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Written Testimony of Emily Woglom
United States House of Representatives
Committee on Natural Resources, Subcommittee on Energy and Mineral Resources
Legislative Hearing on H.R. 12229, H.R. 1230, and H.R. 1231

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Chairman Hastings, Ranking Member Markey, and Members of the Committee, thank you for the invitation to participate in today's hearing. My name is Emily Woglom, and I am the Director of Government Relations for Ocean Conservancy, a national marine conservation organization that has brought scientists and citizens together to promote a healthy ocean for the last forty years. I have worked on marine issues since I served as a budget and policy analyst for ocean issues at the Office of Management and Budget during the Bush Administration. In my graduate program at Duke University I focused jointly on resources economics and marine environmental management. Through my training and professional career I have experience looking at the intersection of natural resource issues and economic concerns in the ocean.

I. INTRODUCTION

Last spring, an explosion rocked the BP Deepwater Horizon offshore drilling rig in the Gulf of Mexico. The explosion and resulting fire killed 11 crew members, seriously injured 16 others, and eventually sank the rig. The explosion marked the beginning of the "world's largest accidental release of oil into marine waters." By the time BP effectively stopped the flow of oil on July 15, 2010, its Macondo well had discharged an estimated 205 million gallons of oil into the Gulf of Mexico. The Gulf disaster impacted lives, livelihoods, and the rich and diverse Gulf of Mexico ecosystem that is a national treasure and a cornerstone of the regional economy.

Ocean Conservancy recognizes that the United States must continue to develop energy sources needed to sustain and promote economic growth and support our social needs. But the catastrophe in the Gulf of Mexico shows that we must learn to do so in ways that are safe for energy workers and that allow us to maintain a healthy environment for this and future generations.[1] At the same time, conservation—including reducing our use of and dependence on hydrocarbons and other high-risk, non-renewable energy sources—must be a part of our

[1] The Gulf disaster is just one of many energy-related disasters that have been in the news lately. In 2009, the Montara offshore oil platform suffered a blowout and released oil into the Timor Sea for more than 70 days. Shortly before the Deepwater Horizon disaster in April 2010, there was a massive explosion at the Upper Big Branch coal mine in West Virginia that killed 29 miners. And, of course, there is an ongoing crisis at Japan's Fukushima Dai-ichi nuclear complex, where radioactive water is now leaking into the ocean and slowing response to the devastation of the tsunami.

country's energy future. Safe and responsible energy development, coupled with sensible conservation measures and investments, will help ensure that there are economic opportunities, healthy and diverse ecosystems, and a clean and safe environment into the future.

Finding a path to safe, responsible, and ultimately sustainable, energy development is one of the biggest challenges of our time. Congress must not view this issue as a political football that can be used to score partisan points. Instead, it must do all in its power to bring the nation together and commit to doing energy development right, including investing in renewable energy sources and conservation programs. The following basic principles should guide the process:

(1) Energy development must protect environmental, human, and economic health;
(2) Energy development must be grounded in science and a commitment to increased understanding of the environment;
(3) Development operations must use the best available, safest engineering and technology;
(4) Government regulators must perform rigorous risk assessments;
(5) Government regulators and industry operators must ensure that they are prepared to respond to a worst-case disaster, even if such an event is of low probability;
(6) Congress must provide the funding necessary to ensure adequate preparedness;
(7) Our nation's energy policy must include conservation programs; and
(8) Congress must commit to restoration in the Gulf of Mexico.

Below, in Part II of this testimony, I expand on these guiding principles. In Part III, I discuss specific areas where the proposed bills that are the subject of this hearing—H.R. 1229, H.R. 1230, and H.R. 1231—diverge from these principles. And in Part IV, I suggest legislative language that would address some specific aspects of the energy issue, including funding for restoration of the Gulf of Mexico, science and oil spill preparedness, and an Arctic research and monitoring program.

II. Principles for Safe and Responsible Energy Development

To ensure that energy development minimizes risks to energy workers, ocean and coastal ecosystems, and the coastal businesses and economies that rely on them, Congress and government regulators should adhere to the principles articulated below.

