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Report to the National Ocean Industries Association
Board of Directors and Membership
on selected legislative and regulatory activities of interest to the domestic offshore energy industry

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NOIA s mission is to secure reliable access and a favorable regulatory and economic environment for the companies that develop the nation s valuable offshore energy resources in an environmentally responsible manner.

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Coastal Zone Management Act

Issue The Coastal Zone Management Act (CZMA) requires that all federally permitted activities in the federal outer continental shelf (OCS) be consistent with an affected state s coastal zone management plan. The Act s consistency provisions, as administered by the National Oceanic and Atmospheric Administration (NOAA), have produced regulatory uncertainty and costly delays, and have unreasonably impeded OCS exploration and production projects, as well as the siting of offshore energy infrastructure. While NOIA supports the intent of the CZMA, we are strongly opposed to the way it has been implemented.

Background Enacted in 1972, the CZMA created a national program intended to comprehensively manage and balance competing uses of, and impacts to, coastal resources. The CZMA s consistency provisions require the federal government to certify that its activities are consistent to the maximum extent practicable with the policies of a state s federally approved coastal management program. A federal agency is forbidden from granting a license or permit unless the state has determined that the activities are consistent with its plan, or unless the Secretary of Commerce elects to override the state s objections. Even with a secretarial override, the appeals process can take a significant amount of time. Commerce appeals have taken up to four years.

Many states have invoked their consistency authority to block energy and economic development activities. Coastal zone plan objections led to the June 2000 Supreme Court decision that ordered the federal government to return more than $158 million in bonus monies paid for leases in the Manteo area offshore North Carolina. The Manteo experience, along with successful state opposition to OCS activities offshore California and Florida, highlight the need to change the CZMA consistency procedure to avoid future process breakdowns.

On Dec. 8, 2000, the Clinton Administration published a final rule revising NOAA s federal consistency regulations. The regulations exacerbated the problems with consistency, tipping the balance toward state coastal use and preservation and increasing the ability of exploration and production opponents to use the CZMA as a procedural tool to delay drilling and create more regulatory uncertainty. The regulations extended the reach of the CZMA s provisions from those that directly impact to those that may affect a given state s coastal zone.

NOIA met with staff and top officials in the Departments of the Interior, Energy, Commerce, and the White House, and provided recommended changes to the rule. In response to our concerns and those of numerous other stakeholders, NOAA published a proposed rule in June 2003, proposing changes to the CZMA

consistency process. NOIA submitted extensive comments and recommendations to the agency. NOIA commended the agency for some of the proposed streamlining changes, but strongly encouraged additional changes to the appellate timing provisions. The proposed rule would have provided certainty for the closing of the decision record, but also extended the time frame for the Secretary to make a decision from 90 days to 270 days. In addition, it would allow that time period to close the decision record to be extended for National Environmental Policy Act (NEPA) or Endangered Species Act (ESA) documentation. NOIA supported the closing of the decision record, but strongly objected to the other provisions, stating that 270 days was too long to make the decision, and that there was no reason to further extend the process since all NEPA and ESA documentation would be complete by the time of an appeal.

On January 4, 2006, NOAA released its final rule on the CZMA consistency process. NOAA responded to our objection to 270 days, shortening the time frame for the Secretary to make the decision to 60 days. In addition, NOAA established a 160 day time period to close the decision record. However, while the agency removed the references to NEPA and the ESA, it did allow for a 60 day stay of the time period to close the decision record, and did not specify that the stay could only be used one time.

NOIA also sought to have Congress correct deficiencies in implementation of the Act. NOIA led an industry coalition that sent letters to Congress providing legislative language that would modify the Act to reduce delays on oil and gas projects, avoid expansion of states review outside their geographic areas, and ensure timely decisions in override review. On May 25, 2005, NOIA President Tom Fry testified before the Senate Commerce Committee on behalf of NOIA and a coalition of industry trade associations.

NOIA succeeded in advocating for a section to be added to the Energy Policy Act of 2005 that requires the Secretary of Commerce to publish a notice in the Federal Register 30 days after an appeal has been filed, close the decision record within 160 days after that, and then issue a final decision within 60 days. However, there is still a clause allowing the Secretary to stay the record to receive more information.

Status

During 2007 and 2008, the Coastal States Organization (CSO) and NOAA have been working on an envisioning process to develop amendments and a reauthorization of the CZMA. NOIA has met with the CSO and NOAA, and strongly asserted that any legislation must improve the consistency process. We continue to work to ensure that the CZMA is not used as a tool to inhibit energy development offshore.

Comprehensive Energy Legislation

Issue On August 8, 2005, President Bush signed the Energy Policy Act of 2005. The law contained numerous provisions that had been championed by NOIA for years, and that support the development of offshore energy. Since passage, industry opponents have been trying to repeal provisions of the bill.

Background The Energy Policy Act of 2005 was a comprehensive energy bill that passed by overwhelming margins in both houses. It contains a myriad of provisions on renewable energy, coal, hydropower, nuclear energy, and tax incentives. The NOIA staff worked closely with Congress and led a coalition of industry and end user advocates to ensure that provisions beneficial to the offshore oil and gas industry would be included in the law. NOIA successfully lobbied for the inclusion of the following provisions:

MMS inventories of oil and natural gas resources on the OCS.
Royalty relief for offshore marginal wells.
Mandatory royalty relief for deepwater wells, with a fourth tier of relief for ultra deep wells.
Mandatory royalty relief for deep gas wells, with a third tier of relief for ultra deep wells.
Royalty relief for Alaska offshore wells.
Permanent authorization of the Royalty in Kind program.
Amendments to the consistency provisions of the Coastal Zone Management Act, including a 160 day time frame to close the decision record and 60 days for the Secretary to make a decision on appeals to consistency determinations.
$1 billion in direct spending over four years for coastal protection to states that currently allow oil and gas exploration off their shorelines. The measure is aimed at Louisiana, which would get 54% of the funds.
MMS authority to permit additional activities on the OCS, such as wind power infrastructure, helicopter refueling platforms and offshore medical way-stations.
Exclusion of hydraulic fracturing from regulation under the Safe Drinking Water Act.
Granting the federal government the right to approve the location of liquified natural gas terminals in order to encourage the construction of such facilities and increase the supply of natural gas.
Amortization of geological and geophysical expenses over two years.

On December 18, 2007, the President signed into law the Energy Independence and Security Act of 2007. When the House passed its first version of the bill in

January of 2007, it was awash in provisions that would have undone the Energy Policy Act of 2005. Among other things, it would have repealed the provisions making deepwater royalty relief mandatory, the provisions adding a fourth tier of relief for deepwater royalty relief and adding a third tier of relief for deep gas royalty relief, and the provision extending deepwater royalty relief to waters in the OCS off Alaska.

The bill would also have required that any companies holding leases with deepwater royalty relief provisions that are not limited by price thresholds be barred from participating in future lease sales or from acquiring any additional leases by other means unless they did one of two things. First they could have modified their leases to include price thresholds, or second, they could have paid an additional conservation fee of $9 per barrel for oil and $1.25 per million BTU for natural gas for producing leases. In addition, the bill would have placed a $3.75 per acre fee on all non-producing leases. This latter conservation fee would have been in addition to the already existing rental fee of $9.50 per acre for deepwater non-producing leases, and $6.25 per acre for shallow water non-producing leases.

In June 2007, the Senate passed amendments to the bill. In August 2007, the House passed an omnibus energy bill that included provisions to use taxes and royalties from oil and gas companies to pay for new investments and incentives for energy and efficiency and alternative energy sources. Like the bill passed earlier that year, it would have repealed incentives set up to spur energy production in the Energy Policy Act of 2005. And, it would have forced holders of leases with deepwater royalty relief provisions not limited by price thresholds to amend their leases to include thresholds, pay excessive fees, or be barred from future oil and gas leasing in the Gulf of Mexico.

