

Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman
Hearing Memorandum

June 22, 2018

To: Members of the Subcommittee on Energy and Mineral Resources

From: Majority Committee Staff, Kate Juelis (x69837)
Subcommittee on Energy and Mineral Resources

Hearing: Legislative hearing on a **Discussion Draft of H.R. ____**, To amend the Outer Continental Shelf Lands Act to provide for a leasing program for offshore renewable energy, and for other purposes.
June 26, 2018, at 10:00 AM; 1324 Longworth House Office Building

H.R. ____, National OCS Renewable Energy Leasing Program Act

Summary of the Bill

This bill establishes regularity and certainty in the federal offshore wind leasing process. Currently, offshore wind lease sales are not regularly scheduled, resulting in uncertainty for a wide range of stakeholders, including offshore wind developers, coastal communities, Department of Defense (DOD) missions, fishermen, and other ocean users. This bill seeks to ameliorate some of these concerns by requiring the Department of the Interior (DOI) to publish a regular leasing schedule, and to update the existing Memorandum of Agreement governing the relationship between DOI and DOD operations on the outer Continental Shelf (OCS).

Invited Witnesses (in alphabetical order)

James F. Bennett
Chief of the Office of Renewable Energy Programs
Bureau of Ocean Energy Management
The Department of the Interior
Washington, DC

Roy Francis
Senior Vice President
Gulf Island Fabricators, Inc.
Houston, TX

Randall Luthi
President
National Ocean Industries Association
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Olaf J. Olsen
Lead Representative

Dockbuilders-Divers-Piledrivers
Keystone Mountain Lakes Regional Council of Carpenters
Edison, NJ

Stephen Pike
Chief Executive Officer
Massachusetts Clean Energy Center
Boston, MA

Background

Historic and Current Offshore Wind Energy Efforts

Societies around the world have been harnessing the power of the wind since the first sails were raised on boats. Windmills helped medieval Europeans mill grains and drain marshes and swamps. Today, modern technologies have harnessed the wind in a new capacity, converting breezes to electricity in large quantities to support a growing number of power needs.

Onshore, wind turbines are a relatively common sight, covering the rolling hills of west Texas and the flatlands throughout Central Europe. This technology has moved offshore in recent decades, capturing some of the most powerful and consistent wind streams. The North Sea has become the epicenter of the offshore wind industry, and hosts several productive commercial wind farms throughout the region. As of 2017, Northern European seas hosted 4,149 grid-connected turbines across eleven countries.¹

However, in the United States, the offshore wind industry is still nascent, but nonetheless an industry that has garnered considerable interest from developers, investors, and coastal communities seeking alternative forms of energy. With over half of the American population located along the coasts, and with an estimated 2 million mega-watts of net technical potential energy blowing over our seas, many see offshore wind as a means to further diversify sources of power generation.² Over the past decade, America has developed a regulatory framework to begin development of this latent resource, and, finally, just last year, America's first offshore wind facility came online. Located largely in State waters off Block Island, Rhode Island, the five-turbine, 30-megawatt project connects Block Island to the mainland grid.³

According to the American Wind Energy Association (AWEA), there are 17 proposed offshore wind projects in the works located offshore in 11 States. While these initial projects are in the Atlantic, developers have indicated significant interest in leasing offshore California and Hawaii (see *Figure 1*, below, depicting the average wind speeds on the OCS).

¹ WindEurope, *Statistics – The European offshore wind industry – key trends and statistics 2017*, (<https://windeurope.org/about-wind/statistics/offshore/european-offshore-wind-industry-key-trends-statistics-2017/>), last accessed June 20, 2018.

² American Wind Energy Association, “*Offshore Wind Energy Briefing for House Resources Committee Staff*,” Sept. 2017.

³ Deepwater Wind, *Block Island Wind Farm*, (<http://dwwind.com/project/block-island-wind-farm/>), last accessed June 19, 2018.

