Written Testimony of Janis Jones
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Committee on Natural Resources

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Chairman Rahall, Ranking Member Hastings and Members of the Committee, thank you for the invitation to participate in today's hearing. My name is Janis Jones and I am the Vice President of Programs for Ocean Conservancy, a national marine conservation organization that has promoted healthy and diverse ocean ecosystems since its founding in 1972. I have worked on marine issues for almost fifteen years, and I serve as an adjunct faculty member of the Northwestern School of Law at Lewis and Clark College in Portland, Oregon.

What we are currently witnessing in the Gulf is a human and environmental tragedy. Even as the disaster continues to unfold, many of its underlying causes are clear: regulators who uncritically accepted the assurances of the oil industry regarding the safety of offshore drilling, inadequate safety and environmental standards, and a false notion that the risk of an accident of this magnitude was so insignificant that it was unworthy of evaluation. It is noteworthy, Mr. Chairman, that this Committee had identified many of the systemic failures that enabled such practices to occur during hearings last year, and that the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act was introduced before the current tragedy in the Gulf began. I would like to thank the Committee for its work to revise that legislation in recent weeks, and for releasing the Discussion Draft under consideration today.

Continued offshore drilling must be considered only as a bridge to a clean energy future; and it cannot continue under a system that fails to protect adequately the coastal and ocean ecosystems—including living coastal and marine resources and habitat—on which we all rely. The law governing oil and gas activities in the Outer Continental Shelf (OCS) lacks provisions that protect ocean and coastal environments and the economies that depend on them; it largely excludes expert agencies from the development process; and it lacks integrated planning to consider and address conflicts and maximize resource protection *and* sustainable production. The federal agency charged with administering OCS oil and gas activities has proved incapable of effective regulation and oversight, and our ability to prepare for, respond to, and clean up oil spills has not kept pace with advances in drilling and extraction technologies. The Discussion Draft takes important steps to correct these shortcomings.

Overall we view this Discussion Draft as a very positive step forward in addressing an urgent set of problems. My testimony focuses mainly on the provisions that affect ocean and coastal ecosystems. The first section of my testimony identifies key weaknesses or gaps in current ocean and energy policy that Congress should address as it moves forward with energy reform legislation. The second section highlights provisions in the proposed legislation that Ocean Conservancy supports as constructively addressing those weaknesses or gaps. The third section discusses provisions of the Discussion Draft that we believe should be strengthened.

I. WEAKNESSES OR GAPS IN CURRENT OCEAN AND ENERGY POLICY: PRIORITIES FOR CHANGE

For purposes of this testimony, key shortcomings in ocean and energy policy can be grouped into five categories: (1) an inadequate national policy for the OCS and a lack of substantive standards to protect the environment and ocean and coastal economies; (2) flawed processes for planning and implementing OCS oil and gas activities; (3) insufficient standards for oil spill prevention and response; (4) a lack of dedicated funding for ocean, coastal, and Great Lakes conservation and management; and (5) a failure to integrate oil and gas activities with other ocean planning and management decisions. The following paragraphs briefly describe these problems and suggest solutions.

First, our national OCS policy focuses too much on development and extraction of oil and gas, and not enough on the consequences of doing so. Congress should amend the policy to recognize that oil and gas activities on the OCS are appropriate only in those areas where it can be demonstrated that oil and gas activities can proceed with minimal risk to the health of ocean ecosystems. In addition to policy shortcomings, the OCS Lands Act (OCSLA) does not contain meaningful, substantive standards to ensure protection of the marine environment. The statute should be amended to prioritize protection and maintenance of healthy marine and coastal ecosystems. Congress should ensure that baseline science is in place before OCS areas are leased, important ecological areas are placed off-limits to leasing and drilling, and facilities use the best available technologies and safety procedures to maximize the protection of workers, ocean and coastal ecosystems and the coastal businesses and economies that rely on them.

Second, the existing process for making decisions about and managing oil and gas activities on the OCS does not do enough to empower governmental agencies with the greatest expertise in ocean issues. OCSLA gives the Secretary too much discretion to permit oil and gas activities where they do not belong and risks substantial harm to ocean and coastal ecosystems. This process should be changed to give expert agencies—such as the National Oceanic and Atmospheric Administration (NOAA), the US Fish and Wildlife Service (USFWS), the US Coast Guard (USCG), and others—a greater role in decisions about, and preparation of environmental analyses for, OCS oil and gas activities. Further, planning and leasing decisions involve such broad areas of the ocean that there is little opportunity for meaningful environmental analysis or public participation before exploration and drilling activities proceed. OCS planning areas should be smaller and precisely focused only on specific lease tracts to facilitate more meaningful review.

