August11, 2008

Mr. Marshall Rose
Department of the Interior
Minerals Management Service
Attention: Regulations and Standards Branch (RSB)
381 Elden Street, MS-4024
Herndon, Virginia 20170-4817

Re: Allocation and Disbursement of Royalties, Rentals, and Bonuses���������Oil and Gas, Offshore, 1010���������AD46

Dear Mr. Rose:

On May 27, 2008, the Mineral Management Service (MMS) published in the Federal Register a proposed rule to amend its existing regulations on distribution and disbursement of royalties, rentals, and bonuses to include the allocation and disbursement of revenues from certain leases on the Gulf of Mexico Outer Continental Shelf (OCS) in accordance with the provisions of the Gulf of Mexico Energy Security Act of 2006 (Title I of Division C of Public Law 109-432; (43 U.S.C. 1331 note; 120 Stat. 3000)) (GOMESA). Allocations and Disbursement of Royalties, Rentals, and Bonuses���������Oil and Gas, Offshore, 73 Fed. Reg. 30331 (May 27, 2008) (NOPR). The NOPR provided a period of 60 days from the date of publication (i.e., until July 28, 2008) for interested parties to submit comments on the proposed rule. The comment was extended an additional 14 days (until August 11, 2008). Following are the State of Louisiana���������s comments on the proposed rule.

I. INTRODUCTION

The State of Louisiana appreciates the opportunity to comment on the NOPR for the Gulf of Mexico Energy Security Act of 2006. This legislation was the product of years of work by scores of dedicated individuals committed to this nation���������s energy security.

Congress passed the Gulf of Mexico Energy Security Act of 2006 (���������GOMESA���������) to provide additional domestically-produced energy and to ensure that the Gulf producing States of Alabama, Louisiana, Mississippi, and Texas received a share of the Outer Continental Shelf (���������OCS���������) revenues obtained through MMS administered oil and gas leases located off of their coastlines. In May, the MMS released a NOPR to administer GOMESA���������s directive that the Service allocate and disburse royalties, rentals, and bonus obtained through offshore leases. About 95 percent of OCS production occurs in the central and western Gulf of Mexico off of the coastlines of the Gulf Producing States. The ports, fabrication facilities and tens of thousands of miles of pipelines located in these state are necessary to access these vital mineral assets.

The Louisiana Constitution requires that all revenues received pursuant to GOMESA be deposited into a trust fund and made available only for hurricane protection, other infrastructure that is adversely affected by OCS activities and coastal wetlands loss and for coastal restoration.

II. COMMENTS

A. Proposed Section 219.418 Should be Revised to Clarify the Timing of Disbursements of Funds to Gulf Producing States and Eligible Coastal Political Subdivisions.

The State of Louisiana urges MMS to revise proposed section 219.418 to provide greater certainty and specificity regarding when funds will be disbursed to Gulf producing States and eligible coastal political subdivisions. Section 105(c) of GOMESA requires amounts deposited in the special Treasury account for sharing with the Gulf producing States and eligible coastal political subdivisions to be made available during the fiscal year immediately following the applicable fiscal year. The proposed section of the NOPR governing the timing of disbursements effectively reiterates the statutory provision, stating that MMS will disburse

The lack of concrete regulatory requirements for payment could hinder the State and its communities from creating effective budgets and from making the most effective use of their distributions towards the ends specified in GOMESA. The money that the Act provides is especially critical to Louisiana, which hosts the most oil and gas producing activities among the Gulf producing States, and therefore has an especially critical need for the funds to be disbursed under GOMESA. Louisiana has demonstrated the leadership required by GOMESA, having in 2006 ratified a constitutional amendment that directs all OCS revenue to provide coastal restoration and hurricane prevention. Act 69 of the 2005 1st Extraordinary Session amended Article VII, Section 10(D)(2)(e), and 10.5(B) and (C) to change the name of the Wetlands Conservation and Restoration Fund to the Coastal Protection and Restoration Fund (providing that the eligible federal revenues received by the State generated from OCS oil and gas activity shall be credited to the Coastal Protection and Restoration Fund and used only for purposes of coastal wetland conservation, coastal restoration, hurricane protection, and infrastructure directly impacted by coastal wetland losses). Incorporating additional payment terms into the final rule will allow the States and political subdivisions to enhance their ability to further the important coastal restoration and protection and other unaddressed direct and cumulative impacts.

