



CALIFORNIA OCEAN PROTECTION COUNCIL

INFORMATIONAL ITEM

TO: Ocean Protection Council Chairman John Laird and Councilmembers
FROM: Chris Potter, Program Manager
DATE: April 24, 2018
SUBJECT: Federal Outer Continental Shelf Oil and Gas Development Legislation

Federal Legislation: H.R. 4239 (Scalise) and H.R. 3133 (Johnson)

Introduction

The purpose of this memo is to bring to your attention two pieces of pending federal legislation pertaining to federal Outer Continental Shelf oil and gas exploration and development. Specifically, bills H.R. 4239 (Scalise) and H.R. 3133 (Johnson) would make broad changes to long established federal laws protecting the marine environment from the effects of oil and gas exploration and development. Below is a more in-depth discussion of important provisions of these two bills and attached is the full text of both bills (Exhibits A and B), along with an article recently published in the LA Times that provides additional context on this issue (Exhibit C).

H.R. 3133 (Johnson)

H.R. 3133, the Streamlining Environmental Approvals (SEA Act), would remove core provisions of the Marine Mammal Protection Act (MMPA) to fast-track seismic surveys and other activities in the ocean to facilitate identification of oil and gas deposits in the sea bed. These activities can significantly harm marine mammals; e.g., whales and dolphins. Essentially, seismic surveying involves a ship firing blasts of pressurized air to create powerful sound pulses that penetrate beneath the seafloor. The sound waves that bounce back are picked up by sensors, painting a picture of potential oil deposits. Below the surface, the explosions sound like bombs going off every 10 to 15 seconds and can be heard as far as 1,500 miles, audio recordings show. Research has shown that undersea sonic blasts can disorient and damage the hearing of whales and dolphins to the degree that they lose their ability to navigate and reproduce.

The SEA Act would remove important safeguards in the MMPA, including the requirement that harassment of marine mammals is limited to “small numbers” of specific species or population stocks. It would also do the following:

- Drop the condition that the activities allowed by Incidental Harassment Authorizations (e.g., seismic surveys) have the “least practicable impact”;

- Curtail the National Ocean and Atmospheric Administration's (NOAA) authority to require mitigation measures to reduce the impacts of activities that harass marine mammals;
- Speed up permitting by mandating that regulatory agencies, such as the Bureau of Ocean Energy Management (BOEM), process applications within 120 days; if no action is taken within that timeframe, permits would be automatically issued.

H.R. 3133 passed out of the House Natural Resources Committee January 10th of this year and is awaiting a floor vote in the House. Although there is no set date for vote on this bill, there are reports that it will be taken up within the next few weeks.

H.R. 4239 (Scalise)

H.R. 4239, the Strengthening the Economy with Critical Untapped Resources to Expand American Energy (SECURE Act), is a broader bill that contains the above elements of the SEA Act but also applies to onshore oil exploration. It would also do the following:

- Eliminate long-standing presidential authority to establish marine National Monuments under the Antiquities Act and ban the ability to protect specific areas of the Outer Continental Shelf (OCS) from oil and gas leasing;
- Establish a revenue sharing framework to distribute revenues collected from oil and gas leasing on the OCS to certain Gulf and eastern states;
- Require the execution of all approved, scheduled offshore oil and gas lease sales, should the Secretary of the Department of Interior call for a revised Five-Year Plan; and
- Require BOEM to conduct feasibility and compatibility studies for potential offshore wind energy lease sales off the coasts of California, Hawaii, Puerto Rico and the U.S. Virgin Islands.

H.R. 4239 passed out of the House Natural Resources Committee November 8, 2017 and is awaiting a floor vote; however, there is no set date.

President Trump Executive Order 13795

It is important to note that the SECURE Act is closely aligned with the federal energy policy set forth in President Trump's Executive Order 13795, "Implementing an America-First Offshore Energy Strategy." Among other things, the Executive Order directs the Secretary of the Department of Commerce to conduct a review of all designations and expansions of National Marine Sanctuaries and Marine National Monuments since April 28, 2007, with the implicit purpose of examining the potential for oil and gas exploration and development within the National Marine Sanctuaries and Monuments. This report is intended to support the Executive Order's findings that, "The energy and minerals produced from lands and waters under Federal management are important to a vibrant economy and to our national security. Increased domestic energy production on Federal lands and waters strengthens the Nation's security and reduces reliance on imported energy." On August 6, 2017, Secretary Laird sent a letter to the Secretary of the Department of Commerce stating his objection to any effort to revoke or change the boundaries of the California's National Marine Sanctuaries (see Exhibit D). The report has yet to be released by the Department of Commerce.

Options and Conclusion

The following are two near-term options for the Council to take action:

- 1) Chairman Laird on behalf of the Council pens letters to the Speaker of the House and the California Congressional delegation stating the Council's concerns with both bills. A letter to the California delegation would specifically ask for their assistance in opposing both bills. OPC staff would work with Governor Brown's Washington, D.C. staff in distributing the letters and making sure that the Congressional staff were informed of the issues and concerns being raised.
- 2) A second option would be a letter signed by the entire OPC Council to the California Congressional delegation. OPC staff would work with the Governor's staff to make sure that the letter received full distribution and attention by the relevant Congressional staff.

Reportedly, Congressional support for H.R. 3133 and H.R. 4239 is very strong. In addition, it is possible that both bills will come up for a floor vote within the next few weeks, especially H.R. 3133. Given this timing, the OPC still has a window of opportunity to provide input on federal legislation that could have far-reaching, long-lasting effects on the state's marine environment.