Third, as the aftermath of the BP *Deepwater Horizon* continues to demonstrate painfully, current standards for oil spill prevention and response are inadequate. Congress should change federal law to require more rigorous safety and technology standards and more robust spill response plans. For example, OCS operators should be required to plan for worst-case spills, including impacts from and response to blowouts. OCS drilling safety equipment should be certified by an independent third-party, should use the best available technology, and should incorporate redundant blowout prevention systems. To be effective in an emergency, sufficient response capability must be on site and able to be mobilized immediately, and a demonstration of that capability must be made before activity commences.

Fourth, despite the importance of coastal and marine ecosystems and the risks posed by oil and gas activities, there is no dedicated source of funding to support conservation and management in these regions. Congress should invest revenues derived from offshore development in a fund dedicated to ocean and coastal restoration and conservation.

Fifth, decision-making about oil and gas activities on the OCS is largely disconnected from other ocean planning and management decisions. This single-sector approach contributes significantly to conflicts among users and the degradation of marine ecosystems. Congress should move to a system that relies upon multi-objective regional planning for the conservation and management of marine resources.

The Discussion Draft contains various provisions that address, or begin to address, many of these problems. Below, Section II highlights critical provisions that make positive changes and should be retained as the CLEAR Act moves forward in the legislative process. Section III discusses provisions that should be strengthened or added to the CLEAR Act to ensure effective and comprehensive reform.

II. PROVISIONS OF THE CLEAR ACT THAT IMPROVE OCEAN AND ENERGY POLICIES

The following paragraphs highlight selected provisions of the Discussion Draft that are particularly important and should be carried forward.[1] In some instances, this testimony recommends changes to these provisions, detailed in Section III, that are intended to further strengthen or clarify the current proposed legislative language.

A. Title I: New Department of the Interior Agencies

Until recent restructuring within the Department of Interior (DOI), DOI's Minerals Management Service (MMS) was responsible for the administration of oil and gas activities on the OCS, including evaluation, planning, regulation, and collection of revenue generated through lease sales and royalties. The *Deepwater Horizon* disaster brought to the public's attention the potential conflicts between the agency's revenue-generating, planning, and environmental and safety enforcement functions. Additionally, reports and investigations by the US Government Accountability Office (GAO) and DOI's Office of Inspector General (OIG) have revealed a troubling history of MMS's failure to effectively track, collect, audit, and enforce royalty and other payments due from industry. And in recent years, reports have revealed an inappropriately close relationship between MMS employees and industry members, instances of unlawful behavior, and an MMS culture of disregard for ethical and substantive duties.

For all of the above reasons, we support the CLEAR Act's abolishment of MMS, creation of three separate DOI agencies, and other statutory changes. The following provisions are particularly important:

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[1] This Section includes provisions that Ocean Conservancy feels are particularly important or noteworthy. If a particular provision is not listed in this Section, it does not indicate that Ocean Conservancy does not support the provision.

• the abolishment of MMS (Section 107) and the creation of separate agencies—the Bureau of Energy and Resource Management (Section 101), the Bureau of Safety and Environmental Enforcement (Section 102), and the Office of Natural Resources Revenue (Section 103)—to carry out MMS's functions and duties;

• with some changes noted below, the requirement that the Secretary of the Interior create an independent office within the Bureau of Energy and Resource Management to carry out environmental studies and to conduct environmental analyses (Section 101(c)(3));

• the requirement that the Secretary of the Interior certify annually that certain Bureau of Energy and Resource Management, Bureau of Safety and Environmental Enforcement, and Office of Natural Resources Revenue officers and employees are in compliance with ethics laws and regulations (Section 104), and the requirement that Bureau of Safety and Environmental Enforcement inspectors are qualified, trained, and meet the highest ethical standards (Section 102(e));

• with some changes noted below, the creation of an independent audit and oversight program to monitor administration of the revenue program (Section 103(d)); and

• with some changes noted below, the creation of an OCS Safety and Environmental Advisory Board to provide independent scientific and technical advice to the Secretary of the Interior and the Directors of the Bureau Energy and Resource Management and the Director of the Bureau of Safety and Environmental Enforcement (Section 109).