Status

NOIA fought to stop the Congress from repealing the Energy Policy Act of 2005 provisions. We succeeded in having nearly every section that would have rolled back incentives removed from the bill. While the final law does contain a provision that excludes the major integrated oil companies from the geological and geophysical amortization provision, all of the other provisions, including those providing deep gas, deep water and Alaska OCS royalty relief and those that added new taxes and royalties on the industry, were removed from the final bill before it became law.

During 2008, there were numerous attempts to place provisions in legislation that would have rolled back the incentives for offshore development and impose new taxes and fees on the industry. NOIA was able to defeat each of those efforts, including efforts to put provisions like that on spending bills. We continue to

advocate for legislation and policies that will improve industry s geographic and economic access to energy on the OCS.

Deep Gas Royalty Relief

Issue Deep gas is defined as any gas production from a completion well with the top of the perforated interval 15,000 feet or greater subsea.

Background The Minerals Management Service (MMS) issued a final regulation on deep gas royalty relief on February 23, 2001. The regulations apply to shallow water, deep gas production for leases issued after the date of the rule (March 26, 2001), and provide a royalty suspension on the first 20 billion cubic feet (BCF) of deep gas production for leases in less than 200 meters of water, where a new deep gas reservoir of 15,000 feet or greater subsea is drilled and commences production.

In 2003, the MMS issued a proposed regulation to extend deep gas relief to leases issued prior to March 26, 2001. The proposed rule established a two-tiered program, with a royalty suspension volume of 15 BCF of deep gas production for a new well drilled and completed from 15,000 feet to 18,000 feet subsurface and on the first 25 BCF for a new well drilled 18,000 feet or deeper subsurface. In addition, the proposal provided for up to two royalty suspension supplements per lease of 5 BCF applied to future oil and gas production anywhere on the lease for unsuccessful wells drilled to a target reservoir of 18,000 feet or deeper.

NOIA led an industry group in submitting extensive comments on the proposed regulation. While strongly supporting the deep gas incentives, NOIA recommended that a third tier of relief be granted, providing a royalty suspension volume for a lease on the first 35 BCF of deep gas production for a new well drilled and completed from 20,000 feet or deeper subsurface. NOIA also recommended that sidetracking be covered under the incentive, that the price threshold be increased, and the MMS be given the discretion to provide for the extension of the five year limitation.

In January 2004, the MMS released the final regulation on deep gas royalty relief, and it went into effect on March 1, 2004. While not adding a third tier of relief, the MMS did accept all the other changes recommended by NOIA. NOIA then successfully advocated for inclusion of the third tier in the Energy Policy Act of 2005. The law provides a royalty suspension volume of 35 BCF for a new well drilled and completed from 20,000 feet or deeper, and extends the relief to waters up to 400 meters.

Status On May 18, 2007, the MMS issued a proposed rule to implement the sections of the Energy Policy Act of 2005 that require a new tier of deep gas royalty relief and an extension of relief to waters up to 400 meters. NOIA led an industry coalition in responding to the proposed rule, filing comments that commended the agency

for the intent of the rule, but expressing strong concerns with the proposal as drafted, and advocating strongly for changes to be made in any final promulgation. The NOIA comments urged that the agency adopt a reasonable price threshold for the new rule, rather than the arbitrarily low threshold in the proposal that would effectively terminate all royalty relief. We urged that the ultra-deep wells be granted the relief intended by Congress, and not subject to arbitrary limitations simply because they are sidetracks or secondary wells. And, our comments urged the MMS to amend current and proposed deepwater and deep gas royalty relief regulations to ensure that they apply to the Alaska region.

On January 18, 2007, the House passed H.R. 6, which would have repealed the additional tier of relief and extension of relief to waters up to 400 meters for deep gas. On August 4, 2007, the House passed an omnibus energy bill, H.R. 3221, which would have repealed these same provisions. NOIA fought to stop these provisions from being enacted, and from being added to the Senate s companion bill. When the final bill was passed into law on December 18, 2007, the provisions had been removed.

During 2008, there were numerous attempts to place provisions in legislation that would have repealed the deep gas royalty relief granted in the Energy Policy Act of 2005. NOIA was able to defeat each of those efforts, including efforts to put the repeal on spending bills. The deep gas royalty relief achieved remains in effect.

NOIA continues to fight to stop attempts to roll back the deep gas provisions by both the Administration and the Congress, and will continue to fight to improve the industry s geographic and economic access to the OCS.

Deep Water Royalty Relief

Issue The Deepwater Royalty Relief (DWRR) Act was passed on November 28, 1995. The Minerals Management Service s (MMS s) DWRR consists of discretionary relief where there is a demonstration of economic need, and mandatory relief which is automatic based on depth drilled.

Background The MMS published royalty relief regulations for producing and existing deepwater leases in January 1998. Automatic relief applies to fields consisting of leases issued from 1996 through 2000, in water depths of 200 meters or deeper, which lie wholly west of 87 degrees, 30 minutes west longitude. Leases resulting from a lease sale held after 2000 may be issued with an automatic royalty suspension volume on a lease basis. Post-2000 leases issued with an automatic royalty suspension volume are called royalty suspension leases.

On January 15, 2002, the MMS published its final rule on DWRR. It established three tiers of royalty relief for leases issued post-2000: 5 million barrels of oil equivalent for leases in waters 400-800 meters, 9 million barrels of oil equivalent for leases in waters 800-1600 meters, and 12 million barrels of oil equivalent for leases in waters 1600 to 2000 meters. NOIA s comments on the draft rule led to several changes in the final rule, including alterations to the definition of sunk costs and the shortening of the royalty relief application review period. In its definition of sunk costs, which the MMS uses to determine whether a lease qualifies for royalty relief, the draft rule proposed to count only the cost of a project s initial discovery well, but the final rule allows the cost of the first discovery well on each lease.

Status NOIA successfully advocated for a provision in the Energy Policy Act of 2005 to make discretionary deepwater royalty relief mandatory, and to include a fourth tier of relief of 16 million barrels of oil equivalent for leases in waters deeper than 2000 meters.

On January 18, 2007, the House passed H.R. 6, which would have repealed the mandatory relief and the fourth tier of relief for deepwater leases. On August 4, 2007, the House passed an omnibus energy bill, H.R. 3221, which would have repealed these same provisions. NOIA fought to stop these provisions from being enacted, and from being added to the Senate s companion bill. When the final bill was passed into law on December 18, 2007, the provisions had been removed.

During 2008, there were numerous attempts to place provisions in legislation that would have repealed the deepwater royalty relief provisions of the Energy Policy Act of 2005. NOIA was able to defeat each of those efforts, including efforts to

put provisions like that on spending bills. NOIA continues to fight to stop attempts to roll back the deepwater royalty relief provisions, and will continue to fight to improve the industry s geographic and economic access to the OCS.

Deep Water Royalty Relief Price Threshold Issue

Issue The Minerals Management Service (MMS) did not include price thresholds in the royalty relief provisions of leases issued in 1998 and 1999. The omission was made public in 2006.

Background The Deepwater Royalty Relief Act authorized the Secretary of the Interior to grant leases with royalty suspension volumes for deepwater leases issued before passage of the Act in 1995. The Act explicitly set the threshold market price beyond which the relief would not apply for those leases.

The MMS interpreted the statute to also give them the authority to condition royalty relief for new leases (leases issued after passage of the Act) on a threshold market price. The agency attached the threshold to leases issued in 1995, 1996, 1997, and 2000. The MMS did not put the threshold in leases issued in 1998 and 1999.

Over 50 companies were issued leases where the royalty suspension provisions did not contain price thresholds. The leases are valid legal contracts between the U.S. government and the companies. While some of those companies were unaware of the omission, others became aware of it, and maintain that they made investment decisions based upon the terms of the leases. Still other companies purchased leases from original lessees with the understanding that there was no threshold in those leases.

In 2006, 2007 and 2008, the House Committees on Government Reform, Appropriations, and Natural Resources, and the Senate Committees on Energy and Natural Resources, Government Reform, and Appropriations all held hearings investigating the omission of the thresholds in the leases, and options to recover what they consider to be funds lost to the U.S. Treasury.

