



## MEMORANDUM

July 16, 2012

**Subject:** List of Submissions to Congress Under Section 18 of the Outer Continental Shelf Lands Act (OCSLA)

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**This memorandum was prepared to enable distribution to more than one congressional office**

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This memorandum responds to requests for a list of submissions to Congress mandated under Section 18 of the Outer Continental Shelf Lands Act (OCSLA).<sup>1</sup> The most recent Section 18 submission was on June 28, 2012, when the Obama Administration submitted a five-year plan to Congress and announced the availability of a Programmatic Environmental Impact Statement (PEIS) consistent with the National Environmental Policy Act (NEPA).<sup>2</sup> Legislative interest in the Obama submission includes the House Committee on Natural Resources scheduling a mark-up session for H.R. 6082 on July 18, 2012. H.R. 6082 was introduced on July 9, 2012, to (among other purposes) adopt a statutory lease sale schedule as a “replacement” to the Obama Administration Section 18 lease sale schedule.<sup>3</sup>

Provided below are the following: (1) an overview of OCSLA Section 18 requirements and a list of the eight Section 18 submissions to Congress starting with the most recent submission on June 28, 2012; (2) a basic discussion of legislative interest in these submissions; and (3) a list of the documents that accompany these submissions (Programmatic Environmental Impact Statement, maps and technical reports).<sup>4</sup>

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<sup>1</sup> 43 U.S.C. §§ 1331 - 1336. Outer Continental Shelf Lands Act (OCSLA) establishes a procedural framework under which the Department of the Interior may lease ocean areas for purposes of exploring and developing the oil and gas deposits. Section 18 of the act states the Secretary of the Interior shall prepare and submit to Congress an oil and gas leasing schedule to implement the policies of the act. This schedule indicates the location of leasing activity that the Secretary determines will best meet national energy needs for the five-year period following the schedule's approval.

<sup>2</sup> 77 *Federal Register* 40080 (Friday, July 6, 2012).

<sup>3</sup> H.R. 6082 would establish a lease sale schedule through 2017 consisting of almost twice as many proposed sales as are listed in the Obama Administration OCSLA Section 18 submission.

<sup>4</sup> OCSLA establishes a procedural framework consistent with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321. NEPA establishes a process that can include preparing and making available to the public an Environmental Impact Statement (EIS). See RS20621, *Overview of National Environmental Policy Act (NEPA) Requirements*, by Kristina Alexander.

### What Materials are Included in a Section 18 Submission to Congress?<sup>5</sup>

In addition to a report outlining the Interior Secretary's decisions about the lease sale schedule, Section 18 submissions include materials demonstrating an environmental review of the areas listed in the lease sale schedule consistent with Council on Environmental Quality (CEQ) regulations for implementing NEPA. Section 18 submissions can be voluminous, consisting of a Programmatic Environmental Impact Statement (PEIS), formal statements of national energy policy, maps, and technical reports.

### Overview

Under the OCSLA, the Department of the Interior (DOI) must prepare and submit to Congress a forward-looking plan at least every five years that indicates proposed public lease sales in U.S. waters.<sup>6</sup> DOI submitted the first five-year plan after passage of the 1978 Amendments to the OCSLA.<sup>7</sup> This regulatory activity is referred to as a "Section 18 submission" or as a "five-year plan." The lead agency within DOI responsible for this submission is the Bureau of Ocean Energy Management (BOEM).<sup>8</sup>

A selected portion of Section 18 of the act describing the five-year plan reads as follows:

*"...The Secretary, pursuant to procedures set forth in ... this section, shall prepare and periodically revise, and maintain an oil and gas leasing program ... The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or re-approval... At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received..."*<sup>9</sup>

The policy underpinning the submission is to facilitate a predictable process for federal leasing activities by notifying Congress and the public of the proposed lease sale schedule at least every five years. Under the act, the Interior Secretary prepares the plan by analyzing a number of factors and balancing national interests in energy supply and environmental protection.<sup>10</sup> The process begins with broad-based planning on a national scale and, over a 2-3 year period results in an increasingly narrower focus on several U.S. regions. Upon completing this process BOEM submits to Congress the Secretary's decisions in the form of a proposed plan for future leasing activity.