B. Title II: OCSLA Reform

As noted above, OCSLA sets forth an inadequate and outdated national OCS policy and lacks meaningful environmental and safety standards. Title II of the Discussion Draft makes many important and positive changes to OCSLA. While these changes will require additional modification to be most effective—see Section III, below—Title II makes great strides in improving OCSLA. Among the most important provisions are amendments that, among other things:

• remedy flaws in the national OCS policy (Section 203);

• require the Secretary of the Interior to promulgate new, more protective regulations and in so doing, to consider the views of the Secretary of Commerce on matters that may affect the marine and coastal environment (Section 205);

• change the leasing provisions of OCSLA to disqualify parties not in compliance with certain safety or environmental requirements from bidding on OCS leases and require the Secretary of the Interior to consult with the Secretary of Commerce before holding an OCS lease sale (Section 206);

• direct a portion of OCS revenue into a new Ocean Resources Conservation and Assistance (ORCA) fund (Section 207);

• eliminate the use of categorical exclusions to approve exploration plans, extend the deadline for approving exploration plans, impose more robust requirement for drilling plans, provide for consultation with the Secretary of Commerce before approving exploration permits, and set forth more protective standards for drilling (Section 208);

• require the Secretary of the Interior to adhere to more protective substantive standards when developing five-year oil and gas leasing programs—including requirements to minimize environmental damage and consider three consecutive years of science—and to invite and consider comments from the Secretary of Commerce during the formulation of the plan (Section 209);

• direct the Secretary of the Interior to cooperate with the Secretary of Commerce to conduct studies of areas of the OCS open to leasing (Section 210);

• require more rigorous and more frequent inspections of drill rigs (Section 212); and

• require Development and Production Plans (DPP) for facilities in the Gulf of Mexico, provide for more robust DPPs, and prohibit the use of categorical exclusions for approving DPPs (Section 214);

C. Title VI: OCS Coordination and Planning

In addition to amending specific statutes like OCSLA to provide greater protection for ocean and coastal resources, we must also reform our overall approach to siting marine uses and managing our ocean. We need management approaches that integrate across federal and state jurisdictions and consider more holistically ecosystem services and the different uses that our oceans provide. The CLEAR Act begins to move in this direction with the changes in Title VI. As outlined in section III below, we recommend further strengthen this Title to truly provide for multi-objective planning; however, we support many of the concepts addressed in Title VI, including:

• increased coordination between state and federal agencies on decisions affecting ocean resources;

• comprehensive regional assessments of ocean ecosystems including important ecological areas, habitats, and species, as well as current and potential uses; and

• regional planning to proactively and transparently consider the tradeoffs made in allowing for ocean uses, while providing for the protection of marine ecosystem health.

In addition, we strongly support Section 605, which creates an Ocean Resources Conservation and Assistance (ORCA) fund. If oil companies are going to continue to make billions of dollars from activities that put ocean and coastal resources at risk, a portion of the revenue from those activities should be made permanently available for efforts to protect, maintain, and restore the health of ocean and coastal ecosystems. Coastal state and tribal governments play an important role in managing and protecting ocean and coastal resources. We support allocating a percentage

of the ORCA funds to those governments, provided there is not a connection between the amount of funding received and proximity to oil and gas activities. The CLEAR Act avoids such a connection, thereby reducing the risk of providing further incentives for offshore drilling.

D. Title VII: Miscellaneous Provisions

Title VII of the Discussion Draft includes several important sections that should be carried forward. We particularly support the following Sections:

- Section 701, including its provisions to repeal incentives and royalty relief for deepwater drilling in the Gulf of Mexico and to repeal certain development and production incentives in Planning Areas offshore Alaska;

- Section 704, which precludes the Secretary of Commerce, the Administrator of NOAA, or Regional Fishery Management Councils from developing or approving fishery management plans or amendments that permit or regulate offshore aquaculture, and which invalidates any permit issued pursuant to this authority to conduct offshore aquaculture. We recommend adding language to clarifying that DOI also lacks authority to regulate offshore aquaculture, given MMS's previous interest in this issue. Because the Magnuson Stevens Fishery Conservation and Management Act does not provide the Secretary of Commerce with the authority to regulate offshore aquaculture, we support H.R. 4363, which establishes a national regulatory framework developed specifically to address the unique environmental concerns associated with offshore aquaculture;

- Section 705, which prevents exploration, development, or production of minerals of the Outer Continental Shelf in areas seaward or adjacent to areas where a state moratorium is in effect;

- Section 707, which would provide new authority for states to develop and revise plans for improved oil spill response under authorities of the Coastal Zone Management Act; and

- Section 708, which requires the President to promote collaboration among federal agencies with ocean and coastal related functions; support Regional Ocean Partnerships; and establish a National Ocean Council.

