Outer Continental Shelf Leasing: Side-by-Side Comparison of Five Legislative Proposals

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Summary

This report provides a side-by-side comparison of three bills and two proposals, each of which addresses oil and gas development in the outer continental shelf (OCS). None of the bills has passed its respective chamber. One of the proposals, H.R. 6899, the "Comprehensive American Energy Security and Taxpayer Protection Act," is expected to come to the House floor the week of September 15, 2008.

The moratoria on oil and gas leasing in much of the OCS has become a major issue in Congress and also in the Presidential campaign. This report describes the background of OCS leasing and the various positions taken by proponents and opponents of leasing. It then compares the provisions of three bills that have been introduced with reported summaries of the House proposal and the Senate proposal, the "New Energy Reform Act of 2008."

On September 16, 2008, the House passed H.R. 6899 by a vote of 236-189 and defeated an alternative bill, H.R. 6709, by a vote of 191-226.

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This report provides a side-by-side comparison of three bills and two proposals—H.R. 6566, H.R. 6670, H.R. 6709, H.R. 6899 (the House Leadership Proposal), and the Senate Draft Proposal—which address oil and gas development in the outer continental shelf (OCS). None of the bills has passed its respective chamber. The text below provides background on the issues. The side-by-side table gives a description of selected sections of the bills.

Recent Developments

President Bush announced on June 18, 2008, that he would like to open areas of the Outer Continental Shelf (OCS) for oil and gas development currently under presidential and congressional moratoria (discussed in more detail below). The President stated that he would lift the executive branch moratoria only after Congress did so legislatively. But, on July 14, 2008, President Bush reversed his position and lifted the executive ban on the OCS imposed in 1990 by President George H.W. Bush. Senator John McCain, among others, has called on Congress to lift the offshore drilling moratoria as well. Further, the Administration proposes to begin planning its next five-year leasing program that would, if approved, be implemented as early as 2010—two years ahead of schedule. The proposed new five-year program would supersede the current five-year leasing program from 2007-2012. The Administration argues that a new five-year lease program beginning in 2010 would allow any newly opened OCS areas (if the congressional moratoria is lifted this year) to be offered in a lease sale sooner than if they remained on their current schedule.

Since the President lifted the executive ban, members of Congress have introduced legislation that would lift the congressional prohibition (in part or completely) against leasing and development of oil and natural gas in the OCS. The legislation section of this report summarizes several of those bills, including the House Leadership proposal (H.R. 6899). Many in Congress, however, oppose lifting the offshore ban. They argue that there are still several million acres leased onshore and offshore but not yet producing and that production from these lands could increase U.S. oil supply.

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How much oil could be brought into production in the short-term (from non-producing leased lands or those under the moratoria) and its impact on price is uncertain. An attempt to lift the offshore moratoria with an amendment to the FY2009 Interior, Environment, and Related Agencies Appropriations bill during the House subcommittee markup was defeated by a vote of 6-9. Meanwhile, on June 26, 2008, under suspension of the rules (which requires a two-thirds majority for passage), the House defeated a measure (H.R. 6251) that would have increased rental fees on non-producing oil and gas leases, and denied new federal leases to those not diligently developing the leases they have.

Background

Oil and gas leasing has been prohibited on much of the outer continental shelf (OCS) since the 1980s. Congress has enacted OCS leasing moratoria for each of fiscal years 1982-2006 in the annual Interior and Related Agencies Appropriations bill (now the Interior and Environment and Related Agencies Appropriations bill), allowing leasing only in the Gulf of Mexico (except near

Florida) and parts of Alaska. President George H.W. Bush in 1990 issued a presidential directive ordering the Department of the Interior (DOI) not to conduct offshore leasing or preleasing activity in areas covered by the annual legislative moratoria until 2000. In 1998, President Clinton extended the offshore leasing prohibition until 2012.

Proponents of the moratoria contend that offshore drilling would pose unacceptable environmental risks and threaten coastal tourism industries, whereas supporters of expanded offshore leasing counter that more domestic oil and gas production is vital for the nation's energy security.

