee for inviting USOA's comments on Representative Shea-Porter's proposal to create an ombudsman for the Marine Fisheries Service.

The United States Ombudsman Association is the oldest organization of public sector ombudsman in the United States. The Association is dedicated to actively promoting the creation of ombudsman offices that have sufficient independence and investigative and reporting authority to be effective.

The United States Ombudsman Association membership represents ombudsman offices that primarily deal with complaints from the public about federal, state, and local governments. USOA is interested in Representative Shea-Porter's bill because the office would handle "external" complaints filed by citizens impacted by actions of the National Marine Fisheries Service. It is with those objectives in mind that I speak to you on behalf of USOA.

I retired as Iowa Citizens' Aide/Ombudsman on June 24, 2010, after 32 years as Ombudsman. I am the immediate past president of the International Ombudsman Institute, an international organization of public sector ombudsman at the local, state, provincial, and national levels representing over 90 different countries. I served as president of USOA from 1981 to 1983.

I was a member of the USOA committee that drafted the USOA Governmental Ombudsman Standards adopted by USOA in 2003. The committee balanced the goal of providing a standard measure of what a Governmental Ombudsman should be with practical ideas that would be useful to individuals in offices that are not general jurisdiction in scope or established in the legislative branch. I have provided a copy of those standards as an attachment to my testimony, and I request that they be made a part of the record. I have also provided a copy of the USOA Model Ombudsman Legislation for State Governments which contains specific language that may be of interest to you in your consideration of specific powers and capacities when creating a independent and impartial ombudsman. I request that this Model Legislation also be made a part of the record.

The USOA envisioned that these Standards will be useful to individuals and policymakers interested in how a Governmental Ombudsman can serve the public and improve administrative efficiency and fairness.

In its January 2010 Audit of *National Oceanic and Atmospheric Administration Review of NOAA Fisheries Enforcement Programs and Operations*, the U.S. Inspector General (IG) recommended that NOAA should consider reestablishing the position of ombudsman to serve as an interface with the regulated industry. Such a position was created in May 1999, but has remained vacant for several years, and it is unclear within NOAA whether the position still exists.

The IG also recommended that NOAA ensure agency leadership regularly addresses and provides input to enforcement priorities and strategies with regional management, including formal reporting protocols. The IG said “Given the complexities of NOAA’s mission and organization, the industry, and the current enforcement climate, its setting of enforcement priorities should involve integration and coordination with the headquarters fisheries management and science center elements, including the Assistant reestablishing the position of ombudsman to serve as an interface with the regulated industry.”

USOA believes that in order to fulfill the IG’s recommendation, any NMFS ombudsman should incorporate the following:

### **Structural Independence**

USOA traditionally encourages:

- A. the classical model (placement in legislative branch). If that is not feasible, other placement options to consider are, in the following order:
  1. another executive agency.
  2. in the agency but with similar structure, appointment/removal and reporting authority as Inspector Generals.
  3. in the agency, with supervision/reporting directly to the head or highest authority in the agency, which in this case is the Secretary of Commerce, or the Deputy Secretary. This would be similar to what Congress did for the Citizenship and Immigration Services Ombudsman, who reports to the Deputy Secretary for Homeland Security.



4. in the agency, with supervision/reporting directly to an official who reports directly the head of the agency. This is what is proposed in the current bill, by providing for the ombudsman to report to the Under Secretary and Administrator for NOAA. While this reporting structure is not as high up as desirable, at least the ombudsman would not be supervised by the Assistant Administrator for National Marine Fisheries Service.

## **Appointment and Removal**

USOA supports establishing a set term for ombudsman appointees as protection from removal for political reasons or to squelch criticism. The bill provides some protection by requiring the administrator to inform Congress of appointment and removal 30 days in advance, so Congress can address concerns with those decisions. USOA suggests increasing that time to 60 days to ensure adequate time to act.

## **Define the Ombudsman's Authority to Investigate**

The term "investigate" is a core function for a classical/external ombudsman. Government entities and individual government employees that are the subjects of complaints may be resistant to cooperating in investigations. Therefore, the Ombudsman's authority to investigate must be clearly established.

USOA strongly recommends adding a provision to clearly and forcefully state the Ombudsman shall have statutory access to information, reports, electronic correspondence, internal memorandum, etc. from the agency to avert obstacles to thorough, impartial investigation.

The Ombudsman should have unlimited access to records and proceedings held by jurisdictional agencies, including records that are considered confidential or not otherwise open to the public. Agency staff should be required to cooperate with the Ombudsman during the conduct of an investigation. The power to issue subpoenas and to take sworn testimony makes enforcement of such a requirement possible. Managers and supervisors should not interfere with an Ombudsman's ability to talk directly to staff.

The authority to examine government premises, documents and files, including electronic records, is crucial to the Ombudsman's role as an investigator. The Ombudsman should be authorized to enter agency premises and inspect without notice. The Ombudsman should be able to initiate an investigation on the Ombudsman's own motion in addition to investigating upon complaint.

As the USOA reads the current legislative document, it appears that complainants are or may be limited to the regulated community only. The USOA believes that the stakeholders in this are much broader than the regulated community only, and recommends that standing to be a complainant to the ombudsman is broadened.

## **Protections for Complainants and the Ombudsman**

USOA suggests adding provisions for:

- A. Confidentiality of ombudsman records including the identity of complainants, with the possible exceptions (e.g., legislative oversight), and
- B. Privilege or immunity protections from being compelled to testify in civil or criminal proceedings that may result from the Fisheries Service taking enforcement actions.

### **Reporting Provision**

USOA suggests adding the provision to allow issuance of investigative or special reports (allowing for agency to append a response), besides annual reports. We also believe that there is a need to be provisions allowing the Ombudsman to report the Ombudsman's findings to the complainant and public.

Perhaps this would be a good time to end my prepared testimony and make myself available to answer questions or respond to comments. During my 32 years of service as Iowa's Ombudsman and in my capacities as an officer in both the United States Ombudsman Association and the International Ombudsman Institute, I have had the opportunity and experience to legally enforce and defend the independence and authority of the office. I am keenly aware of situations in jurisdictions where less independent ombudsman offices have been thwarted from accomplishing the good work they were supposed to attain.

On behalf of the United States Ombudsman Association I again wish to thank you for the opportunity to appear, give testimony, and submit information.

**Written Testimony  
Of  
Sebastian O’Kelly, former Ombudsman, Department of Commerce  
On H.R. 5180, The National Marine Fisheries Service Ombudsman Act of 2010  
Before  
The House Subcommittee on Insular Affairs, Oceans and Wildlife**

July 27, 2010

Thank you for inviting me to testify on H.R. 5180, The National Marine Fisheries Service Ombudsman Act of 2010. I am currently a consultant to the law firm of Hoffman, Silver, Gilman and Blasco, but I am here today to present my individual perspective as the former Ombudsman for the Department of Commerce and not that of the firm or its clients.

My understanding is that this bill was born of controversy over the National Marine Fisheries Service’s (NMFS) enforcement practices in New England. The creation of my position was also born of controversy, also in New England, twelve years ago but the situation was a little different. The controversy was over whether NMFS would open parts of Georges Bank to scalloping. These areas had been closed to fishing to restore groundfish stocks and had the added benefit of boosting scallop populations. Then-Secretary William Daley had been dissatisfied with the reluctance of NMFS to open those grounds despite scientific evidence over the plentiful abundance of scallops. Ultimately, the area was opened to scalloping on a limited basis with appropriate groundfish bycatch restrictions. In the process, the Secretary decided to create the Ombudsman position to provide an independent viewpoint and arbiter on major marine fisheries, marine mammal and endangered species decisions that fall under the purview of NMFS. I served as the Ombudsman from 1998 to 2001 as a Schedule C political appointment. I was the only one to serve in the position and it was not continued into the next administration.

Based on my experience there are two concepts critical to the bill to maximize the effectiveness of the Fisheries Ombudsman. They are independence and integration into the fisheries decision-making process. My comments are aimed at the fisheries management and regulatory process and are less relevant to enforcement as I had minimal involvement in that area.

The legislation takes several steps toward ensuring independence. They include giving the position a statutory mandate along with a separate reporting requirement to Congress. There is a tendency in all bureaucracies to resist or control independent viewpoints. This was the case when the first Inspector Generals were established and a primary reason why Congress ensured that the IGs reported both to the agency and Congress. It looks like you are emulating that model in this bill. The personnel protections in Section 2(a)(6) are also positive steps towards protecting the office’s independence.

Integration into the decision-making process is a more difficult goal to achieve. The legislation notes that the Ombudsman’s functions include mitigating points of conflict and resolving complaints from the regulated community. That raises a few of questions. Is the Ombudsman role primarily to examine how NMFS implements and enforces its regulations and respond to complaints over unfair enforcement? Or should the Ombudsman have the ability to review and have an impact on the actual substance of the regulation itself as it is being developed? What powers should the Ombudsman have to mediate a dispute or resolve points of conflict after a rule has been approved by the Regional Fishery Management Council? After its final approval by the Department?

During my tenure, the overwhelming majority of complaints I received were over the allocation and conservation requirements in fishery management rules. I also received complaints over some marine mammal and endangered species protections. Enforcement was an issue that I did not receive many complaints. If the sponsors of the legislation are intending for the Ombudsman to be able to have input into the substance of fishery management rules and decisions aside from just their enforcement then it needs to be spelled out more clearly. Clarification of how the office might fit within the formal process of fishery management decision-making governing the Magnuson-Stevens Act would also be helpful. Also, the bill should indicate that the Ombudsman have access to all records maintained by NMFS as well as ensure it is included as at least a "cc" in the paperwork trail that goes to the Administrator and ultimately the Secretary. Otherwise, the office will likely not be in the loop on many of the issues it will inevitably receive complaints about.

The Ombudsman in the bill reports directly to the NOAA Administrator. During my tenure, I reported to the NOAA leadership, with a dotted line relationship to the Secretary. While there were some advantages to this reporting relationship, it did not have all the advantages that one might think. The Magnuson Stevens Act (MSA) defers significant powers to the Regional Fishery Management Councils. Departmental orders implementing the Act also delegate review and initial approval of Council recommendations to NMFS. By the time a fishery management rule reached NOAA and Departmental review, agency and departmental leadership had very little flexibility to make or suggest any changes. Two barriers stood in their way – many times rules arrive at the Department with the fishing season about ready to start, in some cases as little as 24 hours. Any delay brought howls of protesting from the fishing community, even if there was strong disagreement over the restrictions in the rule. Second, the MSA has timelines and specific criteria for review, approval, or rejection of Council actions. Any attempt by the Secretary or NOAA Administrator to substitute his judgment for NMFS and the Councils after they have already acted would face strict legal scrutiny and possible court action.

Lastly, the Congressional report requirement in the bill provides some transparency and accountability for the Ombudsman. It would be worth considering extending that transparency, particularly if the office's role is to provide meaningful input in the development of fishery management regulations, to make the Ombudsman's comments and views on such regulations a part of the public rulemaking record. That would allow the public, the fishing community and others to ascertain the Ombudsman's involvement, thoughts and position, if any, on a fishery management rule. Also, it would put NMFS in the position of having to publicly address the Ombudsman's concerns in the rule-making record, though in the end the Ombudsman's comments would only be advisory. This approach would be a little unusual, but there is a precedent. SBA's Office of Advocacy frequently publicly comments on the small business impacts of rules being developed by Federal agencies.

Thank you again for inviting me to testify and I look forward to your questions.



Testimony of

Jim Hutchinson, Jr.

Committee on Natural Resources  
Subcommittee on Insular Affairs, Oceans and Wildlife  
U.S. House of Representatives

July 27, 2010

Madam Chairwoman and members of the Committee, my name is Jim Hutchinson, I'm Managing Director of the Recreational Fishing Alliance (RFA). The RFA is a national 501(c)(4) non-profit political action organization whose mission is to safeguard the rights of saltwater anglers, protect marine industry jobs, and ensure the long-term sustainability of our Nation's marine fisheries. The RFA represents individual recreational fishermen, recreational fishing boat manufacturers, party and charter boat owners and operators, bait and tackle businesses, marina operators and other businesses dependent on recreational fishing.

I appreciate the opportunity to appear before you today about our coastal communities and the importance of the House version of the Coastal Jobs Creation Act of 2010 (H.R. 4914). Today I have the distinct privilege of speaking on behalf of not only RFA but also as President of the New York Sportfishing Federation, and as Governmental Affairs Representative for the New York Fishing Tackle Trades Association. These organizations are made up of not just individual coastal anglers, but American businesses, many of them smaller coastal operators who are not only being hampered by a down economy, but are equally hard-hit by widespread recreational fishing closures and ever-tightening management measures. The Gulf tragedy of course has had a catastrophic impact on our coastal fishermen – and I pray every day that we'll soon see an end to the ongoing environmental disaster so that our folks there can start getting their lives back, as well as their livelihoods.

But while this disaster in the Gulf is something we all hope deeply never, ever happens again, it serves notice that perhaps our coastal communities have been somewhat overlooked during the past few years. As you probably know, the RFA and many of our allied groups including more than a thousand individuals from the Gulf states held a rally at Upper Senate Park this past February – there are several members of this Committee of course who joined us for this historic rally in support of our coastal fishermen that many media accounts tabbed at upwards of 5,000 fishermen. Our coastal communities have been suffering for years because of



these deep sacrifices being made in the name of protecting the fish – and on behalf of real, hard-working Americans, I ask you to now consider our nation's fishermen.

Few could argue that the fisherman is first and foremost a conservationist, and those whom I represent today wish to see as many fish in the ocean tomorrow - and the day after - as there are today, and yes, even yesterday. A healthy, sustained resource is our responsibility as stakeholders, and maintaining that resource for tomorrow's user is not just a goal, it's truly part of our mission. That said, the federal requirements to rebuild fish populations to historic levels have had a deleterious impact on many of our coastal businesses; the for-hire fleet of charter and party boat captains has experienced significant loss of customers, which in turn has impacted their mates, their crew, and many of the ancillary businesses around the docks. Individual anglers experiencing denied access to the resource have in turn not had as much need to visit local tackle shops, or fill their boats at the gas dock, much less keep the boat in the marina. As you can imagine, the recent bottom fishing closure in the South Atlantic, the black sea bass closure in the Mid-Atlantic this past fall and winter, and of course the Gulf area closures before and after the Deepwater Horizon catastrophe have kept many folks away from our waterfront, and in turn has forced coastal businesses to suffer. Respectfully, as the members of this Committee are intimately aware, our fishermen and the communities that support them are hurting.

U.S. recreational fisheries provide enormous benefits to our national economy, including jobs, food, recreation, even ecological benefits. A 2006 U.S. Fish and Wildlife Service report said that there were 7.7 million saltwater anglers who spent nearly \$9 billion on trips and equipment to fish in our coastal communities that year. Trip-related expenditures accounted for \$5.3 billion, food and lodging totaled \$1.7 billion, while transportation accounted for roughly \$1.1 billion. In terms of saltwater equipment, bait and guide fees alone, anglers spent \$6.1 billion in 2006. Regrettably, this same year our economy began its nosedive, and our fisheries restrictions started piling up. When the U.S. Fish and Wildlife Service begins compiling new data for their next survey release two years from now, I can't say that I'm very optimistic about where we're going and what we'll learn. For many small business owners along the shore, two years is an eternity considering that the next two months are do-or-die.

When the President announced plans to put forth a jobs creation bill, my friends in the coastal community had their fingers crossed. Would there be floor-planning for boat owners so that our manufacturers could keep building American-made sportfishing boats, center consoles and cruisers? Would there be stimulus funding to put coastal laborers to work on rebuilding our crumbling marine infrastructure, to revitalize our working waterfronts? Our fishermen had hoped for dedicated earmarks towards improving NOAA Fisheries' science and data collection abilities, so that U.S. fisheries could remain healthy and vibrant while both our recreational and commercial fishermen could be assured of the best possible science through improved technology and perhaps participation in the process. None of this has happened, and our coastal communities continue to suffer.

The Coastal Jobs Creation Act of 2010 (H.R. 4914) begins to address some of these concerns of coastal business owners, and it's a good start. RFA supports the intended purpose of this bill, to provide employment opportunities for coastal communities by increasing support for

cooperative research, revitalizing coastal infrastructure, recreational fishing registry programs, marine debris removal and restoration of coastal resources. If the funds made available under this Act to implement a Coastal Jobs Creation Grant Program are truly dedicated to those full-time fishermen, tackle purveyors, and fully vested marine industry professionals who are suffering through difficult times, then we fully support the intent of this bill. However, if monies are tied up in a bureaucratic web or reallocated to individuals, entrepreneurs and NOAA favorites who are not currently invested in our coastal industry, then this legislation will not work as intended.

It's vitally important that our active fishing businesses, the hard-working charter and party boat captains for example, are given every opportunity under this law to participate in the program. That means that longtime fishing industry representatives should be given unique consideration for any monitoring or observer opportunities. That means amending current law to allow our seasoned coastal professionals to act as observers. The National Marine Fisheries Service presently lists as minimum eligibility standards for marine fisheries observers that they possess a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The rules also contain 'conflict of interest' restrictions which prevent anyone with an interest in a fishery, such as a fisherman who owns a boat or has a permit, or someone who works shoreside for a fishing business, from working as an observer. For the Coastal Jobs Creation Act to work as intended, it's important that NMFS loosen these restrictive measures so that we can allow seasoned professionals from our fishing communities to work as observers. Not all of these folks have college degrees, but I would argue their own on-water experience, some passed on through many generations, is more valuable in terms of a professional observation than those of some greenhorn fresh out of college who gained most of his resource knowledge by looking at a computer screen.

In terms of the revitalization of our coastal resources, we also have concerns about the broad scope of this definition, and hope this is not interpreted to further deny access to our public resources through ever-tightening restrictions and exclusions. When the fishing community sees plans to "identify habitat areas of particular concern," we understandably react with some valid suspicion. Our recreational fishermen especially have asked for increased, improved science and data collection to more accurately monitor catch and participation, but we're also concerned that some of this scientific funding might instead be reallocated towards closing off certain habitat areas which might be of concern to some. When considering the restoration of our coastal resources, I'd ask that our legislators keep in mind that the fishery management councils established by the Magnuson Stevens Fishery Conservation and Management Act are the place where many of these fisheries decisions already takes place. Again, this is also why we need seasoned veterans onboard our ocean vessels, those with knowledge of the resource, familiarity of the fishing grounds, and hands-on experience in working with the local habitat and ecosystem.

We also want to protect local working waterfronts, and ensure that the symbiotic relationship between coastal stakeholders and our oceans will continue for many generations to follow. The House version of this bill makes direct reference to the "Redevelopment of deteriorating and under-utilized working waterfronts and ports." It is vitally important that we protect the heritage and traditions of these ports for the future, and the first priority should be

toward maintaining working infrastructure for the benefit of our fishing communities. To keep fishermen working as the bill's purpose states, it's imperative that we keep this waterfronts working in the name of U.S. fisheries. What we cannot have is economically critical waterfront areas passed into private hands, razed, re-zoned and then redeveloped as condominiums or alternate uses which will further restrict our fishermen from accessing our marine resources.

I mentioned the Magnuson Stevens Fishery Conservation and Management Act, so it's important to point out the congressional mandate contained in the 2006 reauthorization that NOAA fix the recreational data collection methodologies, in part through the creation of a new national registry of saltwater anglers. NOAA has been late in meeting your demand, and instead of implementing a national registry in 2009, the angler registry component was initialized only this year. I would respectfully remind the members of this Committee of the deadlines contained in that law, which stated that the new survey program should've been implemented no later than January 1, 2009, and that within 24 months after establishment of this program, the Secretary shall submit a report to Congress to describe the progress made toward achieving the goals and objectives of said program.

The national registry was 12 months late in its rollout, and the program itself is still not in place within the recreational sector at this time. What we have now is a patchwork of registry programs along coastal states, with very little money at the state level to ensure that NOAA's grand plan for data collection can be administered. NOAA has the money to help fix this problem, and we can certainly afford to allocate monies to coastal states for the purpose of establishing and implementing a registry program to meet the requirements of Section 401(g) of the Magnuson Stevens Fishery Conservation and Management Act. This is a key component of the House version (H.R. 4914) of the Coastal Jobs Creation Act of 2010, and one which I would implore the Committee to make sure remains in place, and is also picked up in the Senate version. If this bill truly intends to meet its mission of promoting sustainable fisheries, then this particular amendment to allocate money to individual states for improved data collection should be vital to passage of this bill.

Finally, the RFA believes that the term "fishing communities" needs to be broadened to include party and charter boat operations, marina and tackle store businesses, bait dealers, and our entire recreational fishing infrastructure. As evidenced in the Gulf of Mexico, our sector has suffered equally with the commercial sector. In terms of loss from widespread fishing closures due to environmental catastrophe, acts of God, and/or restrictive acts of federal law, our recreational sector, in fairness, should be given the same consideration as those in the commercial sector. It's important moving forward that our recreational fishing communities are clearly delineated and accurately portrayed as a driving economic engine in America today. According to a recent NOAA Fisheries estimate, saltwater angling generates \$82 billion in overall sales and supports more than 500,000 jobs annually. Our community shouldn't be an afterthought, an inference, or a footnote on a graph. If the purpose and intent of the Coastal Jobs Creation Act is to promote coastal jobs creation, to promote sustainable fisheries and fishing communities, while also revitalizing working waterfronts, we'd ask then that the Committee take particular note of our recreational fishing businesses and how important our industry is to the lifeblood of our national economy.

RFA would like to go on record with the following specific items of note with regard to language contained with the Coastal Jobs Creation Act (HR 4914) and we respectfully ask the Committee to give a more thorough review of the bill before moving forward. In addition to the points made above, the RFA strongly believes the following key sections warrant special consideration.

Under the activities section 3 (c), HR 4914 identifies numerous deficiencies that if corrected would improve manager's ability to efficiently regulate recreational fisheries and provide a more stable business environment in the recreational fishing industry. RFA supports section (c)(1) to provide federal assistance to cooperative research to collect and compile social and economic information related to the recreational and commercial fisheries. This information is critically important when evaluating the consequences of management on both fishing sectors.

RFA supports section (c)(2) which would support cooperative research to identify habitat areas of particular concern and for habitat restoration and conservation. The RFA has made it clear in past testimony provided to this Subcommittee that placing the entire rebuilding burden solely on the sacrifices of fishermen is far from an efficient or productive management approach. A holistic approach that accounts for non fishing activities and sources of stress must be a part of our fisheries management process. It is undeniable that environmental factors and habitat are the bottleneck in many fisheries that prevent the fishing community from achieving rebuilding objectives. RFA hopes that the results of cooperative research conducted under section (c)(2) provides the information necessary to move in this direction.

RFA supports section (c)(3) to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey. RFA has testified a minimum of 5 times before this Subcommittee and addressed the need for better recreational catch, harvest, effort, and participation estimates produced through the programs included in this section. However, RFA points out that currently NOAA is in the process of decommissioning the MRFSS program and is moving forward with a new program called the Marine Recreational Information Program (MRIP) which is described as having some improvement over MRFSS. RFA questions the placement of additional funds into a data collection system that is activity being dismantled and would suggest that a better use of this money would be directed towards the speedy implementation of the new program which is already years behind schedule. RFA suggests funding MRIP would serve the recreational sector better, and we ask that the Senate version of this act be modified to incorporate this particular language.

RFA supports section (c)(10) to develop, test, and deploy innovations and improvements in coast and ocean observation technologies. RFA believes efforts described under this section could have dramatic benefits particularly for the offshore component of the recreational fishery. Monitoring buoys in the offshore canyons would improve fishermen's ability to predict fishing conditions in the areas that are 50 to 120 miles offshore and outside of traditional monitoring programs. RFA further believes this section would promote a greater level of safety at sea through the use of real time monitoring.

RFA supports section (c)(13) to reduce and prevent the occurrence and adverse impacts of marine debris. RFA suggests funds be directed specifically to state marine enforcement

programs to aid in achieving the objectives of this section. Without a financial incentive for marine law enforcement to reduce and prevent marine debris, they will pursue fishery violations since there is the potential to generate revenue from this action. Marine law enforcement agencies already have the infrastructure and resources to deal with marine debris and has the most potential in meeting the objectives of this section if give incentive.

RFA is uncomfortable with the language of section (c)(7) because, as written, it would prompt the redevelopment of under-utilized working waterfronts and may cause a shift away from traditional uses that service the fishing industries. It should be noted as an example that a marina or a tackle shop may have a lower ratable than a condominium complex sited on the same location. But on the broader note, a marina or tackle provides services to a far greater number of individuals resulting in a greater social value than that can be achieved through non-fishing uses. This socioeconomic information may not be captured in a property assessment or evaluation that considers the best use of the land for redevelopment. Recreational infrastructure is extremely fragile and is disappearing at a rapid rate. Experience has proven that any reduction in recreational infrastructure tends to be permanent which results in an overall lose of access for recreational fishermen and the general public. RFA suggest that this section needs to be rewritten to ensure that fishing infrastructure is preserved during redevelopment of working water fronts.

In section 4 (4), RFA suggest that “subject to the availability of appropriations” be stricken. RFA believes assistance to states should be a top priority. States are currently having a difficult time in light of their inadequate funding to comply with the mandates of MSA section 401 as reauthorized in 2007 to create saltwater angler registries. Federal assistance to implement this federal mandate should be mandatory and provided only if funds are available. Improvements to recreational data collection programs has been identified as being critical to the improved overall health and vitality of the recreational fishing industry and coastal communities, and monies should specifically be dedicated to remedying the problem. Investments to states working to meet these requirements would be a great benefit to anglers and would produce significant socioeconomic impacts in the recreational fishing industry.

RFA is suspect of Section 5 which allows upwards of 5 percent administrative expenses per year which would amount to 2 million over the course of the 5 year appropriation. This amount seems excessive and would be much better served addressing very real problems in fisheries management that are attributed to funding shortfalls.



**United States House of Representatives  
Committee on Natural Resources  
Subcommittee on Insular Affairs, Oceans and Wildlife**

**Written Testimony of Matt Tinning  
Vice President of External Affairs  
Ocean Conservancy**

**July 27, 2010**

Chairwoman Bordallo, Ranking Member Brown, and Members of the Subcommittee, thank you for the invitation to participate in today's hearing on H.R. 4914, the Coastal Jobs Creation Act. My name is Matt Tinning, and I am Vice President of External Affairs at Ocean Conservancy, a national marine conservation organization that has promoted healthy and diverse ocean ecosystems since its founding in 1972. Of most relevance to the legislation before us today, Ocean Conservancy has a proud history of working with fishing communities, retailers, policymakers and the public to advance sustainable fisheries. We are supported by more than 500,000 members and volunteers, and our headquarters is in Washington, DC.

A healthy ocean is critically important to every one of us. The ocean regulates our climate, and provides us with food to eat, water to drink, and oxygen to breathe. Regardless of where we live, we all have a profound stake in ocean ecosystems that are resilient, diverse and teeming with life. It is coastal communities, however, that often suffer the most immediate consequences of a marine environment under stress. For regions where fishing is an economic staple and a way of life, the wellbeing of the marine ecosystem and the community are closely linked. Decades of overfishing has come at a severe cost not only to ocean health, but also to those who have historically relied on abundant fisheries for their livelihoods.

The Coastal Jobs Creation Act seeks to provide economic support to fishermen and fishing communities while measures to end overfishing and rebuild depleted fish populations are implemented. The bill has the potential to advance a number of important policy objectives simultaneously, including provision of economic assistance to coastal communities in need; funding projects that will revitalize waterfronts and improve the ocean environment; and helping ensure that critical legislative mandates established by the Magnuson-Stevens Fishery Conservation and Management Act are met. Ocean Conservancy therefore strongly support this bill.

**Sustainable Fisheries**

The context for the Coastal Jobs Creation Act is our national challenge of transitioning to sustainable fisheries through science-based management. For many decades, our nation's fisheries have suffered from the effects of overfishing. At the end of 2006, Congress enacted important changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), our nation's federal fisheries law. These changes came just over a decade after Congress passed

the Sustainable Fisheries Act, which also aimed to end overfishing – but which failed to fully deliver on that promise. The changes signed into law in 2007 significantly strengthened key provisions of the Act. At the core of the reauthorization was a mandate for science-based fishery management to end overfishing of America’s fisheries once and for all.

In fisheries where science-based management has been implemented we are already seeing evidence of success. In the Gulf of Mexico, for example, the iconic red snapper has long been a poster child for poor management. Unsustainable fishing practices drove the species’ population to a small fraction of its historic spawning abundance. In 2008, a plan was finally implemented to manage red snapper in accordance with science-based catch limits. Shared responsibility for reducing catch was the key to making the new red snapper plan work. Allowable catch was reduced by roughly 40 percent in the short term, a decision that enabled the red snapper population to begin to recover. An updated population assessment led the Gulf of Mexico Fishery Management Council to approve an increase in the red snapper total allowable catch earlier this year. It was a move that Ocean Conservancy supported, and one that illustrated how a short-term reduction in catch limits can put a severely depleted fishery on the path to recovery, leading to increased fishing and economic opportunities.

The BP *Deepwater Horizon* disaster has since added a tragic new dimension to this emerging success story in the Gulf of Mexico. The trajectory of red snapper before the disaster, however, is illustrative of the significant long-term benefits to coastal communities that science-based management can bring. According to the National Oceanic and Atmospheric Administration (NOAA), rebuilding fish populations would at least triple the economic value of many US fisheries, increasing sales by approximately \$31 billion and supporting an estimated 500,000 new US jobs. It is an investment in our future that Congress has mandated, and one that we must see through to completion.

### **Assistance for Coastal Communities**

In the interim, however, assistance may be needed for many coastal communities. The economic downturn has reduced job opportunities, and in the Gulf of Mexico the economic fallout from the BP *Deepwater Horizon* disaster is severe. In some instances measures to end overfishing pursuant to the MSA will mean short-term reductions in the amount of fish that can be caught during a fishing season. As we transition coastal communities to stronger economic health by ending overfishing and rebuilding our fisheries, we should look for opportunities to assist fishermen through any short term economic challenges that may exist.

H.R. 4914 seeks to provide that assistance in a thoughtful and targeted way. It establishes a Coastal Jobs Creation Grant Program; and defines funding criteria that prioritize job creation, conservation gain, and programmatic effectiveness. The five priority areas for which the legislation seeks to increase support are all of vital importance, and are considered in turn below.

### *1. Cooperative Research and Monitoring*

Cooperative research and monitoring programs engage fishermen to collect fisheries information. In addition to providing data that informs fishery management decisions, cooperative research builds partnerships between fishermen and government scientists, increasing stakeholder confidence in the data and creating a more transparent process. Successful cooperative research programs have been conducted by the National Marine Fisheries Service since 1999. They have included work to improve the quality of fish population assessments, assess non-target catch mortality, develop environmentally-friendly fishing gear, and study the impacts of marine protected areas.

### *2. The Revitalization of Coastal Infrastructure*

For many coastal communities, efforts to sustain their economy and culture are dependent on effective and functioning waterfront infrastructure. Whether it be boat ramps, docking facilities, ports or concessions, funds for the revitalization of coastal infrastructure can have benefits far beyond the immediate infusion of funds and direct creation of jobs. Successful working waterfront partnerships in a number of states could be among the beneficiaries of grants under the Act.

### *3. Recreational Fishing Registry Programs*

The current method for collecting data on recreational fishing often does not provide the timely information that managers need to best prevent exceeding science based fishing limits, which in turn may lead to more restrictive fishing opportunities in the future and compromise the ability to achieve management goals. The grant money and funding criteria outlined in the bill could improve the quality and accuracy of information generated by the marine recreational fishing surveys, integrate the local ecological knowledge of fishermen into the scientific process, and support establishment and implementation of critical State recreational fishing registry programs.

### *4. Marine Debris Removal*

Marine debris is one of the most pervasive pollution problems of our time. Among the challenges that NOAA's Marine Debris Program has sought to counter since its inception is the threat that derelict fishing gear poses to marine wildlife, habitat and navigational safety. Several programs have been highly successful in employing fishermen to remove derelict fishing nets, crab pots and lobster traps from the marine environment, and these could be expanded through additional grant funding.

## *5. Restoration of Coastal Resources*

Our coastal resources are under increasing strain, and their protection and restoration must be a national priority. Restoration of our coasts is essential in maintaining the productivity of the marine environment, whether it be the decades-long restoration challenge we face in the wake of the BP *Deepwater Horizon* disaster, or a smaller-scale project funded under this Act. Among the activities eligible for grants are restoration projects identified for their conservation, recreational, ecological, historical, or aesthetic values.

## **Conclusion**

The Coastal Jobs Creation Act not only provides economic assistance to coastal communities in need; it does so by funding activities that advance other important priorities. As we finally move to end overfishing and rebuild fish populations, the Coastal Jobs Creation Act can help bridge immediate economic challenges and pave the way for coastal communities to share in the economic benefits of more abundant fisheries.

Ocean Conservancy strongly supports the Coastal Jobs Creation Act, and we commend Congressman Pallone, as well as Congresswoman Pingree, Congresswoman Shea-Porter, and the bill's other cosponsors for their leadership on this issue. We urge all members of the subcommittee to work for its enactment.

## Calendar No. 510

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3534

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IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2010

Received; read the first time

AUGUST 4, 2010

Read the second time and placed on the calendar

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## AN ACT

To provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior, and for other purposes.

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

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

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Consolidated Land, Energy, and Aquatic Resources Act  
6       of 2010”.



- 1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.  
 Sec. 2. Definitions.

#### TITLE I—CREATION OF NEW DEPARTMENT OF THE INTERIOR AGENCIES

Sec. 101. Bureau of Energy and Resource Management.  
 Sec. 102. Bureau of Safety and Environmental Enforcement.  
 Sec. 103. Office of Natural Resources Revenue.  
 Sec. 104. Ethics.  
 Sec. 105. References.  
 Sec. 106. Abolishment of Minerals Management Service.  
 Sec. 107. Conforming amendment.  
 Sec. 108. Outer Continental Shelf Safety and Environmental Advisory Board.  
 Sec. 109. Limitation on effect on development of ocean renewable energy resource facilities.

#### TITLE II—FEDERAL OIL AND GAS DEVELOPMENT

##### Subtitle A—Safety, Environmental, and Financial Reform of the Outer Continental Shelf Lands Act

Sec. 201. Short title.  
 Sec. 202. Definitions.  
 Sec. 203. National policy for the Outer Continental Shelf.  
 Sec. 204. Jurisdiction of laws on the Outer Continental Shelf.  
 Sec. 205. Outer Continental Shelf leasing standard.  
 Sec. 206. Leases, easements, and rights-of-way.  
 Sec. 207. Disposition of revenues.  
 Sec. 208. Exploration plans.  
 Sec. 209. Outer Continental Shelf leasing program.  
 Sec. 210. Environmental studies.  
 Sec. 211. Safety regulations.  
 Sec. 212. Enforcement of safety and environmental regulations.  
 Sec. 213. Judicial review.  
 Sec. 214. Remedies and penalties.  
 Sec. 215. Uniform planning for Outer Continental Shelf.  
 Sec. 216. Oil and gas information program.  
 Sec. 217. Limitation on royalty-in-kind program.  
 Sec. 218. Restrictions on employment.  
 Sec. 219. Repeal of royalty relief provisions.  
 Sec. 220. Manning and buy- and build-American requirements.  
 Sec. 221. National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.  
 Sec. 222. Coordination and consultation with affected State and local governments.  
 Sec. 223. Implementation.  
 Sec. 224. Report on environmental baseline studies.  
 Sec. 225. Cumulative impacts on marine mammal species and stocks and subsistence use.

##### Subtitle B—Royalty Relief for American Consumers

- Sec. 231. Short title.
- Sec. 232. Eligibility for new leases and the transfer of leases.
- Sec. 233. Price thresholds for royalty suspension provisions.

#### Subtitle C—Limitation on Moratorium

- Sec. 241. Limitation of moratorium on certain permitting and drilling activities.

### TITLE III—OIL AND GAS ROYALTY REFORM

- Sec. 301. Amendments to definitions.
- Sec. 302. Compliance reviews.
- Sec. 303. Clarification of liability for royalty payments.
- Sec. 304. Required recordkeeping.
- Sec. 305. Fines and penalties.
- Sec. 306. Interest on overpayments.
- Sec. 307. Adjustments and refunds.
- Sec. 308. Conforming amendment.
- Sec. 309. Obligation period.
- Sec. 310. Notice regarding tolling agreements and subpoenas.
- Sec. 311. Appeals and final agency action.
- Sec. 312. Assessments.
- Sec. 313. Collection and production accountability.
- Sec. 314. Natural gas reporting.
- Sec. 315. Penalty for late or incorrect reporting of data.
- Sec. 316. Required recordkeeping.
- Sec. 317. Shared civil penalties.
- Sec. 318. Applicability to other minerals.
- Sec. 319. Entitlements.
- Sec. 320. Limitation on royalty in-kind program.
- Sec. 321. Application of royalty to oil that is saved, removed, sold, or discharged under offshore oil and gas leases.

### TITLE IV—FULL FUNDING FOR THE LAND AND WATER CONSERVATION AND HISTORIC PRESERVATION FUNDS

#### Subtitle A—Land and Water Conservation Fund

- Sec. 401. Amendments to the Land and Water Conservation Fund Act of 1965.
- Sec. 402. Extension of the Land and Water Conservation Fund.
- Sec. 403. Permanent funding.

#### Subtitle B—National Historic Preservation Fund

- Sec. 411. Permanent funding.

### TITLE V—GULF OF MEXICO RESTORATION

- Sec. 501. Gulf of Mexico restoration program.
- Sec. 502. Gulf of Mexico long-term environmental monitoring and research program.
- Sec. 503. Gulf of Mexico emergency migratory species alternative habitat program.
- Sec. 504. Gulf of Mexico Restoration Account.

### TITLE VI—COORDINATION AND PLANNING

- Sec. 601. Regional coordination.
- Sec. 602. Regional Coordination Councils.
- Sec. 603. Regional strategic plans.
- Sec. 604. Regulations and savings clause.
- Sec. 605. Ocean Resources Conservation and Assistance Fund.
- Sec. 606. Waiver.

## TITLE VII—OIL SPILL ACCOUNTABILITY AND ENVIRONMENTAL PROTECTION

- Sec. 701. Short title.
- Sec. 702. Repeal of and adjustments to limitation on liability.
- Sec. 703. Evidence of financial responsibility for offshore facilities.
- Sec. 704. Damages to human health.
- Sec. 705. Clarification of liability for discharges from mobile offshore drilling units.
- Sec. 706. Standard of review for damage assessment.
- Sec. 707. Procedures for claims against Fund; Information on claims.
- Sec. 708. Additional amendments and clarifications to Oil Pollution Act of 1990.
- Sec. 709. Americanization of offshore operations in the Exclusive Economic Zone.
- Sec. 710. Safety management systems for mobile offshore drilling units.
- Sec. 711. Safety standards for mobile offshore drilling units.
- Sec. 712. Operational control of mobile offshore drilling units.
- Sec. 713. Single-hull tankers.
- Sec. 714. Repeal of response plan waiver.
- Sec. 715. National Contingency Plan.
- Sec. 716. Tracking Database.
- Sec. 717. Evaluation and approval of response plans; maximum penalties.
- Sec. 718. Oil and hazardous substance cleanup technologies.
- Sec. 719. Implementation of oil spill prevention and response authorities.
- Sec. 720. Impacts to Indian Tribes and public service damages.
- Sec. 721. Federal enforcement actions.
- Sec. 722. Time required before electing to proceed with judicial claim or against the Fund.
- Sec. 723. Authorized level of Coast Guard personnel.
- Sec. 724. Clarification of memorandums of understanding.
- Sec. 725. Build America requirement for offshore facilities.
- Sec. 726. Oil spill response vessel database.
- Sec. 727. Offshore sensing and monitoring systems.
- Sec. 728. Oil and gas exploration and production.
- Sec. 729. Leave retention authority.
- Sec. 730. Authorization of appropriations.
- Sec. 731. Extension of liability to persons having ownership interests in responsible parties.
- Sec. 732. Clarification of liability under Oil Pollution Act of 1990.
- Sec. 733. Salvage activities.
- Sec. 734. Requirement for redundancy in response plans.

## TITLE VIII—MISCELLANEOUS PROVISIONS

- Sec. 801. Repeal of certain taxpayer subsidized royalty relief for the oil and gas industry.
- Sec. 802. Conservation fee.
- Sec. 803. Leasing on Indian lands.

- Sec. 804. Outer Continental Shelf State boundaries.
- Sec. 805. Liability for damages to national wildlife refuges.
- Sec. 806. Strengthening coastal State oil spill planning and response.
- Sec. 807. Information sharing.
- Sec. 808. Limitation on use of funds.
- Sec. 809. Environmental review.
- Sec. 810. Federal response to State proposals to protect State lands and waters.
- Sec. 811. Government Accountability Office evaluation.
- Sec. 812. Study on relief wells.

#### TITLE IX—STUDY OF ACTIONS TO IMPROVE THE ACCURACY OF COLLECTION OF ROYALTIES

- Sec. 901. Short title.
- Sec. 902. Study of actions to improve the accuracy of collection of Federal oil, condensate, and natural gas royalties.
- Sec. 903. Definitions.

#### TITLE X—OFFSHORE OIL AND GAS WORKER WHISTLEBLOWER PROTECTION

- Sec. 1001. Short title.
- Sec. 1002. Whistleblower protections; employee protection from other retaliation.
- Sec. 1003. Definitions.

### 1 **SEC. 2. DEFINITIONS.**

2 For the purposes of this Act:

3 (1) **AFFECTED INDIAN TRIBE.**—The term “af-  
4 fected Indian tribe” means an Indian tribe that has  
5 federally reserved rights that are affirmed by treaty,  
6 statute, Executive order, Federal court order, or  
7 other Federal law in the area at issue.

8 (2) **COASTAL STATE.**—The term “coastal  
9 State” has the same meaning given the term “coast-  
10 al state” in section 304 of the Coastal Zone Man-  
11 agement Act of 1972 (16 U.S.C. 1453).

12 (3) **DEPARTMENT.**—The term “Department”  
13 means the Department of the Interior, except as the  
14 context indicates otherwise.

1           (4) FUNCTION.—The term “function”, with re-  
2       spect to a function of an officer, employee, or agent  
3       of the Federal Government, or of a Department,  
4       agency, office, or other instrumentality of the Fed-  
5       eral Government, includes authorities, powers,  
6       rights, privileges, immunities, programs, projects,  
7       activities, duties, and responsibilities.

8           (5) IMPORTANT ECOLOGICAL AREA.—The term  
9       “important ecological area” means an area that con-  
10      tributes significantly to local or larger marine eco-  
11      system health or is an especially unique or sensitive  
12      marine ecosystem.

13          (6) INDIAN LAND.—The term “Indian land”  
14      has the meaning given the term in section 502(a) of  
15      title V of Public Law 109–58 (25 U.S.C. 3501(2)).

16          (7) INDIAN TRIBE.—The term “Indian tribe”  
17      has the same meaning given the term “Indian tribe”  
18      has in section 4 of the Indian Self-Determination  
19      and Education Assistance Act (25 U.S.C. 450b).

20          (8) MARINE ECOSYSTEM HEALTH.—The term  
21      “marine ecosystem health” means the ability of an  
22      ecosystem in ocean and coastal waters to support  
23      and maintain patterns, important processes, and  
24      productive, sustainable, and resilient communities of  
25      organisms, having a species composition, diversity,



1 and functional organization resulting from the nat-  
2 ural habitat of the region, such that it is capable of  
3 supporting a variety of activities and providing a  
4 complete range of ecological benefits. Such an eco-  
5 system would be characterized by a variety of fac-  
6 tors, including—

7 (A) a complete diversity of native species  
8 and habitat wherein each native species is able  
9 to maintain an abundance, population struc-  
10 ture, and distribution supporting its ecological  
11 and evolutionary functions, patterns, and proc-  
12 esses; and

13 (B) a physical, chemical, geological, and  
14 microbial environment that is necessary to  
15 achieve such diversity.

16 (9) MINERAL.—The term “mineral” has the  
17 same meaning that the term “minerals” has in sec-  
18 tion 2(q) of the Outer Continental Shelf Lands Act  
19 (43 U.S.C. 1331(q)).

20 (10) NONRENEWABLE ENERGY RESOURCE.—  
21 The term “nonrenewable energy resource” means oil  
22 and natural gas.

23 (11) OPERATOR.—The term “operator”  
24 means—

25 (A) the lessee; or

1 (B) a person designated by the lessee as  
2 having control or management of operations on  
3 the leased area or a portion thereof, who is—

4 (i) approved by the Secretary, acting  
5 through the Bureau of Energy and Re-  
6 source Management; or

7 (ii) the holder of operating rights  
8 under an assignment of operating rights  
9 that is approved by the Secretary, acting  
10 through the Bureau of Energy and Re-  
11 source Management.

12 (12) OUTER CONTINENTAL SHELF.—The term  
13 “Outer Continental Shelf” has the same meaning  
14 given the term “outer Continental Shelf” has in the  
15 Outer Continental Shelf Lands Act (43 U.S.C. 1331  
16 et seq.).

17 (13) REGIONAL OCEAN PARTNERSHIP.—The  
18 term “Regional Ocean Partnership” means vol-  
19 untary, collaborative management initiatives devel-  
20 oped and entered into by the Governors of two or  
21 more coastal States or created by an interstate com-  
22 pact for the purpose of addressing more than one  
23 ocean, coastal, or Great Lakes issue and to imple-  
24 ment policies and activities identified under special  
25 area management plans under the Coastal Zone

1 Management Act of 1972 (16 U.S.C. 1451 et seq.)  
2 or other agreements developed and signed by the  
3 Governors.

4 (14) RENEWABLE ENERGY RESOURCE.—The  
5 term “renewable energy resource” means each of the  
6 following:

7 (A) Wind energy.

8 (B) Solar energy.

9 (C) Geothermal energy.

10 (D) Landfill gas.

11 (E) Marine and hydrokinetic renewable en-  
12 ergy, as that term is defined in section 632 of  
13 the Energy Independence and Security Act of  
14 2007 (42 U.S.C. 17211).

15 (15) SECRETARIES.—The term “Secretaries”  
16 means the Secretary of the Interior and the Sec-  
17 retary of Commerce.

18 (16) SECRETARY.—The term “Secretary”  
19 means the Secretary of the Interior, except as other-  
20 wise provided in this Act.

21 (17) TERMS DEFINED IN OTHER LAW.—Each  
22 of the terms “Federal land”, “lease”, and “mineral  
23 leasing law” has the same meaning given the term  
24 under the Federal Oil and Gas Royalty Management  
25 Act of 1982 (30 U.S.C. 1701 et seq.), except that

1 such terms shall also apply to all minerals and re-  
2 newable energy resources in addition to oil and gas.

3 **TITLE I—CREATION OF NEW DE-**  
4 **PARTMENT OF THE INTERIOR**  
5 **AGENCIES**

6 **SEC. 101. BUREAU OF ENERGY AND RESOURCE MANAGE-**  
7 **MENT.**

8 (a) ESTABLISHMENT.—There is established in the  
9 Department of the Interior a Bureau of Energy and Re-  
10 source Management (referred to in this section as the  
11 “Bureau”) to be headed by a Director of Energy and Re-  
12 source Management (referred to in this section as the “Di-  
13 rector”).

14 (b) DIRECTOR.—

15 (1) APPOINTMENT.—The Director shall be ap-  
16 pointed by the President, by and with the advice and  
17 consent of the Senate, on the basis of—

18 (A) professional background, demonstrated  
19 competence, and ability; and

20 (B) capacity to—

21 (i) administer the provisions of this  
22 Act; and

23 (ii) ensure that the fiduciary duties of  
24 the United States Government on behalf of  
25 the people of the United States, as they re-

1           late to development of nonrenewable and  
2           renewable energy and mineral resources,  
3           are duly met.

4           (2) COMPENSATION.—The Director shall be  
5           compensated at the rate provided for Level V of the  
6           Executive Schedule under section 5316 of title 5,  
7           United States Code.

8           (c) DUTIES.—

9           (1) IN GENERAL.—Except as provided in para-  
10          graph (4), the Secretary shall carry out through the  
11          Bureau all functions, powers, and duties vested in  
12          the Secretary relating to the administration of a  
13          comprehensive program of nonrenewable and renew-  
14          able energy and mineral resources management—

15                (A) on the Outer Continental Shelf, pursu-  
16                ant to the Outer Continental Shelf Lands Act  
17                as amended by this Act (43 U.S.C. 1331 et  
18                seq.);

19                (B) on Federal public lands, pursuant to  
20                the Mineral Leasing Act (30 U.S.C. 181 et  
21                seq.) and the Geothermal Steam Act of 1970  
22                (30 U.S.C. 1001 et seq.);

23                (C) on acquired Federal lands, pursuant to  
24                the Mineral Leasing Act for Acquired Lands



1 (30 U.S.C. 351 et seq.) and the Geothermal  
2 Steam Act of 1970 (30 U.S.C. 1001 et seq.);

3 (D) in the National Petroleum Reserve in  
4 Alaska, pursuant to the Naval Petroleum Re-  
5 serves Production Act of 1976 (42 U.S.C. 6501  
6 et seq.);

7 (E) on any Federal land pursuant to any  
8 mineral leasing law; and

9 (F) pursuant to this Act and all other ap-  
10 plicable Federal laws, including the administra-  
11 tion and approval of all instruments and agree-  
12 ments required to ensure orderly, safe, and en-  
13 vironmentally responsible nonrenewable and re-  
14 newable energy and mineral resources develop-  
15 ment activities.