The MMS sent a letter to all 1998 and 1999 leaseholders, maintaining that the agency would honor the terms of the leases issued, but inviting the companies to revise their leases to add price threshold provisions. In 2006, six companies holding 1998/1999 leases agreed to amend their leases to include price threshold terms.

Status On December 18, 2007, the President signed into law the Energy Independence and Security Act of 2007. When the House passed its first version of the bill in January of 2007, it would have required that any companies holding leases with deepwater royalty relief provisions that are not limited by price thresholds be barred from participating in future lease sales or from acquiring any additional

leases by other means unless they did one of two things. First they could have modified their leases to include price thresholds, or second, they could have paid an additional conservation fee of $9 per barrel for oil and $1.25 per million BTU for natural gas for producing leases. In addition, the bill would have placed a $3.75 per acre fee on all non-producing leases. This latter conservation fee would have been in addition to the already existing rental fee of $9.50 per acre for deepwater non-producing leases, and $6.25 per acre for shallow water non-producing leases.

Chairman of the Senate Energy and Natural Resources Committee Jeff Bingaman (D- NM) proposed an amendment to the Senate version of the bill that would have replaced the conservation fees of the bill with a severance tax. The tax would equal 13% of the removal price of oil or natural gas produced from Gulf of Mexico leases. The tax would have applied to all producers, but would have been offset by a credit in the amount of any royalties paid. All leases issued after 2007 have a rate of 16.7%, so they would not have been affected. Most leases before 2007 have a rate of 12.5%, which makes the tax .5%. However, lessees holding the1998/1999 leases that have not reached their royalty suspension volumes would have been required to pay 13%.

NOIA successfully prevented the price threshold royalty relief provision from being included in the final bill. The final law passed in December 2007 does not contain the price threshold, conservation fee, or severance tax provisions.

Several other members of Congress have sponsored provisions in bills to recover the funds. During 2008, amendments involving the price threshold have been proposed on several appropriations bills, omnibus bills, energy bills, and farm bills. NOIA continues to fight to ensure these provisions are not adopted.

The issue has been further complicated by a recent court decision. On October 18, 2007, the U.S. District Court for the Western District of Louisiana issued a decision in *Kerr-McGee Oil & Gas Corp. v. Allred.* The court ruled that the Department did not have the authority to place a price threshold on leases issued from 1996 through 2000. The court stated that the provision exceeded Congressional authority and contradicted the plain, unambiguous text of the statute. Since there is now a court decision stating that the MMS never had the authority to put a price threshold into leases issued in any of those five years, including 1998 and 1999, the whole underlying premise of lost revenue because of an omission has been brought into question. The United States has appealed the decision, and both the agency and holders of leases issued from 1996 through 2000 await the final decision.

In the meantime, NOIA continues to advocate for royalty relief, and to fight to improve the industry s geographic and economic access to the OCS.

Eastern Gulf Leasing

Issue

Eastern Gulf of Mexico Lease Sale 181 was part of the Clinton Administration s 1997-2002 OCS Oil and Gas Leasing Program. As approved in the plan, the sale had the potential to produce 7.8 trillion cubic feet (TCF) of natural gas and 1.9 million barrels of oil. In July 2002, Secretary of the Interior Norton reduced the size of the sale by 75%.

Background

Limited exploration and production activities have occurred in the Eastern Gulf of Mexico for more than three decades. Intent on bolstering domestic natural gas and oil production, the Minerals Management Service (MMS) began preparation of its 1997-2002 Five-Year Program with specific and exhaustive consultation on Eastern Gulf Lease Sale 181. MMS met with key stakeholders, including officials from Louisiana, Alabama, and Florida, to ensure that all concerns were addressed. Following release of the Program in November 1996, Florida Governor Chiles expressed appreciation to MMS for developing a program that recognized the need to exclude any tracts within 100 miles of Florida s coasts. The sale area was specifically excluded from both Congressional moratoria and President Clinton s 1998 executive order moratoria.

MMS issued a call for information on Lease Sale 181 in February 1999. NOIA and the other oil and gas trade associations strongly encouraged the agency to conduct the sale on all the proposed tracts in a timely manner. MMS issued the draft environmental impact statement (EIS) on December 1, 2000, and after extensive public process, issued a final EIS on July 3, 2001. The MMS s Proposed Notice of Sale was released on July 12, 2001. However, following pressure from Florida s new Governor Bush and an anti-Sale 181 vote by the House of Representatives during the appropriations process, Secretary Norton deleted approximately 75% of the acreage. The area was reduced from 5.9 million acres to 1.5 million acres; from 1,033 blocks to 256 blocks.

In 2005, the House Resources Committee approved legislation that would have called for leasing the original sale 181 area within ninety days. Senators Domenici (R-NM) and Bingaman (D-NM) introduced legislation that would direct the Secretary to lease 2.9 million acres of the original Lease Sale 181 area within one year. Senator Lott (R-MS) and the other senators from Mississippi, Alabama and Louisiana introduced legislation directing that the same area be leased within one year, and that the federal government share half of the revenue collected for the area with producing states. The majority of the Florida delegation introduced legislation to permanently prohibit oil and gas leasing in the areas of the original sale 181 that had not yet been leased.

On August 1, 2006, after years of advocacy by NOIA, the U.S. Senate passed the Gulf of Mexico Energy Security Act of 2006 (GOMESA). The House of Representatives passed the bill during a Lame Duck Session in December 2006, and it was signed into law by the President. GOMESA opened 8.3 million acres in the Eastern and Central Gulf of Mexico to new leasing, encompassing part of the original Lease Sale 181 area and a region to its south that was under moratoria. The MMS was required to lease approximately 2.5 million acres of the original Lease Sale 181 area as soon as practicable but not later than one year after enactment. In addition, 5.8 million acres from the 181 South area that used to be under moratoria, must be leased by the agency. The law does include a no-drill buffer for a 125-mile region south of the Florida Panhandle, that will last until 2022.

In addition to opening the areas to leasing, the law also provides revenue sharing for the four adjacent Gulf Coast states: Louisiana, Alabama, Mississippi and Texas. The states will receive 37.5% of the revenue from leasing in the newly opened areas immediately, and will share in revenue in areas where leasing has already taken place beginning in 2016. And, the law requires that 12.5 percent of the revenues from leasing these areas will be distributed into the Land and Water Conservation Fund to be shared by all states.

After the law was passed, President Bush modified the Executive Withdrawal that had withdrawn the lands in the 181 South area from leasing, marking the first time a President lifted administrative moratoria on leasing.

Status

In 2007, the MMS issued the final program for the 2007-2012 OCS Five Year leasing plan. The program includes the area that was offered for lease in the last plan, plus a portion of the bulge area that was deferred, and also the area in the 181 South area. However, it does not include the stovepipe area from the original 181 sale or the area east of the military mission line.

The MMS held the Central Gulf of Mexico Sale 206 and the Eastern Gulf of Mexico Sale 224 on March 19, 2008. Sale 224 was mandated by GOMESA, and encompassed 547,000 acres in the Eastern Gulf of Mexico, and was the first sale where sate revenue sharing provisions were implemented.

On August 1, 2008, MMS issued a scoping notice for a new Five Year leasing plan, which would supersede the current plan, and run from 2010-2015. NOIA rallied its member companies and allies, and submitted extensive comments urging the agency to include all areas of the OCS into the new leasing plan, including the full original Sale 181 area.

EPA Discharge Permit for the Gulf of Mexico

Issue Under the Clean Water Act, oil and gas operators must be granted a permit from the Environmental Protection Agency (EPA) for possible discharges before drilling may be authorized by the Minerals Management Service (MMS). EPA Region 6 issues a general National Pollutant Discharge Elimination System (NPDES) permit for discharges associated with offshore exploration facilities in the Gulf of Mexico. Over the years, there have been problems getting the permits issued in a timely manner and ensuring that there are not unnecessary restrictions placed on the permits.

