STATEMENT OF

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HOUSE COMMITTEE ON RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
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HEARING ON
H.R. 793, ALTERNATIVE ENERGY-RELATED USES ON THE OUTER CONTITNENTAL SHELF
AND
H.R. 794, THE COAL LEASING AMENDMENTS ACT OF 2003

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

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

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

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

Highlights of H.R. 793

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

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

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

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

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

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

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

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

- Environmental expertise and research which are used to make informed decisions with regard to leasing and operations;
- Engineering expertise and research regarding emerging offshore technologies used to develop oil and gas resources and the various safety issues associated with these activities;
- Regulatory expertise in overseeing OCS oil and gas activities to ensure human safety and environmental protection;
- A trained offshore inspection workforce that, in addition to enforcing MMS regulations, also conducts offshore inspections for the Coast Guard and the EPA; and

- Established working relationships with State, federal and international regulators to coordinate and share information and experience on regulation of offshore energy projects to ensure safety of workers and protection of the environment.

Highlights of Comments Received on the Administration's Legislative Proposal

Since we submitted our original legislative proposal to Congress in June 2002, we have received numerous comments from a variety of interested parties on the proposal. In general, comments and concerns can be grouped into several overarching themes. The first set of comments involve the issue of proper site planning. Many commenters expressed concerns that there needed to be a mechanism in place to view alternative energy sites from the standpoint of all projects that may be appropriate for an area as well as what sites will be best for all affected parties—as opposed to reviewing one project and one site at a time without concern for cumulative impacts or other considerations.

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

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

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

Conclusion

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

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

<u>H.R. 794, the Coal Leasing Amendments Act of 2003</u>

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

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

The Department recognizes that the Federal Coal Leasing program would benefit from select modifications to provisions of the Mineral Leasing Act (MLA), as amended by the Federal Coal Leasing Amendments Act of 1976 (FCLAA).. The President's National Energy Policy directed the BLM to analyze

the effectiveness of the MLA as it relates to coal leasing on federal lands and to recommend any needed administrative or legislative changes. Accordingly, a working group established to accomplish this task should be releasing a draft report soon. In reviewing your legislation Madam Chairman, we see several changes that are useful and important.

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

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

The Department supports legislative changes to the advanced royalty provisions. Under current law, the Secretary may suspend the condition that a lessee continually operate upon payment of advance royalties. In granting a suspension, the Secretary must find that the public interest must be served thereby. However, the aggregate number of years during the period of the lease for which advanced royalties may be accepted can not exceed ten. H.R. 794 would extend that to 20 years. Under this provision, an operator would not have to relinquish a lease if unfavorable market conditions make resumption of coal production uneconomic.

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

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

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

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

We appreciate the opportunity to testify on these changes to federal coal legislation and look forward to working with you and your staff on these and other changes to the MLA that will ensure that federal coal resources are efficiently developed for the continued benefit of the public. If H.R. 794 is enacted, the Department will develop guidelines for carrying out the determinations required under the MLA related to

the provisions mentioned above that recognize the importance of the competitive leasing process, a fair return to the taxpayer, and the efficient and orderly development of coal resources.

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