A key component of each submission is a Programmatic Environmental Impact Statement (PEIS).<sup>11</sup> In the past submissions have attracted public attention because the schedule of lease sales and the PEIS are the

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<sup>5</sup> Materials accompanying the June 28, 2012, submission are listed at the end of this memorandum.

<sup>6</sup> 43 U.S.C. § 1331(a). U.S. waters are comprised of an area referred to as "the Outer Continental Shelf" or OCS. This is an area of submerged lands, subsoil, and seabed that lies between the outer seaward reaches of a state's jurisdiction and that of the United States. The OCS generally extends from 3 miles to 200 miles off the coast of the continental United States.

<sup>7</sup> P.L. 95-372; 92 Stat. 629 (1978).

<sup>8</sup> Prior to 2010 the Interior Secretary delegated this responsibility to the Minerals Management Service, then to its successor agency, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). For an overview of the various DOI agencies responsible for offshore energy production see CRS Report R42599, *Department of the Interior (DOI) Reorganization of Ocean Energy Programs*, by Curry L. Hagerty.

<sup>9</sup> 43 U.S.C. § 1344.

<sup>10</sup> The Secretary must ensure, "to the maximum extent practicable," that the timing and location of leasing occurs so as to "obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone." 43 U.S.C. § 1344(a)(3).

<sup>11</sup> Council on Environmental Quality (CEQ) regulations at 40 CFR Part 1500. Section 102(2)(C) of the National Environmental Policy Act (NEPA, 42 USC 4321).

first formal public notice of the locations that might be eligible for public auctions (and might result in future oil and gas projects). The PEIS is made available to demonstrate alternatives, if any, DOI considered as policy options with respect to those areas.

**Table I. OCSLA Section 18 Submissions to Congress 1980 through 2012**

Years	Administration Submitting Plan	Congress	Number of Sales Listed in Submission	Number of Sales Held	Approximate Acreage Leased (in millions)
1980-1982 <sup>a</sup>	Carter	96 <sup>th</sup>	36	12	4.1
1982-1987	Reagan	97 <sup>th</sup>	40	23	19.4
1987-1992	Reagan	100 <sup>th</sup>	24	17	24.7
1992-1997	George H.W. Bush	102 <sup>nd</sup>	18	12	26.8
1997-2002	Clinton	105 <sup>th</sup>	16	12	18.8
2002-2007	George W. Bush	107 <sup>th</sup>	20	15	24.3
2007-2012	George W. Bush	110 <sup>th</sup>	21; revised to 16	11	20.5 (as of 2011)
2012-2017	Obama	112 <sup>th</sup>	15	NA	NA

**Source:** CRS. Data reflecting approximate acreage leased from one lease sale (Central Gulf of Mexico Sale 216/22 held on June 20, 2012) is not yet available. “NA” indicates Not Applicable.

- a. This program was originally referred to as the Comprehensive Program 1980-1985. It was later renamed the Comprehensive Program 1980-1982 due mainly to judicial activity, *California v. Watt*, 688 F.2d 1290 (D.C. Cir. 1981).

## List of Section 18 Proposals Submitted to Congress

Since 1980, there have been eight “five-year plans” submitted to Congress. Following a 60-day review period required by the act, each five-year plan submitted to Congress in the past has taken effect as an approved plan. This list is arranged from the most recent submission (June 28, 2012) to the earliest submission (1980).

### 2012-2017 (Submitted June 28, 2012)

The Obama Administration submitted a five-year plan to Congress on June 28, 2012. This submission is aimed at succeeding the previous schedule for oil and gas lease sales which expired on June 30, 2012. The proposal is eligible to be approved by Secretary Salazar in late August, after a 60-day review period (required under the OCSLA) has passed.<sup>12</sup> After 60 days the proposal may be approved by the Secretary and take effect as an “approved plan” with no further regulatory or legislative action being needed prior to its implementation.<sup>13</sup> Legislative interest in this proposal includes the House Committee on Natural Resources scheduling a mark-up session for H.R. 6082 on July 18, 2012. H.R. 6082 was introduced on July 9, 2012, to (among other purposes) adopt a statutory lease sale schedule instead of the Obama Administration Section 18 lease sale schedule.<sup>14</sup> At issue for Congress is whether or not the Obama Administration submission reflects an adequate balance of national interests, particularly competing

<sup>12</sup> This 60-day period was contemplated by Congress to allow for public review and comment on the contents of the proposal.

