United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240
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TAKE PRIDE IN AMERICA

The Honorable Nick J. Rahall II
Chairman,
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Department of the Interior to questions submitted following Secretary Salazar's appearance before the Committee at the September 16, 2009, hearing on **H.R. 3534, Consolidated Land, Energy, and Aquatic Resources Act of 2009.**

Thank you for the opportunity to provide this material for the record.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Doc Hastings
Ranking Minority Member

Questions for Secretary Salazar
From the Majority

1. Secretary Salazar, I applaud your decision to administratively end the Royalty-in-Kind program. Please provide a detailed timeline on your plan to terminate the program, including the end dates for all existing RIK contracts.

   Response: I have tasked Assistant Secretary for Lands and Minerals Management, Wilma Lewis to oversee the orderly shut-down of the RIK Program. A majority of gas sales contracts expired on October 31, 2009 and a majority of oil sales contracts expired on December 31, 2009. The remaining gas sales contracts expire by March 31, 2010 and the remaining oil sales contracts expire by September 30, 2010. Once all sales contracts expire, the Minerals Management Service estimates that it will take at least an additional year to address imbalances and properly close out the accounting and records associated with the RIK Program.

2. Secretary Salazar, given that a future administration could reinstate the RIK program, would you, or your Solicitor, please suggest legislative language that would ensure this ill-advised program could not again be taken from a pilot project to full implementation within a few short years without any of the appropriate safeguards and benchmarks in place?

   Response: Both the Outer Continental Shelf Lands Act of 1953, as amended, and the Mineral Leasing Act of 1920, as amended, provide the Department with the discretion to take royalties in kind. Additionally, the terms of almost all Federal oil and gas leases provide for royalties to be paid in value or in kind at the discretion of the Federal government. I look forward to continuing to work with the Committee to address these issues.

3. Secretary Salazar, in your testimony you indicate that you are developing options to improve the coordination between MMS and BLM, and that you will also be transitioning to a "more transparent and accountable royalty collection program." Please provide additional details on what those options are, and how you intend to accomplish that transition. What will the structure of a more transparent and accountable royalty collection program be? How will it differ from the current system? Will there be changes in staffing needs as a result of these changes? What is the timeline for you to be able to evaluate the options for improving coordination, and what is the timeline for a transition to a more transparent and accountable royalty collection program?

   Response: The working relationship between MMS and BLM is longstanding because of the interdependent nature of their missions. I have directed these offices, under the guidance of the Assistant Secretary for Land and Minerals Management to put new emphasis on resolution of common issues and addressing common challenges. Their success in this task, despite their very different roles, is important to America's energy security. The elimination of the MMS and restructuring of its

functions that I announced will provide additional opportunities to improve the royalty collection programs for both offshore and onshore revenue management as we stand up the new Office of Natural Resources Revenue.

4. Secretary Salazar, in Appendix IV of the recent Government Accountability Office report on the misuse of Section 390 Categorical Exclusions, Assistant Secretary for Land and Minerals Management Wilma Lewis writes, "The Department of the Interior and the BLM will take immediate steps to ensure that the use of the section 390 categorical exclusions is consistent with the law and BLM policy." Please describe what steps the Department and BLM are taking. Also, is the Department or BLM going to revisit the decision that there is no need to look at extraordinary circumstances when approving a section 390 categorical exclusion?

Response: The BLM will fully implement all of the recommendations from the GAO report, which made the following recommendations for Executive Action:

- **Issuing updated guidance to address gaps in present BLM guidance;**
- **Developing standardized templates for each of the five categorical exclusions (CXs); and**
- **Implementing a plan for overseeing the use of the CXs.**

5. Secretary Salazar, some have argued that the changes the CLEAR Act makes to the onshore drilling program – such as moving to sealed bids or allowing the government to review bids to ensure fair market value prior to issuing leases – are either unprecedented or unworkable. A position paper produced under the Independent Petroleum Association of Mountain States letterhead even states that "no other bidding system, from eBay to a livestock or art auction, allows a seller to withdraw goods from a sale after someone has fairly won the bidding process." However, my understanding is that the offshore leasing program operates very similar to the onshore system established in the CLEAR Act – with sealed bids and post-bid adequacy review prior to issuing leases. Is that the case? Also, one indication that the Department sometimes does not receive adequate bids for leases would be if a lease was not issued due to bids being below a minimum threshold, and then that same lease being reoffered later and obtaining higher bids. Does that ever happen? If so, could you provide some figures on how much additional money the American taxpayers receive as a result?

Response: The offshore leasing program operates with sealed bids and post-sale evaluations of the adequacy of bids. This process has resulted in the rejection of the high bid submitted on a small percentage of tracts receiving bids. For example, the average rejection rate over the past 25 years for tracts receiving bids in Gulf of Mexico lease sales has been about 3 percent.

Since 1983, MMS has rejected 657 tracts offered in central and western Gulf of Mexico sales. The total dollar figure for the high bids submitted and rejected on these tracts was about $631 million. All of these tracts were subsequently reoffered for sale, usually within one year. Eighty-eight of the reoffered tracts, with original

high bids of $52 million, were never sold. The remaining 569 tracts received one or more bids upon being reoffered and their high bids were found to be acceptable by MMS. Of the 569 re-offered tracts that were sold, 465 received a high bid greater than the originally rejected high bid. The sum of the high bids on the 569 tracts sold amounted to about $1,522 million, reflecting an increase of 141% over the original rejected high bid amounts.

Currently onshore the BLM is required by the Mineral Leasing Act (MLA) to offer onshore oil and gas lease sale parcels in a competitive oral auction. The MLA set the minimum acceptable bid at $2.00 an acre, with the highest bidder winning the parcel. If no bids are received, that parcel is made available for 2 years without competition at the $2.00 an acre bonus bid rate. If the parcel is not sold at the end of the 2 years, the BLM removes it from active consideration, but would reoffer the parcel if it were re-nominated. The process would then start over. The BLM has no data that shows how much additional money the American taxpayers have received as a result of higher bids on parcels reoffered after the 2-year non competitive period.

