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BEFORE THE COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ON H.R. 3534, THE CONSOLIDATED LAND, ENERGY, AND AQUATIC RESOURCES
ACT OF 2009.

SEPTEMBER 17, 2009

Chairman Rahall, Ranking Member Hastings and Members of the Committee:

My name is Christopher Mann and I serve as a Senior Officer with the Pew Environment Group in Washington, D.C. I greatly appreciate your invitation to appear before the Committee to share our views on H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act of 2009. The Pew Environment Group is the conservation arm of the Pew Charitable Trusts. We are dedicated to advancing strong environmental policies that are informed and guided by sound science on climate change, wilderness protection and marine conservation. I manage a number of Pew's marine conservation initiatives, including our efforts to promote comprehensive, ecosystem-based management of our oceans, coasts, and Great Lakes.

I am pleased to offer the support of the Pew Environment Group for H.R. 3534. We believe that, this legislation is a strong step in the right direction to assist the much-needed transition to sustainable energy production, to improve accountability for energy development on public lands and in public waters, and to protect the environment and coastal economies through comprehensive planning for offshore energy development. My testimony today will focus primarily on the provisions of the bill that relate to energy development on the Outer Continental Shelf (OCS).

Offshore energy development and a new approach to national energy policy

The Pew Environment Group understands that the United States will continue to depend on fossil fuels for some time to come, even as we begin the necessary transition to non-polluting, renewable energy. As a result, we are not opposed to offshore drilling in general, but feel that if offshore oil and gas development is expanded, it must be done in a way that protects the oceans and coasts. Decisions should be grounded in science and give priority to the maintaining the health of the ecosystem. Further, any expansion in offshore energy development should be used to build a sustainable energy future, not to continue the dependence on fossil fuels that has created the looming crisis of global warming. Congress and the Administration should adopt measures above and beyond the current OCS leasing and development process to ensure that our coastal economies, and the marine resources that sustain them, are not harmed by expanded offshore development. That is why we endorse the approach taken in H.R. 3534.

The case for ocean governance reform

Six years ago, the Pew Oceans Commission released its final report. A year later, the U.S. Commission on Ocean Policy issued its report. The two commissions came to remarkably similar conclusions: Our use and misuse of marine resources—from overfishing, water pollution, habitat destruction, and other activities—has led to widespread marine environmental degradation. The damage from human activities to marine ecosystems was documented exhaustively in the reports of the ocean commissions. The case has since been bolstered by dozens of additional scientific studies.

There is no better example of the Tragedy of the Commons than our oceans. For millennia, humankind viewed the oceans as vast and their resources inexhaustible. Particularly after World War II, however, technology allowed us to strip living resources from the oceans far faster than the oceans could replace them. Technology now allows us to remove minerals and carry out offshore activities, such as renewable energy production and aquaculture, in places never before accessible. With no overarching framework for their management and no single entity responsible for their wellbeing, the oceans are bearing the cumulative effect of a growing list of ad hoc resource use decisions.

Single-sector management approaches are simply not up to the task of addressing the complex interactions and effects of multiple stressors on the oceans. After all, you can drill for oil, float wind turbines, or ship cargo, over a warm, dead ocean, but you can't fish in it and you wouldn't want to swim in it. To address these shortcomings, the ocean commissions recommended that narrow, single-sector resource management give way to a more integrated and comprehensive approach based implemented at the regional level and supported at the national level. This would be a transformative and much-needed change in both the way society views the oceans and in the way we manage our use of the oceans.

Since the ocean commissions released their findings, progress has been mixed. A number of states have adopted a more comprehensive approach to ocean planning and management in their own waters, and are working with adjacent states on regional efforts. Yet these state-based efforts to improve ocean management are limited to the narrow band of coastal waters over which they have jurisdiction and are frustrated by the lack of coordination among federal activities.

With bipartisan leadership from this Committee, Congress has enacted important reforms putting fisheries management on a more sustainable course. But marine ecosystems are about much more than fish. Although science-based fisheries management is a critical element of sound ocean management, fisheries management cannot by itself safeguard the health of marine ecosystems. And it is the overall health of marine ecosystems on which fisheries ultimately depend.

