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Governor Sean Parnell
STATE OF ALASKA

September 30, 2009

The Honorable Nick J. Rahall II
Committee on Natural Resources
United States Congress
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rahall,

Thank you for the opportunity to provide comments as you consider H.R. 3534, "The Consolidated Land, Energy, and Aquatic Resources Act of 2009." Alaska has a long tradition of providing our nation with the domestic energy resources it needs to prosper. Our State permits the responsible development of our oil, gas, and other minerals, with close cooperation between federal and State governments, local communities, and industry.

While I recognize there are a number of areas where changes should be considered, such as royalty accounting and auditing, I am concerned that this legislation simply goes too far and will result in less domestic oil and gas production and fewer energy-related jobs in the U.S.

In the attached document, you will find a list of concerns the State of Alaska has with H.R. 3534, including:

- changes that will cause major inefficiencies within the agencies;
- arbitrary benchmarks that provide an unworkable one-size-fits-all approach to leases and increase unpredictability for potential bidders;
- creating planning councils that make State influence secondary together with strategic plans that are complicated to implement and will serve to supersede both State and local control;
- proposed revenue sharing component that will not treat resource states fairly and would distribute funds unequally; and
- "production incentives" which will only serve to discourage future investment in our domestic resources.

Chairman Rahall
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The State of Alaska's comments for the official committee record are attached. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Sean Parnell". The signature is written in dark ink and is positioned above the printed name and title.

Sean Parnell
Governor

cc: The Honorable Don Young, United States Congress
The Honorable Doc Hastings, United States Congress



State of Alaska Comments on H.R. 3534

Creating a new bureau (Section 101)

Combining programs from the Minerals Management Service (MMS) and the Bureau of Land Management (BLM) to create the Office of Federal Energy and Mineral Leasing (OFEML) will cause inefficiencies as it is merely growing more bureaucracy. In spite of some perceptions, MMS and BLM implement a leasing program with some success. Importantly, this bill will cripple any near term progress in mineral leasing in Alaska by creating bureaucratic paralysis while the agencies reorganize. The National Petroleum Reserve-Alaska (NPR-A) would be particularly vulnerable to such delay.

Eliminating the Royalty in Kind (RIK) program (Section 217)

It is not necessary to eliminate RIK when better training and oversight of the people responsible for the federal RIK program would solve the problem. There are instances where taking oil and gas in-kind makes economic or other sense, as Alaska's own experience demonstrates. The federal government should follow a policy that allows for an RIK program when the outcome yields a direct benefit to the nation, something like the rules that apply to Alaska where an RIK sale must meet the "best interest" standard. A better approach would be to fix any outstanding problems with the royalty-in-value programs, rather than eliminate the RIK option.

Diligent Development (Section 301)

The requirement that OFEML establish benchmarks for "diligent development" suggests that every exploration and development program is the same. It is also punitive when imposed after the fact. A better approach would be to recommend that the lease, when offered in a lease sale, specify work commitments. This is allowed under existing law and would provide potential bidders with more predictable potential costs in their evaluation of their bids.

Best Management Practices (Section 306)

While laudable in its intent, this provision has the potential to add a layers of bureaucracy with no certainty that it will lead to positive environmental impacts. Often, environmental regulation is most effective when outcomes, expectations, and standards are clear but the actual management practices used to achieve standards are left to developers. Moreover, it is not clear that there is a need to alter the current approach.

Outer Continental Shelf (OCS) Regional Planning Councils (Section 602)

The proposal to establish Regional Planning Councils should be abandoned. These Councils diminish the legitimate decision-making authority of federal officials; diminish public accountability for agency action (or inaction); and, add another unnecessary layer to an already cumbersome regulatory process.

If this proposal is not abandoned, the states should have a greater role. Marine ecosystems extend into State jurisdiction and States will absorb impacts of offshore development. As such, a meaningful role for the states on OCS Regional Planning Councils is necessary and appropriate.

As best we can tell under the current proposal, the Council structure is heavily weighted towards federal agencies and other non-state entities. Governors can nominate only a single member to represent a State. A greater role for the states could include a more equitable distribution of seats and federal and state co-chairs.

Finally, the federal director's wide ranging discretion raises concern. The federal director has a great deal of latitude to add members to represent other interests such as tourism, environmental nongovernmental organizations, and many others. So much of the makeup of the councils is left to the directors' discretion that it is difficult to provide meaningful comment about what the impact on the states might be.