6. Secretary Salazar, recently the Export-Import Bank of the United States provided a $2 billion loan to Brazil that has been interpreted by some to indicate that the administration "underwrites offshore drilling" off the coast of Brazil, as an August 18th Wall Street Journal editorial put it. Is this an accurate way to portray that loan? If not, what is the purpose of the loan?

Response: The Department of the Interior had no role in this matter and we are not familiar with the terms of the loan or the extent of offshore development in Brazil. We defer to the Import-Export Bank for more detail on this matter.

7. Secretary Salazar, some have expressed concern about the levels of subsidies that go to supporting renewable energy production in the United States. However, a recent report by the Environmental Law Institute calculates that between 2002 and 2008, while traditional renewables (wind, solar, geothermal, hydro, etc.) received $12.2 billion in subsidies, fossil fuels received over $47 billion in direct tax subsidies, plus billions more in other programs that benefit fossil fuel industries. The President has proposed eliminating a number of tax breaks enjoyed by the oil and gas industry. What is your position on these proposals, and do you believe that removing those tax breaks would, as some opponents have claimed, cripple the domestic oil and gas industry?

Response: The President's proposals will bring the production costs of renewable and non-renewable energy into greater balance, and these changes in tax policies could create incentives for renewable energy development stimulating green-technology job creation, decreasing the nation's reliance on fossil fuels, and mitigating carbon pollution and resulting climate impacts – all critical Administration goals.

Questions Submitted from the Minority

Questions for the Record to Department of the Interior Secretary Salazar

1. The CLEAR Act seeks to encourage diligent development of natural gas and oil resources, yet the DOI IG found in a February 2009 report that DOI suffers from such information systems inconsistencies and data integrity problems that it cannot credibly track what activity is occurring on leases, and does not even have a clear picture of all the leases that are producing and nonproducing. What measures is the Department taking to fix these data problems, and how do those efforts fit into a reorganization of the natural gas and oil leasing functions?

   Response: The Department is taking a number of steps to improve tracking of leases. For example, the BLM and MMS are working together to coordinate the reporting of producing and non-producing lease data, and to adopt standard and consistent terminology. The BLM will discontinue reporting on and using the term "producible leases" and will report leases with actual and allocated production as "producing leases," consistent with MMS usage. In addition, the BLM has improved the reliability of lease status information in its lease data system (LR2000) by correcting erroneous data and establishing new controls to ensure accurate and consistent data input. These changes, which are underway, are expected to complement and benefit any future reorganization of leasing functions.

2. The CLEAR Act would assign DOI the task of determining a 'fair market value' for natural gas and oil leases separate from actual "market value". The government setting a 'market value' is an inherently contradictory concept, as a market value is set by a free functioning market, and indicates a command and control approach to leasing. Does the Department believe that government setting a value on leases rather than the market would result in higher or lower prices, and why? What changes would be necessary for the Department to be able to determine lease prices?

   Response:

   The CLEAR Act would direct that leasing programs be conducted to assure the receipt of fair market value for the lands and resources leased and the rights conveyed by the Federal Government. This is consistent with the general principles on which the Department manages its mineral leasing programs. While the oil and gas market is generally considered a competitive market, it is not perfectly competitive in an economic sense. Oil and gas price fluctuations occur for a variety of reasons and can contribute to significant fluctuations over short periods of time in the perceived value of a given lease resource. In addition, information asymmetries among producers regarding resources in a given area can lead to low competition for some leases.

   Under the Outer Continental Shelf Lands Act, MMS already completes post-sale evaluations of the adequacy of bids in order to determine whether a bid reflects fair

market value. This process has resulted in the rejection of the high bid submitted on a small percentage of tracts receiving bids. Since 1983, MMS has rejected 657 tracts offered in central and western Gulf of Mexico sales. The total dollar figure for the high bids submitted and rejected on these tracts was about $631 million. All of these tracts were subsequently reoffered for sale, usually within one year. Eighty-eight of the reoffered tracts, with original high bids of $52 million, were never sold. The remaining 569 tracts received one or more bids upon being reoffered and their high bids were found to be acceptable by MMS. Of the 569 re-offered tracts that were sold, 465 received a high bid greater than the originally rejected high bid. The sum of the high bids on the 569 tracts sold amounted to about $1,522 million, reflecting an increase of 141% over the original rejected high bid amounts.

For onshore leases, the CLEAR Act would set a minimum national bid of $2.50 per acre with the opportunity for the Secretary to adjust the national minimum through regulation. This requirement is similar to the current practice requiring minimum bids of $2.00 per acre and receipt of fair market value for oil and gas leases.

3. Environmental groups have long pursued a strategy of protesting large numbers of leases, often on the same grounds again and again. Last year, 100% of lease sales and almost every lease parcel were protested. Wouldn't a better strategy for ensuring diligent development be to limit the opportunities for frivolous legal challenges and expedite the process for clearing protests, rather than making it more difficult for oil and gas operators who are stymied by those legal challenges? Does the Department have any plans to address frivolous lease protests? Does the Department have any suggestion for legislative reforms to limit frivolous protests and promote additional energy development?

   Response: Public involvement, including the public's right to protest lease sales, is integral to multiple-use, public land management as directed by BLM's organic act, the Federal Land Policy and Management Act (FLPMA). In accordance with FLPMA, the Department considers competing viewpoints as it works to develop energy resources in a manner that is balanced and scientifically-grounded. This process is consistent with law and allows BLM to make fully informed, sound decisions with integrity that can withstand scrutiny and legal challenge; only a small number of leasing decisions are ultimately challenged in court.

