U.S. Offshore Oil and Gas Access: Changing Dynamics and Policy

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[1] The Domestic Petroleum Council (DPC) is a national trade association representing 24 of the largest U.S. independent natural gas and oil exploration and production companies. The DPC members are leaders in applying technology to the search for, and development and production of, oil and gas supplies onshore and offshore in 23 states and in 43 other countries.

1.01 Introduction

> *…people who are trying to advocate change are like surfers waiting for the big wave. You get out there, you have to be ready to go, you have to be ready to paddle. If you're not ready to paddle when the big wave comes along, you're not going to ride it in.*[2]

Proponents of increased oil and gas leasing, exploration and production off the coasts of the United States waited a long time for the opportunity to catch a wave of favorable policy dynamics, including politics, to achieve their goal. But they did ride a modest one recently. And every dedicated surfer knows that there can be a bigger one somewhere behind it.

When the definitive US offshore oil and gas access legislative history of the past several years is written, the author will have struggled to explain both complex and changing content and confusing process. Culminating with enactment of S. 3711, the Gulf of Mexico Energy Security Act of 2006[3] as part of broader tax legislation, efforts in the 109th Congress to expand the ability to lease and then explore more federal offshore acreage resulted in at least seven significant Senate bills and three in the House of Representatives[4], as well as at least one important concept draft[5]. Among these proposals

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[2] A comment by an interest group policy analyst as quoted in John W. Kingdon, *Agendas, Alternatives, and Public Policies* 165 (2d ed 1995).

[3] Included in H.R. 6111, the Tax Relief and Health Care Act of 2006, PL 109-432, signed into law on December 20, 2006. Library of Congress, Thomas, http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR06111:@@@X (accessed on December 30, 2006).

[4] See Marc Humphries, *Outer Continental Shelf: Debate Over Oil and Gas Leasing and Revenue Sharing,* August 14, 2006 CRS Report for Congress update 14-18, for a complete list of significant bills, including a summary of action on each.

there evolved many permutations and combinations of provisions, some extremely complicated, dealing with how and where more access might be permitted and how resulting federal oil and gas revenues might be shared. A good legislative history would capture the essence of them all. It would also provide detail on the consideration of each, and how the legislative process led to a significant, if relatively modest, increase in offshore access.

More important, however, would be examination of changes in policy dynamics that allowed any access consideration after decades of increasing and continuing access restrictions. Why did the changes occur? Were changes at least in part a result of new policy participants mobilized and, if so, why and how? Were there policy participants, or even “policy entrepreneurs”[6], who had significant behind-the-scenes roles?

Most important, will those changes continue and will participants, perhaps waiting to catch a policy “wave”, remain engaged for additional offshore access initiatives? Even the best legislative history authors are usually not tasked with exploring such questions.

This essay briefly identifies several places that answers might be found.

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[5] The State Enhanced Authority for Coastal and Offshore Resources Act of 2003, or SEACOR, was drafted, circulated among offshore energy stakeholders, modified and re-circulated multiple times by staff of the House Committee on Resources. Its many versions included, and allowed informal consideration of, many of the concepts that eventually were included in bills that were formally introduced and considered.

[6] Kingdon (Ibid.) discusses the many attributes, strategies and tactics of this special class of smart, highly talented policy participants that often have surprisingly important effects on policy development in significant part because of their persistence and willingness to take a long term approach to achieving their goals.

1.02 History

The first US offshore production of oil occurred in California state waters in 1896.[7] Since then the nation's energy production share from the federal offshore oil and gas program has increased to approximately 30 percent for oil and 23 percent for natural gas.[8] Against this background, the modern history of offshore access as a policy and political issue may be viewed as having begun in 1969 with the famous Santa Barbra Channel oil spill and eventual congressional action to reduce offshore energy access in 1981. In that year Congress enacted the first Outer Continental Shelf (OCS) leasing moratorium. Taking effect in the 1982 fiscal year, that moratorium applied to federal waters off central and northern California. Subsequent congressional spending prohibitions on annual appropriations bills and presidential withdrawals increased moratoria areas and sizes.[9]

Since that first moratorium there have been periodic congressional committee and other skirmishes between those in favor of more access, including the US oil and gas producing industry and members of related service sectors, and those opposed, including primarily environmental organizations and state and local governments along the coasts of the Lower 48 States. But access restrictions continued and grew.

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[7] U.S. Department of the Interior Minerals Management Service, *U.S. Offshore Milestones 1* (August 2006) (accessed January 1, 2007 at http://www.mms.gov/stats/PDFs/milestones0806.pdf). This publication has a complete chronology of major events related to US offshore oil and gas exploration and production.