A. Energy development must protect environmental, human, and economic health.

In our pursuit of energy, we must minimize risks to the natural environment to ensure diverse, healthy ecosystems capable of supporting the economy and human health—for this generation and the next. Oil and gas lease sales, exploratory drilling, and development and production on the Outer Continental Shelf (OCS) are appropriate only when science shows that such actions can proceed with minimal risk to the health of ocean and coastal ecosystems. Oil and gas activities and other energy development activities on the outer continental shelf should be consistent with the National Ocean Policy's call to "protect, maintain, and restore the health and

biological diversity of ocean, coastal, and Great Lakes ecosystems and resources."[2] In addition, to help ensure that economic sectors other than oil and gas development are given adequate consideration, we should move toward a more comprehensive system of regional planning for the conservation and management of marine resources.

Instead of eroding existing standards, Congress should bolster environmental safeguards to help ensure that the marine environment is adequately protected from the risks of energy development. The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, for example, noted the need for a "comprehensive overhaul of both leasing and the regulatory policies and institutions used to oversee offshore activities."[3] To help minimize risks from OCS activities, expert agencies other than the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) should play a greater role in decisions about, and preparation of environmental analyses for, oil and gas operations. These agencies should include the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (USFWS), the U.S. Coast Guard (USCG), and others. To facilitate more meaningful environmental analysis before exploration and drilling activities proceed, OCS planning areas—at least in frontier areas—should be smaller and focused more precisely on specific lease tracts. Finally, areas of the marine environment that are particularly significant—such as important essential fish habitat, areas of high productivity or concentrations of wildlife, migratory pathways, and subsistence-use areas—should be protected from the impacts of OCS oil and gas activities. Regulators should preserve the resilience of marine ecosystems by placing important ecological areas off-limits to drilling, or by requiring OCS operators to meet specific, stringent precautions before they conduct on-water activities that may affect these areas.

B. Energy development must be grounded in science and a commitment to increased understanding of the environment.

Congress must ensure that adequate baseline science is in place before OCS activities proceed. Scientific baseline data and risk analyses should inform decisions about whether, when, and where to allow OCS oil and gas activities. Certain types of scientific information are necessary to help plan for and implement oil spill response operations. In addition, baseline science is necessary in the natural resource damage assessment process following an oil spill because the impacts must be measured against the environmental baseline that existed prior to the spill.[4] This is not possible without adequate time series of baseline data, and the costs of obtaining such data are part of the costs of responsible energy development.

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[2] Executive Order 13547, 75 Fed. Reg. 43,023, 43,023 (July 22, 2010). The National Ocean Policy also includes calls to "improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies," and to "use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes." *Id.* at 43,023–24.

[3] National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling—Report to the President* (Jan. 11, 2011) at 250 [hereinafter *National Commission Report*].

[4] *See, e.g.*, 15 C.F.R. § 990.52 (noting that natural resource trustees "must quantify the degree, and spatial and temporal extent of such injuries relative to baseline."); *see also id.* § 990.30 (defining "baseline" as "the condition of the natural resources and services that would have existed had the [oil spill] incident not occurred.").

Before permitting OCS activities to proceed, we should require the availability of specific types and quantities of baseline scientific information. This information might include information on physical characteristics—such as data on the benthic environment, ocean currents, wind and weather patterns, and water temperature and salinity—as well as information about the ecosystem, such as the presence, distribution, and abundance of species and the web of relationships among those species. Collection of baseline science should include and incorporate local and traditional knowledge from affected communities. This approach would ensure that expert concerns are heard from the outset, and would help avoid later complications.

The need for baseline science information is particularly acute in the Arctic OCS. Participants in a workshop[5] on Natural Resource Damage Assessments [NRDA] in the Arctic convened on April 20, 2010—the same day as the BP Deepwater Horizon disaster began to unfold—participants concluded that: "Even under best-case scenarios, spilled oil could have serious consequences for natural resources and local communities, requiring a NRDA to be initiated. However, very little, if any, NRDA work has been done in the Arctic." The National Commission noted that "scientific research on the ecosystems of the Arctic is difficult and expensive. Good information exists for only a few species, and even for those, just for certain times of the year or in certain areas."[6] The Commission recommended "an immediate, comprehensive federal research effort to provide a foundation of scientific information on the Arctic (with periodic review by the National Academy of Sciences), and annual stock assessments for marine mammals, fish, and birds that use the Beaufort and Chukchi Seas."[7]

C. Development operations must use the best available engineering and technology.

Going forward, we must ensure that OCS facilities use the best available engineering, technology, and safety procedures to maximize the protection of workers, ocean and coastal ecosystems, and the coastal businesses and economies that rely on them. A recent Department of the Interior Inspector General Report concluded that BOEMRE's "process for developing or updating standards and regulations has not kept pace with new and emerging offshore technologies."[8] Operators of all new offshore leases should be required to demonstrate that they are using the most effective safety technology for exploration or development activity as a precondition to drilling.[9] Standards regarding spill prevention technologies should be implemented, as well. These might require redundant engineering controls, such as multiple or improved blowout prevention systems, on-site blowout containment structures, and double-

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[5] National Oceanic and Atmospheric Administration Office of Response and Restoration and University of New Hampshire Coastal Response Research Center. *Natural Resources Damage Assessment in the Arctic: The Dialogue Begins* (October 2010) at 4.