4. The CLEAR Act would make natural gas and oil leasing on public lands more expensive, and create new, redundant layers of bureaucracy. Taken together, provisions in the Act could render leasing on public lands nonviable, thereby putting at risk about 15% of the nation's natural gas supply. Since the expanded use of natural gas is a critical and cost-effective way, to provide backup power for renewable sources and increase energy security, is the Department concerned that the bill will result in less supply of domestic natural gas or increase our dependence on imported LNG?

Response: As noted in Secretary Salazar's statement at the hearing on this bill, the Department agrees with the legislation's primary goals of ensuring a balanced and responsible approach to energy development on our public lands and that dependable oversight and sensible reform of mineral royalty programs is achieved. Although the Department is still reviewing the details of the bill, we do not believe this legislation will render leases on public lands not viable.

5. The CLEAR Act that would enable the Department to reject any winning bid from an oil and gas auction within 90 days. Are you aware of any auction system that allows a seller to withdraw goods from a sale after someone has fairly won in an open bidding process? How would introducing that uncertainty into the leasing process result in higher value to the federal treasury from leasing and more energy for American consumers?

Response:

BLM's current oil and gas leasing process allows for the rejection of winning bids from an oil and gas auction. The Secretary of the Interior has discretionary authority to lease or not lease federal land which is otherwise available for leasing whether before or after auction. The Secretary (through the BLM) may reject a bid and decline the offer to lease for any reason prior to lease execution; therefore, the proposed provision will not introduce additional uncertainty into the leasing process.

The federal offshore leasing process also allows for the rejection of high/winning bids after the sale should the MMS determine the bids are not adequate to ensure a fair return for the public resources.

The MMS post-sale evaluation process that examines the adequacy of high bids has resulted in the rejection of less than 3% of high bids, with a cumulative increase to revenues in the hundreds of millions of dollars when those tracts were offered for lease in subsequent sales.

In fact, the withdrawal of goods from a sale after someone has placed the high bid is common in a large variety of forums, including some popular on-line auction sites. Sellers establish a "reserve price" which is an undisclosed price, below which the bid, even if the highest, will be rejected.

6. The CLEAR Act defines 'ecosystem-based management' and implies a shift away from multiple use and sustained yield of natural resources. This would be a move away from the productive use of public lands in an environmentally responsible manner, to an environmental ethic that trumps the need for energy and other economic uses of pubic lands. Currently the BLM has 27 million acres in the National Conservation Landscape System, which is in addition to over 109 million acres of wilderness and 79 million acres of National Parks – all of which are managed primarily for conservation. In light of these numbers, does the Department think that all 256 million acres of BLM administered lands should have conservation as the primary use, rather than productive uses that are

fundamental to the American economy and mineral uses which are identified in the President's budget as the highest value uses of federal lands? If not all BLM lands should be used for conservation, should we pass an Act that clearly makes it more difficult to use appropriate non-park, non-wilderness lands for productive uses?

Response: The Department continues to support the BLM mission to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. Part of this mission is to continue to support the productive uses of public lands. In fiscal year 2008 approximately 6% of domestically produced oil and 15% of domestically produced natural gas was produced from onshore public lands.

The BLM continues to manage public lands on the basis of multiple use and sustained yield in accordance with the FLPMA. However, under FLPMA, the public lands must also "...be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate will preserve and protect certain lands in their natural condition..." The BLM continually strives to balance these important resource values and uses.

7. Does the Department have any concern that creating a new bureaucratic organization, the Office of Federal Energy and Minerals Leasing with elements from MMS and BLM, will slow the development of both renewable and conventional energy, as this bill seeks to create a new entity responsible for leasing without any responsibility for land stewardship?

Response: As noted in Secretary Salazar's statement at the hearing on this bill, while the bill has not been fully analyzed, the Department agrees with the legislation's primary goals of ensuring a balanced and responsible approach to energy development on our public lands and that dependable oversight and sensible reform of mineral royalty programs is achieved. The Secretary's recent announcement that the MMS will be eliminated and its functions reassigned to the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue, underscores those goals.

8. Does the Department have any estimate of what will be the cost to the taxpayer for the reorganization under the CLEAR Act?

Response: No, the Department has not estimated the potential reorganization costs of the legislation.

9. The Chairman's bill includes a variation of Marine Spatial Planning, an effort to establish Regional Planning Councils to map the ocean and decide where certain commercial activities should and should not be permitted to take place. The management of oil and gas resources in the OCS has historically been the responsibility of the Department of the Interior. In this bill that responsibility is transferred to the Department of Commerce through NOAA. Considering that the Department recently gave management of renewable energy projects on the OCS to FERC (contrary to provisions in the Energy Policy Act of 2005), is there any concern that this legislation transfers more of Interior's jurisdiction to another Department that has no mineral resource management responsibilities or experience?

Response: To clarify, the April agreement between the Department and FERC clarified the respective agencies' jurisdictional responsibilities for leasing and licensing of hydrokinetic renewable energy projects on the U.S. Outer Continental Shelf; it did not transfer Departmental jurisdiction for these projects to FERC.

Similarly, H.R. 3534 does not transfer from DOI to NOAA the responsibility for managing oil and gas leasing and development on the OCS. DOI would retain a management role under H.R. 3534, although the bill does establish an additional planning process through its directive to establish regional OCS strategic plans and the requirement that oil and gas activities be consistent with regional plans that have been adopted.

As mentioned previously, the bill has not yet been fully analyzed within the Administration. Nevertheless, the Department does note many questions remain regarding how the regional councils established by the bill would function in practice, the potential for jurisdictional conflicts as a result, and whether the energy-specific nature of the MSP process established by the bill reflects the best approach to comprehensive coastal and marine spatial planning. The Department notes that the President has called for the development of a recommended framework for effective coastal and marine spatial planning. We share and fully support the President's goal of working toward establishing a framework that is a comprehensive, integrated, and ecosystem-based to address conservation, economic activity, user conflicts, and sustainable use of ocean, coastal, and Great Lakes resources consistent with international law.

