

Legislative Bulletin.....July 30, 2010

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H.R. 3534—Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act of 2010

**H.R. 3534—Consolidated Land, Energy, and Aquatic Resources
(CLEAR) Act of 2010 (*Rahall, D-WV*)**

Key Conservative Concerns

Major Take Away Points

- **National Energy Tax Part Deux:** Despite claims the CLEAR Act is a legislative response to the crisis in the Gulf of Mexico, conservatives know it is a Trojan horse to impose a new national energy tax on every American consumer and producer. Estimates have the cost of the tax ranging anywhere between \$22 billion and \$34.2 billion over ten years.
- **Political Ploy:** As White House chief of staff Rahm Emanuel [stated](#), “You never want a serious crisis to go to waste.” Today, House Democrats will politicize the BP oil spill crisis and advertise this to the public as a legislative response to prevent future spills to voters in order to move expansive legislation to vastly restrict and tax our domestic energy supply.
- **Additional De-Facto Nationwide Drilling Moratorium:** The ultimate results of the legislation will make the leasing process more prohibitive and costly, driving many producers to reconsider exploration options with the additional uncertainty.
- **Federal Intrusion:** The CLEAR Act is a clear violation of the 10th Amendment because the legislation would preempt state authority to oversee its offshore permitting process and dictate the type of technology to be used on state wells.
- **Hey Big Spender, We Surrender:** The legislation mandates full funding for the Land and Water Conservation Fund (LWCF), the Historic Preservation Fund (HPF), and the Oceans Resources Conservation and Assistance Fund (ORCA) through 2040 at a cost of \$30 billion in mandatory spending.
- **Premature Legislation:** As we debate the CLEAR Act, a blowout preventer that was the cause of the largest environmental disaster in U.S. history sits 5,000 feet below the surface of the Gulf of Mexico. No inspector, no scientist, no regulator, no oil and gas

expert, no engineer, nor anyone has been able to inspect the blown out pipe that caused the explosion.

For additional information on the conservative concerns on the bill, see below

Order of Business: H.R. 3534 is scheduled to be considered on the House floor on Friday, July 30, 2010, subject to an expected structured rule, making in order several amendments. The rule is expected to waive all points of order against consideration of the bill, except for clause 9 (earmarks) and clause 10 (“PAYGO” violations) of rule XXI and provide one motion to recommit with or without instructions.

Summary as amended after committee consideration: Advertised by House Democrats as response to the BP oil spill, in reality, the CLEAR Act (H.R. 3534) is designed to enact totally unrelated policies, levy additional regulatory burdens on the U.S. oil and gas industry, and impose excessive new energy costs on American consumers and producers.

The bill would replace the Minerals Management Service with three separate agencies dividing responsibilities between permitting and leasing, health and safety inspection, and the collection of oil and gas and renewable energy-related revenues.

In addition, the bill would raise royalty rates for energy production. The bill would place limits on the royalty-in-kind program for receipts derived from oil drilling and prohibit companies that don't require royalty payments to the government from bidding on new tracts if they decline to renegotiate and pay fees on the disputed contracts.

The bill eliminates “categorical exclusion” designed to limit duplicative environmental analyses and requires additional reporting requirements, best management practices, wildlife sustainability, and coordination with conservation programs for leases.

The CLEAR Act would bar companies from obtaining new leases if they have experienced more than ten worker fatalities at drilling sites, production facilities, or refineries during the past seven years. It would also prevent companies from drilling offshore if they have been fined \$10 million for breaking offshore drilling environmental laws during the past seven years.

In addition, H.R. 3534 requires federally mandated standards for well designs and operational practices with the stated purpose of improving drilling safety by the Department of Interior. The bill restricts the type of blowout preventers that can be permitted for use on state offshore wells. In addition to a third-party certification safety requirement for drill designs, the bill requires Chief Executive Officers to certify in writing the operators' compliance with all applicable laws and operating regulations.

The bill ***does not*** require the formation of a 10-member bipartisan congressional committee to whose members would be appointed equally by the two parties. This language, offered by Rep. Cassidy (R-LA) passed unanimously by the Natural Resources Committee, was meant to counter the seven member commission established May 21 by President Obama that has been criticized for lacking understanding of the oil and gas industry and the effects of an OCS moratorium in the Gulf of Mexico.

The legislation also requires permanent full funding of the Land and Water Conservation Fund (LWCF) and National Historic Preservation Fund (NHPF) through 2040. CBO estimates this would increase mandatory spending by \$30 billion over that period.

H.R. 3534 would eliminate the \$75 million cap on economic liability for offshore spills, replacing it with an unlimited liability cap on oil companies that will potentially eliminate independent producers from operating offshore because of astronomical insurance premiums.

The bill contains a commercial wind and solar federal leasing program to be administered by the Director of the Bureau of Energy and Resource Management. H.R. 3534 also requires additional coordination between federal agencies for ocean, coastal, and Great Lakes management. The bill establishes nine Coordination Regions with the authority to integrate regional economic, ecological, affected tribal and social objectives into ocean, coastal, and Great Lakes management. The bill establishes an Ocean Resources Conservation and Assistance Fund to distribute offshore revenues with 70% going to states to be split between compliance with the Coastal Zone Management Act and to establish a new grant program for the conservation and management of ocean, coastal, and Great Lakes ecosystems and marine resources. The remaining 20% will be set aside for the Secretary to conduct long-term coastal observations, and 10% for the Secretary to make regional grants to the regional committees for any purpose.

