Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman
Hearing Memorandum

October 6, 2017

To: All Subcommittee on Energy and Mineral Resource Subcommittee Members

From: Majority Committee Staff, Kate Juelis (x6-9837)
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 distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, and for other purposes.
October 11, 2017 at 2:00 PM; 1334 Longworth House Office Building

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Discussion Draft of H.R. ____ , *"Accessing Strategic Resources Offshore Act"* or *"ASTRO Act"*

Summary of the Bill

The ASTRO Act seeks to increase access to oil and gas resources across America's Outer Continental Shelf lands. This bill establishes a revenue sharing framework to distribute revenues collected from oil and gas leasing on the Outer Continental Shelf ("OCS") to certain coastal states. The act increases the amount that can be distributed to qualifying Gulf states under the Gulf of Mexico Energy Security Act of 2006, and limits the President's authority to withdraw certain areas of the OCS from oil and gas leasing. Finally, this bill also provides the Secretary of the Interior the authority to add lease sales to an approved National Oil and Gas Leasing Plan.

Invited Witnesses

The Honorable Mary Landrieu
Senior Policy Advisor
Van Ness Feldman, LLP
Washington, D.C.

The Honorable Stephen Goldfinch
South Carolina Senator
District 34 – Georgetown
Columbia, S.C.

Mr. Erik Milito
Director, Upstream and Industry Operations
American Petroleum Institute
Washington, D.C.

Mr. Michael Bromwich
Founder and Managing Principal
The Bromwich Group
Washington, D.C.

Background

Untold resources lie off our nation's coasts, and with effective management, could provide the world with a reliable source of energy for decades to come. As global demand for oil and gas continues to increase, the United States is uniquely positioned to safely meet this demand while satisfying our domestic energy needs. Standing in the way of such progress and certainty is a politicized system of regulations. The Bureau of Ocean Energy Management ("BOEM") estimates that 89.9 billion barrels of oil, and 327.5 trillion cubic feet of gas are contained, but undiscovered, on the OCS.[1] However, 94% of the OCS is excluded from oil and gas leasing under the 2017-2022 plan.[2]

Under the current plan, the Atlantic, Pacific, and much of the Alaskan OCS lands are off limits to production. Offshore operators require long lead times to plan projects, so restricting lease sales today directly reduces production in decades to come. Department of the Interior Secretary Ryan Zinke recognized the harmful effects of such a restricted leasing schedule, and called for the development of a new leasing schedule to more carefully consider all potential leasing areas on the OCS.[3]

The Trump Administration has resumed evaluation of six geological and geophysical ("G&G") permits in the Atlantic region. These permits were rejected under the previous Administration, not for technical reasons but for political ones. Because the Atlantic planning area was not included in the 2017-2022 OCS leasing plan, BOEM officials chose to deny these permits and keep stakeholders in the dark about the region's true resource potential. It is critical that the nation assesses its offshore resources to make informed resource management decisions. Using this information, policymakers, operators, and the public can thoughtfully weigh in on how best to increase access to our offshore resources.

The exclusion of these resources comes at the expense of the taxpayer and disadvantages our national and local economies. Oil and gas revenues provide the second largest source of revenue to the U.S. Treasury, second only to federal income tax.[4] In Fiscal Year 2016, OCS revenues totaled $2.8 billion, making up nearly half of all oil and gas revenues for the federal

[1] Unlocking America's Offshore Energy Opportunity, (Oct. 6, 2017), http://www.americasoffshoreenergy.com/#/?section=unlocking-americas-offshore-energy-opportunity
[2] Evaluating Federal Offshore Oil and Gas Development: Hearing before the House Committee on Natural Resources, 115th Cong. (July 12, 2017) (statement of Katharine MacGregor, Acting Assistant Secretary, Dep't of the Interior.
[3] THE DEPARTMENT OF THE INTERIOR, Sec. Order No. 3350, (2017).
[4] Will revenue sharing spur more offshore drilling?, Global Energy Institute, Platts McGraw-Hill https://www.globalenergyinstitute.org/will-revenue-sharing-spur-more-offshore-drilling