10. In April, President Obama said that "if there is oil and gas in the United States, we should use it." Period. Will the Department develop an OCS plan to fully embrace his statement - taking advantage of all of America's rich oil and gas resources? If not, why?

Response: The sinking of the Deepwater Horizon in the Gulf of Mexico on April 20th, 2010, and the ongoing BP oil spill that ensued put into stark relief how important it is to carefully consider oil and gas development on the OCS, and to be

sure the appropriate safeguards are in place before proceeding with new deepwater offshore leasing.

11. Will the Department follow the "use it or lose it" principle with respect to windmills? In other words, if a company trying to lease federal land for a wind farm were held up by protests, appeals, or environmental lawsuits, would the Department seek authority to penalize it for failing to build a wind farm on a timely basis? If a wind farm didn't yield the amount of energy the owner said it had the capacity to produce, would the Department want authority to charge extra fees or cancel the lease for it?

Response: The intent of this principle is to ensure that lessees are complying with the due diligence terms and conditions of the authorization; it is not to penalize project applicants for failing to build a wind farm on a timely basis due to the project being held up by protests, appeals, or environmental lawsuits. For example, if construction of a wind energy facility under a wind energy development authorization has not commenced within 2 years after the effective date of the grant, or is not consistent with the timeframe of the approval, the holder must provide good cause as to the nature of any delay, the anticipated date of construction, and evidence of progress toward commencement of construction. Currently, the Department establishes the rent for a wind farm using public lands based upon the anticipated total installed capacity as identified in the project's authorization. Therefore, the rent for the wind farm would remain unchanged even if the wind farm does not yield the amount of energy authorized.

12. The Department's website says that the $3 billion in stimulus funds could create as many as 100,000 jobs. How is the Department tracking or defining job creation? And how many new private sector jobs do you think have been created by the Department as of today?

Response: The Department estimates that it has created 7,724 job years or full-time equivalents based on the funding obligated as of September 25, 2009. This estimate is based on the Council of Economic Advisors (CEA) guidance on estimates of job creation. In this guidance, CEA estimates that $92,136 of direct government spending creates one job year. It is important to note that this is a conservative estimate and actual job creation may be higher. Also, many of the Department's projects are seasonal in nature and will result in higher job creation or retention for shorter periods of time than a full year.

13. In February, you said that the Department has an abundance of shovel-ready projects. However, as of September 4th – almost precisely seven months after the stimulus was signed into law – your Department has only spent $55 million of the total $519 million available dollars. How does this square with your promise of shovel ready funds? Why is it taking so long for the Department to spend this money? When does the Department expect all of the funds to have been spent?

Response: The Department complied with the Recovery Act for submission of a plan to Congress as of May 1, 2009, and submitted a multi-year plan for obligation and expenditure of Recovery Act funds based on a rigorous, merit-based project selection process. The Department has moved expeditiously to obligate and expend funds since that time while complying with the Act's rigorous transparency and accountability requirements. The expenditure of funds lags the obligation and signals the completion of Recovery Act projects and, thus, is not a true reflection of when jobs are first created. In Interior's case, as with most construction-based programs, jobs are created beginning with the obligation of funds and are not tied to the actual outlay of dollars. Just as no homeowner would pay someone in advance to do repairs on his or her house, the Department pays upon the demonstration of progress or completion in the majority of our projects.

14. The Obama Administration recently agreed to provide loans to increase offshore oil and gas drilling in the Atlantic Ocean off the coast of Brazil. Will the Department be willing to open enough acreage to at least keep pace with Brazilian development in the Atlantic or should American consumers prepare to purchase more oil from Brazil now?

Response: The Department of the Interior is not familiar with these loans and defers to the Import Export Bank for information on this matter. The sinking of the Deepwater Horizon in the Gulf of Mexico on April 20th, 2010, and the ongoing BP oil spill that ensued put into stark relief how important it is to carefully consider oil and gas development on the OCS, and to be sure the appropriate safeguards are in place before proceeding with new deepwater offshore leasing.

15. Mr. Secretary, the Fish Passage Improvement Project at the Red Bluff Diversion Dam in northern California was the Bureau of Reclamation's single largest allocation of so-called stimulus funding for a project. From records obtained by the subcommittee, the potential economic job creation of the project is over 3,500 jobs. The Committee has also been told construction was to begin in September of this year, yet we are nearing the end of the construction season and the project is still mired in paperwork. How many jobs this project has created to date and will construction begin in September? If construction has not occurred, can the Department please identify when it will occur?

Response: As of September 30, $6.588 million has been obligated and $6.314 million outlayed for the Red Bluff project. The site testing and design data collection, permitting, temporary pumping plant installation and design phases of the Fish Passage Improvement Project are virtually complete. Construction of the permanent facility has not yet begun, due in part to the additional time necessary to incorporate a significant design change that will reduce the total project cost by over $30 million. A contract for construction of the bridge and inverted siphon, along with landfill excavation, will be awarded in December, with field work beginning in February, 2010. Contracts for construction of the remaining project components will be advertised beginning early in calendar year 2010.

16. How many jobs has the Bureau of Reclamation's stimulus funding created?

Response: The Department estimates that the Bureau of Reclamation is creating 2,658 job years or full-time equivalents based on the funding obligated as of September 25, 2009. As previously noted, this estimate is based upon the Council of Economic Advisors (CEA) guidance on estimates of job creation.

17. How were the stimulus projects determined? Will the Department please provide a complete list of all the proposed projects? Did OMB play a role in picking the projects? And did any outside groups participate in the project selection process?