[6] National Commission Report at 303.

[7] *Id.*

[8] Office of Inspector General, U.S. Department of the Interior, *A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement* (Dec. 2010), at 44.

[9] At present, OCSLA provides for "the use of the best available and safest technologies . . . on all new drilling and production operations and, wherever practicable, on existing operations." 43 U.S.C. § 1347(b). However, this requirement is weakened significantly by other provisions: it applies only to certain types of equipment, and the Secretary of the Interior may waive the requirement if he determines that the additional cost of using the "best" or "safest" technology outweighs the additional benefits of using the technology. *Id.*

walled pipes or tanks. All OCS leases should be required to incorporate the most environmentally protective timing and location stipulations and terms so as to reduce the potential for environmental damage and the potential for adverse impact on the coastal zone.

D. Regulators must perform a rigorous risk assessment.

As development activities proceed, regulators must ensure a rigorous analysis of potential impacts and risks. As noted above, federal agencies other than BOEMRE should have a greater role in planning for and conducting environmental analyses of OCS oil and gas activities. Risk analysis should be science-based, and subject to peer review. Analysis pursuant to the National Environmental Policy Act (NEPA) should be substantive—not mere window dressing--and OCS drilling operations should not be categorically excluded from environmental review. All OCS drilling activities should be subject to site-specific NEPA analysis, either an Environmental Assessment or an Environmental Impact Statement.

The BP Deepwater Horizon disaster highlighted the risk of failing to engage in worst-case oil spill planning. When making decisions that involve the potential for catastrophic result—such as a major oil spill—environmental analyses must take seriously the potential for disaster. This is true even if the probability of an individual occurrence is low, because the harm from such an event may be very great.[10] In the future, federal regulators must analyze low-probability, high-risk events to ensure that they are prepared for a worst-case disaster. The Council on Environmental Quality concluded that, in light of the BP Deepwater Horizon disaster, BOEMRE must "take steps to incorporate catastrophic risk analysis."[11] The National Commission recommended that BOEMRE "incorporate the 'worst-case scenario' calculations from industry oil spill response plans into NEPA documents and other environmental analyses or reviews" to inform the agency's "estimates for potential oil spill situations in its environmental analyses."[12]

Agency assessment of industry oil spill plans must be more rigorous, as well. In the Arctic, BOEMRE approved an oil spill response plan in which Shell Offshore, Inc. claimed that it would recover 90 percent of the oil spilled during a worst case discharge from its proposed facility in the Beaufort Sea[13]—even though a 90 percent recovery rate is, without question, wholly unrealistic. BOEMRE approved the plan despite the fact that in earlier planning documents, the agency had acknowledged that "[o]n average, spill-response efforts result in recovery of approximately 10-20% of the oil released to the ocean environment."[14] This kind of lax oversight

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[10] *See, e.g., id.* § 1502.22(b)(4) (noting that in a NEPA analysis when information is missing or unavailable, "reasonably foreseeable" impacts include "impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason").

[11] Council on Envtl. Quality, *Report Regarding the Minerals Management Service's National Environmental Policy Act Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development* (Aug. 16, 2010) at 27.

[12] *National Commission Report* at 267.

[13] *See* Shell Offshore Inc., Beaufort Sea Regional Exploration Oil Discharge Prevention and Contingency Plan (Jan. 2010) at unnumbered page following I-12 (containing BOEMRE approval letter); *id.* at 1-29 (assuming that only ten percent of the discharge from a hypothetical blowout will "escape [ ] primary offshore recovery efforts").