Lastly, but certainly not least, the bill contains a massive national energy tax costing at least \$22 billion over a ten year period by requiring a new \$2 per barrel of oil and 20 cents per million BTU of natural gas annual conservation fee for all oil and gas leases on federal onshore and offshore lands. Some estimated believe this tax could cost up to \$34.2 billion over 10 years. ***This provision does not place any taxes on oil or natural gas being imported from foreign nations.*** In addition, the Congressional Budget Office estimates that the imposition of the fee will cause over \$14 billion in litigation costs to the taxpayer.

Some of the more notable provisions summarized from the legislative text are listed below:

CREATION OF NEW DEPARTMENT OF THE INTERIOR AGENCIES

Bureau of Energy & Resource Management: The bill establishes under the Department of the Interior a Bureau of Energy and Resource Management to be headed by a Director of Energy and Resource Management appointed by the President, subject to confirmed by the Senate. The Bureau will be tasked with all functions, powers, and duties relating to the administration of a comprehensive program of nonrenewable and renewable energy and mineral resources management on the Outer Continental Shelf, federal public lands, the National Petroleum Reserve, and on any federal land pursuant to any mineral leasing law. The CLEAR Act requires the Director to promulgate and implement regulations for the proper issuance of leases for the exploration, development, and production of nonrenewable and renewable energy and mineral resources.

The bill requires the Director to establish a programmatically separate and distinct office from the leasing and permitting activities of the Bureau to carry out the environmental studies program and other environmental analysis.

Bureau of Safety and Environmental Enforcement: The bill establishes under the Department of the Interior a Bureau of Safety and Environmental Enforcement to be headed by a Director of Safety and Environmental Enforcement appointed by the President, subject to confirmation by the Senate. The Bureau will be responsible for carrying out all functions, powers, and duties related

to nonrenewable and renewable energy mineral resources on the Outer Continental Shelf, on federal public lands, on acquired federal lands, and in the National Petroleum Reserve in Alaska.

The Director will be responsible for overseeing activities to ensure the proper application of environmental reviews. The Director will have the authority to suspend or prohibit, on a temporary basis, any operation or activity (including production) on leases held on the Outer Continental Shelf, and on leases on rights-of-way on federal lands. The Director will also have the authority to require safety and environmental management programs for persons involved with activities connected with the exploration, development, and production of energy or mineral resources. The Director will be able to develop and implement regulations for federal employees to carry out any inspection or investigation to determine compliance with applicable regulations (including health, safety, or environmental regulations). The Director will be able to cancel any lease, permit, or right-of-way on the Outer Continental Shelf, or on onshore federal lands. The Director will be able to summon witnesses and direct investigations, as well as levy fines and penalties and disqualifying operators, and carry out any safety, response, and removal preparedness functions.

Natural Oil and Gas Health and Safety Academy: H.R. 3534 directs the Secretary to establish and maintain a National Oil and Gas Health and Safety Academy within the Department of the Interior. The Academy shall be responsible for training newly hired and experienced oil and gas inspectors in all aspects of health, safety, environmental, and operational inspections. They will also provide training and technical support for the Bureau. The Academy may contract with outside educational organizations to provide this training.

Office of Natural Resources Revenue: The legislation establishes the Office of Natural Resources Revenue, headed by a Director, appointed by the President, subject to confirmation by the Senate. The Secretary will create an independent audit and oversight program for monitoring the performance of this Office, and conducting internal control audits.

The Director will be responsible for carrying out all functions, powers, and duties relating to the royalty and revenue management functions of:

- ◆ The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.);
- ◆ The Mineral Leasing Act (30 U.S.C. 181 et seq.);
- ◆ The Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.);
- ◆ The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.);
- ◆ The Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.);
- ◆ The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.);
- ◆ The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (Public Law 104-185);
- ◆ The Energy Policy Act of 2005 (Public Law 109-58);
- ◆ The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);
- ◆ The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and
- ◆ This Act and all other applicable Federal laws; and
- ◆ All functions, powers, and duties previously assigned to the Minerals Management Service.

The Secretary shall be responsible for certifying that all Department officers and employees that have regular, direct contact with lessees and operators are in full compliance with all federal employee ethics laws and regulations under the Ethics in Government Act of 1978.

Abolishment of Minerals Management Service: The Mineral Management Service is abolished. Rules, regulation, determinations, permits, contracts, and privileges shall not be terminated, but will continue to exist under the new offices.

Outer Continental Shelf Safety and Environmental Advisory Board: This legislation establishes, under the Federal Advisory Committee Act, a 12 person Outer Continental Shelf Safety and Environmental Advisory Board. The Board will be responsible for providing the Secretary, and the Directors of the newly created organizations in the legislation, with independent scientific and technical advice on safe and environmentally compliant nonrenewable and renewable energy and mineral resource exploration, development, and production activities.