[8] U.S. Department of the Interior Minerals Management Service, *Quick Facts* (accessed January 2, 2007 at http://www.mms.gov/ooc/newweb/quickfacts.htm).

[9] U.S. Department of the Interior Minerals Management Service, *U.S. Offshore Milestones 1* (August 2006) (accessed January 1, 2007 at http://www.mms.gov/stats/PDFs/milestones0806.pdf).

1.03 Status and Recent Action

Today oil and gas exploration and production is prohibited on an estimated 84 percent of the acreage beneath US federal waters off the coasts of the Lower 48 states as a result of congressional moratoria and presidential withdrawals.[10] However, that is about to change in a relatively small but potentially significant way.

With the December 20, 2006, signing into law of the Gulf of Mexico Energy Security Act after several years of periodically intense congressional consideration, approximately 8.3 million acres of additional OCS area in the Gulf of Mexico will be opened for new leasing (as is shown on the map attached as Appendix A). In the new law Congress directed that a significant portion of the new acreage that is not under moratoria (part of an original Clinton Administration "Sale 181" area which had not been leased as a result of a decision by the Bush Administration[11]) be leased within one year of enactment. Remaining acreage to the south which had been subject to moratoria is to be leased as soon as "practicable". In addition, for the first time, coastal states with adjacent offshore oil and gas production are to have a direct share of all federal revenues (37 ½ percent of all bonus payments, rents and royalties) from resulting production.[12]

1.04 Changing Policy Dynamics

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[10] Department of the Interior Minerals Management Service, E-mail (January 3, 2007).

[11] Marc Humphries, *Outer Continental Shelf: Debate Over Oil and Gas Leasing and Revenue Sharing,,* August 14, 2006 CRS Report for Congress update 9.

[12] Gulf of Mexico Energy Security Act (accessed January 2, 2007, at http://thomas.loc.gov/cgi-bin/query/F?c109:6:./temp/~c109HbydSi:e256889:).

The change from increasing and continuing access limitations to more access with a substantial share of federal revenues going to coastal states off whose coasts oil and gas exploration and production is allowed, appears to have resulted from at least two sets of changing policy dynamics. One was low-key and focused primarily by more traditional policy participants on policy content while the other was more dramatic in terms of both new participants and roles.

[1] New Policy Proposal Content

In the fall of 2002 some in the exploration and production sector who had been part of the decades-long history of periodic attempts to ease offshore access restrictions and encourage various forms of coastal impact assistance or revenue sharing[13], including this author, began to think that some new and more bold approach should be tried as a way of changing the anti-access positions of at least some coastal states, especially those that might be facing internal budget and constraints. Such changes were seen as potentially encouraging more serious consideration of increased offshore access by lifting moratoria, at least in some areas off some states' coasts.

The concept that evolved relatively quickly was fairly simple. It was based on the approach of allowing states to request lifting of moratoria off all or parts of their coasts.

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[13] See Marc Humphries, *Outer Continental Shelf: Debate Over Oil and Gas Leasing and Revenue Sharing,* August 14, 2006 CRS Report for Congress update 6 &7 for a brief history and summary of former and existing offshore revenue sharing and impact assistance programs that are targeted rather than providing significant broad sharing comparable to the 50 percent of federal bonuses, rents and royalties received by states from federal oils and gas activity within their borders.

This would be against a background of Congress providing some mechanism for states to share resulting federal revenues.

More specifically, the Domestic Petroleum Council began to discuss with others in the oil and gas industry as well as policymakers a "State-Requested OCS Energy Option" designed to

> …possibly change the dynamics of offshore development especially if states facing budget issues see a benefit from future economic activity that would be generated and/or government revenue sharing/impact assistance tied to OCS activity.

The legislative concept envisioned that the Secretary of the Interior, if requested by a coastal state governor, would provide a short-turnaround estimate of the offshore natural gas and oil resources off the state's coast (or off a portion designated by the governor) along with other information as to how a federal leasing program might be planned and carried out, leading to exploration, development and production. The governor could then decide whether to ask the Secretary to initiate a leasing process, including studies and other actions required by existing laws such as the Outer Continental Lands Act (OCSLA) and the National Environmental Protection Act (NEPA) in an area covered by a moratorium. If such a request were to be made, the Secretary would have the authority to grant it, with congressional moratoria and presidential withdrawals lifted for the requested area. The thrust would be to suggest the opening mechanism in conjunction with whatever Congress could devise as a means of sharing resulting offshore revenues with states.[14]

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[14] Potential Idea for a "State-Requested OCS Energy Option" Provision for Energy Bill, DPC fact sheet (March 7, 2003).