E. Title VIII: Gulf of Mexico Restoration

The *Deepwater Horizon* blowout and spill is a human and environmental tragedy. Coastal communities in the Gulf of Mexico—and coastal and marine ecosystems—are suffering and will continue to feel the effects of the spill for years to come. Effective restoration efforts will require the cooperation of and coordination among many federal, state, local and private interests over a sustained period. We support the effort to facilitate and coordinate restoration activities, including establishing a Gulf of Mexico Restoration Planning Program, establishing a long-term monitoring and research program in the region, and establishing a migratory species emergency habitat restoration and establishment program for the Gulf coast. As noted in Section III, below,

the Committee should clarify how the provisions of Title VIII of the CLEAR Act will relate to processes mandated under existing law.

III. PROVISIONS THAT SHOULD BE STRENGTHENED OR ADDED TO THE CLEAR ACT TO ENSURE EFFECTIVE AND COMPREHENSIVE REFORM.

While the CLEAR Act would enact many significant amendments, the Committee should consider clarifying or strengthening some portions of the draft bill to ensure that reforms are substantive and meaningful. The following section describes, in a general fashion, recommended changes to the Discussion Draft. We would welcome the opportunity to provide to the Committee specific legislative language, in the form of recommended line edits, for Title II, Subtitle A and Title VI of the Discussion Draft.

A. Title I: New Department of the Interior Agencies

Section 101(c)(3) of the Discussion Draft requires the Secretary of the Interior to create an independent office within the Bureau of Energy and Resource Management that would carry out environmental studies required under Section 20 of OCSLA and conduct environmental analyses for programs administered by the Bureau. The Discussion Draft requires this independent office, in carrying out its "studies," to consult with relevant federal agencies including the Bureau of Safety and Environmental Enforcement, the USFWS, the US Geological Survey (USGS), and NOAA. The bill should be amended to clarify that the independent office is required to consult with these other agencies not only with respect to environmental studies pursuant to OCSLA section 20, but also with respect to the environmental analyses noted in Section 101(c)(3)(A)(iii)(II). In addition, the list of federal agencies with which the office shall consult should be expanded to include the Environmental Protection Agency (EPA) and the USCG.

Title I also requires the Secretary to create an audit and oversight program within the Office of Natural Resource Revenue, charged with overseeing the activities of the Office of Natural Resource Revenue (Section 103(d)). This auditing program may not be—or may not be perceived as—truly independent if it resides within the Office it is charged with overseeing. The Committee should change the Discussion Draft such that the independent auditing program is located in an office outside the Office of Natural Resource Revenue, for example in the Office of Inspector General.

Section 109 requires the establishment of an OCS Safety and Environmental Advisory Board, but provides little direction as to who may serve on the Board. Under the bill as drafted, it is possible that the Board could be dominated by members who are part of, or have close ties to, the oil and gas industry. The bill should limit to the number of Board members who currently work for, or have in the recent past worked for, the oil and gas industry.

B. Title II: OCSLA Reform

The paragraphs below describe many recommended changes to Title II of the Clear Act and/or additional amendments to OCSLA, but do not set forth every recommended edit.

Section 203

Section 203 of the Discussion Draft does much to remedy flaws in the national OCS policy. However, the Committee should make additional changes to ensure that the policy is mandatory and consistent with the substantive protections included in the Act. For example, Section 203 of the bill should be revised to provide that the OCS "shall" be managed in a manner that "minimizes"—not just "recognizes"—the potential impacts of development. In amending OCSLA Section 2, paragraph 6, the bill should provide that "exploration, development, and production of energy and minerals on the outer Continental Shelf shall be allowed only when those activities can be accomplished in a manner that does not endanger life . . . ." These additional changes will establish a strong and consistent policy.

Section 205

Section 205(a)(1) amends OCSLA to require the Secretary of the Interior to promulgate rules and regulations, but only when the Secretary determines those rules are "necessary and proper." This section should eliminate Secretarial discretion by striking the words "as he determines to be necessary and proper." With respect to OCSLA's language on lease cancellation, the draft bill should change the current standard in OCSLA Section 5(a)(2)(A)(i)—that continued activity "would probably cause serious harm"—to "could cause serious harm." The draft bill should amend current OCSLA Section 5(a)(8) to require regulatory provisions for the compliance with not only the Clean Air Act, but the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the Clean Water Act (CWA), and the National Environmental Policy Act (NEPA). And in addition to requesting and giving "due consideration to the views of the Secretary of Commerce," the Section 205 should also require the Secretary of the Interior to request and give due consideration to USFWS, EPA, and the USCG.