For these reasons, the State urges MMS to revise the proposed rule to incorporate a more robust interpretation of GOMESA���������s timing provision that provides for revenue distribution to the States and their coastal communities in a manner that is as quick as practicable, and that provides sufficient certainty of payment to permit the states and their coastal communities to engage in effective long term planning. In this regard, the State suggests that MMS exercise its flexibility to interpret the Act and modify the proposed rule to reflect the following principles:

��������� Disbursements of allocated funds to the Gulf producing States and eligible coastal political subdivisions will be made as quickly as practicable.

��������� Monies will be disbursed either by Treasury check or by Electronic Fund Transfer (EFT).

��������� Gulf producing States or eligible coastal political subdivisions may designate that all or a designated portion of each payment be made directly to a trustee designated by that state or subdivision, for instance for the payment or reimbursement of interest, retirement of principal, cost of issuance, cost of insurance, or any other cost incidental to the sale of a bond or other debt financing instrument issued by a Gulf producing State or eligible coastal political subdivision, the proceeds of which are used for authorized uses as provided in GOMESA Section 105(d).

As reflected in these suggestions, it would be beneficial to the Gulf producing States and coastal political subdivisions if the MMS were able to guarantee a more efficient disbursal of revenues in the following fiscal year. This would allow for more precise accounting of the funds received and would enable the States and their coastal communities the opportunity to more effectively plan and manage projects and programs funded with GOMESA proceeds. Furthermore, allowing the Gulf producing States and their eligible political subdivisions to designate a trustee will also improve planning and management of GOMESA-funded programs.

The additional terms also would enhance the ability of the Gulf producing States and their eligible political subdivisions with greater capability to maximize their ability to further the purposes of GOMESA by leveraging their payment streams into long-term financing instruments. GOMESA directs the States and eligible subdivisions to use qualified OCS revenues for five enumerated purposes, each of which either promotes the protection of the environment or mitigates the impact of OCS activities on natural resources. The revenues received will go further towards their intended purposes if the States or political subdivisions may use the revenues for payment or reimbursement of interest, retirement of principal, cost of issuance, cost of insurance, or any other cost incidental to the sale of a bond or other debt financing instrument. The additional money created by incorporating these instruments into the States��������� financing portfolio will provide the States with flexibility to further the purpose of the statute and it���������s authorized uses of the revenues. For these reasons, MMS should revise its proposed rules to reflect the sharing for the years following fiscal year 2016 until some unspecified future date could create unanticipated problems for the Gulf producing States and their coastal communities to most effectively utilize their share of revenues towards the purposes set forth in GOMESA.

GOMESA, the NOPR���������s underlying statute, did not limit the term ���������qualified outer Continental Shelf revenues��������� to the year 2016. GOMESA ������ 102(9)(A)(ii). The State believes that the current rulemaking should not be limited to the period up to fiscal year 2016, but instead should also address the years thereafter in which revenues will continue to be shared with the Gulf producing States and eligible coastal political subdivisions pursuant to GOMESA. The statute also required a rulemaking to ensue within one year of its passage. Splitting the rulemaking into two parts disturbs the goal of providing clarity for the future and circumvents the statute.

As discussed above, the revenue stream created by leases in the OCS will allow the States and its eligible political subdivisions to secure financing instruments necessary to maximize the benefits of revenue sharing. The State intends to use the revenue stream created by its share of revenues from qualified OCS leases to support credit for long-term bonds that will provide the State with enhanced capabilities to further GOMESA���������s authorized purposes. [Place for State to provide further detail of its plan]. As it stands, the ten year time limit imposed under the NOPR could severely limit Louisiana���������s ability to obtain the credit necessary to make a significant impact. A longer term rulemaking addressing years after fiscal year 2016 would provide additional certainty and stability that could be critical to the State����������s ability to obtain the necessary credit to make the highest and best use of its share of OCS leasing revenues.

C. The Exclusion of Rental Revenues or User Fees From Qualified OCS Revenues Falls Outside the Statute and Should be Removed From the Proposed Regulations.