FEDERAL OIL AND GAS DEVELOPMENT

Regulatory Standards for Blowout Preventers, Well Design, and Cementing: The Secretary shall consult with an independent third-party certification to issue regulations on blowout preventers (BOP). The independent third-party certifier shall certify blowout preventers, well design, and the cementing. The costs of any certification shall be borne by the well operator. At a minimum, BOPs will be required to have:

- “Two sets of blind shear rams appropriately spaced to prevent BOP failure if a drill pipe joint or drill tool is across one set of blind shear rams during a situation that threatens loss of well control;
- “Redundant emergency backup control systems capable of activating the relevant components of a blowout preventer, including when the communications link or other critical links between the drilling rig and the blowout preventer are destroyed or inoperable;
- “Regular testing of the emergency backup control systems, including testing during deployment of the blowout preventer; and
- “As appropriate, remotely operated vehicle intervention capabilities for secondary control of all subsea blowout preventer functions, including adequate hydraulic capacity to activate blind shear rams, casing shear rams, and other critical BOP components.”

The legislation also issues requirements for cementing. The legislation states that that the following minimum standards are required for well design:

- “In connection with the installation of the final casing string, the installation of at least two independent, tested mechanical barriers, in addition to a cement barrier, across each flow path between hydrocarbon bearing formations and the blowout preventer;
- “That wells shall be designed so that a failure of one barrier does not significantly increase the likelihood of another barrier’s failure;
- “That the casing design is appropriate for the purpose for which it is intended under reasonably expected wellbore conditions;
- “The installation and verification with a pressure test of a lockdown device at the time the casing is installed in the wellhead.”

Leases, Easements, and Rights-of-Way: This section sets up periodic reviews for leases authorized by this legislation, as well as royalty and rental rates, and minimum bond amounts. Within 30 days of the review, the Secretary shall transmit a report to the House Natural Resources Committee, and the Senate Energy and Natural Resources Committee.

Within two years of enactment, and every five years thereafter, the Secretary shall review all components of the federal offshore oil and gas fiscal system, including bonus bids, rental rates, royalties and oil and gas taxes. During the review, the Secretary shall convene and seek the advice of an independent advisory committee. Within 30 days of the review, the Secretary shall

transmit a report to the House Natural Resources Committee, and the Senate Energy and Natural Resources Committee.

H.R. 3534 sets up certification requirements for requesting a bid or request for a lease, easement, or right-of-way, or drilling permit. The Secretary shall cancel any existing lease, easement, or right of way if they determine the individual is not meeting the below requirements. The legislation also allows the Secretary to put a limitation on the lease tract size. The individual must meet the following requirements:

- “The person is meeting due diligence, safety, and environmental requirements on other leases, easements, and rights-of-way.
- “In the case of a person that is a responsible party for a vessel or a facility from which oil is discharged, for purposes of section 1002 of the Oil Pollution Act of 1990 (33 U.S.C. 2702), the person has met all of its obligations under that Act to provide compensation for covered removal costs and damages.
- “In the 7-year period ending on the date of certification, the person, in connection with activities in the oil industry (including exploration, development, production, transportation by pipeline, and refining)--
 - “Was not found to have committed willful or repeated violations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (including State plans approved under section 18(c) of such Act (29 U.S.C. 667(c))) at a rate that is higher than five times the rate determined by the Secretary to be the oil industry average for such violations for such period;
 - “Was not convicted of a criminal violation for death or serious bodily injury;
 - “Did not have more than 10 fatalities at its exploration, development, and production facilities and refineries as a result of violations of Federal or State health, safety, or environmental laws;
 - “Was not assessed, did not enter into an agreement to pay, and was not otherwise required to pay, civil penalties and criminal fines for violations the person was found to have committed under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (including State programs approved under sections 402 and 404 of such Act (33 U.S.C. 1342 and 1344)) in a total amount that is equal to more than \$10,000,000; and
 - “Was not assessed, did not enter into an agreement to pay, and was not otherwise required to pay, civil penalties and criminal fines for violations the person was found to have committed under the Clean Air Act (42 U.S.C. 7401 et seq.) (including State plans approved under section 110 of such Act (42 U.S.C. 7410)) in a total amount that is equal to more than \$10,000,000.”

At least 60 days prior to any lease sale, the Secretary of the Interior shall request a review by the Secretary of Commerce of the proposed sale with respect to impacts on the marine and coastal environment. The legislation also allows the Secretary to make limitations on the lease tract size.

Land and Water Conservation Fund & Historic Preservation Fund: The bill creates an Ocean Resources Conservation and Assistance (ORCA) Fund by designating 10% of total offshore revenues towards it, with the purpose of making mandatory authorizations of \$900,000,000 for the Land and Water Conservation Fund and \$150,000,000 for the Historic Preservation Fund, beginning in FY 2011.

Ocean Resources Conservation and Assistance Fund: Of all rentals, royalties and other sums paid to the Secretary, of the Secretary of the Navy, under any lease on the Outer Continental

Shelf from June 5, 1950 until today, 10% will be available to the Ocean Resources Conservation and Assistance Fund. These sums are made available to the Secretary, subject to appropriation.

Environmental Studies: The Secretary, along with the Secretary of Commerce, will conduct studies, at least once every three years, on the impacts of Deep Water Spills.

Remedies and Penalties: The legislation establishes fines and penalties for individuals failing to comply of up to \$75,000 per day, and up to \$150,000 a day in cases where there is a threat of harm or damage to life, property, or mineral deposit. The penalties for knowing and willful violations are increased from \$100,000, to \$10,000,000.

