

Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman

Hearing Memorandum

June 22, 2018

To: Members of the Subcommittee on Energy and Mineral Resources

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

Hearing: Legislative hearing on a **Discussion Draft of H.R. _____, (Rep. Bordallo, Guam)**, To amend the Outer Continental Shelf Lands Act to apply to territories of the United States, to establish offshore wind lease sale requirements, to provide dedicated funding for coral reef conservation, and for other purposes.
June 26, 2018, at 10:00 AM; 1324 Longworth House Office Building

H.R. ____, Offshore Renewable Energy for Territories Act

Summary of the Bill

This bill applies the Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. 1331 et seq.) to the submerged lands off American territories and possessions, providing the Secretary of the Interior with the authority to manage this federal offshore acreage. The discussion draft also creates a revenue sharing structure, providing 50% of the revenues generated by nearby leasing activity back to the territory. In addition, under this structure, 15% of the revenues generated are deposited into the National Oceanic and Atmospheric Administration's Coral Reef Conservation Program Fund.

Invited Witnesses (in alphabetical order)

James F. Bennett

Chief of the Office of Renewable Energy Programs

Bureau of Ocean Energy Management

Department of the Interior

Washington, DC

Roy Francis

Senior Vice President

Gulf Island Fabricators, Inc.

Houston, TX

Randall Luthi

President

National Ocean Industries Association

Washington, DC

Olaf J. Olsen

Lead Representative

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

Stephen Pike
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Background

Wind energy development on the outer Continental Shelf (OCS) is a relatively new phenomenon, with a regulatory and statutory structure only being contemplated in the past two decades. Although frameworks had long been established for onshore federal mineral leasing, it was not until 2005 that Congress clarified the process for offshore renewable energy with the passage of the Energy Policy Act of 2005 (EPAct05, Public Law 109-58). Prior to EPAct05, the Army Corps of Engineers (Corps) generally led the offshore wind leasing process, as the projects were considered obstructions in “navigable waters of the United States,” but this authority was never made explicit.¹ EPAct05 clarified this uncertainty by amending the Outer Continental Shelf Lands Act (OCSLA) to provide the Secretary of the Interior the authority to lease offshore lands for the purposes of renewable energy development. EPAct05 preserved and clarified the responsibilities of other federal agencies, such as the Corps, who operate on the OCS.

Although many of America’s coastal states have seen the benefits envisioned under OCSLA, these benefits have not spread to the territories, as OCSLA does not apply to the territories and possessions of the United States.² As such, the Department of the Interior (DOI) cannot lease or otherwise manage the federal OCS acreage off these islands.

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

Several of the territories are attempting to address the energy crisis they currently face. In 2008, Guam’s legislature enacted a renewable portfolio goal of sourcing 8% of its power from renewable generation by 2020. Since that time, several major solar initiatives have taken off. Additionally, Guam has considerable offshore wind potential, and so long as the turbines are engineered to withstand typhoon conditions and earthquakes, offshore wind could prove a reliable energy resource. The long-term technical and economic feasibility of a commercial offshore wind project, however, is still unknown.

¹33 U.S.C. 403.

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

Offshore wind energy development is not without its critics. While demand for the clean energy source appears to be increasing in the United States, other users of the sea are concerned that the wind projects will directly conflict with their usage and enjoyment of the ocean. Throughout the pre-leasing and leasing process, DOI attempts to engage with a variety of coastal and ocean users, including local tourism boards, coastal mayors, fisheries, and shippers. Yet, despite this outreach, many offshore stakeholders maintain concerns that further crowding of the sea will impair or displace their offshore interests. Fishermen are among the most concerned, as their livelihood directly depends on their ability to access large swaths of the sea.

Importantly, the Department of Defense (DOD) remains a major, active user of the OCS – particularly in the Pacific theater – and conducts training and testing missions in nearly all OCS regions. Offshore wind developers, DOI, and DOD must carefully coordinate to avoid conflicting operations. Guam, for instance, is home to several major military installations, and is a critical hub for operations in the Pacific.