Section 206

Section 206 of the CLEAR Act should include additional amendments to strengthen and clarify OCS leasing provisions. For example, it should amend Section 8(b)(4) to clarify that the rights of OCS lessees are conditional: they entitle the lessee to an exclusive right "to seek authorization to" explore, develop, and produce. Section 206 should require the Secretary of the Interior to request from the Secretary of Commerce a review of proposed lease sale environmental impact statements, not just a review of the lease sale itself. Also, the Secretary of Commerce should have more time to conduct this review, and Secretary of the Interior should be required to modify the proposed lease sale as recommended by the Secretary of Commerce's review. Section 206 should also be amended to include a new substantive standard to ensure that OCS leasing does not endanger marine life.

Section 208

This Section of the Discussion Draft makes significant improvements to OCSLA Section 11, but should go further to improve OCSLA's provisions relating to exploration. To begin, the bill should make additional amendments to subsection (a) of OCSLA Section 11 to prohibit duplicative geological or geophysical survey efforts in the same area of the OCS and to ensure the use of the best available technologies and practices to minimize impacts to aquatic life. As written, the Discussion Draft requires the Secretary to approve an exploration plan if, among other things, an operator meets a strict new spill response standard. This should be changed to require the Secretary to approve an exploration plan "only" if the operator meets the new

response standard. OCSLA Section11(g) should be further amended such that the Secretary of the Interior is not only required to consult with the Secretary of Commerce, but also with other relevant natural resource and environmental agencies, including USFWS and EPA. The best available technology standard and technical systems analysis required by the proposed new OCSLA Section 11(j) should apply to OCS exploration plans that contain proposals to drill a well in frontier areas as well as exploration plans that proposed to drill a well in deepwater areas. Finally, the language concerning disapproval of an exploration plan—the proposed new OCSLA Section 11(k)—sets too high a standard and should be modified.

Section 209

OCSLA Section 18 requires the Secretary of the Interior to prepare a five-year oil and gas leasing program. The Discussion Draft makes important changes to this section, but should further modify provisions concerning the five-year leasing program to ensure they include substantive protective standards. For example, the bill should provide a standard to ensure that only specific, limited areas are made available for leasing so that the leasing schedule is focuses on relevant areas of the OCS. It should also include a provision that requires the Secretary of the Interior to conform the five-year program to relevant marine spatial plans. It should exclude important ecological areas from the five-year leasing program. The bill should also require the Secretary of the Interior to consider, when preparing five-year leasing programs, the availability of infrastructure to support oil spill response. In addition to requiring the Secretary of the Interior to invite and consider suggestions from NOAA, the bill should require the Secretary to invite and consider suggestions from other natural resource and environmental agencies, including USFWS and EPA.

Section 210

Section 210 should further amend OCSLA Section 20 to require at least three years of baseline environmental data must be gathered before energy or mineral exploration or development activities are permitted. Baseline data should include (1) weather, water, wind, ocean chemistry, and other environmental data; (2) wildlife assessments, including but not limited to fish, birds, invertebrates, and marine mammals; and (3) data on the benthic environment.

Section 211

Section 211 strengthens the "best available and safest technologies" standard in OCSLA, but it does not go far enough; there are still exceptions and qualifiers that could reduce significantly the impact of this requirement. The bill should further amend OCSLA Section 21 to remove the exceptions and qualifiers and simply require OCS facilities to use the best available and safest technologies. Section 211 also requires the Secretary of the Interior to identify and publish a list of the best available technologies. The bill should require the Secretary to enter into an agreement with the National Academy of Engineering for periodic written review of the list, to make the written review public, and to report to Congress any disagreement with any findings or recommendations made in the review.

C. Title VI: OCS Coordination and Planning

As noted above, we support many of the concepts in Title VI related to regional coordination and planning. Our oceans urgently need a more integrated system with ecosystem based

management at its core, as called for by both the Pew Ocean Commission and the US Commission on Ocean Policy, and as advanced by the recent work of the President's Interagency Ocean Policy Task Force. As currently drafted, Title VI would make important advances in coordination and planning, but would also risk creating another single-sector approach to ocean management. We suggest broadening the objectives of Section 602 and 603 to address multiple objectives, of which energy planning would be one. Moreover, in order to provide for the "long-term economic and environmental benefit of the United States," the protection, maintenance, and restoration of marine ecosystem health, must be prioritized within the overall purpose statement.