Uniform Planning for Outer Continental Shelf: The legislation creates requirements for the development of plans, and extends these to all areas of the Outer Contention Shelf. Development and productions plans would not be allowed unless they had detailed their ability to react successfully in a worst-case scenario.

Limitation on Royalty-in-Kind Program: The Secretary would no longer be able to conduct the Royalty-In-Kind program for oil or gas.

Restrictions on Employment: This section would increase regulations on employees of the Department of the Interior who carry out duties under the Outer Continental Shelf Lands act, and would broaden prohibited activities. This section would also add new requirements and provide stricter penalties for violations.

Repeal of Royalty Relief Provisions: This section would repeal the shallow-water-deep-gas, deep-water, and Alaskan OCS royalty relief provisions that were enacted in the Energy Policy Act of 2005.

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: The legislation would provide the power of subpoena to the commission on the Deepwater Horizon incident and would require the Commission to consult with the National Academy of Engineering monthly.

Implementation: The Secretary would have the power to apply Titles II and VII of this legislation to existing leases in the Outer Continental Shelf.

Eligibility for New Leases and the Transfer of Leases: The bill would prohibit companies from obtaining new oil and gas leases on the OCS if they hold any leases issued between 1996 and 2000 that provide royalty relief, regardless of oil and gas prices.

OIL AND GAS ROYALTY REFORM

This section would grant the statutory authority to the Secretary to correspond each individual lessee, increases penalties for permit violations, conduct additional compliance reviews of royalty payments, and increased liability for royalty payments.

This section requires lease holders to keep records at least seven years (from six) and double fines for underpayment or late payment of royalties and also doubles the penalty for theft. Additionally, the bill eliminates the ability for lessees to make adjustments to their royalty obligations after a compliance review or audit is completed and limits the ability to make adjustments to four years after the date royalties were initially due. Additionally, the bill repeals current law and now

allows the Secretary to impose assessments on those who submit noncompliant royalty reports. This section requires anyone involved in developing, producing, transporting, purchasing, or selling oil or natural gas from federal lands to provide records to the federal government upon request.

Finally, this section amends the Federal Oil and Gas Royalty Management Act to apply any lease authorizing the development of coal or any other solid mineral to the same extent as if such lease were an oil and gas lease, on the same terms and conditions as those authorized for oil and gas leases. The bill applies any lease, easement, right-of-way, or other agreement, regardless of form, including any royalty, rent, or other payment due, to the same terms and conditions as those authorized for oil and gas leases. The bill requires the Secretary to publish final regulations prescribing when a federal lessee or designee must report and pay royalties on the volume of oil and gas based upon its ownership interest on the lease. In addition, the bill requires the Secretary to place a limit on the royalty-in kind program.

FULL FUNDING FOR THE LAND AND WATER CONSERVATION AND HISTORIC PRESERVATION FUNDS

Full Funding for the Land and Water Conservation Fund: The legislation extends the land and water extension fund (16 U.S. C. 4601-5) from September 30, 2015 through September 30, 2040. H.R. 3534 provides \$900 million yearly for the fund in mandatory spending.

The National Historic Preservation Fund: The legislation permanently funds the National Historic Preservation Fund at \$150 million in new mandatory spending through FY 2040.

It is estimated this would **total approximately \$30 billion of mandatory spending.**

GULF OF MEXICO RESTORATION

Gulf of Mexico Restoration Program: H.R. 3534 establishes the Gulf of Mexico Restoration Program, a new executive agency to coordinate federal, state, and local restoration programs in the Gulf of Mexico. Also established is the Gulf of Mexico Restoration Task Force made of the governors of each Gulf state, and heads of appropriate federal agencies selected by the President.

The Task Force will have nine months to propose a long-term restoration plan. The final plan will be published within one year of enactment, which will then be updated every five years. The plan will identify processes and strategies for best coordinating projects, as well as strategies for implementing programs for natural resources, and improving the flexibility of natural resources to withstand the impacts of **climate change and ocean acidification** to ensure the long-term effectiveness of the program. The Task Force will provide an annual report to Congress.

Comprehensive Marine Environmental Monitoring and Research Program: The legislation establishes a comprehensive marine environmental monitoring and research program, within the National Oceanic and Atmospheric Administration, to provide independent data and information to the federal government. This program will remain in effect for a minimum of 10 years. Within one year, the program will submit a report to Congress, and then biennially thereafter.

Gulf of Mexico Emergency Migratory Species Alternative Habitat Program: The legislation establishes a Gulf of Mexico emergency migratory species alternative habitat program to improve wetland water quality, improve habitats to increase fish passage and breeding, provide alternative

migratory habitat for water fowl and migratory birds, and transplant, relocate, and rehabilitate fish and wildlife.