government.[5] Certain states also receive a share of OCS revenues, supplementing their budgets and providing support to coastal communities. The Gulf of Mexico Energy Security Act of 2006 ("GOMESA") established a revenue distribution structure for the Gulf states of Alabama, Louisiana, Mississippi, and Texas. The shared revenues compensate these states for the large-scale infrastructure required by OCS production, and to mitigate the environmental risks presented by offshore development. States rely on these revenues to help balance their budgets, and to fund coastal development projects. Facilitating access to exploration and production in promising OCS areas will strengthen national, state, and local economies.

In addition, opening the OCS Atlantic, Pacific, and Eastern Gulf areas to oil and gas development would continue to strengthen the U.S.'s position as a global energy leader. A recent study found that development of the resource potential in these areas would create 840,000 new jobs and would generate over $200 billion in cumulative revenues for the nation.[6]

Allocation of Revenues Derived from Oil and Gas Leasing on the Outer Continental Shelf

As the owner of the OCS, the federal government is charged with managing over 1.7 billion acres of offshore lands.[7] Until the passage of the GOMESA, the federal government generally received all revenues generated from oil and gas development on the OCS. The Gulf of Mexico quickly became the leader in offshore production, and as the number of offshore wells grew, so did the associated infrastructure and environmental risks of drilling. Ports, pipelines, and refineries rapidly expanded along the Alabama, Louisiana, Mississippi, and Texas coasts to support OCS development. Because federal OCS lands begin three nautical miles from the Alabama, Louisiana, and Mississippi coasts, the impacts of OCS production were immediate. The Gulf states successfully negotiated GOMESA, which established a revenue sharing scheme for qualifying Gulf states. Under GOMESA, states receive 37.5% of all qualifying OCS revenues, with 20% of each state's share dedicated to "coastal political subdivisions."

As OCS production necessarily demands onshore infrastructure and requires states to assume environmental risks, a revenue sharing scheme must be in place for coastal states that will be directly affected by production on federal lands. In the ongoing debate about opening the Atlantic OCS to offshore production, many coastal governors and state lawmakers have made clear their support depends on the existence of a revenue sharing program that would equitably compensate their states.[8]

Virginia Governor Terry McAuliffe stated in a letter to BOEM that "…a primary concern that must be satisfied in order for Virginia to be included in the leasing area is a revenue sharing agreement between participating Atlantic coasts and the federal government."[9] Governor McAuliffe wrote that he was concerned that President Trump's proposed budget eliminated GOMESA state disbursements, creating further uncertainty about the realistic implementation of

[5] Statistics, Office of Natural Resources Revenue, https://statistics.onrr.gov/ReportTool.aspx
[6] Untapped Potential, The American Petroleum Institute. http://maps.api.org/offshore/
[7] Laura B. Comay, *Five Year Program for Federal Offshore Oil and Gas Leasing: Status and Issues in Brief*, (CRS R44692), (Congressional Research Service, Washington, DC), 3, March 31, 2017.
[8] *Supra*, 4.
[9] Letter from Virginia Governor Terry McAuliffe to Kelly Hammerle, National Program Manager, BOEM, August 11, 2017, http://governor.virginia.gov/media/9428/08162017-boem-letter.pdf

a new revenue sharing statute.[10] One of the main provisions of this bill establishes revenue sharing for states in the Mid and Southern Atlantic planning areas, in an attempt to fairly compensate the qualifying producing states, and to ensure disbursement certainty into the future.

Optimizing Access to the Outer Continental Shelf

The federal offshore lease sale schedule is developed through an extensive process that narrows down lease locations within planning areas. The Bureau of Ocean Energy Management ("BOEM") weighs several factors, including geology, economics, operator and public interest, and environmental sensitivity when identifying lease sale areas. The Administration, at present, cannot add lease sales to an approved program, thereby limiting sales (and associated development and revenue) to planning decisions made up to seven years prior. As such, these plans have become something of a political tool, used by each new administration to achieve their respective political goals. As previously discussed, the current, 2017-2022 OCS leasing program excludes many highly prospective areas from development.