16 (2) SPECIFIC AUTHORITIES.—The Director  
17 shall promulgate and implement regulations for the  
18 proper issuance of leases for the exploration, devel-  
19 opment, and production of nonrenewable and renew-  
20 able energy and mineral resources, and for the  
21 issuance of permits under such leases, on the Outer  
22 Continental Shelf and for nonrenewable and renew-  
23 able energy and mineral resources managed by the  
24 Bureau of Land Management on the date of enact-  
25 ment of this Act, or any other Federal land manage-

1       ment agency, including regulations relating to re-  
2       source identification, access, evaluation, and utiliza-  
3       tion.

4               (3)       INDEPENDENT       ENVIRONMENTAL  
5       SCIENCE.—

6               (A) IN GENERAL.—The Secretary shall  
7       create an independent office within the Bureau  
8       that—

9                       (i) shall report to the Director;

10                      (ii) shall be programmatically separate  
11       and distinct from the leasing and permit-  
12       ting activities of the Bureau; and

13                      (iii) shall—

14                      (I) carry out the environmental  
15       studies program under section 20 of  
16       the Outer Continental Shelf Lands  
17       Act (43 U.S.C. 1346);

18                      (II) conduct any environmental  
19       analyses necessary for the programs  
20       administered by the Bureau; and

21                      (III) carry out other functions as  
22       deemed necessary by the Secretary.

23               (B) CONSULTATION.—Studies and anal-  
24       yses carried out by the office created under sub-  
25       paragraph (A) shall be conducted in appro-

1           priate and timely consultation with other rel-  
2           evant Federal agencies, including—

3                   (i) the Bureau of Safety and Environ-  
4                   mental Enforcement;

5                   (ii) the United States Fish and Wild-  
6                   life Service;

7                   (iii) the United States Geological Sur-  
8                   vey; and

9                   (iv) the National Oceanic and Atmos-  
10                  pheric Administration.

11           (4) LIMITATION.—The Secretary shall not carry  
12           out through the Bureau any function, power, or duty  
13           that is—

14                   (A) required by section 102 to be carried  
15                   out through Bureau of Safety and Environ-  
16                   mental Enforcement; or

17                   (B) required by section 103 to be carried  
18                   out through the Office of Natural Resources  
19                   Revenue.

20           (d) COMPREHENSIVE DATA AND ANALYSES ON  
21           OUTER CONTINENTAL SHELF RESOURCES.—

22                   (1) IN GENERAL.—

23                   (A) PROGRAMS.—The Director shall de-  
24                   velop and carry out programs for the collection,  
25                   evaluation, assembly, analysis, and dissemina-

tion of data and information that is relevant to carrying out the duties of the Bureau, including studies under section 20 of the Outer Continental Shelf Lands Act (43 U.S.C. 1346).

(B) USE OF DATA AND INFORMATION.—

The Director shall, in carrying out functions pursuant to the Outer Continental Lands Act (43 U.S.C. 1331 et seq.), consider data and information referred to in subparagraph (A) which shall inform the management functions of the Bureau, and shall contribute to a broader coordination of development activities within the contexts of the best available science and marine spatial planning.

(2) INTERAGENCY COOPERATION.—In carrying out programs under this subsection, the Bureau shall—

(A) utilize the authorities of subsection (g) and (h) of section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344);

(B) cooperate with appropriate offices in the Department and in other Federal agencies;

(C) use existing inventories and mapping of marine resources previously undertaken by the Minerals Management Service, mapping un-

dertaken by the United States Geological Survey and the National Oceanographic and Atmospheric Administration, and information provided by the Department of Defense and other Federal and State agencies possessing relevant data; and

(D) use any available data regarding renewable energy potential, navigation uses, fisheries, aquaculture uses, recreational uses, habitat, conservation, and military uses of the Outer Continental Shelf.

(c) RESPONSIBILITIES OF LAND MANAGEMENT AGENCIES.—Nothing in this section shall affect the authorities of the Bureau of Land Management under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) or of the Forest Service under the National Forest Management Act of 1976 (Public Law 94–588).

**SEC. 102. BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT.**

(a) ESTABLISHMENT.—There is established in the Department a Bureau of Safety and Environmental Enforcement (referred to in this section as the “Bureau”) to be headed by a Director of Safety and Environmental

1 Enforcement (referred to in this section as the “Direc-  
2 tor”).

3 (b) DIRECTOR.—

4 (1) APPOINTMENT.—The Director shall be ap-  
5 pointed by the President, by and with the advice and  
6 consent of the Senate, on the basis of—

7 (A) professional background, demonstrated  
8 competence, and ability; and

9 (B) capacity to administer the provisions  
10 of this Act.

11 (2) COMPENSATION.—The Director shall be  
12 compensated at the rate provided for Level V of the  
13 Executive Schedule under section 5316 of title 5,  
14 United States Code.

15 (c) DUTIES.—

16 (1) IN GENERAL.—The Secretary shall carry  
17 out through the Bureau all functions, powers, and  
18 duties vested in the Secretary relating to the admin-  
19 istration of safety and environmental enforcement  
20 activities related to nonrenewable and renewable en-  
21 ergy and mineral resources—

22 (A) on the Outer Continental Shelf pursu-  
23 ant to the Outer Continental Shelf Lands Act  
24 (43 U.S.C. 1331 et seq.);



1 (B) on Federal public lands, pursuant to  
2 the Mineral Leasing Act (30 U.S.C. 181 et  
3 seq.) and the Geothermal Steam Act of 1970  
4 (30 U.S.C. 1001 et seq.);

5 (C) on acquired Federal lands, pursuant to  
6 the Mineral Leasing Act for Acquired Lands  
7 (30 U.S.C. 351 et seq.) and the Geothermal  
8 Steam Act of 1970 (30 U.S.C. 1001 et seq.);

9 (D) in the National Petroleum Reserve in  
10 Alaska, pursuant to the Naval Petroleum Re-  
11 serves Production Act of 1976 (42 U.S.C. 6501  
12 et seq.); and

13 (E) pursuant to—

14 (i) the Federal Oil and Gas Royalty  
15 Management Act of 1982 (30 U.S.C. 1701  
16 et seq.);

17 (ii) the Energy Policy Act of 2005  
18 (Public Law 109–58);

19 (iii) the Federal Oil and Gas Royalty  
20 Simplification and Fairness Act of 1996  
21 (Public Law 104–185);

22 (iv) the Forest and Rangeland Renew-  
23 able Resources Planning Act of 1974 (16  
24 U.S.C. 1600 et seq.);

1 (v) the Federal Land Policy and Man-  
2 agement Act of 1976 (43 U.S.C. 1701 et  
3 seq.);

4 (vi) this Act; and

5 (vii) all other applicable Federal laws,  
6 including the authority to develop, promulgate,  
7 and enforce regulations to ensure the safe and  
8 environmentally sound exploration, develop-  
9 ment, and production of nonrenewable and re-  
10 newable energy and mineral resources on the  
11 Outer Continental Shelf and onshore federally  
12 managed lands.

13 (d) AUTHORITIES.—In carrying out the duties under  
14 this section, the Secretary's authorities shall include—

15 (1) performing necessary oversight activities to  
16 ensure the proper application of environmental re-  
17 views, including those conducted pursuant to the  
18 National Environmental Policy Act of 1969 (42  
19 U.S.C. 4321 et seq.) by the Bureau of Energy and  
20 Resource Management in the performance of its du-  
21 ties under the Outer Continental Shelf Lands Act  
22 (43 U.S.C. 1331 et seq.);

23 (2) suspending or prohibiting, on a temporary  
24 basis, any operation or activity, including produc-  
25 tion—

1 (A) on leases held on the Outer Conti-  
2 nental Shelf, in accordance with section 5(a)(1)  
3 of the Outer Continental Shelf Lands Act (43  
4 U.S.C. 1334(a)(1)); or

5 (B) on leases or rights-of-way held on Fed-  
6 eral lands under any other minerals or energy  
7 leasing statute, in accordance with section  
8 302(c) of the Federal Land Policy and Manage-  
9 ment Act of 1976 (43 U.S.C. 1701 et seq.);

10 (3) cancelling any lease, permit, or right-of-  
11 way—

12 (A) on the Outer Continental Shelf, in ac-  
13 cordance with section 5(a)(2) of the Outer Con-  
14 tinental Shelf Lands Act (43 U.S.C.  
15 1334(a)(2)); or

16 (B) on onshore Federal lands, in accord-  
17 ance with section 302(c) of the Federal Land  
18 Policy and Management Act of 1976 (43 U.S.C.  
19 1732(c));

20 (4) compelling compliance with applicable work-  
21 er safety and environmental laws and regulations;

22 (5) requiring comprehensive safety and environ-  
23 mental management programs for persons engaged  
24 in activities connected with the exploration, develop-

1       ment, and production of energy or mineral re-  
2       sources;

3           (6) developing and implementing regulations for  
4       Federal employees to carry out any inspection or in-  
5       vestigation to ascertain compliance with applicable  
6       regulations, including health, safety, or environ-  
7       mental regulations;

8           (7) collecting, evaluating, assembling, analyzing,  
9       and publicly disseminating electronically data and  
10      information that is relevant to inspections, failures,  
11      or accidents involving equipment and systems used  
12      for exploration and production of energy and min-  
13      eral resources, including human factors associated  
14      therewith;

15          (8) implementing the Offshore Technology Re-  
16      search and Risk Assessment Program under section  
17      21 of the Outer Continental Shelf Lands Act (43  
18      U.S.C. 1347);

19          (9) summoning witnesses and directing the pro-  
20      duction of evidence;

21          (10) levying fines and penalties and disquali-  
22      fying operators; and

23          (11) carrying out any safety, response, and re-  
24      moval preparedness functions.

25      (e) EMPLOYEES.—

1           (1) IN GENERAL.—The Secretary shall ensure  
2           that the inspection force of the Bureau consists of  
3           qualified, trained employees who meet qualification  
4           requirements and adhere to the highest professional  
5           and ethical standards.

6           (2) QUALIFICATIONS.—The qualification re-  
7           quirements referred to in paragraph (1)—

8                   (A) shall be determined by the Secretary,  
9                   subject to subparagraph (B); and

10                   (B) shall include—

11                           (i) three years of practical experience  
12                           in oil and gas exploration, development, or  
13                           production; or

14                           (ii) a degree in an appropriate field of  
15                           engineering from an accredited institution  
16                           of higher learning.

17           (3) ASSIGNMENT.—In assigning oil and gas in-  
18           spectors to the inspection and investigation of indi-  
19           vidual operations, the Secretary shall give due con-  
20           sideration to the extent possible to their previous ex-  
21           perience in the particular type of oil and gas oper-  
22           ation in which such inspections are to be made.

23           (4) TRAINING ACADEMY.—

24                   (A) IN GENERAL.—The Secretary shall es-  
25                   tablish and maintain a National Oil and Gas

1 Health and Safety Academy (referred to in this  
2 paragraph as the “Academy”) as an agency of  
3 the Department of the Interior.

4 (B) FUNCTIONS OF ACADEMY.—The Sec-  
5 retary, through the Academy, shall be respon-  
6 sible for—

7 (i) the initial and continued training  
8 of both newly hired and experienced oil  
9 and gas inspectors in all aspects of health,  
10 safety, environmental, and operational in-  
11 spections;

12 (ii) the training of technical support  
13 personnel of the Bureau;

14 (iii) any other training programs for  
15 oil and gas inspectors, Bureau personnel,  
16 Department personnel, or other persons as  
17 the Secretary shall designate; and

18 (iv) certification of the successful  
19 completion of training programs for newly  
20 hired and experienced oil and gas inspec-  
21 tors.

22 (C) COOPERATIVE AGREEMENTS.—

23 (i) IN GENERAL.—In performing func-  
24 tions under this paragraph, and subject to  
25 clause (ii), the Secretary may enter into



1 cooperative educational and training agree-  
2 ments with educational institutions, related  
3 Federal academies, other Federal agencies,  
4 State governments, labor organizations,  
5 safety training firms, and oil and gas oper-  
6 ators and related industries.

7 (ii) TRAINING REQUIREMENT.—Such  
8 training shall be conducted by the Acad-  
9 emy in accordance with curriculum needs  
10 and assignment of instructional personnel  
11 established by the Secretary.

12 (D) USE OF DEPARTMENTAL PER-  
13 SONNEL.—In performing functions under this  
14 subsection, the Secretary shall use, to the ex-  
15 tent practicable, the facilities and personnel of  
16 the Department of the Interior. The Secretary  
17 may appoint or assign to the Academy such of-  
18 ficers and employees as the Secretary considers  
19 necessary for the performance of the duties and  
20 functions of the Academy.

21 (5) ADDITIONAL TRAINING PROGRAMS.—

22 (A) IN GENERAL.—The Secretary shall  
23 work with appropriate educational institutions,  
24 operators, and representatives of oil and gas  
25 workers to develop and maintain adequate pro-

grams with educational institutions and oil and gas operators, that are designed—

(i) to enable persons to qualify for positions in the administration of this Act; and

(ii) to provide for the continuing education of inspectors or other appropriate Departmental personnel.

(B) FINANCIAL AND TECHNICAL ASSISTANCE.—The Secretary may provide financial and technical assistance to educational institutions in carrying out this paragraph.

(6) ROLE OF OIL OR GAS OPERATORS AND RELATED INDUSTRIES.—The Secretary shall ensure that any cooperative agreement or other collaboration with a representative of an oil or gas operator or related industry in relation to a training program established under paragraph (4) or paragraph (5) is limited to consultation regarding curricula and does not extend to the provision of instructional personnel.

**SEC. 103. OFFICE OF NATURAL RESOURCES REVENUE.**

(a) ESTABLISHMENT.—There is established in the Department an Office of Natural Resources Revenue (referred to in this section as the “Office”) to be headed by

1 a Director of Natural Resources Revenue (referred to in  
2 this section as the “Director”).

3 (b) APPOINTMENT AND COMPENSATION.—

4 (1) IN GENERAL.—The Director shall be ap-  
5 pointed by the President, by and with the advice and  
6 consent of the Senate, on the basis of—

7 (A) professional competence; and

8 (B) capacity to—

9 (i) administer the provisions of this  
10 Act; and

11 (ii) ensure that the fiduciary duties of  
12 the United States Government on behalf of  
13 the American people, as they relate to de-  
14 velopment of nonrenewable and renewable  
15 energy and mineral resources, are duly  
16 met.

17 (2) COMPENSATION.—The Director shall be  
18 compensated at the rate provided for Level V of the  
19 Executive Schedule under section 5316 of title 5,  
20 United States Code.

21 (c) DUTIES.—

22 (1) IN GENERAL.—The Secretary shall carry  
23 out, through the Office—

24 (A) all functions, powers, and duties vested  
25 in the Secretary and relating to the administra-

tion of the royalty and revenue management  
functions pursuant to—

(i) the Outer Continental Shelf Lands  
Act (43 U.S.C. 1331 et seq.);

(ii) the Mineral Leasing Act (30  
U.S.C. 181 et seq.);

(iii) the Mineral Leasing Act for Ac-  
quired Lands (30 U.S.C. 351 et seq.);

(iv) the Geothermal Steam Act of  
1970 (30 U.S.C. 1001 et seq.);

(v) the Naval Petroleum Reserves  
Production Act of 1976 (42 U.S.C. 6501  
et seq.);

(vi) the Federal Oil and Gas Royalty  
Management Act of 1982 (30 U.S.C. 1701  
et seq.);

(vii) the Federal Oil and Gas Royalty  
Simplification and Fairness Act of 1996  
(Public Law 104–185);

(viii) the Energy Policy Act of 2005  
(Public Law 109–58);

(ix) the Forest and Rangeland Renew-  
able Resources Planning Act of 1974 (16  
U.S.C. 1600 et seq.);

1 (x) the Federal Land Policy and Man-  
2 agement Act of 1976 (43 U.S.C. 1701 et  
3 seq.); and

4 (xi) this Act and all other applicable  
5 Federal laws; and

6 (B) all functions, powers, and duties pre-  
7 viously assigned to the Minerals Management  
8 Service (including the authority to develop, pro-  
9 mulgate, and enforce regulations) regarding—

10 (i) royalty and revenue collection;

11 (ii) royalty and revenue distribution;

12 (iii) auditing and compliance;

13 (iv) investigation and enforcement of  
14 royalty and revenue regulations; and

15 (v) asset management for onshore and  
16 offshore activities.

17 (d) OVERSIGHT.—In order to provide transparency  
18 and ensure strong oversight over the revenue program, the  
19 Secretary shall—

20 (1) create within the Office an independent  
21 audit and oversight program responsible for moni-  
22 toring the performance of the Office with respect to  
23 the duties and functions under subsection (c), and  
24 conducting internal control audits of the operations  
25 of the Office;

1           (2) facilitate the participation of those Indian  
2       tribes and States operating pursuant to cooperative  
3       agreements or delegations under the Federal Oil and  
4       Gas Royalty Management Act of 1982 (30 U.S.C.  
5       1701 et seq.) on all of the management teams, com-  
6       mittees, councils, and other entities created by the  
7       Office; and

8           (3) assure prior consultation with those Indian  
9       tribes and States referred to in paragraph (2) in the  
10      formulation all policies, procedures, guidance, stand-  
11      ards, and rules relating to the functions referred to  
12      in subsection (c).

13 **SEC. 104. ETHICS.**

14       (a) CERTIFICATION.—The Secretary shall certify an-  
15      nually that all Department of the Interior officers and em-  
16      ployees having regular, direct contact with lessees and op-  
17      erators as a function of their official duties are in full com-  
18      pliance with all Federal employee ethics laws and regula-  
19      tions under the Ethics in Government Act of 1978 (5  
20      U.S.C. App.) and part 2635 of title 5, Code of Federal  
21      Regulations, and all guidance issued under subsection (b).

22       (b) GUIDANCE.—Not later than 90 days after the  
23      date of enactment of this Act, the Secretary shall issue  
24      supplementary ethics guidance for the employees for which  
25      certification is required under subsection (a). The Sec-



1   retary shall update the supplementary ethics guidance not  
2   less than once every 3 years thereafter.

3   **SEC. 105. REFERENCES.**

4       (a) BUREAU OF ENERGY AND RESOURCE MANAGE-  
5   MENT.—Any reference in any law, rule, regulation, direc-  
6   tive, instruction, certificate, or other official document, in  
7   force immediately before the enactment of this Act—

8           (1) to the Minerals Management Service that  
9       pertains to any of the duties and authorities referred  
10      to in section 101 is deemed to refer and apply to the  
11      Bureau of Energy and Resource Management estab-  
12      lished by section 101;

13          (2) to the Director of the Minerals Management  
14      Service that pertains to any of the duties and au-  
15      thorities referred to in section 101 is deemed to  
16      refer and apply to the Director of the Bureau of En-  
17      ergy and Resource Management;

18          (3) to any other position in the Minerals Man-  
19      agement Service that pertains to any of the duties  
20      and authorities referred to in section 101 is deemed  
21      to refer and apply to that same or equivalent posi-  
22      tion in the Bureau of Energy and Resource Manage-  
23      ment;

24          (4) to the Bureau of Land Management that  
25      pertains to any of the duties and authorities referred

1 to in section 101 is deemed to refer and apply to the  
2 Bureau of Energy and Resource Management;

3 (5) to the Director of the Bureau of Land Man-  
4 agement that pertains to any of the duties and au-  
5 thorities referred to in section 101 is deemed to  
6 refer and apply to the Director of the Bureau of En-  
7 ergy and Resource Management; and

8 (6) to any other position in the Bureau of Land  
9 Management that pertains to any of the duties and  
10 authorities referred to in section 101 is deemed to  
11 refer and apply to that same or equivalent position  
12 in the Bureau of Energy and Resource Management.

13 (b) BUREAU OF SAFETY AND ENVIRONMENTAL EN-  
14 FORCEMENT.—Any reference in any law, rule, regulation,  
15 directive, instruction, certificate, or other official docu-  
16 ment in force immediately before the enactment of this  
17 Act—

18 (1) to the Minerals Management Service that  
19 pertains to any of the duties and authorities referred  
20 to in section 102 is deemed to refer and apply to the  
21 Bureau of Safety and Environmental Enforcement  
22 established by section 102;

23 (2) to the Director of the Minerals Management  
24 Service that pertains to any of the duties and au-  
25 thorities referred to in section 102 is deemed to

1 refer and apply to the Director of the Bureau of  
2 Safety and Environmental Enforcement;

3 (3) to any other position in the Minerals Man-  
4 agement Service that pertains to any of the duties  
5 and authorities referred to in section 102 is deemed  
6 to refer and apply to that same or equivalent posi-  
7 tion in the Bureau of Safety and Environmental En-  
8 forcement;

9 (4) to the Bureau of Land Management that  
10 pertains to any of the duties and authorities referred  
11 to in section 102 is deemed to refer and apply to the  
12 Bureau of Safety and Environmental Enforcement;

13 (5) to the Director of the Bureau of Land Man-  
14 agement that pertains to any of the duties and au-  
15 thorities referred to in section 102 is deemed to  
16 refer and apply to the Director of the Bureau of  
17 Safety and Environmental Enforcement; and

18 (6) to any other position in the Bureau of Land  
19 Management that pertains to any of the duties and  
20 authorities referred to in section 102 is deemed to  
21 refer and apply to that same or equivalent position  
22 in the Bureau of Safety and Environmental Enforce-  
23 ment.

24 (c) OFFICE OF NATURAL RESOURCES REVENUE.—  
25 Any reference in any law, rule, regulation, directive, or in-

1 instruction, or certificate or other official document, in force  
 2 immediately prior to enactment—

3 (1) to the Minerals Management Service that  
 4 pertains to any of the duties and authorities referred  
 5 to in section 103 is deemed to refer and apply to the  
 6 Office of Natural Resources Revenue established by  
 7 section 103;

8 (2) to the Director of the Minerals Management  
 9 Service that pertains to any of the duties and au-  
 10 thorities referred to in section 103 is deemed to  
 11 refer and apply to the Director of Natural Resources  
 12 Revenue; and

13 (3) to any other position in the Minerals Man-  
 14 agement Service that pertains to any of the duties  
 15 and authorities referred to in section 103 is deemed  
 16 to refer and apply to that same or equivalent posi-  
 17 tion in the Office of Natural Resources Revenue.

18 **SEC. 106. ABOLISHMENT OF MINERALS MANAGEMENT**  
 19 **SERVICE.**

20 (a) **ABOLISHMENT.**—The Minerals Management  
 21 Service (in this section referred to as the “Service”) is  
 22 abolished.

23 (b) **COMPLETED ADMINISTRATIVE ACTIONS.**—

24 (1) **IN GENERAL.**—Completed administrative  
 25 actions of the Service shall not be affected by the

1 enactment of this Act, but shall continue in effect  
2 according to their terms until amended, modified,  
3 superseded, terminated, set aside, or revoked in ac-  
4 cordance with law by an officer of the United States  
5 or a court of competent jurisdiction, or by operation  
6 of law.

7 (2) COMPLETED ADMINISTRATIVE ACTION DE-  
8 FINED.—For purposes of paragraph (1), the term  
9 “completed administrative action” includes orders,  
10 determinations, rules, regulations, personnel actions,  
11 permits, agreements, grants, contracts, certificates,  
12 licenses, registrations, and privileges.

13 (c) PENDING PROCEEDINGS.—Subject to the author-  
14 ity of the Secretary of the Interior and the officers of the  
15 Department of the Interior under this Act—

16 (1) pending proceedings in the Service, includ-  
17 ing notices of proposed rulemaking, and applications  
18 for licenses, permits, certificates, grants, and finan-  
19 cial assistance, shall continue, notwithstanding the  
20 enactment of this Act or the vesting of functions of  
21 the Service in another agency, unless discontinued or  
22 modified under the same terms and conditions and  
23 to the same extent that such discontinuance or  
24 modification could have occurred if this Act had not  
25 been enacted; and

1           (2) orders issued in such proceedings, and ap-  
2       peals therefrom, and payments made pursuant to  
3       such orders, shall issue in the same manner and on  
4       the same terms as if this Act had not been enacted,  
5       and any such orders shall continue in effect until  
6       amended, modified, superseded, terminated, set  
7       aside, or revoked by an officer of the United States  
8       or a court of competent jurisdiction, or by operation  
9       of law.

10       (d) PENDING CIVIL ACTIONS.—Subject to the au-  
11      thority of the Secretary of the Interior or any officer of  
12      the Department of the Interior under this Act, pending  
13      civil actions shall continue notwithstanding the enactment  
14      of this Act, and in such civil actions, proceedings shall be  
15      had, appeals taken, and judgments rendered and enforced  
16      in the same manner and with the same effect as if such  
17      enactment had not occurred.

18       (e) REFERENCES.—References relating to the Service  
19      in statutes, Executive orders, rules, regulations, directives,  
20      or delegations of authority that precede the effective date  
21      of this Act are deemed to refer, as appropriate, to the De-  
22      partment, to its officers, employees, or agents, or to its  
23      corresponding organizational units or functions. Statutory  
24      reporting requirements that applied in relation to the



1 Service immediately before the effective date of this Act  
2 shall continue to apply.

3 **SEC. 107. CONFORMING AMENDMENT.**

4 Section 5316 of title 5, United States Code, is  
5 amended by striking “Director, Bureau of Mines, Depart-  
6 ment of the Interior.” and inserting the following new  
7 items:

8 “Director, Bureau of Energy and Resource  
9 Management, Department of the Interior.

10 “Director, Bureau of Safety and Environmental  
11 Enforcement, Department of the Interior.

12 “Director, Office of Natural Resources Rev-  
13 enue, Department of the Interior.”.

14 **SEC. 108. OUTER CONTINENTAL SHELF SAFETY AND ENVI-  
15 RONMENTAL ADVISORY BOARD.**

16 (a) ESTABLISHMENT.—The Secretary shall establish,  
17 under the Federal Advisory Committee Act, an Outer Con-  
18 tinental Shelf Safety and Environmental Advisory Board  
19 (referred to in this section as the “Board”), to provide  
20 the Secretary and the Directors of the bureaus established  
21 by this title with independent scientific and technical ad-  
22 vice on safe and environmentally compliant nonrenewable  
23 and renewable energy and mineral resource exploration,  
24 development, and production activities.

25 (b) MEMBERSHIP.—

1           (1) SIZE.—The Board shall consist of not more  
2           than 12 members, chosen to reflect a range of exper-  
3           tise in scientific, engineering, management, environ-  
4           mental, and other disciplines related to safe and en-  
5           vironmentally compliant renewable and nonrenewable  
6           energy and mineral resource exploration, develop-  
7           ment, and production activities. The Secretary shall  
8           consult with the National Academy of Sciences and  
9           the National Academy of Engineering to identify po-  
10          tential candidates for the Board.

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

15          (3) BALANCE.—In appointing members to the  
16          Board, the Secretary shall ensure a balanced rep-  
17          resentation of industry- and nonindustry-related in-  
18          terests.

19          (c) CHAIR.—The Secretary shall appoint the Chair  
20          for the Board.

21          (d) MEETINGS.—The Board shall meet not less than  
22          3 times per year and, at least once per year, shall host  
23          a public forum to review and assess the overall safety and  
24          environmental performance of Outer Continental Shelf

1 nonrenewable and renewable energy and mineral resource  
2 activities.

3 (e) OFFSHORE DRILLING SAFETY ASSESSMENTS  
4 AND RECOMMENDATIONS.—As part of its duties under  
5 this section, the Board shall, by not later than 180 days  
6 after the date of enactment of this section and every 5  
7 years thereafter, submit to the Secretary a report that—

8 (1) assesses offshore oil and gas well control  
9 technologies, practices, voluntary standards, and  
10 regulations in the United States and elsewhere;

11 (2) assesses whether existing well control regu-  
12 lations issued by the Secretary under the Outer Con-  
13 tinental Shelf Lands Act (43 U.S.C. 1331 et seq.)  
14 adequately protect safety and the environment; and

15 (3) as appropriate, recommends modifications  
16 to the regulations issued under this Act to ensure  
17 adequate protection of safety and the environment.

18 (f) REPORTS.—Reports of the Board shall be sub-  
19 mitted to the Congress and made available to the public  
20 in electronically accessible form.

21 (g) TRAVEL EXPENSES.—Members of the Board,  
22 other than full-time employees of the Federal Government,  
23 while attending meeting of the Board or while otherwise  
24 serving at the request of the Secretary or the Director  
25 while serving away from their homes or regular places of

1 business, may be allowed travel expenses, including per  
 2 diem in lieu of subsistence, as authorized by section 5703  
 3 of title 5, United States Code, for individuals in the Gov-  
 4 ernment serving without pay.

5 **SEC. 109. LIMITATION ON EFFECT ON DEVELOPMENT OF**  
 6 **OCEAN RENEWABLE ENERGY RESOURCE FA-**  
 7 **CILITIES.**

8 Nothing in this title shall delay development of ocean  
 9 renewable energy resource facilities including—

- 10 (1) promotion of offshore wind development;  
 11 (2) planning, leasing, licensing, and fee and  
 12 royalty collection for such development of ocean re-  
 13 newable energy resource facilities; and  
 14 (3) developing and administering an efficient  
 15 leasing and licensing process for ocean renewable en-  
 16 ergy resource facilities.

17 **TITLE II—FEDERAL OIL AND GAS**  
 18 **DEVELOPMENT**

19 **Subtitle A—Safety, Environmental,**  
 20 **and Financial Reform of the**  
 21 **Outer Continental Shelf Lands**  
 22 **Act**

23 **SEC. 201. SHORT TITLE.**

24 This subtitle may be cited as the “Outer Continental  
 25 Shelf Lands Act Amendments of 2010”.

1 **SEC. 202. DEFINITIONS.**

2 Section 2 of the Outer Continental Shelf Lands Act  
3 (43 U.S.C. 1331) is amended by adding at the end the  
4 following:

5 “(r) The term ‘safety case’ means a body of evidence  
6 that provides a basis for determining whether a system  
7 is adequately safe for a given application in a given oper-  
8 ating environment.”.

9 **SEC. 203. NATIONAL POLICY FOR THE OUTER CONTI-**  
10 **NENTAL SHELF.**

11 Section 3 of the Outer Continental Shelf Lands Act  
12 (43 U.S.C. 1332) is amended—

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

15 “(3) the outer Continental Shelf is a vital na-  
16 tional resource reserve held by the Federal Govern-  
17 ment for the public, that should be managed in a  
18 manner that—

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

22 “(B) minimizes the potential impacts of  
23 development of those resources on the marine  
24 and coastal environment and on safety; and

25 “(C) acknowledges the long-term economic  
26 value to the United States of the balanced and

1           orderly management of those resources that  
2           safeguards the environment and respects the  
3           multiple values and uses of the outer Conti-  
4           nental Shelf;”;

5           (2) in paragraph (4), by striking the period at  
6           the end and inserting a semicolon;

7           (3) in paragraph (5), by striking “should be”  
8           and inserting “shall be”, and striking “; and” and  
9           inserting a semicolon;

10          (4) by redesignating paragraph (6) as para-  
11          graph (7);

12          (5) by inserting after paragraph (5) the fol-  
13          lowing:

14               “(6) exploration, development, and production  
15               of energy and minerals on the outer Continental  
16               Shelf should be allowed only when those activities  
17               can be accomplished in a manner that minimizes—

18                       “(A) harmful impacts to life (including fish  
19                       and other aquatic life) and health;

20                       “(B) damage to the marine, coastal, and  
21                       human environments and to property; and

22                       “(C) harm to other users of the waters,  
23                       seabed, or subsoil; and”;

24          (6) in paragraph (7) (as so redesignated), by—



1 (A) striking “should be” and inserting  
2 “shall be”;

3 (B) inserting “best available” after  
4 “using”; and

5 (C) striking “or minimize”.

6 **SEC. 204. JURISDICTION OF LAWS ON THE OUTER CONTI-**  
7 **NENTAL SHELF.**

8 Section 4(a)(1) of the Outer Continental Shelf Lands  
9 Act (43 U.S.C. 1333(a)(1)) is amended by—

10 (1) inserting “or producing or supporting pro-  
11 duction of energy from sources other than oil and  
12 gas” after “therefrom”;

13 (2) inserting “or transmitting such energy”  
14 after “transporting such resources”; and

15 (3) inserting “and other energy” after “That  
16 mineral”.

17 **SEC. 205. OUTER CONTINENTAL SHELF LEASING STAND-**  
18 **ARD.**

19 (a) IN GENERAL.—Section 5 of the Outer Conti-  
20 nental Shelf Lands Act (43 U.S.C. 1334) is amended—

21 (1) in subsection (a), by striking “The Sec-  
22 retary may at any time” and inserting “The Sec-  
23 retary shall”;

24 (2) in the second sentence of subsection (a), by  
25 adding after “provide for” the following: “oper-

1       ational safety, the protection of the marine and  
2       coastal environment, and”;

3               (3) in subsection (a), by inserting “and the Sec-  
4       retary of Commerce with respect to matters that  
5       may affect the marine and coastal environment”  
6       after “which may affect competition”;

7               (4) in clause (ii) of subsection (a)(2)(A), by  
8       striking “a reasonable period of time” and inserting  
9       “30 days”;

10              (5) in subsection (a)(7), by inserting “in a  
11       manner that minimizes harmful impacts to the ma-  
12       rine and coastal environment” after “lease area”;

13              (6) in subsection (a), by striking “and” after  
14       the semicolon at the end of paragraph (7), redesign-  
15       nating paragraph (8) as paragraph (13), and insert-  
16       ing after paragraph (7) the following:

17              “(8) for independent third-party certification  
18       requirements of safety systems related to well con-  
19       trol, such as blowout preventers;

20              “(9) for performance requirements for blowout  
21       preventers, including quantitative risk assessment  
22       standards, subsea testing, and secondary activation  
23       methods;

1           “(10) for independent third-party certification  
2           requirements of well casing and cementing programs  
3           and procedures;

4           “(11) for the establishment of mandatory safety  
5           and environmental management systems by opera-  
6           tors on the Outer Continental Shelf;

7           “(12) for procedures and technologies to be  
8           used during drilling operations to minimize the risk  
9           of ignition and explosion of hydrocarbons;”;

10          (7) in subsection (a), by striking the period at  
11          the end of paragraph (13), as so redesignated, and  
12          inserting “; and”, and by adding at the end the fol-  
13          lowing:

14          “(14) ensuring compliance with other applicable  
15          environmental and natural resource conservation  
16          laws.”; and

17          (8) by adding at the end the following new sub-  
18          sections:

19          “(k) DOCUMENTS INCORPORATED BY REFERENCE.—  
20          Any documents incorporated by reference in regulations  
21          promulgated by the Secretary pursuant to this Act shall  
22          be made available to the public, free of charge, on a  
23          website maintained by the Secretary.

24          “(l) REGULATORY STANDARDS FOR BLOWOUT PRE-  
25          VENTERS, WELL DESIGN, AND CEMENTING.—

1           “(1) IN GENERAL.—In promulgating regula-  
2       tions under this Act related to blowout preventers,  
3       well design, and cementing, the Secretary shall en-  
4       sure that such regulations include the minimum  
5       standards included in paragraphs (2), (3), and (4),  
6       unless, after notice and an opportunity for public  
7       comment, the Secretary determines that a standard  
8       required under this subsection would be less effective  
9       in ensuring safe operations than an available alter-  
10      native technology or practice. Such regulations shall  
11      require independent third-party certification, pursu-  
12      ant to paragraph (5), of blowout preventers, well de-  
13      sign, and cementing programs and procedures prior  
14      to the commencement of drilling operations. Such  
15      regulations shall also require re-certification by an  
16      independent third-party certifier, pursuant to para-  
17      graph (5), of a blowout preventer upon any material  
18      modification to the blowout preventer or well design  
19      and of a well design upon any material modification  
20      to the well design.

21           “(2) BLOWOUT PREVENTERS.—Subject to para-  
22      graph (1), regulations issued under this Act for  
23      blowout preventers shall include at a minimum the  
24      following requirements:

1           “(A) Two sets of blind shear rams appro-  
2           priately spaced to prevent blowout preventer  
3           failure if a drill pipe joint or drill tool is across  
4           one set of blind shear rams during a situation  
5           that threatens loss of well control.

6           “(B) Redundant emergency backup control  
7           systems capable of activating the relevant com-  
8           ponents of a blowout preventer, including when  
9           the communications link or other critical links  
10          between the drilling rig and the blowout pre-  
11          venter are destroyed or inoperable.

12          “(C) Regular testing of the emergency  
13          backup control systems, including testing dur-  
14          ing deployment of the blowout preventer.

15          “(D) As appropriate, remotely operated ve-  
16          hicle intervention capabilities for secondary con-  
17          trol of all subsea blowout preventer functions,  
18          including adequate hydraulic capacity to acti-  
19          vate blind shear rams, casing shear rams, and  
20          other critical blowout preventer components.

21          “(3) WELL DESIGN.—Subject to paragraph (1),  
22          regulations issued under this Act for well design  
23          standards shall include at a minimum the following  
24          requirements:

1           “(A) In connection with the installation of  
2           the final casing string, the installation of at  
3           least two independent, tested mechanical bar-  
4           riers, in addition to a cement barrier, across  
5           each flow path between hydrocarbon bearing  
6           formations and the blowout preventer.

7           “(B) That wells shall be designed so that  
8           a failure of one barrier does not significantly in-  
9           crease the likelihood of another barrier’s failure.

10          “(C) That the casing design is appropriate  
11          for the purpose for which it is intended under  
12          reasonably expected wellbore conditions.

13          “(D) The installation and verification with  
14          a pressure test of a lockdown device at the time  
15          the casing is installed in the wellhead.

16          “(4) CEMENTING.—Subject to paragraph (1),  
17          regulations issued under this Act for cementing  
18          standards shall include at a minimum the following  
19          requirements:

20               “(A) Adequate centralization of the casing  
21               to ensure proper distribution of cement.

22               “(B) A full circulation of drilling fluids  
23               prior to cementing.

24               “(C) The use of an adequate volume of ce-  
25               ment to prevent any unintended flow of hydro-

1           carbons between any hydrocarbon-bearing for-  
2           mation zone and the wellhead.

3           “(D) Cement bond logs for all cementing  
4           jobs intended to provide a barrier to hydro-  
5           carbon flow.

6           “(E) Cement bond logs or such other in-  
7           tegrity tests as the Secretary may prescribe for  
8           cement jobs other than those identified in sub-  
9           paragraph (D).

10          “(5) INDEPENDENT THIRD-PARTY CER-  
11          TIFIERS.—The Secretary shall establish appropriate  
12          standards for the approval of independent third-  
13          party certifiers capable of exercising certification  
14          functions for blowout preventers, well design, and ce-  
15          menting. For any certification required for regula-  
16          tions related to blowout preventers, well design, or  
17          cementing, the operator shall use a qualified inde-  
18          pendent third-party certifier chosen by the Sec-  
19          retary. The costs of any certification shall be borne  
20          by the operator.

21          “(6) APPLICATION TO INSHORE WATERS; STATE  
22          IMPLEMENTATION.—

23          “(A) IN GENERAL.—Requirements estab-  
24          lished under this subsection shall apply, as pro-  
25          vided in subparagraph (B), to offshore drilling



1 operations that take place on lands that are  
2 landward of the outer Continental Shelf and  
3 seaward of the line of mean high tide, and that  
4 the Secretary determines, based on criteria es-  
5 tablished by rule, could, in the event of a blow-  
6 out, lead to extensive and widespread harm to  
7 safety or the environment.

8 “(B) SUBMISSION OF STATE REGULATORY  
9 REGIME.—Any State may submit to the Sec-  
10 retary a plan demonstrating that the State’s  
11 regulatory regime for wells identified in sub-  
12 paragraph (A) establishes requirements for  
13 such wells that are comparable to, or alter-  
14 native requirements providing an equal or  
15 greater level of safety than, those established  
16 under this section for wells on the outer Conti-  
17 nental Shelf. The Secretary shall promptly de-  
18 termine, after notice and an opportunity for  
19 public comment, whether a State’s regulatory  
20 regime meets the standard set forth in the pre-  
21 ceding sentence. If the Secretary determines  
22 that a State’s regulatory regime does not meet  
23 such standard, the Secretary shall identify the  
24 deficiencies that are the basis for such deter-  
25 mination and provide a reasonable period of

1 time for the State to remedy the deficiencies. If  
2 the State does not do so within such reasonable  
3 period of time, the Secretary shall apply the re-  
4 quirements established under this section to off-  
5 shore drilling operations described in subpara-  
6 graph (A) that are located in such State, until  
7 such time as the Secretary determines that the  
8 deficiencies have been remedied.

9 “(m) RULEMAKING DOCKETS.—

10 “(1) ESTABLISHMENT.—Not later than the  
11 date of proposal of any regulation under this Act,  
12 the Secretary shall establish a publicly available  
13 rulemaking docket for such regulation.

14 “(2) DOCUMENTS TO BE INCLUDED.—The Sec-  
15 retary shall include in the docket—

16 “(A) all written comments and documen-  
17 tary information on the proposed rule received  
18 from any person in the comment period for the  
19 rulemaking, promptly upon receipt by the Sec-  
20 retary;

21 “(B) the transcript of each public hearing,  
22 if any, on the proposed rule, promptly upon re-  
23 ceipt from the person who transcribed such  
24 hearing; and

1           “(C) all documents that become available  
2           after the proposed rule is published and that  
3           the Secretary determines are of central rel-  
4           evance to the rulemaking, by as soon as pos-  
5           sible after their availability.

6           “(3) PROPOSED AND DRAFT FINAL RULE AND  
7           ASSOCIATED MATERIAL.—The Secretary shall in-  
8           clude in the docket—

9           “(A) each draft proposed rule submitted by  
10          the Secretary to the Office of Management and  
11          Budget for any interagency review process prior  
12          to proposal of such rule, all documents accom-  
13          panying such draft, all written comments there-  
14          on by other agencies, and all written responses  
15          to such written comments by the Secretary, by  
16          no later than the date of proposal of the rule;  
17          and

18          “(B) each draft final rule submitted by the  
19          Secretary for such review process before  
20          issuance of the final rule, all such written com-  
21          ments thereon, all documents accompanying  
22          such draft, and all written responses thereto, by  
23          no later than the date of issuance of the final  
24          rule.”.

1 (b) CONFORMING AMENDMENT.—Subsection (g) of  
 2 section 25 of the Outer Continental Shelf Lands Act (43  
 3 U.S.C. 1351), as redesignated by section 215(4) of this  
 4 Act, is further amended by striking “paragraph (8) of sec-  
 5 tion 5(a) of this Act” each place it appears and inserting  
 6 “paragraph (13) of section 5(a) of this Act”.

7 **SEC. 206. LEASES, EASEMENTS, AND RIGHTS-OF-WAY.**

8 (a) FINANCIAL ASSURANCE AND FISCAL RESPONS-  
 9 BILITY.—Section 8 of the Outer Continental Shelf Lands  
 10 Act (43 U.S.C. 1337) is amended by adding at the end  
 11 the following:

12 “(q) REVIEW OF BOND AND SURETY AMOUNTS.—  
 13 Not later than May 1, 2011, and every 5 years thereafter,  
 14 the Secretary shall review the minimum financial responsi-  
 15 bility requirements for leases issued under this section and  
 16 shall ensure that any bonds or surety required are ade-  
 17 quate to comply with the requirements of this Act or the  
 18 Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

19 “(r) PERIODIC FISCAL REVIEW AND REPORT.—

20 “(1) IN GENERAL.—Not later than 1 year after  
 21 the date of enactment of this subsection and every  
 22 3 years thereafter, the Secretary shall carry out a  
 23 review and prepare a report setting forth—

24 “(A)(i) the royalty and rental rates in-  
 25 cluded in new offshore oil and gas leases; and

1 “(ii) the rationale for the rates;

2 “(B) whether, in the view of the Secretary,  
3 the royalty and rental rates described in sub-  
4 paragraph (A) will yield a fair return to the  
5 public while promoting the production of oil and  
6 gas resources in a timely manner;

7 “(C)(i) the minimum bond or surety  
8 amounts required pursuant to offshore oil and  
9 gas leases; and

10 “(ii) the rationale for the minimum  
11 amounts;

12 “(D) whether the bond or surety amounts  
13 described in subparagraph (C) are adequate to  
14 comply with subsection (q); and

15 “(E) whether the Secretary intends to  
16 modify the royalty or rental rates, or bond or  
17 surety amounts, based on the review.

18 “(2) PUBLIC PARTICIPATION.—In carrying out  
19 a review and preparing a report under paragraph  
20 (1), the Secretary shall provide to the public an op-  
21 portunity to participate.

22 “(3) REPORT DEADLINE.—Not later than 30  
23 days after the date on which the Secretary completes  
24 a report under paragraph (1), the Secretary shall  
25 transmit copies of the report to—

1           “(A) the Committee on Energy and Nat-  
2           ural Resources of the Senate; and

3           “(B) the Committee on Natural Resources  
4           of the House of Representatives.

5           “(s) COMPARATIVE REVIEW OF FISCAL SYSTEM.—

6           “(1) IN GENERAL.—Not later than 2 years  
7           after the date of enactment of this subsection and  
8           every 5 years thereafter, the Secretary shall carry  
9           out a comprehensive review of all components of the  
10          Federal offshore oil and gas fiscal system, including  
11          requirements for—

12                   “(A) bonus bids;

13                   “(B) rental rates; and

14                   “(C) royalties.

15          “(2) REQUIREMENTS.—

16                   “(A) CONTENTS; SCOPE.—A review under  
17          paragraph (1) shall include—

18                           “(i) the information and analyses nec-  
19                           essary to compare the offshore bonus bids,  
20                           rents, and royalties of the Federal Govern-  
21                           ment to the offshore bonus bids, rents, and  
22                           royalties of other resource owners, includ-  
23                           ing States and foreign countries; and

24                           “(ii) an assessment of the overall off-  
25                           shore oil and gas fiscal system in the

1 United States, as compared to foreign  
2 countries.

3 “(B) INDEPENDENT ADVISORY COM-  
4 MITTEE.—In carrying out a review under para-  
5 graph (1), the Secretary shall convene and seek  
6 the advice of an independent advisory com-  
7 mittee comprised of oil and gas and fiscal ex-  
8 perts from States, Indian tribes, academia, the  
9 energy industry, and appropriate nongovern-  
10 mental organizations.

11 “(3) REPORT.—

12 “(A) IN GENERAL.—The Secretary shall  
13 prepare a report that contains—

14 “(i) the contents and results of the re-  
15 view carried out under paragraph (1) for  
16 the period covered by the report; and

17 “(ii) any recommendations of the Sec-  
18 retary based on the contents and results of  
19 the review.

20 “(B) REPORT DEADLINE.—Not later than  
21 30 days after the date on which the Secretary  
22 completes a report under paragraph (1), the  
23 Secretary shall transmit copies of the report to  
24 the Committee on Natural Resources of the  
25 House of Representatives and the Committee



1           on Energy and Natural Resources of the Sen-  
2           ate.”.

3           (b) ENVIRONMENTAL DILIGENCE.—Section 8 of the  
4 Outer Continental Shelf Lands Act (43 U.S.C. 1337) is  
5 amended by striking subsection (d) and inserting the fol-  
6 lowing:

7           “(d) REQUIREMENT FOR CERTIFICATION OF RE-  
8 SPONSIBLE STEWARDSHIP.—

9           “(1) CERTIFICATION REQUIREMENT.—No bid  
10 or request for a lease, easement, or right-of-way  
11 under this section, or for a permit to drill under sec-  
12 tion 11(d), may be submitted by any person unless  
13 the person certifies to the Secretary that the person  
14 (including any related person and any predecessor of  
15 such person or related person) meets each of the fol-  
16 lowing requirements:

17           “(A) The person is meeting due diligence,  
18 safety, and environmental requirements on  
19 other leases, easements, and rights-of-way.

20           “(B) In the case of a person that is a re-  
21 sponsible party for a vessel or a facility from  
22 which oil is discharged, for purposes of section  
23 1002 of the Oil Pollution Act of 1990 (33  
24 U.S.C. 2702), the person has met all of its obli-

gations under that Act to provide compensation for covered removal costs and damages.