The Outer Continental Shelf Lands Act of 1953 (OCSLA), as amended, provides for the leasing of OCS lands in a manner that protects the environment and returns revenues to the federal government in the form of bonus bids, rents, and royalties.[1] OCSLA requires the Secretary of the Interior to submit five-year leasing programs that specify the time, location, and size of the areas to be offered. Each five-year leasing program entails a lengthy multistep process that includes environmental impact statements. After a public comment period, a final proposed plan is submitted to the President and Congress. The latest plan went into effect July 1, 2002. Public hearings for the 2007-2012 leasing program are underway. States and interest groups are filing comments on future lease sale areas for the 2007-2012 leasing program.[2]

States with energy development off their shores in federal waters[3] have been seeking a larger portion of the federal revenues generated in those areas. They particularly want more assistance for coastal areas that may be most affected by onshore and near-shore activities that support offshore energy development. Proponents of these proposals look to the rates at which funds are given to jurisdictions where onshore energy development occurs on federal lands within those jurisdictions. Coastal destruction has received more attention in Louisiana—especially hard-hit by hurricanes in 2005—where many square miles of wetlands have been lost to the ocean each year. Widespread energy-related development is thought to contribute to coastal losses. Currently, the affected states receive some revenue directly from offshore oil and gas leases in federal waters under section 8(g) of OCSLA and under the Gulf of Mexico Energy Security Act of 2006. P.L. 109-432.[4] This is in contrast to the 50% share of direct revenues to states that have onshore federal leases within their boundaries. Opponents point out the budget implications that would result from such a loss of federal revenues.

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[1] 43 U.S.C. 1331 et seq.

[2] *Federal Registe*r Notice, 70 FR 49669.

[3] State jurisdiction is typically limited to three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured. However, the state jurisdiction off the Gulf Coast of Florida and Texas extends nine nautical miles and for Louisiana, three imperial nautical miles. Federal jurisdiction extends, typically, 200 nautical miles seaward of the baseline from which the breadth of the territorial sea is measured. One nautical mile equals 1.15 statute miles.

[4] The 8(g) revenue stream is the result of a 1978 OCSLA amendment that provides for a "fair and equitable" sharing of revenues from section 8(g) common pool lands. These lands are defined in the amendments as submerged acreage lying outside the three-nautical mile state-federal demarcation line, typically extending to a total of six nautical miles offshore but that include a pool of oil common to both federal and state jurisdiction. The states' share of the revenue (27%) was established by the OCSLA amendments of 1985 (P.L. 99-272) and is paid directly to the states. Payments to the states previously had been placed in escrow, which were then paid out between 1986 and 2001.

Table 1. Comparison of H.R. 6566, H.R. 6670, H.R. 6709, H.R. 6899, and the Senate Draft Energy Reform Act of 2008

Provision	H.R. 6566	H.R. 6670	H.R. 6709	H.R. 6899 (House-passed)	Senate Draft Energy Reform Act of 2008
Short Title	American Energy Act (Title I)	Long-Term Energy Assurance and Security Act of 2008	National Conservation, Environment, and Energy Act (Title I)	Comprehensive American Energy Security and Taxpayer Protection Act	New Energy Reform Act of 2008
Grants of Leases by Secretary (natural gas-only leases)	Sec. 109. The Secretary of the Interior would establish regulations for natural gas-only leases in the OCS. The value of the leases for bidding purposes would exclude the value of any potential crude oil. However, oil could be produced if the adjacent state government did not object.	No similar provision.	No similar provision.	No similar provision.	No similar provision.
Conservation of Resources Fee	Sec. 109. An annual conservation of resources fee of $3.75 per acre would be established and applied to new and existing non-producing leases.	No similar provision.	No similar provision.	Sec. 131-134. Lessees without price threshold in their leases would not be eligible for future leases in the Gulf of Mexico unless they amended lease to include price threshold levels, paid conservation of resources fees, or agreed to pay fees. Conservation of resources fees would be established at $9.00 per barrel of oil and $1.25 per million Btu of natural gas (in 2005 dollars). An annual fee of $3.75 per acre would be established on all nonproducing offshore leases.	No similar provision.