By the end of March, 2003, the concept had been refined and drafted into legislation[15] and was being provided by the DPC to a number of congressional and Executive Branch policymakers and staff. It would continue to be provided to, and revenue sharing would be discussed with, others periodically over more than three years as interest in what became known as a "state option/revenue sharing" approach to increasing offshore access gained legitimacy and support – with that support increasingly coming from non-traditional oil and gas and access policy participants. In turn, and in large measure a result of actions by the new policy participants during this period, a number of the eventual House and Senate bills began to take form. [16] Their most common element was increased ability of states to decide where and to what extent there should be access for oil and/or natural gas exploration and production off their coasts.[17]

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[15] A copy of the legislative language and a summary, both drafted by L. Poe Leggette, Fulbright & Jaworski LLP, is attached as Appendix B.

[16] Although not the subject of this paper, many long-time proponents of more offshore access of both political parties, especially those from coastal and other producing states, were also increasingly energized for both general energy policy and more parochial reasons. For example, a key leader in the efforts to pass new access and revenue sharing legislation was Senator Mary Landrieu (D-LA). While her persistence and determination were driven by the need for money to repair and restore much of her state's infrastructure that was damaged or destroyed by hurricanes Rita and Katrina, the emergence of new and extremely active access proponents provided much needed and welcomed support for the package that was eventually signed into law.

[17] The most significant of these proposals, the *Deep Ocean Energy Resources Act* (H.R. 4761), passed the House of Representatives on June 29, 2006 by a vote of 232-187. Library of Congress, Thomas, at http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR04761:@@@R (accessed January 2, 2007).

[2] New Policy Participants

The new participants were natural gas consumers of all classes. Industrial natural gas users, manufacturers, fertilizer producers, farmers, chemical companies, paper manufacturers, senior citizens and others were feeling the effects of rising natural gas prices and were making their views known to their representatives and senators. In Washington and in states and congressional districts company employees and executives, senior citizen and trade association representatives[18] were making strong cases that high natural has prices were causing real consumer hardship and forcing manufacturing and chemical facilities to be located overseas while the US Government failed to allow access to large domestic natural gas resources, onshore and offshore, that could increase supply and reduce price volatility and levels.[19]

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[18] Although the list is long, among the most active associations were the American Gas Association, American Chemical Council, American Forest & Paper Association, Fertilizer Institute, National Association of Manufacturers, National Farm Bureau Federation, U.S. Chamber of Commerce, 60 Plus, and others, a number of which would later provide significant funding for offshore access coalition efforts. Oil and gas associations had less visible roles in providing information, resources, lobbying participation and other help.

[19] Typical of those most actively arguing for more offshore access was the Industrial Energy Consumers of America (IECA), representing the largest industrial users of natural gas for glass, steel, paper, chemical fertilizer and other manufacturing. A June, 2006, IECA fact sheet was headlined: “Over last five years, on average, U.S. prices are highest in the world. The price of natural gas rose 382% since 2001.” In it, IECA provided data showing that natural gas prices had “…caused manufacturing demand destruction of 19%...”. Industrial Energy Consumers of America, *The Natural Gas Crisis is Real* (June, 2006).

Eventually the consumers, companies and their trade associations formed and funded the Consumer Alliance for Energy Security (CAES)[20] to coordinate and leverage their efforts. Under its umbrella, Washington lobbying coordination increased as did state and local outreach and more traditional public affairs efforts. Public opinion changes that had been seen in trade association and coalition polling began to be reported in local coastal state media. In June of 2005 an American Gas Association news release distributed widely was headlined: “Majority of Citizens in Six Coastal States Support Offshore Energy Production, Especially if States Receive Revenues”. With more control over offshore development decisions and a share of revenues, majorities of polled residents of California (51 percent), Florida (53 percent), Georgia (69 percent), North Carolina (66 percent), South Carolina (69 percent) and Virginia (64 percent) indicated that they were more likely to allow offshore exploration and production.[21] In May of 2006 a Quinnipiac University poll in Florida showed that residents there backed offshore drilling for natural gas as close as nine miles off their coast – and did so by a 19-point margin.[22] An internal CAES poll released the following month showed a similar 19-point margin in favor of natural gas drilling as close as 20 miles from the Florida coast.[23]

On Capitol Hill one could sense a change in policy dynamics. Longtime and new proponents of more offshore access were seen to be more enthusiastic and determined to achieve meaningful access improvement and state revenue sharing adopted. That enthusiasm reflected relentless and well-coordinated CAES coalition efforts to provide

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[20] See http://www.secureourenergy.com for a complete list of CAES members and other information.