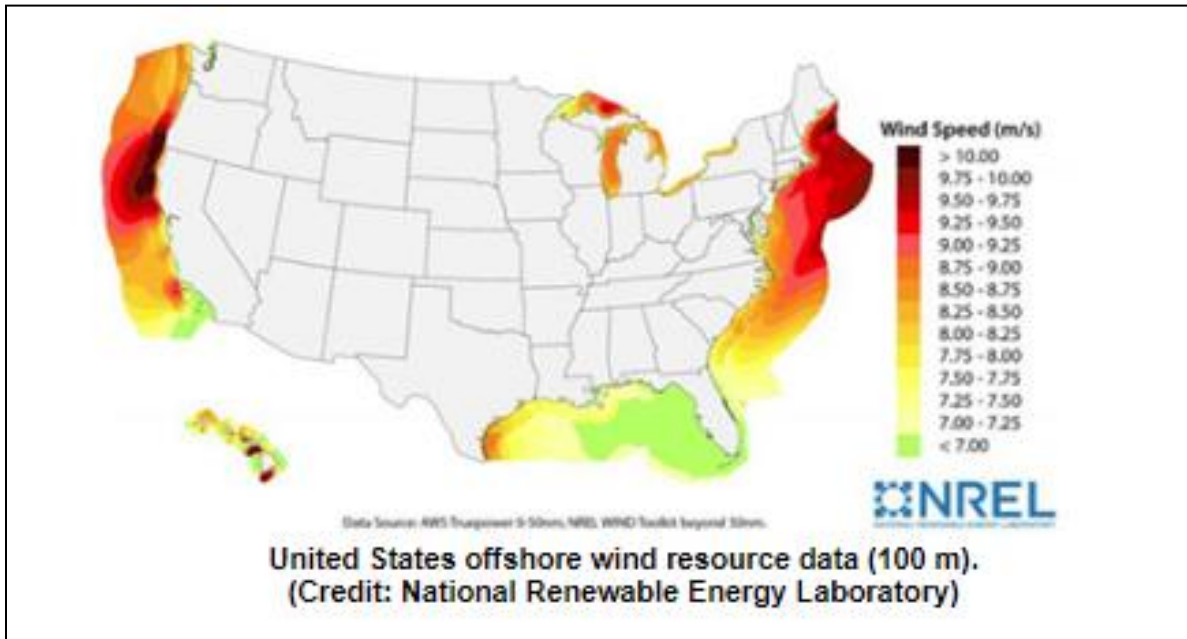


Figure I: Average Offshore Wind Speeds, Continental USA⁴

Statutory Framework and Leasing Process

Wind energy development on the OCS is a relatively new phenomenon, with a regulatory and statutory structure being contemplated in the past two decades. Although frameworks had long been established for onshore federal mineral leasing, it was not until 2005 that Congress clarified the process for offshore renewable energy, with the passage of the Energy Policy Act (EPAct05, Public law 109-58). EPAct05 amended the Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. 1331 et seq.) to provide the Secretary of the Interior the authority to lease offshore lands for the purposes of renewable energy development. EPAct05 also preserved and clarified the responsibilities of other federal agencies, such as the Army Corps of Engineers, who operate on the OCS.

EPAct05 also set forth State involvement in the offshore wind leasing process. DOI is directed to balance a range of considerations, including environmental impact, national security, and existing operations on the OCS in developing a lease. Furthermore, DOI must consult and coordinate with an affected coastal State's governor or head of local government before executing an offshore wind lease sale.⁵ Other applicable federal statutes include the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.), the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

⁴ Bureau of Ocean Energy Management, *Renewable Energy Program, Offshore Wind Energy*, (<https://www.boem.gov/Renewable-Energy-Program/Renewable-Energy-Guide/Offshore-Wind-Energy.aspx>), last accessed June 19, 2018.

⁵ 43 U.S.C. 1337(p)(7).

DOI’s Bureau of Ocean Energy Management (BOEM) is charged with developing and executing the offshore wind leasing process. Currently, there is no scheduled process for holding wind leases on the OCS. The process begins with potential developers identifying parcels that may technically and economically support an offshore wind farm. Then BOEM coordinates with taskforces in affected States, and begins establishing parameters of the lease. Currently, the process takes an estimated four years to execute a lease sale, and about seven years after the sale to begin construction (see *Figure II*, below, depicting the current wind leasing process). The burdensome environmental review requirements required under NEPA are completed after the lease is executed, adding uncertainty regarding milestone completions and presenting considerable legal exposure to the leaseholders.