<sup>13</sup> The act does not require a plan be in effect at all times. However, there has rarely been a lapse when no plan has been in place.

<sup>14</sup> H.R. 6082 consists of provisions to establish a lease sale schedule through 2017 that would consist of almost twice as many proposed sales as are listed in the Obama Administration OCSLA Section 18 submission.

interests in promoting domestic energy supply and providing adequate environmental review for ocean and coastal areas affected by the plan.

Preparation for this submission started in 2009 under the direction of Interior Secretary Dirk Kempthorne and was subsequently completed and presented to Congress under the direction of Interior Secretary Ken Salazar. Accordingly, the plan reflects Obama Administration policies toward offshore energy development in the aftermath of the *Deepwater Horizon* events and subsequent reforms involving DOI strategies for managing offshore energy development.<sup>15</sup> The submission consists of 15 proposed lease sales from August 2012 through 2017, including 12 sales in the Gulf of Mexico and three in the Alaska region.

## 2007 to 2012

The George W. Bush Administration prepared and submitted the 2007-2012 five-year plan to Congress under the direction of Interior Secretary Dirk Kempthorne. This submission was consistent with the Bush Administration policies toward domestic energy production and environmental protection.<sup>16</sup> The proposed plan went into effect on July 1, 2007, with a schedule of 21 sales. DOI revised the schedule in accordance with a 2009 court order.<sup>17</sup> After re-submitting the plan to Congress in 2010 (essentially replacing the original lease sale schedule with a schedule consisting of 16 sales), the plan was approved after the 60-day review period had passed. Eleven of the 16 sales were held.<sup>18</sup> This five-year program expired on June 30, 2012.

## 2002 to 2007

Preparation for the 2002-2007 OCS oil and gas leasing plan started in December 2000<sup>19</sup> and was presented to Congress in March 2002 at the direction of Interior Secretary Gale Norton. This submission was supported by the George W. Bush Administration policies toward energy production and environmental review.<sup>20</sup> The proposal consisted of a schedule of 20 lease sales, 15 of which were held before the program expired on June 30, 2007.

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<sup>15</sup> The *Deepwater Horizon* events resulted in 11 worker fatalities, a massive oil release, and a national response effort in the Gulf of Mexico led by the federal government. Based on estimates from the U.S. Geological Survey, the oil spill was the largest in U.S. waters. Numerous structural and substantive reforms are referred to in the submission. Most were put in place since 2010 to improve energy operations, worker safety, and environmental protection in U.S. waters. See 76 *Federal Register* 64432 (October 18, 2011). Bureau of Safety and Environmental Enforcement, 30 CFR Chapter II; Bureau of Ocean Energy Management, 30 CFR Chapter V.

<sup>16</sup> Energy analysis was consistent with the National Energy Policy Plan (May 2001) and NEPA analysis was consistent with the EIS made available through 72 *Federal Register* 24326-24327 (May 2, 2007).

<sup>17</sup> *Center for Biological Diversity, et al. v. Department of the Interior*, 563 F.3d 466 (D.C. Cir. 2009).

<sup>18</sup> See Revised 2007-2012 Program, December 2010. See also DOI history of related litigation available at <http://www.boem.gov/5-year/2007-2012FiveYearProgram.htm>.

<sup>19</sup> 67 *Federal Register* 19447 (April 19, 2002).

<sup>20</sup> Energy analysis was consistent with the National Energy Policy Plan (May 2001) and NEPA analysis was consistent with the EIS made available through 67 *Federal Register* 19447 (April 19, 2002).

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## 1997 to 2002

Preparation of the Section 18 submission for the period from 1997 through 2002 began in 1994 and was completed and submitted to Congress in 1997 under the direction of Interior Secretary Bruce Babbitt. The submission was consistent with national energy and environmental policies established during the Clinton Administration.<sup>21</sup> The submission listed 16 sales, 12 of which were held before the program expired on June 30, 2002.