[14] Minerals Management Service, Final Environmental Impact Statement: Beaufort Sea Planning Area Oil and Gas Lease Sales 186, 195, and 202 p. IV-17 (Feb. 2003).

led DOI's Office of Inspector General to conclude that BOEMRE's review of oil spill response plans "does not ensure that critical data are correct."[15]

To facilitate more serious review of oil spill response plans for offshore facilities, broaden the scope of review, and promote better information-sharing in the review process, multiple federal agencies should review and approve these plans. The National Commission endorsed the idea of interagency spill plan review:

> In addition to the Department of the Interior, other agencies with relevant scientific and operational expertise should play a role in evaluating spill response plans to verify that operators can conduct the response and containment operations detailed in their plans. Specifically, oil spill response plans, including source-control measures, should be subject to interagency review and approval by the Coast Guard, EPA, and NOAA. Other parts of the federal government, such as Department of Energy national laboratories that possess relevant scientific expertise, could be consulted.[16]

The Commission also noted that interagency review of oil spill response plans for OCS facilities would facilitate greater integration of those plans with broader-level area contingency plans and regional contingency plans because it would "involve[e] the agencies with primary responsibility for government spill response planning in oversight of industry planning."[17] In addition to interagency review of oil spill response plans for OCS facilities, there should be public comment on such plans.[18]

E. Government regulators and industry operators must ensure that they are prepared to respond to a worst-case disaster.

Worst-case scenario planning will help federal regulators and OCS operators anticipate their needs in the event of a major oil spill or other disaster. To protect healthy, diverse ocean ecosystems for future generations, regulators and the oil and gas industry must also ensure the immediate availability of equipment and trained personnel sufficient to contain, control, and clean-up a worst-case discharge.

Estimates following the BP Deepwater Horizon disaster reveal that despite the massive effort that BP activated to clean up the oil[19] response efforts were able to remove or chemically disperse—without removal of the dispersed oil—only about one-third of the oil that was discharged from the Macondo well.[20] The National Commission determined that "[t]he

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[15] Office of Inspector General, U.S. Department of the Interior, *A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement* (Dec. 2010), at 44.
[16] National Commission Report at 266-67.
[17] *Id.* at 267.
[18] *See id.* ("Plans should also be made available for a public comment period prior to final approval and response plans should be made available to the public following their approval.")
[19] At its peak, more than 45,000 people were involved in the response effort. *National Commission Report* at 133.
[20] *See* Jane Lubchenco *et al.*, *BP Deepwater Horizon Oil Budget: What Happened to the Oil?* (Aug. 4, 2010) *available at* http://www.restorethegulf.gov/sites/default/files/imported_pdfs/posted/2931/Oil_Budget_description_8_3_FINAL.8

technology available for cleaning up oil spills has improved only incrementally since 1990" [21] The Commission further observed that "[f]ederal research and development programs in this area are underfunded," and the major oil companies have committed minimal resources to in-house research and development related to spill response technology."

To spur better on-water cleanup results and more investment in research and development for response technologies, regulators should require operators to demonstrate the ability to meet specific performance standards in real-world conditions in the lease area before allowing operators to conduct drilling operations. The performance standards should require operators to demonstrate in simulated field trials that they have in place adequate equipment, personnel, and resources to respond effectively in the event of a catastrophic spill. Operators should show that they can deploy their resources in real-world conditions and that the chosen equipment is effective in meeting an established oil removal performance target. These spill response standards should be enforced through independent third-party review of facility response plans and regular audits during the period of exploration and production.

F. Congress must provide the funding necessary to ensure adequate preparedness.

It will not be enough to require adequate oil spill preparedness in legislation or agency regulations. Congress also must commit the necessary financial resources to enable relevant federal agencies, such as the Coast Guard, NOAA, the Department of the Interior (DOI), and others, to do their jobs. Absent stable and adequate funding for oil spill preparedness, federal agencies may not be able to carry out their responsibilities to plan, prepare, and respond to incidents, and to contain, control, and clean-up a major oil spill.

To ensure that research and development on oil spill response technologies is not put off until the next catastrophic spill, Congress should provide steady funding for federal agencies to promote and conduct such research. The National Commission recommended that Congress establish a funding mechanism that is not subject to the annual appropriations process to "increase federal funding for oil spill response research by agencies such as [the Department of the] Interior, the Coast Guard, EPA, and NOAA—including NOAA's Office of Response and Restoration."[22] In addition, agencies may be able to increase their own focus on spill response research. For example, the DOI Inspector General recommended that DOI "[c]onduct additional research on containment and control measures to determine appropriate requirements for containing oil discharge at the source."[23] As noted above, agencies also can promote industry investment in oil spill response research and development by instituting strict new performance standards that require operators of OCS facilities to demonstrate the effectiveness of their spill response equipment in real-world conditions before they are allowed to conduct drilling activities.[24]

44091.pdf (estimating that of the 4.9 million barrels of oil that was discharged, responders recovered 17% directly from the wellhead, skimmed 3%, burned 5%, and chemically dispersed 8%, for a total of 33%).

