

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

August 31, 2018

To: Members of the Committee on Natural Resources

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

Mark-Up: **H.R. 6665 (Rep. Bordallo, Guam)**, To amend the Outer Continental Shelf Lands Act to apply to territories of the United States, to establish offshore wind lease sale requirements, to provide dedicated funding for coral reef conservation, and for other purposes.
September 5, 2018, at 10:15 AM; 1324 Longworth House Office Building

H.R. 6665, "Offshore Wind for Territories Act"

Summary of the Bill

This bill applies the Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. 1331 et seq.) to the submerged lands off American territories and possessions, providing the Secretary of the Interior with management authority for such offshore acreage. The bill also creates a revenue sharing structure, providing 37.5% of the revenues generated to the adjacent territory. In addition, 12.5% of the revenues generated are deposited into the National Oceanic and Atmospheric Administration's Coral Reef Conservation Program Fund.

Cosponsors:

Rep. Gonzalez-Colon (PR-AL), Rep. Soto (FL-09), Rep. Radewagen (AS-AL), Rep. Sablan (MP-AL).

Background

Wind energy development on the Outer Continental Shelf (OCS) is a relatively new phenomenon, with a regulatory and statutory structure only 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 of 2005 (EPA05, Public Law 109-58). Prior to EPA05, the Army Corps of Engineers (Corps) generally led the offshore wind leasing process, as the projects were considered obstructions in "navigable waters of the United States."¹ EPA05 clarified this uncertainty by amending the Outer Continental Shelf Lands Act (OCSLA) to provide the Secretary of the Interior the authority to lease offshore lands for the purposes of renewable energy development. Furthermore, EPA05 preserved and clarified the responsibilities of other federal agencies, such as the Corps, who operate on the OCS.

¹ 33 U.S.C. 403

While several coastal States have seen the benefits envisioned under OCSLA, these benefits have not spread to the territories. Currently, OCSLA does not apply to the territories and possessions of the United States.² As such, the Department of the Interior (DOI) cannot lease or otherwise manage the federal OCS acreage off these islands for the purposes of development.

The inapplicability of OCSLA to the U.S. territories, as well as their distance from the mainland, have hindered the territories' abilities to tap into the mainland's large-scale electricity grids. Many are reliant on imported petroleum products. For instance, Guam's per capita petroleum consumption is nearly twice that in the continental U.S.³ Moreover, the devastating hurricanes experienced by Puerto Rico again reiterated the need for modernization and diversification of fuel sources. These islands are in dire need of energy solutions.

Several of the territories are attempting to address the energy crisis they currently face. In 2008, Guam enacted a renewable portfolio goal of sourcing 8% of its power from renewable generation by 2020.⁴ Since that time, several major solar initiatives have taken off. Additionally, Guam has considerable offshore wind potential, and so long as the turbines are engineered to withstand typhoon conditions and earthquakes, offshore wind could prove a reliable energy resource. However, the long-term economic feasibility of a commercial offshore wind project is still unknown.

A predominant concern about offshore wind energy leasing is that development may directly conflict with existing uses and activities. Throughout the pre-leasing and leasing process for offshore areas of the mainland U.S., DOI attempts to engage with a variety of coastal and ocean users, including local tourism boards, coastal mayors, fisheries, and shippers.⁵ Yet, despite this outreach, many offshore stakeholders maintain that additional activities will impair or displace existing offshore interests.

Fishermen are among the most concerned, as their livelihood directly depends on their ability to access large swaths of the sea. Importantly, the Department of Defense (DOD) is a major, active user of the OCS – particularly in the Pacific Theater – and conducts training and testing missions in nearly all OCS regions. Guam, for instance, is home to several major military installations, and is a critical hub for operations in the Pacific.⁶ Tourism may also be impacted by the turbines dotting the horizon. In most territories, tourism is a major economic driver. The presence of visible offshore wind installations might be considered a threat to the local tourism industry.⁷

Similar to the offshore areas of the mainland U.S., minimizing and mitigating potential conflicts with other ocean users, including local and regional stakeholders and the DOD, is essential to the successful development and progression of the wind industry off the territories.

² These include American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

³ See U.S. Energy Information Administration-Guam, September 21, 2017, *available at* <https://www.eia.gov/state/analysis.php?sid=GO>

⁴ See Guam Bill 166, March 2008.

⁵ See Bureau of Ocean Energy Management, Regulatory Roadmap, *available at* (<https://www.boem.gov/Regulatory-Roadmap/>)

⁶ See MilitaryINSTALLATIONS, Joint Region Marianas – Naval Base Guam, Guam, *available at* http://www.militaryinstallations.dod.mil/MOS/f?p=132:CONTENT:0::NO::P4_INST_ID%2CP4_INST_TYPE:3025%2CINSTALLATION.