## 1992-1997

Preparation for the Section 18 submission for the period 1992 through 1997 started in 1990 and was presented to Congress in 1991 under the direction of Interior Secretary Manuel Lujan. Planning was consistent with George H.W. Bush Administration policies toward energy production and environmental review.<sup>22</sup> A schedule of 18 sales was submitted. Thirteen sales were held before the program expired on June 30, 1997.

## 1987-1992

This Section 18 submission was presented to Congress in April 1987 under the direction of Interior Secretary Donald Hodel. The lease sale schedule reflected Reagan Administration policies<sup>23</sup> and the approved lease sale schedule consisted of 24 sales, 17 of which were held before the program expired on June 30, 1992.

## 1982-1987

Preparation of the 1982 submission to Congress began in December 1980 during the Carter Administration, when the Department of the Interior conducted a mandated annual review of the 1980-1985 Program.<sup>24</sup> In July 1982, Interior Secretary James Watt submitted the proposal to Congress consistent with the Reagan Administration's national energy and environmental policies.<sup>25</sup> This plan consisted of 40 sales, 23 of which were held before the program expired on June 30, 1987.

## 1980-1985

The original Section 18 submission for domestic oil and gas leasing was envisioned during the passage of the 1978 Amendments to the OCSLA and was prepared starting in October 1978.<sup>26</sup> Consistent with

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<sup>21</sup> Energy analysis was consistent with the National Energy Policy: Sustainable Energy Strategy (July 1995) and NEPA analysis was consistent with the EIS made available through 59 *Federal Register* 59328 (November 16, 1996).

<sup>22</sup> Energy analysis was consistent with the National Energy Strategy: Powerful Ideas for America (February 1991) and NEPA analysis was consistent with the EIS made available through 57 *Federal Register* 19308, May 5, 1992.

<sup>23</sup> Energy analysis was consistent with the National Energy Plan (1985) and NEPA analysis was consistent with the EIS made available through 50 *Federal Register* 11585-11595 (March 22, 1985).

<sup>24</sup> OCSLA Section 18 (a)(2)(f) authorizes an annual review for determining the adequacy of the program from year to year. On December 31, 1980, DOI announced the start of an annual review of the adequacy of the 1980-1985 program.

<sup>25</sup> Energy analysis was consistent with the National Energy Strategy (1985) and NEPA analysis was consistent with the EIS made available through 47 *Federal Register* 11980-11985 (March 19, 1982).

<sup>26</sup> This program was originally referred to as the Comprehensive Program 1980-1985. It was later renamed the Comprehensive (continued...)

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President Carter's Energy Message of April 5, 1979, the program was presented to Congress in April 1980 under the direction of Interior Secretary Cecil D. Andrus. This proposal took effect as an approved plan in June 1980.<sup>27</sup> Under this plan, DOI proposed 36 sales, 12 of which were held. This program was succeeded by the 1982-1987 program.

## Lease Sales Held Prior to 1980

The domestic program for oil and gas leasing prior to 1980 encompassed almost 30 years of federal government lease sales conveying more than 3,000 leases from October 1953 through September 1980.

## Legislative Interest in Past Section 18 Submissions

Since the first proposal was submitted to Congress by the Carter Administration in 1980, each submission has sparked legislative interest (and sometimes controversy). One reason the submissions garner attention is that they notify Congress (and the public) of federal regulatory policies toward offshore drilling locations being contemplated for the five years following the submission.

At times in the past, heightened public interest has prompted legislative action such as hearings on the submissions.<sup>28</sup> The hearings have been a forum for stakeholders (oil and gas companies, coastal states and citizens groups) to support or oppose the submissions. At issue for Congress has been whether or not DOI analysis and balancing of national interests (as directed by the OCSLA) is consistent with national economic and environmental goals. Of particular interest has been whether the plan adequately balances competing national interests such as fostering greater energy independence by increasing domestic energy supply (from renewable and nonrenewable resources) and protecting the nation's marine and coastal areas, including some areas that are significant to America's commercial fishing and tourism sectors. In the past lawmakers have expressed a lack of confidence in DOI decision-making with respect to presenting a plan that adequately balances such national interests.<sup>29</sup>

In addition to legislative interest in the submissions, there is a history of judicial activity associated with Section 18 submissions.<sup>30</sup>

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(...continued)

Program 1980-1982. *California v. Watt*, 688 F.2d 1290 (D.C. Cir. 1981).