“(C) In the 7-year period ending on the date of certification, the person, in connection with activities in the oil industry (including exploration, development, production, transportation by pipeline, and refining)—

“(i) was not found to have committed willful or repeated violations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (including State plans approved under section 18(c) of such Act (29 U.S.C. 667(c))) at a rate that is higher than five times the rate determined by the Secretary to be the oil industry average for such violations for such period;

“(ii) was not convicted of a criminal violation for death or serious bodily injury;

“(iii) did not have more than 10 fatalities at its exploration, development, and production facilities and refineries as a result of violations of Federal or State health, safety, or environmental laws;

“(iv) was not assessed, did not enter into an agreement to pay, and was not oth-

1           erwise required to pay, civil penalties and  
2           criminal fines for violations the person was  
3           found to have committed under the Fed-  
4           eral Water Pollution Control Act (33  
5           U.S.C. 1251 et seq.) (including State pro-  
6           grams approved under sections 402 and  
7           404 of such Act (33 U.S.C. 1342 and  
8           1344)) in a total amount that is equal to  
9           more than \$10,000,000; and

10           “(v) was not assessed, did not enter  
11           into an agreement to pay, and was not oth-  
12           erwise required to pay, civil penalties and  
13           criminal fines for violations the person was  
14           found to have committed under the Clean  
15           Air Act (42 U.S.C. 7401 et seq.) (includ-  
16           ing State plans approved under section  
17           110 of such Act (42 U.S.C. 7410)) in a  
18           total amount that is equal to more than  
19           \$10,000,000.

20           “(2) ENFORCEMENT.—If the Secretary deter-  
21           mines that a certification made under paragraph (1)  
22           is false, the Secretary shall cancel any lease, ease-  
23           ment, or right of way and shall revoke any permit  
24           with respect to which the certification was required  
25           under such paragraph.

1           “(3) DEFINITION OF RELATED PERSON.—For  
 2           purposes of this subsection, the term ‘related person’  
 3           includes a parent, subsidiary, affiliate, member of  
 4           the same controlled group, contractor, subcontractor,  
 5           a person holding a controlling interest or in which  
 6           a controlling interest is held, and a person with sub-  
 7           stantially the same board members, senior officers,  
 8           or investors.”.

9           (c) ALTERNATIVE ENERGY DEVELOPMENT.—

10           (1) CLARIFICATION RELATING TO ALTERNATIVE  
 11           ENERGY DEVELOPMENT.—Section 8(p) of the Outer  
 12           Continental Shelf Lands Act (43 U.S.C. 1337(p)) is  
 13           amended—

14                   (A) in paragraph (1)—

15                           (i) in the matter preceding subpara-  
 16                           graph (A), by inserting “or” after “1501  
 17                           et seq.),”, and by striking “or other appli-  
 18                           cable law,”; and

19                           (ii) by amending subparagraph (D) to  
 20                           read as follows:

21                           “(D) use, for energy-related purposes, fa-  
 22                           cilities currently or previously used for activities  
 23                           authorized under this Act, except that any oil  
 24                           and gas energy-related uses shall not be author-  
 25                           ized in areas in which oil and gas preleasing,

1 leasing, and related activities are prohibited by  
2 a moratorium.”; and

3 (B) in paragraph (4)—

4 (i) in subparagraph (E), by striking  
5 “coordination” and inserting “in consulta-  
6 tion”; and

7 (ii) in subparagraph (J)(ii), by insert-  
8 ing “a potential site for an alternative en-  
9 ergy facility,” after “deepwater port,”.

10 (2) NONCOMPETITIVE ALTERNATIVE ENERGY  
11 LEASE OPTIONS.—Section 8(p)(3) of such Act (43  
12 U.S.C. 1337(p)(3)) is amended to read as follows:

13 “(3) COMPETITIVE OR NONCOMPETITIVE  
14 BASIS.—Any lease, easement, right-of-way, or other  
15 authorization granted under paragraph (1) shall be  
16 issued on a competitive basis, unless—

17 “(A) the lease, easement, right-of-way, or  
18 other authorization relates to a project that  
19 meets the criteria established under section  
20 388(d) of the Energy Policy Act of 2005 (43  
21 U.S.C. 1337 note; Public Law 109–58);

22 “(B) the lease, easement, right-of-way, or  
23 other authorization—

1 “(i) is for the placement and oper-  
2 ation of a meteorological or marine data  
3 collection facility; and

4 “(ii) has a term of not more than 5  
5 years; or

6 “(C) the Secretary determines, after pro-  
7 viding public notice of a proposed lease, ease-  
8 ment, right-of-way, or other authorization, that  
9 no competitive interest exists.”.

10 (d) REVIEW OF IMPACTS OF LEASE SALES ON THE  
11 MARINE AND COASTAL ENVIRONMENT BY SECRETARY.—  
12 Section 8 of the Outer Continental Shelf Lands Act (43  
13 U.S.C. 1337) is amended by adding at the end of sub-  
14 section (a) the following:

15 “(9) At least 60 days prior to any lease sale,  
16 the Secretary shall request a review by the Secretary  
17 of Commerce of the proposed sale with respect to  
18 impacts on the marine and coastal environment. The  
19 Secretary of Commerce shall complete and submit in  
20 writing the results of that review within 60 days  
21 after receipt of the Secretary of the Interior’s re-  
22 quest. If the Secretary of Commerce makes specific  
23 recommendations related to a proposed lease sale to  
24 reduce impacts on the marine and coastal environ-  
25 ment, and the Secretary rejects or modifies such rec-

1       ommendations, the Secretary shall provide in writing  
2       justification for rejecting or modifying such rec-  
3       ommendations.”.

4       (e) LIMITATION ON LEASE TRACT SIZE.—Section  
5       8(b)(1) of the Outer Continental Shelf Lands Act (43  
6       U.S.C. 1337(b)(1)) is amended by striking “, unless the  
7       Secretary finds that a larger area is necessary to comprise  
8       a reasonable economic production unit”.

9       (f) SULPHUR LEASES.—Section 8(i) of the Outer  
10      Continental Shelf Lands Act (43 U.S.C. 1337(i)) is  
11      amended by striking “meet the urgent need” and inserting  
12      “allow”.

13      (g) TERMS AND PROVISIONS.—Section 8(b) of the  
14      Outer Continental Shelf Lands Act (43 U.S.C. 1337(b))  
15      is amended by striking “An oil and gas lease issued pursu-  
16      ant to this section shall” and inserting “An oil and gas  
17      lease may be issued pursuant to this section only if the  
18      Secretary determines that activities under the lease are  
19      not likely to result in any condition described in section  
20      5(a)(2)(A)(i), and shall”.

21      **SEC. 207. DISPOSITION OF REVENUES.**

22      Section 9 of the Outer Continental Shelf Lands Act  
23      (43 U.S.C. 1338) is amended to read as follows:



1   **“SEC. 9. DISPOSITION OF REVENUES.**

2           “(a) GENERAL.—Except as provided in subsections  
3 (b), (c), and (d), all rentals, royalties, and other sums paid  
4 to the Secretary or the Secretary of the Navy under any  
5 lease on the outer Continental Shelf for the period from  
6 June 5, 1950, to date, and thereafter shall be deposited  
7 in the Treasury of the United States and credited to mis-  
8 cellaneous receipts.

9           “(b) LAND AND WATER CONSERVATION FUND.—Ef-  
10 fective for fiscal year 2011 and each fiscal year thereafter,  
11 \$900,000,000 of the amounts referred to in subsection (a)  
12 shall be deposited in the Treasury of the United States  
13 and credited to the Land and Water Conservation Fund.  
14 These sums shall be available to the Secretary, without  
15 further appropriation or fiscal year limitation, for carrying  
16 out the purposes of the Land and Water Conservation  
17 Fund Act of 1965 (16 U.S.C. 460l–4 et seq.).

18           “(c) HISTORIC PRESERVATION FUND.—Effective for  
19 fiscal year 2011 and each fiscal year thereafter,  
20 \$150,000,000 of the amounts referred to in subsection (a)  
21 shall be deposited in the Treasury of the United States  
22 and credited to the Historic Preservation Fund. These  
23 sums shall be available to the Secretary, without further  
24 appropriation or fiscal year limitation, for carrying out the  
25 purposes of the National Historic Preservation Fund Act  
26 of 1966 (16 U.S.C. 470 et seq.).

1       “(d) OCEAN RESOURCES CONSERVATION AND AS-  
2       SISTANCE FUND.—Effective for each fiscal year 2011 and  
3       thereafter, 10 percent of the amounts referred to in sub-  
4       section (a) shall be deposited in the Treasury of the  
5       United States and credited to the Ocean Resources Con-  
6       servation and Assistance Fund established by the Consoli-  
7       dated Land, Energy, and Aquatic Resources Act of 2010.  
8       These sums shall be available to the Secretary, subject to  
9       appropriation, for carrying out the purposes of section 605  
10      of the Consolidated Land, Energy, and Aquatic Resources  
11      Act of 2010.

12      “(e) SAVINGS PROVISION.—Nothing in this section  
13      shall decrease the amount any State shall receive pursuant  
14      to section 8(g) of this Act or section 105 of the Gulf of  
15      Mexico Energy Security Act (43 U.S.C. 1331 note).”.

16      **SEC. 208. EXPLORATION PLANS.**

17      (a) LIMITATION ON HARM FROM AGENCY EXPLO-  
18      RATION.—Section 11(a)(1) of the Outer Continental Shelf  
19      Lands Act (43 U.S.C. 1340(a)(1)) is amended by striking  
20      “, which do not interfere with or endanger actual oper-  
21      ations under any lease maintained or granted pursuant to  
22      this Act, and which are not unduly harmful to aquatic life  
23      in such area” and inserting “if a permit authorizing such  
24      activity is issued by the Secretary under subsection (g)”.

1 (b) EXPLORATION PLAN REVIEW.—Section 11(c) of  
2 the Outer Continental Shelf Lands Act (43 U.S.C.  
3 1340(c)), is amended—

4 (1) by inserting “(A)” before the first sentence;

5 (2) in paragraph (1)(A), as designated by the  
6 amendment made by paragraph (1) of this sub-  
7 section—

8 (A) by striking “and the provisions of such  
9 lease” and inserting “the provisions of such  
10 lease, and other applicable environmental and  
11 natural resource conservation laws”; and

12 (B) by striking the fourth sentence and in-  
13 serting the following:

14 “(B) The Secretary shall approve such  
15 plan, as submitted or modified, within 90 days  
16 after its submission and it is made publicly ac-  
17 cessible by the Secretary, or within such addi-  
18 tional time as the Secretary determines is nec-  
19 essary to complete any environmental, safety, or  
20 other reviews, if the Secretary determines  
21 that—

22 “(i) any proposed activity under such  
23 plan is not likely to result in any condition  
24 described in section 5(a)(2)(A)(i);

1 “(ii) the plan complies with other ap-  
2 plicable environmental or natural resource  
3 conservation laws;

4 “(iii) in the case of geophysical sur-  
5 veys, the applicant will use the best avail-  
6 able technologies and methods to minimize  
7 impacts on marine life; and

8 “(iv) the applicant has demonstrated  
9 the capability and technology to respond  
10 immediately and effectively to a worst-case  
11 oil spill in real-world conditions in the area  
12 of the proposed activity.”; and

13 (3) by adding at the end the following:

14 “(5) If the Secretary requires greater than 90  
15 days to review an exploration plan submitted pursu-  
16 ant to any oil and gas lease issued or maintained  
17 under this Act, then the Secretary may provide for  
18 a suspension of that lease pursuant to section 5  
19 until the review of the exploration plan is com-  
20 pleted.”.

21 (c) REQUIREMENTS.—Section 11(c) of the Outer  
22 Continental Shelf Lands Act (43 U.S.C. 1340(c), is  
23 amended by amending paragraph (3) to read as follows:

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

4                   “(A) a schedule of anticipated exploration  
5                   activities to be undertaken;

6                   “(B) a detailed and accurate description of  
7                   equipment to be used for such activities, includ-  
8                   ing—

9                           “(i) a description of each drilling unit;

10                           “(ii) a statement of the design and  
11                           condition of major safety-related pieces of  
12                           equipment, including independent third  
13                           party certification of such equipment; and

14                           “(iii) a description of any new tech-  
15                           nology to be used;

16                   “(C) a map showing the location of each  
17                   well to be drilled;

18                   “(D) a scenario for the potential blowout  
19                   of the well involving the highest potential vol-  
20                   ume of liquid hydrocarbons, along with a com-  
21                   plete description of a response plan to both con-  
22                   trol the blowout and manage the accompanying  
23                   discharge of hydrocarbons, including the likeli-  
24                   hood for surface intervention to stop the blow-  
25                   out, the availability of a rig to drill a relief well,

1 an estimate of the time it would take to drill a  
2 relief well, a description of other technology  
3 that may be used to regain control of the well  
4 or capture escaping hydrocarbons and the po-  
5 tential timeline for using that technology for its  
6 intended purpose, and the strategy, organiza-  
7 tion, and resources necessary to avoid harm to  
8 the environment from hydrocarbons;

9 “(E) an analysis of the potential impacts  
10 of the worst-case-scenario discharge of hydro-  
11 carbons on the marine, coastal, and human en-  
12 vironments for activities conducted pursuant to  
13 the proposed exploration plan; and

14 “(F) such other information deemed perti-  
15 nent by the Secretary.”.

16 (d) DRILLING PERMITS.—Section 11(d) of the Outer  
17 Continental Shelf Lands Act (43 U.S.C. 1340(d)) is  
18 amended by to read as follows:

19 “(d) DRILLING PERMITS.—

20 “(1) IN GENERAL.—The Secretary shall, by  
21 regulation, require that any lessee operating under  
22 an approved exploration plan obtain a permit prior  
23 to drilling any well in accordance with such plan,  
24 and prior to any significant modification of the well  
25 design as originally approved by the Secretary.

1           “(2) ENGINEERING REVIEW REQUIRED.—The  
2       Secretary may not grant any drilling permit or  
3       modification of the permit prior to completion of a  
4       full engineering review of the well system, including  
5       a determination that critical safety systems, includ-  
6       ing blowout prevention, will utilize best available  
7       technology and that blowout prevention systems will  
8       include redundancy and remote triggering capability.

9           “(3) OPERATOR SAFETY AND ENVIRONMENTAL  
10       MANAGEMENT REQUIRED.—The Secretary shall not  
11       grant any drilling permit or modification of the per-  
12       mit prior to completion of a safety and environ-  
13       mental management plan to be utilized by the oper-  
14       ator during all well operations.”.

15       (c) EXPLORATION PERMIT REQUIREMENTS.—Sec-  
16       tion 11(g) of the Outer Continental Shelf Lands Act (43  
17       U.S.C. 1340(g)) is amended by—

18           (1) striking “shall be issued” and inserting  
19       “may be issued”;

20           (2) inserting “and after consultation with the  
21       Secretary of Commerce,” after “in accordance with  
22       regulations issued by the Secretary”;

23           (3) striking the “and” at the end of paragraph  
24       (2);



1           (4) in paragraph (3) striking “will not be un-  
2       duly harmful to” and inserting “is not likely to  
3       harm”;

4           (5) striking the period at the end of paragraph  
5       (3) and inserting a semicolon; and

6           (6) adding at the end the following:

7           “(4) the exploration will be conducted in ac-  
8       cordance with other applicable environmental and  
9       natural resource conservation laws;

10          “(5) in the case of geophysical surveys, the ap-  
11       plicant will use the best available technologies and  
12       methods to minimize impacts on marine life; and

13          “(6) in the case of drilling operations, the appli-  
14       cant has available oil spill response and clean-up  
15       equipment and technology that has been dem-  
16       onstrated to be capable of effectively remediating a  
17       worst-case release of oil.”.

18       (f) ENVIRONMENTAL REVIEW OF PLANS; DEEP-  
19       WATER PLAN; PLAN DISAPPROVAL.—Section 11 of the  
20       Outer Continental Shelf Lands Act (43 U.S.C. 1340) is  
21       amended by adding at the end the following:

22       “(i) ENVIRONMENTAL REVIEW OF PLANS.—The Sec-  
23       retary shall treat the approval of an exploration plan, or  
24       a significant revision of such a plan, as an agency action  
25       requiring preparation of an environmental assessment or

1 environmental impact statement in accordance with the  
2 National Environmental Policy Act of 1969 (42 U.S.C.  
3 4321 et seq.), and shall require that such plan—

4 “(1) be based on the best available technology  
5 to ensure safety in carrying out both the drilling of  
6 the well and any oil spill response; and

7 “(2) contain a technical systems analysis of the  
8 safety of the proposed activity, the blowout preven-  
9 tion technology, and the blowout and spill response  
10 plans.

11 “(j) DISAPPROVAL OF PLAN.—

12 “(1) IN GENERAL.—The Secretary shall dis-  
13 approve the plan if the Secretary determines, be-  
14 cause of exceptional geological conditions in the  
15 lease areas, exceptional resource values in the ma-  
16 rine or coastal environment, or other exceptional cir-  
17 cumstances, that—

18 “(A) implementation of the plan would  
19 probably cause serious harm or damage to life  
20 (including fish and other aquatic life), to prop-  
21 erty, to any mineral deposits (in areas leased or  
22 not leased), to the national security or defense,  
23 or to the marine, coastal, or human environ-  
24 ments;

1 “(B) the threat of harm or damage will  
 2 not disappear or decrease to an acceptable ex-  
 3 tent within a reasonable period of time; and

4 “(C) the advantages of disapproving the  
 5 plan outweigh the advantages of exploration.

6 “(2) CANCELLATION OF LEASE FOR DIS-  
 7 APPROVAL OF PLAN.—If a plan is disapproved under  
 8 this subsection, the Secretary may cancel such lease  
 9 in accordance with subsection (c)(1) of this sec-  
 10 tion.”.

11 **SEC. 209. OUTER CONTINENTAL SHELF LEASING PROGRAM.**

12 Section 18 of the Outer Continental Shelf Lands Act  
 13 (43 U.S.C. 1344) is amended—

14 (1) in subsection (a) in the second sentence by  
 15 striking “meet national energy needs” and inserting  
 16 “balance national energy needs and the protection of  
 17 the marine and coastal environment and all the re-  
 18 sources in that environment,”;

19 (2) in subsection (a)(1), by striking “considers”  
 20 and inserting “gives equal consideration to”;

21 (3) in subsection (a)(2)(A)—

22 (A) by striking “existing” and inserting  
 23 “the best available scientific”; and

24 (B) by inserting “, including at least three  
 25 consecutive years of data” after “information”;

1           (4) in subsection (a)(2)(D), by inserting “po-  
2           tential and existing sites of renewable energy instal-  
3           lations,” after “deepwater ports,”;

4           (5) in subsection (a)(2)(H), by inserting “in-  
5           cluding the availability of infrastructure to support  
6           oil spill response” before the period;

7           (6) in subsection (a)(3), by—

8                 (A) striking “to the maximum extent prac-  
9                 ticable,”;

10                (B) striking “obtain a proper balance be-  
11                tween” and inserting “minimize”; and

12                (C) striking “damage,” and all that follows  
13                through the period and inserting “damage and  
14                adverse impacts on the marine, coastal, and  
15                human environments, and enhancing the poten-  
16                tial for the discovery of oil and gas.”;

17           (7) in subsection (b)(1), by inserting “environ-  
18           mental, marine, and energy” after “obtain”;

19           (8) in subsection (b)(2), by inserting “environ-  
20           mental, marine, and” after “interpret the”;

21           (9) in subsection (b)(3), by striking “and” after  
22           the semicolon at the end;

23           (10) by striking the period at the end of sub-  
24           section (b)(4) and inserting a semicolon;

1           (11) by adding at the end of subsection (b) the  
2 following:

3           “(5) provide technical review and oversight of  
4 exploration plans and a systems review of the safety  
5 of well designs and other operational decisions;

6           “(6) conduct regular and thorough safety re-  
7 views and inspections; and

8           “(7) enforce all applicable laws and regula-  
9 tions.”;

10          (12) in the first sentence of subsection (c)(1),  
11 by inserting “the National Oceanic and Atmospheric  
12 Administration and” after “including”;

13          (13) in subsection (c)(2)—

14           (A) by inserting after the first sentence the  
15 following: “The Secretary shall also submit a  
16 copy of such proposed program to the head of  
17 each Federal agency referred to in, or that oth-  
18 erwise provided suggestions under, paragraph  
19 (1).”;

20           (B) in the third sentence, by inserting “or  
21 head of a Federal agency” after “such Gov-  
22 ernor”; and

23           (C) in the fourth sentence, by inserting “or  
24 between the Secretary and the head of a Fed-  
25 eral agency,” after “affected State,”;

1           (14) by redesignating subsection (c)(3) as sub-  
2           section (c)(4) and by inserting before subsection  
3           (c)(4) (as so redesignated) the following:

4           “(3) At least 60 days prior to the publication of a  
5           proposed leasing program under this section, the Sec-  
6           retary shall request a review by the Secretary of Com-  
7           merce of the proposed leasing program with respect to im-  
8           pacts on the marine and coastal environments. If the Sec-  
9           retary rejects or modifies any of the recommendations  
10          made by the Secretary of Commerce concerning the loca-  
11          tion, timing, or conduct of leasing activities under the pro-  
12          posed leasing program, the Secretary shall provide in writ-  
13          ing justification for rejecting or modifying such rec-  
14          ommendations.”.

15          (15) in the second sentence of subsection  
16          (d)(2), by inserting “, the head of a Federal agen-  
17          cy,” after “Attorney General”;

18          (16) in subsection (g), by inserting after the  
19          first sentence the following: “Such information may  
20          include existing inventories and mapping of marine  
21          resources previously undertaken by the Department  
22          of the Interior and the National Oceanic and Atmos-  
23          pheric Administration, information provided by the  
24          Department of Defense, and other available data re-  
25          garding energy or mineral resource potential, navi-

1       gation uses, fisheries, aquaculture uses, recreational  
2       uses, habitat, conservation, and military uses on the  
3       outer Continental Shelf.”; and

4               (17) by adding at the end the following new  
5       subsection:

6       “(i) RESEARCH AND DEVELOPMENT.—The Secretary  
7       shall carry out a program of research and development  
8       to ensure the continued improvement of methodologies for  
9       characterizing resources of the outer Continental Shelf  
10      and conditions that may affect the ability to develop and  
11      use those resources in a safe, sound, and environmentally  
12      responsible manner. Such research and development ac-  
13      tivities may include activities to provide accurate estimates  
14      of energy and mineral reserves and potential on the Outer  
15      Continental Shelf and any activities that may assist in fill-  
16      ing gaps in environmental data needed to develop each  
17      leasing program under this section.”.

18   **SEC. 210. ENVIRONMENTAL STUDIES.**

19       (a) INFORMATION NEEDED FOR ASSESSMENT AND  
20      MANAGEMENT OF ENVIRONMENTAL IMPACTS.—Section  
21      20 of the Outer Continental Shelf Lands Act (43 U.S.C.  
22      1346) is amended by striking so much as precedes “of  
23      any area” in subsection (a)(1) and inserting the following:



1   **“SEC. 20. ENVIRONMENTAL STUDIES.**

2           “(a)(1) The Secretary, in cooperation with the Sec-  
3   retary of Commerce, shall conduct a study no less than  
4   once every three years”.

5           (b) IMPACTS OF DEEP WATER SPILLS.—Section 20  
6   of the Outer Continental Shelf Lands Act (43 U.S.C.  
7   1346) is amended by—

8                 (1) redesignating subsections (c) through (f) as  
9                 (d) through (g); and

10                (2) inserting after subsection (b) the following  
11   new subsection:

12           “(c) The Secretary shall conduct research to identify  
13   and reduce data gaps related to impacts of deepwater hy-  
14   drocarbon spills, including—

15                 “(1) effects to benthic substrate communities  
16                 and species;

17                 “(2) water column habitats and species;

18                 “(3) surface and coastal impacts from spills  
19                 originating in deep waters; and

20                 “(4) the use of dispersants.”.

21   **SEC. 211. SAFETY REGULATIONS.**

22           Section 21 of the Outer Continental Shelf Lands Act  
23   (43 U.S.C. 1347) is amended—

24                 (1) in subsection (a), by striking “Upon the  
25                 date of enactment of this section,” and inserting

26                 “Within 6 months after the date of enactment of the

1 Outer Continental Shelf Lands Act Amendments of  
2 2010 and every three years thereafter,”;

3 (2) in subsection (b) by—

4 (A) striking “for the artificial islands, in-  
5 stallations, and other devices referred to in sec-  
6 tion 4(a)(1) of” and inserting “under”;

7 (B) striking “which the Secretary deter-  
8 mines to be economically feasible”; and

9 (C) adding at the end “Not later than 6  
10 months after the date of enactment of the  
11 Outer Continental Shelf Lands Act Amend-  
12 ments of 2010 and every 3 years thereafter, the  
13 Secretary shall, in consultation with the Outer  
14 Continental Shelf Safety and Environmental  
15 Advisory Board established under title I of the  
16 Consolidated Land, Energy, and Aquatic Re-  
17 sources Act of 2010, identify and publish an  
18 updated list of (1) the best available tech-  
19 nologies for key areas of well design and oper-  
20 ation, including blowout prevention and blowout  
21 and oil spill response and (2) technology needs  
22 for which the Secretary intends to identify best  
23 available technologies in the future.”; and

24 (3) by adding at the end the following:

1       “(g) SAFETY CASE.—Not later than 6 months after  
2 the date of enactment of the Outer Continental Shelf  
3 Lands Act Amendments of 2010, the Secretary shall pro-  
4 mulgate regulations requiring a safety case be submitted  
5 along with each new application for a permit to drill on  
6 the outer Continental Shelf. Not later than 5 years after  
7 the date final regulations promulgated under this sub-  
8 section go into effect, and not less than every 5 years  
9 thereafter, the Secretary shall enter into an arrangement  
10 with the National Academy of Engineering to conduct a  
11 study to assess the effectiveness of these regulations and  
12 to recommend improvements in their administration.

13       “(h) OFFSHORE TECHNOLOGY RESEARCH AND RISK  
14 ASSESSMENT PROGRAM.—

15               “(1) IN GENERAL.—The Secretary shall carry  
16 out a program of research, development, and risk as-  
17 sessment to address technology and development  
18 issues associated with exploration for, and develop-  
19 ment and production of, energy and mineral re-  
20 sources on the outer Continental Shelf, with the pri-  
21 mary purpose of informing its role relating to safety,  
22 environmental protection, and spill response.

23               “(2) SPECIFIC FOCUS AREAS.—The program  
24 under this subsection shall include research and de-  
25 velopment related to—

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

4           “(B) analysis of industry trends in tech-  
5           nology, investment, and frontier areas;

6           “(C) reviews of best available technologies,  
7           including those associated with pipelines, blow-  
8           out preventer mechanisms, casing, well design,  
9           and other associated infrastructure related to  
10          offshore energy development;

11          “(D) oil spill response and mitigation, in-  
12          cluding reviews of the best available technology  
13          for oil spill response and mitigation and the  
14          availability and accessibility of such technology  
15          in each region where leasing is taking place;

16          “(E) risk associated with human factors;

17          “(F) technologies and methods to reduce  
18          the impact of geophysical exploration activities  
19          on marine life; and

20          “(G) renewable energy operations.”.

21 **SEC. 212. ENFORCEMENT OF SAFETY AND ENVIRON-**  
22 **MENTAL REGULATIONS.**

23          (a) IN GENERAL.—Section 22 of the Outer Conti-  
24          nental Shelf Lands Act (43 U.S.C. 1348) is amended—

1           (1) by amending subsection (c) to read as fol-  
2       lows:

3       “(c) INSPECTIONS.—The Secretary and the Secretary  
4 of the department in which the Coast Guard is operating  
5 shall individually, or jointly if they so agree, promulgate  
6 regulations to provide for—

7           “(1) scheduled onsite inspection, at least once a  
8       year, of each facility on the outer Continental Shelf  
9       which is subject to any environmental or safety regu-  
10      lation promulgated pursuant to this Act, which in-  
11      spection shall include all safety equipment designed  
12      to prevent or ameliorate blowouts, fires, spillages, or  
13      other major accidents;

14          “(2) scheduled onsite inspection, at least once a  
15      month, of each facility on the outer Continental  
16      Shelf engaged in drilling operations and which is  
17      subject to any environmental or safety regulation  
18      promulgated pursuant to this Act, which inspection  
19      shall include validation of the safety case required  
20      for the facility under section 21(g) and identifica-  
21      tions of deviations from the safety case, and shall in-  
22      clude all safety equipment designed to prevent or  
23      ameliorate blowouts, fires, spillages, or other major  
24      accidents;

1           “(3) periodic onsite inspection without advance  
2           notice to the operator of such facility to assure com-  
3           pliance with such environmental or safety regula-  
4           tions; and

5           “(4) periodic audits of each required safety and  
6           environmental management plan, and any associated  
7           safety case, both with respect to their implementa-  
8           tion at each facility on the outer Continental Shelf  
9           for which such a plan or safety case is required and  
10          with respect to onshore management support for ac-  
11          tivities at such a facility.”;

12          (2) in subsection (d)(1)—

13                (A) by striking “each major fire and each  
14                major oil spillage” and inserting “each major  
15                fire, each major oil spillage, each loss of well  
16                control, and any other accident that presented  
17                a serious risk to human or environmental safe-  
18                ty”; and

19                (B) by inserting before the period at the  
20                end the following: “, as a condition of the lease  
21                or permit”;

22          (3) in subsection (d)(2), by inserting before the  
23          period at the end the following: “as a condition of  
24          the lease or permit”;

1           (4) in subsection (e), by adding at the end the  
2           following: “Any such allegation from any employee  
3           of the lessee or any subcontractor of the lessee shall  
4           be investigated by the Secretary.”;

5           (5) in subsection (b)(1), by striking “recog-  
6           nized” and inserting “uncontrolled”; and

7           (6) by adding at the end the following:

8           “(g) INFORMATION ON CAUSES AND CORRECTIVE  
9           ACTIONS.—For any incident investigated under this sec-  
10          tion, the Secretary shall promptly make available to all  
11          lessees and the public technical information about the  
12          causes and corrective actions taken. All data and reports  
13          related to any such incident shall be maintained in a data  
14          base available to the public.

15          “(h) OPERATOR’S ANNUAL CERTIFICATION.—

16               “(1) The Secretary, in cooperation with the  
17          Secretary of the department in which the Coast  
18          Guard is operating, shall require all operators of all  
19          new and existing drilling and production operations  
20          to annually certify that their operations are being  
21          conducted in accordance with applicable law and reg-  
22          ulations.

23               “(2) Each certification shall include, but, not be  
24          limited to, statements that verify the operator has—

1           “(A) examined all well control system  
2 equipment (both surface and subsea) being used  
3 to ensure that it has been properly maintained  
4 and is capable of shutting in the well during  
5 emergency operations;

6           “(B) examined and conducted tests to en-  
7 sure that the emergency equipment has been  
8 function-tested and is capable of addressing  
9 emergency situations;

10          “(C) reviewed all rig drilling, casing, ce-  
11 menting, well abandonment (temporary and  
12 permanent), completion, and workover practices  
13 to ensure that well control is not compromised  
14 at any point while emergency equipment is in-  
15 stalled on the wellhead;

16          “(D) reviewed all emergency shutdown and  
17 dynamic positioning procedures that interface  
18 with emergency well control operations;

19          “(E) taken the necessary steps to ensure  
20 that all personnel involved in well operations  
21 are properly trained and capable of performing  
22 their tasks under both normal drilling and  
23 emergency well control operations; and

24          “(F) updated the operator’s response plan  
25 required under section 25(e)(7) and exploration



1 plans required under section 11(c)(3) to reflect  
2 the best available technology, including the  
3 availability of such technology.

4 “(i) CEO STATEMENT.—

5 “(1) IN GENERAL.—The Secretary shall not ap-  
6 prove any application for a permit to drill a well  
7 under this Act unless such application is accom-  
8 panied by a statement in which the chief executive  
9 officer of the applicant attests, in writing, that—

10 “(A) the applicant is in compliance with all  
11 applicable environmental and natural resource  
12 conservation laws;

13 “(B) the applicant has the capability and  
14 technology to respond immediately and effec-  
15 tively to a worst-case oil spill in real-world con-  
16 ditions in the area of the proposed activity  
17 under the permit;

18 “(C) the applicant has an oil spill response  
19 plan that ensures that the applicant has the ca-  
20 pacity to promptly control and stop a blowout  
21 in the event that well control measures fail;

22 “(D) the blowout preventer to be used dur-  
23 ing the drilling of the well has redundant sys-  
24 tems to prevent or stop a blowout for all fore-  
25 seeable blowout scenarios and failure modes;

1                   “(E) the well design is safe; and

2                   “(F) the applicant has the capability to ex-  
3                   peditiously begin and complete a relief well if  
4                   necessary in the event of a blowout.

5                   “(2) CIVIL PENALTY.—Any chief executive offi-  
6                   cer who makes a false certification under paragraph  
7                   (1) shall be liable for a civil penalty under section  
8                   24.

9                   “(j) THIRD PARTY CERTIFICATION.—All operators  
10                  that modify or upgrade any emergency equipment placed  
11                  on any operation to prevent blow-outs or other well control  
12                  events, shall have an independent third party conduct a  
13                  detailed physical inspection and design review of such  
14                  equipment within 30 days of its installation. The inde-  
15                  pendent third party shall certify that the equipment will  
16                  operate as originally designed and any modifications or  
17                  upgrades conducted after delivery have not compromised  
18                  the design, performance, or functionality of the equip-  
19                  ment. Failure to comply with this subsection shall result  
20                  in suspension of the lease.”.

21                  (b) APPLICATION.—Section 22(i) of the Outer Conti-  
22                  nental Shelf Lands Act, as added by the amendments  
23                  made by subsection (a), shall apply to approvals of appli-  
24                  cations for a permit to drill that are submitted after the

1 end of the 6-month period beginning on the date of enact-  
2 ment of this Act.

3 **SEC. 213. JUDICIAL REVIEW.**

4 Section 23(c)(3) of the Outer Continental Shelf  
5 Lands Act (43 U.S.C. 1349(c)(3)) is amended by striking  
6 “sixty” and inserting “90”.

7 **SEC. 214. REMEDIES AND PENALTIES.**

8 (a) CIVIL PENALTY, GENERALLY.—Section 24(b) of  
9 the Outer Continental Shelf Lands Act (43 U.S.C.  
10 1350(b)) is amended to read as follows:

11 “(b)(1) Except as provided in paragraph (2), any per-  
12 son who fails to comply with any provision of this Act,  
13 or any term of a lease, license, or permit issued pursuant  
14 to this Act, or any regulation or order issued under this  
15 Act, shall be liable for a civil administrative penalty of not  
16 more than \$75,000 for each day of the continuance of  
17 such failure. The Secretary may assess, collect, and com-  
18 promise any such penalty. No penalty shall be assessed  
19 until the person charged with a violation has been given  
20 an opportunity for a hearing. The Secretary shall, by regu-  
21 lation at least every 3 years, adjust the penalty specified  
22 in this paragraph to reflect any increases in the Consumer  
23 Price Index (all items, United States city average) as pre-  
24 pared by the Department of Labor.

(c) OFFICERS AND AGENTS OF CORPORATIONS.—  
Section 24(d) of the Outer Continental Shelf Lands Act  
(43 U.S.C. 1350(d)) is amended by inserting “, or with  
willful disregard,” after “knowingly and willfully”.

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

(2) in subsection (c), by striking “and” after the semicolon at the end of paragraph (5), redesignating paragraph (6) as paragraph (11), and inserting after paragraph (5) the following new paragraphs:

1           “(6) a detailed and accurate description of  
2           equipment to be used for the drilling of wells pursu-  
3           ant to activities included in the development and  
4           production plan, including—

5                   “(A) a description of the drilling unit or  
6           units;

7                   “(B) a statement of the design and condi-  
8           tion of major safety-related pieces of equip-  
9           ment, including independent third-party certifi-  
10          cation of such equipment; and

11                  “(C) a description of any new technology  
12          to be used;

13          “(7) a scenario for the potential blowout of  
14          each well to be drilled as part of the plan involving  
15          the highest potential volume of liquid hydrocarbons,  
16          along with a complete description of a response plan  
17          to both control the blowout and manage the accom-  
18          panying discharge of hydrocarbons, including the  
19          likelihood for surface intervention to stop the blow-  
20          out, the availability of a rig to drill a relief well, an  
21          estimate of the time it would take to drill a relief  
22          well, a description of other technology that may be  
23          used to regain control of the well or capture escap-  
24          ing hydrocarbons and the potential timeline for  
25          using that technology for its intended purpose, and

1 the strategy, organization, and resources necessary  
2 to avoid harm to the environment from hydro-  
3 carbons;

4 “(8) an analysis of the potential impacts of the  
5 worst-case-scenario discharge on the marine and  
6 coastal environments for activities conducted pursu-  
7 ant to the proposed development and production  
8 plan;

9 “(9) a comprehensive survey and characteriza-  
10 tion of the coastal or marine environment within the  
11 area of operation, including bathymetry, currents  
12 and circulation patterns within the water column,  
13 and descriptions of benthic and pelagic environ-  
14 ments;

15 “(10) a description of the technologies to be de-  
16 ployed on the facilities to routinely observe and mon-  
17 itor in real time the marine environment throughout  
18 the duration of operations, and a description of the  
19 process by which such observation data and informa-  
20 tion will be made available to Federal regulators and  
21 to the System established under section 12304 of  
22 Public Law 111–11 (33 U.S.C. 3603); and”;

23 (3) in subsection (e), by striking so much as  
24 precedes paragraph (2) and inserting the following:

1       “(e)(1) The Secretary shall treat the approval of a  
2   development and production plan, or a significant revision  
3   of a development and production plan, as an agency action  
4   requiring preparation of an environmental assessment or  
5   environmental impact statement, in accordance with the  
6   National Environmental Policy Act of 1969 (42 U.S.C.  
7   4321 et seq.).”;

8           (4) by striking subsections (g) and (l), and re-  
9   designating subsections (h) through (k) as sub-  
10   sections (g) through and (j); and

11          (5) in subsection (g), as so redesignated, by re-  
12   designating paragraphs (2) and (3) as paragraphs  
13   (3) and (4), respectively, and inserting after para-  
14   graph (1) the following:

15          “(2) The Secretary shall not approve a develop-  
16   ment and production plan, or a significant revision  
17   to such a plan, unless—

18           “(A) the plan is in compliance with all  
19   other applicable environmental and natural re-  
20   source conservation laws; and

21           “(B) the applicant has available oil spill re-  
22   sponse and clean-up equipment and technology  
23   that has been demonstrated to be capable of ef-  
24   fectively remediating the projected worst-case

1 release of oil from activities conducted pursuant  
2 to the development and production plan.”.

3 **SEC. 216. OIL AND GAS INFORMATION PROGRAM.**

4 Section 26(a)(1) of the Outer Continental Shelf  
5 Lands Act (43 U.S.C. 1352(a)(1)) is amended by—

6 (1) striking the period at the end of subpara-  
7 graph (A) and inserting “, provided that such data  
8 shall be transmitted in electronic format either in  
9 real-time or as quickly as practicable following the  
10 generation of such data.”; and

11 (2) striking subparagraph (C) and inserting the  
12 following:

13 “(C) Lessees engaged in drilling operations  
14 shall provide to the Secretary—

15 “(i) all daily reports generated by the  
16 lessee, or any daily reports generated by  
17 contractors or subcontractors engaged in  
18 or supporting drilling operations on the  
19 lessee’s lease, no more than 24 hours after  
20 the end of the day for which they should  
21 have been generated;

22 “(ii) documentation of blowout pre-  
23 venter maintenance and repair, and any  
24 changes to design specifications of the



1 blowout preventer, within 24 hours after  
 2 such activity; and  
 3 “(iii) prompt or real-time trans-  
 4 mission of the electronic log from a blow-  
 5 out preventer control system.”.

6 **SEC. 217. LIMITATION ON ROYALTY-IN-KIND PROGRAM.**

7 Section 27(a) of the Outer Continental Shelf Lands  
 8 Act (43 U.S.C. 1353(a)) is amended by striking the period  
 9 at the end of paragraph (1) and inserting “, except that  
 10 the Secretary shall not conduct a regular program to take  
 11 oil and gas lease royalties in oil or gas.”.

12 **SEC. 218. RESTRICTIONS ON EMPLOYMENT.**

13 Section 29 of the Outer Continental Shelf Lands Act  
 14 (43 U.S.C. 1355) is amended—

15 (1) in the matter preceding paragraph (1)—  
 16 (A) by striking “SEC. 29” and all that fol-  
 17 lows through “No full-time” and inserting the  
 18 following:

19 **“SEC. 29. RESTRICTIONS ON EMPLOYMENT.**

20 “(a) IN GENERAL.—No full-time”; and

21 (B) by striking “, and who was at any  
 22 time during the twelve months preceding the  
 23 termination of his employment with the Depart-  
 24 ment compensated under the Executive Sched-  
 25 ule or compensated at or above the annual rate

1 of basic pay for grade GS-16 of the General  
2 Schedule”;

3 (2) in paragraph (1)—

4 (A) in subparagraph (A), by inserting “or  
5 advise” after “represent”;

6 (B) in subparagraph (B), by striking “with  
7 the intent to influence, make” and inserting  
8 “act with the intent to influence, directly or in-  
9 directly, or make”; and

10 (C) in the matter following subparagraph  
11 (C)—

12 (i) by inserting “inspection or enforce-  
13 ment action,” before “or other particular  
14 matter”; and

15 (ii) by striking “or” at the end;

16 (3) in paragraph (2)—

17 (A) in subparagraph (A), by inserting “or  
18 advise” after “represent”;

19 (B) in subparagraph (B), by striking “with  
20 the intent to influence, make” and inserting  
21 “act with the intent to influence, directly or in-  
22 directly, or make”; and

23 (C) by striking the period at the end and  
24 inserting “; or”; and

25 (4) by adding at the end the following:

1           “(3) during the 2-year period beginning on the  
2           date on which the employment of the officer or em-  
3           ployee ceased at the Department, accept employment  
4           or compensation from any party that has a direct  
5           and substantial interest—

6                   “(A) that was pending under the official  
7           responsibility of the officer or employee as an  
8           officer at any point during the 2-year period  
9           preceding the date of termination of the respon-  
10          sibility; or

11                   “(B) in which the officer or employee par-  
12          ticipated personally and substantially as an offi-  
13          cer or employee of the Department.

14          “(b) PRIOR DEALINGS.—No full-time officer or em-  
15       ployee of the Department of the Interior who directly or  
16       indirectly discharged duties or responsibilities under this  
17       Act shall participate personally and substantially as a  
18       Federal officer or employee, through decision, approval,  
19       disapproval, recommendation, the rendering of advice, in-  
20       vestigation, or otherwise, in a proceeding, application, re-  
21       quest for a ruling or other determination, contract, claim,  
22       controversy, charge, accusation, inspection, enforcement  
23       action, or other particular matter in which, to the knowl-  
24       edge of the officer or employee—

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

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

7           “(3) any person or organization with whom the  
8           officer or employee is negotiating or has any ar-  
9           rangement concerning prospective employment has a  
10          financial interest; or

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

16          “(c) GIFTS FROM OUTSIDE SOURCES.—No full-time  
17          officer or employee of the Department of the Interior who  
18          directly or indirectly discharges duties or responsibilities  
19          under this Act shall, directly or indirectly, solicit or accept  
20          any gift in violation of subpart B of part 2635 of title  
21          5, Code of Federal Regulations (or successor regulations).

22          “(d) PENALTY.—Any person that violates subsection  
23          (a) or (b) shall be punished in accordance with section  
24          216 of title 18, United States Code.”.

1 **SEC. 219. REPEAL OF ROYALTY RELIEF PROVISIONS.**

2 (a) REPEAL OF PROVISIONS OF ENERGY POLICY ACT  
3 OF 2005.—The following provisions of the Energy Policy  
4 Act of 2005 (Public Law 109–58) are repealed:

5 (1) Section 344 (42 U.S.C. 15904; relating to  
6 incentives for natural gas production from deep wells  
7 in shallow waters of the Gulf of Mexico).

8 (2) Section 345 (42 U.S.C. 15905; relating to  
9 royalty relief for deep water production in the Gulf  
10 of Mexico).

11 (b) REPEAL OF PROVISIONS RELATING TO PLAN-  
12 NING AREAS OFFSHORE ALASKA.—Section 8(a)(3)(B) of  
13 the Outer Continental Shelf Lands Act (43 U.S.C.  
14 1337(a)(3)(B)) is amended by striking “and in the Plan-  
15 ning Areas offshore Alaska”.

16 **SEC. 220. MANNING AND BUY- AND BUILD-AMERICAN RE-**  
17 **QUIREMENTS.**

18 Section 30 of the Outer Continental Shelf Lands Act  
19 (43 U.S.C. 1356) is amended—

20 (1) in subsection (a), by striking “shall issue  
21 regulations which” and inserting “shall issue regula-  
22 tions that shall be supplemental to and complemen-  
23 tary with and under no circumstances a substitution  
24 for the provisions of the Constitution and laws of the  
25 United States extended to the subsoil and seabed of  
26 the outer Continental Shelf pursuant to section

1       4(a)(1) of this Act, except insofar as such laws  
2       would otherwise apply to individuals who have ex-  
3       traordinary ability in the sciences, arts, education,  
4       or business, which has been demonstrated by sus-  
5       tained national or international acclaim, and that”;  
6       and

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

8       “(d) BUY AND BUILD AMERICAN.—It is the intention  
9       of the Congress that this Act, among other things, result  
10      in a healthy and growing American industrial, manufac-  
11      turing, transportation, and service sector employing the  
12      vast talents of America’s workforce to assist in the devel-  
13      opment of energy from the outer Continental Shelf. More-  
14      over, the Congress intends to monitor the deployment of  
15      personnel and material on the outer Continental Shelf to  
16      encourage the development of American technology and  
17      manufacturing to enable United States workers to benefit  
18      from this Act by good jobs and careers, as well as the  
19      establishment of important industrial facilities to support  
20      expanded access to American resources.”.

21   **SEC. 221. NATIONAL COMMISSION ON THE BP DEEPWATER**  
22                   **HORIZON OIL SPILL AND OFFSHORE DRILL-**  
23                   **ING.**

24       (a) TECHNICAL EXPERTISE.—

1           (1) NATIONAL ACADEMY OF ENGINEERING AND  
2       NATIONAL RESEARCH COUNCIL.—The National  
3       Commission on the BP Deepwater Horizon Oil Spill  
4       and Offshore Drilling established under Executive  
5       Order No. 13543 of May 21, 2010 (referred to in  
6       this section as the “Commission”) shall consult reg-  
7       ularly, and in any event no less frequently than once  
8       per month, with the engineering and technology ex-  
9       perts who are conducting the “Analysis of Causes of  
10      the Deepwater Horizon Explosion, Fire, and Oil  
11      Spill to Identify Measures to Prevent Similar Acci-  
12      dents in the Future” for the National Academy of  
13      Engineering and the National Research Council.

14           (2) OTHER TECHNICAL EXPERTS.—The Com-  
15      mission also shall consult with other United States  
16      citizens with experience and expertise in such areas  
17      as—

- 18                   (A) engineering;
- 19                   (B) environmental compliance;
- 20                   (C) health and safety law (particularly oil  
21      spill legislation);
- 22                   (D) oil spill insurance policies;
- 23                   (E) public administration;
- 24                   (F) oil and gas exploration and production;
- 25                   (G) environmental cleanup;

1 (H) fisheries and wildlife management;

2 (I) marine safety; and

3 (J) human factors affecting safety.

4 (3) COMMISSION STAFF AND TECHNICAL EX-  
5 PERTISE.—The Commission shall retain, as either a  
6 full-time employee or a contractor, one or more  
7 science and technology expert-advisors with experi-  
8 ence and expertise in petroleum engineering, rig  
9 safety, or drilling.

10 (b) SUBPOENAS.—

11 (1) SUBPOENA POWER.—The Commission may  
12 issue subpoenas in accordance with this subsection  
13 to compel the attendance and testimony of witnesses  
14 and the production of books, records, correspond-  
15 ence, memoranda, and other documents.

16 (2) ISSUANCE.—

17 (A) AUTHORIZATION.—A subpoena may be  
18 issued under this subsection only by—

19 (i) agreement of the Co-Chairs of the  
20 Commission; or

21 (ii) the affirmative vote of a majority  
22 of the members of the Commission.

23 (B) JUSTICE DEPARTMENT COORDINA-  
24 TION.—



1 (i) NOTIFICATION.—The Commission  
2 shall notify the Attorney General or the  
3 Attorney General’s designee of the Com-  
4 mission’s intent to issue a subpoena under  
5 this subsection, the identity of the recipi-  
6 ent, and the nature of the testimony, docu-  
7 ments, or other evidence (described in sub-  
8 paragraph (A)) sought before issuing such  
9 a subpoena. The form and content of such  
10 notice shall be set forth in the guidelines  
11 issued under clause (iv).

12 (ii) CONDITIONS FOR OBJECTION TO  
13 ISSUANCE.—The Commission may not  
14 issue a subpoena under authority of this  
15 Act if the Attorney General objects to the  
16 issuance of the subpoena on the basis that  
17 the subpoena is likely to interfere with  
18 any—

19 (I) Federal or State criminal in-  
20 vestigation or prosecution;

21 (II) pending investigation under  
22 sections 3729 through 3732 of title  
23 31, United States Code (commonly  
24 known as the “Civil False Claims  
25 Act”);

1 (III) pending investigation under  
2 any other Federal statute providing  
3 for civil remedies; or

4 (IV) civil litigation to which the  
5 United States or any of its agencies is  
6 or is likely to be a party.