Provision	H.R. 6566	H.R. 6670	H.R. 6709	H.R. 6899 (House-passed)	Senate Draft Energy Reform Act of 2008
Gulf of Mexico Energy Security Act of 2006 (GOMESA) (sec. 104 (a) of P.L. 109-432	Sec. 122. GOMESA would be repealed.	Sec. 101. Amends GOMESA to allow drilling in the Eastern Gulf of Mexico beyond 100 miles of the Florida coastline.	Sec. 101. GOMESA would be repealed.	No changes to GOMESA.	Sec. 401. Would open the Eastern Gulf of Mexico in areas beyond 50 miles off the coastline for oil and natural gas leasing, but only after consultation with the Secretary of Defense.
Reservation of Lands and Rights (establishing where drilling can take place)	Sec.111. Section 12 of OCSLA would be amended (43 U.S.C. 1341). Defines presidential withdrawal authority and limits to 25% the amount of acreage withdrawn beyond 100 miles from any coastline. The areas within 50 miles of the state's coastline would be off-limits unless states submit a petition for leasing to the Secretary of the Interior. The acreage between 50 and 100 miles from the state's coastline would be available for leasing unless the state petitioned the Secretary for a withdrawal from leasing for a five-year period. The state may request a five-year extension for withdrawal multiple times. There would be a prohibition of leasing east of the military mission line as defined in the bill unless a waiver is granted by the Secretary of Defense.	Sec. 123. OCS moratoria/withdrawals are terminated outside the Gulf of Mexico beyond 100 miles of the coastline. A Governor of a state outside the Gulf of Mexico may submit a request to the Secretary of the Interior to lease for oil and natural gas between 25-100 miles of a state's coastline if the coastal state passes a law to authorize such request.	Sec. 101. OCS congressional moratoria are repealed but leases may not be issued within 25 miles of a state's coastline. The secretary may not issue leases in areas between 25-50 miles off a state's coastline if the state passes a law, within one year of enactment of this act, disapproving of such leases.	Would allow states to "opt-in" to oil and gas development 50-100 miles off their coasts if a state legislature enacts a state law authorizing oil and gas development. Beyond 100 miles offshore in areas now under the congressional moratoria would be open to oil and gas development. National Marine sanctuaries, national marine monuments, and the Georges Bank (in the North Atlantic Planning Area) would remain off-limits.	Sec. 401. The southeastern states (Virginia, North Carolina, South Carolina, and Georgia) may submit a petition for approval to the Secretary of the Interior to conduct an oil and natural gas lease sale beyond 50 miles from its coast.

Provision	H.R. 6566	H.R. 6670	H.R. 6709	H.R. 6899 (House-passed)	Senate Draft Energy Reform Act of 2008
Disposition of Receipts (Revenue Sharing for new leases)	Sec. 110. A revenue sharing plan for coastal states would include tracts within 100 miles of the states' coastlines and tracts beyond 100 miles of the states' coastlines. There would be phased-in sharing and immediate sharing for both areas. Under the phased-in plan, the states' share would eventually reach 42.5% of the revenues generated from offshore leases. Phased-in sharing would be different for those leases held within 4 marine leagues of a state's coastline. For all areas the phased-in sharing plan includes lease tracts available under the 2002-2007 leasing program in effect prior to enactment of this act, and those lease tracts in production prior to October 1, 2005, that were not available for leasing under the 2002-2007 leasing program. Immediate revenue sharing of 42.5% would occur from offshore leases not under the phased-in plan. The allocation of royalty revenues for tracts between 4 marine leagues and 100 miles and those beyond 100 miles would be shared among producing states that have a coastline point within	Sec. 102. Revenue sharing (with limits) with the states would include all qualified revenues to be distributed as follows: 25% to the general fund of the U.S. Treasury, 25% to the Energy Independence and Security Fund that would be established by the act, and 50% to a special account for the states.	Sec. 102. Revenue sharing with states would include revenues from qualified leases to be shared as follows: 30% to the general fund of the U.S. Treasury, 30% to producing states, 40% split among several reserve accounts (e.g., Conservation Reserve, Environment Restoration Reserve) that would be established under this act.	No similar provision.	Sec. 401. Revenue sharing provisions in the bill would allow for Southeastern states - Virginia, North Carolina, South Carolina, and Georgia to receive 37.5% of revenues generated from leases 50 to 100 off their coasts. If two or more neighboring states "opt-in," then the revenue share would increase to 50%. Florida would receive 37.5% of the revenues generated off its coast in the Eastern Gulf of Mexico.