Response: The Department submitted Recovery Act plans for each bureau. Plans were complete by the beginning of May and included detailed project selection processes and projects. Each bureau followed defined selection criteria for categories of projects (e.g. deferred maintenance, habitat restoration, trails maintenance, etc.). The bureaus documented their selection criteria and approach for managing their Recovery Act programs in their program plans which were reviewed in conjunction with the project lists. The program plans are available on the Department of the Interior's American Recovery and Reinvestment Act of 2009 webpage, at the following url: http://recovery.doi.gov/press/plans-and-reports/

The focus of the Department's review was ensuring each bureau had merit-based selection criteria for each category of project and had a sound risk management approach for the Recovery Act program. The Department, including Interior's Recovery Coordinator, the Office of Budget, the Office of Acquisition and Property Management, and the Office of Planning and Performance Management used an iterative process to review the program plans and project lists. The bureau plans were then reviewed by the Office of Management and Budget (OMB). During March and April, detailed reviews of the program plans were conducted by OMB.

OMB focused on ensuring that bureaus used merit-based processes to prioritize and select projects for Recovery Act funding and that projects would meet the Act requirements for job creation and timely obligation. OMB approval was not required for each individual project. However, OMB did review the project lists for the distribution of funding among categories, e.g. how much to spend on deferred maintenance versus new construction versus habitat restoration. In reviewing the distribution of funding across categories, OMB considered the impact of Recovery Act funds on reducing existing deferred maintenance backlogs as well as the future operational costs of construction.

No outside groups participated in the project selection process.

18. Have all of the MMS RIK employees in the Denver office who violated ethics rules or violated the law been terminated from federal service, and if not, why not?

Response: All personnel actions, which are confidential matters, were made following the guidelines and regulations that pertain to government personnel.

19. Mr. Secretary your testimony mentions the tremendous offshore wind "potential" without mentioning the costs of converting that potential into electricity. According to the Energy Information Administration (EIA), offshore wind is much more expensive than onshore wind. Moreover, the MMS cited in its report that the National Renewable Energy Laboratory (NREL) considers any offshore wind in waters deeper than 100 feet to be "unfeasible." Is it the Department's position that the US should replace American coal-based electricity with much more expensive wind power generated from the shallow waters closest to our beaches?

Response: As noted in the Department's 45-day report (*Survey of Available Data on OCS Resources and Identification of Data Gaps*), we recognize that many sources, including oil & gas, coal, hydro, solar and wind power will be required to satisfy our nation's need for energy. Wind energy may supplement existing sources of electricity or avoid the need for new power plants in the long term Today private-sector developers are coming forward with more proposals for development in areas with water depth greater than 100 feet. The Department will evaluate renewable energy proposals as they are submitted, considering effects on the environment and coastal areas, and will depend upon the market to determine the economic viability of offshore proposals.

20. Since the coal and the generating equipment being replaced are of US origin, would it make sense to the Department that the committee includes a provision consistent with the Jones Act that the windmills be manufactured, in the US, only, to protect American jobs?

Response: The approval, construction, and outfitting of coal-fired power plants lies outside the Department's area of expertise, as does the origin of equipment contained in such plants. While Secretary Salazar has stated his belief in the importance of producing the raw materials for clean energy technologies here in the United States when possible and economically feasible, the Department defers to the Office of the United States Trade Representative for a detailed response on this matter.

21. Does the Department believe that the Jones Act applies to wind projects in the OCS?

Response: Administration of the Jones Act falls under the jurisdiction of U.S. Customs and Border Protection (CBP) in the Department of Homeland Security. We defer to CBP with regard to any questions on the applicability and implementation of the Jones Act.

22. Our nation faces huge deficits under the Obama Administration's budget the nation's deficits will double over the next ten years. And this year we face a deficit of nearly $2 trillion. One bright spot in the past has been the Department, which last year provided $23 billion for the treasury from bonus bids, rents, and royalties from the sale of oil and gas leases on federal lands and waters. Since we're just two weeks away from the end of

this fiscal year, do you have a ballpark estimate of how much the Department will collect in bonus bids this year? How much in rents? How much in royalties?

Response:

In the last five years, the Department has disbursed an average of more than $13 billion annually. It is important to note that the Fiscal Year 2008 disbursement of over $23 billion was an anomaly due in part to the high price of oil and gas and the record bonus bids received for Outer Continental Shelf leases. In Fiscal Year 2009, MMS collected approximately $8.4 billion in federal revenues from federal oil and gas leasing. Oil and gas rents totaled approximately $300 million; oil and gas bonus bids totaled approximately $1.5 billion; and oil and gas royalties totaled approximately $6.6 billion.

23. Under the bill for offshore wind power, the majority proposes charging bonus bids, rents, fees, and royalties to ensure a "fair return to the United States." Since wind power today relies on tremendous subsidies from the federal government. How much more should we be prepared to increase those subsidies so American taxpayers can be sure they are receiving a "fair return" in the form of royalties from OCS wind projects?

Response: It is important to understand the role of federal subsidies in promoting new energy technologies. While such subsidies are typically legislated by Congress, as part of developing the regulatory framework for renewable energy, MMS analyzed the sensitivity of OCS renewable energy project economics to federal fiscal payment requirements, given federal and state tax and subsidy laws relating to renewable energy projects in effect as of April 2008. Based on that review, nothing in H.R. 3534 would require a change to our existing regulations concerning payments for offshore renewable energy.

24. Over the next decade, how much does the Department anticipate it will generate in revenues for the treasury through wind and solar permitting or leasing? How much of that money will come from the Federal Treasury subsidies of the wind and solar industries?

Response: The Department estimates that over $500 million will be generated through the development of wind and solar over the next 10 years. The Department is not aware that similar estimates for subsidies exist for this particular timeframe.