⁷ See Michelle Froese, Study shows offshore wind would have no impact on Maryland tourism, Oct. 11, 2017, *available at* <https://www.windpowerengineering.com/business-news-projects/study-shows-offshore-wind-no-impact-maryland-tourism/> (“... some observers have expressed concern that the wind farms could impact tourism”).

Major Provisions of H.R. 6665

Section 2. Application of Outer Continental Shelf Lands Act with Respect to the Territories

- Amends the application of the Outer Continental Shelf Lands Act (OCLSA) to include the territories and possessions of the United States
- Excludes the territories and possessions from inclusion in a National OCS Oil and Gas Leasing Program

Section 3. Disposition of Revenues with Respect to Territories of the United States

- Establishes a revenue sharing program for revenues generated by leasing and development off a territory
- Territories will receive 37.5% of qualifying revenues, consistent with the revenue sharing structure for the Gulf Coast states, as established in the Gulf of Mexico Energy Security Act (GOMESA, Public Law 109-432)
- 12.5% of revenues will be deposited into the Coral Reef Conservation Fund
- 50% of revenues generated will be deposited into US Treasury

Section 4. Wind Lease Sales for Areas of Outer Continental Shelf

- Directs DOI to conduct feasibility studies on offshore wind lease sales off all territories
- Should a study determine that a wind lease is feasible, the Secretary is directed to conduct a lease sale off of said territory

Section 5. Establishment of Coral Reef Conservation Fund

- Establishes the Coral Reef Conservation Fund for the purpose of maintaining the health of coral reefs in the American OCS
- Fund is subject to appropriations
- Renames existing Coral Reef Conservation Fund to “coral reef public-private partnership”

Cost

CBO has not scored the legislation.

Administration Position

Unknown.

Anticipated Amendments

None.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 6665

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.)

§1331. Definitions

When used in this subchapter-

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control or lying within the exclusive economic zone of the United States and the outer Continental Shelf adjacent to any territory or possession of the United States, except that such term shall not include any area conveyed by Congress to a territorial government for administration;

(b) The term "Secretary" means the Secretary of the Interior, except that with respect to functions under this subchapter transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term "Secretary" means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be;

(c) The term "lease" means any form of authorization which is issued under section 1337 of this title or maintained under section 1335 of this title and which authorizes exploration for, and development and production of, minerals;

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation;

(e) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 1454(b)(1) 1 of title 16;

(f) The term "affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this subchapter, any State-

(1) the laws of which are declared, pursuant to section 1333(a)(2) of this title, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 1333(a)(1) of this title;

(3) which is receiving, or in accordance 2 with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(g) The term "marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

(h) The term "coastal environment" means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(i) The term "human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

(j) The term "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this subchapter;

(k) The term "exploration" means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

(l) The term "development" means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered;

(m) The term "production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over drilling;

(n) The term "antitrust law" means-

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

(o) The term "fair market value" means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

(p) The term "major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 4332(2)(C) of title 42; **[and]**

(q) The term "minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 1702 of this title **[.]**; and

(r) The term "State" includes each territory of the United States.

Section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338)

§1338. Disposition of revenues

[All rentals] (a) IN GENERAL.—Except as otherwise provided in law, all rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

(b) DISPOSITION OF REVENUES TO TERRITORIES OF THE UNITED STATES.—Of the rentals, royalties, and other sums paid to the Secretary under this Act from a lease for an area of land on the outer Continental Shelf adjacent to a territory and lying within the exclusive economic zone of the United States pertaining to such territory, and not otherwise obligated or appropriated—

(1) 50 percent shall be deposited in the Treasury and credited to miscellaneous receipts;

(2) 12.5 percent shall be deposited in the Coral Reef Conservation Fund established under section 211 of the Coral Reef Conservation Act of 2000; and

(3) 37.5 percent shall be disbursed to territories of the United States in an amount for each territory (based on a formula established by the Secretary by regulation) that is inversely proportional to the respective distance between the point on the coastline of the territory that is closest to the geographic center of the applicable leased tract and the geographic center of the leased tract.

Section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344)

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(i) This section shall not apply to the scheduling of lease sales in the outer Continental Shelf adjacent to the territories and possession of the United States.

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

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SEC. 33. WIND LEASE SALES FOR AREAS OF OUTER CONTINENTAL SHELF.

(a) AUTHORIZATION.—The Secretary may conduct wind lease sales on the outer Continental Shelf.

(b) WIND LEASE SALE PROCEDURE.—Any wind lease sale conducted under this section shall be considered a lease under section 8(p).

(c) WIND LEASE SALES OFF COASTS OF TERRITORIES OF THE UNITED STATES.—

(1) STUDY ON FEASIBILITY OF CONDUCTING WIND LEASE SALES.—

(A) IN GENERAL.—The Secretary shall conduct a study on the feasibility, including the technological and long-term economic feasibility, of conducting wind lease sales on an area of the outer Continental Shelf within the territorial jurisdiction of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

(B) CONSULTATION.—In conducting the study required in paragraph (A), the Secretary shall consult—

(i) the National Renewable Energy Laboratory of the Department of Energy; and

(ii) the Governor of each of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

(C) PUBLICATION.—The study required in paragraph (A) shall be published in the Federal Register for public comment for not fewer than 60 days.