7 (iii) NOTIFICATION OF OBJECTION.—  
8 The Attorney General or relevant United  
9 States Attorney shall notify the Commis-  
10 sion of an objection raised under this sub-  
11 paragraph without unnecessary delay and  
12 as set forth in the guidelines issued under  
13 clause (iv).

14 (iv) GUIDELINES.—As soon as prac-  
15 ticable, but no later than 30 days after the  
16 date of the enactment of this Act, the At-  
17 torney General, after consultation with the  
18 Commission, shall issue guidelines to carry  
19 out this paragraph.

20 (C) SIGNATURE AND SERVICE.—A sub-  
21 poena issued under this subsection may be—

22 (i) issued under the signature of ei-  
23 ther Co-Chair of the Commission or any  
24 member designated by a majority of the  
25 Commission; and

1 (ii) served by any person designated  
2 by the Co-Chairs or a member designated  
3 by a majority of the Commission.

4 (3) ENFORCEMENT.—

5 (A) REQUIRED PROCEDURES.—In the case  
6 of contumacy of any person issued a subpoena  
7 under this subsection or refusal by such person  
8 to comply with the subpoena, the Commission  
9 may request the Attorney General to seek en-  
10 forcement of the subpoena. Upon such request,  
11 the Attorney General may seek enforcement of  
12 the subpoena in a court described in subpara-  
13 graph (B). The court in which the Attorney  
14 General seeks enforcement of the subpoena may  
15 issue an order requiring the subpoenaed person  
16 to appear at any designated place to testify or  
17 to produce documentary or other evidence de-  
18 scribed in subparagraph (A) of paragraph (2),  
19 and may punish any failure to obey the order  
20 as a contempt of that court.

21 (B) JURISDICTION FOR ENFORCEMENT.—  
22 Any United States district court for a judicial  
23 district in which a person issued a subpoena  
24 under this subsection resides, is served, or may  
25 be found, or where the subpoena is returnable,

1           upon application of the Attorney General, shall  
2           have jurisdiction to enforce the subpoena as  
3           provided in subparagraph (A).

4       (c) RECOMMENDATIONS AND PURPOSES.—

5           (1) IN GENERAL.—The Commission shall de-  
6       velop recommendations for—

7                   (A) improvements to Federal laws, regula-  
8                   tions, and industry practices applicable to off-  
9                   shore drilling that would—

10                           (i) ensure the effective oversight, in-  
11                           spection, monitoring, and response capa-  
12                           bilities; and

13                           (ii) protect the environment and nat-  
14                           ural resources; and

15                   (B) organizational or other reforms of  
16                   Federal agencies or processes, including the  
17                   creation of new agencies, as necessary, to en-  
18                   sure that the improvements described in para-  
19                   graph (1) are implemented and maintained.

20           (2) GOALS.—In developing recommendations  
21       under paragraph (1), the Commission shall ensure  
22       that the following goals are met:

23                   (A) Ensuring the safe operation and main-  
24                   tenance of offshore drilling platforms or vessels.

1           (B) Protecting the overall environment and  
2           natural resources surrounding ongoing and po-  
3           tential offshore drilling sites.

4           (C) Developing and maintaining Federal  
5           agency expertise on the safe and effective use of  
6           offshore drilling technologies, including tech-  
7           nologies to minimize the risk of release of oil  
8           from offshore drilling platforms or vessels.

9           (D) Encouraging the development and im-  
10          plementation of efficient and effective oil spill  
11          response techniques and technologies that mini-  
12          mize or eliminate any adverse effects on natural  
13          resources or the environment that result from  
14          response activities.

15          (E) Ensuring that the Federal agencies  
16          regulating offshore drilling are staffed with, and  
17          managed by, career professionals, who are—

18               (i) permitted to exercise independent  
19               professional judgments and make safety  
20               the highest priority in carrying out their  
21               responsibilities;

22               (ii) not subject to undue influence  
23               from regulated interests or political ap-  
24               pointees; and

1 (iii) subject to strict regulation to pre-  
2 vent improper relationships with regulated  
3 interests and to eliminate real or perceived  
4 conflicts of interests.

5 (3) REPORT TO CONGRESS.—In coordination  
6 with its final public report to the President, the  
7 Commission shall submit to Congress a report con-  
8 taining the recommendations developed under para-  
9 graph (1).

10 **SEC. 222. COORDINATION AND CONSULTATION WITH AF-**  
11 **FECTED STATE AND LOCAL GOVERNMENTS.**

12 Section 19 of the Outer Continental Shelf Lands Act  
13 (43 U.S.C. 1345) is amended—

14 (1) by inserting “exploration plan or” before  
15 “development and production plan” in each place it  
16 appears; and

17 (2) by amending subsection (c) to read as fol-  
18 lows:

19 “(c) ACCEPTANCE OR REJECTION OF RECOMMENDA-  
20 TIONS.—The Secretary shall accept recommendations of  
21 the Governor and may accept recommendations of the ex-  
22 ecutive of any affected local government if the Secretary  
23 determines, after having provided the opportunity for con-  
24 sultation, that they provide for a reasonable balance be-  
25 tween the national interest and the well-being of the citi-

1 zens of the affected State. For purposes of this subsection,  
2 a determination of the national interest shall be based on  
3 the desirability of obtaining oil and gas supplies in a bal-  
4 anced manner and on protecting coastal and marine eco-  
5 systems and the economies dependent on those eco-  
6 systems. The Secretary shall provide an explanation to the  
7 Governor, in writing, of the reasons for his determination  
8 to accept or reject such Governor's recommendations, or  
9 to implement any alternative identified in consultation  
10 with the Governor.''.  
11

11 **SEC. 223. IMPLEMENTATION.**

12 (a) NEW LEASES.—The provisions of this title and  
13 title VII shall apply to any lease that is issued under the  
14 Outer Continental Shelf Lands Act (43 U.S.C. 1331 et  
15 seq.) after the effective date of this Act.

16 (b) EXISTING LEASES.—For all leases that were  
17 issued under the Outer Continental Shelf Lands Act (43  
18 U.S.C. 1331 et seq.) that are in effect on the effective  
19 date of this Act, the Secretary shall take action, consistent  
20 with the terms of those leases, to apply the requirements  
21 of this title and title VII to those leases. Such action may  
22 include, but is not limited to, promulgating regulations,  
23 renegotiating such existing leases, conditioning future  
24 leases on bringing such existing leases into full or partial

1 compliance with this title and title VII, or taking any other  
2 actions authorized by law.

3 **SEC. 224. REPORT ON ENVIRONMENTAL BASELINE STUD-**  
4 **IES.**

5 The Secretary of the Interior shall report to Congress  
6 within 6 months after the date of enactment of this Act  
7 on the costs of baseline environmental studies to gather,  
8 analyze, and characterize resource data necessary to im-  
9 plement the Outer Continental Shelf Lands Act (43  
10 U.S.C. 1331 et seq.). The Secretary shall include in the  
11 report proposals of fees or other ways to recoup such costs  
12 from persons engaging or seeking to engage in activities  
13 on the Outer Continental Shelf to which that Act applies.

14 **SEC. 225. CUMULATIVE IMPACTS ON MARINE MAMMAL SPE-**  
15 **CIES AND STOCKS AND SUBSISTENCE USE.**

16 Section 20 of the Outer Continental Shelf Lands Act  
17 (43 U.S.C. 1346) is further amended by adding at the  
18 end the following:

19 “(h) CUMULATIVE IMPACTS ON MARINE MAMMAL  
20 SPECIES AND STOCKS AND SUBSISTENCE USE.—In deter-  
21 mining, pursuant to subparagraphs (A)(i) and (D)(i) of  
22 section 101(a)(5) of the Marine Mammal Protection Act  
23 of 1972 (16 U.S.C.1371(a)(5)), whether takings from  
24 specified activities administered under this title will have  
25 a negligible impact on a marine mammal species or stock,



1 and not have an unmitigable adverse impact on the avail-  
 2 ability of such species or stock for taking for subsistence  
 3 uses, the Secretary of Commerce or Interior shall incor-  
 4 porate any takings of such species or stock from any other  
 5 reasonably foreseeable activities administered under this  
 6 Act.”.

## 7 **Subtitle B—Royalty Relief for** 8 **American Consumers**

### 9 **SEC. 231. SHORT TITLE.**

10 This subtitle may be cited as the “Royalty Relief for  
 11 American Consumers Act of 2010”.

### 12 **SEC. 232. ELIGIBILITY FOR NEW LEASES AND THE TRANS-** 13 **FER OF LEASES.**

#### 14 (a) ISSUANCE OF NEW LEASES.—

15 (1) IN GENERAL.—The Secretary shall not  
 16 issue any new lease that authorizes the production  
 17 of oil or natural gas under the Outer Continental  
 18 Shelf Lands Act (43 U.S.C. 1331 et seq.) to a per-  
 19 son described in paragraph (2) unless the person has  
 20 renegotiated each covered lease with respect to which  
 21 the person is a lessee, to modify the payment re-  
 22 sponsibilities of the person to require the payment of  
 23 royalties if the price of oil and natural gas is greater  
 24 than or equal to the price thresholds described in  
 25 clauses (v) through (vii) of section 8(a)(3)(C) of the

Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(3)(C)).

(2) PERSONS DESCRIBED.—A person referred to in paragraph (1) is a person that—

(A) is a lessee that—

(i) holds a covered lease on the date on which the Secretary considers the issuance of the new lease; or

(ii) was issued a covered lease before the date of enactment of this Act, but transferred the covered lease to another person or entity (including a subsidiary or affiliate of the lessee) after the date of enactment of this Act; or

(B) any other person that has any direct or indirect interest in, or that derives any benefit from, a covered lease.

(3) MULTIPLE LESSEES.—

(A) IN GENERAL.—For purposes of paragraph (1), if there are multiple lessees that own a share of a covered lease, the Secretary may implement separate agreements with any lessee with a share of the covered lease that modifies the payment responsibilities with respect to the share of the lessee to include price thresholds

1           that are equal to or less than the price thresh-  
2           olds described in clauses (v) through (vii) of  
3           section 8(a)(3)(C) of the Outer Continental  
4           Shelf Lands Act (43 U.S.C. 1337(a)(3)(C)).

5           (B) TREATMENT OF SHARE AS COVERED  
6           LEASE.—Beginning on the effective date of an  
7           agreement under subparagraph (A), any share  
8           subject to the agreement shall not constitute a  
9           covered lease with respect to any lessees that  
10          entered into the agreement.

11          (b) TRANSFERS.—A lessee or any other person who  
12          has any direct or indirect interest in, or who derives a  
13          benefit from, a lease shall not be eligible to obtain by sale  
14          or other transfer (including through a swap, spinoff, serv-  
15          icing, or other agreement) any covered lease, the economic  
16          benefit of any covered lease, or any other lease for the  
17          production of oil or natural gas in the Gulf of Mexico  
18          under the Outer Continental Shelf Lands Act (43 U.S.C.  
19          1331 et seq.), unless the lessee or other person has—

20               (1) renegotiated each covered lease with respect  
21          to which the lessee or person is a lessee, to modify  
22          the payment responsibilities of the lessee or person  
23          to include price thresholds that are equal to or less  
24          than the price thresholds described in clauses (v)  
25          through (vii) of section 8(a)(3)(C) of the Outer Con-

1        tinal Shelf Lands Act (43 U.S.C. 1337(a)(3)(C));  
2        or

3            (2) entered into an agreement with the Sec-  
4        retary to modify the terms of all covered leases of  
5        the lessee or other person to include limitations on  
6        royalty relief based on market prices that are equal  
7        to or less than the price thresholds described in  
8        clauses (v) through (vii) of section 8(a)(3)(C) of the  
9        Outer Continental Shelf Lands Act (43 U.S.C.  
10       1337(a)(3)(C)).

11        (c) USE OF AMOUNTS FOR DEFICIT REDUCTION.—  
12       Notwithstanding any other provision of law, any amounts  
13       received by the United States as rentals or royalties under  
14       covered leases shall be deposited in the Treasury and used  
15       for Federal budget deficit reduction or, if there is no Fed-  
16       eral budget deficit, for reducing the Federal debt in such  
17       manner as the Secretary of the Treasury considers appro-  
18       priate.

19        (d) DEFINITIONS.—In this section—

20            (1) COVERED LEASE.—The term “covered  
21        lease” means a lease for oil or gas production in the  
22        Gulf of Mexico that is—

23            (A) in existence on the date of enactment  
24        of this Act;

1 (B) issued by the Department of the Inte-  
 2 rior under section 304 of the Outer Continental  
 3 Shelf Deep Water Royalty Relief Act (43  
 4 U.S.C. 1337 note; Public Law 104–58); and

5 (C) not subject to limitations on royalty re-  
 6 lief based on market price that are equal to or  
 7 less than the price thresholds described in  
 8 clauses (v) through (vii) of section 8(a)(3)(C) of  
 9 the Outer Continental Shelf Lands Act (43  
 10 U.S.C. 1337(a)(3)(C)).

11 (2) LESSEE.—The term “lessee” includes any  
 12 person or other entity that controls, is controlled by,  
 13 or is in or under common control with, a lessee.

14 (3) SECRETARY.—The term “Secretary” means  
 15 the Secretary of the Interior.

16 **SEC. 233. PRICE THRESHOLDS FOR ROYALTY SUSPENSION**  
 17 **PROVISIONS.**

18 The Secretary of the Interior shall agree to a request  
 19 by any lessee to amend any lease issued for any Central  
 20 and Western Gulf of Mexico tract in the period of January  
 21 1, 1996, through November 28, 2000, to incorporate price  
 22 thresholds applicable to royalty suspension provisions, that  
 23 are equal to or less than the price thresholds described  
 24 in clauses (v) through (vii) of section 8(a)(3)(C) of the  
 25 Outer Continental Shelf Lands Act (43 U.S.C.

1 1337(a)(3)(C)). Any amended lease shall impose the new  
2 or revised price thresholds effective October 1, 2010. Ex-  
3 isting lease provisions shall prevail through September 30,  
4 2010.

## 5 **Subtitle C—Limitation on** 6 **Moratorium**

### 7 **SEC. 241. LIMITATION OF MORATORIUM ON CERTAIN PER-** 8 **MITTING AND DRILLING ACTIVITIES.**

9 (a) IN GENERAL.—The moratorium set forth in the  
10 decision memorandum of the Secretary of the Interior en-  
11 titled “Decision memorandum regarding the suspension of  
12 certain offshore permitting and drilling activities on the  
13 Outer Continental Shelf” and dated July 12, 2010, and  
14 any suspension of operations issued in connection with the  
15 moratorium, shall not apply to an application for a permit  
16 to drill submitted on or after the effective date of this Act  
17 if the Secretary determines that the applicant—

18 (1) has complied with the notice entitled “Na-  
19 tional Notice to Lessees and Operators of Federal  
20 Oil and Gas Leases, Outer Continental Shelf  
21 (OCS)” dated June 8, 2010 (NTL No. 2010–N05)  
22 and the notice entitled “National Notice to Lessees  
23 and Operators of Federal Oil and Gas Leases, Outer  
24 Continental Shelf (OCS)” dated June 18, 2010  
25 (NTL No. 2010–N06);

1           (2) has complied with additional safety meas-  
2           ures recommended by the Secretary as of the date  
3           of the enactment of this Act; and

4           (3) has completed all required safety inspec-  
5           tions.

6           (b) DETERMINATION ON PERMIT.—Not later than 30  
7           days after the date on which the Secretary makes a deter-  
8           mination that an applicant has complied with paragraphs  
9           (1), (2), and (3) of subsection (a), the Secretary shall  
10          make a determination on whether to issue the permit.

11          (c) NO SUSPENSION OF CONSIDERATION.—No Fed-  
12          eral entity shall suspend the active consideration of, or  
13          preparatory work for, permits required to resume or ad-  
14          vance activities suspended in connection with the morato-  
15          rium.

16          (d) REPORT TO CONGRESS.—Not later than October  
17          31, 2010, the Secretary shall report to the House Com-  
18          mittee on Natural Resources and the Senate Committee  
19          on Energy and Natural Resources on the status of: (1)  
20          the collection and analysis of evidence regarding the poten-  
21          tial causes of the April 20, 2010 explosion and sinking  
22          of the Deepwater Horizon offshore drilling rig, including  
23          information collected by the Presidential Commission and  
24          other investigations; (2) implementation of safety reforms  
25          described in the May 27, 2010, Departmental report enti-

1 tled “Increased Safety Measures for Energy Development  
 2 on the Outer Continental Shelf,”; (3) the ability of opera-  
 3 tors in the Gulf of Mexico to respond effectively to an oil  
 4 spill in light of the Deepwater Horizon incident; and (4)  
 5 industry and government efforts to engineer, design, con-  
 6 struct and assemble wild well intervention and blowout  
 7 containment resources necessary to contain an uncon-  
 8 trolled release of hydrocarbons in deep water should an-  
 9 other blowout occur.

10 (e) SAVINGS CLAUSE.—Nothing herein affects the  
 11 Secretary’s authority to suspend offshore drilling permit-  
 12 ting and drilling operations based on the threat of signifi-  
 13 cant, irreparable or immediate harm or damage to life,  
 14 property, or the marine, coastal or human environment  
 15 pursuant to the Outer Continental Shelf Lands Act (43  
 16 U.S.C. 133 et seq.).

## 17 **TITLE III—OIL AND GAS** 18 **ROYALTY REFORM**

### 19 **SEC. 301. AMENDMENTS TO DEFINITIONS.**

20 Section 3 of the Federal Oil and Gas Royalty Man-  
 21 agement Act of 1982 (30 U.S.C. 1702) is amended—

22 (1) in paragraph (8), by striking the semicolon  
 23 and inserting “including but not limited to the Act  
 24 of October 20, 1914 (38 Stat. 741); the Act of Feb-  
 25 ruary 25, 1920 (41 Stat. 437); the Act of April 17,



1       1926 (44 Stat. 301); the Act of February 7, 1927  
2       (44 Stat. 1057); and all Acts heretofore or hereafter  
3       enacted that are amendatory of or supplementary to  
4       any of the foregoing Acts;”;

5               (2) in paragraph (20)(A), by striking “: *Pro-*  
6       *vided, That*” and all that follows through “subject of  
7       the judicial proceeding”;

8               (3) in paragraph (20)(B), by striking “(with  
9       written notice to the lessee who designated the des-  
10      ignee)”;

11              (4) in paragraph (23)(A), by striking “(with  
12      written notice to the lessee who designated the des-  
13      ignee)”;

14              (5) by striking paragraph (24) and inserting  
15      the following:

16              “(24) ‘designee’ means a person who pays, off-  
17      sets, or credits monies, makes adjustments, requests  
18      and receives refunds, or submits reports with respect  
19      to payments a lessee must make pursuant to section  
20      102(a);”;

21              (6) in paragraph (25)(B)—

22                      (A) by striking “(subject to the provisions  
23      of section 102(a) of this Act)”;

24                      (B) in clause (ii) by striking the matter  
25      after subclause (IV) and inserting the following:

1 “that arises from or relates to any lease, easement, right-  
2 of-way, permit, or other agreement regardless of form ad-  
3 ministered by the Secretary for, or any mineral leasing  
4 law related to, the exploration, production, and develop-  
5 ment of oil and gas or other energy resource on Federal  
6 lands or the Outer Continental Shelf;”.

7 (7) in paragraph (29), by inserting “or permit”  
8 after “lease”; and

9 (8) by striking “and” after the semicolon at the  
10 end of paragraph (32), by striking the period at the  
11 end of paragraph (33) and inserting a semicolon,  
12 and by adding at the end the following new para-  
13 graphs:

14 “(34) ‘compliance review’ means a full-scope or  
15 a limited-scope examination of a lessee’s lease ac-  
16 counts to compare one or all elements of the royalty  
17 equation (volume, value, royalty rate, and allow-  
18 ances) against anticipated elements of the royalty  
19 equation to test for variances; and

20 “(35) ‘marketing affiliate’ means an affiliate of  
21 a lessee whose function is to acquire the lessee’s pro-  
22 duction and to market that production.”.

1 **SEC. 302. COMPLIANCE REVIEWS.**

2 Section 101 of the Federal Oil and Gas Royalty Man-  
3 agement Act of 1982 (30 U.S.C. 1711) is amended by  
4 adding at the end the following new subsection:

5 “(d) The Secretary may, as an adjunct to audits of  
6 accounts for leases, utilize compliance reviews of accounts.  
7 Such reviews shall not constitute nor substitute for audits  
8 of lease accounts. Any disparity uncovered in such a com-  
9 pliance review shall be immediately referred to a program  
10 auditor. The Secretary shall, before completion of a com-  
11 pliance review, provide notice of the review to designees  
12 whose obligations are the subject of the review.”.

13 **SEC. 303. CLARIFICATION OF LIABILITY FOR ROYALTY PAY-**  
14 **MENTS.**

15 Section 102(a) of the Federal Oil and Gas Royalty  
16 Management Act of 1982 (30 U.S.C. 1712(a)) is amended  
17 to read as follows:

18 “(a) In order to increase receipts and achieve effec-  
19 tive collections of royalty and other payments, a lessee who  
20 is required to make any royalty or other payment under  
21 a lease, easement, right-of-way, permit, or other agree-  
22 ment, regardless of form, or under the mineral leasing  
23 laws, shall make such payment in the time and manner  
24 as may be specified by the Secretary or the applicable dele-  
25 gated State. Any person who pays, offsets, or credits mon-  
26 ies, makes adjustments, requests and receives refunds, or

1 submits reports with respect to payments the lessee must  
2 make is the lessee's designee under this Act. Notwith-  
3 standing any other provision of this Act to the contrary,  
4 a designee shall be liable for any payment obligation of  
5 any lessee on whose behalf the designee pays royalty under  
6 the lease. The person owning operating rights in a lease  
7 and a person owning legal record title in a lease shall be  
8 liable for that person's pro rata share of payment obliga-  
9 tions under the lease.”.

10 **SEC. 304. REQUIRED RECORDKEEPING.**

11 Section 103(b) of the Federal Oil and Gas Royalty  
12 Management Act of 1982 (30 U.S.C. 1712(a)) is amended  
13 by striking “6” and inserting “7”.

14 **SEC. 305. FINES AND PENALTIES.**

15 Section 109 of the Federal Oil and Gas Royalty Man-  
16 agement Act of 1982 (30 U.S.C. 1719) is amended—

17 (1) in subsection (a) in the matter following  
18 paragraph (2), by striking “\$500” and inserting  
19 “\$1,000”;

20 (2) in subsection (a)(2)(B), by inserting “(i)”  
21 after “such person”, and by striking the period at  
22 the end and inserting “; and (ii) has not received no-  
23 tice, pursuant to paragraph (1), of more than two  
24 prior violations in the current calendar year.”;

1           (3) in subsection (b), by striking “\$5,000” and  
2 inserting “\$10,000”;

3           (4) in subsection (c)—

4               (A) in paragraph (2), by striking “; or”  
5 and inserting “, including any failure or refusal  
6 to promptly tender requested documents;”;

7               (B) in the text following paragraph (3)—

8                   (i) by striking “\$10,000” and insert-  
9 ing “\$20,000”; and

10                   (ii) by striking the comma at the end  
11 and inserting a semicolon; and

12               (C) by adding at the end the following new  
13 paragraphs:

14               “(4) knowingly or willfully fails to make any  
15 royalty payment in the amount or value as specified  
16 by statute, regulation, order, or terms of the lease;  
17 or

18               “(5) fails to correctly report and timely provide  
19 operations or financial records necessary for the Sec-  
20 retary or any authorized designee of the Secretary to  
21 accomplish lease management responsibilities,”;

22               (5) in subsection (d), by striking “\$25,000”  
23 and inserting “\$50,000”;

1           (6) in subsection (h), by striking “by registered  
2       mail” and inserting “a common carrier that provides  
3       proof of delivery”; and

4           (7) by adding at the end the following sub-  
5       section:

6       “(m)(1) Any determination by the Secretary or a des-  
7       ignee of the Secretary that a person has committed a vio-  
8       lation under subsection (a), (c), or (d)(1) shall toll any  
9       applicable statute of limitations for all oil and gas leases  
10      held or operated by such person, until the later of—

11           “(A) the date on which the person corrects the  
12      violation and certifies that all violations of a like na-  
13      ture have been corrected for all of the oil and gas  
14      leases held or operated by such person; or

15           “(B) the date a final, nonappealable order has  
16      been issued by the Secretary or a court of competent  
17      jurisdiction.

18       “(2) A person determined by the Secretary or a des-  
19       ignee of the Secretary to have violated subsection (a), (c),  
20       or (d)(1) shall maintain all records with respect to the per-  
21       son’s oil and gas leases until the later of—

22           “(A) the date the Secretary releases the person  
23      from the obligation to maintain such records; and

1           “(B) the expiration of the period during which  
2       the records must be maintained under section  
3       103(b).”.

4   **SEC. 306. INTEREST ON OVERPAYMENTS.**

5       Section 111 of the Federal Oil and Gas Royalty Man-  
6   agement Act of 1982 (30 U.S.C. 1721) is amended—

7           (1) by amending subsections (h) and (i) to read  
8       as follows:

9       “(h) Interest shall not be allowed nor paid nor cred-  
10   ited on any overpayment, and no interest shall accrue from  
11   the date such overpayment was made.

12       “(i) A lessee or its designee may make a payment  
13   for the approximate amount of royalties (hereinafter in  
14   this subsection referred to as the ‘estimated payment’)  
15   that would otherwise be due for such lease by the date  
16   royalties are due for that lease. When an estimated pay-  
17   ment is made, actual royalties are payable at the end of  
18   the month following the month in which the estimated  
19   payment is made. If the estimated payment was less than  
20   the amount of actual royalties due, interest is owed on  
21   the underpaid amount. If the lessee or its designee makes  
22   a payment for such actual royalties, the lessee or its des-  
23   ignee may apply the estimated payment to future royal-  
24   ties. Any estimated payment may be adjusted, recouped,  
25   or reinstated by the lessee or its designee provided such

1 adjustment, recoupment, or reinstatement is made within  
2 the limitation period for which the date royalties were due  
3 for that lease.”;

4 (2) by striking subsection (j); and

5 (3) in subsection (k)(4)—

6 (A) by striking “or overpaid royalties and  
7 associated interest”; and

8 (B) by striking “, refunded, or credited”.

9 **SEC. 307. ADJUSTMENTS AND REFUNDS.**

10 Section 111A of the Federal Oil and Gas Royalty  
11 Management Act of 1982 (30 U.S.C. 1721a) is amend-  
12 ed—

13 (1) in subsection (a)(3), by inserting “(A)”  
14 after “(3)”, and by striking the last sentence and in-  
15 serting the following:

16 “(B) Except as provided in subparagraph  
17 (C), no adjustment may be made with respect  
18 to an obligation that is the subject of an audit  
19 or compliance review after completion of the  
20 audit or compliance review, respectively, unless  
21 such adjustment is approved by the Secretary  
22 or the applicable delegated State, as appro-  
23 priate.



1           “(C) If an overpayment is identified during  
2           an audit, the Secretary shall allow a credit in  
3           the amount of the overpayment.”;

4           (2) in subsection (a)(4)—

5                 (A) by striking “six” and inserting “four”;  
6           and

7                 (B) by striking “shall” the second place it  
8           appears and inserting “may”; and

9           (3) in subsection (b)(1) by striking “and” after  
10          the semicolon at the end of subparagraph (C), by  
11          striking the period at the end of subparagraph (D)  
12          and inserting “; and”, and by adding at the end the  
13          following:

14                 “(E) is made within the adjustment period  
15          for that obligation.”.

16 **SEC. 308. CONFORMING AMENDMENT.**

17          Section 114 of the Federal Oil and Gas Royalty Man-  
18          agement Act of 1982 is repealed.

19 **SEC. 309. OBLIGATION PERIOD.**

20          Section 115(c) of the Federal Oil and Gas Royalty  
21          Management Act of 1982 (30 U.S.C. 1724(c)) is amended  
22          by adding at the end the following new paragraph:

23                 “(3) ADJUSTMENTS.—In the case of an adjust-  
24          ment under section 111A(a) in which a recoupment  
25          by the lessee results in an underpayment of an obli-

1       gation, for purposes of this Act the obligation be-  
2       comes due on the date the lessee or its designee  
3       makes the adjustment.”.

4   **SEC. 310. NOTICE REGARDING TOLLING AGREEMENTS AND**  
5                   **SUBPOENAS.**

6       (a) TOLLING AGREEMENTS.—Section 115(d)(1) of  
7       the Federal Oil and Gas Royalty Management Act of 1982  
8       (30 U.S.C. 1724(d)(1)) is amended by striking “(with no-  
9       tice to the lessee who designated the designee)”.

10      (b) SUBPOENAS.—Section 115(d)(2)(A) of the Fed-  
11      eral Oil and Gas Royalty Management Act of 1982 (30  
12      U.S.C. 1724(d)(2)(A)) is amended by striking “(with no-  
13      tice to the lessee who designated the designee, which notice  
14      shall not constitute a subpoena to the lessee)”.

15   **SEC. 311. APPEALS AND FINAL AGENCY ACTION.**

16      Paragraphs (1) and (2) of section 115(h) the Federal  
17      Oil and Gas Royalty Management Act of 1982 (30 U.S.C.  
18      1724(h)) are amended by striking “33” each place it ap-  
19      pears and inserting “48”.

20   **SEC. 312. ASSESSMENTS.**

21      Section 116 of the Federal Oil and Gas Royalty Man-  
22      agement Act of 1982 (30 U.S.C. 1724) is repealed.

1 **SEC. 313. COLLECTION AND PRODUCTION ACCOUNT-**  
2 **ABILITY.**

3 (a) PILOT PROJECT.—Within 2 years after the date  
4 of enactment of this Act, the Secretary shall complete a  
5 pilot project with willing operators of oil and gas leases  
6 on the Outer Continental Shelf that assesses the costs and  
7 benefits of automatic transmission of oil and gas volume  
8 and quality data produced under Federal leases on the  
9 Outer Continental Shelf in order to improve the produc-  
10 tion verification systems used to ensure accurate royalty  
11 collection and audit.

12 (b) REPORT.—The Secretary shall submit to Con-  
13 gress a report on findings and recommendations of the  
14 pilot project within 3 years after the date of enactment  
15 of this Act.

16 **SEC. 314. NATURAL GAS REPORTING.**

17 The Secretary shall, within 180 days after the date  
18 of enactment of this Act, implement the steps necessary  
19 to ensure accurate determination and reporting of BTU  
20 values of natural gas from all Federal oil and gas leases  
21 to ensure accurate royalty payments to the United States.  
22 Such steps shall include, but not be limited to—

23 (1) establishment of consistent guidelines for  
24 onshore and offshore BTU information from gas  
25 producers;

1           (2) development of a procedure to determine  
2           the potential BTU variability of produced natural  
3           gas on a by-reservoir or by-lease basis;

4           (3) development of a procedure to adjust BTU  
5           frequency requirements for sampling and reporting  
6           on a case-by-case basis;

7           (4) systematic and regular verification of BTU  
8           information; and

9           (5) revision of the “MMS–2014” reporting  
10          form to record, in addition to other information al-  
11          ready required, the natural gas BTU values that  
12          form the basis for the required royalty payments.

13 **SEC. 315. PENALTY FOR LATE OR INCORRECT REPORTING**  
14 **OF DATA.**

15          (a) IN GENERAL.—The Secretary shall issue regula-  
16          tions by not later than 1 year after the date of enactment  
17          of this Act that establish a civil penalty for late or incor-  
18          rect reporting of data under the Federal Oil and Gas Roy-  
19          alty Management Act of 1982 (30 U.S.C. 1701 et seq.).

20          (b) AMOUNT.—The amount of the civil penalty shall  
21          be—

22                (1) an amount (subject to paragraph (2)) that  
23                the Secretary determines is sufficient to ensure filing  
24                of data in accordance with that Act; and

1           (2) not less than \$10 for each failure to file  
2           correct data in accordance with that Act.

3           (c) CONTENT OF REGULATIONS.—Except as provided  
4           in subsection (b), the regulations issued under this section  
5           shall be substantially similar to part 216.40 of title 30,  
6           Code of Federal Regulations, as most recently in effect  
7           before the date of enactment of this Act.

8           **SEC. 316. REQUIRED RECORDKEEPING.**

9           Within 1 year after the date of enactment of this Act,  
10          the Secretary shall publish final regulations concerning re-  
11          quired recordkeeping of natural gas measurement data as  
12          set forth in part 250.1203 of title 30, Code of Federal  
13          Regulations (as in effect on the date of enactment of this  
14          Act), to include operators and other persons involved in  
15          the transporting, purchasing, or selling of gas under the  
16          requirements of that rule, under the authority provided  
17          in section 103 of the Federal Oil and Gas Royalty Man-  
18          agement Act of 1982 (30 U.S.C. 1713).

19          **SEC. 317. SHARED CIVIL PENALTIES.**

20          Section 206 of the Federal Oil and Gas Royalty Man-  
21          agement Act of 1982 (30 U.S.C. 1736) is amended by  
22          striking “Such amount shall be deducted from any com-  
23          pensation due such State or Indian Tribe under section  
24          202 or section 205 or such State under section 205.”.

1 **SEC. 318. APPLICABILITY TO OTHER MINERALS.**

2 Section 304 of the Federal Oil and Gas Royalty Man-  
3 agement Act of 1982 (30 U.S.C. 1753) is amended by  
4 adding at the end the following new subsection:

5 “(e) APPLICABILITY TO OTHER MINERALS.—

6 “(1) Notwithstanding any other provision of  
7 law, sections 107, 109, and 110 of this Act and the  
8 regulations duly promulgated with respect thereto  
9 shall apply to any lease authorizing the development  
10 of coal or any other solid mineral on any Federal  
11 lands or Indian lands, to the same extent as if such  
12 lease were an oil and gas lease, on the same terms  
13 and conditions as those authorized for oil and gas  
14 leases.

15 “(2) Notwithstanding any other provision of  
16 law, sections 107, 109, and 110 of this Act and the  
17 regulations duly promulgated with respect thereto  
18 shall apply with respect to any lease, easement,  
19 right-of-way, or other agreement, regardless of form  
20 (including any royalty, rent, or other payment due  
21 thereunder)—

22 “(A) under section 8(k) or 8(p) of the  
23 Outer Continental Shelf Lands Act (43 U.S.C.  
24 1337(k) and 1337(p)); or

25 “(B) under the Geothermal Steam Act (30  
26 U.S.C. 1001 et seq.), to the same extent as if

1           such lease, easement, right-of-way, or other  
2           agreement were an oil and gas lease on the  
3           same terms and conditions as those authorized  
4           for oil and gas leases.

5           “(3) For the purposes of this subsection, the  
6           term ‘solid mineral’ means any mineral other than  
7           oil, gas, and geo-pressured-geothermal resources,  
8           that is authorized by an Act of Congress to be pro-  
9           duced from public lands (as that term is defined in  
10          section 103 of the Federal Land Policy and Manage-  
11          ment Act of 1976 (43 U.S.C. 1702)).”.

12 **SEC. 319. ENTITLEMENTS.**

13          Not later than 180 days after the date of enactment  
14 of this Act, the Secretary shall publish final regulations  
15 prescribing when a Federal lessee or designee must report  
16 and pay royalties on the volume of oil and gas it takes  
17 under either a Federal or Indian lease or on the volume  
18 to which it is entitled to based upon its ownership interest  
19 in the Federal or Indian lease. The Secretary shall give  
20 consideration to requiring 100 percent entitlement report-  
21 ing and paying based upon the lease ownership.

22 **SEC. 320. LIMITATION ON ROYALTY IN-KIND PROGRAM.**

23          Section 36 of the Mineral Leasing Act (30 U.S.C.  
24 192) is amended by inserting before the period at the end  
25 of the first sentence the following: “, except that the Sec-

1 retary shall not conduct a regular program to take oil and  
2 gas lease royalties in oil or gas”.

3 **SEC. 321. APPLICATION OF ROYALTY TO OIL THAT IS**  
4 **SAVED, REMOVED, SOLD, OR DISCHARGED**  
5 **UNDER OFFSHORE OIL AND GAS LEASES.**

6 Section 8(a) of the Outer Continental Shelf Lands  
7 Act (43 U.S.C. 1337(a)) is further amended by adding  
8 at the end the following new paragraph:

9 “(10)(A) Any royalty under a lease under this section  
10 shall apply to all oil that is saved, removed, sold, or dis-  
11 charged, without regard to whether any of the oil is un-  
12 avoidably lost or used on, or for the benefit of, the lease.

13 “(B) In this paragraph the term ‘discharged’ means  
14 any emission (other than natural seepage), intentional or  
15 unintentional, and includes, but is not limited to, spilling,  
16 leaking, pumping, pouring, emitting, emptying, or dump-  
17 ing.”.



1 **TITLE IV—FULL FUNDING FOR**  
 2 **THE LAND AND WATER CON-**  
 3 **SERVATION AND HISTORIC**  
 4 **PRESERVATION FUNDS**

5 **Subtitle A—Land and Water**  
 6 **Conservation Fund**

7 **SEC. 401. AMENDMENTS TO THE LAND AND WATER CON-**  
 8 **SERVATION FUND ACT OF 1965.**

9 Except as otherwise expressly provided, whenever in  
 10 this subtitle an amendment or repeal is expressed in terms  
 11 of an amendment to, or repeal of, a section or other provi-  
 12 sion, the reference shall be considered to be made to a  
 13 section or other provision of the Land and Water Con-  
 14 servation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.).

15 **SEC. 402. EXTENSION OF THE LAND AND WATER CON-**  
 16 **SERVATION FUND.**

17 Section 2 (16 U.S.C. 460l–5) is amended by striking  
 18 “September 30, 2015” both places it appears and insert-  
 19 ing “September 30, 2040”.

20 **SEC. 403. PERMANENT FUNDING.**

21 (a) IN GENERAL.—The text of section 3 (16 U.S.C.  
 22 460l–6) is amended to read as follows:

23 “(a) PERMANENT FUNDING.—Of the moneys covered  
 24 into the fund, \$900,000,000 shall be available each fiscal

1 year for expenditure for the purposes of this Act without  
2 further appropriation.

3 “(b) ALLOCATION AUTHORITY.—The Committees on  
4 Appropriations of the House of Representatives and the  
5 Senate may provide by law for the allocation of moneys  
6 in the fund to eligible activities under this Act.

7 “(c) RECREATIONAL ACCESS FUNDING.—Notwith-  
8 standing subsection (b), not less than 1.5 percent of the  
9 amounts made available under subsection (a) for each fis-  
10 cal year shall be made available for projects that secure  
11 recreational public access to Federal land under the juris-  
12 diction of the Secretary of the Interior for hunting, fish-  
13 ing, and other recreational purposes through easements,  
14 rights-of-way, or fee title acquisitions, from willing sell-  
15 ers.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 2(c)(2) (16 U.S.C. 460l–5(c)(2)) is  
18 amended by striking “: *Provided*” and all that fol-  
19 lows through the end of the sentence and inserting  
20 a period.

21 (2) Section 7(a) (16 U.S.C. 460l–9) is amended  
22 to read as follows: “Moneys from the fund for Fed-  
23 eral purposes shall, unless allocated pursuant to sec-  
24 tion 3(b) of this Act, be allotted by the President to  
25 the following purposes and subpurposes:”.

1       **Subtitle B—National Historic**  
2               **Preservation Fund**

3   **SEC. 411. PERMANENT FUNDING.**

4       The text of section 108 of the National Historic Pres-  
5   ervation Act (16 U.S.C. 470h) is amended to read as fol-  
6   lows:

7       “(a) PERMANENT FUNDING.—To carry out the provi-  
8   sions of this Act, there is hereby established the Historic  
9   Preservation Fund (hereinafter referred to as the ‘fund’)  
10   in the Treasury of the United States. There shall be cov-  
11   ered into the fund \$150,000,000 for each of fiscal years  
12   1982 through 2040 from revenues due and payable to the  
13   United States under the Outer Continental Shelf Lands  
14   Act (67 Stat. 462, 469), as amended (43 U.S.C. 1338)  
15   and/or under the Act of June 4, 1920 (41 Stat. 813), as  
16   amended (30 U.S.C.191), notwithstanding any provision  
17   of law that such proceeds shall be credited to miscella-  
18   neous receipts of the Treasury. Such moneys shall be used  
19   only to carry out the purposes of this Act and shall be  
20   available for expenditure without further appropriation.

21       “(b) ALLOCATION AUTHORITY.—The Committees on  
22   Appropriations of the House of Representatives and the  
23   Senate may provide by law for the allocation of moneys  
24   in the fund to eligible activities under this Act.”.

**TITLE V—GULF OF MEXICO  
RESTORATION**

**SEC. 501. GULF OF MEXICO RESTORATION PROGRAM.**

(a) PROGRAM.—There is established a Gulf of Mexico Restoration Program for the purposes of coordinating Federal, State, and local restoration programs and projects to maximize efforts in restoring biological integrity, productivity and ecosystem functions in the Gulf of Mexico.

(b) GULF OF MEXICO RESTORATION TASK FORCE.—

(1) ESTABLISHMENT.—There is established a task force to be known as the Gulf of Mexico Restoration Task Force (in this section referred to as the “Restoration Task Force”).

(2) MEMBERSHIP.—The Restoration Task Force shall consist of the Governors of each of the Gulf Coast States and the heads of appropriate Federal agencies selected by the President. The chairperson of the Restoration Task Force (in this subsection referred to as the “Chair”) shall be appointed by the President. The Chair shall be a person who, as the result of experience and training, is exceptionally well-qualified to manage the work of the Restoration Task Force. The Chair shall serve in the Executive Office of the President.

1           (3) ADVISORY COMMITTEES.—The Restoration  
2       Task Force may establish advisory committees and  
3       working groups as necessary to carry out its du-  
4       ties under this Act.

5           (4) CITIZEN ADVISORY COUNCIL.—

6                (A) IN GENERAL.—The Gulf Coast Res-  
7       toration Task Force shall create a Citizen Advi-  
8       sory Council made up of individuals who—

9                   (i) are local residents of the Gulf of  
10       Mexico region;

11                  (ii) are stakeholders who are not from  
12       the oil and gas industry or scientific com-  
13       munity;

14                  (iii) include business owners, home-  
15       owners, and local decisionmakers; and

16                  (iv) are a balanced representation geo-  
17       graphically and in diversity among the in-  
18       terests of its members.

19           (B) FUNCTION.—The Council shall provide  
20       recommendations to the Task Force regarding  
21       its work.

22       (c) GULF OF MEXICO RESTORATION PLAN.—

23           (1) IN GENERAL.—Not later than nine months  
24       after the date of enactment of this Act, the Restora-  
25       tion Task Force shall issue a proposed comprehen-

1 sive, multi-jurisdictional plan for long-term restora-  
2 tion of the Gulf of Mexico that incorporates, to the  
3 greatest extent possible, existing restoration plans.  
4 Not later than 12 months after the date of enact-  
5 ment and after notice and opportunity for public  
6 comment, the Restoration Task Force shall publish  
7 a final plan. The Plan shall be updated every five  
8 years in the same manner.

9 (2) ELEMENTS OF RESTORATION PLAN.—The  
10 Plan shall—

11 (A) identify processes and strategies for  
12 coordinating Federal, State, and local restora-  
13 tion programs and projects to maximize efforts  
14 in restoring biological integrity, productivity  
15 and ecosystem functions in the Gulf of Mexico  
16 region;

17 (B) identify mechanisms for scientific re-  
18 view and input to evaluate the benefits and  
19 long-term effectiveness of restoration programs  
20 and projects;

21 (C) identify, using the best science avail-  
22 able, strategies for implementing restoration  
23 programs and projects for natural resources in-  
24 cluding—

1 (i) restoring species population and  
2 habitat including oyster reefs, sea grass  
3 beds, coral reefs, tidal marshes and other  
4 coastal wetlands and barrier islands and  
5 beaches;

6 (ii) restoring fish passage and improv-  
7 ing migratory pathways for wildlife;

8 (iii) research that directly supports  
9 restoration programs and projects;

10 (iv) restoring the biological produc-  
11 tivity and ecosystem function in the Gulf  
12 of Mexico region;

13 (v) improving the resilience of natural  
14 resources to withstand the impacts of cli-  
15 mate change and ocean acidification to en-  
16 sure the long-term effectiveness of the res-  
17 toration program; and

18 (vi) restoring fisheries resources in  
19 the Gulf of Mexico that benefit the com-  
20 mercial and recreational fishing industries  
21 and seafood processing industries through-  
22 out the United States.

23 (3) REPORT.—The Task Force shall annually  
24 provide a report to Congress about the progress in  
25 implementing the Plan.

1 (d) DEFINITIONS.—For purposes of this section, the  
2 term—

3 (1) “Gulf Coast State” means each of the  
4 States of Texas, Louisiana, Mississippi, Alabama,  
5 and Florida; and

6 (2) “restoration programs and projects” means  
7 activities that support the restoration, rehabilitation,  
8 replacement, or acquisition of the equivalent, of in-  
9 jured or lost natural resources including the ecologi-  
10 cal services and benefits provided by such resources.

11 (e) RELATIONSHIP TO OTHER LAW.—Nothing in this  
12 section affects the ability or authority of the Federal Gov-  
13 ernment to recover costs of removal or damages from a  
14 person determined to be a responsible party pursuant to  
15 the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.)  
16 or other law.

17 **SEC. 502. GULF OF MEXICO LONG-TERM ENVIRONMENTAL**  
18 **MONITORING AND RESEARCH PROGRAM.**

19 (a) IN GENERAL.—To ensure that the Federal Gov-  
20 ernment has independent, peer-reviewed scientific data  
21 and information to assess long-term direct and indirect  
22 impacts on trust resources located in the Gulf of Mexico  
23 and Southeast region resulting from the Deepwater Hori-  
24 zon oil spill, the Secretary, through the National Oceanic  
25 and Atmospheric Administration, shall establish as soon



1 as practicable after the date of enactment of this Act, a  
2 long-term, comprehensive marine environmental moni-  
3 toring and research program for the marine and coastal  
4 environment of the Gulf of Mexico. The program shall re-  
5 main in effect for a minimum of 10 years, and the Sec-  
6 retary may extend the program beyond this initial period  
7 based upon a determination that additional monitoring  
8 and research is warranted.

9 (b) SCOPE OF PROGRAM.—The program established  
10 under subsection (a) shall at a minimum include moni-  
11 toring and research of the physical, chemical, and biologi-  
12 cal characteristics of the affected marine, coastal, and es-  
13 tuarine areas of the Gulf of Mexico and other regions of  
14 the exclusive economic zone of the United States affected  
15 by the Deepwater Horizon oil spill, and shall include spe-  
16 cifically the following elements:

17 (1) The fate, transport, and persistence of oil  
18 released during the spill and spatial distribution  
19 throughout the water column.

20 (2) The fate, transport, and persistence of  
21 chemical dispersants applied in-situ or on surface  
22 waters.

23 (3) Identification of lethal and sub-lethal im-  
24 pacts to fish and wildlife resources that utilize habi-  
25 tats located within the affected region.

1           (4) Impacts to regional, State, and local econo-  
2       mies that depend on the natural resources of the af-  
3       fected area, including commercial and recreational  
4       fisheries, and other wildlife-dependent recreation.

5           (5) Other elements considered necessary by the  
6       Secretary to ensure a comprehensive marine re-  
7       search and monitoring program to comprehend and  
8       understand the implications to trust resources  
9       caused by the Deepwater Horizon oil spill.

10       (c) COOPERATION AND CONSULTATION.—In devel-  
11   oping the research and monitoring program established  
12   under subsection (a), the Secretary shall cooperate with  
13   the United States Geological Survey, and shall consult  
14   with—

15           (1) the Council authorized under subtitle E of  
16       title II of Public Law 104–201;

17           (2) appropriate representatives from the Gulf  
18       Coast States;

19           (3) academic institutions and other research or-  
20       ganizations; and

21           (4) other experts with expertise in long-term  
22       environmental monitoring and research of the ma-  
23       rine environment.

24       (d) AVAILABILITY OF DATA.—Data and information  
25   generated through the program established under sub-

1 section (a) shall be managed and archived to ensure that  
2 it is accessible and available to governmental and non-  
3 governmental personnel and to the general public for their  
4 use and information.

5 (e) REPORT.—No later than 1 year after the estab-  
6 lishment of the program under subsection (a), and bienni-  
7 ally thereafter, the Secretary shall forward to the Con-  
8 gress a comprehensive report summarizing the activities  
9 and findings of the program and detailing areas and issues  
10 requiring future monitoring and research.

11 (f) DEFINITIONS.—For the purposes of this section,  
12 the term—

13 (1) “trust resources” means the living and non-  
14 living natural resources belonging to, managed by,  
15 held in trust by, appertaining to, or otherwise con-  
16 trolled by the United States, any State, an Indian  
17 tribe, or a local government;

18 (2) “Gulf coast State” means each of the states  
19 of Texas, Louisiana, Mississippi, Alabama and Flor-  
20 ida; and

21 (3) “Secretary” means the Secretary of Com-  
22 merce.