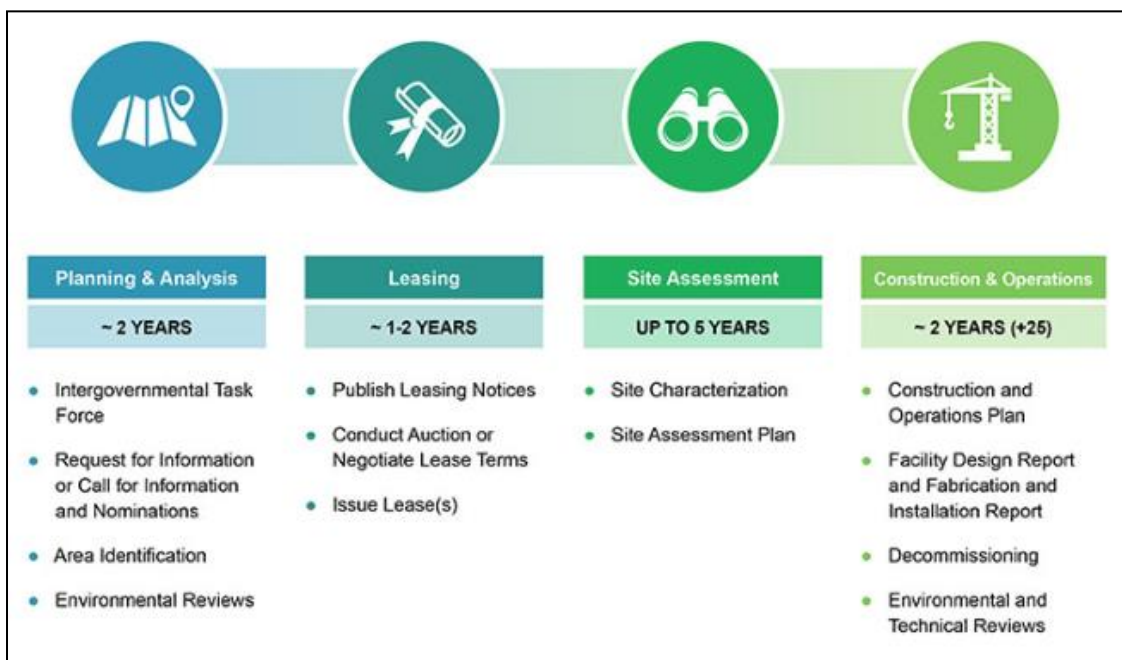


Figure II – OCS Renewable Energy Authorization Process⁶

Concerns and Frustrations with the Current Process

Offshore wind development is not without its critics. While demand for the clean energy source appears to be increasing in the United States, other ocean users are concerned the wind projects will directly conflict with their usage and enjoyment. Throughout the pre-leasing and leasing process, BOEM attempts to engage with a variety of coastal and ocean users, including local tourism boards, coastal mayors, fishermen, and shippers. These meetings are geared at alleviating concerns that further crowding of the sea will impair or displace important, existing offshore industries.

⁶ Bureau of Ocean Energy Management, *Renewable Energy, Energy Roadmap*, (<https://www.boem.gov/Regulatory-Roadmap/>), last accessed June 19, 2018.

Despite outreach, concerns linger. In Rhode Island, for instance, mainland consumers saw an increase in electricity prices, with many pointing to the Block Island offshore wind project's \$300 million construction price tag as the cause.⁷ Reacting to this increase, the City Council of Newport, Rhode Island, passed a resolution citing the State's Public Utility Commission "decision to put the significant increase in renewable power costs from offshore wind" onto the mainland consumer as a primary reason for a sharp increase in local electricity costs.⁸

While offshore wind developers have some options in reducing visibility from shore, such as painting the turbines to blend with the sky or modifying the layout of the wind farm, many coastal communities are concerned the turbines will make their beaches and waterways less attractive. In December 2017, leaseholders of what would have been the very first federal offshore wind farm, the Cape Wind Project, relinquished the lease largely because they were unable to ameliorate concerns of landowners in Nantucket, Massachusetts.⁹

Improving and Facilitating Wind Projects on the OCS through Statutory and Regulatory Reform

Much needed statutory and regulatory changes can provide certainty and reliability in the leasing process, to ensure that all stakeholders will benefit from development. In March 2017, President Trump issued Executive Order 13783, entitled Promoting Energy Independence and Economic Growth, which states:

It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation's geopolitical security.¹⁰