Regional Assessments required by Section 603 will be critical in providing the science and data necessary for any multi-objective regional planning. As such, the bill should be amended to include additional requirements for robust environmental baseline data, as well as assessments of existing and emerging threats to marine ecosystem health, impacts of drilling, and effectiveness of clean-up technologies. It should also require identification and prioritization of additional science needs. Given the ocean science expertise within NOAA, these assessments should be conducted jointly by the Secretary of the Interior and the Secretary of Commerce.

In addition, we support finalization of the President's Interagency Ocean Policy Task Force work to establish a National Ocean Policy and Framework for Coastal and Marine Spatial Planning. The draft policy and framework have benefitted from significant agency, stakeholder, and public input. We suggest modifying Title VI to align with the proposed structures to avoid potentially overlapping and duplicative planning processes. Our suggestions include modification of the geographic scope for assessments, plans, and regional bodies, and establishment of regional bodies by the President in consultation with the National Ocean Council, established in Section 708.

Section 605 creates the ORCA fund to be administered by the Secretary of Commerce for the conservation, protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems. Thirty-five percent of the funding would be made available through a competitive grants program. To enhance federal agency communication and coordination we suggest that the National Ocean Council, established in section 708, approve the final selection of the Ocean, Coastal, and Great Lakes competitive grant proposals, based on the recommendations of the Secretary of Commerce. With this approval process, review by a statutorily mandated Review Panel, as provided for in Section 605(c)(2), is unnecessary. Instead, Congress should direct the Secretary of Commerce to establish procedures and criteria for evaluating grant proposals that include appropriate broad, interdisciplinary review.

Under Section 605, Regional Ocean Partnerships would be eligible for ten percent of the ORCA funding. We suggest modifications to the definition of Regional Ocean Partnership in Section 3 in order to ensure that the regional bodies established pursuant to Section 602 are also eligible for this funding.

D. Title VII: Miscellaneous Provisions

Section 702 requires the Secretary of the Interior to issue regulations establishing a "production incentive fee" on oil or gas wells producing in commercial quantities. The fee is set at $2 per

barrel of oil and 20 cents per million BTU of natural gas. The draft bill should clarify whether the monies collected pursuant to this section will be deposited into the General Treasury or used for some specific purpose.

Section 710 provides that funds made available pursuant to the CLEAR Act cannot be used to fund or carry out activities for which a responsible party (as defined by the Oil Pollution Act (OPA)) is liable. This section should be modified to allow CLEAR Act funds to be used, but to require that responsible parties remain liable and must reimburse any expenditures.

E. Title VIII: Gulf of Mexico Restoration

Sections 801 and 802 establish a Gulf of Mexico Restoration Program and a Gulf of Mexico Long-Term Environmental Monitoring and Research Program. The activities to be undertaken pursuant to these programs appear to overlap significantly with processes that OPA requires federal and state natural resources trustees to undertake. For example, Section 801(c), which calls for a restoration plan, appears to overlap significantly with OPA's requirement that trustees develop and implement "a plan for the restoration . . . of the natural resources under their trusteeship." 33 USC. § 2706(b).

The Committee should clarify the relationship between the requirements of Title VIII and the requirements of OPA, including OPA regulations and NOAA Natural Resource Damages Assessment (NRDA) guidance. If the Restoration Plan and/or Monitoring and Research Program requirements set forth in Sections 801 and 802 are intended to establish or replace requirements for a NRDA process, the draft should make that clear, and should provide more detailed legislative language. Sections 801 and 802 should also provide for more opportunities for public participation in the Restoration and Monitoring programs.

Section 801(d)(2)'s definition of restoration programs and projects should be changed to add the word "enhancement" after the word "replacement." In Section 802(b), the bill should be amended to require that the research and monitoring program address not only physical, chemical, and biological characteristics, but also "ecological" characteristics.

IV. CONCLUSION

The CLEAR Act makes significant strides in addressing a host of shortcomings in the administration of oil and gas activities on the OCS and in other areas of law and policy. Additional targeted improvements would maximize the effectiveness of these reforms. I look forward to working with the Committee as the CLEAR Act moves forward in the legislative process. The need for action is urgent and I commend you again for moving forward with reform legislation. Thank you again for this opportunity to testify.