<sup>27</sup> Energy analysis was consistent with the National Energy Plan (April 1977), and NEPA analysis was consistent with the EIS made available through 44 *Federal Register* 43115-43125 (July 23, 1979).

<sup>28</sup> The first two hearings were in 1980 and 1981. For a complete list of hearings contact the author. House Committee on Merchant Marine and Fisheries, Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf, "Review of the President's Five-Year Plan to Manage Future Oil and Gas Development in our Nation's Outer Continental Shelf," (April 11, 1980). House Committee on Interior and Insular Affairs, Subcommittee on Oversight and Investigations, "Outer Continental Shelf Lease Sales and the Department of the Interior's 5-Year Leasing Plan," (October 9, 1981).

<sup>29</sup> For a complete list of House and Senate hearings, please contact the author.

<sup>30</sup> Four approved Section 18 submissions were challenged in court: in 1980, 1982, and 1987, and 2007. The U.S. Court of Appeals for the District of Columbia Circuit decided all of those lawsuits. Each subsequent Section 18 program was prepared in accordance with judicial guidance consistent with the following court decisions: *California v. Watt*, 688 F.2d 1290 (D.C. Cir. 1981); *California v. Watt*, 712 F.2d 584 (D.C. Cir. 1983); *Natural Resources Defense Council, et al. v. Hodel*, 865 F.2d 288 (D.C. Cir. 1988); and *Center for Biological Diversity, et al. v. Department of the Interior*, 563 F.3d 466 (D.C. Cir. 2009).

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## Supporting Documents

The remainder of this memorandum is a guide to BOEM documents in support of Section 18 submissions. The OCSLA requires that each submission be consistent with economic and environmental reviews required by OCSLA, NEPA, and Council on Environmental Quality (CEQ) regulations for implementing NEPA.<sup>31</sup> Accordingly, submissions are accompanied by a Programmatic Environmental Impact Statement (PEIS) and related technical documents. Basically, in addition to a narrative outlining the Interior Secretary's decisions about the lease sale schedule, the PEIS provides a detailed environmental review with some findings being cross-referenced with the narrative describing the sale schedule. Public comments used as input from stakeholders, including state governors, companies, individuals, and public interest organizations are provided in both the PEIS and the proposed five-year leasing plan.

The following list refers to resources available on the BOEM website (<http://www.boem.gov/>) and are provided on the website to support public review of the current submission for 2012-2017.<sup>32</sup>

- Proposed Final OCS Oil and Gas Leasing Program (221 pages)
- Programmatic Environment Impact Statement (2,057 pages)
- BOEM Fact Sheet: Proposed Final Oil and Gas Leasing Program for 2012-2017
- BOEM Fact Sheet: Arctic
- Map: OCS Oil and Gas Strategy – Lower 48 Continental U.S.
- Map: OCS Oil and Gas Strategy – Alaska
- Map: Chukchi Area Analytical Considerations
- Map: Beaufort Area Analytical Considerations
- Economic Analysis Methodology for the Five Year OCS Oil and Gas Leasing Program for 2012-2017 (BOEM 2012-022)
- Energy Alternatives and the Environment (BOEM 2012-021)
- Inventory of Environmental and Social Resource Categories Along the U.S. Coast (BOEM 2012-003)
- Forecasting Environmental and Social Externalities Associated with OCS Oil and Gas Development: The Revised Offshore Environmental Cost Model OECM (OECM) (BOEM 2012-025)
- Consumer Surplus and Energy Substitutes for OCS Oil and Gas Production: The Revised Market Simulation Model (MarketSim) (BOEM 2012-024)
- Update of Occurrence Rates for Offshore Oil Spills (BOEM 2012-069).

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<sup>31</sup> Council on Environmental Quality (CEQ) regulations at 40 CFR Part 1500.

<sup>32</sup> The BOEM website offers several tools including interactive maps: <http://www.boem.gov/>. Last checked July 16, 2012.