[21] National Commission Report at 269.

[22] *Id.* at 270.

[23] Office of Inspector General, U.S. Department of the Interior, *A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement* (Dec. 2010), at 51.

[24] *See supra*, Part II(B)(3).

G. Congress must commit to restoration in the Gulf of Mexico.

A sound energy development policy must include a commitment to restoration of the Gulf of Mexico ecosystem and communities. The Gulf's people, businesses, and ecosystem suffered a major blow from last summer's BP Deepwater Horizon disaster. As we move forward with safer, more responsible energy development, we must support restoration efforts by committing to a full Natural Resource Damage Assessment process and by dedicating Clean Water Act penalties to Gulf restoration work.

Successful restoration of the Gulf ecosystem—including preserving the region's unique culture and traditions and promoting its economic restoration—will require sound management, stable and coordinated funding, prudent project selection, stewardship of the full ecosystem, and monitoring and adaptive management over the long-term. Restoration should focus on five key priorities:

1. Protecting, restoring, and enhancing the coast and wetlands: Restore resilience to coastal areas and nourish wetlands through major projects in the Mississippi River delta region and elsewhere in the five-state region.
2. Maintaining healthy, sustainable fisheries: Restore and sustain Gulf of Mexico fisheries through investments in science, technology, fishing fleet performance, and strategies to restore depleted fish populations and support sustainable long-term management.
3. Restoring and protecting coastal and marine habitats: Enhance key coastal and marine habitats like oyster reefs, seagrass beds, deepwater corals, and nesting sites for birds and turtles to strengthen and restore critical ecosystems services, such as shoreline protection, tourism, and fishing.
4. Shrinking the dead zone in the northern Gulf of Mexico: Implement nutrient reduction strategies in the Mississippi River watershed to reduce the size and duration of the hypoxia zone to improve marine health and increase fisheries productivity in the Gulf of Mexico.
5. Taking the pulse of the Gulf ecosystem: Create a permanently-funded, long-term Gulf of Mexico ecosystem monitoring and research program to provide the basis for adaptive management of coastal and marine natural resources.

Restoration in the Gulf must be well-managed. The restoration process should be based on a comprehensive, science-based ecosystem restoration strategy, supplemented by annual work plans, progress reports, and periodic requests for proposals. Relevant federal entities and all Gulf States should be active, full participants. The process should engage the public through a formal and recognized process that includes broad representation from communities and stakeholders in the region. Federal and state partners should commit to incorporating local and traditional knowledge in management decisions. The Natural Resource Damage Assessment and restoration process (NRDA) conducted in response to the BP oil disaster must be well-coordinated with the broader restoration planning functions of the Gulf Coast Ecosystem Restoration Task Force.

Stable funding will be critical to successful restoration. Congress should dedicate Clean Water Act penalties to fund restoration in the Gulf of Mexico, and the National Commission

recommended that 80 percent of such penalties be dedicated to that purpose. This commitment should be done in a way that results in predictable funding streams that are consistent from year to year and sustained over the long-term. For example, an endowment should be established to support long-term research and monitoring needed to assess the health of the Gulf, evaluate the efficacy of restoration measures, and facilitate adaptive management. The funding stream from the endowment could also provide valuable support for the work of Gulf Coast research institutions, which are in a good position to make lasting contributions to the overall recovery of the Gulf ecosystem and economy.

Restoration projects should be selected based on established criteria that clearly link projects to specific, measurable, feasible objectives. The selection and evaluation of projects should be subject to independent scientific peer review, and a comprehensive ecosystem restoration strategy should coordinate and integrate various restoration projects.

Gulf of Mexico restoration must embrace the whole ecosystem, from coasts and marshes under state jurisdictions to open blue-water environments managed by the federal government. It should include habitat protection and enhancements that provide long-term resiliency and sustainability for coastal communities, as well as rehabilitation of degraded natural resources and ecosystem services that provide sustainable economic opportunity and human uses.