The State of Louisiana believes that the NOPR����������s proposal to exclude ���������[r]ental revenues or user fees credited to MMS appropriated funds through the annual Congressional appropriations process��������� is contrary to the requirements of GOMESA and should be deleted from the final rule. GOMESA specifically defines the types of OCS leasing revenues that must be shared with the Gulf producing States and eligible coastal political subdivisions. Specifically, the statute provides that:

(i) in the case of each of fiscal years 2007 through 2016, all rentals, royalties, bonus bids, and other sums due and payable to the United States from leases entered into on or after the date of enactment of this Act for����������

(I) areas in the 181 Area located in the Eastern Planning Area; and

(II) the 181 South Area; and

(ii) in the case of fiscal year 2017 and each fiscal year thereafter, all rentals, royalties, bonus bids, and other sums due and payable to the United States received on or after October 1, 2016, from leases entered into on or after the date of enactment of this Act for���������

(I) the 181 Area;

(II) the 181 South Area; and

(III) the 2002����������2007 planning area.

GOMESA sec. 102(9)(A)(i)-(ii) (emphasis added). Congress provided only for two exclusions to the revenues that are subject to sharing with eligible States and political subdivisions: ���������(i) revenues from the forfeiture of a bond or other surety securing obligations other than royalties, civil penalties, or royalties taken by the Secretary in-kind and not sold; or (ii) revenues generated from leases subject to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)).��������� GOMESA ������102(9)(B).

Despite GOMESA���������s very specific definition of ���������qualified outer Continental Shelf revenues,��������� and the statute���������s limited exclusions to that definition, the NOPR proposes also to exclude ���������[r]ental revenues or user fees credited to MMS

As a practical matter, such an exception would have detrimental effects on Louisiana. Adoption of the proposed exclusion would result in the states sharing in only $3 of the $9.50/acre in rentals paid to obtain deep water leases. This would upset the 50/50 federal-state cost sharing balance enacted in GOMESA and create real monetary consequences for the State. Depending on the number of acres leased at future sites in the ���������181 South Area,��������� this exclusion could result in Louisiana receiving $600,000 to $1,000,000 less revenue per year by 2012. If the MMS allows this exclusion to be carried forth in a subsequent rulemaking to address qualified OCS revenue sharing from fiscal years 2017 through 2055, the exclusion could continue to have an even larger impact on the revenue shared with the States. For these reasons, Louisiana requests that the exclusion on rental revenues or user fees credited to MMS be removed from the proposed rule.

D. The Royalty-in-Kind Provision in Proposed Section 219.411 Should be Revised to Provide Added Assurances to the States.

Louisiana believes that MMS����������s final rule should provide added assurances to the Gulf producing States with respect to the exclusion of ���������[r] oyalties taken by the Secretary in-kind and not sold��������� from qualified OCS revenues. The State recognizes that GOMESA excludes such in-kind royalties from the qualified OCS revenues subject to revenue sharing under the statute. GOMESA ������ 102(9)(B)(i). However, the NOPR����������s statement that such excluded in-kind royalties would include oil taken in-kind and transferred into the Strategic Petroleum Reserve (SPR) raises potential issues for the State and its coastal communities. 73 Fed. Reg. at 30333.

Although the transfer of oil to the SPR currently is not a large concern for the State, the present energy climate suggests that the SPR could be drawn down or expanded in the future. Should this occur, oil taken from GOMESA leases will reduce the amount of revenue shared with the States. For this reasons, Louisiana suggests that the proposed rule be revised to require the MMS to sell all of the royalty-in-kind oil it receives from GOMESA leases so that the revenues to which the Gulf producing States and their eligible coastal political subdivisions are not locked-up in the SPR as well.

E. Proposed Section 219.415 Should be Revised to Subject Bonus or Royalty Credits for Relinquished Leases to Qualified OCS Revenue Sharing.

The State of Louisiana believes that proposed section 219.415 should be modified to further the requirements of GOMESA, ensuring that any use of bonus and royalty credits under section 104(c) of GOMESA does not reduce revenue sharing with the Gulf producing States and their eligible coastal political subdivisions. The State believes that the NOPR would inappropriately offset the issuance of bonus or royalty credits for relinquished leases from qualified OCS revenues to be shared under GOMESA.

As noted above, GOMESA requires that all rentals, royalties, bonus bids, and other sums due and payable to the United States from eligible leases are subject to revenue sharing in accordance with the statute, subject to two limited exclusions not applicable here. Section 104(c) of GOMESA authorizes the Secretary of the Interior to accept the exchange of certain leases located offshore of the State of Florida by issuing a bonus or royalty credit for use only in the Gulf of Mexico. As the NOPR recognizes, the statute leaves open the possibility that these credits could be applied to bonus or royalty obligations for leases subject to GOMESA����������s revenue sharing provisions.