(D) SUBMISSION OF RESULTS.—Not later than 18 months after the date of the enactment of this section, the Secretary shall submit the results of the study conducted under subparagraph (A) to:

- (i) the Committee on Energy and Natural Resources of the Senate;
- (ii) the Committee on Natural Resources of the House of Representatives; and
- (iii) each of the delegates or resident commissioner to the House of Representatives from American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, respectively.

(E) PUBLIC AVAILABILITY.—The study required under subparagraph (A) and results submitted under subparagraph (C) shall be made readily available on a public Government internet website.

(2) CALL FOR INFORMATION AND NOMINATIONS.—The Secretary shall issue a call for information and nominations for proposed wind lease sales for areas determined to be feasible under the study conducted under paragraph (1).

(3) CONDITIONAL WIND LEASE SALES.—

(A) IN GENERAL.—For each territory, the Secretary shall conduct not less than 1 wind lease sale on an area of the outer Continental Shelf within the territorial jurisdiction of such territory that meets each of the following criteria:

- (i) The study required under paragraph (1)(A) concluded that a wind lease sale on the area is feasible.
- (ii) The Secretary has determined that the call for information has generated sufficient interest for the area.
- (iii) The Secretary has consulted with the Secretary of Defense regarding such a sale.
- (iv) The Secretary has consulted with the Governor of the territory regarding the suitability of the area for wind energy development.

(B) EXCEPTION.—If no area of the outer Continental Shelf within the territorial jurisdiction of a territory meets each of the criteria in clauses (i) through (iii) of subparagraph (A), the requirement under subparagraph (A) shall not apply to such territory.

Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.)

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SEC. 211. CORAL REEF CONSERVATION FUND.

(a) ESTABLISHMENT.—There is established in the Treasury the Coral Reef Conservation Fund, hereafter referred to as the Fund.

(b) DEPOSITS.—For each fiscal year, there shall be deposited in the Fund the portion of such revenues due and payable to the United States under subsection (b)(2) of section 9 of the Outer Continental Shelf Lands Act ([43 U.S.C. 1338](#)).

(c) USES.—Amounts deposited in the Fund under this section and appropriated to the Secretary of Commerce under subsection (f) shall be used by the Secretary of Commerce to carry out the Coral Reef Conservation Act of 2000 ([16 U.S.C. 6401](#) et seq.), with priority given to carrying out sections 204 and 206 of such Act ([16 U.S.C. 6403](#) and 6405).

(d) AVAILABILITY.—Amounts deposited in the Fund shall remain in the Fund until appropriated by Congress.

(e) REPORTING.—The President shall include with the proposed budget for the United States Government submitted to Congress for a fiscal year a comprehensive statement of deposits into the Fund during the previous fiscal year and estimated requirements during the following fiscal year for appropriations from the Fund.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Fund to the Secretary of Commerce, an amount equal to the amount deposited in the Fund in the previous fiscal year.

(g) NO LIMITATION.—Appropriations from the Fund pursuant to this section may be made without fiscal year limitation.

Section 205 Coral Reef Conservation Act of 2000 (16 U.S.C. 6404)

§6404. [Coral reef conservation Fund] CORAL REEF PUBLIC-PRIVATE PARTNERSHIP

(a) [Fund] Public-Private Partnership

The Administrator may enter into an agreement with a nonprofit organization that promotes coral reef conservation authorizing such organization to receive, hold, and administer funds received pursuant to this section. The organization shall invest, reinvest, and otherwise administer the funds and maintain such funds and any interest or revenues earned in a separate interest bearing account, hereafter referred to as the Fund, established by such organization solely to support partnerships between the public and private sectors that further the purposes of this chapter and are consistent with the national coral reef action strategy under section 6402 of this title.

(b) Authorization to solicit donations

Pursuant to an agreement entered into under subsection (a) of this section, an organization may accept, receive, solicit, hold, administer, and use any gift to further the purposes of this chapter. Any moneys received as a gift shall be deposited and maintained in the [Fund] separate interest bearing account established by the organization under subsection (a).

(c) Review of performance

The Administrator shall conduct a continuing review of the grant program administered by an organization under this section. Each review shall include a written assessment concerning the extent to which that organization has implemented the goals and requirements of this section and the national coral reef action strategy under section 6402 of this title.

(d) Administration

Under an agreement entered into pursuant to subsection (a), the Administrator may transfer funds appropriated to carry out this chapter to an organization. Amounts received by an organization under this subsection may be used for matching, in whole or in part, contributions (whether in money, services, or property) made to the organization by private persons and State and local government agencies.