[21] American Gas Association news release (June 15, 2005).

[22] Quinnipiac University Polling Results summary (May 25, 2006).

[23] Consumer Alliance for Energy Security memo (December, 2006).

direct and indirect, or grassroots, input to key members of the House and Senate on the need to pass legislation before the end of the 109th Congress. Even White House support for some form of increased access and revenue sharing was seen to grow over time as natural gas consumers made their views known and Hill proponents urged the Administration to support their efforts.

The future definitive legislative history will track the many content and process complexities that led to President George W. Bush's signing of the legislation that became Public Law 109-432.

However, for those in and outside of government who sought more offshore access, the lessons that came through were clear. Consumers were instrumental in changing the policy dynamics by clearly explaining the natural gas supply and price problems they faced. Other policy participants worked over a significant period of time to develop, refine and legitimize policy content options that could, in turn, be successfully supported by the consumers as at least partial solutions to their problems. Finally, strong, coordinated (and expensive) consumer coalition action at local, state and national levels were successful.

1.05 Future Offshore Access Action

For many, the offshore access legislation approved by the 109th Congress and signed into law was, as one group described it, "…a critically important first step to increase domestic supply of natural gas and oil that is essential to reducing energy prices, keeping manufacturing jobs in the United States and increasing energy security."[24] But it

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[24] Industrial Energy Consumers of America letter to President George W. Bush (December 20, 2006).

was and is viewed by many of the same offshore access participants as only a first step. A representative of the American Gas Association and its 200 local distribution companies said recently, for example, that increased offshore access for more natural gas supply remains "…among AGA's top priorities."[25]

As a result, we can expect that consumer and producer groups, companies and individuals alike, will continue to point out that there is a delicate natural gas supply and demand balance at present, that more supply continues to be necessary, and there must be more offshore exploration and production access.

Whether any new access initiatives can be put on the congressional agenda that is now controlled by new Democratic majorities in the House and Senate is uncertain. But already there is talk among some members and staff as to what the scope and content of new access legislation might be.

Perhaps it is, as one of the new offshore access participants has said, that

> *…proponents of domestic energy development now have the wind at their backs. More and more of the federal OCS, in deep water far out of sight from shore, will be opened for oil and natural gas development in the years ahead. The empirical data supports it and the realities of our modern economy demand it. Sooner or later, politics will allow it.*[26]

Such a shift in policy dynamics is more certain to continue if consumers remain engaged and demand it and the policy entrepreneurs are ready to ride the next good wave with good policy proposals.

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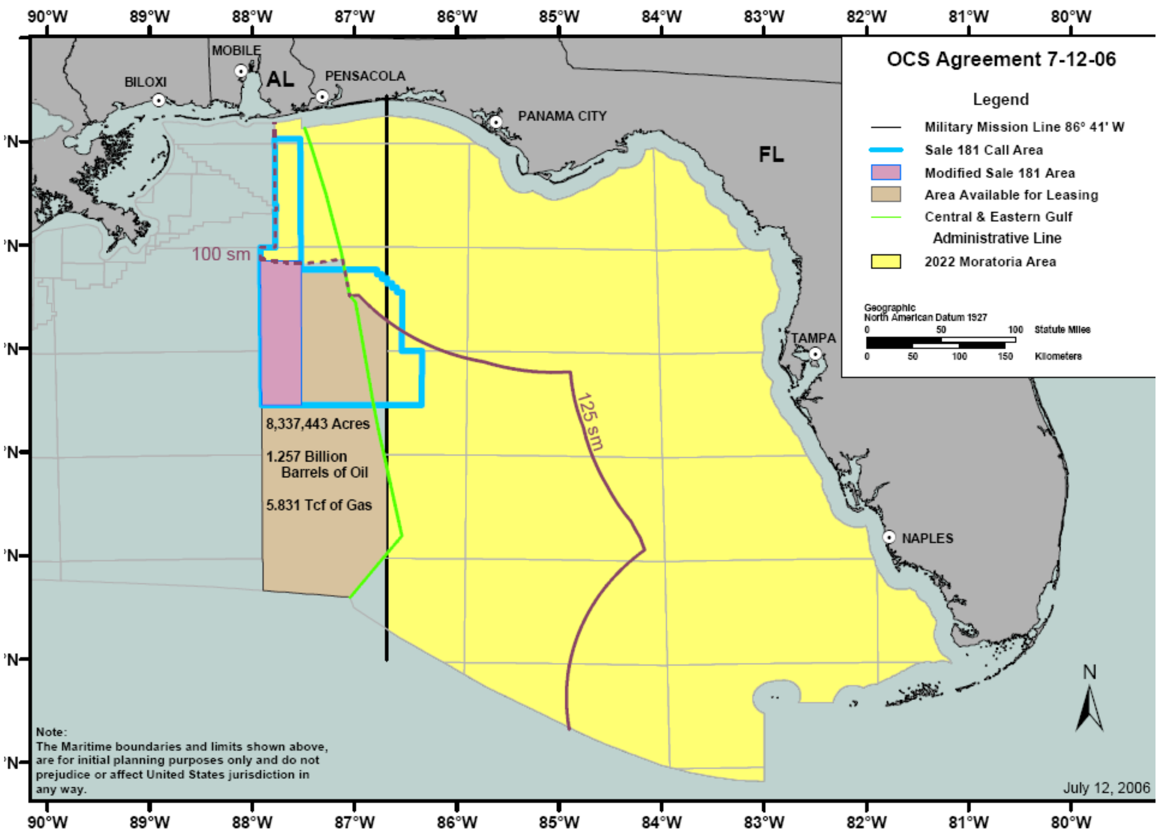
[25] Thomas L. Moskitis, Managing Director, External Affairs, American Gas Association, E-mail (December 21, 2006).