1 **SEC. 503. GULF OF MEXICO EMERGENCY MIGRATORY SPE-**  
2 **CIES ALTERNATIVE HABITAT PROGRAM.**

3 (a) IN GENERAL.—In order to reduce the injury or  
4 death of many populations of migratory species of fish and  
5 wildlife, including threatened and endangered species and  
6 other species of critical conservation concern, that utilize  
7 estuarine, coastal, and marine habitats of the Gulf of Mex-  
8 ico that have been impacted, or are likely to be impacted,  
9 by the Deepwater Horizon oil spill, and to ensure that mi-  
10 gratory species upon their annual return to the Gulf of  
11 Mexico find viable, healthy, and environmentally-safe habi-  
12 tats to utilize for resting, feeding, nesting and roosting,  
13 and breeding, the Secretary of the Interior shall establish  
14 as soon as practicable after date of enactment of this Act,  
15 an emergency migratory species alternative habitat pro-  
16 gram.

17 (b) SCOPE OF PROGRAM.—The program established  
18 under subsection (a) shall at a minimum support projects  
19 along the Northern coast of the Gulf of Mexico to—

- 20 (1) improve wetland water quality and forage;  
21 (2) restore and refurbish diked impoundments;  
22 (3) improve riparian habitats to increase fish  
23 passage and breeding habitat;  
24 (4) encourage conversion of agricultural lands  
25 to provide alternative migratory habitat for water  
26 fowl and other migratory birds;

1           (5) transplant, relocate, or rehabilitate fish and  
2     wildlife; and

3           (6) conduct other activities considered nec-  
4     essary by the Secretary to ensure that migratory  
5     species have alternative habitat available for their  
6     use outside of habitat impacted by the oil spill.

7     (c) NATIONAL FISH AND WILDLIFE FOUNDATION.—  
8     In implementing this section the Secretary may enter into  
9     an agreement with the National Fish and Wildlife Foun-  
10    dation to administer the program.

11   **SEC. 504. GULF OF MEXICO RESTORATION ACCOUNT.**

12       (a) ESTABLISHMENT OF SPECIAL ACCOUNT.—There  
13    is established in the Treasury of the United States a sepa-  
14    rate account to be known as the “Gulf of Mexico Restora-  
15    tion Account”.

16       (b) FUNDING.—The Gulf of Mexico Restoration Ac-  
17    count shall consist of such amounts as may be appro-  
18    priated or credited to such Account by section 311A of  
19    the Federal Water Pollution Control Act.

20       (c) EXPENDITURES.—Amounts in the Gulf of Mexico  
21    Restoration Account shall be available, as provided in ap-  
22    propriations Acts, to carry out projects, programs, and ac-  
23    tivities as recommended by the Gulf of Mexico Restoration  
24    Task Force established in this title.

1 (d) AMENDMENT TO THE FEDERAL WATER POLLU-  
 2 TION CONTROL ACT.—

3 (1) IN GENERAL.—Title III of the Federal  
 4 Water Pollution Control Act is amended by inserting  
 5 after section 311 the following:

6 **“SEC. 311A. ADDITIONAL PENALTIES FOR LARGE SPILLS IN**  
 7 **THE GULF OF MEXICO.**

8 “(a) IN GENERAL.—In the case of an offshore facility  
 9 from which more than 1,000,000 barrels of oil or a haz-  
 10 ardous substance is discharged into the Gulf of Mexico  
 11 in violation of section 311(b)(3), any person who is the  
 12 owner or operator of the facility shall be subject to a civil  
 13 penalty of \$200,000,000 for each 1,000,000 barrels dis-  
 14 charged.

15 “(b) RELATIONSHIP TO OTHER PENALTIES.—The  
 16 civil penalty under subsection (a) shall be in addition to  
 17 any other penalties to which the owner or operator of the  
 18 facility is subject, including those under section 311.”.

19 (2) EFFECTIVE DATE.—The amendment made  
 20 by paragraph (1) takes effect on April 1, 2010.

21 **TITLE VI—COORDINATION AND**  
 22 **PLANNING**

23 **SEC. 601. REGIONAL COORDINATION.**

24 (a) IN GENERAL.—The purpose of this title is to pro-  
 25 mote—

1           (1) better coordination, communication, and  
2           collaboration between Federal agencies with authori-  
3           ties for ocean, coastal, and Great Lakes manage-  
4           ment; and

5           (2) coordinated and collaborative regional plan-  
6           ning efforts using the best available science, and to  
7           ensure the protection and maintenance of marine  
8           ecosystem health, in decisions affecting the sustain-  
9           able development and use of Federal renewable and  
10          nonrenewable resources on, in, or above the ocean  
11          (including the Outer Continental Shelf) and the  
12          Great Lakes for the long-term economic and envi-  
13          ronmental benefit of the United States.

14          (b) OBJECTIVES OF REGIONAL EFFORTS.—Such re-  
15          gional efforts shall achieve the following objectives:

16               (1) Greater systematic communication and co-  
17               ordination among Federal, coastal State, and af-  
18               fected tribal governments concerned with the con-  
19               servation of and the sustainable development and  
20               use of Federal renewable and nonrenewable re-  
21               sources of the oceans, coasts, and Great Lakes.

22               (2) Greater reliance on a multiobjective,  
23               science- and ecosystem-based, spatially explicit man-  
24               agement approach that integrates regional economic,  
25               ecological, affected tribal, and social objectives into

1 ocean, coastal, and Great Lakes management deci-  
2 sions.

3 (3) Identification and prioritization of shared  
4 State and Federal ocean, coastal, and Great Lakes  
5 management issues.

6 (4) Identification of data and information need-  
7 ed by the Regional Coordination Councils established  
8 under section 602.

9 (c) REGIONS.—There are hereby designated the fol-  
10 lowing Coordination Regions:

11 (1) PACIFIC REGION.—The Pacific Coordination  
12 Region, which shall consist of the coastal waters and  
13 Exclusive Economic Zone adjacent to the States of  
14 Washington, Oregon, and California.

15 (2) GULF OF MEXICO REGION.—The Gulf of  
16 Mexico Coordination Region, which shall consist of  
17 the coastal waters and Exclusive Economic Zone ad-  
18 jacent to the States of Texas, Louisiana, Mississippi,  
19 and Alabama, and the west coast of Florida.

20 (3) NORTH ATLANTIC REGION.—The North At-  
21 lantic Coordination Region, which shall consist of  
22 the coastal waters and Exclusive Economic Zone ad-  
23 jacent to the States of Maine, New Hampshire, Mas-  
24 sachusetts, Rhode Island, and Connecticut.



1           (4) MID ATLANTIC REGION.—The Mid Atlantic  
2       Coordination Region, which shall consist of the  
3       coastal waters and Exclusive Economic Zone adja-  
4       cent to the States of New York, New Jersey, Penn-  
5       sylvania, Delaware, Maryland, and Virginia.

6           (5) SOUTH ATLANTIC REGION.—The South At-  
7       lantic Coordination Region, which shall consist of  
8       the coastal waters and Exclusive Economic Zone ad-  
9       jacent to the States of North Carolina, South Caro-  
10      lina, Georgia, the east coast of Florida, and the  
11      Straits of Florida Planning Area.

12          (6) ALASKA REGION.—The Alaska Coordination  
13      Region, which shall consist of the coastal waters and  
14      Exclusive Economic Zone adjacent to the State of  
15      Alaska.

16          (7) PACIFIC ISLANDS REGION.—The Pacific Is-  
17      lands Coordination Region, which shall consist of the  
18      coastal waters and Exclusive Economic Zone adja-  
19      cent to the State of Hawaii, the Commonwealth of  
20      the Northern Mariana Islands, American Samoa,  
21      and Guam.

22          (8) CARIBBEAN REGION.—The Caribbean Co-  
23      ordination Region, which shall consist of the coastal  
24      waters and Exclusive Economic Zone adjacent to  
25      Puerto Rico and the United States Virgin Islands.

1           (9) GREAT LAKES REGION.—The Great Lakes  
2       Coordination Region, which shall consist of waters of  
3       the Great Lakes in the States of Illinois, Indiana,  
4       Michigan, Minnesota, New York, Ohio, Pennsyl-  
5       vania, and Wisconsin.

6 **SEC. 602. REGIONAL COORDINATION COUNCILS.**

7       (a) IN GENERAL.—Within 180 days after the date  
8       of enactment of this Act, the Chairman of the Council on  
9       Environmental Quality, in consultation with the affected  
10      coastal States and affected Indian tribes, shall establish  
11      or designate a Regional Coordination Council for each of  
12      the Coordination Regions designated by section 601(c).

13      (b) MEMBERSHIP.—

14           (1) FEDERAL REPRESENTATIVES.—Within 90  
15      days after the date of enactment of this Act, the  
16      Chairman of the Council on Environmental Quality  
17      shall publish the titles of the officials of each Fed-  
18      eral agency and department that shall participate in  
19      each Council. The Councils shall include representa-  
20      tives of each Federal agency and department that  
21      has authorities related to the development of ocean,  
22      coastal, or Great Lakes policies or engages in plan-  
23      ning, management, or scientific activities that sig-  
24      nificantly affect or inform the use of ocean, coastal,  
25      or Great Lakes resources. The Chairman of the

1 Council on Environmental Quality shall determine  
2 which Federal agency representative shall serve as  
3 the chairperson of each Council.

4 (2) COASTAL STATE REPRESENTATIVES.—

5 (A) NOTICE OF INTENT TO PARTICI-  
6 PATE.—The Governor of each coastal State  
7 within each Coordination Region designated by  
8 section 601(e) shall within 3 months after the  
9 date of enactment of this Act, inform the Chair-  
10 man of the Council on Environmental Quality  
11 whether or not the State intends to participate  
12 in the Regional Coordination Council for the  
13 Region.

14 (B) APPOINTMENT OF RESPONSIBLE  
15 STATE OFFICIAL.—If a coastal State intends to  
16 participate in such Council, the Governor of the  
17 coastal State shall appoint an officer or em-  
18 ployee of the coastal State agency with primary  
19 responsibility for overseeing ocean and coastal  
20 policy or resource management to that Council.

21 (C) ALASKA REGIONAL COORDINATION  
22 COUNCIL.—The Regional Coordination Council  
23 for the Alaska Coordination Region shall in-  
24 clude representation from each of the States of  
25 Alaska, Washington, and Oregon, if appointed

1           by the Governor of that State in accordance  
2           with this paragraph.

3           (3) REGIONAL FISHERY MANAGEMENT COUNCIL  
4           REPRESENTATION.—A representative of each Re-  
5           gional Fishery Management Council with jurisdiction  
6           in the Coordination Region of a Regional Coordina-  
7           tion Council (who is selected by the Regional Fish-  
8           ery Management Council) and the executive director  
9           of the interstate marine fisheries commission with  
10          jurisdiction in the Coordination Region of a Regional  
11          Coordination Council shall each serve as a member  
12          of the Council.

13          (4) REGIONAL OCEAN PARTNERSHIP REP-  
14          RESENTATION.—A representative of any Regional  
15          Ocean Partnership that has been established for any  
16          part of the Coordination Region of a Regional Co-  
17          ordination Council may appoint a representative to  
18          serve on the Council in addition to any Federal or  
19          State appointments.

20          (5) TRIBAL REPRESENTATION.—An appropriate  
21          tribal official selected by affected Indian tribes situ-  
22          ated in the affected Coordination Region may elect  
23          to appoint a representative of such tribes collectively  
24          to serve as a member of the Regional Coordination  
25          Council for that Region.

1           (6) LOCAL REPRESENTATION.—The Chairman  
2       of the Council on Environmental Quality shall, in  
3       consultation with the Governors of the coastal States  
4       within each Coordination Region, identify and ap-  
5       point representatives of county and local govern-  
6       ments, as appropriate, to serve as members of the  
7       Regional Coordination Council for that Region.

8       (c) ADVISORY COMMITTEE.—Each Regional Coordi-  
9       nation Council shall establish advisory committees for the  
10      purposes of public and stakeholder input and scientific ad-  
11      vice, made up of a balanced representation from the en-  
12      ergy, shipping, transportation, commercial and rec-  
13      reational fishing, and recreation industries, from marine  
14      environmental nongovernmental organizations, and from  
15      scientific and educational authorities with expertise in the  
16      conservation and management of ocean, coastal, and  
17      Great Lakes resources to advise the Council during the  
18      development of Regional Assessments and Regional Stra-  
19      tegic Plans and in its other activities.

20      (d) COORDINATION WITH EXISTING PROGRAMS.—  
21      Each Regional Coordination Council shall build upon and  
22      complement current State, multistate, and regional capac-  
23      ity and governance and institutional mechanisms to man-  
24      age and protect ocean waters, coastal waters, and ocean  
25      resources.

1 **SEC. 603. REGIONAL STRATEGIC PLANS.**

2 (a) INITIAL REGIONAL ASSESSMENT.—

3 (1) IN GENERAL.—Each Regional Coordination  
4 Council, shall, within one year after the date of en-  
5 actment of this Act, prepare an initial assessment of  
6 its Coordination Region that shall identify defi-  
7 ciencies in data and information necessary to in-  
8 formed decisionmaking by Federal, State, and af-  
9 fected tribal governments concerned with the con-  
10 servation of and management of the oceans, coasts,  
11 and Great Lakes. Each initial assessment shall to  
12 the extent feasible—

13 (A) identify the Coordination Region’s re-  
14 newable and non renewable resources, including  
15 current and potential energy resources, except  
16 for the assessment for the Great Lakes Coordi-  
17 nation Region, for which the Regional Coordi-  
18 nation Council for such Coordination Region  
19 shall only identify the Great Lakes Coordina-  
20 tion Region’s renewable energy resources, in-  
21 cluding current and potential renewable energy  
22 resources;

23 (B) identify and include a spatially and  
24 temporally explicit inventory of existing and po-  
25 tential uses of the Coordination Region, includ-

1 ing fishing and fish habitat, recreation, and en-  
2 ergy development;

3 (C) document the health and relative envi-  
4 ronmental sensitivity of the marine ecosystem  
5 within the Coordination Region, including a  
6 comprehensive survey and status assessment of  
7 species, habitats, and indicators of ecosystem  
8 health;

9 (D) identify marine habitat types and im-  
10 portant ecological areas within the Coordination  
11 Region;

12 (E) assess the Coordination Region's ma-  
13 rine economy and cultural attributes and in-  
14 clude regionally-specific ecological and socio-  
15 economic baseline data;

16 (F) identify and prioritize additional sci-  
17 entific and economic data necessary to inform  
18 the development of Strategic Plans; and

19 (G) include other information to improve  
20 decision making as determined by the Regional  
21 Coordination Council.

22 (2) DATA.—Each initial assessment shall—

23 (A) use the best available data;

24 (B) collect and provide data in a spatially  
25 explicit manner wherever practicable and pro-

1           vide such data to the interagency comprehensive  
2           digital mapping initiative as described in section  
3           2 of Public Law 109–58 (42 U.S.C. 15801);  
4           and

5           (C) make publicly available any such data  
6           that is not classified information.

7           (3) PUBLIC PARTICIPATION.—Each Regional  
8           Coordination Council shall provide adequate oppor-  
9           tunity for review and input by stakeholders and the  
10          general public during the preparation of the initial  
11          assessment and any revised assessments.

12          (b) REGIONAL STRATEGIC PLANS.—

13           (1) REQUIREMENT.—Each Regional Coordina-  
14          tion Council shall, within 3 years after the comple-  
15          tion of the initial regional assessment, prepare and  
16          submit to the Chairman of the Council on Environ-  
17          mental Quality a multiobjective, science- and eco-  
18          system-based, spatially explicit, integrated Strategic  
19          Plan in accordance with this subsection for the  
20          Council’s Coordination Region.

21           (2) OBJECTIVE AND GOALS.—The objective of  
22          the Strategic Plans under this subsection shall be to  
23          foster comprehensive, integrated, and sustainable de-  
24          velopment and use of ocean, coastal, and Great  
25          Lakes resources, while protecting marine ecosystem



1 health and sustaining the long-term economic and  
2 ecosystem values of the oceans, coasts, and Great  
3 Lakes.

4 (3) CONTENTS.—Each Strategic Plan prepared  
5 by a Regional Coordination Council shall—

6 (A) be based on the initial regional assess-  
7 ment and updates for the Coordination Region  
8 under subsections (a) and (c), respectively;

9 (B) foster the sustainable and integrated  
10 development and use of ocean, coastal, and  
11 Great Lakes resources in a manner that pro-  
12 tects the health of marine ecosystems;

13 (C) identify areas with potential for siting  
14 and developing renewable and nonrenewable en-  
15 ergy resources in the Coordination Region cov-  
16 ered by the Strategic Plan, except for the Stra-  
17 tegic Plan for the Great Lakes Coordination  
18 Region which shall identify only areas with po-  
19 tential for siting and developing renewable en-  
20 ergy resources in the Great Lakes Coordination  
21 Region;

22 (D) identify other current and potential  
23 uses of the ocean and coastal resources in the  
24 Coordination Region;

1           (E) identify and recommend long-term  
2           monitoring needs for ecosystem health and so-  
3           cioeconomic variables within the Coordination  
4           Region covered by the Strategic Plan;

5           (F) identify existing State and Federal  
6           regulating authorities within the Coordination  
7           Region covered by the Strategic Plan and meas-  
8           ures to assist those authorities in carrying out  
9           their responsibilities;

10          (G) identify best available technologies to  
11          minimize adverse environmental impacts and  
12          use conflicts in the development of ocean and  
13          coastal resources in the Coordination Region;

14          (H) identify additional research, informa-  
15          tion, and data needed to carry out the Strategic  
16          Plan;

17          (I) identify performance measures and  
18          benchmarks for purposes of fulfilling the re-  
19          sponsibilities under this section to be used to  
20          evaluate the Strategic Plan's effectiveness;

21          (J) define responsibilities and include an  
22          analysis of the gaps in authority, coordination,  
23          and resources, including funding, that must be  
24          filled in order to fully achieve those perform-  
25          ance measures and benchmarks; and

1                   (K) include such other information at the  
2           Chairman of the Council on Environmental  
3           Quality determines is appropriate.

4           (4) PUBLIC PARTICIPATION.—Each Regional  
5           Coordination Council shall provide adequate oppor-  
6           tunities for review and input by stakeholders and the  
7           general public during the development of the Stra-  
8           tegic Plan and any Strategic Plan revisions.

9           (c) UPDATED REGIONAL ASSESSMENTS.—Each Re-  
10          gional Coordination Council shall update the initial re-  
11          gional assessment prepared under subsection (a) in coordi-  
12          nation with each Strategic Plan revision under subsection  
13          (e), to provide more detailed information regarding the re-  
14          quired elements of the assessment and to include any rel-  
15          evant new information that has become available in the  
16          interim.

17          (d) REVIEW AND APPROVAL.—

18               (1) COMMENCEMENT OF REVIEW.—Within 10  
19          days after receipt of a Strategic Plan under this sec-  
20          tion, or any revision to such a Strategic Plan, from  
21          a Regional Coordination Council, the Chairman of  
22          the Council of Environmental Quality shall com-  
23          mence a review of the Strategic Plan or the revised  
24          Strategic Plan, respectively.

1           (2) PUBLIC NOTICE AND COMMENT.—Imme-  
2           diately after receipt of such a Strategic Plan or revi-  
3           sion, the Chairman of the Council of Environmental  
4           Quality shall publish the Strategic Plan or revision  
5           in the Federal Register and provide an opportunity  
6           for the submission of public comment for a 90-day  
7           period beginning on the date of such publication.

8           (3) REQUIREMENTS FOR APPROVAL.—Before  
9           approving a Strategic Plan, or any revision to a  
10          Strategic Plan, the Chairman of the Council on En-  
11          vironmental Quality must find that the Strategic  
12          Plan or revision—

13                   (A) complies with subsection (b); and

14                   (B) complies with the purposes of this title  
15          as identified in section 601(a) and the objec-  
16          tives identified in section 601(b).

17          (4) DEADLINE FOR COMPLETION.—Within 180  
18          days after the receipt of a Strategic Plan, or a revi-  
19          sion to a Strategic Plan, the Chairman of the Coun-  
20          cil of Environmental Quality shall approve or dis-  
21          approve the Strategic Plan or revision. If the Chair-  
22          man disapproves the Strategic Plan or revision, the  
23          Chairman shall transmit to the Regional Coordina-  
24          tion Council that submitted the Strategic Plan or re-  
25          vision, an identification of the deficiencies and rec-

1       ommendations to improve it. The Council shall sub-  
2       mit a revised Strategic Plan or revision to such plan  
3       with 180 days after receiving the recommendations  
4       from the Chairman.

5       (c) PLAN REVISION.—Each Strategic Plan shall be  
6       reviewed and revised by the relevant Regional Coordina-  
7       tion Council at least once every 5 years. Such review and  
8       revision shall be based on the most recently updated re-  
9       gional assessment. Any proposed revisions to the Strategic  
10      Plan shall be submitted to the Chairman of the Council  
11      on Environmental Quality for review and approval pursu-  
12      ant to this section.

13      **SEC. 604. REGULATIONS AND SAVINGS CLAUSE.**

14      (a) REGULATIONS.—The Chairman of the Council on  
15      Environmental Quality may issue such regulations as the  
16      Chairman considers necessary to implement sections 601  
17      through 603.

18      (b) SAVINGS CLAUSE.—Nothing in this title shall be  
19      construed to affect existing authorities under Federal law.

20      **SEC. 605. OCEAN RESOURCES CONSERVATION AND ASSIST-**  
21                                   **ANCE FUND.**

22      (a) ESTABLISHMENT.—

23              (1) IN GENERAL.—There is established in the  
24      Treasury of the United States a separate account to

1 be known as the Ocean Resources Conservation and  
2 Assistance Fund.

3 (2) CREDITS.—The ORCA Fund shall be cred-  
4 ited with amounts as specified in section 9 of the  
5 Outer Continental Shelf Lands Act (43 U.S.C.  
6 1338), as amended by section 207 of this Act.

7 (3) ALLOCATION OF THE ORCA FUND.—Of the  
8 amounts appropriated from the ORCA Fund each  
9 fiscal year—

10 (A) 70 percent shall be allocated to the  
11 Secretary, of which—

12 (i) one-half shall be used to make  
13 grants to coastal States and affected In-  
14 dian tribes under subsection (b); and

15 (ii) one-half shall be used for the  
16 ocean, coastal, and Great Lakes grants  
17 program established by subsection (c);

18 (B) 20 percent shall be allocated to the  
19 Secretary to carry out the purposes of sub-  
20 section (e); and

21 (C) 10 percent shall be allocated to the  
22 Secretary to make grants to Regional Ocean  
23 Partnerships under subsection (d) and the Re-  
24 gional Coordination Councils established under  
25 section 602.

1           (4) PROCEDURES.—The Secretary shall estab-  
2       lish application, review, oversight, financial account-  
3       ability, and performance accountability procedures  
4       for each grant program for which funds are allo-  
5       cated under this subsection.

6       (b) GRANTS TO COASTAL STATES.—

7           (1) GRANT AUTHORITY.—The Secretary may  
8       use amounts allocated under subsection  
9       (a)(3)(A)(I)(I) to make grants to—

10           (A) coastal States pursuant to the formula  
11       established under section 306(c) of the Coastal  
12       Zone Management Act of 1972 (16 U.S.C.  
13       1455(c)); and

14           (B) affected Indian tribes based on and  
15       proportional to any specific coastal and ocean  
16       management authority granted to an affected  
17       tribe pursuant to affirmation of a Federal re-  
18       served right.

19           (2) ELIGIBILITY.—To be eligible to receive a  
20       grant under this subsection, a coastal State or af-  
21       fected Indian tribe must prepare and revise a 5-year  
22       plan and annual work plans that—

23           (A) demonstrate that activities for which  
24       the coastal State or affected Indian tribe will  
25       use the funds are consistent with the eligible

1 uses of the Fund described in subsection (f);  
2 and

3 (B) provide mechanisms to ensure that  
4 funding is made available to government, non-  
5 government, and academic entities to carry out  
6 eligible activities at the county and local level.

7 (3) APPROVAL OF STATE AND AFFECTED TRIB-  
8 AL PLANS.—

9 (A) IN GENERAL.—Plans required under  
10 paragraph (2) must be submitted to and ap-  
11 proved by the Secretary.

12 (B) PUBLIC INPUT AND COMMENT.—In de-  
13 termining whether to approve such plans, the  
14 Secretary shall provide opportunity for, and  
15 take into consideration, public input and com-  
16 ment on the plans from stakeholders and the  
17 general public.

18 (5) ENERGY PLANNING GRANTS.—For each of  
19 the fiscal years 2011 through 2015, the Secretary  
20 may use funds allocated for grants under this sub-  
21 section to make grants to coastal States and affected  
22 tribes under section 320 of the Coastal Zone Man-  
23 agement Act of 1972 (16 U.S.C. 1451 et seq.), as  
24 amended by this Act.



1           (6) USE OF FUNDS.—Any amounts provided as  
2       a grant under this subsection, other than as a  
3       grants under paragraph (5), may only be used for  
4       activities described in subsection (f).

5       (c) OCEAN AND COASTAL COMPETITIVE GRANTS  
6 PROGRAM.—

7           (1) ESTABLISHMENT.—The Secretary shall use  
8       amounts allocated under subsection (a)(3)(A)(I)(II)  
9       to make competitive grants for conservation and  
10      management of ocean, coastal, and Great Lakes eco-  
11      systems and marine resources.

12          (2) OCEAN, COASTAL, AND GREAT LAKES RE-  
13 VIEW PANEL.—

14           (A) IN GENERAL.—The Secretary shall es-  
15      tablish an Ocean, Coastal, and Great Lakes Re-  
16      view Panel (in this subsection referred to as the  
17      “Panel”), which shall consist of 12 members  
18      appointed by the Secretary with expertise in the  
19      conservation and management of ocean, coastal,  
20      and Great Lakes ecosystems and marine re-  
21      sources. In appointing members to the Council,  
22      the Secretary shall include a balanced diversity  
23      of representatives of relevant Federal agencies,  
24      the private sector, nonprofit organizations, and  
25      academia.

1 (B) FUNCTIONS.—The Panel shall—

2 (i) review, in accordance with the pro-  
3 cedures and criteria established under  
4 paragraph (3), grant applications under  
5 this subsection;

6 (ii) make recommendations to the  
7 Secretary regarding which grant applica-  
8 tions should be funded and the amount of  
9 each grant; and

10 (iii) establish any specific require-  
11 ments, conditions, or limitations on a grant  
12 application recommended for funding.

13 (3) PROCEDURES AND ELIGIBILITY CRITERIA  
14 FOR GRANTS.—

15 (A) IN GENERAL.—The Secretary shall es-  
16 tablish—

17 (i) procedures for applying for a grant  
18 under this subsection and criteria for eval-  
19 uating applications for such grants; and

20 (ii) criteria, in consultation with the  
21 Panel, to determine what persons are eligi-  
22 ble for grants under the program.

23 (B) ELIGIBLE PERSONS.—Persons eligible  
24 under the criteria under subparagraph (A)(ii)  
25 shall include Federal, State, affected tribal, and

1 local agencies, fishery or wildlife management  
2 organizations, nonprofit organizations, and aca-  
3 demic institutions.

4 (4) APPROVAL OF GRANTS.—In making grants  
5 under this subsection the Secretary shall give the  
6 highest priority to the recommendations of the  
7 Panel. If the Secretary disapproves a grant rec-  
8 ommended by the Panel, the Secretary shall explain  
9 that disapproval in writing.

10 (5) USE OF GRANT FUNDS.—Any amounts pro-  
11 vided as a grant under this subsection may only be  
12 used for activities described in subsection (f).

13 (d) GRANTS TO REGIONAL OCEAN PARTNERSHIPS.—

14 (1) GRANT AUTHORITY.—The Secretary may  
15 use amounts allocated under subsection (a)(3)(A)(iii)  
16 to make grants to Regional Ocean Partnerships.

17 (2) ELIGIBILITY.—In order to be eligible to re-  
18 ceive a grant, a Regional Ocean Partnership must  
19 prepare and annually revise a plan that—

20 (A) identifies regional science and informa-  
21 tion needs, regional goals and priorities, and  
22 mechanisms for facilitating coordinated and col-  
23 laborative responses to regional issues;

24 (B) establishes a process for coordinating  
25 and collaborating with the Regional Coordina-

1           tion Councils established under section 602 to  
2           address regional issues and information needs  
3           and achieve regional goals and priorities; and

4           (C) demonstrates that activities to be car-  
5           ried out with such funds are eligible uses of the  
6           funds identified in subsection (f).

7           (3) APPROVAL BY SECRETARY.—Such plans  
8           must be submitted to and approved by the Sec-  
9           retary.

10          (4) PUBLIC INPUT AND COMMENT.—In deter-  
11          mining whether to approve such plans, the Secretary  
12          shall provide opportunity for, and take into consider-  
13          ation, input and comment on the plans from stake-  
14          holders and the general public.

15          (5) USE OF FUNDS.—Any amounts provided as  
16          a grant under this subsection may only be used for  
17          activities described in subsection (f).

18          (c) LONG-TERM OCEAN AND COASTAL OBSERVA-  
19          TIONS.—

20          (1) IN GENERAL.—The Secretary shall use the  
21          amounts allocated under subsection (a)(3)(A)(ii) to  
22          build, operate, and maintain the system established  
23          under section 12304 of Public Law 111–11 (33  
24          U.S.C. 3603), in accordance with the purposes and  
25          policies for which the system was established.

1           (2) ADMINISTRATION OF FUNDS.—The Sec-  
2       retary shall administer and distribute funds under  
3       this subsection based upon comprehensive system  
4       budgets adopted by the Council referred to in section  
5       12304(c)(1)(A) of the Integrated Coastal and Ocean  
6       Observation System Act of 2009 (33 U.S.C.  
7       3603(c)(1)(A)).

8       (f) ELIGIBLE USE OF FUNDS.—Any funds made  
9       available under this section may only be used for activities  
10      that contribute to the conservation, protection, mainte-  
11      nance, and restoration of ocean, coastal, and Great Lakes  
12      ecosystems in a manner that is consistent with Federal  
13      environmental laws and that avoids environmental deg-  
14      radation, including—

15           (1) activities to conserve, protect, maintain, and  
16      restore coastal, marine, and Great Lakes ecosystem  
17      health;

18           (2) activities to protect marine biodiversity and  
19      living marine and coastal resources and their habi-  
20      tats, including fish populations;

21           (3) the development and implementation of  
22      multiobjective, science- and ecosystem-based plans  
23      for monitoring and managing the wide variety of  
24      uses affecting ocean, coastal, and Great Lakes eco-

1 systems and resources that consider cumulative im-  
2 pacts and are spatially explicit where appropriate;

3 (4) activities to improve the resiliency of those  
4 ecosystems;

5 (5) activities to improve the ability of those eco-  
6 systems to become more resilient, and to adapt to  
7 and withstand the impacts of climate change and  
8 ocean acidification;

9 (6) planning for and managing coastal develop-  
10 ment to minimize the loss of life and property asso-  
11 ciated with sea level rise and the coastal hazards re-  
12 sulting from it;

13 (7) research, education, assessment, monitoring,  
14 and dissemination of information that contributes to  
15 the achievement of these purposes;

16 (8) research of, protection of, enhancement to,  
17 and activities to improve the resiliency of culturally  
18 significant areas and resources; and

19 (9) activities designed to rescue, rehabilitate,  
20 and recover injured marine mammals, marine birds,  
21 and sea turtles.

22 (g) DEFINITIONS.—In this section:

23 (1) ORCA FUND.—The term “ORCA Fund”  
24 means the Ocean Resources Conservation and As-  
25 sistance Fund established by this section.

1           (2) SECRETARY.—Notwithstanding section 3,  
2       the term “Secretary” means the Secretary of Com-  
3       merce.

4 **SEC. 606. WAIVER.**

5       The Federal Advisory Committee Act (5 U.S.C. App.)  
6       shall not apply to the Regional Coordination Councils es-  
7       tablished under section 602.

8 **TITLE VII—OIL SPILL ACCOUNT-**  
9 **ABILITY AND ENVIRON-**  
10 **MENTAL PROTECTION**

11 **SEC. 701. SHORT TITLE.**

12       This title may be cited as the “Oil Spill Account-  
13       ability and Environmental Protection Act of 2010”.

14 **SEC. 702. REPEAL OF AND ADJUSTMENTS TO LIMITATION**  
15 **ON LIABILITY.**

16       (a) IN GENERAL.—Section 1004 of the Oil Pollution  
17       Act of 1990 (33 U.S.C. 2704) is amended—

18           (1) in subsection (a)—

19               (A) in paragraph (2)—

20                   (i) by striking “\$800,000,,” and in-  
21                   serting “\$800,000,”; and

22                   (ii) by adding “and” after the semi-  
23                   colon at the end;

24               (B) by striking paragraph (3); and

1 (C) by redesignating paragraph (4) as  
2 paragraph (3);

3 (2) in subsection (b)(2) by striking the second  
4 sentence; and

5 (3) by striking subsection (d)(4) and inserting  
6 the following:

7 “(4) ADJUSTMENT OF LIMITS ON LIABILITY.—  
8 Not later than 3 years after the date of enactment  
9 of the Oil Spill Accountability and Environmental  
10 Protection Act of 2010, and at least once every 3  
11 years thereafter, the President shall review the limits  
12 on liability specified in subsection (a) and shall by  
13 regulation revise such limits upward to reflect either  
14 the amount of liability that the President determines  
15 is commensurate with the risk of discharge of oil  
16 presented by a particular category of vessel, facility,  
17 or port or any increase in the Consumer Price Index,  
18 whichever is greater.”.

19 (b) APPLICABILITY.—The amendments made by this  
20 section apply to—

21 (1) any claim arising from an event occurring  
22 after the date of enactment of this Act; and

23 (2) any claim arising from an event occurring  
24 before such date of enactment, if the claim is



1 brought within the limitations period applicable to  
2 the claim.

3 **SEC. 703. EVIDENCE OF FINANCIAL RESPONSIBILITY FOR**  
4 **OFFSHORE FACILITIES.**

5 Section 1016 of the Oil Pollution Act of 1990 (33  
6 U.S.C. 2716) is amended—

7 (1) in subsection (c)(1)—

8 (A) in subparagraph (B) by striking “sub-  
9 paragraph (A) is” and all that follows before  
10 the period and inserting “subparagraph (A) is  
11 \$300,000,000”; and

12 (B) by striking subparagraph (C) and in-  
13 serting the following:

14 “(C) ALTERNATE AMOUNT.—

15 “(i) SPECIFIC FACILITIES.—

16 “(I) IN GENERAL.—If the Presi-  
17 dent determines that an amount of fi-  
18 nancial responsibility for a responsible  
19 party that is less than the amount re-  
20 quired by subparagraph (B) is justi-  
21 fied based on the criteria established  
22 under clause (ii), the evidence of fi-  
23 nancial responsibility required shall be  
24 for an amount determined by the  
25 President.

1                   “(II) MINIMUM AMOUNTS.—In  
2                   no case shall the evidence of financial  
3                   responsibility required under this sec-  
4                   tion be less than—

5                               “(aa) \$105,000,000 for an  
6                               offshore facility located seaward  
7                               of the seaward boundary of a  
8                               State; or

9                               “(bb) \$30,000,000 for an  
10                              offshore facility located landward  
11                              of the seaward boundary of a  
12                              State.

13                   “(ii) CRITERIA FOR DETERMINATION  
14                   OF FINANCIAL RESPONSIBILITY.—The  
15                   President shall prescribe the amount of fi-  
16                   nancial responsibility required under clause  
17                   (i)(I) based on the following:

18                              “(I) The market capacity of the  
19                              insurance industry to issue such in-  
20                              struments.

21                              “(II) The operational risk of a  
22                              discharge and the effects of that dis-  
23                              charge on the environment and the re-  
24                              gion.

1 “(III) The quantity and location  
2 of the oil and gas that is explored for,  
3 drilled for, produced, or transported  
4 by the responsible party.

5 “(IV) The asset value of the  
6 owner of the offshore facility, includ-  
7 ing the combined asset value of all  
8 partners that own the facility.

9 “(V) The cost of all removal  
10 costs and damages for which the  
11 owner may be liable under this Act  
12 based on a worst-case-scenario.

13 “(VI) The safety history of the  
14 owner of the offshore facility.

15 “(VII) Any other factors that the  
16 President considers appropriate.

17 “(iii) ADJUSTMENT FOR ALL OFF-  
18 SHORE FACILITIES.—

19 “(I) IN GENERAL.—Not later  
20 than 3 years after the date of enact-  
21 ment of the Oil Spill Accountability  
22 and Environmental Protection Act of  
23 2010, and at least once every 3 years  
24 thereafter, the President shall review  
25 the levels of financial responsibility

1 specified in this subsection and the  
2 limit on liability specified in sub-  
3 section (f)(4) and may by regulation  
4 revise such levels and limit upward to  
5 the levels and limit that the President  
6 determines are justified based on the  
7 relative operational, environmental,  
8 and other risks posed by the quantity,  
9 quality, or location of oil that is ex-  
10 plored for, drilled for, produced, or  
11 transported by the responsible party.

12 “(II) NOTICE TO CONGRESS.—  
13 Upon completion of a review specified  
14 in subclause (I), the President shall  
15 notify Congress as to whether the  
16 President will revise the levels of fi-  
17 nancial responsibility and limit on li-  
18 ability referred to in subclause (I) and  
19 the factors used in making such deter-  
20 mination.”;

21 (2) in subsection (e) by striking “self-insurer,”  
22 and inserting “self-insurer, participation in coopera-  
23 tive arrangements such as pooling or joint insur-  
24 ance,”; and

25 (3) in subsection (f)—

1 (A) in paragraph (1) by striking “Subject”  
2 and inserting “Except as provided in paragraph  
3 (4) and subject”; and

4 (B) by adding at the end the following:

5 “(4) MAXIMUM LIABILITY.—The maximum li-  
6 ability of a guarantor of an offshore facility under  
7 this subsection is \$300,000,000.”.

8 **SEC. 704. DAMAGES TO HUMAN HEALTH.**

9 (a) IN GENERAL.—Section 1002(b)(2) of the Oil Pol-  
10 lution Act of 1990 (33 U.S.C. 2702(b)(2)) is amended by  
11 adding at the end the following:

12 “(G) HUMAN HEALTH.—

13 “(i) IN GENERAL.—Damages to  
14 human health, including fatal injuries,  
15 which shall be recoverable by any claimant  
16 who has a demonstrable, adverse impact to  
17 human health or, in the case of a fatal in-  
18 jury to an individual, a claimant filing a  
19 claim on behalf of such individual.

20 “(ii) INCLUSION.—For purposes of  
21 clause (i), the term ‘human health’ in-  
22 cludes mental health.”.

23 (b) APPLICABILITY.—The amendments made by this  
24 section apply to—

1           (1) any claim arising from an event occurring  
2           after the date of enactment of this Act; and

3           (2) any claim arising from an event occurring  
4           before such date of enactment, if the claim is  
5           brought within the limitations period applicable to  
6           the claim.

7   **SEC. 705. CLARIFICATION OF LIABILITY FOR DISCHARGES**  
8                   **FROM MOBILE OFFSHORE DRILLING UNITS.**

9           (a) IN GENERAL.—Section 1004(b)(2) of the Oil Pol-  
10          lution Act of 1990 (33 U.S.C. 2704(b)(2)) is amended—

11                  (1) by striking “from any incident described in  
12                  paragraph (1)” and inserting “from any discharge of  
13                  oil, or substantial threat of a discharge of oil, into  
14                  or upon the water”; and

15                  (2) by striking “liable” and inserting “liable as  
16                  described in paragraph (1)”.

17           (b) APPLICABILITY.—The amendments made by this  
18          section shall apply to—

19                  (1) any claim arising from an event occurring  
20                  after the date of enactment of this Act; and

21                  (2) any claim arising from an event occurring  
22                  before such date of enactment, if the claim is  
23                  brought within the limitations period applicable to  
24                  the claim.

1 **SEC. 706. STANDARD OF REVIEW FOR DAMAGE ASSESS-**  
2 **MENT.**

3 Section 1006(e)(2) of the Oil Pollution Act of 1990  
4 (33 U.S.C. 2706(e)(2)) is amended—

5 (1) in the heading by striking “REBUTTABLE  
6 PRESUMPTION” and inserting “JUDICIAL REVIEW OF  
7 ASSESSMENTS”; and

8 (2) by striking “have the force and effect” and  
9 all that follows before the period and inserting the  
10 following: “be subject to judicial review under sub-  
11 chapter II of chapter 5 of title 5, United States  
12 Code (commonly known as the Administrative Proce-  
13 dure Act), on the basis of the administrative record  
14 developed by the lead Federal trustee as provided in  
15 such regulations”.

16 **SEC. 707. PROCEDURES FOR CLAIMS AGAINST FUND; IN-**  
17 **FORMATION ON CLAIMS.**

18 (a) PROCEDURES FOR CLAIMS AGAINST FUND.—  
19 Section 1013(e) of the Oil Pollution Act of 1990 (33  
20 U.S.C. 2713(e)) is amended by adding at the end the fol-  
21 lowing: “In the event of a spill of national significance,  
22 the President may exercise the authorities under this sec-  
23 tion to ensure that the presentation, filing, processing, set-  
24 tlement, and adjudication of claims occurs within the  
25 States and local governments affected by such spill to the  
26 greatest extent practicable.”.

1 (b) INFORMATION ON CLAIMS.—Title I of the Oil  
2 Pollution Act of 1990 (33 U.S.C. 2701 et seq.) is amended  
3 by inserting after section 1013 the following:

4 **“SEC. 1013A. INFORMATION ON CLAIMS.**

5 “In the event of a spill of national significance, the  
6 President may require a responsible party or a guarantor  
7 of a source designated under section 1014(a) to provide  
8 to the President any information on or related to claims,  
9 either individually, in the aggregate, or both, that the  
10 President requests, including—

11 “(1) the transaction date or dates of such  
12 claims, including processing times; and

13 “(2) any other data pertaining to such claims  
14 necessary to ensure the performance of the respon-  
15 sible party or the guarantor with regard to the proc-  
16 essing and adjudication of such claims.”.

17 (c) CONFORMING AMENDMENT.—The table of con-  
18 tents contained in section 2 of such Act is amended by  
19 inserting after the item relating to section 1013 the fol-  
20 lowing:

“Sec. 1013A. Information on claims.”.

21 (d) APPLICABILITY.—The amendments made by this  
22 section apply to—

23 (1) any claim arising from an event occurring  
24 after the date of enactment of this Act; and



1           (2) any claim arising from an event occurring  
2       before such date of enactment, if the claim is  
3       brought within the limitations period applicable to  
4       the claim.

5   **SEC. 708. ADDITIONAL AMENDMENTS AND CLARIFICATIONS**  
6                   **TO OIL POLLUTION ACT OF 1990.**

7       (a) DEFINITIONS.—

8           (1) REMOVAL COSTS.—Section 1001(31) of the  
9       Oil Pollution Act of 1990 (33 U.S.C. 2701(31)) is  
10      amended by inserting before the semicolon the fol-  
11      lowing: “and includes all costs of Federal enforce-  
12      ment activities related thereto”.

13           (2)       RESPONSIBLE       PARTY.—Section  
14      1001(32)(B) of such Act (33 U.S.C. 2701(32)(B))  
15      is amended by inserting before “, except a” the fol-  
16      lowing: “any person who owns or who has a lease-  
17      hold interest or other property interest in the land  
18      or in the minerals beneath the land on which the fa-  
19      cility is located, and any person who is the assignor  
20      of a property interest in the land or in the minerals  
21      beneath the land on which the facility is located,”.

22       (b)       ELEMENTS       OF       LIABILITY.—Section  
23      1002(b)(1)(A) of such Act (33 U.S.C. 2702(b)(1)(A)) is  
24      amended by inserting before the semicolon the following:

1 “, including all costs of Federal enforcement activities re-  
2 lated thereto”.

3 (c) SUBROGATION.—Section 1015(c) of such Act (33  
4 U.S.C. 2715(c)) is amended by adding at the end the fol-  
5 lowing: “In such actions, the Fund shall recover all costs  
6 and damages paid from the Fund unless the decision to  
7 make the payment is found to be arbitrary or capricious.”.

8 (d) FINANCIAL RESPONSIBILITY.—Section  
9 1016(f)(1) of such Act (33 U.S.C. 2717(f)(1)) is amend-  
10 ed—

11 (1) by inserting “and” at the end of subpara-  
12 graph (A);

13 (2) by striking “; and” at the end of subpara-  
14 graph (B) and inserting a period; and

15 (3) by striking subparagraph (C).

16 (e) CONSIDERATIONS OF TRUSTEES.—Section  
17 1006(d) of such Act (33 U.S.C. 2706(d)) is amended by  
18 adding at the end the following:

19 “(4) CONSIDERATIONS OF TRUSTEES.—

20 “(A) EQUAL AND FULL CONSIDERATION.—  
21 Trustees shall—

22 “(i) give equal and full consideration  
23 to restoration, rehabilitation, replacement,  
24 and the acquisition of the equivalent of the

1 natural resources under their trusteeship;  
 2 and

3 “(ii) consider restoration, rehabilita-  
 4 tion, replacement, and the acquisition of  
 5 the equivalent of the natural resources  
 6 under their trusteeship in a holistic eco-  
 7 system context and using, where available,  
 8 eco-regional or natural resource plans.

9 “(B) SPECIAL RULE ON ACQUISITION.—  
 10 Acquisition shall only be given full and equal  
 11 consideration under subparagraph (A) if it pro-  
 12 vides a substantially greater likelihood of im-  
 13 proving the resilience of the lost or damaged re-  
 14 source and supports local ecological processes.”.

15 (f) APPLICABILITY.—The amendments made by this  
 16 section apply to—

17 (1) any claim arising from an event occurring  
 18 after the date of enactment of this Act; and

19 (2) any claim arising from an event occurring  
 20 before such date of enactment, if the claim is  
 21 brought within the limitations period applicable to  
 22 the claim.

23 **SEC. 709. AMERICANIZATION OF OFFSHORE OPERATIONS**  
 24 **IN THE EXCLUSIVE ECONOMIC ZONE.**

25 (a) REGISTRY ENDORSEMENT REQUIRED.—

1           (1) IN GENERAL.—Section 12111 of title 46,  
2       United States Code, is amended by adding at the  
3       end the following:

4       “(e) RESOURCE ACTIVITIES IN THE EEZ.—Except  
5       for activities requiring an endorsement under sections  
6       12112 or 12113, only a vessel for which a certificate of  
7       documentation with a registry endorsement is issued and  
8       that is owned by a citizen of the United States (as deter-  
9       mined under section 50501(d)) may engage in support of  
10      exploration, development, or production of resources in,  
11      on, above, or below the exclusive economic zone or any  
12      other activity in the exclusive economic zone to the extent  
13      that the regulation of such activity is not prohibited under  
14      customary international law.”.

15           (2) APPLICABILITY.—The amendment made by  
16      paragraph (1) applies only with respect to explo-  
17      ration, development, production, and support activi-  
18      ties that commence on or after July 1, 2011.

19           (b) LEGAL AUTHORITY.—Section 2301 of title 46,  
20      United States Code, is amended—

21           (1) by striking “chapter” and inserting “title”;  
22      and

23           (2) by inserting after “1988” the following:  
24      “and the exclusive economic zone to the extent that

1 the regulation of such operation is not prohibited  
2 under customary international law”.

3 (c) TRAINING FOR COAST GUARD PERSONNEL.—Not  
4 later than 180 days after the date of enactment of this  
5 Act, the Secretary of the department in which the Coast  
6 Guard is operating shall establish a program to provide  
7 Coast Guard personnel with the training necessary for the  
8 implementation of the amendments made by this section.

9 **SEC. 710. SAFETY MANAGEMENT SYSTEMS FOR MOBILE**  
10 **OFFSHORE DRILLING UNITS.**

11 Section 3203 of title 46, United States Code, is  
12 amended—

13 (1) by redesignating subsection (b) as sub-  
14 section (c); and

15 (2) by inserting after subsection (a) the fol-  
16 lowing:

17 “(b) MOBILE OFFSHORE DRILLING UNITS.—The  
18 safety management system described in subsection (a) for  
19 a mobile offshore drilling unit operating in waters subject  
20 to the jurisdiction of the United States (including the ex-  
21 clusive economic zone) shall include processes, procedures,  
22 and policies related to the safe operation and maintenance  
23 of the machinery and systems on board the vessel that  
24 may affect the seaworthiness of the vessel in a worst-case  
25 event.”.

1 **SEC. 711. SAFETY STANDARDS FOR MOBILE OFFSHORE**  
 2 **DRILLING UNITS.**

3 Section 3306 of title 46, United States Code, is  
 4 amended by adding at the end the following:

5 “(k) In prescribing regulations for mobile offshore  
 6 drilling units, the Secretary shall develop standards to ad-  
 7 dress a worst-case event on the vessel.”.