COORDINATION AND PLANNING

Regional Coordination Councils: H.R. 3534 requires additional coordination between federal agencies for ocean, coastal, and Great Lakes management. The bill establishes nine Coordination Regions with the authority to integrate regional economic, ecological, affected tribal and social objectives into ocean, coastal, and Great Lakes management. The regions are divided into the Pacific Region, Gulf of Mexico Region, North Atlantic Region, Mid Atlantic Region, South Atlantic Region, Alaska Region, Pacific Islands Region, Caribbean Region, and Great Lakes Region. Within 180 days of the creation of the regions, the Chairman of the Council on Environmental Quality must establish Regional Coordination Councils and must include representatives of federal agencies, coastal states, regional fishery management councils, interstate fisheries commissions, regional ocean partnerships, affected Tribes, and county and local governments. Within three years, each council must submit a multi-objective, science and ecosystem-based, spatially explicit, integrated strategic plan to the Chairman. This plan, among other objectives listed in the legislation, must consider plans to foster the sustainable and integrated development and use of ocean, coastal, and Great Lakes resources in a manner that protects the health of marine ecosystems and identifies long-term monitoring needs for ecosystem health and socioeconomic variables.

Ocean Resources Conservation and Assistance Fund (ORCA FUND): The bill establishes a separate Ocean Resources Conservation and Assistance Fund within the Treasury, comprised of funds collected from section 9 of the Outer Continental Shelf Lands Act. The Secretary is required to distribute offshore revenues with 70% going to states to be split between compliance with the Coastal Zone Management Act and to establish a new grant program for the conservation and management of ocean, coastal, and Great Lakes ecosystems and marine resources. The remaining 20% will be set aside for the Secretary to conduct long-term coastal observations, and 10% for the Secretary to make regional grants to the regional committees for any purpose.

OIL SPILL ACCOUNTABILITY AND ENVIRONMENTAL PROTECTION

Unlimited Liability: The bill removes the statutory limitation of \$75 million on liability for damages of a responsible party for an offshore facility. The CLEAR Act requires any responsible party for an offshore facility to be liable for all removal costs plus all damages related to a discharge, or a substantial threat of discharge, of oil – i.e. ***unlimited liability***. The bill raises the maximum liability amount of evidence of financial responsibility to \$300 million and the evidence of financial responsibility required can be less than \$105 million for an offshore facility located seaward of the seaward boundary of a State or \$30 million for an offshore facility located landward of the seaward boundary of a state. In addition, the bill allows individuals to seek compensation for damages to human health resulting from a discharge of oil.

Exclusive Economic Zone (EEZ) Operations: The bill requires all vessels involved in the exploration, development, or production of resources in the EEZ (200 mile economic boundary from U.S. coast) be U.S. flagged vessels, owned 75% by U.S. citizens, and crewed with U.S. citizens. The ***Obama Administration has “concerns with provisions relating to the Exclusive Economic Zone*** with respect to U.S. obligations under international trade and investment agreements.”

Mobile Offshore Drilling Unit (MODU) Regulations: The bill mandates a safety management plan prescribed by the Secretary of Homeland Security for vessels operating in U.S. waters to include processes, procedures, and policies related to the safe operation and maintenance of the machinery and systems on board the vessel that may affect the seaworthiness of the vessel in a worst-case event. Additionally, the bill implements additional requirements for an individual to obtain a license as master of a MODU, and prohibits single-hull tankers from offloading at the Louisiana Offshore Oil Platform or U.S. lightering areas beginning on January 1, 2011.

Additional Safety Regulations: The bill amends the Clean Water Act to require the President to establish guidelines for the use of oil spill containment booms develop criteria for ceasing and removing a worst-case discharge of oil or hazardous substances, and create a tracking database of spilled oil, and directs the EPA Administrator to update the regulations for use of chemical dispersants. The provision also increases the level of administrative and civil penalties for failure to develop or implement an oil spill response plan.

Build America Provision: The bill prohibits offshore facilities for oil and gas activities unless the facility was built in the U.S., with certain exemptions. Some conservatives have expressed concern that this language could include all types of drilling platforms, some of which are extremely complex. Some conservatives have expressed concern this provision will lead to major production delays and higher costs.

Appropriations: This section authorizes a total of \$245 million in appropriations for the FY 2011-2015 periods.

MISCELLANEOUS PROVISIONS

Royalty Relief: The Alaskan OCS royalty relief provisions that were enacted in the Energy Policy Act of 2005 would be repealed.

Conservation Fee (TAX): The bill would impose a tax of \$2 per barrel of oil, or 20 cents per million Btu of natural gas, for production from all new and existing American onshore and offshore leases, set to expire at the end of 2021.

OCS Boundaries: The bill requires the President to establish new boundaries of coastal states projected seaward to the outer margin of the Outer Continental Shelf.

Planning & Response: The Coastal Zone Management Act of 1972 would be amended to provide grants, not to exceed \$750,000, to eligible coastal States to revise relevant plans of management programs to ensure sufficient oil spill response capabilities. Additionally, the bill eliminates the five statutory categorical exclusions for oil and gas operations originally meant to stop duplicative reviews.

Additional Information: On April 20, 2010, a highly dangerous buildup of natural gas reached the platform of the Deepwater Horizon oil rig located at the Macondo Prospect, approximately 40 miles south of the Louisiana coast in the Gulf of Mexico. That evening, the built-up pressure caused the drill to explode, destroying the drilling platform, killing eleven workers. BP officials and contractors on the rig had neglected to detect anomalies that indicated issues with the well's pressure, and the blow out preventer (BOP) - the backup system designed to prevent such situations - failed for a still undetermined reason. The failure of the BOP to activate allowed oil to begin flowing into the gulf at a rate estimated between 35,000 to 60,000 barrels of crude per

day. Oil flowed, more or less freely, until July 15, when the well was temporarily capped; this temporary fix should prevent any additional oil from flowing into the Gulf until relief wells reach the necessary depth and permanently end the flow in August.