Earlier this month, DOI's Royalty and Policy Committee's Planning, Analysis, and Competitiveness Subcommittee proposed a series of recommendations that would require DOI to lease at least two gigawatts of offshore wind annually over four lease sales. These recommendations were adopted by the full Royalty and Policy Committee. These actions demonstrate a commitment to regularly scheduled leasing, proposing a specific number of lease sales, and thus helping reach a level of leasing activity.¹¹

⁷ Dennis, Brady, "In Block Island Turbines, Some See Progress Where Others See An Eyesore," The Hartford Courant, Sept. 4, 2106, (<http://www.courant.com/business/hc-block-island-wind-turbines-0830-20160829-story.html>)

⁸ Trodson, Lars, "Wind farm blamed for higher mainland power rates," The Block Island Times, Jan. 19, 2018, (<http://www.blockislandtimes.com/article/wind-farm-blamed-higher-mainland-power-rates/51561>)

⁹ Brian Eckhouse and Joe Ryan, "What was once hailed as first U.S. offshore wind farm is no more," Bloomberg, (<https://www.bloomberg.com/news/articles/2017-12-01/cape-wind-developer-terminates-project-opposed-by-kennedys-koch>).

¹⁰ E.O. 13783 of Mar 28, 2017 (82 FR 16093).

¹¹ The Department of the Interior, Royalty and Policy Committee, "Planning Analysis, and Competitiveness Subcommittee Recommendations, Jun 2018 (https://www.doi.gov/sites/doi.gov/files/uploads/approved_pac_recommendations_6.6.18_-_with_rpc_edits_1_0.pdf)

Offshore wind is an important and underdeveloped resource that would allow the United States to diversify its energy production and maximize energy security. However, existing inefficiencies and the lack of coordination in the offshore wind leasing process must be addressed to ensure that this clean, renewable source of energy is further developed.

Major Provisions of the Bill

Section 2. Leasing Program for Energy from Sources Other than Oil and Gas.

- Requires DOI and DOD to update the Memorandum of Agreement Between the Department of Defense and the Department of the Interior on Mutual Concerns on the Outer Continental Shelf to include leases, easements, and rights-of-way pertaining to offshore wind leases.
- Establishes a four-year leasing program that schedules offshore wind lease sales, detailing the size, timing, and location of leasing activity.
- At least one year prior to each offshore wind lease sale, DOI shall publish a list of applicable bidding credits. Bidding credits may not: exceed 10% of the total value offered by a bidder in each sale; be an exclusive agreement; and be advantaged by previous compliance with any federal agency.

Administration Position

Unknown.

Cost

CBO has not scored the legislation.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by the Discussion Draft/National OCS Renewable Energy Leasing Program Act

[text to be added highlighted in yellow]

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.)

Section 8 (43 U.S.C. 1337)

§1337. Leases, easements, and rights-of-way on the outer Continental Shelf

* * * *

(p) Leases, easements, or rights-of-way for energy and related purposes

(1) In general

The Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce, the Secretary of Energy, affected United States Regional Fishery Management Councils, and other relevant departments and agencies

of the Federal Government, may grant a lease, easement, or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this subchapter, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law, if those activities-

(A) support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium;

(B) support transportation of oil or natural gas, excluding shipping activities;

(C) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

(D) use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under this subchapter, except that any oil and gas energy-related uses shall not be authorized in areas in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium.

(2) Payments and revenues

(A) The Secretary shall establish royalties, fees, rentals, bonuses, or other payments to ensure a fair return to the United States for any lease, easement, or right-of-way granted under this subsection.

(B) The Secretary shall provide for the payment of 27 percent of the revenues received by the Federal Government as a result of payments under this section from projects that are located wholly or partially within the area extending three nautical miles seaward of State submerged lands. Payments shall be made based on a formula established by the Secretary by rulemaking no later than 180 days after August 8, 2005, that provides for equitable distribution, based on proximity to the project, among coastal states that have a coastline that is located within 15 miles of the geographic center of the project.

(3) Competitive or noncompetitive basis

Except with respect to projects that meet the criteria established under section 388(d) of the Energy Policy Act of 2005, the Secretary shall issue a lease, easement, or right-of-way under paragraph (1) on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.

(4) Requirements

The Secretary shall ensure that any activity under this subsection is carried out in a manner that provides for-

(A) safety;

(B) protection of the environment;

(C) prevention of waste;

(D) conservation of the natural resources of the outer Continental Shelf;

(E) coordination with relevant Federal agencies;

(F) protection of national security interests of the United States;

(G) protection of correlative rights in the outer Continental Shelf;

(H) a fair return to the United States for any lease, easement, or right-of-way under this subsection;

(I) prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;

(J) consideration of-

(i) the location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and

(ii) any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;

(K) public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this subsection; and

(L) oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.