[26] Thomas L. Moskitis, The Politics of Natural Gas Resource Development on the Outer Continental Shelf (OCS) (November, 2006)

Appendix A

Map: Area to be Leased under PL 109-432
(shaded)



Source: Minerals Management Service

Appendix B

DPC State Option Concept

SECTION __. REVIEW OF STATE REQUESTS TO EXAMINE OCS ENERGY AREAS

Section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended by adding at the end the following subsection:

"(i) REVIEW OF STATE REQUESTS TO CONSIDER OCS LEASING

"(1) For the purpose of this subsection, the term "moratorium area" means (A) any area withdrawn from disposition by leasing by the "Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition," 34 WEEKLY COMP. PRES. DOC. 1111 (June 12, 1998); and (B) any area of the Outer Continental Shelf as to which Congress has denied by the use of appropriated funds or other means for pre-leasing, leasing, or related activities.

"(2) At any time the Governor of an affected State may request the Secretary to provide a current estimate of proven and potential oil and gas resources within any moratorium area (or any part of it the Governor may identify) adjacent, or lying seaward of the coastline, to that state. Within 45 days of the request, the Secretary shall provide the estimates and an explanation of the planning processes that could lead to the leasing, exploration, development, and production of the oil and gas resources within the area identified.

"(3) Upon consideration of the information received, the Governor may request the President to consider whether the moratorium area, or part of it identified by the Governor, should be restored to consideration for oil and/or natural gas leasing. If the President agrees, he shall notify the Governor and the Secretary.

"(4) If any of the moratorium area identified by the Governor is withdrawn as described in paragraph (1)(A) of this subsection, the President's notification shall be deemed to rescind the withdrawal of that area. Upon the President's notification, this subsection shall be deemed to repeal any restriction preventing spending appropriated funds for preleasing, leasing, and related activities as to the area identified in the Governor's request.

"(5) Upon receipt of the President's notification, the Secretary shall treat the Governor's request as a proposed revision to the leasing program maintained under this section. The Secretary shall give expedited consideration to the proposed revision."

This section would add a new subsection (i) to section 18 of the OCS Lands Act. Section 18 governs the Five-Year OCS Oil and Gas Leasing Program. The Program currently in effect has no lease sales proposed in areas withdrawn from leasing by President Clinton in 1998. Other areas not included in President Clinton's withdrawal have also been the subject of annual prohibitions against spending appropriated funds for preleasing, leasing, and related activities. These areas, too, have been excluded from the current Program.

This amendment would create a procedure through which a governor of an affected coastal state could request that the President restore moratorium areas adjacent to the governor's state to consideration for oil and gas leasing. The President is not required to accept the governor's request; but if the President agrees, his notification to the governor would serve to lift all legal and appropriations restrictions currently preventing the Secretary from considering the area identified by the governor for possible leasing.

Upon receiving the President's notification, the Secretary would be required to treat the governor's request as a proposed revision to the current Five-Year Leasing Program. The Secretary is not required to adopt the governor's proposed revision to the Program, but would consider the proposed revision on an expedited basis.

The Secretary's decision to adopt the revision, as well as all subsequent prelease planning and leasing decisions, would be conducted in strict compliance with all applicable environmental laws.

The amendment relies on terms already defined by the OCS Lands Act: "outer Continental Shelf," "Secretary," "affected State," "Governor," "exploration," "development," and "production."