25. Mr. Secretary, following your testimony you said that there was no legal requirement to have a new OCS Leasing plan in place prior to 2012. Yet in your written testimony before this committee you stated that you are now planning to move forward, quoting, "in a timely fashion, a truly comprehensive energy program for the OCS to succeed the

existing 2007-2012 Program." Will the Department have a new plan in place to overlap with the current plan or only to "succeed" the current plan?

Response: The previous administration released an out-of-cycle Draft Proposed Program (DPP) on January 16, 2009. On February 10, the comment period was extended for an additional 180 days to allow more opportunity for stakeholder and public input. The comment period on the DPP closed September 21, 2009, with over 530,000 comments from all levels of government, energy and non-energy industries, public interest groups, and individual members of the public. After analyzing more than 530,000 comments received as a result of the unprecedented public outreach for the comprehensive Federal offshore oil and gas development plan, we are confident that the Department will focus development in the right way in the right places. My expectation is that the Department will issue an approved Final Program and Final EIS with a schedule of offshore lease sales to allow for activities to be conducted in an environmentally safe and operationally sound manner at a time that overlaps with the current 2007-2012 sale schedule. It is of critical importance that the Final Program and Final EIS incorporate any lessons learned from the investigation of the Deepwater Horizon sinking and the ensuing BP oil spill in the Gulf of Mexico.

26. In your testimony regarding the RIK program you announced; "a phased-in termination of the program and an orderly transition over time to a more transparent and accountable royalty collection program." What could be more transparent than a system in which the government cleanly receives 1 in 6 or 1 in 8 barrels of oil or cubic feet of natural gas directly without an army of accountants and auditors arguing over deductions and costs? The mantra of the RIK program since it was started by the Clinton administration has been that it will only take product in kind if it will make money for the federal government by doing so. Since the RIK program has made the federal government money over the last few years, how much does the Department believe the phased out termination of the program will cost the taxpayers?

Response: The Department's role in revenue collection, currently carried out by the Minerals Management Service and soon to be assumed by the Office of Natural Resources Revenue, has been and will continue to be to ensure that the American public realizes fair market value for the minerals and energy produced on federal lands. The current Royalty-in-Kind program was terminated not only because the Government Accountability Office found that the program may not ensure fair return to the Treasury, but also because it involves the federal government excessively in oil and gas markets. Moreover, while revenue gains attributed to the program are estimates based on a model that incorporates a series of assumptions, numerous reviews and reports by the Inspector General, the Government Accountability Office and the Royalty Policy Committee have suggested that we cannot be certain of these estimates or the validity of returns already reported under the RIK program.

27. How much revenue from lease bids and royalties do individual Indian allottees and tribes earn from oil, gas, and coal leasing on Indian lands, and how does this compare to the amount of estimated leasing and royalty revenue they can expect to earn from wind and solar energy development pursuant to the Obama Administration's energy policy?

Response: Since 1982, the Department has distributed approximately $6.2 billion to 41 Tribes and 30,000 individual Indian mineral owners. In FY 2008 alone, $533.9 million was distributed to 34 Tribes and 30,000 individual Indian mineral owners. The Department has not projected the potential additional revenue from future alternative energy development on tribal lands as development of these resources involves decisions by individual tribes.

28. For many tribes, the ability to conduct tribal leasing to develop energy resources, refineries, and transmission lines for the benefit of jobless members depends on timely action by the Department to acquire lands in trust for these purposes. Why did the Bureau of Indian Affairs refuse to acquire lands in trust for the Three Affiliated Tribes of the Fort Berthold Reservation to operate an oil refinery? Were the standards used by the BIA in its decision the same for evaluating trust land acquisitions for other purposes? Does the Obama Administration's goal of reducing reliance on oil outweigh the jobs and revenues that tribal members would have earned in this case?

Response: The Bureau of Indian Affairs has not finalized a decision on taking the land into trust. However, the BIA and the Environmental Protection Agency have issued a final EIS in which BIA's preferred alternative was to not take the land into trust, but to allow the refinery to go forward. The preferred alternative notes that the land on which the refinery would sit does not need to be in trust for the refinery to be operated. The BIA supports the Tribes' efforts at economic development. A final determination on the land into trust issue will be made under the fee-to-trust regulations in 25 CFR Part 151, as it is for all other trust acquisitions.

29. According to Navajo Nation President Joe Shirley, "The Desert Rock Energy Project, now 23 years in the planning, addresses the most important economic, environmental and energy challenges the Navajo Nation faces." Earlier this year EPA Administrator Lisa Jackson undertook an unprecedented move with an administrative body in her agency, to rescind a permit with which the EPA has not identified any legal flaws. What is the Department doing to assist the Navajo in the successful and timely completion of the Desert Rock project?

Response: The Department, through the Bureau of Indian Affairs, has been coordinating with the Navajo Nation and with the various federal agencies that are involved in the approval process for the Desert Rock Energy Project. The BIA is currently awaiting results from the U.S. Fish and Wildlife Service on the Biological Opinion for the project. The air quality permit is currently under review by EPA. Both of these issues must be resolved before the project can move forward.

30. What is the status of the Department's approach to implementing the Carcieri decision of the Supreme Court?

Response: The BIA continues to review land-into-trust applications on a case-by-case basis. If there is a question regarding whether a Tribe was under federal jurisdiction in 1934, the BIA consults with the Office of the Solicitor before proceeding with the application.

31. Pursuant to what Act of Congress did the Department of the Interior extend recognition to the Wilton Rancheria as a tribe this year?

Response: The Department did not rely on any particular act of Congress in restoring the Wilton Rancheria. Rather, the Department agreed to restore the Tribe because the Department had unlawfully terminated it pursuant to the Rancheria Termination Act. That Act required the Department to undertake various infrastructure upgrades (water, sanitation, roads) prior to terminating the Rancheria. The Department failed to perform the upgrades, and the Tribe sued in federal district court. The Department agreed that the termination was unlawful because it did not comply with the requirements of the termination act, and entered into a court-approved settlement agreement with the Wilton Rancheria that provided for the restoration of the Tribe.