Tourism may also be impacted by the turbines dotting the horizon. In most territories, tourism is a major economic driver. The presence of visible offshore wind installations might be considered a threat to the local tourism industry. Offshore wind developers have some options in reducing visibility from shore, such as painting the turbines to blend with the sky or modifying the layout of the wind farm, and should continue to work with affected coastal communities to ensure everyone can share in the benefits of the ocean.

Recognizing these concerns will be paramount. Any development of largescale windfarms offshore the territories will need to be studied to ensure local and regional stakeholders, including DOD, can benefit – or at the very least live with -- offshore wind energy generation.

Major Provisions of the Bill

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

- Applies OCSLA to American territories and possessions, providing DOI the authority to manage submerged acreage off American territories.

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

- Establishes a revenue-sharing structure that returns 50% of revenues generated by nearby offshore wind leases to territories, and directs 15% of revenues to the National Oceanic and Atmospheric Administration’s Coral Reef Conservation Fund established by section 5 of the bill.

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

- Directs DOI to conduct offshore wind feasibility studies off American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. These studies shall

determine the technical and long-term economic feasibility of OCS wind farms offshore these territories.

- Directs DOI to conduct an offshore wind lease sale in each of these areas, if the relevant feasibility study determines that such a project is possible and economic.

Section 5. Establishment of the Coral Reef Conservation Fund.

- Amends the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) to create a Coral Reef Conservation Fund to receive a portion of the revenues generated by leases offshore the territories. Expenditures from this Fund are subject to appropriations.

Administration Position

Unknown.

Cost

CBO has not scored the legislation.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by Discussion Draft/Offshore Renewable Energy for Territories Act

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

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

§1331. Definitions

When used in this subchapter-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) The term "antitrust law" means-

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

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

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

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

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

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

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

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

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

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

§1338. Disposition of revenues

[All rentals] (a) IN GENERAL.—Except as otherwise provided in law, all rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer

Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

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

(1) 35 percent shall be deposited in the Treasury and credited to miscellaneous receipts;

(2) 15 percent shall be deposited in the Coral Reef Conservation Fund established under section 211 of the Coral Reef Conservation Act of 200; and

(3) 50 percent shall be disbursed to territories of the United States in an amount for each territory (based on a formula established by the Secretary by regulation) that is inversely proportional to the respective distance between the point on the coastline of the territory that is closest to the geographic center of the applicable leased tract and the geographic center of the leased tract.

Outer Continental Shelf Lands Act (43 U.S.C. 1338)

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Sec. 33. WIND LEASE SALES FOR AREA OF OUTER CONTINENTAL SHELF.

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

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

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

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

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

(B) **REQUIREMENTS.**—The study required in paragraph (A) shall be—

(i) published in the Federal Register for public comment for not fewer than 90 days; and

(ii) finalized within 90 days after the end of the public comment period.

(C) **SUBMISSION OF RESULTS.**—Not later than 180 days after the date of the enactment of this section, the Secretary shall submit the results of the study conducted under subparagraph (A) to:

(i) the Committee on Energy and Natural Resources of the Senate;

(ii) the Committee on Natural Resources of the House of Representatives; and

(iii) each of the delegates or resident commissioner of the House of Representatives from American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, respectively.

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

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

(3) CONDITIONAL WIND LEASE SALES.—

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

(i) The study required under paragraph (1)(A) concluded that a wind lease sale on the area is feasible.

(ii) The Secretary has determined that the call for information has generated sufficient interest for the area.

(iii) The Secretary has consulted with the Secretary of Defense regarding such a sale.

(iv) The Secretary has consulted with the Governor of the territory regarding the suitability of the area for wind energy development.

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

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

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SEC. 211. CORAL REEF CONSERVATION FUND.

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

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

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

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

(e) REPORTING.—The President shall include with the proposed budget for the United States Government submitted to Congress for a fiscal year a comprehensive statement of

deposits into the Fund during the previous fiscal year and estimated requirements during the following fiscal year for appropriations from the Fund.

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

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

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

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

(a) [Fund] Public-Private Partnership

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

(b) Authorization to solicit donations

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

(c) Review of performance

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

(d) Administration

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