President Obama compounded the lack of access through his December 2016 withdrawals that precluded offshore oil and gas production on millions of acres of OCS Atlantic and Alaskan federal lands.[11] President Obama unilaterally removed 118.8 million acres from oil and gas development, creating an immediate threat to national security and barring economic growth along these coasts. President Obama relied on Section 12(a) of the Outer Continental Shelf Lands Act, which authorizes the President to withdraw OCS lands from leasing consideration, but does not provide insight into a President's ability to undo such withdrawals.[12] A key provision of this bill would preclude a President from making such withdrawals, instead leaving this critical decision to Congress.

<u>**Major Provisions of the Bill**</u>

The *"Accessing Strategic Resources Offshore Act,"* or *"ASTRO Act"*, seeks to improve access to these resources and to provide certainty and reliability in our federal OCS resource management. This bill also attempts to establish revenue sharing of oil and gas revenues for additional coastal states, and is modeled after successful revenue sharing scheme for the Gulf of Mexico. The ASTRO Act also attempts to add flexibility to the national oil and gas leasing process by providing the Secretary of the Interior the authority to conduct lease sales in areas excluded from an approved national leasing program. The Act also limits the President's authority to withdraw certain OCS areas from leasing, and prohibits the enforcement of the Arctic Rule. Each of these legislative proposals deserves careful consideration and thoughtful debate as we attempt to resolve these policy challenges.

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[10] *Id*.
[11] Representative David Brat (VA-7), H.R. 2157- OCEAN Act Summary
[12] 43 U.S.C.1331

Section 2, Disposition of Revenues from Oil and Gas Leasing on the Outer Continental Shelf to Producing States:

- Establishes oil and gas revenue sharing structure for Virginia, North Carolina, South Carolina, and Alaska. Modeled after GOMESA, the Atlantic states and Alaska would receive 37.5% of the revenues generated by offshore oil and gas leasing and development;

- Revenue Allocations provided by this bill are as follows:
    - 50% to the US Treasury;
    - 37.5% to qualifying state treasuries;
    - 6.25% to the DOT for investment in energy infrastructure and support projects in coastal ports;
    - 6.25% to the DOI for deferred maintenance projects on National Park System units; and

- Provides for minimum allocation of 10% of revenues among the Atlantic states.

Section 3, Limitation on the Amount of Distributed Qualified Outer Continental Shelf Revenues Under GOMESA:

- Modifies Section 105(f)(1) of GOMESA to increase the limitations on distributions to states over time

- Raising the caps on distributions to states will require extensive planning and consideration to comply with all House Budget rules.

Section 4, Limitation on Authority of the President to Withdraw Areas of the Outer Continental Shelf from Oil and Gas Leasing:

- Requires an Act of Congress to establish new moratoriums on offshore drilling and for the creation of National Marine Monuments;

- Rescinds all previous moratoriums other than established Marine Sanctuaries and National Monuments; and

- Allows president withdrawals during national emergencies for up to 90 days, subject to renewal.

Section 5, Modification to the Outer Continental Shelf Leasing Program:

- Provides Secretary of the Department of the Interior the authority to hold additional lease sales in planning areas outside of an approved national leasing plan, provided the lease sales comply with environmental standards.

Section 6, Inspection Fee Collection

- Placeholder language to authorize the collection of inspection fees.

Section 7, Study on BOEM and BSEE:

- Requires the Secretary of the Interior to conduct a study to evaluate inefficiencies or duplication in mission or function of the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement.

Section 8, Arctic Rule Shall Have No Force or Effect:

- Precludes the enforcement of the "Oil and Gas and Sulfur Operations on the Outer Continental Shelf – Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf" rule, also known as the Arctic Rule.

Administration Position

Unknown at this time.

Cost

CBO has not scored the legislation.