32. Does the Department support enforcement of the Migratory Bird Treaty Act?

Response: Yes, the Department supports enforcement of the Migratory Bird Treaty Act . Such enforcement is vital to our efforts to protect and conserve migratory birds.

33. A recent article in the Wall Street Journal highlighted that Oregon-based electric utility PacifiCorp paid $1.4 million in fines and restitution for killing 232 eagles in Wyoming over the past two years. ExxonMobil just settled a suit for $600,000 regarding bird kills related to contact with crude oil or other pollutants in uncovered tanks or waste-water facilities on its properties. Does the Department believe those penalties are appropriate?

Response: In both instances, the companies involved had repeatedly refused to use proven and readily available measures to reduce the impact of their operations on protected birds. Both were fully aware that birds were being killed at their facilities. Both also knew of their stewardship responsibilities under the MBTA and of their liability with respect to possible Federal prosecution. Given these facts, the Department believes that the penalties assessed in these cases were appropriate.

34. Michael Fry of the American Bird Conservancy estimates that U.S. wind turbines kill between 75,000 and 275,000 birds per year. Yet the Justice Department is does not bring cases against wind companies. Does the Department believe that wind companies should be compliant with the Migratory Bird Treaty Act as to how it relates to bird and bat kills?

a. If the answer is yes, please answer, should wind companies be prosecuted with similar zeal to traditional energy companies?
b. If the answer is no, please explain, why should we treat wind energy differently than other energy sources with respect to the Migratory Bird Treaty Act

Response: The MBTA prohibits the taking or killing migratory birds without authorization. The Department, through the U.S. Fish and Wildlife Service (FWS), is currently engaged with a Federal Advisory Committee to provide recommended guidelines to the Secretary for the siting, construction, and operation of wind energy generation facilities to avoid or minimize impacts to wildlife and their habitats. The Committee's members include industry representatives, technical experts, and private sector conservationists. The final guidelines will be designed to help wind-energy installations avoid potential violations of the MBTA.

Guidance on preventing bird deaths has long been available for traditional energy companies, and legal action is taken when companies fail to use recommended measures for avoiding bird mortality. The FWS's approach with respect to both traditional energy companies and wind power and other new industries is to focus first on outreach and education to inform companies of their responsibilities and promote compliance – specifically, those industry-based actions known to prevent or avoid bird deaths. FWS referrals for prosecution are prioritized based on available resources and on whether or not an industrial operation is complying with industry guidelines or guidance provided to it through consultation with the FWS, or kills birds with disregard for their actions and the law.

Final wind energy guidelines will be intended to allow the development of wind resources without negatively impacting migratory bird populations. We remain committed to fostering relationships with wind developers that ultimately reduce impacts on wildlife and promote compliance with the law, without impeding activities that address the Nation's economic and environmental needs.

The Department believes that this approach to MBTA enforcement appropriately balances the Nation's goals with respect to energy independence with its long-standing commitment to protecting and conserving wildlife resources through both cooperative efforts and, if necessary, enforcement of the laws.

Questions submitted by Rep. Lummis for written response:

35. Mr. Secretary – less than three weeks ago, the BLM announced it was rescinding 23,757 acres of oil and gas leases in the Bridger Teton National Forest in Wyoming. My understanding is that these leases were properly auctioned and that your Department accepted payment. Furthermore, once the BLM accepts a bid at an oil and gas lease sale, the agency has a mandatory statutory obligation under the Mineral Leasing Act to issue

that lease to the qualified winning bidder "within 60 days following payment by successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first year." Finally, I bring to your attention a statement Sen. Barrasso (R-WY) made on the Senate floor in regards to the acreage encompassed by these withdrawls. He specifically stated that: ""*The legislation does not cancel any of these areas which are being contested...Everyone should keep in mind that the acres currently leased or currently leased but under protest represent the area where the most promising reserves exist. This bill does nothing to touch that.*" With all this in mind, what statutory authority does the BLM have to rescind these leases?

Response: The Secretary of the Interior is vested by the Mineral Leasing Act of 1920, as amended, with broad discretionary authority to lease or not lease Federal land which is otherwise available for leasing. The Secretary (through the BLM) may exercise that broad authority to reject a bid and decline the offer to lease for any reason, prior to lease execution. In this case, the Omnibus Public Lands Management act of 2009, P.L. 111-11, withdrew lands in the Wyoming Range from disposition under the Mineral leasing laws.

QUESTIONS FOR SECRETARY OF THE INTERIOR
THE HONORABLE KEN SALAZAR
ENDANGERED SPECIES ACT

36. The Endangered Species Act was last reauthorized by the Congress in 1988. Would you describe the recovery rate of listed species under the Endangered Species Act to be a success or a failure?

Response: Once a species is listed, the Endangered Species Act mandates actions intended to recover the species. Delisting a species is the ultimate measure of success; however, there are multiple opportunities to demonstrate success before that point is reached in a species recovery. For example, the ESA has been successful in preventing the extinction of listed species, promoting recovery planning and implementation, stabilizing species, and improving species status such that they can be reclassified from endangered to threatened.

37. How does the Department explain the fact that only about twenty of the 1,900 U. S. listed species have been declared recovered in the past 36 years?

