State of Louisiana

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May 29, 2014

Mr. Armand Southall,
Regulatory Specialist, ONRR,
P.O. Box 25165, MS 61030A
Denver, Colorado 80225-0165

Re: Allocation and Disbursement of Royalties, Rentals, and Bonuses- Oil and Gas, Offshore, 1012-AA11

Dear Mr. Southall,

On March 31, 2014, the Office of Natural Resources Revenue, Interior (ONRR) 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, 79 Fed. Reg. 61 (March 31, 2014) (NOPR). The NOPR provided a period of 60 days from the date of publication (i.e., until May 30, 2014) for interested parties to submit comments on the proposed rule.

Following are the State of Louisiana's comments on the proposed rule.

I. COMMENTS

A. Proposed Section 1219.516 Should be Revised to Clarify the Timing of Disbursements of Funds to Gulf Producing States and Eligible Coastal Political Subdivisions.

As was done in 2008 by the Minerals Management Services (MMS) in response to comments received by the States of Louisiana and Alabama on the prior proposed rule related to the Allocation and Disbursement of Royalties, Rentals, and Bonuses - Oil and Gas, Offshore, 1010-AD46 (Phase I), the State of Louisiana urges ONRR to revise proposed section 1219.516 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 ONRR will disburse allocated funds in the fiscal year after ONRR collects the qualified OCS revenues, further suggesting that ONRR intends to disburse revenues within the first half of the fiscal year following the year that ONRR collects qualified OCS revenues.

As was the case for Phase I, this open-ended language leaves uncertainty for the states and their coastal communities as to when they will receive their distributions. It is critical to the State of Louisiana and its coastal communities that they be able to rely on the funds available from lease revenues to operate key programs that protect the State's coastal resources and communities. This includes knowing in advance when they will receive their shares of lease revenues, and having assurances that ONRR will distribute those shares as expeditiously as practicable.

The lack of concrete regulatory requirements for payment could hinder the State and its communities from creating effective budgets and from making the most efficient 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 a crucial need for the funds to be disbursed under GOMESA in a certain, clear and consistent manner. 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 important coastal restoration and protection work and address other direct and cumulative impacts of OCS activities.

We note that MMS previously addressed similar requests from the states of Alabama and Louisiana during the comment period for the Phase I Rule adopted in 2008, by clarifying the timing of disbursements to Gulf Producing States and their Coastal Political Subdivisions, stating that MMS intended to disburse revenues on or before March 31st of the year following the fiscal year of qualified OCS revenues, or 3 months sooner than the proposed Rule dictates.

For these reasons, and given the precedent from Phase I, 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 efficient 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 again suggests that ONRR 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, but not later than March 31st of the year following the fiscal year of qualified OCS revenues.

- Gulf producing States or eligible coastal political subdivisions may direct that all or a specified 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). While ONRR acknowledges that GOMESA is silent on this procedure, we reiterate the importance of each State's ability to direct funds in this manner.

As reflected in these suggestions, it would be beneficial to the Gulf producing States and coastal political subdivisions if the ONRR 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 State's suggestions.

B. Proposed Section 1219.511 Should be Revised such that the definition "Qualified OCS revenues (Phase II) aligns with the GOMESA definition as "due and payable".

The State of Louisiana believes that proposed section 1219.511 should be modified to align with the definitions with GOMESA, ensuring that any monies due and payable to the United States are within the definition of "Qualified OCS revenues." Understanding that the existing ONRR system of collecting, disbursing, and accounting for royalty revenues, accounts only for amounts payors report and pay, the uncertainty inherent in having Qualified OCS revenues include only those funds received rather than those due and payable, suggests that monies owed to the United States, and therefore to the Gulf Producing States and their Coastal Political Subdivisions, may not be received, as ONRR may be perceived as having no obligation to collect what is owed.

GOMESA Section 102.(9)(A)(ii) states clearly that the term "qualified outer Continental Shelf revenues" means 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 the Act for (I) the 181 Area; (II) the 181 South Area; and (III) the 2002-2007 planning area. Louisiana hereby requests that ONRR amend its Rule and procedures such that the definition of "Qualified OCS revenues" aligns with the original Act.

As with our proposed clarification on timing of disbursements above, the alignment of this definition with that of GOMESA enhances 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, as payment of debt service on such an instrument would thereby be predicated on the ability and necessity of the ONRR to collect revenues due and payable, rather than simply those that are reported and paid.

Thank you for the opportunity to comment.

Sincerely,

Jerome Zeringue
State of Louisiana
Executive Assistant to the Governor for Coastal Activities