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	300 miles of any portion of the leased tract: 1/3 to the adjacent state and 2/3 to each producing state inversely proportional to the distance to the nearest point of the coastline of the producing state and the geographic center of the leased tract. This section also includes language that would share only 25% of OCS revenues from lease tracts partially or completely beyond 100 miles if no leasing is allowed within any portion of a state's adjacent zone within 100 miles of its coastline.				
Diligent Development				Sec. 121-124. Secretary of the Interior shall establish what constitutes diligent development. Secretary shall provide resource estimates for onshore and offshore oil and natural gas (on lease and unleased acreage)	
OCS Royalties				Sec. 141-145. The Secretary may take royalty payments in-kind and work to ensure that royalty payments are accurate and timely. Ethics training and a gift ban would be implemented at the Minerals Management Service.	

Provision	H.R. 6566	H.R. 6670	H.R. 6709	H.R. 6899 (House-passed)	Senate Draft Energy Reform Act of 2008
Policy	Sec. 102. states that it is U.S. policy that adjacent states commit significant resources to development of offshore oil and gas, thus those states should receive a portion of the revenues generated from offshore activities.	No similar provision.	No similar provision.	No similar provision.	No similar provision.
Administration of Leasing	Sec. 108. Amends Section 5 of OCSLA (43 U.S.C. 1334) and allows lessee to voluntarily release a portion of a lease in which it has no interest in producing and is deemed geologically prospective by the Secretary of the Interior. The lessee, in return would receive a royalty incentive on the portion retained. This section also establishes procedures for natural gas-only leases.	No similar provision.	No similar provision.	No similar provision.	No similar provision.
OCS Leasing Program	Sec. 112. Amends Sec. 18 of 43 U.S.C. 1344. Would make available at least 75% of unleased acreage and establish a procedure for the preparation of a proposed leasing program, including the preparation of a draft Environmental Impact Statement (EIS). Would also estimate states' adjacent zones resources and share of OCS revenues.	No similar provision.	Sec. 102. See disposition of receipts section above.	No similar provision.	No similar provision.

Provision	H.R. 6566	H.R. 6670	H.R. 6709	H.R. 6899 (House-passed)	Senate Draft Energy Reform Act of 2008
Environmental Studies	Sec. 114. Amends Section 20(d) of OCSLA (43 U.S.C. 1346). Categorical exclusions (CE) for the need for an Environmental Assessment (EA) or EIS including seismic activities are established. Exploration plans would be no longer subject to an EIS and may be eligible for a CE. An EIS would be required only for the first development and production plan within each OCS Planning Area. Future plans for leased tracts within the Area would require an EA unless the EIS were over 10 years old.	No similar provision.	No similar provision.	No similar provision.	No similar provision.
Termination of Effect of Laws Prohibiting the Spending of Appropriated Funds for Certain Purposes	Sec. 115. All provisions of existing laws prohibiting the spending of appropriated funds to conduct oil and natural gas leasing and preleasing activities in the OCS would no longer be in effect.	See Sec. 123 description above.	Similar provision.	No similar provision.	No similar provision.
Leases From Areas Located within 100 Miles of California or Florida	Sec. 120. Lessees may exchange their leases held within 100 miles of the coast of Florida or California for oil and gas or natural gas leases in other parts of the OCS available for leasing.	No similar provision.	No similar provision.	No similar provision.	No similar provision.
Coastal Impact Assistance	Sec. 121. Would repeal Sec. 31 of OCSLA (43 U.S.C. 1356a), providing Coastal Assistance.	No similar provision.	No similar provision.	No similar provision.	No similar provision.

Provision	H.R. 6566	H.R. 6670	H.R. 6709	H.R. 6899 (House-passed)	Senate Draft Energy Reform Act of 2008
Energy Independence and Security Fund	No similar provision.	Sec. 131. An Energy Independence and Security Fund would be established to fund energy research and development projects including but not limited to wind, solar, geothermal, advanced vehicles, and carbon capture and storage.	No similar provision.	No similar provision.	Sec. 401. An Alternative Fuel Trust Fund would be established to conduct research, development, and commercialization programs in alternative fuels and alternative fuel technologies.
National Commission on Energy Independence	No similar provision.	No similar provision.	No similar provision.	No similar provision.	Sec. 101. Would establish a National Commission on Energy Independence to examine technical and policy obstacles to achieving U.S. energy independence and make recommendations to Congress and the President.

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