STATEMENT OF

JOHNNIE BURTON

DIRECTOR, MINERALS MANAGEMENT SERVICE

U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

HOUSE COMMITTEE ON RESOURCES

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

HEARING ON ADMINISTRATION LEGISLATION

ON ENERGY RELATED USES OF THE OCS

July 25, 2002

Madam Chairman, thank you for the opportunity to appear before the Subcommittee today to discuss the Administration's legislative proposal to help facilitate energy-related uses on the Outer Continental Shelf (OCS). The Department is excited about H.R. 5156 and its potential to encourage innovative energy projects on the OCS. Furthermore, the legislation directly supports the President's National Energy Policy initiative to simplify permitting for energy production in an environmentally sensitive manner and also supports the Secretary of the Interior's goal of facilitating renewable energy projects. We look forward to working closely with the Committee as it further considers both the need for and merits of this proposal. Hopefully, my testimony today will help shed additional light on why the Administration submitted a legislative proposal; some highlights of H.R. 5156; and why the Department of the Interior is given the lead role in this legislative initiative.

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

These projects include renewable energy projects such as wind, wave and solar energy.

In addition, the oil and gas industry is contemplating ancillary projects offshore that would directly support OCS oil and gas development, particularly in the deep water areas of the OCS. These projects include developing offshore staging facilities, emergency medical facilities, and supply facilities. Since there

currently is no legal authority to permit these types of projects, H.R. 5156 would give the Secretary of the Interior the authority to permit and oversee energy-related activities in the OCS under the OCS Lands Act.

Why New Legislative Authority is Needed

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

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

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

This means that the vast majority of OCS alternate energy-related projects that are or may be contemplated in the future by the private sector have no clearly defined permitting process. There is no single agency with an overarching role to coordinate that process.

Instead, various Federal agencies with different responsibilities are responsible for permitting a specific part of a proposed project.

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

A second drawback to the current situation is that the private sector, which must make the tough investment decisions regarding whether to proceed with new energy-related projects--is now forced to "agency shop" in

an attempt to identify an authority that will allow them to move forward on a creative new venture. Otherwise, their only alternatives are to wait for clarified authority before proceeding, or to proceed--with the possibility that a new statute will establish new authority with new restrictions. Clearly, this situation stifles innovation in the energy arena-and, in fact, acts as a deterrent to critical investment decisions associated with offshore energy-related projects.

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

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

Highlights of the Administration's Legislative Proposal

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

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

- Grant an easement or right-of-way for energy-related activities on the OCS--including renewable energy projects, such as wave, wind, or solar projects; projects ancillary to OCS oil and gas operations, such as offshore staging areas; and energy or non-energy related uses of existing OCS facilities previously permitted under the OCS Lands Act;

- Protect the public's interest to capture fair value for the use of the Federal OCS by authorizing the Secretary to require an appropriate form of payment such as a fee, rental, or other payment for use of the seabed;

- Issue the easement or right-of-way on either a competitive or non-competitive basis, as appropriate and determined by the Secretary;

- Oversee all activities associated with a project through regulations and inspection activities to ensure safety and environmental protection;

- Pursue appropriate enforcement actions in the event that violations occur; and

- Require financial surety to ensure that any facilities constructed are properly removed at the end of their economic life.

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

Permitting Agency

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

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

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

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

- Environmental expertise and research which are used to make informed decisions with regard to leasing and operations;

- Engineering expertise and research regarding emerging offshore technologies used to develop oil and gas resources and the various safety issues associated with these activities;

- Regulatory expertise in overseeing OCS oil and gas activities to ensure human safety and environmental protection; and
- A trained offshore inspection workforce that, in addition to enforcing MMS regulations, also conducts offshore inspections for the Coast Guard and EPA.
- Established working relationships with international regulators to coordinate and share information and experience on regulation of offshore energy projects to ensure safety of workers and protection of the environment.

In closing, I would again like to thank the Subcommittee for its interest in this issue and express our sincere desire to work with you on this important legislation. The Administration firmly believes that this bill will provide numerous and immediate benefits. First, it will provide for the sound management of offshore public lands by ensuring that principles of safety, environmental protection, multiple use, fair compensation,

and conservation of resources are all addressed before a project is initiated. It will also provide the private sector, which desires to invest in offshore energy-related projects with certainty and predictability. Finally, the bill has the potential to help increase both our sources and supplies of energy that will be so critical to our Nation in the future. We have already seen that interest and expect to see more once a statutory framework is in place.

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

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

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