Background The general discharge permit for the Gulf of Mexico expired in November 2003. EPA and MMS disagreed about the terms of the new proposed permit. EPA expressed concern that oil and gas activities were contributing to the hypoxic zone in the Gulf of Mexico. Industry and MMS maintained that industry s activities were not the cause of the hypoxia and, in fact, the hypoxia was mostly caused by non-point source runoff.

NOIA, working with the Offshore Operators Committee, advocated strongly before EPA, MMS and the White House, arguing that additional mitigation measures were not needed and the permit should be issued expeditiously. Advocating on behalf of our members, NOIA staff met with agency officials in Washington and in the Gulf of Mexico, provided information and data to the federal officials, and drafted several position papers. In addition, we provided information and data to members of Congress and state officials on the issue.

NOIA President Tom Fry transmitted a letter to the EPA Administrator in which he asked for the immediate renewal of the Gulf of Mexico permit. Fry s letter stated that the agency s failure to act was severely hampering U.S. energy production and compromising the federal government s contractual obligations to oil and gas lessees. He further stated that the agency s inaction effectively freezes millions of dollars worth of mineral investments . . . and compromises the nation s largest oil and natural gas producing region at a time when affordable and reliable supplies of energy are critical to the nation s security and economic well being.

On June 30, 2004, the EPA published the draft permit and posted an Administrative Compliance Order and Notice to Request Coverage Form on its website. The order was an attempt to provide companies with an option to proceed with drilling without a permit.

NOIA submitted comments to the EPA on the draft permit. In addition to fully endorsing the comments of the Offshore Operators Committee, NOIA again called

for the immediate issuance of a final permit, and stated that the failure of the government to act was adversely impacting domestic energy production.

On October 7, 2004, the EPA issued the general discharge permit. Most of the terms of the permit were similar to the terms of the previous permit, but there were a few changes. The term of the permit was for three years, rather than five. The requirement to submit fourteen day advanced notification of intent to be covered by the permit was removed. A time frame was specified for the collection of a produced water sample after a sheen is observed. The discharge prohibitions at National Marine Sanctuaries were clarified. The variability factor for use in determining compliance with the permit s limits for sediment toxicity and biodegradation was removed. New test methods were allowed for monitoring cadmium and mercury in stock barite. And, there was a requirement for collecting produced water samples to assess effluent characterization and study any possible effects on hypoxia. This last permit requirement applied to those operators within the hypoxic zone, as defined by lease blocks cited in the permit. Permittees were given the option to comply with the provision individually, or to participate in an industry-wide study.

Status

In anticipation of the 2004 permit expiring in October 2007, NOIA worked with the agency to ensure that the new permit was issued expeditiously. The EPA issued a new permit on June 7, 2007, which went into effect on October 1, 2007, and will be in effect for three years. The new permit includes changes recommended by industry after reviewing a draft permit in 2006. NOIA continues to advocate for expeditious processing of permits and regulations, so that offshore oil and natural gas operations will not be unnecessarily delayed.

Floating Production Storage and Offloading Vessels

Issue

NOIA and other industry groups have long advocated the use of Floating Production Storage and Offloading (FPSO) vessels in the U.S. Gulf of Mexico. FPSOs are offshore production facilities that have the capability to process oil and natural gas, store crude oil in tanks located in the hull of the vessels and offload the crude oil to shuttle tankers or ocean-going barges for transport to shore. FPSOs offer an option to develop areas that challenge or exceed current infrastructure or technologies.

Background

FPSOs have been put to use in offshore development projects around the world, but were not authorized in the U.S. until 2002, when the Minerals Management Service (MMS) announced that it would accept applications for the use of FPSOs in the Gulf of Mexico. The decision was documented in a Record of Decision for a programmatic environmental impact statement (EIS) on the potential use of FPSOs. The EIS evaluated a permanently moored, double-hulled ship-shaped FPSO with up to one million barrels of crude oil storage capability. The decision excluded the use of FPSOs in a 471-block area just off the continental shelf from Galveston to New Orleans, part of the U.S. Coast Guard lightering-prohibited areas.

While the programmatic level decision did not approve any specific FPSO site or project, it provided a foundation for considering a specific request by a company to use an FPSO. MMS announced that it would conduct additional site-specific environmental assessments, as well as project-specific technical and operational reviews, before any specific project would be approved.

On September 25, 2006, Petrobras America sent in a conceptual plan for an FPSO to the MMS, the first FPSO application for the Gulf of Mexico. The application for the conceptual plan was approved on November 29, 2006.

Status

On April 21, 2008, the MMS approved development plans for Petrobras Cascade-Chinook oil and natural gas project, located in the Walker Ridge area of the Gulf of Mexico, approximately 165 miles offshore Louisiana in 8,200 feet of water. The floating facility will have the capability to process oil and natural gas. Crude oil will be stored in tanks located in the facility s hull and offloaded to shuttle tankers for transportation to shore. Natural gas will be transported by pipeline.

The company is now preparing its Deepwater Operations Plan for the project. The plan, which outlines the specific details and capabilities of the FPSO facility and associated new technologies, must be approved by MMS before production can begin.

Global Climate Change

Issue There is a concern that carbon emissions are contributing to global climate change, and that global climate change is causing detrimental effects to the environment, changing the intensity and frequency of storms, droughts and fire, raising the level of the oceans, melting glaciers, and endangering species.

Background Global climate change, also known as global warming, is believed by some to be caused by the emission of heat trapping gases produced by vehicles, power plants, industrial processes, and deforestation. Some research shows that the earth has become hotter than it has been at any time in the past 1,000 years. And, some climate models that project future conditions show that global warming could continue if emissions continue to increase.

Numerous bills have been introduced in the Congress to try to slow down or stop climate change by limiting carbon emissions in various ways. Most of these are cap-and-trade proposals, which will require industry to buy allowances for emissions.

During the 110th Congress, seven bills were introduced that contained economy-wide cap-and-trade proposals. All of these bills would require domestic energy processors and producers to buy allowances for emissions generated by the end consumer of the energy. Bills were sponsored by: John McCain (R-AZ) and Joe Lieberman (I-CT); Joe Lieberman (I-CT) and John Warner (R-VA); Jeff Bingaman (D-NM) and Arlen Specter (R-PA); Bernard Sanders (I-VT) and Barbara Boxer (D-CA); John Kerry (D-MA) and Olympia Snowe (R-ME); John Olver (D-MA) and Wayne Gilchrest (R-MD); and Henry Waxman (D-CA).

In December 2006, the Fish and Wildlife Service proposed listing the polar bear as threatened under the Endangered Species Act, citing concerns about melting ice from global climate change.

In January 2008, a lawsuit was filed by several environmental groups and Alaska Native groups to stop the Chukchi Sea OCS lease sale. The suit alleged the sale would harm the polar bear and other species. The court refused to issue the injunction and the sale went forward.

In February of 2008, the Center for Biological Diversity (CBD) petitioned the Department of the Interior to list the Pacific walrus as threatened, due to melting ice from global climate change. The CBD has further petitioned for the listing of the American pika, the ribbon seal, and 12 species of penguins.

Status

In May 2008, the Secretary of the Interior announced that the agency had decided to list the polar bear as a threatened species under the Endangered Species Act. In his announcement, the Secretary stated that it was the loss of sea ice and not oil and gas development that was the reason for the new status. He further pointed out that the oil and gas industry has been operating in the Arctic for decades in compliance with the Marine Mammal Protection Act, and no polar bears have been reported killed due to encounters with oil and gas operations.

NOIA continues to advocate for industry to have the opportunity to conduct energy development on the OCS in an environmentally sensitive manner, and to ensure that environmental statutes are not misused to inhibit energy production.

Law of the Sea Treaty

Issue The United Nations Convention on the Law of the Sea entered into force on November 16, 1994, without U.S. participation. The Administration has forwarded the Law of the Sea to the U.S. Senate for ratification. 154 nations, excluding the United States, have become parties to the treaty.

