

Testimony of  
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Before the  
U.S. House of Representatives  
Committee on Natural Resources  
Legislative Hearing on  
H.R. 21  
“The Ocean Conservation, Education and National Strategy for the 21<sup>st</sup> Century Act”  
Thursday, June 18, 2009 at 10:00 a.m.

My name is Jim Ray. I thank you for the opportunity to testify before the Committee, and to comment on the proposed legislation to restructure our management of ocean resources. It is an important time, as we move forward in the development of a national ocean policy for the United States. The input from a broad range of ocean users is a crucial part of the process in determining where we are, and what needs to be done to improve our system of ocean governance.

I am here today to testify on the subject legislation as President of Oceanic Environmental Solutions, LLC, an environmental consulting company that specializes in addressing and solving offshore environmental issues. My primary focus is on issues that face the oil and gas industry on a daily basis. My background includes a Ph.D. in biological oceanography, and thirty years of experience working for a major oil company, and the industry in general, on offshore environmental issues. Over my career, I have chaired numerous industry committees, including those with the American Petroleum Institute and the Offshore Operators Committee with the responsibility of initiating, funding, and managing offshore environmental studies. I have also spent much of my career working with various government entities in advisory roles. This has included six years on the Scientific Advisory Committee of the Minerals Management Service, and three years on the Ocean Studies Board of the National Research Council. I have served on numerous National Academy of Sciences panels. Most recently, I was on the federal advisory committee for the Marine Mammal Commission’s review of the effects of sound on marine mammals. I am currently completing my sixth year on the federal advisory committee for the Marine Protected Areas program (a joint Department of Interior, and Department of Commerce project). This broad experience has given me a good understanding of marine ecosystems, government regulation of the oceans, and the interactions between various ocean user groups and government Agencies. I am testifying today based on my scientific understanding of ocean systems and regulation, and my long association with the oil and gas industry.

Ocean industries are committed stewards of the oceans and have a vested interest in the continued health and economic viability of our seas. But my experience of operating offshore for decades and balancing competing uses of ocean resources leads me to conclude that the approach laid out in HR 21 is fatally flawed.

## Ray Testimony on HR 21

Title II of the bill calls for the establishment in law of a national ocean policy that will, in essence, sit over the existing statutory mandates of every agency with an ocean portfolio.

While it may not be the intent of the bill's authors that the bill be interpreted in this manner, I can foresee a situation where outside groups might sue in court, alleging that any number of agricultural, construction, power generation or land-use efforts (perhaps hundreds of miles inland) be stopped because they could potentially impact the ocean, thereby violating the terms of the national ocean policy. Establishing a national ocean policy in law is fraught with potential unintended consequences.

The approach taken by the U.S. Commission on Ocean Policy, the Bush Administration and the Obama Administration is much preferred. The U.S. Commission on Ocean Policy expressly did not call for the passage of a statutory national ocean policy. Instead, they asked that someone in the Office of the President be tasked with managing the interagency coordination of ocean policies pursued individually by the different departments of the federal government. Each agency follows its own mandates and when conflicts arise, they can be refereed by the appointed ocean policy chief at the White House. This is a more bottom-up, adaptive style of management that is better suited to managing the still-evolving world of ocean policy making.

The Bush Administration created an interagency task force along these lines and decreed the Chair of the Council on Environmental Quality should lead it. Such an interagency infrastructure, therefore, already exists. In his executive order on Marine Spatial Planning ("MSP") issued last week, President Obama built on this by tasking the various agencies, under the guidance of the Chair of the Council on Environmental Quality, Nancy Sutley, to come up with initial recommendations on MSP. This is an ad hoc effort that can develop into something more should the need arise. It has adaptability, breadth of scope, and requires no new regulatory or statutory language to begin its work. This is a much better approach to the broad and potentially damaging governance structure proposed by HR 21.

The ocean ecosystems are integral and vital to the health and well being of the planet. In addition to the obvious living resources, the oceans also contain significant non-living resources that support many industries that are crucial to maintaining a healthy world economy. I believe that if properly regulated and managed, the vast majority of our coastal waters and oceans should be, and can be available to the American people for multiple uses - recreational and commercial. One critical aspect is to continue the development and utilization of offshore energy resources to continue supplying this country with much needed energy. OCS oil and natural gas is a vital component to meet our Nation's energy security and work towards energy independence. H.R. 21 could jeopardize energy development in the midst of very delicate economic and national security times. The OCS currently provides 27% of the crude oil (492,329,179 bbls) and 14% of the natural gas (2,860 billion cubic feet) produced in this Nation. This is from 3,795 production facilities on 8,124 leases distributed over more than 43 million acres.

The Interior Department's report "Survey of Available Data on OCS Resources and Identification of Data Gaps"<sup>1</sup> shows that "even after more than 50 years of exploration and development on the OCS, 70 percent of the mean BOE total endowment<sup>2</sup> is represented by undiscovered resources. More than half of this potential exists in areas of the OCS outside of the Central and Western Gulf of Mexico." Therefore, the undiscovered reserves of the OCS represent about 4 times (average estimate of 85 billion barrels technically recoverable) the current US proved reserves of oil and about 2 times (419 trillion cubic feet) the current US proved reserves of natural gas.