Response: Recovery of listed species is a challenging task. Some species are listed due to just one of five threat factors – loss or degradation of habitat, overutilization, disease or predation, inadequacies of regulatory mechanisms, or other factors. However, many species face compound threats, such as habitat degradation (through land, water, and other resource development and extraction) and invasive species proliferation, and determining how best to reduce or eliminate those synergistic threats can be a complex problem. Because listing species as endangered

or threatened under the ESA does not immediately halt or alter the threats that may have been impacting the species for decades or longer, species often continue to decline following listing. As knowledge of species and their requirements increases through the development and implementation of recovery plan actions, the status of species will often stabilize and begin to show improvement over time. As of September 30, 2008, 551 species or 43% were considered stable or improving compared to last year. However, there were 389 species whose status was decreasing (30%), 301 species status was unknown (24%), and 19 species were presumed extinct (1%).

38. What is the reason for this low recovery rate? Is there a need to modernize the Endangered Species Act?

Response: Recovery is the shared responsibility of many agencies using many different authorities. With regard to the FWS's role under the Endangered Species Act to plan, coordinate, and incentivize recovery actions, we believe we have adequate authority to act administratively to develop new tools and improve performance.

39. What role do lawsuits play in the management of this program? How many lawsuits is the U. S. Fish and Wildlife Service currently involved in? Please provide the Committee with a list of those lawsuits?

Response: Litigation on listing and critical habitat actions has significantly affected the management of the program. For example, due to the volume of litigation on critical habitat in the late 1990s that required the use of all listing funds to respond to the litigation, Congress approved the implementation of a funding subcap for critical habitat. This subcap provides some discretion to the Service to begin addressing the backlog of petition findings and listing determinations for candidate species. However, the management and priorities of the program are still heavily influenced by litigation. Litigation-driven actions are funded first to respond to court-approved or imposed deadlines, thereby reducing the amount of funding remaining in the program to fund other high priority actions.

Attachment 1 is a list of the 51 active lawsuits involving approximately 270 domestic species under ESA Section 4 that the Service is involved in. These cases are challenges regarding candidate species, listing and delisting decisions, petition findings, and critical habitat designations.

40. In previous Congressional testimony, both former Secretary Bruce Babbitt and former Director of the U. S. Fish and Wildlife Service Jamie Clarke testified that: "There is little value in designating critical habitat." Do you agree with that assessment?

Response: Based upon our experience in recent years, the Service believes that in most cases there is conservation value in designating critical habitat for listed species. The conservation benefit of consultation under section 7(a)(2) of the Act is clear, and critical habitat designations help federal agencies know when consultation is warranted. Some critical habitat designations identify areas that are outside the current range but are essential for the conservation of the species; preventing the destruction or adverse modification of such areas is clearly of conservation value.

41. Mr. Ed Bangs who is the wolf recovery coordinator for the Fish and Wildlife Service was asked to comment on the Department's decision to delist gray wolves in the west. He stated that: Right now the wolf population is highly diverse. We've done as much as we can. The science is absolutely rock-sold". Do you agree with Mr. Bangs statement?

Response: Yes.

42. What is your reaction to the comment of Earthjustice that the Department's wolf decision was: "biologically unsound and legally indefensible?"

Response: As stated above, we agree with Mr. Bangs' statement that the decision to delist gray wolves in the northern Rocky Mountains is based on sound science.

43. Mr. Secretary, who in your department is currently in the surname process for ESA decisions regarding listing, delisting, status review and critical habitat designations? What is their professional background?

Response: Listing, delisting and reclassification determinations and findings on petitions to list, delist or reclassify a species are based on the best scientific and commercial information regarding the species' biological status. The final review and surname for these determinations and findings is done by senior leadership of the FWS, including the affected Regional Director(s), the Assistant Director for Endangered Species, and, ultimately, the Director of the Fish and Wildlife Service. All of these FWS employees have backgrounds in the biological or natural resource sciences. Final review and surname for determinations for critical habitat and special rules under sections 4(d), 4(e) and 10(j) of the ESA, which also include determination of effects based on information other than biological science, is with the Office of the Assistant Secretary for Fish and Wildlife and Parks. The Assistant Secretary and each of his staff are attorneys with many years of experience in natural resource law and policy.

Further, once a determination has gone through final review and surname, it is still required to be cleared by the Department before it can be submitted to the *Federal Register* for publication. This clearance process involves review by the staff in the Executive Secretariat's Office, the Associate Deputy Secretary and the Deputy Chief of Staff to the Secretary. This clearance process focuses on whether documents satisfy the quality and format standards of the Federal Register, whether effective communication plans are in place, and whether decisions, which are based on the best scientific and commercial data available, are also consistent with Administration policy.

44. There seems to be a recent trend where organizations, like WildEarth Guardians, are filing petitions that ask the U. S. Fish and Wildlife Service to simultaneous list hundreds of different species. Is this a helpful development? Do you agree with Fish and Wildlife Service biologists that very few of those in the petition need our help, and it's taking away from the species that do need our help?

Response: We support the public's right to petition the government to review the status of any species that may be in need of protection under the ESA. At the same time, we must manage the petition/listing workload in a manner that continues to support the purposes of the Act.

In most instances, the trend of submitting petitions for hundreds of species is not helpful, especially in those circumstances where information supporting the claims in the petition is not provided. In those cases, FWS biologists must spend their time collecting and reviewing the information identified in the petition prior to processing the petition itself. The additional time that FWS biologists spend on collecting and reviewing this information distracts them from other higher priority conservation-related actions that may help recover listed species, preclude the need to list species, or identify species in need of protection. Alternatively, petitions submitted with the supporting information and a thorough synopsis of that information greatly facilitates the petition review process.

45. Do you agree with the statement that we need to move away from a mentality that the listing of a species is the goal of the Act and instead embrace the idea that we should be placing the emphasis on species recovery?

Response: The purposes of the ESA are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of the Act. The FWS does not consider listing of species to be the goal of the Act, although we recognize our statutory obligation to list a species under the ESA if it is determined that the species meets the definition of an endangered or threatened species. Once the FWS has listed a species, our priority is to identify, coordinate, facilitate, and implement those measures needed to achieve species recovery.