According to estimates by federal and independent scientists, between 94 to 184 million gallons in total have been dumped into the Gulf of Mexico creating a serious strain on the environment - nearly 2,200 birds and 500 sea turtles have been found dead since the spill began, and close to 590 miles of shoreline on the Gulf have been directly impacted by oil. In addition, the Gulf Coast economy and residents have suffered another dramatic blow with significant financial losses from the loss of fishing and tourism revenue. In total, 35% of federal waters in the Gulf and 55% of the commercial saltwater fishing areas in Louisiana are currently closed.

The federal government has been directly involved in the response to the Deepwater Horizon oil spill through the National Contingency Plan, which includes activation of the National Response System's National Response Team, several Regional Response Teams, and Area Committees. The President has appointed an On-Scene Commander, (CG) Admiral Thad Allen, and also has appointed a seven-member National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling to investigate how to prevent and mitigate the impact of any future spills. This commission has been widely criticized for including no experts on oil or offshore drilling and including politicians and members with long backgrounds in environmental groups. Other controversial Presidential actions include instituting, with [misleading scientific support](#), a six-month moratorium on deep water exploratory drilling (the first was enjoined by federal district and appellate judges – for more see below).

The on-the-ground response to the oil spill includes thousands of workers, more than 6,470 vessels, and dozens of aircraft, but has been hampered by several federal actions. The EPA has continued to enforce regulations requiring skimmers to reach 99.9985% purity in water returned to the Gulf; several federal agencies have required approval for plans to build berms and barriers, but have delayed granting approval or refused it for needed projects; and the U.S. Maritime Administration has refused to grant any waivers to the Jones Act – requiring only U.S. vessels be used in activities beginning and ending in U.S. waters – which would allow for additional foreign assistance. There have been numerous examples of bureaucratic red tape hindering an effective response to the situation, and frustration with the federal government appears to be widespread among state and local officials. Governor Bobby Jindal (R-LA) has been extremely vocal on these problems during the recovery process.

Additional Background: Definitions for commonly referred to issues involving the BP Oil Spill:

Blowout preventers (BOP): are valves that are closed if the drilling crew loses control of the influx of fluids (usually a mixture of oil, gas, and water) that flow from the pores of the rock. For shallow water rigs, the BOP is located on the rig itself. For deep water rigs, the BOP is attached to the sea floor. Closing the BOP usually allows the drilling crew to regain control of the reservoir. After closed, the crew can increase the drilling mud density until it is possible to open the BOP and maintain pressure control of the formation. Drilling mud ([drilling fluid](#)) is used to drill boreholes into the earth. When the density of the mud is too low, or the pressure of the oil/gas is too high, a blowout can occur. BOPs are inspected, tested and refurbished at regular intervals determined by the amount of risk of the well, well type and legal requirements. (See a diagram [here](#))

Deep water: Traditionally, the term “deep water” has been used for depths of 1,000 feet or more, and in general the industry reflects this depth. However, some classify “deep water” as greater

than 656 feet (200 meters). The Mineral Management Service (MMS) is responsible for the definitions. As advancements in drilling technology have been made, what was once referred to as “deep” is now more easily attainable and the definition has evolved. In this 1999 [article](#), MMS defines deep water as greater than 1,000 feet. However, the Oilfield Glossary, by Schlumberger (an oilfield service provider), defines deep-water as being greater than [200 meters](#). This 2001 MMS news release classifies [ultra-deep water](#) as greater than 5,249 feet.

Independent Producers: 90% of wells in the United States are drilled by American independent oil and natural gas producers which employ, on average, 12 people. These small businesses are the companies most endangered by the current drilling moratorium and by threats of eliminating the cap on liability for drilling operations – which would make independent producers uninsurable. According to a study by IHS Global Insight, excluding independent producers from the Gulf of Mexico would eliminate 265,000 jobs and \$106 billion in tax revenue by 2020.

Jones Act: The [Jones Act](#) requires that all waterborne shipping between points in the United States be carried by vessels built in the United States and owned and operated by Americans. The purpose of the Act is to ensure that the nation has a sufficient merchant marine and domestic shipbuilding base to protect the nation’s defense and commercial interests. Critics claim that the Act does not accomplish this goal and furthermore raises shipping costs, thereby making U.S. farmers and manufacturers less competitive. There has been some controversy over the Act’s impact on the cleanup of the Deepwater Horizon oil spill; although the Act was waived by President Bush one day after the Hurricane Katrina disaster, it has not been similarly waived during this crisis by the Obama administration. This has led to reports surfacing of foreign nations willing to supply vessels to assist in the clean-up effort being turned away.

High Seas Act: The [Death on the High Seas Act](#) is a provision of federal maritime law that allows members of a deceased seaman’s family to file for benefits if he or she dies due to the negligence of the seaman’s employer while the employee was on the high seas. The high seas are legally defined as any location at sea more than “one marine league” (three nautical miles) off the shore of any U.S. state, district, territory, or dependency. The Act also prevents families of those who died on the Deepwater Horizon from suing BP, Transocean, and other companies for compensation beyond funeral expenses and a portion of the workers’ lost wages; under a bill passed by the House, families would be able to sue for pain and suffering and loss of care, compassion and comfort – this change would also apply to passengers of cruise ships.