8 **SEC. 712. OPERATIONAL CONTROL OF MOBILE OFFSHORE**  
 9 **DRILLING UNITS.**

10 (a) LICENSES FOR MASTERS OF MOBILE OFFSHORE  
 11 DRILLING UNITS.—

12 (1) IN GENERAL.—Chapter 71 of title 46,  
 13 United States Code, is amended by redesignating  
 14 sections 7104 through 7114 as sections 7105  
 15 through 7115, respectively, and by inserting after  
 16 section 7103 the following:

17 **“§ 7104. Licenses for masters of mobile offshore drill-**  
 18 **ing units**

19 “A license as master of a mobile offshore drilling unit  
 20 may be issued only to an applicant who has been issued  
 21 a license as master under section 7101(c)(1) and has dem-  
 22 onstrated the knowledge, understanding, proficiency, and  
 23 sea service for all industrial business or functions of a mo-  
 24 bile offshore drilling unit.”.

25 (2) CONFORMING AMENDMENT.—Section 7109  
 26 of such title, as so redesignated, is amended by

1 striking “section 7106 or 7107” and inserting “sec-  
2 tion 7107 or 7108”.

3 (3) CLERICAL AMENDMENT.—The analysis at  
4 the beginning of such chapter is amended by strik-  
5 ing the items relating to sections 7104 through 7114  
6 and inserting the following:

“7104. Licenses for masters of mobile offshore drilling units.

“7105. Certificates for medical doctors and nurses.

“7106. Oaths.

“7107. Duration of licenses.

“7108. Duration of certificates of registry.

“7109. Termination of licenses and certificates of registry.

“7110. Review of criminal records.

“7111. Exhibiting licenses.

“7112. Oral examinations for licenses.

“7113. Licenses of masters or mates as pilots.

“7114. Exemption from draft.

“7115. Fees.”.

7 (b) REQUIREMENT FOR CERTIFICATE OF INSPEC-  
8 TION.—Section 8101(a)(2) of title 46, United States  
9 Code, is amended by inserting before the semicolon the  
10 following: “and shall at all times be under the command  
11 of a master licensed under section 7104”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall take effect 6 months after the date of  
14 enactment of this Act.

15 **SEC. 713. SINGLE-HULL TANKERS.**

16 (a) APPLICATION OF TANK VESSEL CONSTRUCTION  
17 STANDARDS.—Section 3703a(b) of title 46, United States  
18 Code, is amended by striking paragraph (3), and redesign-  
19 ating paragraphs (4) through (6) as paragraphs (3)  
20 through (5), respectively.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) takes effect on January 1, 2011.

3 **SEC. 714. REPEAL OF RESPONSE PLAN WAIVER.**

4 Section 311(j)(5)(G) of the Federal Water Pollution  
5 Control Act (33 U.S.C. 1321(j)(5)(G)) is amended—

6 (1) by striking “a tank vessel, nontank vessel,  
7 offshore facility, or onshore facility” and inserting  
8 “a nontank vessel”;

9 (2) by striking “tank vessel, nontank vessel, or  
10 facility” and inserting “nontank vessel”; and

11 (3) by adding at the end the following: “A mo-  
12 bile offshore drilling unit, as such term is defined in  
13 section 1001 of the Oil Pollution Act of 1990 (33  
14 U.S.C. 2701), is not eligible to operate without a re-  
15 sponse plan approved under this section.”.

16 **SEC. 715. NATIONAL CONTINGENCY PLAN.**

17 (a) GUIDELINES FOR CONTAINMENT BOOMS.—Sec-  
18 tion 311(d)(2) of the Federal Water Pollution Control Act  
19 (33 U.S.C. 1321(d)(2)) is amended by adding at the end  
20 the following:

21 “(N) Guidelines regarding the use of con-  
22 tainment booms to contain a discharge of oil or  
23 a hazardous substance, including identification  
24 of quantities of containment booms likely to be  
25 needed, available sources of containment booms,



1           and best practices for containment boom place-  
2           ment, monitoring, and maintenance.”.

3           (b) SCHEDULE, CRITERIA, AND FEES.—Section  
4 311(d) of the Federal Water Pollution Control Act (33  
5 U.S.C. 1321(d)) is amended by adding at the end the fol-  
6 lowing:

7           “(5) SCHEDULE FOR USE OF DISPERSANTS,  
8           OTHER CHEMICALS, AND OTHER SPILL MITIGATING  
9           DEVICES AND SUBSTANCES.—

10           “(A) RULEMAKING.—Not later than 2  
11           years after the date of enactment of this para-  
12           graph, the President, acting through the Ad-  
13           ministrator, after providing notice and an op-  
14           portunity for public comment, shall issue a re-  
15           vised regulation for the development of the  
16           schedule for the use of dispersants, other  
17           chemicals, and other spill mitigating devices  
18           and substances developed under paragraph  
19           (2)(G) in a manner that is consistent with the  
20           requirements of this paragraph and shall mod-  
21           ify the existing schedule to take into account  
22           the requirements of the revised regulation.

23           “(B) SCHEDULE LISTING REQUIRE-  
24           MENTS.—In issuing the regulation under sub-  
25           paragraph (A), the Administrator shall—

1 “(i) with respect to dispersants, other  
2 chemicals, and other spill mitigating sub-  
3 stances included or proposed to be included  
4 on the schedule under paragraph (2)(G)—

5 “(I) establish minimum toxicity  
6 and efficacy testing criteria, taking  
7 into account the results of the study  
8 carried out under subparagraph (D);

9 “(II) provide for testing or other  
10 verification (independent from the in-  
11 formation provided by an applicant  
12 seeking the inclusion of such dispers-  
13 ant, chemical, or substance on the  
14 schedule) related to the toxicity and  
15 effectiveness of such dispersant, chem-  
16 ical, or substance;

17 “(III) establish a framework for  
18 the application of any such dispersant,  
19 chemical, or substance, including—

20 “(aa) application conditions;

21 “(bb) the quantity thresh-  
22 olds for which approval by the  
23 Administrator is required;

24 “(cc) the criteria to be used  
25 to develop the appropriate max-

1           imum quantity of any such dis-  
2           persant, chemical, or substance  
3           that the Administrator deter-  
4           mines may be used, both on a  
5           daily and cumulative basis; and

6                   “(dd) a ranking, by geo-  
7                   graphic area, of any such dis-  
8                   persant, chemical, or substance  
9                   based on a combination of its ef-  
10                  fectiveness for each type of oil  
11                  and its level of toxicity;

12                   “(IV) establish a requirement  
13                  that the volume of oil or hazardous  
14                  substance discharged, and the volume  
15                  and location of any such dispersant,  
16                  chemical, or substance used, be meas-  
17                  ured and made publicly available, in-  
18                  cluding on the Internet;

19                   “(V) require the public disclosure  
20                  of all ingredients, including the chem-  
21                  ical and common name of such ingre-  
22                  dients, contained in any such dispers-  
23                  ant, chemical, or substance; and

24                   “(VI) in addition to existing au-  
25                  thority, expressly provide a mecha-

1 nism for the delisting of any such dis-  
2 persant, chemical, or substance that  
3 the Administrator determines poses a  
4 significant risk or impact to water  
5 quality, the environment, or any other  
6 factor the Administrator determines  
7 appropriate;

8 “(ii) with respect to a dispersant,  
9 other chemical, and other spill mitigating  
10 substance not specifically identified on the  
11 schedule, and prior to the use of such dis-  
12 persant, chemical, or substance in accord-  
13 ance with paragraph (2)(G)—

14 “(I) establish the minimum tox-  
15 icity and efficacy levels for such dis-  
16 persant, chemical, or substance;

17 “(II) require the public disclosure  
18 of all ingredients, including the chem-  
19 ical and common name of such ingre-  
20 dients, contained in any such dispers-  
21 ant, chemical, or substance; and

22 “(III) require the provision of  
23 such additional information as the Ad-  
24 ministrator determines necessary; and

1 “(iii) with respect to other spill miti-  
2 gating devices included or proposed to be  
3 included on the schedule under paragraph  
4 (2)(G)—

5 “(I) require the manufacturer of  
6 such device to carry out a study of the  
7 risks and effectiveness of the device  
8 according to guidelines developed and  
9 published by the Administrator; and

10 “(II) in addition to existing au-  
11 thority, expressly provide a mecha-  
12 nism for the delisting of any such de-  
13 vice based on any information made  
14 available to the Administrator that  
15 demonstrates that such device poses a  
16 significant risk or impact to water  
17 quality, the environment, or any other  
18 factor the Administrator determines  
19 appropriate.

20 “(C) DELISTING.—In carrying out sub-  
21 paragraphs (B)(i)(VI) and (B)(iii)(II), the Ad-  
22 ministrator, after posting a notice in the Fed-  
23 eral Register and providing an opportunity for  
24 public comment, shall initiate a formal review  
25 of the potential risks and impacts associated

1 with a dispersant, chemical, substance, or de-  
2 vice prior to delisting the dispersant, chemical,  
3 substance, or device.

4 “(D) STUDY.—

5 “(i) IN GENERAL.—Not later than 3  
6 months after the date of enactment of this  
7 paragraph, the Administrator shall initiate  
8 a study of the potential risks and impacts  
9 to water quality, the environment, or any  
10 other factor the Administrator determines  
11 appropriate, including acute and chronic  
12 risks, from the use of dispersants, other  
13 chemicals, and other spill mitigating sub-  
14 stances, if any, that may be used to carry  
15 out the National Contingency Plan, includ-  
16 ing an assessment of such risks and im-  
17 pacts—

18 “(I) on a representative sample  
19 of biota and types of oil from loca-  
20 tions where such dispersants, chemi-  
21 cals, or substances may potentially be  
22 used; and

23 “(II) that result from any by-  
24 products created from the use of such  
25 dispersants, chemicals, or substances.

1 “(ii) INFORMATION FROM MANUFAC-  
2 TURERS.—

3 “(I) IN GENERAL.—In conjunc-  
4 tion with the study authorized by  
5 clause (i), the Administrator shall de-  
6 termine the requirements for manu-  
7 facturers of dispersants, chemicals, or  
8 substances to evaluate the potential  
9 risks and impacts to water quality,  
10 the environment, or any other factor  
11 the Administrator determines appro-  
12 priate, including acute and chronic  
13 risks, associated with the use of the  
14 dispersants, chemicals, or substances  
15 and any byproducts generated by such  
16 use and to provide the details of such  
17 evaluation as a condition for listing on  
18 the schedule, or approving for use  
19 under this section, according to guide-  
20 lines developed and published by the  
21 Administrator.

22 “(II) MINIMUM REQUIREMENTS  
23 FOR EVALUATION.—In carrying out  
24 this clause, the Administrator shall re-  
25 quire a manufacturer to include—

1                   “(aa) information on the oils  
2                   and locations where such  
3                   dispersants, chemicals, or sub-  
4                   stances may potentially be used;  
5                   and

6                   “(bb) if appropriate, an as-  
7                   sessment of application and im-  
8                   pacts from subsea use of the dis-  
9                   persant, chemical, or substance,  
10                  including the potential long term  
11                  effects of such use on water qual-  
12                  ity and the environment.

13               “(E) PERIODIC REVISIONS.—

14               “(i) IN GENERAL.—Not later than 5  
15               years after the date of the issuance of the  
16               regulation under this paragraph, and on an  
17               ongoing basis thereafter (and at least once  
18               every 5 years), the Administrator shall re-  
19               view the schedule for the use of  
20               dispersants, other chemicals, and other  
21               spill mitigating devices and substances that  
22               may be used to carry out the National  
23               Contingency Plan and update or revise the  
24               schedule, as necessary, to ensure the pro-  
25               tection of water quality, the environment,



1 and any other factor the Administrator de-  
2 termines appropriate.

3 “(ii) EFFECTIVENESS.—The Adminis-  
4 trator shall ensure, to the maximum extent  
5 practicable, that each update or revision to  
6 the schedule increases the minimum effec-  
7 tiveness value necessary for listing a dis-  
8 persant, other chemical, or other spill miti-  
9 gating device or substance on the schedule.

10 “(F) APPROVAL OF USE AND APPLICATION  
11 OF DISPERSANTS.—

12 “(i) IN GENERAL.—In issuing the reg-  
13 ulation under subparagraph (A), the Ad-  
14 ministrator shall require the approval of  
15 the Federal On-Scene Coordinator, in co-  
16 ordination with the Administrator, for all  
17 uses of a dispersant, other chemical, or  
18 other spill mitigating substance in any re-  
19 moval action, including—

20 “(I) any such dispersant, chem-  
21 ical, or substance that is included on  
22 the schedule developed pursuant to  
23 this subsection; or

24 “(II) any dispersant, chemical, or  
25 other substance that is included as

1                   part an approved area contingency  
2                   plan or response plan developed under  
3                   this section.

4                   “(ii) REPEAL.—Any part of section  
5                   300.910 of title 40, Code of Federal Regu-  
6                   lations, that is inconsistent with this para-  
7                   graph is hereby repealed.

8                   “(G) TOXICITY DEFINITION.—In this sec-  
9                   tion, the term ‘toxicity’ is used in reference to  
10                  the potential impacts of a dispersant, sub-  
11                  stance, or device on water quality or the envi-  
12                  ronment.

13                  “(6) REVIEW OF AND DEVELOPMENT OF CRI-  
14                  TERIA FOR EVALUATING RESPONSE PLANS.—

15                  “(A) REVIEW.—Not later than 6 months  
16                  after the date of enactment of this paragraph,  
17                  the President shall review the procedures and  
18                  standards developed under paragraph (2)(J) to  
19                  determine their sufficiency in ceasing and re-  
20                  moving a worst case discharge of oil or haz-  
21                  ardous substances, and for mitigating or pre-  
22                  venting a substantial threat of such a dis-  
23                  charge.

24                  “(B) RULEMAKING.—Not later than 2  
25                  years after the date of enactment of this para-

graph, the President, after providing notice and an opportunity for public comment, shall issue a final rule to—

“(i) revise the procedures and standards for ceasing and removing a worst case discharge of oil or hazardous substances, and for mitigating or preventing a substantial threat of such a discharge; and

“(ii) develop a metric for evaluating the National Contingency Plan, Area Contingency Plans, and tank vessel, nontank vessel, and facility response plans consistent with the procedures and standards developed pursuant to this paragraph.

“(7) FEES.—

“(A) GENERAL AUTHORITY AND FEES.— Subject to subparagraph (B), the Administrator shall establish a schedule of fees to be collected from the manufacturer of a dispersant, chemical, or spill mitigating substance or device to offset the costs of the Administrator associated with evaluating the use of the dispersant, chemical, substance, or device in accordance with this subsection and listing the dispersant, chem-

1           ical, substance, or device on the schedule under  
2           paragraph (2)(G).

3           “(B) LIMITATION ON COLLECTION.—No  
4           fee may be collected under this subsection un-  
5           less the expenditure of the fee to pay the costs  
6           of activities and services for which the fee is im-  
7           posed is provided for in advance in an appro-  
8           priations Act.

9           “(C) FEES CREDITED AS OFFSETTING  
10          COLLECTIONS.—

11           “(i) IN GENERAL.—Notwithstanding  
12          section 3302 of title 31, United States  
13          Code, any fee authorized to be collected  
14          under this paragraph shall—

15           “(I) be credited as offsetting col-  
16          lections to the account that finances  
17          the activities and services for which  
18          the fee is imposed;

19           “(II) be available for expenditure  
20          only to pay the costs of activities and  
21          services for which the fee is imposed,  
22          including all costs associated with col-  
23          lecting such fees; and

24           “(III) remain available until ex-  
25          pended.

1 “(ii) CONTINUING APPROPRIATIONS.—

2 The Administrator may continue to assess,  
3 collect, and spend fees established under  
4 this section during any period in which the  
5 funding for the Environmental Protection  
6 Agency is provided under an Act providing  
7 continuing appropriations in lieu of the  
8 Administration’s regular appropriations.

9 “(iii) ADJUSTMENTS.—The Adminis-  
10 trator shall adjust the fees established by  
11 subparagraph (A) periodically to ensure  
12 that each of the fees required by subpara-  
13 graph (A) is reasonably related to the Ad-  
14 ministration’s costs, as determined by the  
15 Administrator, of performing the activity  
16 for which the fee is imposed.”.

17 (c) TEMPORARY MORATORIUM ON APPROVAL OF USE  
18 OF DISPERSANTS.—

19 (1) IN GENERAL.—Subject to paragraph (2),  
20 the Administrator of the Environmental Protection  
21 Agency may not approve the use of a dispersant  
22 under section 311(d) of the Oil Pollution Act of  
23 1990 (33 U.S.C. 1321(d)), and shall withdraw any  
24 approval of such use made before the date of enact-  
25 ment of this Act, until the date on which the rule-

1 making and study required by subparagraphs (A)  
2 and (D) of section 311(d)(5) of such Act (as added  
3 by subsection (b) of this section) are complete.

4 (2) **CONDITIONAL APPROVAL.**—The Adminis-  
5 trator may approve the use of a dispersant under  
6 section 311(d) of such Act (33 U.S.C. 1321(d)) for  
7 the period of time before the date on which the rule-  
8 making and study required by subparagraphs (A)  
9 and (D) of section 311(d)(5) of such Act (as added  
10 by subsection (b) of this section) are complete if the  
11 Administrator determines that such use will not  
12 have a negative impact on water quality, the envi-  
13 ronment, or any other factor the Administrator de-  
14 termines appropriate.

15 (3) **INFORMATION.**—In approving the use of a  
16 dispersant under paragraph (2), the Administrator  
17 may require the manufacturer of the dispersant to  
18 provide such information as the Administrator deter-  
19 mines necessary to satisfy the requirements of that  
20 paragraph.

21 (d) **INCLUSION OF CONTAINMENT BOOMS IN AREA**  
22 **CONTINGENCY PLANS.**—Section 311(j)(4)(C)(iv) of such  
23 Act (33 U.S.C. 1321(j)(4)(C)(iv)) is amended by striking  
24 “(including firefighting equipment)” and inserting “(in-  
25 cluding firefighting equipment and containment booms)”.

1 **SEC. 716. TRACKING DATABASE.**

2 Section 311(b) of the Federal Water Pollution Con-  
3 trol Act (33 U.S.C. 1321(b)) is amended by adding at the  
4 end the following:

5 “(13) TRACKING DATABASE.—

6 “(A) IN GENERAL.—The President shall  
7 create a database to track all discharges of oil  
8 or hazardous substances—

9 “(i) into the waters of the United  
10 States, onto adjoining shorelines, or into or  
11 upon the waters of the contiguous zone;

12 “(ii) in connection with activities  
13 under the Outer Continental Shelf Lands  
14 Act (43 U.S.C. 1331 et seq.) or the Deep-  
15 water Port Act of 1974 (33 U.S.C. 1501  
16 et seq.); or

17 “(iii) which may affect natural re-  
18 sources belonging to, appertaining to, or  
19 under the exclusive management authority  
20 of the United States (including resources  
21 under the Fishery Conservation and Man-  
22 agement Act of 1976 (16 U.S.C. 1801 et  
23 seq.)).

24 “(B) REQUIREMENTS.—The database  
25 shall—

26 “(i) include—

1           “(I) the name of the vessel or fa-  
2           cility;

3           “(II) the name of the owner, op-  
4           erator, or person in charge of the ves-  
5           sel or facility;

6           “(III) the date of the discharge;

7           “(IV) the volume of the dis-  
8           charge;

9           “(V) the location of the dis-  
10          charge, including an identification of  
11          any receiving waters that are or could  
12          be affected by the discharge;

13          “(VI) the type, volume, and loca-  
14          tion of the use of any dispersant,  
15          other chemical, or other spill miti-  
16          gating substance used in any removal  
17          action;

18          “(VII) a record of any deter-  
19          mination of a violation of this section  
20          or liability under section 1002 of the  
21          Oil Pollution Act of 1990 (33 U.S.C.  
22          2702);

23          “(VIII) a record of any enforce-  
24          ment action taken against the owner,  
25          operator, or person in charge; and



1 “(IX) any additional information  
2 that the President determines nec-  
3 essary;

4 “(ii) use data provided by the Envi-  
5 ronmental Protection Agency, the Coast  
6 Guard, and other appropriate Federal  
7 agencies;

8 “(iii) use data protocols developed and  
9 managed by the Environmental Protection  
10 Agency; and

11 “(iv) be publicly accessible, including  
12 by electronic means.”.

13 **SEC. 717. EVALUATION AND APPROVAL OF RESPONSE**  
14 **PLANS; MAXIMUM PENALTIES.**

15 (a) AGENCY REVIEW OF RESPONSE PLANS.—

16 (1) LEAD FEDERAL AGENCY FOR REVIEW OF  
17 RESPONSE PLANS.—Section 311(j)(5)(A) of the Fed-  
18 eral Water Pollution Control Act (33 U.S.C.  
19 1321(j)(5)(A)) is amended by adding at the end the  
20 following:

21 “(iii) In issuing the regulations under this para-  
22 graph, the President shall ensure that—

23 “(I) the owner, operator, or person in  
24 charge of a tank vessel, nontank vessel, or off-  
25 shore facility described in subparagraph (C) will

1 not be considered to have complied with this  
2 paragraph until the owner, operator, or person  
3 in charge submits a plan under clause (i) or  
4 (ii), as appropriate, to the Secretary of the de-  
5 partment in which the Coast Guard is oper-  
6 ating, the Secretary of the Interior, or the Ad-  
7 ministrator, with respect to such offshore facili-  
8 ties as the President may designate, and the  
9 Secretary or Administrator, as appropriate, de-  
10 termines and notifies the owner, operator, or  
11 person in charge that the plan, if implemented,  
12 will provide an adequate response to a worst  
13 case discharge of oil or a hazardous substance  
14 or a substantial threat of such a discharge; and

15 “(II) the owner, operator, or person in  
16 charge of an onshore facility described in sub-  
17 paragraph (C)(iv) will not be considered to have  
18 complied with this paragraph until the owner,  
19 operator, or person in charge submits a plan  
20 under clause (i) either to the Secretary of  
21 Transportation, with respect to transportation-  
22 related onshore facilities, or the Administrator,  
23 with respect to all other onshore facilities, and  
24 the Secretary or Administrator, as appropriate,  
25 determines and notifies the owner, operator, or

1 person in charge that the plan, if implemented,  
2 will provide an adequate response to a worst-  
3 case discharge of oil or a hazardous substance  
4 or a substantial threat of such a discharge.

5 “(iv)(I) The Secretary of the department in  
6 which the Coast Guard is operating, the Secretary of  
7 the Interior, the Secretary of Transportation, or the  
8 Administrator, as appropriate, shall require that a  
9 plan submitted to the Secretary or Administrator for  
10 a vessel or facility under clause (iii)(I) or (iii)(II) by  
11 an owner, operator, or person in charge—

12 “(aa) contain a probabilistic risk analysis  
13 for all critical engineered systems of the vessel  
14 or facility; and

15 “(bb) adequately address all risks identi-  
16 fied in the risk analysis.

17 “(II) The Secretary or Administrator, as appro-  
18 priate, shall require that a risk analysis developed  
19 under subclause (I) include, at a minimum, the fol-  
20 lowing:

21 “(aa) An analysis of human factors risks,  
22 including both organizational and management  
23 failure risks.

1           “(bb) An analysis of technical failure risks,  
2           including both component technologies and inte-  
3           grated systems risks.

4           “(cc) An analysis of interactions between  
5           humans and critical engineered systems.

6           “(dd) Quantification of the likelihood of  
7           modes of failure and potential consequences.

8           “(ee) A description of methods for reduc-  
9           ing known risks.

10          “(III) The Secretary or Administrator, as ap-  
11          propriate, shall require an owner, operator, or per-  
12          son in charge that develops a risk analysis under  
13          subclause (I) to make the risk analysis available to  
14          the public.”.

15          (2) REVIEW AND APPROVAL OF RESPONSE  
16          PLANS.—Section 311(j)(5)(E) of such Act (33  
17          U.S.C. 1321(j)(5)(E)) is amended to read as follows:

18               “(E) With respect to any response plan sub-  
19               mitted under this paragraph for an onshore facility  
20               that, because of its location, could reasonably be ex-  
21               pected to cause significant and substantial harm to  
22               the environment by discharging into or on the navi-  
23               gable waters or adjoining shorelines or the exclusive  
24               economic zone, and with respect to each response  
25               plan submitted under this paragraph for a tank ves-

1 sel, nontank vessel, or offshore facility, the President  
2 shall—

3 “(i) promptly review the response plan;

4 “(ii) verify that the response plan complies  
5 with subparagraph (A)(iv), relating to risk anal-  
6 yses;

7 “(iii) with respect to a plan for an offshore  
8 or onshore facility or a tank vessel that carries  
9 liquefied natural gas, provide an opportunity for  
10 public notice and comment on the response  
11 plan;

12 “(iv) taking into consideration any public  
13 comments received and other appropriate fac-  
14 tors, as determined by the President, require  
15 revisions to the response plan;

16 “(v) approve, approve with revisions, or  
17 disapprove the response plan;

18 “(vi) review the response plan periodically  
19 thereafter, and if applicable requirements are  
20 not met, acting through the head of the appro-  
21 priate Federal department or agency—

22 “(I) issue administrative orders di-  
23 recting the owner, operator, or person in  
24 charge to comply with the response plan or  
25 any regulation issued under this section; or

1                   “(II) assess civil penalties or conduct  
2                   other appropriate enforcement actions in  
3                   accordance with subsections (b)(6), (b)(7),  
4                   and (b)(8) for failure to develop, submit,  
5                   receive approval of, adhere to, or maintain  
6                   the capability to implement the response  
7                   plan, or failure to comply with any other  
8                   requirement of this section;

9                   “(vii) acting through the head of the ap-  
10                  propriate Federal department or agency, con-  
11                  duct, at a minimum, biennial inspections of the  
12                  tank vessel, nontank vessel, or facility to ensure  
13                  compliance with the response plan or identify  
14                  deficiencies in such plan;

15                  “(viii) acting through the head of the ap-  
16                  propriate Federal department or agency, make  
17                  the response plan available to the public, includ-  
18                  ing on the Internet; and

19                  “(ix) in the case of a plan for a nontank  
20                  vessel, consider any applicable State-mandated  
21                  response plan in effect on the date of enactment  
22                  of the Coast Guard and Maritime Transpor-  
23                  tation Act of 2004 and ensure consistency to  
24                  the extent practicable.”.

1           (3) BIENNIAL REPORT.—Section 311(j)(5) of  
2       such Act (33 U.S.C. 1321(j)(5)) is amended by add-  
3       ing at the end the following:

4           “(J) Not later than 2 years after the date of  
5       enactment of this subparagraph, and biennially  
6       thereafter, the President, acting through the Admin-  
7       istrator, the Secretary of the department in which  
8       the Coast Guard is operating, and the Secretary of  
9       Transportation, shall submit to Congress a report  
10      containing the following information for each owner,  
11      operator, or person in charge that submitted a re-  
12      sponse plan for a tank vessel, nontank vessel, or fa-  
13      cility under this paragraph:

14           “(i) The number of response plans ap-  
15      proved, disapproved, or approved with revisions  
16      under subparagraph (E) annually for tank ves-  
17      sels, nontank vessels, and facilities of the  
18      owner, operator, or person in charge.

19           “(ii) The number of inspections conducted  
20      under subparagraph (E) annually for tank ves-  
21      sels, nontank vessels, and facilities of the  
22      owner, operator, or person in charge.

23           “(iii) A summary of each administrative or  
24      enforcement action concluded with respect each  
25      tank vessel, nontank vessel, and facility of the

owner, operator, or person in charge, including a description of the violation, the date of violation, the amount of each penalty proposed, and the final assessment of each penalty and an explanation for any reduction in a penalty.”.

(4) ADMINISTRATIVE PROVISIONS FOR FACILITIES.—Section 311(m)(2) of such Act (33 U.S.C. 1321(m)(2)) is amended in each of subparagraphs (A) and (B) by inserting “, the Secretary of Transportation,” before “or the Secretary of the department in which the Coast Guard is operating”.

(b) PENALTIES.—

(1) ADMINISTRATIVE PENALTIES.—

(A) AUTHORITY OF SECRETARY OF TRANSPORTATION TO ASSESS PENALTIES.—Section 311(b)(6)(A) of such Act (33 U.S.C. 1321(b)(6)(A)) is amended by inserting “, the Secretary of Transportation,” before “or the Administrator”.

(B) ADMINISTRATIVE PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 311(b)(6)(A) of such Act (33 U.S.C. 1321(b)(6)(A)) is further amended—



1 (i) in clause (i) by striking “para-  
2 graph (3), or” and inserting “paragraph  
3 (3),”;

4 (ii) in clause (ii) by striking “any reg-  
5 ulation issued under subsection (j)” and  
6 inserting “any order or action required by  
7 the President under subsection (c) or (e)  
8 or any regulation issued under subsection  
9 (d) or (j)”;

10 (iii) by redesignating clause (ii) as  
11 clause (iii);

12 (iv) by inserting after clause (i) the  
13 following:

14 “(ii) who fails to provide notice to the  
15 appropriate Federal agency pursuant to  
16 paragraph (5), or”; and

17 (v) by adding at the end the following:  
18 “Whenever the President delegates the au-  
19 thority to issue regulations under sub-  
20 section (j), the head of the agency who  
21 issues regulations pursuant to that author-  
22 ity shall have the authority to assess a civil  
23 penalty in accordance with this section for  
24 violations of such regulations.”.

1 (C) PENALTY AMOUNTS.—Section  
2 311(b)(6)(B) of such Act (33 U.S.C.  
3 1321(b)(6)(B)) is amended—

4 (i) in clause (i)—

5 (I) by striking “\$10,000” and in-  
6 serting “\$100,000”; and

7 (II) by striking “\$25,000” and  
8 inserting “\$250,000”; and

9 (ii) in clause (ii)—

10 (I) by striking “\$10,000” and in-  
11 serting “\$100,000”; and

12 (II) by striking “\$125,000” and  
13 inserting “\$1,000,000”.

14 (2) CIVIL PENALTIES.—Section 311(b)(7) of  
15 such Act (33 U.S.C. 1321(b)(7)) is amended—

16 (A) in subparagraph (A)—

17 (i) by striking “\$25,000” and insert-  
18 ing “\$100,000”; and

19 (ii) by striking “\$1,000” and insert-  
20 ing “\$2,500”;

21 (B) in subparagraph (B)—

22 (i) by striking “described in subpara-  
23 graph (A)”;

24 (ii) in clause (i) by striking “carry out  
25 removal of the discharge under an order of

1 the President pursuant to subsection (c);  
2 or” and inserting “comply with any order  
3 or action required by the President pursu-  
4 ant to subsection (c),”;

5 (iii) in clause (ii) by striking  
6 “(1)(B)”;

7 (iv) by redesignating clause (ii) as  
8 clause (iii);

9 (v) by inserting after clause (i) the  
10 following:

11 “(ii) fails to provide notice to the ap-  
12 propriate Federal agency pursuant to para-  
13 graph (5), or”; and

14 (vi) by striking “\$25,000” and insert-  
15 ing “\$100,000”;

16 (C) in subparagraph (C)—

17 (i) by striking “(j)” and inserting “(d)  
18 or (j)”;

19 (ii) by striking “\$25,000” and insert-  
20 ing “\$100,000”; and

21 (iii) by adding at the end the fol-  
22 lowing: “Whenever the President delegates  
23 the authority to issue regulations under  
24 subsection (j), the head of the agency who  
25 issues regulations pursuant to that author-

1           ity shall have the authority to seek injunc-  
2           tive relief or assess a civil penalty in ac-  
3           cordance with this section for violations of  
4           such regulations and the authority to refer  
5           the matter to the Attorney General for ac-  
6           tion under subparagraph (E).”;

7           (D) in subparagraph (D)—

8                 (i) by striking “\$100,000” and insert-  
9                 ing “\$300,000”; and

10                (ii) by striking “\$3,000” and insert-  
11                ing “\$7,500”; and

12           (E) in subparagraph (E) by adding at the  
13           end the following: “The court may award ap-  
14           propriate relief, including a temporary or per-  
15           manent injunction, civil penalties, and punitive  
16           damages.”.

17           (3) APPLICABILITY.—The amendments made  
18           by this subsection apply to—

19                 (A) any claim arising from an event occur-  
20                 ring after the date of enactment of this Act;  
21                 and

22                 (B) any claim arising from an event occur-  
23                 ring before such date of enactment, if the claim  
24                 is brought within the limitations period applica-  
25                 ble to the claim.

1       (c) CLARIFICATION OF FEDERAL REMOVAL AUTHOR-  
2     ITY.—Section 311(c)(1)(B)(ii) of such Act (33 U.S.C.  
3     1321(c)(1)(B)(ii)) is amended by striking “direct” and in-  
4     serting “direct, including through the use of an adminis-  
5     trative order,”.

6     **SEC. 718. OIL AND HAZARDOUS SUBSTANCE CLEANUP**  
7                   **TECHNOLOGIES.**

8       Section 311(j) of the Federal Water Pollution Control  
9     Act (33 U.S.C. 1321(j)) is amended by adding at the end  
10    the following:

11               “(9) OIL AND HAZARDOUS SUBSTANCE CLEAN-  
12       UP TECHNOLOGIES.—The President, acting through  
13       the Secretary of the department in which the Coast  
14       Guard is operating, shall—

15               “(A) in coordination with the Secretary of  
16       the Interior and the heads of other appropriate  
17       Federal agencies, establish a process for—

18               “(i) quickly and effectively soliciting,  
19       assessing, and deploying offshore oil and  
20       hazardous substance cleanup technologies  
21       in the event of a discharge or substantial  
22       threat of a discharge of oil or a hazardous  
23       substance; and

24               “(ii) effectively coordinating with  
25       other appropriate agencies, industry, aca-

demia, small businesses, and others to ensure the best technology available is implemented in the event of such a discharge or threat; and

“(B) in coordination with the Secretary of the Interior and the heads of other appropriate Federal agencies, maintain a database on best available oil and hazardous substance cleanup technologies in the event of a discharge or substantial threat of a discharge of oil or a hazardous substance.”.

**SEC. 719. IMPLEMENTATION OF OIL SPILL PREVENTION  
AND RESPONSE AUTHORITIES.**

Section 311(l) of the Federal Water Pollution Control Act (33 U.S.C. 1321(l)) is amended—

(1) by striking “(l) The President” and inserting the following:

“(l) DELEGATION AND IMPLEMENTATION.—

“(1) DELEGATION.—The President”; and

(2) by adding at the end the following:

“(2) ENVIRONMENTAL PROTECTION AGENCY.—

“(A) IN GENERAL.—The President shall delegate the responsibilities under subparagraph (B) to the Administrator.

1           “(B) RESPONSIBILITIES.—With respect to  
2           onshore facilities (other than transportation-re-  
3           lated facilities) and such offshore facilities as  
4           the President may designate, the Administrator  
5           shall ensure that Environmental Protection  
6           Agency personnel develop and maintain oper-  
7           ational capability—

8                   “(i) for effective inspection, moni-  
9                   toring, prevention, preparedness, and re-  
10                  sponse authorities related to the discharge  
11                  or substantial threat of a discharge of oil  
12                  or a hazardous substance;

13                  “(ii) to protect water quality and the  
14                  environment from impacts of a discharge  
15                  or substantial threat of a discharge of oil  
16                  or a hazardous substance; and

17                  “(iii) to review and approve of, dis-  
18                  approve of, or require revisions (if nec-  
19                  essary) to facility response plans and to  
20                  carry out all other responsibilities under  
21                  subsection (j)(5)(E).

22           “(3) COAST GUARD.—

23                   “(A) IN GENERAL.—The President shall  
24           delegate the responsibilities under subparagraph

1 (B) to the Secretary of the department in which  
2 the Coast Guard is operating.

3 “(B) RESPONSIBILITIES.—The Secretary  
4 shall ensure that Coast Guard personnel de-  
5 velop and maintain operational capability—

6 “(i) to establish and enforce regula-  
7 tions and standards for procedures, meth-  
8 ods, equipment, and other requirements to  
9 prevent and to contain a discharge of oil or  
10 a hazardous substance from a tank vessel  
11 or nontank vessel or such an offshore facil-  
12 ity as the President may designate;

13 “(ii) to establish and enforce regula-  
14 tions, and to carry out all other respon-  
15 sibilities, under subsection (j)(5) with re-  
16 spect to such vessels and offshore facilities  
17 as the President may designate; and

18 “(iii) to protect the environment and  
19 natural resources from impacts of a dis-  
20 charge or substantial threat of a discharge  
21 of oil or a hazardous substance from such  
22 vessels and offshore facilities as the Presi-  
23 dent may designate.

24 “(C) ROLE AS FIRST RESPONDER.—



1           “(i) IN GENERAL.—The responsibil-  
2           ities delegated to the Secretary under sub-  
3           paragraph (B) shall be sufficient to allow  
4           the Coast Guard to act as a first responder  
5           to a discharge or substantial threat of a  
6           discharge of oil or a hazardous substance  
7           from a tank vessel, nontank vessel, or off-  
8           shore facility.

9           “(ii) CAPABILITIES.—The President  
10          shall ensure that the Coast Guard has suf-  
11          ficient personnel and resources to act as a  
12          first responder as described in clause (i),  
13          including the resources necessary for on-  
14          going training of personnel, acquisition of  
15          equipment (including containment booms,  
16          dispersants, and skimmers), and  
17          prepositioning of equipment.

18          “(D) CONTRACTS.—The Secretary may  
19          enter into contracts with private and nonprofit  
20          organizations for personnel and equipment in  
21          carrying out the responsibilities delegated to the  
22          Secretary under subparagraph (B).

23          “(4) DEPARTMENT OF TRANSPORTATION.—

1           “(A) IN GENERAL.—The President shall  
2           delegate the responsibilities under subparagraph  
3           (B) to the Secretary of Transportation.

4           “(B) RESPONSIBILITIES.—The Secretary  
5           of Transportation shall—

6                   “(i) establish and enforce regulations  
7                   and standards for procedures, methods,  
8                   equipment, and other requirements to pre-  
9                   vent and to contain discharges of oil and  
10                  hazardous substances from transportation-  
11                  related onshore facilities;

12                  “(ii) have the authority to review and  
13                  approve of, disapprove of, or require revi-  
14                  sions (if necessary) to transportation-re-  
15                  lated onshore facility response plans and to  
16                  carry out all other responsibilities under  
17                  subsection (j)(5)(E); and

18                  “(iii) ensure that Department of  
19                  Transportation personnel develop and  
20                  maintain operational capability—

21                   “(I) for effective inspection, mon-  
22                   itoring, prevention, preparedness, and  
23                   response authorities related to the dis-  
24                   charge or substantial threat of a dis-  
25                   charge of oil or a hazardous substance

1 from a transportation-related onshore  
2 facility; and

3 “(II) to protect the environment  
4 and natural resources from the im-  
5 pacts of a discharge or substantial  
6 threat of a discharge of oil or a haz-  
7 ardous substance from a transpor-  
8 tation-related onshore facility.

9 “(5) DEPARTMENT OF THE INTERIOR.—

10 “(A) IN GENERAL.—The President shall  
11 delegate the responsibilities under subparagraph  
12 (B) to the Secretary of the Interior.

13 “(B) RESPONSIBILITIES.—The Secretary  
14 of the Interior shall—

15 “(i) establish and enforce regulations  
16 and standards for procedures, methods,  
17 equipment, and other requirements to pre-  
18 vent and to contain discharges of oil and  
19 hazardous substances from such offshore  
20 facilities as the President may designate;

21 “(ii) establish and enforce regulations  
22 to carry out all other responsibilities under  
23 subsection (j)(5) for such offshore facilities  
24 as the President may designate;

“(iii) have the authority to review and approve of, disapprove of, or require revisions (if necessary) to offshore facility response plans under subsection (j)(5) for such offshore facilities as the President may designate; and

“(iv) ensure that Department of the Interior personnel develop and maintain operational capability for effective inspection, monitoring, prevention, and preparedness authorities related to the discharge or a substantial threat of a discharge of oil or hazardous material from such offshore facilities as the President may designate.”.

**SEC. 720. IMPACTS TO INDIAN TRIBES AND PUBLIC SERVICE DAMAGES.**

(a) IN GENERAL.—Section 1002(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2702(b)(2)) is amended—

(1) in subparagraph (D) by striking “or a political subdivision thereof” and inserting “a political subdivision of a State, or an Indian tribe”; and

(2) in subparagraph (F) by striking “by a State” and all that follows before the period and inserting “the United States, a State, a political subdivision of a State, or an Indian tribe”.

1 (b) APPLICABILITY.—The amendments made by this  
2 section apply to—

3 (1) any claim arising from an event occurring  
4 after the date of enactment of this Act; and

5 (2) any claim arising from an event occurring  
6 before such date of enactment, if the claim is  
7 brought within the limitations period applicable to  
8 the claim.

9 **SEC. 721. FEDERAL ENFORCEMENT ACTIONS.**

10 Section 309(g)(6)(A) of the Federal Water Pollution  
11 Control Act (33 U.S.C. 1319(g)(6)(A)) is amended by  
12 striking “or section 311(b)”.

13 **SEC. 722. TIME REQUIRED BEFORE ELECTING TO PROCEED**  
14 **WITH JUDICIAL CLAIM OR AGAINST THE**  
15 **FUND.**

16 Paragraph (2) of section 1013(c) of the Oil Pollution  
17 Act of 1990 (33 U.S.C. 2713(c)) is amended by striking  
18 “90” and inserting “45”.

19 **SEC. 723. AUTHORIZED LEVEL OF COAST GUARD PER-**  
20 **SONNEL.**

21 The authorized end-of-year strength for active duty  
22 personnel of the Coast Guard for fiscal year 2011 is here-  
23 by increased by 300 personnel, above any other level au-  
24 thorized by law, for implementing the activities of the

1 Coast Guard under this title, including the amendments  
2 made by this title.

3 **SEC. 724. CLARIFICATION OF MEMORANDUMS OF UNDER-**  
4 **STANDING.**

5 Not later than September 30, 2011, the President  
6 (acting through the head of the appropriate Federal de-  
7 partment or agency) shall implement or revise, as appro-  
8 priate, memorandums of understanding to clarify the roles  
9 and jurisdictional responsibilities of the Environmental  
10 Protection Agency, the Coast Guard, the Department of  
11 the Interior, the Department of Transportation, and other  
12 Federal agencies relating to the prevention of oil dis-  
13 charges from tank vessels, nontank vessels, and facilities  
14 subject to the Oil Pollution Act of 1990.

15 **SEC. 725. BUILD AMERICA REQUIREMENT FOR OFFSHORE**  
16 **FACILITIES.**

17 (a) IN GENERAL.—Title VI of the Oil Pollution Act  
18 of 1990 (33 U.S.C. 2751 et seq.) is amended by adding  
19 at the end the following:

20 **“SEC. 6005. BUILD AMERICA REQUIREMENT FOR OFFSHORE**  
21 **FACILITIES.**

22 “(a) BUILD AMERICA REQUIREMENT.—Except as  
23 provided by subsection (b), a person may not use an off-  
24 shore facility to engage in support of exploration, develop-  
25 ment, or production of oil or natural gas in, on, above,

1 or below the exclusive economic zone unless the facility  
2 was built in the United States, including construction of  
3 any major component of the hull or superstructure of the  
4 facility.

5 “(b) WAIVER AUTHORITY.—A person seeking to  
6 charter an offshore facility in the exclusive economic zone  
7 may seek a waiver of subsection (a). The Secretary may  
8 waive subsection (a) if the Secretary, in consultation with  
9 the Secretary of the Interior and the Secretary of Trans-  
10 portation, finds that—

11 “(1) the offshore facility was built in a foreign  
12 country and is under contract, on the date of enact-  
13 ment of this section, in support of exploration, devel-  
14 opment, or production of oil or natural gas in, on,  
15 above, or below the exclusive economic zone;

16 “(2) an offshore facility built in the United  
17 States is not available within a reasonable period of  
18 time, as defined in subsection (e), or of sufficient  
19 quality to perform drilling operations required under  
20 a contract; or

21 “(3) an emergency requires the use of an off-  
22 shore facility built in a foreign country.

23 “(c) WRITTEN JUSTIFICATION AND PUBLIC NOTICE  
24 OF NONAVAILABILITY WAIVER.—When issuing a waiver  
25 based on a determination under subsection (b)(2), the Sec-

1   retary shall issue a detailed written justification as to why  
 2   the waiver meets the requirement of such subsection. The  
 3   Secretary shall publish the justification in the Federal  
 4   Register and provide the public with 45 days for notice  
 5   and comment.

6       “(d) FINAL DECISION.—The Secretary shall approve  
 7   or deny any waiver request submitted under subsection (b)  
 8   not later than 90 days after the date of receipt of the re-  
 9   quest.

10       “(e) REASONABLE PERIOD OF TIME DEFINED.—For  
 11   purposes of subsection (b)(2), the term ‘reasonable period  
 12   of time’ means the time needed for a person seeking to  
 13   charter an offshore facility in the exclusive economic zone  
 14   to meet the requirements in the primary term of the per-  
 15   son’s lease.”.

16       (b) CLERICAL AMENDMENT.—The table of contents  
 17   contained in section 2 of such Act is amended by inserting  
 18   after the item relating to section 6004 the following:

“Sec. 6005. Build America requirement for offshore facilities.”.

19   **SEC. 726. OIL SPILL RESPONSE VESSEL DATABASE.**

20       (a) REQUIREMENT.—Not later than 90 days after the  
 21   date of enactment of this Act, the Commandant of the  
 22   Coast Guard shall complete an inventory of all vessels op-  
 23   erating in the waters of the United States that are capable  
 24   of meeting oil spill response needs designated in the Na-  
 25   tional Contingency Plan authorized by section 311(d) of



1 the Federal Water Pollution Control Act (33 U.S.C.  
2 1321(d)).

3 (b) CATEGORIZATION.—The inventory required under  
4 subsection (a) shall categorize such vessels by capabilities,  
5 type, function, and location.

6 (c) MAINTENANCE OF DATABASE.—The Com-  
7 mandant shall maintain a database containing the results  
8 of the inventory required under subsection (a) and update  
9 the information in the database on no less than a quar-  
10 terly basis.

11 (d) AVAILABILITY.—The Commandant may make in-  
12 formation regarding the location and capabilities of oil  
13 spill response vessels available to a Federal On-Scene Co-  
14 ordinator designated under section 311 of such Act (33  
15 U.S.C. 1321) to assist in the response to an oil spill or  
16 other incident in the waters of the United States.

17 **SEC. 727. OFFSHORE SENSING AND MONITORING SYSTEMS.**

18 (a) REQUIREMENT.—Subtitle A of title IV of the Oil  
19 Pollution Act of 1990 is amended by adding at the end  
20 the following new section:

21 **“SEC. 4119. OFFSHORE SENSING AND MONITORING SYS-**  
22 **TEMS.**

23 “(a) IN GENERAL.—The equipment required to be  
24 available under section 311(j)(5)(D)(iii) of the Federal  
25 Water Pollution Control Act for facilities listed in section

1 311(j)(5)(C)(iii) of such Act and located in more than 500  
2 feet of water includes sensing and monitoring systems that  
3 meet the requirements of this section.

4 “(b) SYSTEMS REQUIREMENTS.—Sensing and moni-  
5 toring systems required under subsection (a) shall—

6 “(1) use an integrated, modular, expandable,  
7 multi-sensor, open-architecture design and tech-  
8 nology with interoperable capability;

9 “(2) be capable of—

10 “(A) operating for at least 25 years;

11 “(B) real-time physical, biological, geologi-  
12 cal, and environmental monitoring;

13 “(C) providing alerts in the event of anom-  
14 alous circumstances;

15 “(D) providing docking bases to accommo-  
16 date spatial sensors for remote inspection and  
17 monitoring; and

18 “(E) collecting chemical boundary condi-  
19 tion data for drift and flow modeling; and

20 “(3) include—

21 “(A) an uninterruptible power source;

22 “(B) a spatial sensor;

23 “(C) secure Internet access to real-time  
24 physical, biological, geological, and environ-

1           mental monitoring data gathered by the system  
2           sensors; and

3           “(D) a process by which such observation  
4           data and information will be made available to  
5           Federal Regulators and to the system estab-  
6           lished under section 12304 of Public Law 111-  
7           11 (33 U.S.C. 3603).”.

8           (b) REQUEST FOR INFORMATION.—Within 60 days  
9   after the date of enactment of this Act, the Secretary of  
10 the department in which the Coast Guard is operating  
11 shall issue a request for information to determine the most  
12 capable and efficient domestic systems that meet the re-  
13 quirements under section 4119 of the Oil Pollution Act  
14 of 1990, as amended by this section.

15          (c) IMPLEMENTING REGULATIONS.—Within 180  
16 days after the date of enactment of this Act, the Secretary  
17 of the department in which the Coast Guard is operating  
18 shall issue regulations to implement section 4119 of the  
19 Oil Pollution Act of 1990 as amended by this section.

20          (d) CLERICAL AMENDMENT.—The table of contents  
21 in section 2 of the Oil Pollution Act of 1990 is amended  
22 by adding at the end of the items relating to such subtitle  
23 the following new item:

“Sec. 4119. Offshore sensing and monitoring systems.”.