Finally, successful restoration in the Gulf of Mexico will require long-term monitoring and management systems to help identify and address lingering oil spill injuries, evaluate the effectiveness of restoration projects, and make necessary adjustments. As noted above, Ocean Conservancy supports a permanent program that "takes the pulse of the Gulf" to track ecosystem health, identifies emerging problems, and facilitates solutions.

H. Our nation's energy policy must include conservation programs.

Ocean Conservancy recognizes that additional energy development—consistent with the foregoing principles—must be part of this country's overall energy policy. Any energy policy must also call for and incentivize conservation to reduce our overall energy demand. Congress should identify and support programs that effectively reduce consumer demand for hydrocarbons. These measures might include weatherization, alternative transportation, and other projects.

III. The Legislative Language in H.R. 1229, H.R. 1230, and H.R. 1231 Does Not Conform to the Principles for Safe and Responsible Energy Development.

The bills that are the subject of this hearing—H.R. 1229, H.R. 1230, and H.R. 1231—pursue a lop-sided approach that promotes energy development without ensuring that such development will be conducted in a way that maintains a healthy environment for present and future generations. This "full-steam ahead" path jeopardizes the health of ecosystems, as well as the people and businesses that depend on those ecosystems. The following section touches on some of the shortcomings of the three bills.

A. Shortcomings of H.R. 1229, the "Putting the Gulf of Mexico Back to Work Act"

H.R. 1229 proposes a series of amendments to the Outer Continental Shelf Lands Act (OCSLA) intended to hasten Secretarial approval of drilling permits by imposing limits on the Secretary's ability to delay or deny approval of such permits, and by declaring that permits would be "deemed approved" if the Secretary does not issue a decision within 60 days. These proposed deadlines would interfere with—or make impossible—BOEMRE's ability to conduct thorough, site-specific environmental analyses of drilling projects, or to ensure adequate oil spill preparedness and response capability. These deadlines would effectively elevate production above safety and environmental concerns, risking another BP Deepwater Horizon-type incident.

In addition, this legislation proposes limits on judicial review of energy projects in the Gulf of Mexico. These limits are designed to discourage litigation that might slow down energy development. Insulating BOEMRE from scrutiny and encouraging the agency to rush critical environmental analyses and spill plan review simply sets the stage for the kind of lax regulatory culture that made possible the BP disaster.

B. Shortcomings of H.R. 1230, the "Restarting American Offshore Leasing Now Act"

H.R. 1230 would require certain lease sales in the Gulf of Mexico and off the Coast of Virginia. It would require the Secretary of the Interior to hold Lease Sale 216 in the Central Gulf of Mexico within four months after enactment, Lease Sale 218 in the Western Gulf of Mexico within eight months after enactment, and Lease Sale 222 in the Central Gulf by June 1, 2012. For all these sales, the Act deems pre-existing NEPA analyses sufficient—even though those reviews took place before the BP Deepwater Horizon disaster. The proposed legislation would also require the Secretary to hold Lease Sale 220, off the coast of Virginia, no later than one year after enactment.

By forcing lease sales in quick succession, this legislation would place a burden on BOEMRE that would likely only be met by conducting the most cursory reviews and superficial analyses. More importantly, this legislation subverts the NEPA process. It would deny BOEMRE the opportunity to conduct a thorough and specific environmental review—including more comprehensive worst-case discharge analyses—and would deny the public the opportunity to learn about and comment on the lease sales. Shortcutting the environmental review process increases risks. In fact, H.R. 1229 would effectively eliminate BOEMRE's ability to conduct a rigorous site-specific analysis of environmental impacts at the drilling stage.

C. Shortcomings of H.R. 1231, the "Reversing President Obama's Offshore Moratorium Act"

H.R. 1231 would amend section 18 of the Outer Continental Shelf Lands Act by requiring the Secretary to open certain portions of planning areas to oil and gas leasing and open other areas as requested by state governors. It would also require the Secretary to establish production goals, set specific production goals for the 2012-2017 five-year OCS leasing program, and require

annual progress reports. The Act would also require the Secretary to establish regulations for the issuance of "seismic surveying cost credits," equal in value to 50 percent of the costs of the survey.

This legislation would effectively force BOEMRE to offer for lease sweeping areas of the OCS. In so doing, it would make it difficult for the agency to conduct any meaningful, site-specific analysis of the potential environmental impacts and risks of oil and gas activity. Moreover, by flooding the market with OCS leases, it could reduce competition and lower bids for OCS areas—diminishing returns to taxpayers. The last section of the bill also would harm the American public by forcing taxpayers to foot half the bill for certain oil and gas exploration costs. Oil and gas companies do not need this subsidy, and taxpayers should not have to give their earnings to some of the most profitable corporations on the planet.