Federal Regulation of Off-Shore Drilling: The federal government regulates off-shore drilling – outside the three-mile-limit of state jurisdiction – through several bureaus and agencies. The Bureau of Ocean Energy Management, Regulation, and Enforcement (formerly MMS) has the lead authority to regulate off-shore leases and requires a company to demonstrate its proposal to lease, explore, or produce conforms to regulations, is safe, and will not cause impermissible damage to the environment. It also requires operators to use the “Best Available and Safest Technology” on wells, platforms, and other equipment and facilities and conducts inspections to ensure compliance and a sufficient level of maintenance. The Coast Guard also must grant approval to a platform used in off-shore drilling and conducts annual inspections to ensure that the platform’s non-drilling-related equipment is safe for the crew and off-shore operation.

Presidential Outer Continental Shelf Moratorium Timeline: President Obama first began penalizing all companies for one company’s mistake on [May 27, 2010](#) by issuing the first drilling moratorium. The moratorium was to last for six months, until the Presidential Commission investigating the BP oil spill completed its six-month review. Upon the announcement, the MMS immediately began to hold up shallow-water permits too, although they were not explicitly

included. The six month ban on drilling is thought to be more destructive to the local economy than the oil spill itself.

On [June 22, 2010](#), New Orleans federal judge Martin Feldman granted an injunction blocking the moratorium from taking effect. The judge ruled that President Obama and Secretary Salazar had underestimated the economic impact of the moratorium. The administration immediately appealed the ruling and asked the Fifth Circuit to stay the injunction.

On [July 8, 2010](#), a federal appeals-court panel rejected the Obama administration's bid to maintain the moratorium on deep water drilling. The three-judge panel stated that Interior Secretary Salazar did not prove the U.S. would suffer permanent damage without the immediate ban on drilling in deep waters.

On [July 12, 2010](#), the Secretary Salazar announced the drilling ban would be re-imposed, even after the courts had declared the first moratorium illegal.

Moratorium Impact: In spite of 53,000 wells drilled without major incident – including 3,000 deepwater wells – the administration believed it was appropriate to idle 33 deepwater drilling rigs. This action eliminated thousands of jobs in the oil and gas industry, and countless others industries, to coincide with the economic impact to the gulf coast imposed by the spill on the fishing and tourism industry. Deepwater wells account for [80% of the oil, and 45% of the natural gas](#) produced in the Gulf and the moratorium is expected to eliminate [80,000 barrels a day](#) of domestic production. Furthermore, the [potential](#) for lost wages is over \$5 to \$10 million for one month per platform that is idle. Overall, Gulf States stand to lose an estimated [\\$2.7 billion](#) in economic productivity.

[Conservative Concerns with H.R. 3534:](#)

- ***National Energy Tax Part Deux:*** Despite claims the CLEAR Act is a legislative response to the crisis in the Gulf of Mexico, conservatives know it is a Trojan horse to impose a new national energy tax on every American consumer and producer. Estimates have the cost of the tax ***ranging anywhere between \$22 billion and \$34.2 billion*** over ten years. Conservatives have also expressed concern this provision does not place any taxes on oil or natural gas being imported from foreign nations.
- ***Political Ploy:*** As White House chief of staff Rahm Emanuel [stated](#), “You never want a serious crisis to go to waste.” Today, House Democrats will politicize the BP oil spill crisis and advertise this to the public as a legislative response to prevent future spills to voters in order to move expansive legislation to vastly restrict and tax our domestic energy supply.
- ***Premature Legislation:*** As we debate the CLEAR Act, a blowout preventer that was the cause of the largest environmental disaster in U.S. history sits 5,000 feet below the surface of the Gulf of Mexico. No inspector, no scientist, no regulator, no oil and gas expert, no engineer, nor anyone has been able to inspect the blown out pipe that caused the explosion. Today, the House plans to pass prescriptive regulations to supposedly prevent future blowouts - without fully knowing what caused the drill bit to blowout in the first place. In fact, the [Center for Public Integrity](#) revealed today that the sinking of the rig, which helped cause the leak, may have been attributed to the chaotic spraying of tons of salt water by private boats.