Growing global demand dictates that all sources of energy and efficiency will be needed to fuel economic growth. The economic benefits of new oil and gas production simply cannot be overlooked, especially in the difficult circumstances we face today. Producing more of our own energy resources on the OCS will:

- Create jobs and fuel economic recovery,
- Keep investment dollars and our companies here, rather than exporting trillions of dollars to pay for imported oil,
- Generate significant new revenues for federal, state and local governments. It is these revenues that can be looked upon to help fund the acquisition of science needed to understand the threats to our Oceans and take the necessary steps to make them healthy and sustainable.

I am concerned that the bill significantly increases the oceans' bureaucracy and establishes numerous layers of additional laws, regulations, advisors, committees, subcommittees, regional partnerships, etc. that could lead to confusion, conflict, and unnecessary delay in obtaining necessary permits for projects. In addition to agency disputes over interpretation and jurisdiction, the vague nature of the proposed legislation could result in private party lawsuits. Before embarking on a remake of ocean governance, a thorough assessment should be conducted on what works well, and what needs improvement in the current system. It may be more time and cost effective to fix the current system, than to cause a major disruption, or create a new structure. Improving the current system does not preclude the development of a National Ocean Policy, and the overall coordination that it is trying to achieve.

Many of the past problems of ocean governance have been the result of inadequate funding of various Agencies with oceans responsibility. This lack of research, surveying, and monitoring funds, have left gaps in necessary information for making informed resource management decisions. If a new national ocean policy is created, the issue of adequate funding is imperative to try and alleviate many of the delays that have been experienced in the past because of a lack of oceanographic data. In consort with this need for adequate funds, a new national ocean policy should mandate that agencies with oceans responsibility should work cooperatively with

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<sup>1</sup> OCS Report MMS 2009-015

<sup>2</sup> Total hydrocarbons available, e.g., oil, gas, condensate, as barrels of oil equivalents (BOE)

each other to assist in the timely development of offshore energy resources in a manner that is protective of the environment, but that can allow us to move forward.

A regulatory framework already exists to regulate coastal and ocean activities. The National Marine Sanctuaries Act provides is an example of a framework that seeks a balance between use of ocean resources and protection of the environment and cultural resources. It importantly includes public consultation, and makes use of the best available science to develop multiple use management plans for most areas. This allows shared, sustainable use of the resources by multiple users, and it works. The Flower Garden Banks National Marine Sanctuary is a good example of government, NGO, and industry cooperative approach which has accommodated multiple users.

Many believe that MSP may be a good tool to better understand the multiple uses of the oceans, its abundant resources, and the stresses on those resources; and that it can help set in place an ecosystem-based management approach to the oceans. However, MSP should not be used as a tool to delay development of offshore energy projects, including those for both oil and natural gas and renewable and alternative energy sources. Nor should MSP be used as a de-facto moratorium to "zone off" areas which may hold significant natural resources, such as oil and natural gas, when development activities can be undertaken in a way that protects the marine environment.

In my experience over 35 years as a marine biologist, with the benefit of hundreds of scientific studies, the Gulf of Mexico is still a healthy, viable ecosystem. This historical information is important, because the location and abundance of new subsurface oil and natural gas deposits, especially in areas outside the Gulf of Mexico, will not be known until companies invest to find them through seismic surveys and exploration drilling. Selection of new areas for potential oil and gas exploration are identified in the Department of Interior's 5-Year Lease Planning process. The incorporation of new MSP approaches will further improve their abilities to manage or avoid potential multiple use conflicts of the oceans. I am concerned that H.R. 21 creates additional governmental bureaucracy that will cause confusion, lack of certainty, and delay in developing the energy resources the citizens of our country need. We must strike a balance between protecting our oceans and providing our nation with the energy it needs.

However, this legislation, as drafted includes unbalanced language that could unduly put certain areas of the ocean off limits without any sound scientific basis by enacting the "precautionary principle". The U.S. has purposely not included the "precautionary principle" per se, in previous statutes because of conflicting definitions and interpretation,. HR 21, has modified the definition proposed by the U.S. Commission on Ocean Policy. They stated that "decision makers follow a balanced precautionary approach, applying judicious and responsible management practices based on the best available science and on proactive, rather than reactive policies." Decisions should be made based on "the best available scientific and technical information available" at the time an agency has to act. Our regulatory agencies already adjust the conservatism of their regulatory approach based on the adequacy of the best

available science, and the risk posed to the environment. The industry needs a stable regulatory environment so that our industry can plan and execute necessary operations on a timely basis.

HR 21, in their establishment of the Council of Advisors on Ocean Policy, also lumps the oil and gas industry in with a variety of other commercial users of the oceans (see Sec 105,C,(H) [the energy development, the shipping and transportation, and the marine tourism industries]. With the vague language of the legislation, it is conceivable that the oil and gas industry might not even have a representative at the table.

Recommendations:

- Our National Oceans Policy must be coordinated with our National Energy Policy - they must go hand-in-hand and not be one-or-the other.
- It is vitally important that we coordinate our acquisition of science and leverage our resources to bring the very best minds together from government, academia, NGO community, and industry.
- NOAA already has a leadership role in stewardship over the Oceans' health and sustainability. But, there does not appear to be any justification for changing the important role that the Department of Interior has played in managing the offshore oil and gas industry, and mineral extraction. They have had a proven track record, and have invested over three quarters of a billion dollars conducting environmental and socio-economic research related to oil and gas offshore activities. However, it is vitally important that NOAA and DOI, using their built in strengths, work together for common National goals. The DOI must be integrally involved in MSP.
- MSP should not be used as a vehicle to zone off important uses of our natural resources unless these areas are set aside through established mechanisms such as the Marine Sanctuaries Act.