IV. The Path Forward: Legislation to Ensure Safer, More Responsible Energy Development and Restoration of the Gulf of Mexico.

As noted at the outset, intact and diverse ocean ecosystems are critical for human health and support a wide array of jobs and businesses. The amendments proposed in H.R. 1229, H.R. 1230, and H.R. 1231 fail to provide critical protections. In contrast, Ocean Conservancy supports legislation that will promote energy development "done right": legislation that will not only lead to new sources of energy, but will provide the science, safety, and environmental safeguards necessary to ensure clean, healthy ecosystems today and in the future. Ranking Member Markey has introduced H.R. 501 the Implementing the Recommendation of the BP Oil Spill Commission Act of 2011. We urge the Committee to take up H.R. 501 which addresses many of the chronic regulatory problems that led to the Deepwater Horizon disaster and would ensure that energy development occurs in a responsible manner that would protect our oceans and coasts and the businesses and economies that depend on them.

The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling recommended a series of reforms to this country's administration of OCS oil and gas activities. For example, the Commission recognized the need for science-based decision-making and argued: "To ensure that offshore oil and gas development and production proceed in ways that minimize adverse impacts to the natural and human environment, decisions about these activities must be grounded in strong science." [25] It also recognized the need for other federal agencies (beyond BOEMRE) to participate in scientific research, environmental review, and other parts of the OCS process.[26] The Commission recommendations called for changes in regulatory processes, including changes in BOEMRE's NEPA processes and incorporation of "the 'worst-case scenario' calculations from industry oil spill response plans" into NEPA analyses.[27] They also recommended that NOAA provide advice on especially sensitive areas "that should be excluded from the leasing program or treated in a specific manner due to their ecological sensitivity or for other reasons."[28] The Commission recommended new safety and regulatory

[25] National Commission Report at 263.
[26] *Id.* at 264, 265.
[27] *Id.* at 267.
[28] *Id.*

standards for OCS activities and more rigorous oil spill response planning and preparedness.[29] In addition, the Commission recommended funding Gulf of Mexico restoration work with 80 percent of the penalties associated with the Deepwater Horizon disaster.[30] Ocean Conservancy believes that the Commission's recommendations—if fully implemented by government and industry—would address many of the flaws in the existing system.

In addition to supporting comprehensive OCS oil and gas reform legislation as envisioned by the National Commission, Ocean Conservancy supports specific legislative priorities that would advance energy development while at the same time maintaining a healthy environment for this and future generations. Specifically, Ocean Conservancy supports:

> (1) Targeted changes to the Oil Pollution Act of 1990 (OPA 90) that would increase funding available to the U.S. Coast Guard for annual operating expenses; establish minimum funding levels for Coast Guard operating expenses related to the implementation, administration, and enforcement of area contingency plans and facility response plans for oil spills; and establish minimum funding levels for Coast Guard operating expenses related to operations in the Arctic Ocean, where current capacity is extremely limited.
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> (2) Establishment of an Arctic scientific research and monitoring program to be administered by the North Pacific Research Board, in cooperation with the U.S. Arctic Research Commission. At present, our understanding of Arctic ecosystems is limited; and our lack of knowledge precludes informed decisions about whether to allow oil and gas operations, and if so under what conditions.
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> (3) Comprehensive restoration for the Gulf of Mexico ecosystem and economies, using financial resources from the Natural Resource Damage Assessment and Clean Water Act penalties for programs and projects that include restoring coastal wetlands and marine habitats, long-term monitoring and research, shrinking the Gulf hypoxic ("dead") zones, improving fisheries and wildlife management throughout the Gulf, and enhancing critical nursery habitat and ecosystem services through oyster reef and seagrass restoration.

CONCLUSION

The United States must move forward with energy development, but we must "do it right." Any energy development must be guided by principles and practices that will ensure a safe, healthy environment for present and future generations. The bills that are the subject of this hearing do not clear that hurdle, and Ocean Conservancy cannot support them. We look forward to working with the Committee on future legislation that takes a more balanced and measured approach to energy development on the OCS.

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[29] *See, e.g., id.* at 252-53, 265.
[30] *Id.* at 280.