1 **SEC. 728. OIL AND GAS EXPLORATION AND PRODUCTION.**

2 Section 502 of the Federal Water Pollution Control  
3 Act (33 U.S.C. 1362) is amended—

4 (1) by striking paragraph (24); and

5 (2) by redesignating paragraph (25) as para-  
6 graph (24).

7 **SEC. 729. LEAVE RETENTION AUTHORITY.**

8 (a) IN GENERAL.—Chapter 11 of title 14, United  
9 States Code, is amended by inserting after section 425 the  
10 following:

11 **“§ 426. Emergency leave retention authority**

12 “(a) IN GENERAL.—A duty assignment for an active  
13 duty member of the Coast Guard in support of a declara-  
14 tion of a major disaster or emergency by the President  
15 under the Robert T. Stafford Disaster Relief and Emer-  
16 gency Assistance Act (42 U.S.C. 5121 et seq.) or in re-  
17 sponse to a spill of national significance shall be treated,  
18 for the purpose of section 701(f)(2) of title 10, as a duty  
19 assignment in support of a contingency operation.

20 “(b) DEFINITIONS.—In this section:

21 “(1) SPILL OF NATIONAL SIGNIFICANCE.—The  
22 term ‘spill of national significance’ means a dis-  
23 charge of oil or a hazardous substance that is de-  
24 clared by the Commandant to be a spill of national  
25 significance.

1           “(2) DISCHARGE.—The term ‘discharge’ has  
2           the meaning given that term in section 1001 of the  
3           Oil Pollution Act of 1990 (33 U.S.C. 2701).”.

4           (b) CLERICAL AMENDMENT.—The analysis for such  
5 chapter is amended by inserting after the item relating  
6 to section 425 the following:

“426. Emergency leave retention authority.”.

7   **SEC. 730. AUTHORIZATION OF APPROPRIATIONS.**

8           (a) COAST GUARD.—In addition to amounts made  
9 available pursuant to section 1012(a)(5)(A) of the Oil Pol-  
10 lution Act of 1990 (33 U.S.C. 2712(a)(5)(A)), there is au-  
11 thorized to be appropriated to the Secretary of the depart-  
12 ment in which the Coast Guard is operating from the Oil  
13 Spill Liability Trust Fund established by section 9509 of  
14 the Internal Revenue Code of 1986 (26 U.S.C. 9509) to  
15 carry out the purposes of this title and the amendments  
16 made by this title the following:

17           (1) For fiscal year 2011, \$30,000,000.

18           (2) For each of fiscal years 2012 through 2015,  
19           \$32,000,000.

20           (b) ENVIRONMENTAL PROTECTION AGENCY.—In ad-  
21 dition to amounts made available pursuant to section 1012  
22 of the Oil Pollution Act of 1990 (33 U.S.C. 2712), there  
23 is authorized to be appropriated to the Administrator of  
24 the Environmental Protection Agency from the Oil Spill  
25 Liability Trust Fund to implement this title and the

1 amendments made by this title \$10,000,000 for each of  
2 fiscal years 2011 through 2015.

3 (c) DEPARTMENT OF TRANSPORTATION.—In addi-  
4 tion to amounts made available pursuant to section 60125  
5 of title 49, United States Code, there is authorized to be  
6 appropriated to the Secretary of Transportation from the  
7 Oil Spill Liability Trust Fund to carry out the purposes  
8 of this title and the amendments made by this title the  
9 following:

10 (1) For each of fiscal years 2011 through 2013,  
11 \$7,000,000.

12 (2) For each of fiscal years 2014 and 2015,  
13 \$6,000,000.

14 **SEC. 731. EXTENSION OF LIABILITY TO PERSONS HAVING**  
15 **OWNERSHIP INTERESTS IN RESPONSIBLE**  
16 **PARTIES.**

17 (a) DEFINITION OF RESPONSIBLE PARTY.—Section  
18 1001(32) of the Oil Pollution Act of 1990 (33 U.S.C.  
19 2701(32)) is amended by adding at the end the following:

20 “(G) PERSON HAVING OWNERSHIP INTER-  
21 EST.—Any person, other than an individual,  
22 having an ownership interest (directly or indi-  
23 rectly) in any entity described in any of sub-  
24 paragraphs (A) through (F) of more than 25  
25 percent, in the aggregate, of the total ownership

1 interests in such entity, if the assets of such en-  
2 tity are insufficient to pay the claims owed by  
3 such entity as a responsible party under this  
4 Act.”.

5 (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to an incident occurring on or after  
7 January 1, 2010.

8 **SEC. 732. CLARIFICATION OF LIABILITY UNDER OIL POLLU-**  
9 **TION ACT OF 1990.**

10 The Oil Pollution Act of 1990 is amended—

11 (1) in section 1013 (33 U.S.C. 2713), by insert-  
12 ing after subsection (d) the following:

13 “(e) LIMITATION ON RELEASE OF LIABILITY.—No  
14 release of liability in connection with compensation re-  
15 ceived by a claimant under this Act shall apply to liability  
16 for any type of harm unless—

17 “(1) the claimant presented a claim under sub-  
18 section (a) with respect to such type of harm; and

19 “(2) the claimant received compensation for  
20 such type of harm, from the responsible party or  
21 from guarantor of the source designated under sec-  
22 tion 1014(a), in connection with such release.”; and

23 (2) in section 1018 (33 U.S.C. 2718), by—

24 (A) striking “or” at the end of paragraph

25 (1);

1 (B) striking the period at the end of para-  
2 graph (2) and inserting “; and”; and

3 (C) inserting after paragraph (2) the fol-  
4 lowing:

5 “(3) with respect to a claim described in section  
6 1013(e), affect, or be construed or interpreted to af-  
7 fect or modify in any way, the obligations or liabil-  
8 ities of any person under other Federal law.”.

9 **SEC. 733. SALVAGE ACTIVITIES.**

10 Section 311 of the Federal Water Pollution Control  
11 Act (33 U.S.C. 1321) is amended—

12 (1) in subsection (a)(2)(D) by inserting “or sal-  
13 vage activities” after “removal”; and

14 (2) in subsection (c)(4)(A) by inserting “or con-  
15 ducting salvage activities” after “advice”.

16 **SEC. 734. REQUIREMENT FOR REDUNDANCY IN RESPONSE**  
17 **PLANS.**

18 (a) REQUIREMENT.—Section 311(j)(5)(D) of the  
19 Federal Water Pollution Control Act (33 U.S.C.  
20 1331(j)(5)(D)) is amended by redesignating clauses (v)  
21 and (vi) as clauses (vii) and (viii), and by inserting after  
22 clause (iv) the following new clauses:

23 “(v) include redundancies that specify  
24 response actions that will be taken if other  
25 response actions specified in the plan fail;



1 “(vi) be vetted by impartial experts;”.

2 (b) CONDITION OF PERMIT.—The Outer Continental  
3 Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by  
4 adding at the end the following new section:

5 **“SEC. 32. RESPONSE PLAN REQUIRED FOR PERMIT OR LI-**  
6 **CENSE AUTHORIZING DRILLING FOR OIL AND**  
7 **GAS.**

8 “The Secretary may not issue any license or permit  
9 authorizing drilling for oil and gas on the Outer Conti-  
10 nental Shelf unless the applicant for the license or permit  
11 has a response plan approved under section 311(j)(5)(D)  
12 of the Federal Water Pollution Control Act (33 U.S.C.  
13 1331(j)(5)(D)) for the vessel or facility that will be used  
14 to conduct such drilling.”.

## 15 **TITLE VIII—MISCELLANEOUS** 16 **PROVISIONS**

17 **SEC. 801. REPEAL OF CERTAIN TAXPAYER SUBSIDIZED**  
18 **ROYALTY RELIEF FOR THE OIL AND GAS IN-**  
19 **DUSTRY.**

20 (a) PROVISIONS RELATING TO PLANNING AREAS  
21 OFFSHORE ALASKA.—Section 8(a)(3)(B) of the Outer  
22 Continental Shelf Lands Act (43 U.S.C. 1337(a)(3)(B))  
23 is amended by striking “and in the Planning Areas off-  
24 shore Alaska” after “West longitude”.

1 (b) PROVISIONS RELATING TO NAVAL PETROLEUM  
2 RESERVE IN ALASKA.—Section 107 of the Naval Petro-  
3 leum Reserves Production Act of 1976 (as transferred, re-  
4 designated, moved, and amended by section 347 of the En-  
5 ergy Policy Act of 2005 (119 Stat. 704)) is amended—

6 (1) in subsection (i) by striking paragraphs (2)  
7 through (6); and

8 (2) by striking subsection (k).

9 **SEC. 802. CONSERVATION FEE.**

10 (a) ESTABLISHMENT.—The Secretary shall, within  
11 180 days after the date of enactment of this Act, issue  
12 regulations to establish an annual conservation fee for all  
13 oil and gas leases on Federal onshore and offshore lands.

14 (b) AMOUNT.—The amount of the fee shall be, for  
15 each barrel or barrel equivalent produced from land that  
16 is subject to a lease from which oil or natural gas is pro-  
17 duced in a calendar year, \$2 per barrel of oil and 20 cents  
18 per million BTU of natural gas in 2010 dollars.

19 (c) ASSESSMENT AND COLLECTION.—The Secretary  
20 shall assess and collect the fee established under this sec-  
21 tion.

22 (d) REGULATIONS.—The Secretary may issue regula-  
23 tions to prevent evasion of the fee under this section.

24 (e) SUNSET.—This section and the fee established  
25 under this section shall expire on December 31, 2021.

1   **SEC. 803. LEASING ON INDIAN LANDS.**

2           Nothing in this Act modifies, amends, or affects leas-  
3   ing on Indian lands as currently carried out by the Bureau  
4   of Indian Affairs.

5   **SEC. 804. OUTER CONTINENTAL SHELF STATE BOUND-**  
6                   **ARIES.**

7           (a) GENERAL.—Not later than 2 years after the date  
8   of enactment of this Act, the President, acting through  
9   the Secretary of the Interior, shall publish a final deter-  
10   mination under section 4(a)(2) of the Outer Continental  
11   Shelf Lands Act (43 U.S.C. 1333(a)(2)) of the boundaries  
12   of coastal States projected seaward to the outer margin  
13   of the Outer Continental Shelf.

14          (b) NOTICE AND COMMENT.—In determining the  
15   projected boundaries specified in subsection (a), the Sec-  
16   retary shall comply with the notice and comment require-  
17   ments under chapter 5 of title 5, United States Code.

18          (c) SAVINGS CLAUSE.—The determination and publi-  
19   cation of projected boundaries under subsection (a) shall  
20   not be construed to alter, limit, or modify the jurisdiction,  
21   control, or any other authority of the United States over  
22   the Outer Continental Shelf.

1 **SEC. 805. LIABILITY FOR DAMAGES TO NATIONAL WILDLIFE**  
2 **REFUGES.**

3 Section 4 of the National Wildlife Refuge System Ad-  
4 ministration Act of 1966 (16 U.S.C. 668dd) is amended  
5 by adding at the end the following new subsection:

6 “(p) DESTRUCTION OR LOSS OF, OR INJURY TO,  
7 REFUGE RESOURCES.—

8 “(1) LIABILITY.—

9 “(A) LIABILITY TO UNITED STATES.—Any  
10 person who destroys, causes the loss of, or in-  
11 jures any refuge resource is liable to the United  
12 States for an amount equal to the sum of—

13 “(i) the amount of the response costs  
14 and damages resulting from the destruc-  
15 tion, loss, or injury; and

16 “(ii) interest on that amount cal-  
17 culated in the manner described under sec-  
18 tion 1005 of the Oil Pollution Act of 1990  
19 (33 U.S.C. 2705).

20 “(B) LIABILITY IN REM.—Any instrumen-  
21 tality, including a vessel, vehicle, aircraft, or  
22 other equipment, that destroys, causes the loss  
23 of, or injures any refuge resource shall be liable  
24 in rem to the United States for response costs  
25 and damages resulting from such destruction,

1           loss, or injury to the same extent as a person  
2           is liable under subparagraph (A).

3           “(C) DEFENSES.—A person is not liable  
4           under this paragraph if that person establishes  
5           that—

6                   “(i) the destruction or loss of, or in-  
7                   jury to, the refuge resource was caused  
8                   solely by an act of God, an act of war, or  
9                   an act or omission of a third party, and  
10                  the person acted with due care;

11                  “(ii) the destruction, loss, or injury  
12                  was caused by an activity authorized by  
13                  Federal or State law; or

14                  “(iii) the destruction, loss, or injury  
15                  was negligible.

16           “(D) LIMITS TO LIABILITY.—Nothing in  
17           sections 30501 to 30512 or section 30706 of  
18           title 46, United States Code, shall limit the li-  
19           ability of any person under this section.

20           “(2) RESPONSE ACTIONS.—The Secretary may  
21           undertake or authorize all necessary actions to pre-  
22           vent or minimize the destruction or loss of, or injury  
23           to, refuge resources, or to minimize the imminent  
24           risk of such destruction, loss, or injury.

1           “(3) CIVIL ACTIONS FOR RESPONSE COSTS AND  
2 DAMAGES.—

3           “(A) IN GENERAL.—The Attorney General,  
4 upon request of the Secretary, may commence  
5 a civil action against any person or instrumen-  
6 tality who may be liable under paragraph (1)  
7 for response costs and damages. The Secretary,  
8 acting as trustee for refuge resources for the  
9 United States, shall submit a request for such  
10 an action to the Attorney General whenever a  
11 person may be liable for such costs or damages.

12           “(B) JURISDICTION AND VENUE.—An ac-  
13 tion under this subsection may be brought in  
14 the United States district court for any district  
15 in which—

16           “(i) the defendant is located, resides,  
17 or is doing business, in the case of an ac-  
18 tion against a person;

19           “(ii) the instrumentality is located, in  
20 the case of an action against an instru-  
21 mentality; or

22           “(iii) the destruction of, loss of, or in-  
23 jury to a refuge resource occurred.

24           “(4) USE OF RECOVERED AMOUNTS.—Response  
25 costs and damages recovered by the Secretary under

1       this subsection shall be retained by the Secretary in  
2       the manner provided for in section 107(f)(1) of the  
3       Comprehensive Environmental Response, Compensa-  
4       tion, and Liability Act of 1980 (42 U.S.C.  
5       9607(f)(1)) and used as follows:

6               “(A) RESPONSE COSTS.—Amounts recov-  
7       ered by the United States for costs of response  
8       actions and damage assessments under this  
9       subsection shall be used, as the Secretary con-  
10      siders appropriate—

11              “(i) to reimburse the Secretary or any  
12      other Federal or State agency that con-  
13      ducted those activities; and

14              “(ii) after reimbursement of such  
15      costs, to restore, replace, or acquire the  
16      equivalent of any refuge resource.

17              “(B) OTHER AMOUNTS.—All other  
18      amounts recovered shall be used, in order of  
19      priority—

20              “(i) to restore, replace, or acquire the  
21      equivalent of the refuge resources that  
22      were the subject of the action, including  
23      the costs of monitoring the refuge re-  
24      sources;

1           “(ii) to restore degraded refuge re-  
2           sources of the refuge that was the subject  
3           of the action, giving priority to refuge re-  
4           sources that are comparable to the refuge  
5           resources that were the subject of the ac-  
6           tion; and

7           “(iii) to restore degraded refuge re-  
8           sources of other refuges.

9           “(5) DEFINITIONS.—In this subsection, the  
10          term—

11           “(A) ‘damages’ includes—

12           “(i) compensation for—

13           “(I)(aa) the cost of replacing, re-  
14           storing, or acquiring the equivalent of  
15           a refuge resource; and

16           “(bb) the value of the lost use of  
17           a refuge resource pending its restora-  
18           tion or replacement or the acquisition  
19           of an equivalent refuge resource; or

20           “(II) the value of a refuge re-  
21           source if the refuge resource cannot  
22           be restored or replaced or if the equiv-  
23           alent of such resource cannot be ac-  
24           quired;



1                   “(ii) the cost of conducting damage  
2                   assessments;

3                   “(iii) the reasonable cost of moni-  
4                   toring appropriate to the injured, restored,  
5                   or replaced refuge resource; and

6                   “(iv) the cost of enforcement actions  
7                   undertaken by the Secretary in response to  
8                   the destruction or loss of, or injury to, a  
9                   refuge resource;

10                  “(B) ‘response costs’ means the costs of  
11                  actions taken or authorized by the Secretary to  
12                  minimize destruction or loss of, or injury to,  
13                  refuge resources, or to minimize the imminent  
14                  risks of such destruction, loss, or injury, includ-  
15                  ing costs related to seizure, forfeiture, storage,  
16                  or disposal arising from liability, or to monitor  
17                  ongoing effects of incidents causing such de-  
18                  struction, loss, or injury under this subsection;  
19                  and

20                  “(C) ‘refuge resource’ means any living or  
21                  nonliving resource of a refuge that contributes  
22                  to the conservation, management, and restora-  
23                  tion mission of the System, including living or  
24                  nonliving resources of a marine national monu-

1           ment that may be managed as a unit of the  
2           System.”.

3 **SEC. 806. STRENGTHENING COASTAL STATE OIL SPILL**  
4 **PLANNING AND RESPONSE.**

5       The Coastal Zone Management Act of 1972 (16  
6 U.S.C. 1451 et seq.) is amended adding at the end the  
7 following new section:

8 **“SEC. 320. STRENGTHENING COASTAL STATE OIL SPILL RE-**  
9 **SPONSE AND PLANNING.**

10       “(a) GRANTS TO STATES.—The Secretary may make  
11 grants to eligible coastal States—

12           “(1) to revise management programs approved  
13       under section 306 (16 U.S.C. 1455) to identify and  
14       implement new enforceable policies and procedures  
15       to ensure sufficient response capabilities at the State  
16       level to address the environmental, economic, and so-  
17       cial impacts of oil spills or other accidents resulting  
18       from Outer Continental Shelf energy activities with  
19       the potential to affect any land or water use or nat-  
20       ural resource of the coastal zone; and

21           “(2) to review and revise where necessary appli-  
22       cable enforceable policies within approved State  
23       management programs affecting coastal energy ac-  
24       tivities and energy to ensure that these policies are  
25       consistent with—

1           “(A) other emergency response plans and  
2           policies developed under Federal or State law;  
3           and

4           “(B) new policies and procedures developed  
5           under paragraph (1); and

6           “(3) after a State has adopted new or revised  
7           enforceable policies and procedures under para-  
8           graphs (1) and (2)—

9           “(A) the State shall submit the policies  
10          and procedures to the Secretary; and

11          “(B) the Secretary shall notify the State  
12          whether the Secretary approves or disapproves  
13          the incorporation of the policies and procedures  
14          into the State’s management program pursuant  
15          to section 306(e).

16          “(b) ELEMENTS.—New enforceable policies and pro-  
17          cedures developed by coastal States with grants awarded  
18          under this section shall consider, but not be limited to—

19               “(1) other existing emergency response plans,  
20               procedures and enforceable policies developed under  
21               other Federal or State law that affect the coastal  
22               zone;

23               “(2) identification of critical infrastructure es-  
24               sential to facilitate spill or accident response activi-  
25               ties;

1           “(3) identification of coordination, logistics and  
2           communication networks between Federal and State  
3           government agencies, and between State agencies  
4           and affected local communities, to ensure the effi-  
5           cient and timely dissemination of data and other in-  
6           formation;

7           “(4) inventories of shore locations and infra-  
8           structure and equipment necessary to respond to oil  
9           spills or other accidents resulting from Outer Conti-  
10          nental Shelf energy activities;

11          “(5) identification and characterization of sig-  
12          nificant or sensitive marine ecosystems or other  
13          areas possessing important conservation, rec-  
14          reational, ecological, historic, or aesthetic values;

15          “(6) inventories and surveys of shore locations  
16          and infrastructure capable of supporting alternative  
17          energy development; and

18          “(7) other information or actions as may be  
19          necessary.

20          “(c) GUIDELINES.—The Secretary shall, within 180  
21          days after the date of enactment of this section and after  
22          consultation with the coastal states, publish guidelines for  
23          the application for and use of grants under this section.

24          “(d) PARTICIPATION.—A coastal state shall provide  
25          opportunity for public participation in developing new en-

1 forceable policies and procedures under this section pursu-  
2 ant to sections 306(d)(1) and 306(e), especially by rel-  
3 evant Federal agencies, other coastal state agencies, local  
4 governments, regional organizations, port authorities, and  
5 other interested parties and stakeholders, public and pri-  
6 vate, that are related to, or affected by Outer Continental  
7 Shelf energy activities.

8 “(e) ANNUAL GRANTS.—

9 “(1) IN GENERAL.—For each of fiscal years  
10 2011 through 2015, the Secretary may make a  
11 grant to a coastal state to develop new enforceable  
12 policies and procedures as required under this sec-  
13 tion.

14 “(2) GRANT AMOUNTS AND LIMIT ON  
15 AWARDS.—The amount of any grant to any one  
16 coastal State under this section shall not exceed  
17 \$750,000 for any fiscal year. No coastal state may  
18 receive more than two grants under this section.

19 “(3) NO STATE MATCHING CONTRIBUTION RE-  
20 QUIRED.—As it is in the national interest to be able  
21 to respond efficiently and effectively at all levels of  
22 government to oil spills and other accidents resulting  
23 from Outer Continental Shelf energy activities, a  
24 coastal state shall not be required to contribute any

1       portion of the cost of a grant awarded under this  
2       section.

3               “(4) SECRETARIAL REVIEW AND LIMIT ON  
4       AWARDS.—After an initial grant is made to a coastal  
5       state under this section, no subsequent grant may be  
6       made to that coastal state under this section unless  
7       the Secretary finds that the coastal state is satisfac-  
8       torily developing revisions to address offshore energy  
9       impacts. No coastal state is eligible to receive grants  
10      under this section for more than 2 fiscal years.

11      “(f) APPLICABILITY.—The requirements of this sec-  
12      tion shall only apply if appropriations are provided to the  
13      Secretary to make grants under this section. This section  
14      shall not be construed to convey any new authority to any  
15      coastal state, or repeal or supersede any existing authority  
16      of any coastal state, to regulate the siting, licensing, leas-  
17      ing, or permitting of energy facilities in areas of the Outer  
18      Continental Shelf under the administration of the Federal  
19      Government. Nothing in this section repeals or supersedes  
20      any existing coastal state authority.

21      “(g) ASSISTANCE BY THE SECRETARY.—The Sec-  
22      retary as authorized under section 310(a) and to the ex-  
23      tent practicable, shall make available to coastal states the  
24      resources and capabilities of the National Oceanic and At-  
25      mospheric Administration to provide technical assistance

1 to the coastal states to prepare revisions to approved man-  
2 agement programs to meet the requirements under this  
3 section.”.

4 **SEC. 807. INFORMATION SHARING.**

5 Section 388(b) of the Energy Policy Act of 2005 (43  
6 U.S.C. 1337 note) is amended by adding at the end the  
7 following:

8 “(4) AVAILABILITY OF DATA AND INFORMA-  
9 TION.—All heads of departments and agencies of the  
10 Federal Government shall, upon request of the Sec-  
11 retary, provide to the Secretary all data and infor-  
12 mation that the Secretary deems necessary for the  
13 purpose of including such data and information in  
14 the mapping initiative, except that no department or  
15 agency of the Federal Government shall be required  
16 to provide any data or information that is privileged  
17 or proprietary.”.

18 **SEC. 808. LIMITATION ON USE OF FUNDS.**

19 None of the funds authorized or made available by  
20 this Act may be used to carry out any activity or pay any  
21 costs for removal or damages for which a responsible party  
22 (as such term is defined in section 1001 of the Oil Pollu-  
23 tion Act of 1990 (33 U.S.C. 2701)) is liable under the  
24 Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) or  
25 other law.

1 **SEC. 809. ENVIRONMENTAL REVIEW.**

2 Section 390 of the Energy Policy Act of 2005 (Public  
3 Law 109–58; 42 U.S.C. 15942) is repealed.

4 **SEC. 810. FEDERAL RESPONSE TO STATE PROPOSALS TO**  
5 **PROTECT STATE LANDS AND WATERS.**

6 Any State shall be entitled to timely decisions regard-  
7 ing permit applications or other approvals from any Fed-  
8 eral official, including the Secretary of the Interior or the  
9 Secretary of Commerce, for any State or local government  
10 response activity to protect State lands and waters that  
11 is directly related to the discharge of oil determined to  
12 be a spill of national significance. Within 48 hours of the  
13 receipt of the State application or request for approval,  
14 the Federal official shall provide a clear determination on  
15 the permit application or approval request to the State,  
16 or provide a definite date by which the determination shall  
17 be made to the State. If the Federal official fails to meet  
18 either of these deadlines, the permit application is pre-  
19 sumed to be approved or other approval granted.

20 **SEC. 811. GOVERNMENT ACCOUNTABILITY OFFICE EVALUA-**  
21 **TION.**

22 (a) **EVALUATION.**—The Comptroller General shall  
23 conduct an evaluation of the Department of the Interior  
24 to determine—

25 (1) whether the reforms carried out under this  
26 Act and the amendments made by this Act address



1 concerns of the Government Accountability Office  
2 and the Inspector General expressed before the date  
3 of enactment of this Act;

4 (2) whether the increased hiring authority given  
5 to the Secretary of the Interior under this Act and  
6 the amendments made by this Act has resulted in  
7 the Department of the Interior being more effective  
8 in addressing its oversight missions; and

9 (3) whether there has been a sufficient reduc-  
10 tion in the conflict between mission and interest  
11 within the Department of the Interior.

12 (b) REPORT.—Not later than 3 years after the date  
13 of enactment of this Act, the Comptroller General shall  
14 submit to Congress a report containing the results of the  
15 evaluation conducted under subsection (a).

16 **SEC. 812. STUDY ON RELIEF WELLS.**

17 Not later than 60 days after the date of enactment  
18 of this Act, the Secretary shall enter into an arrangement  
19 with the National Academy of Engineering under which  
20 the Academy shall, not later than 1 year after such ar-  
21 rangement is entered into, submit to the Secretary and  
22 to Congress a report that assesses the economic, safety,  
23 and environmental impacts of requiring that 1 or more  
24 relief wells be drilled in tandem with the drilling of some

1 or all wells subject to the requirements of this Act and  
2 the amendments made by this Act.

3 **TITLE IX—STUDY OF ACTIONS**  
4 **TO IMPROVE THE ACCURACY**  
5 **OF COLLECTION OF ROYAL-**  
6 **TIES**

7 **SEC. 901. SHORT TITLE.**

8 This title may be cited as the “Study of Ways to Im-  
9 prove the Accuracy of the Collection of Federal Oil, Con-  
10 densate, and Natural Gas Royalties Act of 2010”.

11 **SEC. 902. STUDY OF ACTIONS TO IMPROVE THE ACCURACY**  
12 **OF COLLECTION OF FEDERAL OIL, CONDEN-**  
13 **SATE, AND NATURAL GAS ROYALTIES.**

14 The Secretary of the Interior shall seek to enter into  
15 an arrangement with the National Academy of Engineer-  
16 ing under which the Academy, by not later than six  
17 months after the date of the enactment of this Act, shall  
18 study and report to the Secretary regarding whether the  
19 accuracy of collection of royalties on production of oil, con-  
20 densate, and natural gas under leases of Federal lands (in-  
21 cluding submerged and deep water lands) and Indian  
22 lands would be improved by any of the following:

- 23 (1) Requiring the installation of digital meters,  
24 calibrated at least monthly to an absolute zero value,

1 for all lands from which natural gas (including con-  
2 densate) is produced under such leases.

3 (2) Requiring that—

4 (A) the size of every orifice plate on each  
5 natural gas well operated under such leases be  
6 inspected at least quarterly by the Secretary;  
7 and

8 (B) chipped orifice plates and wrong-sized  
9 orifice plates be replaced immediately after  
10 those inspections and reported to the Secretary  
11 for retroactive volume measurement corrections  
12 and royalty payments with interest of 8 percent  
13 compounded monthly.

14 (3) Requiring that any plug valves that are in  
15 natural gas gathering lines be removed and replaced  
16 with ball valves.

17 (4) Requiring that—

18 (A) all meter runs should be opened for in-  
19 spection by the Secretary and the producer at  
20 all times; and

21 (B) any welding or closing of the meter  
22 runs leading to the orifice plates should be pro-  
23 hibited unless authorized by the Secretary.

24 (5) Requiring the installation of straightening  
25 vanes approximately 10 feet before natural gas en-

ters each orifice meter, including each master meter  
and each sales meter.

(6) Requiring that all master meters be inspected and the results of such inspections be made available to the Secretary and the producers immediately.

(7) Requiring that—

(A) all sampling of natural gas for heating content analysis be performed monthly upstream of each natural gas meter, including upstream of each master meter;

(B) records of such sampling and heating content analysis be maintained by the purchaser and made available to the Secretary and to the producer monthly;

(C) probes for such upstream sampling be installed upstream within three feet of each natural gas meter;

(D) any oil and natural gas lease for which heat content analysis is falsified shall be subject to cancellation;

(E) natural gas sampling probes be located—

(i) upstream of the natural gas meter  
at all times;

1                   (ii) within a few feet of the natural  
2                   gas meter; and

3                   (iii) after the natural gas goes  
4                   through a Welker or Y-Z vanishing cham-  
5                   ber; and

6                   (F) temperature probes and testing probes  
7                   be located between the natural gas sampling  
8                   probe and the orifice of the natural gas meter.

9                   (8) Prohibiting the dilution of natural gas with  
10                  inert nitrogen or inert carbon dioxide gas for royalty  
11                  determination, sale, or resale at any point.

12                  (9) Requiring that both the measurement of the  
13                  volume of natural gas and the heating content anal-  
14                  yses be reported only on the basis of 14.73 PSI and  
15                  60 degrees Fahrenheit, regardless of the elevation  
16                  above sea level of such volume measurement and  
17                  heating content analysis, for both purchases and  
18                  sales of natural gas.

19                  (10) Prohibiting the construction of bypass  
20                  pipes that go around the natural gas meter, and im-  
21                  posing criminal penalties for any such construction  
22                  or subsequent removal including, but not limited to,  
23                  automatic cancellation of the lease.

24                  (11) Requiring that all natural gas sold to con-  
25                  sumers have a minimum BTU content of 960 at an

1 atmospheric pressure of 14.73 PSI and be at a tem-  
2 perature of 60 degrees Fahrenheit, as required by  
3 the State of Wyoming Public Utilities Commission.

4 (12) Requiring that all natural gas sold in the  
5 USA will be on a MMBTU basis with the BTU con-  
6 tent adjusted for elevation above sea level in higher  
7 altitudes. Thus all natural gas meters must correct  
8 for BTU content in higher elevations (altitudes).

9 (13) Issuance by the Secretary of rules for the  
10 measurement at the wellhead of the standard volume  
11 of natural gas produced, based on independent in-  
12 dustry standards such as those suggested by the  
13 American Society of Testing Materials (ASTM).

14 (14) Requiring use of the fundamental orifice  
15 meter mass flow equation, as revised in 1990, for  
16 calculating the standard volume of natural gas pro-  
17 duced.

18 (15) Requiring the use of Fpv in standard vol-  
19 ume measurement computations as described in the  
20 1992 American Gas Association Report No. 8 enti-  
21 tled Compressibility Factor of Natural Gas and  
22 Other Related Hydrocarbon Gases.

23 (16) Requiring that gathering lines must be  
24 constructed so as to have as few angles and turns

1 as possible, with a maximum of three angles, before  
2 they connect with the natural gas meter.

3 (17) Requiring that for purposes of reporting  
4 the royalty value of natural gas, condensate, oil, and  
5 associated natural gases, such royalty value must be  
6 based upon the natural gas' condensate's, oil's, and  
7 associated natural gases' arm's length, independent  
8 market value, as reported in independent, respected  
9 market reports such as Platts or Bloomborgs, and  
10 not based upon industry controlled posted prices,  
11 such as Koch's.

12 (18) Requiring that royalties be paid on all the  
13 condensate recovered through purging gathering  
14 lines and pipelines with a cone-shaped device to push  
15 out condensate (popularly referred to as a pig) and  
16 on condensate recovered from separators, dehydra-  
17 tors, and processing plants.

18 (19) Requiring that all royalty deductions for  
19 dehydration, treating, natural gas gathering, com-  
20 pression, transportation, marketing, removal of im-  
21 purities such as carbon dioxide (CO<sub>2</sub>), nitrogen (N<sub>2</sub>),  
22 hydrogen sulphide (H<sub>2</sub>S), mercaptain (HS), helium  
23 (He), and other similar charges on natural gas, con-  
24 densate, and oil produced under such leases that are  
25 now in existence be eliminated.

1           (20) Requiring that at all times—

2                   (A) the quantity, quality, and value ob-  
3           tained for natural gas liquids (condensate) be  
4           reported to the Secretary; and

5                   (B) such reported value be based on fair  
6           independent arm's length market value.

7           (21) Issuance by the Secretary of regulations  
8           that prohibit venting or flaring (or both) of natural  
9           gas in cases for which technology exists to reason-  
10          ably prevent it, strict enforcement of such prohibi-  
11          tions, and cancellation of leases for violations.

12          (22) Requiring lessees to pay full royalties on  
13          any natural gas that is vented, flared, or otherwise  
14          avoidably lost.

15          (23)(A) Requiring payment of royalties on car-  
16          bon dioxide at the wellhead used for tertiary oil re-  
17          covery from depleted oil fields on the basis of 5 per-  
18          cent of the West Texas Intermediate crude oil fair  
19          market price to be used for one MCF (1,000 cubic  
20          feet) of carbon dioxide gas.

21          (B) Requiring that—

22                   (i) carbon dioxide used for edible purposes  
23           should be subjected to a royalty per thousand  
24           cubic feet (MCF) on the basis of the sales price  
25           at the downstream delivery point without de-



ducting for removal of impurities, processing,  
transportation, and marketing costs;

(ii) such price to apply with respect to gaseous forms, liquid forms, and solid (dry ice) forms of carbon dioxide converted to equivalent MCF; and

(iii) such royalty to apply with respect to both a direct producer of carbon dioxide and purchases of carbon dioxide from another person that is either affiliated or not affiliated with the purchaser.

(24) Requiring that—

(A) royalties be paid on the fair market value of nitrogen extracted from such leases that is used industrially for well stimulation, helium recovery, or other uses; and

(B) royalties be paid on the fair market value of ultimately processed helium recovered from such leases.

(25) Allowing only 5 percent of the value of the elemental sulfur recovered during processing of hydrogen sulfide gas from such leases to be deducted for processing costs in determining royalty payments.

1           (26) Requiring that all heating content analysis  
2           of natural gas be conducted to a minimum level of  
3           C<sub>15</sub>.

4           (27) Eliminating artificial conversion from dry  
5           BTU to wet BTU, and requiring that natural gas be  
6           analyzed and royalties paid for at all times on the  
7           basis of dry BTU only.

8           (28) Requiring that natural gas sampling be  
9           performed at all times with a floating piston cylinder  
10          container at the same pressure intake as the pres-  
11          sure of the natural gas gathering line.

12          (29) Requiring use of natural gas filters with a  
13          minimum of 10 microns, and preferably 15 microns,  
14          both in the intake to natural gas sampling con-  
15          tainers and in the exit from the natural gas sam-  
16          pling containers into the chromatograph.

17          (30) Mandate the use of a Quad Unit for both  
18          portable and stationary chromatographs in order to  
19          correct for the presence of nitrogen and oxygen, if  
20          any, in certain natural gas streams.

21          (31) Require the calibration of all chro-  
22          matograph equipment every three months and the  
23          use of only American Gas Association-approved  
24          standard comparison containers for such calibration.

1           (32) Requiring payment of royalties on any  
2           such natural gas stored on Federal or Indian lands  
3           on the basis of corresponding storage charges for the  
4           use of Federal or Indian lands, respectively, for such  
5           storage service.

6           (33) Imposing penalties for the intentional non-  
7           payment of royalties for natural gas liquids recov-  
8           ered—

9                   (A) from purging of natural gas gathering  
10           lines and natural gas pipelines; or

11                   (B) from field separators, dehydrators, and  
12           processing plants,  
13           including cancellation of oil and natural gas leases  
14           and criminal penalties.

15           (34) Requiring that the separator, dehydrator,  
16           and natural gas meter be located within 100 feet of  
17           each natural gas wellhead.

18           (35) Requiring that BTU heating content anal-  
19           ysis be performed when the natural gas is at a tem-  
20           perature of 140 to 150 degrees Fahrenheit at all  
21           times, as required by the American Gas Association  
22           (AGA) regulations.

23           (36) Requiring that heating content analysis  
24           and volume measurements are identical at the sales  
25           point to what they are at the purchase point, after

1 allowing for a small volume for leakage in old pipes,  
2 but with no allowance for heating content discrep-  
3 ancy.

4 (37) Verification by the Secretary that the spe-  
5 cific gravity of natural gas produced under such  
6 leases, as measured at the meter run, corresponds to  
7 the heating content analysis data for such natural  
8 gas, in accordance with the Natural Gas Processors  
9 Association Publication 2145–71(1), entitled “Phys-  
10 ical Constants Of Paraffin Hydrocarbons And Other  
11 Components Of Natural Gas”, and reporting of all  
12 discrepancies immediately.

13 (38) Prohibiting all deductions on royalty pay-  
14 ments for marketing of natural gas, condensate, and  
15 oil by an affiliate or agent.

16 (39) Requiring that all standards of the Amer-  
17 ican Petroleum Institute, the American Gas Associa-  
18 tion, the Gas Processors Association, and the Amer-  
19 ican Society of Testing Materials, Minerals Manage-  
20 ment Service Order No. 5, and all other Minerals  
21 Management Service orders be faithfully observed  
22 and applied, and willful misconduct of such stand-  
23 ards and orders be subject to oil and gas lease can-  
24 cellation.

1 **SEC. 903. DEFINITIONS.**

2 In this title:

3 (1) COVERED LANDS.—The term “covered  
4 lands” means—

5 (A) all Federal onshore lands and offshore  
6 lands that are under the administrative jurisdic-  
7 tion of the Department of the Interior for pur-  
8 poses of oil and gas leasing; and

9 (B) Indian onshore lands.

10 (2) SECRETARY.—The term “Secretary” means  
11 the Secretary of the Interior.

12 **TITLE X—OFFSHORE OIL AND**  
13 **GAS WORKER WHISTLE-**  
14 **BLOWER PROTECTION**

15 **SEC. 1001. SHORT TITLE.**

16 This title may be cited as the “Offshore Oil and Gas  
17 Worker Whistleblower Protection Act of 2010”.

18 **SEC. 1002. WHISTLEBLOWER PROTECTIONS; EMPLOYEE**  
19 **PROTECTION FROM OTHER RETALIATION.**

20 (a) PROHIBITION AGAINST RETALIATION.—

21 (1) IN GENERAL.—No employer may discharge  
22 or otherwise discriminate against a covered employee  
23 because the covered employee, whether at the cov-  
24 ered employee’s initiative or in the ordinary course  
25 of the covered employee’s duties—

1           (A) provided, caused to be provided, or is  
2           about to provide or cause to be provided to the  
3           employer or to a Federal or State Government  
4           official, information relating to any violation of,  
5           or any act or omission the covered employee  
6           reasonably believes to be a violation of, any pro-  
7           vision of the Outer Continental Shelf Lands Act  
8           (43 U.S.C. 1301 et seq.), or any order, rule,  
9           regulation, standard, or prohibition under that  
10          Act, or exercised any rights provided to employ-  
11          ees under that Act;

12          (B) testified or is about to testify in a pro-  
13          ceeding concerning such violation;

14          (C) assisted or participated or is about to  
15          assist or participate in such a proceeding;

16          (D) testified or is about to testify before  
17          Congress on any matter covered by such Act;

18          (E) objected to, or refused to participate in  
19          any activity, policy, practice, or assigned task  
20          that the covered employee reasonably believed  
21          to be in violation of any provision of such Act,  
22          or any order, rule, regulation, standard, or ban  
23          under such Act;

24          (F) reported to the employer or a State or  
25          Federal Government official any of the fol-

1           lowing related to the employer's activities de-  
2           scribed in section 1003(1): an illness, injury,  
3           unsafe condition, or information regarding the  
4           adequacy of any oil spill response plan required  
5           by law; or

6           (G) refused to perform the covered employ-  
7           ee's duties, or exercised stop work authority, re-  
8           lated to the employer's activities described in  
9           section 1003(1) if the covered employee had a  
10          good faith belief that performing such duties  
11          could result in injury to or impairment of the  
12          health of the covered employee or other employ-  
13          ees, or cause an oil spill to the environment.

14          (2) GOOD FAITH BELIEF.—For purposes of  
15          paragraph (1)(E), the circumstances causing the  
16          covered employee's good faith belief that performing  
17          such duties would pose a health and safety hazard  
18          shall be of such a nature that a reasonable person  
19          under circumstances confronting the covered em-  
20          ployee would conclude there is such a hazard.

21          (b) PROCESS.—

22          (1) IN GENERAL.—A covered employee who be-  
23          lieves that he or she has been discharged or other-  
24          wise discriminated against (hereafter referred to as  
25          the “complainant”) by any employer in violation of

1 subsection (a)(1) may, not later than 180 days after  
2 the date on which such alleged violation occurs or  
3 the date on which the covered employee knows or  
4 should reasonably have known that such alleged vio-  
5 lation occurred, file (or have any person file on his  
6 or her behalf) a complaint with the Secretary of  
7 Labor (referred to in this section as the “Sec-  
8 retary”) alleging such discharge or discrimination  
9 and identifying employer or employers responsible  
10 for such act. Upon receipt of such a complaint, the  
11 Secretary shall notify, in writing, the employer or  
12 employers named in the complaint of the filing of  
13 the complaint, of the allegations contained in the  
14 complaint, of the substance of evidence supporting  
15 the complaint, and of the opportunities that will be  
16 afforded to such person under paragraph (2).

17 (2) INVESTIGATION.—

18 (A) IN GENERAL.—Not later than 90 days  
19 after the date of receipt of a complaint filed  
20 under paragraph (1) the Secretary shall initiate  
21 an investigation and determine whether there is  
22 reasonable cause to believe that the complaint  
23 has merit and notify, in writing, the complain-  
24 ant and the employer or employers alleged to  
25 have committed a violation of subsection (a)(1)



1 of the Secretary's findings. The Secretary shall,  
2 during such investigation afford the complain-  
3 ant and the employer or employers named in  
4 the complaint an opportunity to submit to the  
5 Secretary a written response to the complaint  
6 and an opportunity to meet with a representa-  
7 tive of the Secretary to present statements from  
8 witnesses. The complainant shall be provided  
9 with an opportunity to review the information  
10 and evidence provided by employer or employers  
11 to the Secretary, and to review any response or  
12 rebuttal by such the complaint, as part of such  
13 investigation.

14 (B) REASONABLE CAUSE FOUND; PRELIMI-  
15 NARY ORDER.—If the Secretary concludes that  
16 there is reasonable cause to believe that a viola-  
17 tion of subsection (a)(1) has occurred, the Sec-  
18 retary shall accompany the Secretary's findings  
19 with a preliminary order providing the relief  
20 prescribed by paragraph (3)(B). Not later than  
21 30 days after the date of notification of find-  
22 ings under this paragraph, the employer or em-  
23 ployers alleged to have committed the violation  
24 or the complainant may file objections to the  
25 findings or preliminary order, or both, and re-

1           quest a hearing on the record before an admin-  
2           istrative law judge of the Department of Labor.  
3           The filing of such objections shall not operate  
4           to stay any reinstatement remedy contained in  
5           the preliminary order. Any such hearing shall  
6           be conducted expeditiously. If a hearing is not  
7           requested in such 30-day period, the prelimi-  
8           nary order shall be deemed a final order that is  
9           not subject to judicial review. The Secretary of  
10          Labor is authorized to enforce preliminary rein-  
11          statement orders in the United States district  
12          court for the district in which the violation was  
13          found to occur, or in the United States district  
14          court for the District of Columbia.

15                   (C) DISMISSAL OF COMPLAINT.—

16                           (i) STANDARD FOR COMPLAINANT.—

17           The Secretary shall dismiss a complaint  
18           filed under this subsection and shall not  
19           conduct an investigation otherwise required  
20           under subparagraph (A) unless the com-  
21           plainant makes a prima facie showing that  
22           any behavior described in subparagraphs  
23           (A) through (G) of subsection (a)(1) was a  
24           contributing factor in the adverse action  
25           alleged in the complaint.

1           (ii) STANDARD FOR EMPLOYER.—Not-  
2           withstanding a finding by the Secretary  
3           that the complainant has made the show-  
4           ing required under clause (i), no investiga-  
5           tion otherwise required under subpara-  
6           graph (A) shall be conducted if the em-  
7           ployer demonstrates, by clear and con-  
8           vincing evidence, that the employer would  
9           have taken the same adverse action in the  
10          absence of that behavior.

11          (iii) VIOLATION STANDARD.—The  
12          Secretary may determine that a violation  
13          of subsection (a)(1) has occurred only if  
14          the complainant demonstrates that any be-  
15          havior described in subparagraphs (A)  
16          through (G) of such subsection was a con-  
17          tributing factor in the adverse action al-  
18          leged in the complaint.

19          (iv) RELIEF STANDARD.—Relief may  
20          not be ordered under subparagraph (A) if  
21          the employer demonstrates by clear and  
22          convincing evidence that the employer  
23          would have taken the same adverse action  
24          in the absence of that behavior.

25          (3) ORDERS.—

1 (A) IN GENERAL.—Not later than 90 days  
2 after the receipt of a request for a hearing  
3 under subsection (b)(2)(B), the administrative  
4 law judge shall issue findings of fact and order  
5 the relief provided under this paragraph or  
6 deny the complaint. At any time before issuance  
7 of an order, a proceeding under this subsection  
8 may be terminated on the basis of a settlement  
9 agreement entered into by the Secretary, the  
10 complainant, and the person alleged to have  
11 committed the violation. Such a settlement may  
12 not be agreed by such parties if it contains con-  
13 ditions which conflict with rights protected  
14 under this title, are contrary to public policy, or  
15 include a restriction on a complainant's right to  
16 future employment with employers other than  
17 the specific employers named in the complaint.

18 (B) CONTENT OF ORDER.—If, in response  
19 to a complaint filed under paragraph (1), the  
20 administrative law judge determines that a vio-  
21 lation of subsection (a)(1) has occurred, the ad-  
22 ministrative law judge shall order the employer  
23 or employers who committed such violation—

24 (i) to take affirmative action to abate  
25 the violation;

1           (ii) to reinstate the complainant to his  
2           or her former position together with com-  
3           pensation (including back pay and prejudg-  
4           ment interest) and restore the terms, con-  
5           ditions, and privileges associated with his  
6           or her employment; and

7           (iii) to provide compensatory and con-  
8           sequential damages, and, as appropriate,  
9           exemplary damages to the complainant.

10          (C) ATTORNEY FEES.—If such an order is  
11          issued under this paragraph, the Secretary, at  
12          the request of the complainant, shall assess  
13          against the employer or employers a sum equal  
14          to the aggregate amount of all costs and ex-  
15          penses (including attorneys' and expert witness  
16          fees) reasonably incurred by the complainant  
17          for, or in connection with, the bringing of the  
18          complaint upon which the order was issued at  
19          the conclusion of any stage of the proceeding.

20          (D) BAD FAITH CLAIM.—If the Secretary  
21          finds that a complaint under paragraph (1) is  
22          frivolous or has been brought in bad faith, the  
23          Secretary may award to the prevailing employer  
24          reasonable attorneys' fees, not exceeding  
25          \$1,000, to be paid by the complainant.

1           (E) ADMINISTRATIVE APPEAL.—Not later  
2           than 30 days after the receipt of findings of  
3           fact or an order under subparagraph (B), the  
4           employer or employers alleged to have com-  
5           mitted the violation or the complainant may  
6           file, with objections, an administrative appeal  
7           with the Secretary, who may designate such ap-  
8           peal to a review board. In reviewing a decision  
9           and order of the administrative law judge, the  
10          Secretary shall affirm the decision and order if  
11          it is determined that the factual findings set  
12          forth therein are supported by substantial evi-  
13          dence and the decision and order are made in  
14          accordance with applicable law. The Secretary  
15          shall issue a final decision and order affirming,  
16          or reversing, in whole or in part, the decision  
17          under review within 90 days after receipt of the  
18          administrative appeal under this subparagraph.  
19          If it is determined that a violation of subsection  
20          (a)(1) has occurred, the Secretary shall order  
21          relief provided under subparagraphs (B) and  
22          (C). Such decision shall constitute a final agen-  
23          cy action with respect to the matter appealed.  
24          (4) ACTION IN COURT.—

1           (A) IN GENERAL.—If the Secretary has  
2           not issued a final decision within 300 days after  
3           the filing of the complaint, the complainant  
4           may bring an action at law or equity for de  
5           novo review in the appropriate district court of  
6           the United States, which action shall, at the re-  
7           quest of either party to such action, be tried by  
8           the court with a jury. The proceedings shall be  
9           governed by the same legal burdens of proof  
10          specified in paragraph (2)(C).