Regional OCS Strategic Plans (Section 603)

Alaska's immediate concerns focus on ambiguities in approach, process, and participation. The process that would produce a marine spatial strategic plan remains unclear. However, after reviewing marine spatial planning efforts undertaken in other areas, it is clear that the efforts result in substantial long-term consequences in the marine environment that is critical to the communities dependent on marine-based activities and resources.

Marine ecosystems are not limited to the spatial extent of federal jurisdiction. Hence, the development of marine spatial planning should assure active participation of coastal states as sovereigns with authorities in marine waters and relevant uplands, as well as resources and competencies of value to the planning process. Furthermore, the process should include active outreach to the wide range of constituencies and authorities with interests or responsibilities in the marine environment and resources.

Marine spatial planning as undertaken in other countries raises important questions and considerations for such a process in the United States. It is interesting to note that marine spatial planning pursued in other countries or by individual states in our own country has been a process requiring years of intensive effort. Belgium is developing an integrated national plan for its jurisdiction in the North Sea which entails 44 kilometers of coastline and 3,600 square kilometers of marine waters. Between 2002 and 2006, Norway completed a plan for part of its exclusive economic zone (EEZ) that addresses an area of 1.4 million square kilometers in the Barents Sea and anticipates two more plans for areas of similar size.

The United States has jurisdiction over 11 million square kilometers in its EEZ in addition to the Great Lakes, with the marine area extending from the Arctic to the temperate zones along the shores of three oceans. The extent of U.S. marine holdings and complexities of jurisdiction would require that action at the national level focus on stating broad goals and objectives and that more localized processes be employed to develop strategies and programs to fulfill the national goals. We support a deliberate and inclusive process as a necessary precursor to an effective plan and, therefore, encourage a conceptual level of discourse to be followed by expansive outreach and consultation with States. Marine spatial planning should have a local and regional focus relying on the resources and expertise of state and regional authorities.

The State of Alaska and the North Pacific Fishery Management Council have designated 673,000 square miles in the waters off Alaska as closed to fishing with some or all gear types. Boundaries and management measures for these areas should remain under local control. Regional councils and coastal states have the local knowledge and regulatory processes necessary to expand, modify, or contract these areas in response to new scientific research or changing conditions. We do not support inclusion of existing protected areas into a national framework that could make it difficult to modify boundaries or management measures in the future. Marine sanctuaries and marine protected areas should be established through existing regulatory processes at the local or regional level.

Establishment of the Ocean Resources Conservation and Assistance (ORCA) Fund (Section 605)

Ideally, the establishment of the ORCA Fund would represent some level of OCS revenue sharing for which Alaska and other States have been advocating. Unfortunately, the proposal put forth by H.R. 3534 is problematic for numerous reasons, including the following:

- All coastal states and regional ocean partnerships, regardless of proximal OCS activity or political stance on OCS development, are eligible for the funds. A state like Alaska, that assumes the responsibilities for planning and infrastructure development associated with OCS oil and gas development, ought to reap the rewards.
- The promise of a “grant” program for distributing money concerns us. Where federal agencies distribute money outside a formula, there is no guarantee that OCS revenues generated off Alaska’s shores will be shared with Alaska. Eligibility for funding could be based on criteria entirely unacceptable for Alaska.
- The ORCA Fund provides grants for “activities that contribute to the protection, maintenance, and restoration of ocean, coastal and Great Lakes ecosystems.” It is not clear that research and other activities that further facilitate oil and gas exploration on the OCS would be considered as appropriate under this Fund. It has been a significant challenge to get them approved under the existing Coastal Impact Assistance Program (CIAP), with MMS as the lead granting agency. As with the CIAP, the ORCA Funds are meant to mitigate or prevent impacts. However, there are many projects that the State could undertake or fund that would develop the baseline data and information that may further facilitate oil and gas development, but

in a more appropriate and educated manner. More information and data should lead to better permitting decisions.

Production Incentives (Section 702)

Charging more rent as a “production incentive” for leases not currently producing is an outright penalty to the industry and imposes costs at exactly the wrong time. This is a solution looking for a problem in Alaska. The explorers in the NPR-A are struggling to consolidate their land position after drilling many exploration wells at a cost of millions of dollars in the NPR-A over the last several years. Explorers are already facing the potential of losing acreage because leases will soon expire before the lessees have time to complete their exploration. Adding a higher rent is unfair and could eventually make federal lands in Alaska off-limits to any future development. This increase does not recognize the realities of how oil exploration and development occur in Alaska and elsewhere.