(5) Lease duration, suspension, and cancellation

The Secretary shall provide for the duration, issuance, transfer, renewal, suspension, and cancellation of a lease, easement, or right-of-way under this subsection.

(6) Security

The Secretary shall require the holder of a lease, easement, or right-of-way granted under this subsection to-

(A) furnish a surety bond or other form of security, as prescribed by the Secretary;

(B) comply with such other requirements as the Secretary considers necessary to protect the interests of the public and the United States; and

(C) provide for the restoration of the lease, easement, or right-of-way.

(7) Coordination and consultation with affected State and local governments

The Secretary shall provide for coordination and consultation with the Governor of any State or the executive of any local government that may be affected by a lease, easement, or right-of-way under this subsection.

(8) Regulations

(A) IN GENERAL.--Not later than 270 days after August 8, 2005, the Secretary, in consultation with the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce, heads of other relevant departments and agencies of the Federal Government, and the Governor of any affected State, shall issue any necessary regulations to carry out this subsection.

(B) MEMORANDUM OF UNDERSTANDING.—Not later than 270 days after the date of the enactment of this subparagraph, the Secretary in consultation with the Secretary of Defense shall update the Memorandum of Agreement entitle “Memorandum of Agreement Between the Department of Defense and the Department of the Interior on Mineral Concerns on the Outer Continental Shelf to include leases, easements, and rights-of-way for activities listed in paragraph ((1)(C) of this subsection.

(9) Effect of subsection

Nothing in this subsection displaces, supersedes, limits, or modifies the jurisdiction, responsibility, or authority of any Federal or State agency under any other Federal law.

(10) Applicability

This subsection does not apply to any area on the outer Continental Shelf within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.

(11) SCHEDULE OF PROPOSED LEASE SALES FOR ENERGY PRODUCED FROM SOURCES OTHER THAN OIL AND GAS.—

(A) IN GENERAL.—The Secretary shall prepare, periodically revised, and maintain a leasing program for the production of energy from sources other than oil and gas, and for supporting such production and the transportation or transmission of such energy.

(B) SCHEDULE.—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, that the Secretary determines will best meet national energy needs for a minimum of four years following the program's approval or re-approval.

(C) PRE-LEASE SALE NOTICE.—

(i) IN GENERAL.—No later than one year before holding a lease sale under such program, the Secretary shall issue a public notice describing nonmonetary factors, or bidding credits, that will be considered as components of a bid in such a sale, including—

- (I) value of each bidding credit;
- (II) eligibility and terms of each bidding credit;
- (III) any other information the Secretary considers relevant to the lease

sale.

(ii) BIDDING CREDIT DEFINED.—In this subparagraph, the term “bidding credit” means a value to be received by the lessee under the terms of a proposed lease, that—

- (I) does not exceed 10 percent of the total value offered by a bidder in such a sale;
- (II) Is not an exclusive agreement;
- (III) Is not an agreement with, approval by, document generated in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by, or project evaluation determined by, any federal agency before the lease sale.

Section 19 (43 U.S.C. 1345)

§1345. Coordination and consultation with affected State and local governments

(a) Recommendations regarding size, time, or location of proposed lease sales

Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan or to a proposed lease, easement, or right-of-way for activities conducted under section 8((p)(1)(C)). Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

(b) Time for submission of recommendations

Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or after receipt of such development and production plan or such a proposed lease, easement, or right-of-way for activities conducted under section 8(p)(1)(C).

(c) Acceptance or rejection of recommendations

The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after

having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies **or energy produced from sources other than oil and gas** in a balanced manner and on the findings, purposes, and policies of this subchapter. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

(d) Finality of acceptance or rejection of recommendations

The Secretary's determination that recommendations provide, or do not provide, for a reasonable balance between the national interest and the well-being of the citizens of the affected State shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to [section 1349 of this title](#), unless found to be arbitrary or capricious.

(e) Cooperative agreements

The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this subchapter and other applicable Federal law. Such agreements may include, but need not be limited to, the sharing of information (in accordance with the provisions of [section 1352 of this title](#)), the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to outer Continental Shelf operations both onshore and offshore.