



Section by Section Summary
The Consolidated Land, Energy, and Aquatic Resources Act of 2009
As Proposed by House Natural Resources Committee Majority Staff
August 2009

On July 28, 2009, House Natural Resources Committee Democratic staff, under the direction of Chairman Nick Rahall (D-WV) released draft legislation impacting the development of renewable energy projects on public lands and in federal waters. This document summarizes the sections of the bill impacting offshore wind projects.

Section 2. Definitions

Key definitions of interest are:

“Ecosystem-based management”

The term “ecosystem-based management” means an integrated approach to management that—

- (A) considers the entire ecosystem, including humans, and accounts for interactions among the ecosystem, the range of activities affecting the ecosystem, and the management of such activities;
- (B) aims to maintain ecosystems in a healthy, productive, sustainable, and resilient condition so that they can provide the services humans want and need;
- (C) emphasizes the protection of ecosystem structure, function, patterns, and important processes;
- (D) considers the impacts, including cumulative impacts, of the range of activities affecting an ecosystem that fall within geographical boundaries of the ecosystem;

(E) explicitly accounts for the interconnectedness within an ecosystem, such as food webs, and acknowledges the interconnectedness among systems, such as between air, land, and sea; and

(F) integrates ecological, social, economic, cultural, and institutional perspectives, recognizing their strong interdependencies.

“Important ecological area”

The term “important ecological area” means an area that contributes significantly to local or larger marine ecosystem health or is an especially unique or sensitive marine ecosystem.

“Marine ecosystem health”

The term “marine ecosystem health” means the ability of an ecosystem in ocean and coastal waters to support and maintain patterns, important processes, and productive, sustainable, and resilient communities of organisms, having a species composition, diversity, and functional organization resulting from the natural habitat of the region, such that it is capable of supporting a variety of activities and providing a complete range of ecological benefits. Such an ecosystem would be characterized by a variety of factors, including—

(A) a complete diversity of native species and habitat wherein each native species is able to maintain an abundance, population structure, and distribution supporting its ecological and evolutionary functions, patterns, and processes; and

(B) a physical, chemical, geological, and microbial environment that is necessary to achieve such diversity.

Title I – Consolidation of Department of the Interior Energy and Minerals Leasing Programs

Section 101. Establishment of the Office of Federal Energy and Minerals Leasing

This section creates a new office within the Department of the Interior (DOI), the Office of Federal Energy and Minerals Leasing (OFEML). OFEML will consolidate the leasing, inspection, enforcement and revenue collection for all energy activities (oil, gas, renewable) into a single entity. OFEML will have the leasing and related functions previously done by the Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and the Minerals and Management Service (MMS).

With respect to renewable energy projects, OFEML is specifically empowered to (i) establish the fair market value for onshore lease sales (ii) conduct lease sales (iii) issue and oversight of onshore leases...and conduct (v) compliance activities, including timely payments of rentals, royalties and other fees, production verification, inspection and enforcement.

Requires transfer of the audit functions of MMS to the inspector general of the DOI.

Title VI – Outer Continental Shelf Coordination and Planning

Section 601. Regional Outer Continental Shelf Coordination

The purpose of this Title is to “promote coordinated regional planning efforts” and “greater systematic communication and coordination among Federal, coastal State, and affected tribal governments concerned with siting and development of Federal renewable and non-renewable energy resources on, in, or above the OCS.”

Another objective is achieve “to the maximum extent feasible, greater reliance on multiobjective, science- and ecosystem-based, spatially explicit management approach that integrates regional economic, ecological, affected tribal, and social objectives into energy development decisions.”

Establishes four OCS Regions: Pacific (WA, OR, CA, HI), Gulf of Mexico (TX, LA, MS, AL and the west coast of FL), Atlantic (ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, and the east coast of FL), and Alaska.

Section 602. Regional OCS Councils

Within 180 days of enactment, requires the Secretaries of Interior and Commerce to establish a council for each OCS region.

Within 90 days of enactment, requires the appointment of each Federal agency and department that will participate in each council. The Federal appointments shall include those with “expertise in energy production facility siting and development and ocean and coastal policy, and engages in planning, management, and scientific activities that significantly affect or inform the use of ocean waters, coastal water, or ocean resources or other affected uses.”

Requires states to notify the Secretary with 3 months after the date of enactment of the bill whether the state will participate in the council and if so to appoint a representative.

Also provides for representation for Regional Fishery Management Councils, Regional Ocean Partnerships, Tribes, and Others. Under “Others”, the goal is to

“achieve balanced representation from the energy, shipping and transportation, marine tourism, and recreation industries, and from marine environmental nongovernmental organizations, and scientific and educational authorities with expertise in energy siting and development, land and water resource management, and conservation of ocean and coastal species and the habitat they depend upon.”

Section 603. Regional OCS Strategic Plans

Requires the councils, within one year of the date of enactment of the bill, to make an initial assessment of each OCS region that “shall identify deficiencies in data and information necessary to informed decision-making.”

Further requires each initial assessment to the extent feasible (A) identify the region’s potential alternative energy resources (B) identify the region’s existing infrastructure and projections for future transmission requirements (C) document the health and relative environmental sensitivity of the marine ecosystem, including a comprehensive survey of species, habitats, and indicators of ecosystem health (D) identify marine habitat types and important marine ecological areas (E) assess the region’s marine economy and cultural attributes (F) inventory other existing uses of the OCS.

Within 2 years of the completion of the initial assessment, requires the council to prepare a “multiobjective, science- and ecosystem-based, spatially explicit integrated marine energy and energy-related mineral resources strategic plan.”

The objective of the plan is “to foster sustainable development of additional energy resources from the OCS while protecting ocean and coastal ecosystem health and sustaining the long-term economic values of the oceans.”

Each plan shall “(C) identify areas with potential for siting and developing renewable and nonrenewable energy resources in the OCS...(F) identify best available technologies that can minimize adverse environmental impacts of construction and operation of energy facilities in the region (G) identify additional research, information, and data needed to carry out the strategic plan”...

Requires councils to allow participation by the public.

Requires the Secretaries of Interior and Commerce to review the regional plans within 10 days of submission and to complete the review within 180 days. Requires an opportunity for public comment on the plan for a 90 day period. The Secretaries can approve the plan to transmit back to the council with an explanation of the deficiencies. If it is rejected, the council has 180 days to transmit improvements.

Requires the councils to review and revise their plans at least once every 5 years.

Section 605. Ocean Resources Conservation and Assistance Fund

Establishes ORCA within the U.S. Treasury. Authorizes the funds to be distributed:

50% to be used to make grants to coastal states and tribes under the CZMA formula

40% to the Ocean, Coastal, and Great Lakes Grant Program created by the bill

10% to make grants to Regional Ocean Partnerships created by the bill

These funds are available to the Secretary without further congressional appropriation required.

Section 608. Alternative Energy on the OCS

Provides for grandfathering of certain projects. Specifically allows Interior to continue to implement the April 29, 2009, rule for offshore alternative energy prior to approval of a strategic plan from a regional council.

Provides that a strategic plan “shall not affect (1) projects for which leases have been obtained under the rule prior to submittal of the Plan for approval; and (2) tracts of the OCS for which the competitive alternative energy leasing process under that rule has been initiated prior to submittal of the Plan for approval.”