As we struggle to transform our energy economy, there is renewed interest in offshore oil and gas extraction, as well as emerging opportunities for ocean renewable energy development. At the same time, the environmental damage that our dependence on fossil fuels is causing to marine and terrestrial ecosystems alike has become more apparent. Global warming-induced

changes in currents and upwelling patterns, rising sea level and water temperature, melting sea ice, and the increasing acidity of ocean waters will cause considerable damage to marine ecosystems. These new challenges are perhaps nowhere more evident than in the Arctic, where a poorly understood system already under stress from rapid environmental change is at the same time being exposed by reduction in ice cover to increased resource extraction and maritime traffic.

As you are aware, President Obama took an important step to address ocean management needs when he established an interagency ocean policy task force in June to recommend a national ocean policy and an implementation framework for that policy. The broad outlines of that plan have already been transmitted to the President and we expect that it will be made public as early as today.

Comprehensive offshore energy planning and management: a constructive step

Mr. Chairman, H.R. 3534 contains a number of significant reforms to guide rational development of offshore energy while providing greater protection for the living resources and ecological services provided by the oceans. We believe these reforms are complementary to the ocean governance reforms being undertaken by the Administration, and we of course urge you to work closely with the Administration to ensure that continues to be the case as the President's efforts come into sharper focus and as this legislation advances in Congress.

First, title VI requires that the Secretary of the Interior and the Secretary of Commerce jointly establish outer continental shelf councils to provide for long-term, multiple-objective planning and management of energy development in the OCS on a regional basis. The councils would be chaired either by Interior or Commerce. The councils would be broadly representative of the key resource-use decision makers at the federal, state and tribal levels. They would take full advantage of existing regional expertise in marine fisheries management and interstate ocean management. Detailed regional assessments of the renewable and non-renewable energy potential, resource uses and users, and ecological condition of an OCS region would be prepared by the Department of the Interior, in consultation with the Department of Commerce.

Based on these assessments, each regional council would prepare, and submit to the Secretary of the Interior for approval, a multi-objective, science- and ecosystem-based plan for OCS energy development in that region. The plans developed by regional councils would explicitly consider the many other economic and recreational uses of the marine resources of each region, and would be designed to "ensure the protection and maintenance of ecosystem health in decisions affecting the siting of energy facilities." After considering these factors, the plans would delineate areas open to energy development in each region, and once finalized, the plans would be binding on the Secretary of the Interior in leasing and permitting under the OCS Lands Act (OCSLA).

This is not the fully integrated governance system recommended by the ocean commissions, but we recognize that this is an energy bill. Creating an offshore energy decision-making process that requires fuller consideration of other uses—and users—of ocean resources is a substantial improvement over current practice. Careful assessment of the economic and ecological

conditions of each region, followed by full consideration of the impact of energy development decisions on resources, resource users, and ecological values will result in energy siting decisions that protect the long-term public interest in healthy and productive marine ecosystems. To further these ends, we suggest a number of improvements to the bill.

Suggested improvements to the bill

We strongly support the inclusion of the Department of Commerce, presumably acting through the National Oceanic and Atmospheric Administration, in establishing and running regional councils, and in preparing regional energy, economic and ecological assessments. To better fulfill the purposes of title VI, however, we believe the bill should go further and require that regional councils are jointly chaired by Interior and Commerce, and that regional assessments are jointly prepared by the two departments. These departments bring considerable, but different, expertise to bear on the problem of offshore energy siting and management. To ensure the fullest consideration of the range of ocean resources and users affected by offshore energy development decisions, we believe that NOAA should be a full partner in the assessment and regional planning process, even though Interior will make final decisions regarding regional plan approval and implementation under the OCSLA.

As introduced, the bill would allow leasing and permitting under the OCSLA to continue as usual until regional plans are approved. The timeline in the bill allows up to four years for regional plans to be approved and the consequences for failure to approve a plan are vague. We recognize the complexity of the task assigned to the councils, but four years is too long to continue with business as usual under the OCSLA. We recommend that you firm up the requirement for the Secretary of the Interior to ultimately approve regional plans. We also request that you include provisions from an earlier draft of the bill that created new environmental requirements in the OCSLA that would apply in addition to requirements of a regional plan.

Section 602 of the bill provides broad authority to appoint non-government officials to the council to achieve balance on the council. Although we support balanced representation of interests and perspectives on these councils, that can be done from within the ranks of government agencies with expertise and jurisdiction over marine resources. We do not feel it is appropriate to delegate decision-making authority over public resources to non-government stakeholders. Indian tribes and interstate efforts to improve ocean management should be represented on the regional councils, but there is a need to clarify how such representation will be selected and appointed. As a practical matter, one council for the entire Atlantic EEZ will be too large and ungainly. This represents too many states and marine ecosystems to provide effective advice to the Secretary.