Background The Law of the Sea Treaty is a comprehensive international agreement that covers a broad range of ocean and coastal issues, including delineation of the outer limits of the OCS. When concluded in 1982, the Law of the Sea contained several provisions, especially those related to ocean mining, which were highly objectionable to the United States. In 1994, an amendment to the seabed mining provision was negotiated that eliminated these objectionable provisions.

The treaty is of interest to the offshore industry because it supports U.S. claims to the marine and seabed resources where the continental shelf extends farther than 200 nautical miles from the coasts. This favors the United States, one of the few nations with broad continental margins, particularly in the North Atlantic, Gulf of Mexico, Bering Sea and Arctic Ocean. The convention also establishes the International Seabed Authority and the Continental Shelf Commission, a body of experts through which nations may establish universally binding outer limits for the continental shelf.

NOIA sent letters to the Senate, urging expedited ratification of the treaty. The treaty was placed on the Department of State s list of priorities. At the November 2001 meeting of the U.S. Commission on Ocean Policy, NOIA testified to the urgency of ratifying the Law of the Sea Treaty. The Ocean Commission responded by passing a resolution supporting the earliest possible ratification of the treaty and including the recommendation in its final report issued in September of 2004.

The NOIA Board of Directors passed a resolution supporting ratification of the Convention in October 2004. NOIA testified before the Senate Foreign Relations Committee during the 109th Congress, urging ratification of the treaty, and it was favorably passed out of committee.

Status On October 4, 2007, NOIA Public Affairs Committee Chairman Paul Kelly testified before the Senate Foreign Relations Committee on behalf of NOIA and an industry coalition, urging Senate ratification of the Law of the Sea Convention.

NOIA continues to advocate before Congress and the Administration for ratification.

Marine Mammal Protection Act Reauthorization

Issue

The Marine Mammal Protection Act (MMPA) was enacted in 1972 to protect and conserve marine mammal populations. The original Act established a moratorium on the taking or importing of marine mammals and marine mammal products except for certain activities which are regulated and permitted. The MMPA defines take as to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal. Under the Act, the Secretary of the Interior has jurisdiction over sea otters, polar bears, manatees, dugongs, and walruses, while the Secretary of Commerce has jurisdiction over all other marine mammals.

Background

The MMPA was last amended in 1994 and a number of new provisions were added to the Act including: a definition of harassment; an incidental take regime for commercial fisheries including marine mammal stock assessments and abundance estimates; and cooperative agreements between Alaska Natives and the agencies. The amendments also modified a number of existing provisions in the Act. The permit process was eased for scientific research, photography and public display; Pinniped-Fishery Interaction Task Forces were authorized; and an authorization was included for the Departments of Commerce and Interior and the Marine Mammal Commission for fiscal years 1994-1999.

Since the enactment of the 1994 amendments, lawsuits have hindered the agency s permitting process for scientific research, and the regulated communities have questioned the agencies implementation of certain provisions in the Act.

Status

While MMPA reauthorization bills have been before both the 109th and 110th Congresses, they have not passed.

The final report from the U.S. Commission on Ocean Policy endorses the recommendations presented in the National Academy of Sciences report, Ocean Noise and Marine Mammals, including an improved scientific basis for permitting decisions and a revision of the definition of harassment to focus on the disruption of biologically significant activities. NOIA also believes these recommendations would be improvements to the Act.

NOIA continues to work closely with key Congressional staff to ensure favorable modifications to the MMPA, including changes to the definition of harassment and modifications to the incidental take provisions, among others.

Marine Mammals and Explosive Removal of Offshore Structures

Issue The Minerals Management Service (MMS) regulations require that operators remove surplus structures within one year after lease expiration. Explosives are often needed to sever structural elements to allow structure removal. Marine mammals are protected by the Marine Mammal Protection Act (MMPA), which is administered by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries). The potential effect of structure removal can be construed as a taking under the Act.

Background Although the MMPA generally prohibits the intentional taking of marine mammals, the Act does allow for the incidental taking of small numbers of mammals if certain findings are made and regulations are issued that include requirements for monitoring and reporting. In 1995, NOAA Fisheries issued regulations governing the incidental taking of marine mammals when using explosives to remove offshore structures. Under those regulations, operators who removed oil and gas drilling and production structures and related facilities in waters of the Gulf of Mexico applied for Letters of Authorization (LOAs) to incidentally take marine mammals in the course of structure removal activities. However, those regulations expired in 2000, and NOAA Fisheries could no longer issue LOAs for structure removal activities. Without the LOAs, operators faced a regulatory void and possible legal problems when removing offshore structures.

NOIA and other industry representatives urged NOAA Fisheries to promulgate new regulations. In response, the agency published a proposed rule on April 19, 2002, which proposed to authorize and govern the incidental taking of bottlenose and spotted dolphins in water depths equal to or less than 200 meters for a period of one year. NOIA commented on the proposed rule on May 1, 2002, urging the expeditious promulgation of regulations, and recommending that the one year time frame be expanded.

The agency responded, and expanded the effective dates of the rule to 18 months. In addition, the agency changed the regulation to require that remotely operated vehicles be deployed prior to detonation in water depths of 46 meters or greater if divers were not deployed during the course of the removal operations.

NOIA and other industry representatives requested another rulemaking that would authorize these explosive removal activities for an additional five years after the 2002 regulation expires. However, the 2002 regulation expired on February 2, 2004, before the Minerals Management Service (MMS) could complete the

documentation and analysis required under the National Environmental Policy Act in order to support a petition for a five-year regulation.

NOIA and a coalition of other industry trade associations worked closely with the MMS as they prepared documentation for the rulemaking, including participating in an MMS mitigation workshop on the subject.

MMS completed its environmental analysis (EA) on March 1, 2005. The EA resulted in a Finding of No Significant Impact. Potentially adverse but not significant impacts were identified for marine mammals and negligible to potentially adverse but not significant impacts were identified for sea turtles. No potentially significant impacts were identified for air and water quality, fish, benthic, and archaeological resources, or other OCS pipeline, navigation and military uses.

The EA was included as part of the information package used to petition NOAA Fisheries for the rulemaking authorizing small takes incidental to explosive severance activities in the Gulf of Mexico, and for the formal consultation with NOAA under Section 7 of the Endangered Species Act.

Status

NOAA Fisheries began its regulatory process with a notice in the Federal Register in August 2005. The final biological opinion was issued in October 2006, and then the rulemaking was stalled. NOIA and a coalition of industry representatives urged the agency to issue the final rulemaking, and a group of NOIA executives met with the NOAA Administrator to urge the agency to complete it.

On June 19, 2008, NOAA issued the final rule authorizing the taking of marine mammals incidental to explosive removal of offshore oil and gas structures in the Gulf of Mexico. The rule will be in effect from July 21, 2008 through July 19, 2013.

Marine Mammals and Seismic Activities

Issue Starting with Lease Sale 184 in 2002, the Minerals Management Service (MMS) has included several stipulations regarding seismic activities in its notices of sales in the Central and Western Gulf of Mexico. The stipulations were imposed to comply with National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) Biological Opinions issued as part of the Endangered Species Act and Marine Mammal Protection Act consultation, in order to protect marine mammals and endangered species, particularly sperm whales.

Background The stipulations require that seismic surveyors post trained observers to visually scan the ocean for whales, cease operations when a whale is detected in an 180 dB impact zone, and wait for the whale to leave the area of operations. Furthermore, seismic surveys are only to be initiated during daylight, and procedures must be followed in order to allow any unseen whales to leave the area before airgun ramp-up. MMS has clarified how the seismic survey mitigation measures are to be implemented in Notices to Lessees. Seismic vessels are required to use visual observers who have successfully completed a NOAA Fisheries-approved training program to visually survey the ocean within a radius of 500 meters for sperm whales. If any are spotted, activities must be stopped until the whale has departed the area. Observers are required to document the date, time and location of each whale observation, and report the information to NOAA Fisheries.