In proposed section 219.415, the MMS suggests that credits used by industry for relinquished leases on GOMESA lease bonus or royalty obligations will not produce revenue that may be shared with the States and their eligible coastal political subdivisions. The State of Louisiana strongly disagrees with the NOPR����������s conclusion that, to the extent such credits are applied with respect to leases subject to revenue sharing, the distribution of royalty or bonus payments to eligible states and political subdivisions must be reduced accordingly from what they would have received had the entire bonus or royalty payment been made in cash. The amount of royalties or bonuses offset by such credits are nonetheless ���������sums due and payable to the United States��������� within the meaning of GOMESA, and are thus qualified OCS revenues, regardless of whether they are

The State of Louisiana notes that the NOPR does not indicate a designated office or officer within the MMS to administer the GOMESA cost-sharing program. It would be beneficial to the participating States and coastal political subdivisions to have a designated point of contact within the MMS who has the authority to represent and act for the Service in dealing with the States and subdivisions for GOMESA purposes. For this reason, Louisiana suggests that the final rule specify a designated point of contact to administer the GOMESA revenue sharing program.

G. Qualified OCS Revenues Should Include Revenues Derived From Alternative Uses of the OCS.

The State of Louisiana believes that the NOPR inappropriately limits revenue sharing to revenues associated with oil and gas activity, excluding revenue sharing from alternative energy activity on the OCS. GOMESA was not so narrowly confined. As noted above, GOMESA defines qualified OCS revenues to include ���������all rentals, royalties, bonus bids, and other sums due and payable to the United States from leases entered into��������� in the 181 Area in the Eastern Planning Area and the 181 South Area. GOMESA ������ 102(9)(A)(i). Beginning with fiscal year 2017, qualified revenues extend to include the Western Planning Area. GOMESA ������ 102(9)(A)(ii). The references to the planning areas are simply geographic boundaries that define the area for revenue sharing; they do not act to limit qualifying revenues to oil and gas revenues only. There is no basis in the Act for MMS to restrict revenue sharing to oil and gas activity and exclude alternative uses through this rulemaking.

Louisiana is aware that, on July 9, 2008, MMS issued a separate NOPR concerning Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf. Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf. 73 Fed. Reg. 39376 (Jul. 9, 2008). The MMS issued this rulemaking following passage of a provision in the Energy Policy Act of 2005 (���������EPAct���������) that amended the Outer Continental Shelf Lands Act (���������OCS Lands Act���������). EPAct section 388. This provision authorized MMS to issue leases to ���������produce or support production, transportation, or transmission of energy from sources other than oil and gas; or use, for energy-related or other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.��������� 73 Fed. Reg. 39376. MMS���������s proposed rule in that rulemaking would establish a program to grant leases, easements, and rights-of-way for alternative energy project activities on the OCS) as well as for certain previously unauthorized activities involving the alternate use of existing facilities located on the OCS, and would establish the methods for sharing revenues generated by this program with nearby coastal States. Specifically, in accordance with new subsection 8(p)(2)(B) of the OCSLA, 43 U.S.C. 1337(p)(2)(B)), the proposed rule provides for the distribution among certain coastal states of 27 percent of the revenues received by the Federal government from qualified projects located wholly or partially within the area extending 3 nautical miles seaward of State submerged lands (i.e., the 8(g) zone). 73 Fed. Reg. at 39481.

The State���������s request that MMS address the issue of alternative energy uses of the OCS in its GOMESA NOPR discussed in these comments is not redundant. As noted above, subsection 8(p) of the OCS Lands Act, and the recently proposed alternative energy leases rule, provide for revenue sharing derived only from leases that are wholly or partially within the 8(g) zone. Revenue sharing under that section also is limited to States that have a coastline within 15 miles of the geographic center of the project. The 181 Planning Area discussed in the GOMESA NOPR falls outside of the 8(g) zone.

For these reasons, the final rule should include revenues from leases that support alternative energy uses beyond the 8(g) zone.

H. The Final Rule Should Make Clear that the Gulf Producing States and Eligible Coastal Political Subdivisions May Use Funds Received Pursuant to the GOMESA Revenue Sharing Provisions for Cost Sharing or Matching Requirements.

The State of Louisiana urges MMS to make clear in its final rule that funds

III. CONCLUSION

For the foregoing reasons, the State of Louisiana respectfully requests that the MMS accept its comments and adopt the suggestions set forth above.

Sincerely,

Garret Graves
Executive Assistant to the Governor
Coastal Activities