Because of the pace and magnitude of climate change in the Arctic, the challenges to safe energy exploration and development in that hostile environment, and the poor state of scientific understanding of those ecosystems, the Pew Environment Group recommends that energy development in the Arctic be deferred until a comprehensive plan can be developed for that region.

Reinvesting OCS revenue to conserve and manage our oceans and coasts

We strongly support section 605, which establishes a permanently appropriated, dedicated fund for ocean and coastal management. This is consistent with the recommendations of both ocean commissions. The bill would cover ten percent of OCS revenue into the fund each year. This would provide approximately one billion dollars annually for ocean and coastal management. The proposed trust fund would be used to support three classes of activities for protection, maintenance and restoration of marine ecosystem health: grants to states based on a formula similar to that used to allocate funds under the Coastal Zone Management Act; competitive grants for ocean conservation and management available to public and private entities; and grants to support regional ocean partnerships.

In the early years of the fund, it would be subject to appropriation. In later years, the unappropriated balance and new receipts would become available without appropriation under the guidelines of the legislation. Offshore energy extraction has significant offshore and onshore impacts. This fund can help address those effects as well as the myriad other challenges facing our oceans and coasts.

There is a compelling logic in taking public revenue derived primarily from the extraction of non-renewable ocean resources and investing them in the conservation and management of renewable resources. Such a financing scheme will pay rich dividends long after the oil and gas coming from our oceans has been used. That was certainly the thinking of this Committee a number of years ago when it crafted bipartisan legislation establishing a similar fund and shepherded it through House passage.

Of course we are in a much different fiscal climate than the late 1990s, but given the state of our oceans and coasts, an investment of this magnitude is appropriate and much needed. Moreover, an investment of this magnitude is in fact modest given the millions of jobs and hundreds of billions in annual economic activity derived from our oceans and coasts. Given the hundreds of billions that are being spent to prop up our financial infrastructure, I respectfully suggest that an investment of a tiny fraction of that amount in support of our blue infrastructure is highly prudent.

Mining Law reform

My portfolio is marine conservation, but the Pew Environment Group continues to support reform of the nation's antiquated mining law. As a result, we strongly support the provision in this bill that removes uranium from the purview of the 1872 Mining Law. We believe this is a sensible policy change that will allow development of uranium resources from public lands where such development is in the public interest and with the appropriate safeguards. Long ago, the government recognized the critical value of oil and gas resources and removed them from the antiquated law that gives away mineral resources on public lands. At the time that oil and gas reserves were withdrawn from the mining law, the primary concern was the potential loss of strategic resources. Thanks to those concerns, oil and gas resources on public lands have been managed for decades under the Mineral Leasing Act, bringing significant returns to the U.S. taxpayers.

Today, uranium remains the only energy mineral still subject to the antiquated law that limits the ability of federal land managers to determine how and where extraction takes place. Under that law, uranium mining may occur in sensitive areas, including lands adjacent to the Grand Canyon National Park that hold important waters feeding springs and seeps in the Park's rich ecosystem. And once claims are staked and valid discoveries made, mining may go forward, even in areas that have important public uses such as watershed protection, wildlife habitat or recreation that may be seriously impaired. In contrast, management of public uranium resources under a leasing program will allow not only for a royalty return to the taxpayers but also careful, proactive balancing of other public needs.

Offshore aquaculture

Last but not least, we support section 704, which prohibits the Department of Commerce and Regional Fishery Management Councils from permitting and managing offshore aquaculture under the Magnuson Stevens Act. The Pew Environment Group believes that attempting to regulate aquaculture under the Magnuson Stevens Act is a gross misinterpretation of the plain meaning of that law and congressional intent in enacting it. Offshore aquaculture should be guided by a national regulatory program designed specifically for aquaculture, not created ad hoc from a law designed to regulate capture fisheries.

Conclusion

Mr. Chairman, we look forward to working with both Congress and the Administration to protect, maintain and restore the health of our oceans through comprehensive, ecosystem-based management. H.R. 3534 provides for rational and sustainable development of the energy resources of our public lands and oceans, while ensuring that a significant portion of the revenue derived from extraction of nonrenewable resources is reinvested in the conservation and management of renewable resources. That is an important step toward a sound and sustainable national energy policy. I thank you again for the opportunity to provide the views of the Pew Environment Group and I would be happy to answer any questions you may have.