The NOAA Biological Opinions have also stated that incidental takings of sperm whales could not be permitted, since there is no regulation in place for such a permit. NOIA, as part of an industry-wide coalition, met with both the MMS and NOAA and submitted extensive comments on the Biological Opinions. In the comments, NOIA pointed out that the Biological Opinions appear to lack objectivity, attempt to draw conclusions where there is no data or evidence to back up the conclusions, and there is no external peer review for the documents. In addition, NOIA submitted extensive comments regarding NOAA Fisheries assertions regarding marine noise and its effects on sperm whales, and expressed particular concern about the assertions that seismic activities may adversely affect sperm whales in the Gulf of Mexico, and that there is no authorization for incidental takings of sperm whales.

A biological opinion was issued by NOAA Fisheries for the 2002-2007 Five Year Eastern Gulf Multi-Sale environmental impact statement (EIS). Once again, NOIA, as part of an industry coalition, met with NOAA Fisheries and the MMS after the draft biological opinion was issued, and expressed our concerns, requesting changes to the document. NOAA Fisheries adopted numerous changes at the request of industry, correcting many of the inaccuracies in previous

opinions. While many of the stipulations requested by NOAA Fisheries are still required under the opinion and MMS notices to lessees, there is no longer a concern that the opinion incorrectly implies that the marine mammals are harmed by exploration and production activities.

On December 26, 2002, responding to NOAA Fisheries assertions and the concerns of industry, the MMS submitted a petition to NOAA Fisheries for takes of marine mammals incident to seismic activities. MMS completed an environmental assessment and a revised petition for rulemaking in the Summer of 2004, and submitted them to NOAA Fisheries. NOAA Fisheries announced that it intended to prepare an environmental impact statement to accompany the rulemaking.

Status

The EIS process to support a rulemaking for takes of marine mammals incidental to seismic activities began in early 2005, and was expected to take two years. However, the agency had not completed any of the work required and was seriously behind schedule as of January 2006. Several NOIA members met with NOAA, and urged the agency to move forward on the EIS and rulemaking. NOAA responded, and stated that they expected to complete the EIS and rulemaking by early 2008. This did not happen.

NOIA has advocated for additional staff and funding for both NOAA and MMS to complete this work, but the rulemaking remains woefully behind schedule. We continue to advocate for the issuance of the incidental take authority before the agencies and Congress.

NOIA will continue to work with the MMS and NOAA Fisheries to ensure that the agencies base their regulations and decisions on accurate information based on sound science, and that, if required, regulations will be promulgated to provide incidental take authority for mammals.

Moratoria

Issue For 26 years, due to congressional moratoria and administrative withdrawals, only a small percentage of the OCS was available for leasing. NOIA has worked hard to change this public policy, getting policymakers to lift the moratoria and revoke the withdrawals so that offshore areas may be available for the exploration and development of oil and natural gas.

Background The first congressionally imposed moratoria was for fiscal year 1982, and encompassed 736,000 acres in the Central California OCS planning area. From 1982 to 2001, congressional moratoria and Presidential withdrawals grew to cover 266,500,000 acres. This included the east and west coasts of the lower 48 states, parts of the Alaska OCS, and the majority of the Eastern Gulf of Mexico.

In June 1990, President George H.W. Bush issued an Executive Order canceling lease sales and withdrawing from leasing areas off the East and West coasts for ten years and until necessary scientific studies could be completed. Congress then imposed legislative moratoria in those same areas, renewing them every year since 1990.

In June 1998, President Clinton issued an Executive Order extending the existing withdrawal from offshore oil and gas leasing until June 30, 2012, and permanently barring any new leasing in the twelve national marine sanctuaries. The President s decision included all areas currently covered by the legislative moratoria, but did not expand the prohibitions to existing leases in moratoria areas.

NOIA prepared an extensive plan that was implemented at the grassroots and grasstops levels, in States, in the Congress and in the agencies. The plan s goals were to stop attempts to extend moratoria, to get existing moratoria lifted, and to have the Executive Order revoked.

Status Congress: Most Congressional moratoria have now been lifted.

First, the Congressional moratorium on leasing in Bristol Bay off Alaska was removed with the 2004 appropriations law, making this the first time any leasing moratorium had been discontinued since its initial implementation.

Second, in December 2006, the President signed into law the Gulf of Mexico Energy Security Act, which opened 8.3 million acres in the Eastern and Central Gulf of Mexico to new leasing, encompassing part of the original Lease Sale 181 area and a region to its south that was under moratorium. The Minerals

Management Service (MMS) was required to lease approximately 2.5 million acres of the original Lease Sale 181 area as soon as practicable but not later than one year after enactment. In addition, 5.8 million acres from the 181 South area that used to be under moratoria, must be leased by the agency. The law does include a no-drill buffer for a 125-mile region south of the Florida Panhandle, that will last until 2022. In addition to opening the areas to leasing, the law also provides revenue sharing for the four adjacent Gulf Coast states: Louisiana, Alabama, Mississippi and Texas.

Third, on September 30, 2008, President Bush signed into law a Continuing Resolution to keep the federal government funded through March 2009. For the first time in 26 years, moratoria were not included in the funding statute. Early versions of the bill did include moratoria of one sort or another, along with proposals for new fees on industry. NOIA successfully rallied its members and allies to have those provisions removed.

The only area currently closed to oil and gas leasing through legislation is now an area in the Eastern Gulf of Mexico within 125 miles of Florida. This area was closed until 2022 by the Gulf of Mexico Energy Security Act.

Administration: Except for the national marine sanctuaries, no areas are closed by Executive Order anymore.

First, On January 9, 2007, President Bush modified the Executive Withdrawal that withdrew the lands in the 181 South area of the Central and Eastern Gulf of Mexico, as well as the area in the North Aleutian Basin (Bristol Bay) from leasing, marking the first time a President had lifted administrative moratoria on leasing.

Second, on July 14, 2008, President Bush modified the Executive Withdrawal that withdrew lands on the East Coast, the West Coast, and part of the Eastern Gulf of Mexico from leasing. The President s memorandum opened all the areas for leasing, except for the very limited areas that are designated as national marine sanctuaries.

States: The Virginia state legislature passed a bill in 2006 that supports lifting the moratoria to lease for natural gas off the state s shore. The bill was signed into law by Governor Kaine in May 2006, and the Governor included offshore natural gas production in his energy plan issued in 2007.

In 2007, the South Carolina General Assembly unanimously passed a bill creating a 20-person study committee to assess the feasibility of offshore natural gas exploration in the OCS waters off South Carolina. The committee members were

appointed during 2008, and the committee is expected to conduct its work and issue a report of its recommendations to the General Assembly in 2009. In addition, several bills were introduced in the legislature during 2008 that would have called for leasing off the Atlantic Coast.

Governor Purdue of Georgia released a state energy policy in December 2006 that calls on the state to support prudent exploration of natural gas reserves on the Outer Continental Shelf. Two different bills were also introduced in the legislature during 2008 that would address offshore energy. One would have requested that the area off the coast of Georgia be included in the Minerals Management Service Five-Year Leasing Plan, and the other would have asked that the area off the Atlantic Coast be open for leasing.

The legislatures of Kansas, Oklahoma, North Dakota, Tennessee, and Idaho have passed resolutions supporting the lifting of moratoria. The Montana House of Representatives and the Nevada Senate passed legislation supporting the lifting of moratoria. And, state legislators in Utah and Arizona have submitted similar letters to the federal government.

More resolutions and bills continue to be introduced in state legislatures, and NOIA is working with state officials and our consumer coalition partners to support grassroots efforts to pass state initiatives that would support OCS energy development.

NOIA continues to implement an access and development strategy that includes conducting grassroots efforts to keep offshore areas open to oil and natural gas leasing, as well as conducting direct advocacy before the Congress and the Administration.

OCS Five-Year Leasing Program

Issue Section 18 of the Outer Continental Shelf Lands Act (OCSLA) requires the Secretary of the Interior to prepare and maintain a five year schedule of lease sales that best meets national energy needs. The current program will be in place until 2012.