- ***Backwards Energy Plan:*** Once again, Democrats demonstrate they have no credibility when talking about reaching energy independence. Just like when they passed legislation to impose a national energy tax under H.R. 2454, this bill aims to restrict oil and gas exploration in the United States. They continue to believe the only energy policy is to throw subsidies to wind and solar technology, and do not understand what conservatives already know. A responsible solution to lead us to energy independence is a [comprehensive plan](#) that recognizes America's reliance on oil and natural gas that will continue for decades to come.
- ***Additional De-Facto Nationwide Drilling Moratorium:*** The ultimate results of the legislation will make the leasing process more prohibitive and costly, driving many producers to reconsider exploration options with the additional uncertainty. The proposal will not only further regulate deep water rigs, but also those in shallow water, and on state lands offshore. Additionally, the new regime will create additional layers of bureaucracy to ultimately secure an offshore lease, at the peril of a federally centralized command and control mechanism.
- ***Federal Intrusion:*** The CLEAR Act is a clear violation of the 10th Amendment because the legislation would preempt state authority to oversee its offshore permitting process and dictate the type of technology to be used on state wells. Some conservatives argue the federal government lacks justification and expertise for the oversight of oil and natural gas production and Democrats are using the oversight failures and incompetence within the Department Interior as an excuse to usurp state authority.
- ***No OCS Moratorium Repeal:*** The majority of Gulf Coast residents support lifting the moratorium to foster job growth and help keep afloat an economy that has already taken a dramatic blow with significant financial losses from the loss of fishing and tourism revenue. The moratorium does not ultimately penalize BP or any other oil company, as they can and [will move](#) many rigs to other open waters in foreign nations and continue to make profits. The moratorium imposes a secondary blow to the Gulf Coast economy, and also dries up millions in lost royalties for the federal government and states.
- ***Hey Big Spender, We Surrender:*** The legislation mandates full funding for the Land and Water Conservation Fund (LWCF), the Historic Preservation Fund (HPF), and the Oceans Resources Conservation and Assistance Fund (ORCA) through 2040 at a ***cost of \$30 billion in mandatory spending***. Perhaps most ironic is this legislation will actually decrease royalty revenue to the same federal Treasury that Democrats are relying on for \$30 billion in new mandatory spending to pay for these programs. Additionally, conservatives have expressed concern that the primary function of the LWCF is to have the federal treasury assist in the acquisition of state and federal lands.
- ***Litigation Gone Galore:*** The [Congressional Budget Office](#) estimates that the imposition of the conservation fee will ***cause over \$14 billion in litigation costs*** to the taxpayer.
- ***Blow Out Preventer Mandates:*** H.R. 3534 requires federally mandated standards for well designs and operational practices and restricts the type of blowout preventers permitted for use on state offshore wells. Some conservatives have expressed concern this mandate will undermine the development of safer and more efficient technology in the future and prescribes a federal one-size-fits-all solution to vastly different states with oil and gas production.

- **Coordination Regions:** Some conservatives have expressed concern that the coordination regions add another layer of bureaucracy which could have the regulatory authority to subject coastal areas to limits on energy production, fishing, and even (possibly) recreation. In addition, some conservatives have expressed concern the bill establishes an Ocean Resources Conservation and Assistance Fund allowing 10% of all offshore revenues to be controlled by the nine coordination regions to be used for any purpose.
- **Unlimited Liability:** Some conservatives have expressed concern that unlimited liability caps for offshore operators would effectively eliminate independent producers from operating offshore. Ironically, this would leave only the largest oil companies - like the one in that caused the Gulf spill - financially able to drill in the Outer Continental Shelf.
- **Obligatory Union Payoff:** Whether it is Davis-Bacon or some other action, conservatives have expressed concern the CLEAR Act contains another payoff to the labor lobby. The CLEAR Act requires all offshore oil and gas facilities to be built in the United States. This provision covers all types of platforms, some of which are extremely complex. Some conservatives have expressed concern this provision will lead to major production delays and higher costs.

Committee Action: On September 8, 2009, the bill was referred to the Committee on Natural Resources. On July 15, 2010, the Natural Resources Committee held a mark-up and ordered the bill reported, as amended, by a vote of 27 - 21. On July 26, 2010, the Committee on Rules presented an amendment in the nature of a substitute for House consideration of the CLEAR Act, which contains many provisions incorporated from H.R. 3534, H.R. 5626, and H.R. 5629.

Administration Position: A Statement of Administration Policy (SAP) states, “the Administration strongly supports House passage of H.R. 3534. H.R. 3534, which is largely consistent with the Administration's vision of dividing the key responsibilities for offshore energy management into three distinct entities within the Department of the Interior, contains the necessary authorities for these three entities. The Administration believes that it would be most effective if this reorganization focused exclusively on Outer Continental Shelf resources at this time.”

Cost to Taxpayers: According to CBO, “enacting this legislation would increase direct spending by \$20.5 billion over the 2011-2020 period and would increase revenues by \$22.2 billion over the same period. In total, CBO estimates that enacting H.R. 3534 would reduce future deficits by \$5.3 billion over the 2011-2015 period and \$1.7 billion over the 2011-2020 period.” However, CBO does not make it clear of how much forgone revenue is calculated because of the mandates and tax increases caused by H.R. 3534 that will cause oil and gas companies to not drill in the United States.

Does the Bill Expand the Size and Scope of the Federal Government? Absolutely, the bill significantly expands the number of agencies under the Department of Interior to regulate the oil, mining, and natural gas industry. In addition, the bill requires permanent full funding for the LWCF and NFHP through 2040. The bill also imposes a new “conservation fee” on U.S. based oil and natural gas companies of \$2 a barrel and 20 cents for each BTU of natural gas. The bill also establishes regional coordination councils to oversee the management of coastal regions for any sort of activity. The bill also expands the government in other fashions, as detailed in the summary. No estimate of spending subject to appropriations was available for the substitute at press time.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? Yes, the bill contains dozens of new mandates on the oil and gas industry ranging from acquiring a permit, to compliance with safety and environmental precautions, to the design of drilling equipment.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to Committee Report 111-575, H.R. 3534 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: Committee Report 111-575 cites Article I, section 8 and Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

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