11          (B) RELIEF.—The court may award all  
12          appropriate relief including injunctive relief,  
13          compensatory and consequential damages, in-  
14          cluding—

15               (i) reinstatement with the same se-  
16               niority status that the covered employee  
17               would have had, but for the discharge or  
18               discrimination;

19               (ii) the amount of back pay sufficient  
20               to make the covered employee whole, with  
21               prejudgment interest;

22               (iii) exemplary damages, as appro-  
23               priate; and

24               (iv) litigation costs, including reason-  
25               able attorney fees and expert witness fees.

1           (5) REVIEW.—

2                   (A) IN GENERAL.—Any person aggrieved  
3           by a final order issued under paragraph (3) or  
4           a judgment or order under paragraph (4) may  
5           obtain review of the order in the appropriate  
6           United States Court of Appeals. The petition  
7           for review must be filed not later than 60 days  
8           after the date of the issuance of the final order  
9           of the Secretary. Review shall be in accordance  
10          with chapter 7 of title 5, United States Code.  
11          The commencement of proceedings under this  
12          subparagraph shall not, unless ordered by the  
13          court, operate as a stay of the order.

14                  (B) NO OTHER JUDICIAL REVIEW.—An  
15          order of the Secretary with respect to which re-  
16          view could have been obtained under subpara-  
17          graph (A) shall not be subject to judicial review  
18          in any other proceeding.

19           (6) FAILURE TO COMPLY WITH ORDER.—When-  
20          ever any employer has failed to comply with an order  
21          issued under paragraph (3), the Secretary may ob-  
22          tain in a civil action in the United States district  
23          court for the district in which the violation was  
24          found to occur, or in the United States district court  
25          for the District of Columbia, all appropriate relief



1 including, but not limited to, injunctive relief and  
2 compensatory damages.

3 (7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

4 (A) IN GENERAL.—Whenever an employer  
5 has failed to comply with an order issued under  
6 paragraph (3), the complainant on whose behalf  
7 the order was issued may obtain in a civil ac-  
8 tion in an appropriate United States district  
9 court against the employer to whom the order  
10 was issued, all appropriate relief.

11 (B) AWARD.—The court, in issuing any  
12 final order under this paragraph, may award  
13 costs of litigation (including reasonable attor-  
14 neys' and expert witness fees) to any party  
15 whenever the court determines such award is  
16 appropriate.

17 (c) CONSTRUCTION.—

18 (1) EFFECT ON OTHER LAWS.—Nothing in this  
19 section preempts or diminishes any other safeguards  
20 against discrimination, demotion, discharge, suspen-  
21 sion, threats, harassment, reprimand, retaliation, or  
22 any other manner of discrimination provided by Fed-  
23 eral or State law.

24 (2) RIGHTS OF EMPLOYEES.—Nothing in this  
25 section shall be construed to diminish the rights,

1       privileges, or remedies of any employee under any  
2       Federal or State law or under any collective bar-  
3       gaining agreement. The rights and remedies in this  
4       section may not be waived by any agreement, policy,  
5       form, or condition of employment.

6       (d) ENFORCEMENT OF NONDISCRETIONARY DU-  
7       TIES.—Any nondiscretionary duty imposed by this section  
8       shall be enforceable in a mandamus proceeding brought  
9       under section 1361 of title 28, United States Code.

10      (e) POSTING OF NOTICE AND TRAINING.—All em-  
11      ployers shall post a notice which has been approved as to  
12      form and content by the Secretary of Labor in a con-  
13      spicuous location in the place of employment where cov-  
14      ered employees frequent which explains employee rights  
15      and remedies under this section. Each employer shall pro-  
16      vide training to covered employees of their rights under  
17      this section within 30 days of employment, and at not less  
18      than once every 12 months thereafter, and provide covered  
19      employees with a card which contains a toll free telephone  
20      number at the Department of Labor which covered em-  
21      ployees can call to get information or file a complaint  
22      under this section.

23      (f) DESIGNATION BY THE SECRETARY.—The Sec-  
24      retary of Labor shall, within 30 days of the date of enact-  
25      ment of this Act, designate by order the appropriate agen-

1 cy officials to receive, investigate, and adjudicate com-  
2 plaints of violations of subsection (a)(1).

3 **SEC. 1003. DEFINITIONS.**

4 As used in this title the following definitions apply:

5 (1) The term “covered employee”—

6 (A) means an individual performing serv-  
7 ices on behalf of an employer that is engaged  
8 in activities on or in waters above the Outer  
9 Continental Shelf related to—

10 (i) supporting, or carrying out explo-  
11 ration, development, production, proc-  
12 essing, or transportation of oil or gas; or

13 (ii) oil spill cleanup, emergency re-  
14 sponse, environmental surveillance, protec-  
15 tion, or restoration, or other oil spill activi-  
16 ties related to occupational safety and  
17 health; and

18 (B) includes an applicant for such employ-  
19 ment.

20 (2) The term “employer” means one or more  
21 individuals, partnerships, associations, corporations,  
22 trusts, unincorporated organizations, nongovern-  
23 mental organizations, or trustees, and includes any  
24 agent, contractor, subcontractor, grantee or consult-  
25 ant of such employer.

Attest: LORRAINE C. MILLER,  
*Clerk.*



Calendar No. 510

11TH CONGRESS  
2D Session

**H. R. 3534**

**AN ACT**

To provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior, and for other purposes.

111TH CONGRESS  
2D SESSION

# S. 3594

To amend the Magnuson-Stevens Fishery Conservation and Management Act to mitigate the economic impact of the transition to sustainable fisheries on fishing communities, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 15, 2010

Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to mitigate the economic impact of the transition to sustainable fisheries on fishing communities, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fishery Conservation  
5 Transition Act”.

6 **SEC. 2. TRANSITION TO SUSTAINABLE FISHERIES.**

7 (a) IN GENERAL.—Within 180 days after the close  
8 of fishing year 2010 (within the meaning given that term

1 in the Magnuson-Stevens Fishery conservation and Man-  
2 agement Act (16 U.S.C. 1802 et seq.), the Secretary of  
3 Commerce shall determine, with respect to each fishery  
4 for which a fishery management plan that meets the re-  
5 quirements of section 303(a)(15) of that Act (16 U.S.C.  
6 1853(a)(15)) is in effect that contains a complete prohibi-  
7 tion on the retention of stocks subject to overfishing with-  
8 in the fishery for the entire fishing season, whether the  
9 prohibition is sufficient to prevent or end overfishing for  
10 the stocks, or stocks undergoing overfishing, to which it  
11 applies.

12 (b) REMEDIAL ACTION.—If the Secretary determines  
13 that the prohibition contained in such a fishery manage-  
14 ment plan is not sufficient to prevent or end overfishing  
15 for the stocks to which it applies, the Secretary may au-  
16 thorize retention of fish that are not undergoing over-  
17 fishing within that fishery, notwithstanding that discard  
18 mortality of stocks for which retention is prohibited may  
19 be inconsistent with provisions on ending or preventing  
20 overfishing, if, within 90 days after a determination by  
21 the Secretary under subsection (a), the Regional Fishery  
22 Management Council with jurisdiction over the fishery im-  
23 plements—

24 (1) measures to minimize bycatch and bycatch  
25 mortality to the extent practicable;



1           (2) an enhanced data collection requirement,  
2       such as an electronic logbook data collection system,  
3       for recreational, for hire, and commercial fishers;

4           (3) a program of on-board observers for char-  
5       ter, for-hire, and commercial fishers that will mon-  
6       itor and collect data on bycatch and bycatch mor-  
7       tality in multispecies fisheries with prohibitions on  
8       retention on one or more species in the fisheries; and

9           (4) in coordination with the Secretary, other  
10      measures to ensure accountability of the fishery, in-  
11      cluding those that will substantially contribute to ad-  
12      dressing data gaps in stock assessments.

13      (c) **ADDITIONAL REQUIREMENTS.**—The Secretary  
14      shall take such action as may be necessary to ensure that,  
15      with respect to any stock subject to overfishing in a fishery  
16      to which a determination under subsection (b) applies—

17           (1) a monitoring and research program to mon-  
18       itor the recovery of the affected stocks of fish is im-  
19       plemented for the fishery within 1 year after the  
20       date of enactment of this Act;

21           (2) a stock assessment for the overfished spe-  
22       cies within the affected stocks of fish is initiated,  
23       taking into account relevant life history of the stock,  
24       within 6 months after the date on which the Sec-  
25       retary makes such a determination; and

1           (3) the Regional Fishery Management Council  
2       with jurisdiction over the affected fishery submits a  
3       report to Congress and the Secretary detailing a  
4       long-term plan for reducing discard mortality of the  
5       affected stocks of fish to which a determination  
6       under subsection (a) applies within 2 years after the  
7       date of enactment of this Act.

8       (d) FURTHER ACTION REQUIRED.—If the Secretary  
9       determines that—

10           (1) the Regional Fishery Management Council  
11       with jurisdiction over a fishery has complied with  
12       the requirements of paragraphs (b) and (c), and

13           (2) the fishery management plan’s prohibition  
14       on the retention of stocks subject to overfishing con-  
15       tinues to be insufficient to prevent or end over-  
16       fishing for those stocks,

17       the Secretary shall take such action as may be necessary  
18       to end overfishing for the stocks to which the prohibition  
19       applies before the end of fishery year 2015.

20       **SEC. 3. ECONOMIC ASSISTANCE PROGRAM.**

21       (a) IN GENERAL.—Section 208 of the Magnuson-Ste-  
22       vens Fishery Conservation and Management Reauthoriza-  
23       tion Act of 2006 (16 U.S.C. 1891b) is amended—

24           (1) by striking “and” after the semicolon in  
25       subsection (b)(6);

1           (2) by striking “materia.” in subsection (b)(7)  
2           and inserting “materia; and”;

3           (3) by adding at the end of subsection (b) the  
4           following:

5           “(8) the economic assistance program under  
6           subsection (f).”;

7           (4) by striking “and” after the semicolon in  
8           subsection (c)(2)(A);

9           (5) by striking “section.” in subsection  
10          (c)(2)(B) and inserting “section; and”;

11          (6) by adding at the end of subsection (c)(2)  
12          the following:

13                 “(C) fees collected under permit programs  
14                 for a fishery significantly affected by a prohibi-  
15                 tion on the retention of stocks to end or prevent  
16                 overfishing.”; and

17          (7) by adding at the end thereof the following:

18          “(f) ECONOMIC ASSISTANCE PROGRAM.—

19                 “(1) IN GENERAL.—The Secretary shall estab-  
20                 lish an economic assistance program to assist rec-  
21                 reational and commercial fishery participants, fish-  
22                 ing industries, and fishing communities significantly  
23                 affected by a prohibition on the retention of stocks  
24                 to end or prevent overfishing or rebuild overfished

1 stocks and use amounts in the Fund to provide such  
2 assistance.

3 “(2) CRITERIA FOR ASSISTANCE.—In the ad-  
4 ministration of the program, the Secretary shall de-  
5 velop criteria for prioritizing economic assistance re-  
6 quests, including consideration of the conservation  
7 and management history of the fishery, the sustain-  
8 ability of conservation and management approaches,  
9 the magnitude of the economic impact of the reten-  
10 tion prohibition, and community and social impacts.

11 “(3) APPLICATION PROCESS.—The Secretary  
12 shall develop an application process to determine eli-  
13 gibility for economic assistance under the program  
14 and shall consult with States whose recreational and  
15 commercial fishery participants, fishing industries,  
16 or fishing communities have been affected by the  
17 prohibition. Any person or community seeking as-  
18 sistance under the program shall submit an applica-  
19 tion at such time, in such manner, and containing  
20 such information and assurances as the Secretary  
21 may require.

22 “(4) STATE MATCHING FUNDS.—The Federal  
23 share of assistance provided under the program to  
24 recreational and commercial fishery participants,  
25 fishing industries, or fishing communities may not

1       exceed 75 percent. Before granting assistance under  
2       the program, the Secretary shall consult with the  
3       State in which the recipient is located and request  
4       that the State provide matching funds. The Sec-  
5       retary may waive, in whole or in part, the matching  
6       requirement under this paragraph.”.

7       **SEC. 4. AUTHORITY TO ACT.**

8       (a) CLARIFICATION OF EMERGENCY AUTHORITY.—  
9       Section 305(c) of the Magnuson-Stevens Fishery Con-  
10      servation and Management Act (16 U.S.C. 1855(c)) is  
11      amended by adding at the end the following:

12       “(4) For purposes of this section, an emergency is  
13      a situation that results from recent, unforeseen, or re-  
14      cently discovered circumstances that present serious con-  
15      servation or management problems in the fishery, includ-  
16      ing ecological, economic, social, or public health interests.  
17      An emergency may include increasing or decreasing a  
18      catch limit, or modifying a time or area closure or reten-  
19      tion prohibition in response to new science or stock assess-  
20      ment information, but only if such action is needed to ad-  
21      dress serious conservation or management problems in the  
22      fishery.”.

1 **SEC. 5. FISHERY STUDIES AND REPORTS.**

2 STATUS OF FISHERY REPORT.—Section 304(e) of  
3 the Magnuson-Stevens Fishery Conservation and Manage-  
4 ment Act (16 U.S.C. 1854(e)) is amended—

5 (1) by inserting “(A)” before “The Secretary”;

6 (2) by redesignating subparagraphs (A) and  
7 (B) as clauses (i) and (ii); and

8 (3) by adding at the end the following:

9 “(B) In the review, the Secretary shall consider—

10 “(i) a stock assessment conducted pursuant to  
11 subsection (c);

12 “(ii) an analysis of the local, regional, and na-  
13 tional social and economic impacts on fishing com-  
14 munities and industries directly and indirectly re-  
15 lated to the fishery; and

16 “(iii) fishery management measures to enhance  
17 the sustainability of stocks of fish that are over-  
18 fished, and an evaluation of alternative management  
19 approaches that may be implemented to enhance  
20 such sustainability.

21 “(C) Stock assessment updates for each stock of fish  
22 that is overfished or undergoing overfishing shall be con-  
23 ducted at 2 year intervals, and a full stock assessment  
24 pursuant to subsection (c) shall be conducted no less fre-  
25 quently than once every 5 years.

1       “(D) The Secretary shall include a summary of re-  
 2 views conducted under subparagraph (A) in the report re-  
 3 quired by paragraph (1) of this subsection. To the extent  
 4 possible, the Secretary shall include in the report rec-  
 5 ommendations for actions that could be taken to encour-  
 6 age the sustainable management of stocks of fish listed  
 7 in the Fish Stocks Sustainability Index.”.

8       (b) ASSESSMENT OF CURRENT MANAGEMENT MEAS-  
 9 URES.—

10       (1) IN GENERAL.—The Secretary of Commerce  
 11 shall conduct a study, in cooperation with the Na-  
 12 tional Academy of Sciences, to determine if current  
 13 fishery management measures for stocks in a multi-  
 14 species fishery yield the most productive use of ma-  
 15 rine resources while effectively conserving sustain-  
 16 able populations and a healthy marine ecosystem.  
 17 The study shall include—

18       (A) the identification of the statutory and  
 19 regulatory impediments to achieving the max-  
 20 imum sustainable yield from the entire fishery;

21       (B) the identification of fishery inde-  
 22 pendent environmental stressors on the fishery;

23       (C) the economic value derived from the  
 24 yield in the fishery; and

1           (D) alternative fishery management meas-  
2           ures and technologies which would result in in-  
3           creased economic and harvest yields consistent  
4           with sound conservation.

5           (2) REPORT.—Within 180 days after the date  
6           of enactment of this Act, the Secretary shall trans-  
7           mit a report to the Senate Committee on Commerce,  
8           Science, and Transportation and the House of Rep-  
9           resentatives Committee on Natural Resources con-  
10          taining the Secretary's findings, conclusions, and  
11          recommendations.

12 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

13          There are authorized to be appropriated to the Sec-  
14          retary of Commerce such sums as may be necessary to  
15          carry out the provisions of this Act and the amendments  
16          made by this Act.





## APPROVAL OF COUNCIL MEETING MINUTES

The draft minutes for the September 2009 Council meeting were provided to the Council for review at the June 2010 Council meeting. At this meeting, the Council will be asked to approve those minutes; they have not been included with this briefing book. **Please bring your copy from June (Agenda Item G.1.a, Supplemental Attachment 1, June 2010)** or utilize the document on the website at:

[http://www.pcouncil.org/wp-content/uploads/G1a\\_SUP\\_ATT1\\_JUNE2010BB.pdf](http://www.pcouncil.org/wp-content/uploads/G1a_SUP_ATT1_JUNE2010BB.pdf)

At the June meeting, one correction was made to the draft minutes on page 26. That correction has been made and is highlighted in Attachment 1.

The full record of each Pacific Fishery Management Council (Council) meeting is maintained at the Council office, and consists of the following:

1. The proposed agenda (available online at <http://www.pcouncil.org/resources/archives/briefing-books/>).
2. The approved minutes (available online at <http://www.pcouncil.org/council-operations/council-meetings/past-meetings/>). The minutes summarize actual meeting proceedings, noting the time each agenda item was addressed and identifying relevant key documents. The agenda item summaries consist of a narrative on noteworthy elements of the gavel-to-gavel components of the Council meeting and summarize pertinent Council discussion for each Council Guidance, Discussion, or Action item, including detailed descriptions of rationale leading to a decision and discussion between an initial motion and the final vote.
3. Audio recordings of the testimony, presentations, and discussion occurring at the meeting. Recordings are labeled by agenda number and time to facilitate tape or CD-ROM review of a particular agenda item (available from our recorder, Mr. Craig Hess, Martin Enterprises, phone [360] 425-7507).
4. All written documents produced for consideration at the Council meeting, including (1) pre-meeting briefing book materials, (2) pre-meeting supplemental briefing book documents, (3) supplemental documents produced or received at the meeting, validated by a label assigned by the Council Secretariat and distributed to Council Members, and (4) public comments and miscellaneous visual aids or handout materials used in presentations to Council Members during the open session (available online at <http://www.pcouncil.org/council-operations/council-meetings/past-meetings/>).
5. A copy of the Council Decision Document. This document is distributed immediately after the meeting and contains very brief descriptions of Council decisions (available online at <http://www.pcouncil.org/resources/archives/council-meeting-decisions/>).
6. A copy of Pacific Council News. Refer to the Spring Edition for March and April meetings;

the Summer Edition for the June meeting; the Fall Edition for the September meeting; and the Winter Edition for the October-November Council meeting (available online at <http://www.pcouncil.org/resources/archives/newsletters/>).

**Council Action:**

**1. Review and approve the draft September 2009 Council meeting minutes.**

**Reference Materials:**

1. Agenda Item G.3.a, Attachment 1: Excerpt and Correction from the September 2009 Council Meeting Minutes.
2. Agenda Item G.1.a, Supplemental Attachment 1 (*from the June 2010 Briefing Book*): Draft September 2009 Council Meeting Minutes. **Please bring your copy from June or utilize the website copy at:**  
[http://www.pcouncil.org/wp-content/uploads/G1a\\_SUP\\_ATT1\\_JUNE2010BB.pdf](http://www.pcouncil.org/wp-content/uploads/G1a_SUP_ATT1_JUNE2010BB.pdf)

**Agenda Order:**

- a. Council Member Review and Comments **Mark Cedergreen**
- b. **Council Action:** Approve September 2009 Council Meeting Minutes

PFMC  
08/27/10

...

**E.5.b Reports and Comments of Management Entities and Advisory Bodies (09/16/09; 10:49 a.m.)**

SSC Report

Dr. Steve Ralston provided Agenda Item E.5.b, Supplemental SSC Report. Additionally, he provided a PowerPoint regarding how to express uncertainty in west coast groundfish stock assessments. This presentation better defined the conceptual approach being considered by the SSC for deciding scientific uncertainty buffers.

Mr. Moore asked if this approach is adding precaution upon precaution given the precautionary assumptions within assessments. Dr. Ralston said no, this is not double counting uncertainty. There are many sources of uncertainty and this approach tries to account for more of the scientific uncertainty than is done within an assessment.

Mr. Wolford asked about the coefficient of variation and Dr. Ralston said that is the coefficient of variation from the meta-analysis of all the data-rich species. Mr. Wolford asked if ultimately it would make sense to do this meta-analysis for such a diverse group of species. Dr. Ralston said species-specific distributions of uncertainty between assessments will be evaluated as well as the coefficient of variation from the meta-analysis. All of these analyses will help the SSC and Council decide the size of the scientific uncertainty based on either within-assessment variability or between-assessment variability.

Dr. McIsaac asked for a specific example using yelloweye to understand how variance from the meta-analysis might inform a scientific uncertainty buffer. Dr. Ralston walked the Council through the example using Figure 1 in the SSC report.

Mr. Lockhart asked about the biomass ratios that are central to the meta-analysis. Dr. Ralston explained how the approach measures year-specific biomass estimates from different assessments of a stock. These paired data points are analyzed as ratios in the analysis to determine variance in estimating biomass.

Mr. Lockhart asked about the national SSC meeting in November and whether that meeting will change our SSC's approach in deciding scientific uncertainty. Dr. Ralston said our approach may change their thinking. However, none of this addresses forecast uncertainty. Other types of uncertainty that can't be well estimated now is another good reason to framework Amendment 23 to be able to fold in more uncertainty in management decisions at a later date. This methodology addresses uncertainty in estimating biomass.

...

## FISCAL MATTERS

The Council's Budget Committee will meet on Friday, September 10, 2010, at 1:00 PM to consider budget issues as outlined in the Budget Committee Agenda.

The Budget Committee's report is scheduled for Council review and approval on Thursday, September 16.

### **Council Action:**

**Consider the report and recommendations of the Budget Committee.**

### **Reference Materials:**

1. Agenda Item G.4.b, Supplemental Budget Committee Report.

### **Agenda Order:**

- a. Agenda Item Overview
- b. Budget Committee Report
- c. Reports and Comments of Advisory Bodies and Management Entities
- d. Public Comment
- e. **Council Action:** Consider Budget Committee Recommendations

John Coon  
Jerry Mallet

PFMC  
08/04/10

## REPORT OF THE BUDGET COMMITTEE

The Budget Committee met on Friday, September 10, 2010 at 1 p.m. and received the Executive Director's Budget Report. The report covered: (1) a review of the calendar year (CY) 2009 audit; (2) the status of the CY 2010 operational budget and expenditures through July 31, 2010; (3) discussion of additional funding provided for trailing amendments to Groundfish Amendment 20 with emphasis on community fishing association (CFA) issues; and (4) expectations for future funding. The following Budget Committee members were present:

Mr. Jerry Mallet, Chairman  
Mr. Mark Cedergreen  
Ms. Michele Culver  
Dr. Dave Hanson

Ms. Jennifer Isé (alternate for NMFS)  
Mr. Rod Moore  
Mr. Dan Wolford

Others Present: Dr. John Coon, Mr. Donald Hansen, Dr. Donald McIsaac

### **CY 2009 Audit Report**

Dr. John Coon provided a brief overview of the audit report for CY 2009. The auditor's findings for the Council's financial affairs were an unqualified approval with no reportable conditions or material weaknesses.

### **Status of CY 2010 Budget and Expenditures**

Overall expenditure of the CY 2010 budget is proceeding within normal expectations for the first seven months of the year. Council staff will closely monitor ongoing expenditures toward the target of not exceeding the budget. Dr. McIsaac also noted that the final rule for Council operations that could guide the payment of advisory body stipends has not yet been published. In November, the Council could approve stipend payments.

### **Additional Funding**

In late July, the Council received an additional \$30,000 to assist in developing trailing actions for the catch shares program with an emphasis on exploring potential actions utilizing CFA's. The Council's decisions on the trailing action topic under Agenda Item I.6 will provide guidance to the expenditure of the additional funds.

### **Expectations for Future Funding**

Dr. McIsaac reported that there is still a lot of uncertainty in how and when Congress will approve the fiscal year (FY) 2011 appropriations. Nothing is expected to happen until after the November elections. After the election, Congress could pass the President's budget (which continues the FY 2010 funding level) or pass a continuing resolution that could be at last year's level or some other level likely lower than the 2010 level. In any event, we will not know the level of Council funding for CY 2011 by the November Council meeting. Therefore, as in the past several years at the November Council meeting, staff will provide a target CY 2011 budget

to continue status quo operations as well as contingency budgets at higher and lower funding levels to cover the expected range of funding.

### **Budget Committee Recommendations**

The Budget Committee recommends that:

- The Council approve the upward adjustment of the CY 2010 operational budget to accommodate the addition of a lump sum of \$30,000 for the purpose of assisting in the development of trailing actions for the catch shares program with the actual disposition of the funding to be guided by the Council's actions under Agenda Item I.6.

PFMC

09/14/10

## MEMBERSHIP APPOINTMENTS AND COUNCIL OPERATING PROCEDURES

During this agenda item, the Council has the opportunity to consider changes in the Council Membership Roster, including Council Members, advisory body membership, and appointments to other forums, and also any relevant changes in Council Operating Procedures (COP).

### Council Members and Designees

The appointments to the 2010-2013 Council member term were announced in late June. Mr. Dan Wolford was reappointed to his second consecutive term in an at-large position and Mr. Herb Pollard was appointed to his first term as the Idaho Obligatory member.

The Idaho Department of Fish and Game has designated Mr. Dave Ortmann to serve as its second designee for the Idaho principal state official Council member, Director Cal Groen.

### Council Member Committee Appointments

In his new position as Council Chair, Mr. Mark Cedergreen will replace outgoing chair and Council member Dave Ortmann on the Budget and Groundfish Allocation committees.

### Council Advisory Body Appointments

#### *Scientific and Statistical Committee (SSC)*

No resignations, nominations, or other changes were identified by the Briefing Book deadline.

#### *Management and Technical Teams*

##### **Ecosystem Plan Development Team (EPDT)**

The National Marine Fisheries Service Northwest Fisheries Science Center (NMFS NWFSC) has nominated Dr. Phil Levin to replace Dr. Mary Ruckelshaus on the EPDT (Attachment 1). The SSC Chair will provide that body's recommendations regarding the nomination.

##### **Groundfish Management Team (GMT)**

The Washington Department of Fish and Wildlife (WDFW) has nominated Ms. Heather Reed to the second WDFW position on the GMT (Attachment 2). The SSC Chair will provide that body's recommendations regarding the nomination.

#### *Advisory Subpanels*

No resignations, nominations, or other changes were identified by the Briefing Book deadline.

### *Enforcement Consultants (EC)*

No resignations, nominations, or other changes were identified by the Briefing Book deadline.

### *Habitat Committee (HC)*

No resignations, nominations, or other changes were identified by the Briefing Book deadline.

### *Ad Hoc Council Committees*

No resignations, nominations, or other changes were identified by the Briefing Book deadline.

### *Unfilled Vacancies*

None identified by the Briefing Book deadline that have not already been addressed by the Council.

## **Appointments to Other Forums**

No appointments or other changes were identified by the Briefing Book deadline.

## **Changes to Council Operating Procedures (COP)**

Staff has modified COP 2 (Advisory Subpanels) to eliminate the Tribal At-Large position on the Ecosystem Advisory Subpanel.

Staff proposes a change to certain COPs to better manage administrative logistics and additional costs involved when advisory body alternates are designated at the last minute before a meeting.

Currently, most advisory body members may designate an alternate up to two times per year if done in writing in advance of the meeting. That usually means an email, some of which are not received until a few days or less prior to the meeting. There is a certain amount of meeting logistics which precede each meeting that, if left to the last minute, cause additional work and cost for the Council (e.g., hotel and travel reservations and document distribution). This is especially true for those bodies that meet in conjunction with a Council meeting when any changes may come as final preparations for the meeting are already requiring the focus of all Council staff. Last minute alternates can also cause confusion and delays during the actual meetings. Therefore, Council staff believe a deadline for designating alternates would be useful.

For the reasons cited above, Council staff proposes to modify the COPs for Advisory Subpanels (COP 2); Plan, Technical and Management Teams (COP 3); Scientific and Statistical Committee (COP 4); Enforcement Consultants (COP 5); Habitat Committee (COP 6); Groundfish Allocation Committee (COP 7); and Ad Hoc Committees (COP 8) by making the following, or similar, changes to each operative section governing alternates (edited example below is from COP 2):

### Alternates

A subpanel member may send an alternate to a subpanel meeting no more than twice per calendar year under the following stipulations. If The Executive Director must be is notified in advance in writing with the name of and contact information for the proposed



alternate at least two weeks prior to the first day of the advisory body meeting, or the first day of the Council meeting held in conjunction with the advisory body meeting. ~~a subpanel member may send an alternate to a subpanel meeting no more than twice per year when the official is unable to attend.~~ The alternate will be reimbursed for travel expenses per the Council travel rules. Exceptions to these stipulations may be made to exceed two alternates per year at the discretion of the Executive Director for highly unusual occurrences.

### **Council Action:**

1. Consider issues with regard to appointments and potential COP changes.
2. Approve the nomination of Dr. Phil Levin for a NWFSC position on the EPDT.
3. Approve the nomination of Ms. Heather Reed for the second WDFW position on the GMT.
4. Consider amending the COP with regard to requirements for notifying the Council of a designated advisory body member alternate.

### **Reference Materials:**

1. Closed Session A.1.a, Attachment 1: Nomination of Dr. Phil Levin to a NWFSC position on the EPDT.
2. Closed Session A.1.a, Attachment 2: Nomination of Ms. Heather Reed to the second WDFW position on the GMT.

### **Agenda Order:**

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Consider Changes to Council Operating Procedures and Advisory Body Appointments

**John Coon**

PFCM  
08/26/10

## FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

This agenda item is intended to refine general planning for future Council meetings, especially in regard to the details of the proposed agenda for the November 2010 Council Meeting. The following attachments are intended to help the Council in this process:

1. An abbreviated display of potential agenda items for the next full year (Attachment 1).
2. A preliminary proposed November 2010 Council meeting Agenda (Attachment 2).

The Executive Director will assist the Council in reviewing the items listed above and discuss any other matters relevant to Council meeting agendas and workload. After considering supplemental material provided at the Council meeting, and any reports and comments from advisory bodies and public, the Council will provide guidance for future agenda development and workload priorities. The Council may also identify priorities for advisory body consideration at the November 2010 Council Meeting.

### **Council Action:**

- 1. Review pertinent information and provide guidance on potential agenda topics for future Council meetings.**
- 2. Provide more detailed guidance on a Proposed Agenda for the November Council meeting.**
- 3. Identify priorities for advisory body considerations at the next Council meeting.**

### **Reference Materials:**

1. Agenda Item G.6.a, Attachment 1: Pacific Council Workload Planning: "Preliminary Year at a Glance Summary."
2. Agenda Item G.6.a, Attachment 2: Preliminary Proposed Council Meeting Agenda, November 3-9, 2010, Costa Mesa, California.

### **Agenda Order:**

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. Council Discussion and Guidance on Future Council Meeting Agenda and Workload Planning

**Don McIsaac**

PFMC  
08/04/10

## Pacific Council Workload Planning: Preliminary Year-at-a-Glance Summary

(Parenthetical numbers mean multiple items per topic; shaded Items may be rescheduled re: workload priorities; deletions= struck-out; border=new)

	<b><u>November 2010</u></b> (Costa Mesa)	<b><u>March 2011</u></b> (Vancouver)	<b><u>April 2011</u></b> (San Mateo)	<b><u>June 2011</u></b> (Spokane)	<b><u>September 2011</u></b> (San Mateo)
<b>CPS</b>	NMFS Rpt Sardine Asmnt & Mgmt Meas. STAR & Methods TOR--Final CPS EFH Review	EFPs: for Pub Rev	NMFS Report EFPs: Final Recom.	NMFS Rpt  Mackerel HG & Meas.	
<b>Groundfish</b>	NMFS Report Inseason Mgmt (2)  Initiate Pln for Bien Spx Proc. Review Final EFPs A-20 Trailing Amd: Scoping A-20 Implementation Update	NMFS Report Inseason Mgmt (2) Pac Whiting Spx & Meas.	NMFS Report Inseason Mgmt (2) GF EFH: Confirm Process Bien Spx Proc. & Sched  A-20 Trailing Amd: Adopt for Public Rev	NMFS Report Inseason Mgmt (2)  Bien Spx Process & Sched Approve Stk Assessments Prelim EFP Adoption A-20 Trailing Amd: Adopt Final	NMFS Report Inseason Mgmt (2)  Science Improvements: Plan Approve Stk Assmnts Part 2 Prelim EFP Adoption Follow-up on Trailing Actions A-20 Emerging Issues
<b>HMS</b>	NMFS Report Routine Mgmt Changes Final Adoption Input to WCPFC & IATTC		NMFS Report  Albacore Mgmt	NMFS Report  Internat'l RFMO Matters Swordfish Whitepaper	NMFS Report
<b>Salmon</b>	NMFS Rpt OF Rpt Status Update--Sac Mitchell Act Hatchery EIS 2011 Preseas'n Mgmt Schd 2010 Method Rev.--Final (including PS Coho Obj.) A-16 (ACLs)--Final Action	NMFS Rpt Sacramento OF Report EFH Rev: Adopt Final  2011 Season Setting (6) Cons. Obj. Report	NMFS Rpt  2011 Season Setting (3) 2011 Method Rev.--Identify & Include CRT Update	  Straits Coho Follow-up	NMFS Rpt  Method Rev: Adopt Priorities Including CRT Update
<b>Other</b>	Pac Halibut: Adopt Final CS  WA Enforcement Report Habitat Issues Ecosystem Info Session Deepwater Coral-Info Rpt  Routine Admin (8)	Pacific Halibut (2) Halibut Allocation-Pub Rev USCG Ann. Enf. Rpt. Habitat Issues Ecosystem FMP Dev Plan OCNMS Mgmt Pln Update  Routine Admin (7)	Halibut-Incidntl Regs  Habitat Issues  Routine Admin (7)	Halibut Allocation-Final  Habitat Issues Ecosystem FMP Dev Plan  Routine Admin (8)	Pacific Halibut (2)  CA State Enforcement Rpt Habitat Issues  Routine Admin (8)
<b>Apx. Floor Time</b>	<b>6 days</b>	<b>6 days</b>	<b>5 days</b>	<b>6 days</b>	<b>5 days</b>

Agenda Item G.6.a  
Attachment 1  
September 2010

**PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, NOVEMBER 3-9, 2010 IN COSTA MESA, CALIFORNIA**

Wed, Nov 3	Thu, Nov 4	Fri, Nov 5	Sat, Nov 6	Sun, Nov 7	Mon, Nov 8	Tue, Nov 9
	<p align="center"><b>8:00 AM</b> <b>CLOSED SESSION</b></p> <hr/> <p align="center"><b>9:00 AM</b> <b>OPEN SESSION</b></p> <p>1-4. Opening Remarks &amp; Approve Agenda (30 min)</p> <hr/> <p align="center"><b>OPEN COMMENT</b></p> <p>1. Comments on Non-Agenda Items (45 min)</p> <hr/> <p align="center"><b>SALMON</b></p> <p>1. Mitchell Act Hatchery EIS: Comments (1 hr 30 min)</p> <p>2. Preseason Mgmt Schedule for 2011: Adopt (15 min)</p> <p>3. Sacramento Fall Chinook OF Rpt: Update (2 hr)</p> <p>4. NMFS Report (1 hr)</p> <hr/> <p align="center"><b>PACIFIC HALIBUT</b></p> <p>1. Proposed Changes to 2011 Regs: Adopt Final (1 hr)</p>	<p align="center"><b>SALMON</b></p> <p>5. 2010 Methodology Review: Adopt Final Methodology Changes for 2011 (1 hr 45 min)</p> <p>6. Amend 16 (ACLs): Adopt Final (3 hr 30 min)</p> <hr/> <p align="center"><b>HABITAT</b></p> <p>1. Current Issues (45 min)</p> <p>2. Deepwater Coral Information Report (1 hr)</p> <hr/> <p align="center"><b>GROUNDFISH</b></p> <p>1. NMFS Report (1 hr)</p> <hr/> <p align="center"><b>ECOSYSTEM SCIENCE INFO SESSION</b></p> <p>1. Ecosystem Information Session (30 min)</p>	<p align="center"><b>GROUNDFISH</b></p> <p>2. A-20 (Trawl Catch Shares) &amp; A-21 (Trawl Allocation): Implementation Update (2 hr)</p> <p>3. Trailing Amendments to A-20 (Trawl Catch Shares): Initiate Planning &amp; Schedule (6 hr)</p> <hr/>	<p align="center"><b>COASTAL PELAGIC SPECIES</b></p> <p>1. NMFS Report (1 hr)</p> <p>2. Sardine Stock Assessment &amp; CPS Mgmt Measures: Adopt for 2011 (3hr 30 min)</p> <p>3. TOR for STAR Panel &amp; Methodology Reviews: Adopt Final (1 hr 30 min)</p> <p>4. CPS EFH 5 Year Review (2 hr)</p> <hr/>	<p align="center"><b>ADMINISTRATIVE</b></p> <p>1. Legislative Matters (30 min)</p> <hr/> <p align="center"><b>GROUNDFISH</b></p> <p>4. Inseason Adjustments (2 hr)</p> <p>5. EFPs for 2011: Adopt Final (1 hr 30 min)</p> <hr/> <p align="center"><b>HIGHLY MIGRATORY MGMT</b></p> <p>1. NMFS Report (1 hr)</p> <p>2. Changes to Routine Mgmt for 2011-12: Adopt Final (2 hr)</p> <p>3. Council Input to RFMOs (1 hr 30 min)</p> <hr/>	<p align="center"><b>GROUNDFISH</b></p> <p>6. Inseason Adjustments (1 hr 30 min)</p> <p>7. Initiate Planning for Revised Groundfish Biennial Mgmt Process (1 hr 30 min)</p> <hr/> <p align="center"><b>ENFORCEMENT ISSUES</b></p> <p>1. WA Fishery Enforcement Rpt (1 hr)</p> <hr/> <p align="center"><b>ADMINISTRATIVE</b></p> <p>2. Approve Council Minutes (15 min)</p> <p>3. Fiscal Matters (15 min)</p> <p>4. Membership Appointments (15 min)</p> <p>5. Future Meeting Agenda &amp; Workload Planning (30 min)</p>
	8 hr	8 hr 30 min	8 hr	8 hr	8 hr 30 min	5 hr 15 min
<p>8 am Secretariat</p> <p>8 am SSC</p> <p>8 am SAS</p> <p>8 am STT/SAC</p> <p>1 pm Ballrm Setup</p> <p>1 pm BC</p> <p>2:30 pm LC</p> <p>4:30 pm Ch Bfg</p>	<p>7 am WA/OR/CA</p> <p>7 am Secretariat</p> <p>8 am GAP</p> <p>8 am GMT</p> <p>8 am SAS &amp; STT</p> <p>8 am SSC</p> <p>8:30 am HC</p> <p>4:30 pm EC</p>	<p>7 am WA/OR/CA</p> <p>7 am Secretariat</p> <p>8 am EC</p> <p>8 am CPSAS &amp; MT</p> <p>8 am GAP</p> <p>8 am GMT</p> <p>8 am HC</p>	<p>7 am WA/OR/CA</p> <p>7 am Secretariat</p> <p>8 am CPSAS &amp; MT</p> <p>8 am EC</p> <p>8 am GAP</p> <p>8 am GMT</p>	<p>7 am WA/OR/CA</p> <p>7 am Secretariat</p> <p>8 am EC</p> <p>8 am GAP</p> <p>8 am GMT</p> <p>8 am HMSAS</p> <p>8 am HMSMT</p>	<p>7 am WA/OR/CA</p> <p>7 am Secretariat</p> <p>8 am EC</p> <p>8 am GAP</p> <p>8 am GMT</p> <p>8 am HMSAS</p> <p>8 am HMSMT</p>	<p>7 am WA/OR/CA</p> <p>7 am Secretariat</p> <p>8 am EC</p>
<b>PFMC sponsored evening sessions:</b>	6 pm Annual Banquet					

Agenda Item G.6.a  
Attachment 2  
September 2010

## Pacific Council Workload Planning: Year-at-a-Glance Summary

(Parenthetical numbers mean multiple items per topic; shaded Items may be rescheduled re: workload priorities; deletions= struck-out; border=new)

	<b><u>November 2010</u></b> (Costa Mesa)	<b><u>March 2011</u></b> (Vancouver)	<b><u>April 2011</u></b> (San Mateo)	<b><u>June 2011</u></b> (Spokane)	<b><u>September 2011</u></b> (San Mateo)
<b>CPS</b>	NMFS Rpt Sardine Asmnt & Mgmt Meas. STAR & Methods TOR--Final CPS EFH Review	EFPs: for Pub Rev	NMFS Report EFPs: Final Recom.	NMFS Rpt  Mackerel HG & Meas.	
<b>Groundfish</b>	NMFS Report Inseason Mgmt (2)  Initiate Pln for Bien Spx Proc. Review Final EFPs A-20 Trailing Amd: Scoping A-20 Implementation Update	NMFS Report Inseason Mgmt (2) Pac Whiting Spx & Meas.	NMFS Report Inseason Mgmt (2) Bien Spx Proc. & Sched: Update  GF EFH: Confirm Process A-20 Trailing Amd: Adopt for Public Rev	NMFS Report Inseason Mgmt (2) Bien Spx Proc. & Sched: Adopt Final Approve Stk Assessments Prelim EFP Adoption A-20 Trailing Amd: Adopt Final	NMFS Report Inseason Mgmt (2)  Science Improvements: Plan Approve Stk Assmnts Part 2 Prelim EFP Adoption Follow-up on Trailing Actions A-20 Emerging Issues
<b>HMS</b>	NMFS Report Routine Mgmt Changes Final Adoption Input to WCPFC & IATTC		NMFS Report  Albacore Mgmt	NMFS Report  Internat'l RFMO Matters Swordfish Whitepaper	NMFS Report
<b>Salmon</b>	<del>NMFS Rpt</del> OF Rpt Status Update--Sac Mitchell Act Hatchery DEIS 2011 Preseas'n Mgmt Schd 2010 Method Rev.--Final (including PS Coho Obj.) A-16 (ACLs)--Final Action*	NMFS Rpt Sacramento OF Report EFH Rev: Adopt Final  2011 Season Setting (6) Cons. Obj. Report	NMFS Rpt  2011 Season Setting (3) 2011 Method Rev.--Identify & Include CRT Update	  Straits Coho Follow-up	NMFS Rpt  Method Rev: Adopt Priorities Including CRT Update
<b>Other</b>	Pac Halibut: Adopt Final CS  WA Enforcement Report Habitat Issues Ecosystem Info Session Deepwater Coral-Info Rpt  Routine Admin (8)	Pacific Halibut (2) Halibut Allocation & Bycatch Ret--Pub Rev USCG Ann. Enf. Rpt. Habitat Issues Ecosystem FMP Dev Plan OCNMS Mgmt Pln Update  Routine Admin (7)	Halibut-Incidntl Regs  Habitat Issues  Marine Spatial Pln Update  Routine Admin (7)	  Halibut Allocation & Bycatch Ret--Final  Habitat Issues Ecosystem FMP Dev Plan  Routine Admin (8)	Pacific Halibut (2)  CA State Enforcement Rpt Habitat Issues  Routine Admin (8)
<b>Apx. Floor Time</b>	<b>6 days</b>	<b>6 days</b>	<b>5 days</b>	<b>6 days</b>	<b>5 days</b>

Agenda Item G.6.a  
Supplemental Attachment 3  
September 2010

**PROPOSED COUNCIL MEETING AGENDA, NOVEMBER 3-9, 2010 IN COSTA MESA, CALIFORNIA**

Wed, Nov 3	Thu, Nov 4	Fri, Nov 5	Sat, Nov 6	Sun, Nov 7	Mon, Nov 8	Tue, Nov 9
	<p>9:30 AM <b>CLOSED SESSION</b></p> <p>10:30 AM <b>OPEN SESSION</b></p> <p>1-4. Opening &amp; Approve Agenda (30 min)</p> <p><b>OPEN COMMENT</b></p> <p>1. Comments on Non-Agenda Items (45 min)</p> <p><b>ENFORCEMENT ISSUES</b></p> <p>1. WA Fishery Enforcement Rpt (1 hr)</p> <p><b>ECOSYSTEM SCIENCE INFO SESSION</b></p> <p>1. Ecosystem Info Session: NPFMC Model (1 hr)</p> <p><b>HABITAT</b></p> <p>1. Current Issues (45 min) 2. Deepwater Coral Information Report (1 hr)</p> <p><b>SALMON</b></p> <p>1. Preseason Mgmt Schedule for 2011: Adopt (15 min)</p>	<p><b>SALMON</b></p> <p>1. <del>NMFS Report (1 hr)</del></p> <p>2. Amend 16 (ACLs): Adopt Final (4 hr)</p> <p>3. Sacramento Fall Chinook OF Rpt: Update (1 hr 30 min)</p> <p>4. Mitchell Act Hatchery EIS: Comments (2 hr 30 min)</p>	<p><b>GROUNDFISH</b></p> <p>1. Initiate Planning for Revised Groundfish Biennial Mgmt Process (1 hr 30 min)</p> <p><b>SALMON</b></p> <p>1. 2010 Methodology Review: Adopt Final Methodology Changes for 2011 (1 hr 30 min)</p> <p><b>PACIFIC HALIBUT</b></p> <p>1. Proposed Changes to 2011 Regs: Adopt Final (45 min)</p> <p><b>GROUNDFISH</b></p> <p>2. NMFS Report (1 hr) 3. Inseason Adjustments (2 hr) 4. EFPs for 2011: Adopt Final (1 hr 30 min)</p>	<p><b>COASTAL PELAGIC SPECIES</b></p> <p>1. NMFS Report (1 hr) 2. Sardine Stock Assessment &amp; CPS Mgmt Measures: Adopt for 2011 (4hr) 3. TOR for STAR Panel &amp; Methodology Reviews: Adopt Final (1 hr) 4. CPS EFH 5 Year Review (2 hr)</p>	<p><b>GROUNDFISH</b></p> <p>5. A-20 (Trawl Catch Shares) &amp; A-21 (Trawl Allocation): Implementation Update (1 hr)</p> <p>6. Trailing Amendments to A-20 (Trawl Catch Shares): Scoping (7 hr)</p>	<p><b>GROUNDFISH</b></p> <p>7. Inseason Adjustments (1 hr 30 min)</p> <p><b>HIGHLY MIGRATORY MGMT</b></p> <p>1. NMFS Report (1 hr) 2. Changes to Routine Mgmt for 2011-12: Adopt Final (2 hr) 3. Council Input to RFMOs (1 hr 30 min)</p> <p><b>ADMINISTRATIVE</b></p> <p>1. <del>Legislative Matters (30 min)</del></p> <p>1. Approve Council Minutes (15 min) 2. Fiscal Matters (15 min) 3. Membership Appointments (15 min) 4. Future Meeting Agenda &amp; Workload Planning (30 min)</p>
	6 hr 15 min	8 hr	8 hr 15 min	8 hr	8 hr	7 hr 15 min
8 am HC	7 am WA/OR/CA	7 am WA/OR/CA	7 am WA/OR/CA	7 am WA/OR/CA	7 am WA/OR/CA	7 am WA/OR/CA
8 am Mtchl Act Cm	7 am Secretariat	7 am Secretariat	7 am Secretariat	7 am Secretariat	7 am Secretariat	7 am Secretariat
8 am Secretariat	8 am ChrBfg	8 am CPSAS & MT	8 am CPSAS & MT	8 am EC	8 am EC	8 am EC
8 am SSC	8 am HC	8 am EC	8 am EC	8 am GAP	8 am GAP	
8 am SAS	8 am SAS & STT	8 am GAP	8 am GAP	8 am GMT	8 am GMT	
8 am STT/SAC	8 am SSC	8 am GMT	8 am GMT	8 am HMSAS	8 am HMSAS	
1 pm Balrm Setup	1 pm GAP?			8 am HMSMT	8 am HMSMT	
3:30 pm BC	4:30 pm EC					
2:30 pm LC						
6 pm Annual Banquet						

Agenda Item G.6.a  
Sup. Attachment 4  
September 2010

GROUND FISH MANAGEMENT TEAM (GMT) REPORT ON  
FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Groundfish Management Team (GMT) notes that in the draft agenda (Agenda Item G.6.a, Attachment 2) for the November meeting there are two groundfish inseason agenda items scheduled on consecutive days. One day is insufficient for all but the most cursory informational updates on inseason management (e.g. a scorecard reflecting impacts from inseason action). Any more extensive inseason action requires multiple model runs, GMT discussion of the most appropriate model scenarios and potential associated management actions, statement writing and compilation that reflects the consensus of the GMT from those discussions, and final review and editing of the report. It also requires doing so without meaningful input from the Groundfish Advisory Subpanel. While we have accomplished similar feats in short time periods before, it requires most of the GMT working through the night which is not sustainable as an ongoing course of operations.

In the longer term, the GMT also supports the Council Staff effort to prepare a white paper exploring process efficiencies prior to the next harvest specifications and management measures cycle. We emphasize the importance of this project, including preparing for an amendment to the Fishery Management Plan in planning for future meetings (i.e. in addition to routine groundfish management issues such as inseason) if necessary.

PFMC  
09/16/10