Background The planning process for the 2007-2012 Five-Year Program began with a scoping notice in the Federal Register on August 24, 2005. This came after nearly a year of advocacy by NOIA, since the Administration signaled in 2004 that it intended to pre-judge the planning process and not include any areas under moratoria, administrative withdrawal, or that were not included in the current leasing program.

On December 17, 2004, NOIA sent a letter to President Bush urging a broad scoping process, as mandated by law. On February 8, 2005, NOIA led a six trade association coalition in a letter to Secretary Norton on the same subject, and rallied numerous allies in industry, consumer organizations, and on the Hill to do the same.

NOIA supplied its member companies, a coalition of industry trade associations, numerous end user groups, and numerous public officials with draft comments to submit on the scoping notice. The comments advocated for the continued annual offering of all acreage in the Central and Western Gulf of Mexico. NOIA further urged the agency to lease the full area of the Eastern Gulf of Mexico not under moratoria, known as the original 181 area. We encouraged MMS to include areas currently under administrative withdrawal or leasing moratoria in the plan. In particular, we strongly recommended that the Aleutian Basin of Alaska, portions of the Eastern Gulf, and portions of the Atlantic planning areas be included. Finally, we urged the agency to make the new plan as flexible as possible, so that the federal government would be nimble in responding to changing circumstances and needs of the country. The MMS received 11,274 comments on the scoping notice, more than three-fourths of which favored increasing OCS leasing and access. For the first time, the MMS received numerous comments from non-energy industry, business, and agricultural groups.

On February 8, 2006, the MMS issued its draft proposed program for 2007-2012. The draft included all the areas in the old program, in addition to a portion of the original Lease Sale 181 bulge area and three areas that were currently under administrative withdrawal and/or legislative leasing moratoria. These were the North Aleutian Basin off Alaska, a portion of the Eastern Gulf of Mexico south of

the original Lease Sale 181 area, and a triangle of acreage off the coast of Virginia.

NOIA supplied its member companies, a coalition of industry trade associations, numerous end user groups, and numerous public officials with draft comments to submit on the draft proposed program. Our comments asked that the agency continue to include all the areas identified for leasing in the draft, but also expand the areas to include all OCS areas, particularly the entire area off the Atlantic coast and the entire original Lease Sale 181 area. The agency received over 39,000 comments on the draft proposed program, more than two-thirds of which favored additional access.

On August 24, 2006, the MMS issued its proposed program and draft environmental impact statement. While the proposal included the Central and Western Gulf of Mexico, a portion of the original 181 area, the 181 south area, several areas in Alaska (including the North Aleutian Basin formerly under moratoria) and a small sliver of acreage off the coast of Virginia, NOIA felt it was still too restrictive. NOIA drafted comments for the association and allied trade associations, for numerous end user groups, and numerous public officials. In addition, we provided comments on the NOIA Real Clout site for both companies and employees and retirees of companies, so that our members could submit comments electronically. The agency received over 73,000 comments, two-thirds of which supported greater access.

The 2007-2012 final plan went into effect in July 2007. It included 21 lease sales, including two sales in areas previously under moratoria and one sale in an area that was still under moratoria.

Status

On August 1, 2008, the MMS initiated a process for a new Five Year Program, which would supersede the current program and be in effect from 2010-2015. NOIA drafted comments for the association and allied trade associations, for numerous end user groups, and numerous public officials. In addition, we provided draft comments on the NOIA Real Clout site for both companies and employees and retirees of companies, so that our members could submit comments electronically. Among other things, NOIA s comments recommended that the agency analyze the resource potential of all areas of the OCS, include lease sales in all areas of interest for hydrocarbon development regardless of moratoria status, continue areawide lease sales in the Gulf of Mexico, schedule focused sales where areawide sales are not possible, and break up the Atlantic Coast and Pacific Coast into more planning areas. MMS received over 168,000 comments. The comments supporting more offshore access outnumbered the comments opposed to oil and gas development by approximately 10,000.

The MMS expects to issue a draft proposed program by the end of 2008. NOIA continues to work to advocate for a new program that includes as much of the OCS as possible.

OCS Rights of Way and Alternative Energy

Issue

On June 20, 2002, the Secretary of the Interior sent draft legislation to the Congress that would grant the Minerals Management Service (MMS) the authority to issue easements or rights-of-way for alternate energy development projects on the OCS, such as wind energy and deepwater ports, and to use decommissioned platforms as staging facilities, hospitals, and other support facilities for deepwater operations.

Background

Congresswoman Barbara Cubin (R-WY), Chairman of the House Energy and Minerals Subcommittee, introduced the Administration s proposal as H.R. 5156, and held a hearing on the bill on July 25, 2002.

NOIA led an industry coalition in preparing and submitting a letter to the Subcommittee on August 5, 2002, in which we expressed our support for the bill and for the MMS in this role, and recommended a series of changes to the current draft, including:

1. a new purpose be added to consider the President s Executive Order on energy-related projects,
2. the consultations with other agencies required in the bill be given a structure and definite beginning and ending time frame,
3. the MMS be required to promulgate regulations to set the fee structure, and the bill make it clear that payments will not be royalties, and
4. correlative rights be protected.

Despite the efforts of the Administration and Congresswoman Cubin, the bill did not pass before the end of the 107th Session.

In the 108th Congress, Congresswoman Cubin introduced H.R. 793. This bill adopted all of the changes requested by NOIA and the rest of the industry coalition. The Subcommittee held a hearing on the bill on March 6, 2003, and invited NOIA to testify. Eric Smith, then-Vice President of Strategic Planning for Global Industries and a member of the NOIA Board of Directors, testified on behalf of industry. Smith expressed support for the bill, and for the ability of the MMS to authorize these activities. The language from H.R. 793 was also added to the energy bills in the 108th and 109th Congresses.

The OCS Rights of Way bill was included in the Energy Policy Act of 2005, and became law on August 8, 2005.

Status

The agency issued a draft programmatic environmental impact statement in March 2007. Hearings were held in May and June of 2007, and the final programmatic

environmental impact statement was released in November 2007. The record of decision was issued in January 2008, which adopted 15 policies and 52 best management practices.

On December 20, 2005, MMS issued an advance notice of proposed rulemaking, requesting comments on a program for OCS energy development from sources other than oil and gas and alternative uses of existing facilities. NOIA led an industry coalition in submitting comments on the notice. Our comments supported the development of a program to authorize and regulate these uses of the OCS, and recommended that the agency establish a streamlined process to authorize and regulate alternate uses of facilities and alternate energy development, while not infringing upon existing oil and gas exploration and production activities. Furthermore, we recommended the agency adopt a system of multi-year rights-of-way for commercial alternative energy projects and set up a separate program of short-term easements for demonstration projects that would be used for technologies that are emerging from industry and academic laboratories and are ready for ocean testing but are not yet commercially viable. Finally, we recommended that the MMS provide the public with notice and opportunity to comment on applications and proposals, as well as direct notice to holders of existing facilities, leases, permits, rights-of-ways, and other authorizations, when those facilities and authorizations are in the same areas or adjacent to the areas requested for pilot or demonstration projects.

On July 8, 2008, MMS issued the proposed rule. The rule would establish a program to grant leases, easements, and rights-of-way for alternative energy project activities and alternate uses of existing facilities on the OCS. NOIA submitted comments on the proposal, supporting the general intent and structure of the rule, and commending the agency for creating two types of licenses one for commercially viable companies and the other for experimental OCS projects. NOIA also encouraged the agency to ensure that a balance exists between permitting and siting of alternative projects and the need to support traditional oil and natural gas exploration and production.

The agency plans to promulgate a final rule in December 2008.

NOIA continues to advocate before Congress and the Administration for economic and geographic access to the OCS for all offshore energy producers.

Offshore Leasing Legislation

Issue

After many years of advocacy by NOIA and others to change the law governing offshore oil and natural gas leasing in order to provide more access to those resources, the association is now achieving some successes on Capitol Hill. Legislation was passed in both houses of Congress, for the first time ever, to affirmatively lift moratoria and withdrawals, legislation was passed and signed by the President that lifted moratoria, the President modified the executive withdrawal to lift the Presidential moratoria, and Congress passed and the President signed a spending bill in effect until March 2009 that does not contain any appropriations moratoria.

Background

From 1990 to 2008, 85% of the lower 48 Outer Continental Shelf was off limits to offshore oil and natural gas leasing through administrative withdrawals or appropriations act leasing moratoria. When areas are leased, the bonus bids, royalties and other revenue go to the federal government with a few small, but notable, exceptions. The first three miles of federal waters are governed by section 8(g) of the Outer Continental Shelf Lands Act, and a percentage of that revenue is shared with the adjacent state to compensate for any drainage from the adjacent state waters. And, approximately 1/6 of the funds collected from all federal waters is allocated to the Land and Water Conservation Fund and the National Historic Preservation Fund. Those funds are distributed to all states and the federal agencies. The rest of the revenue collected goes to the federal treasury.

NOIA led an advocacy effort to increase access to the offshore for our members. We worked with other industry groups, numerous end user groups, grassroots organizations, and policymakers in various states and the Congress.

On June 29, 2006, the House of Representatives passed H.R. 4761, the Deep Ocean Energy Resources Act, by a vote of 232-187. The historic bill, sponsored by Congressmen Jindal (R-LA) and Melancon (D-LA) and including concepts from bills sponsored by Congressmen Pombo (R-CA), Peterson (R-PA) and Abercrombie (D-HI), would lift moratoria beyond 100 miles from the coast. From 50 to 100 miles, it would lift moratoria for natural gas one year after enactment and for oil in 2010, unless a state enacted legislation to continue the moratoria. Moratoria would continue up to 50 miles from shore for areas that are currently under moratoria, unless a state opted out of the restrictions. The bill would also set up a system for the federal government to share offshore oil and natural gas revenues with the states.

In December 2006, the President signed into law the Gulf of Mexico Energy Security Act, which opened 8.3 million acres in the Eastern and Central Gulf of

Mexico to new leasing, encompassing part of the original Lease Sale 181 area and a region to its south that was under moratoria. The MMS was required to lease approximately 2.5 million acres of the original Lease Sale 181 area as soon as practicable but not later than one year after enactment. In addition, 5.8 million acres from the 181 South area that used to be under moratoria, had to be leased by the agency. The law does include a no-drill buffer for a 125-mile region south of the Florida Panhandle, that will last until 2022.

In addition to opening the areas to leasing, the law also provided revenue sharing for the four adjacent Gulf Coast states: Louisiana, Alabama, Mississippi and Texas. The states will receive 37.5% of the revenue from leasing in the newly opened areas immediately, and will share in revenue in areas where leasing has already taken place beginning in 2016. And, the law requires that 12.5 percent of the revenues from leasing these areas will be distributed into the Land and Water Conservation Fund to be shared by all states.

On January 9, 2007, President Bush modified the Executive Withdrawal that withdrew the lands in the 181 South area of the Central and Eastern Gulf of Mexico, as well as the area in the North Aleutian Basin (Bristol Bay) from leasing, marking the first time a President lifted administrative moratoria on leasing.

Status

On September 30, 2008, President Bush signed into law a Continuing Resolution to keep the federal government funded through March 2009. For the first time in 26 years, moratoria is not included in the funding statute. Early versions of the bill did include moratoria of one sort or another, along with proposals for new fees on industry. NOIA successfully rallied its members and allies to have those provisions removed.

NOIA continues to work with members of Congress and states to achieve more offshore access, and to ensure that the newly-opened areas remain opened, and actually get leased. There are numerous proposals to re-impose moratoria completely or with setbacks from the shore of anywhere from 25 to 100 miles. We are working to fight those proposals.

Working closely with numerous coalitions of energy end users and other interested parties, NOIA will continue to build on our successes to achieve legislation and policies in both houses of Congress and in the Administration that will allow us to produce energy from the OCS in an environmentally responsible manner.

Oil in the Sea Study

Issue

In 1985, the National Research Council (NRC) published its comprehensive study, *Oil in the Sea: Inputs, Fates and Effects*. The study identified and quantified petroleum inputs to the world s oceans and the environmental impacts associated with those inputs. The study found that OCS oil and gas operations were responsible for less than 2% of the oil in the world s marine environment. In May 2002, the National Research Council issued a new report, Oil in the Sea III: Inputs, Fates and Effects, which updates the original report, and reinforces the original conclusions.

Background

Much of the data in the original NRC report predated 1980, so the Minerals Management Service, with financial assistance from the U.S. Coast Guard, Office of Naval Research and the Department of Energy, contracted with the NRC s Ocean Studies Board to update the study. In April of 2000, the NOIA Board of Directors approved a motion to contribute $20,000 to help fund the NRC Study.

The NRC formed an Oil in the Sea Committee to complete the update. The Chair of the Committee was Jim Coleman of Louisiana State University. The Committee updated the study in two phases. Phase 1 involved the identification, quantification and categorization of hydrocarbon input to the marine environment. Phase 2 concerned an update on the fates and effects of oil in the marine environment and was viewed by the NRC as the most critical aspect of the update.

Status

Oil in the Sea III indicates that the overall amount of petroleum released into the marine environment is less than generally thought. The report attributes this to advances over the last decade in marine transportation and oil and gas production techniques. Overall, nearly 85% of the 29 million gallons of petroleum that enter North American ocean waters each year from human activity are the result of land-based runoff, polluted rivers, airplanes, small boats and jet skis, while less than 8% comes from tanker and pipeline spills, and less than 1% is from oil exploration and extraction activities. The total amount of the oil entering the oceans is dwarfed, however, by the 47 million gallons that annually seep into the ocean naturally from the seafloor. Oil seeps account for over 60% of the total oil in the sea.

In September 2008, the Energy Security Leadership Council published A National Strategy for Energy Security. The report cites the Oil in the Sea study, and reprints its graphics.

NOIA often cites the study results to support our industry s exemplary environmental record, and has made it a part of our grassroots toolkit.

Royalty in Kind

Issue Royalty in Kind (RIK) is a Minerals Management Service (MMS) program that takes oil and natural gas royalties in kind rather than in value. MMS has stated that the RIK program is beneficial to both the taxpayer and industry through increased revenue, lower administrative costs, lower auditing costs, less appeals and litigation, and greater certainty to fulfill royalty obligations.

Background The MMS, under the Outer Continental Shelf Lands Act and the Mineral Leasing Act, has the authority to create programs such as RIK to manage mineral interest and generate revenue for the federal government. Started in 1976, the first RIK program was developed to provide small refiners with access to adequate supplies of crude oil at equitable prices. Since then, four other RIK pilot programs have been created: one in Wyoming in 1997, one for the Texas 8(g) zone of the Gulf of Mexico in 1998, one initiated in 1999 for natural gas from the Gulf of Mexico, and one initiated in 2000 to address the feasibility of taking royalty crude oil from the Gulf of Mexico. As MMS analyzes the data from the pilots, it is identifying those efforts that may be incorporated as one of their management tools into Minerals Revenue Management.

Status The Bush Administration is utilizing the RIK program to increase the Strategic Petroleum Reserve, so that the reserve will reach full capacity of 700 million barrels.

The Energy Policy Act of 2005, which became law on August 8, 2005, contains a provision that makes the RIK authority permanent. It also provides for authority to use the royalty volumes for the Low Income Housing Energy Assistance Program and the Strategic Petroleum Reserve.

In September 2008, Senators Menendez (D-NJ) and Nelson (D-FL) introduced a bill to suspend the RIK program until reforms are implemented at the agency.

NOIA closely monitored the Interior appropriations bills, and advocated to ensure that the RIK program appropriations not be reduced. We will continue to be vigilant on this subject.

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