

**Testimony of Peter Shelley
Of the Conservation Law Foundation**

**On Behalf of the Conservation Law Foundation,
the Union of Concerned Scientists, Environmental Defense,
and the Natural Resources Defense Council**

Before the Subcommittee on Energy and Mineral Resources

**Concerning HR 793,
A Bill to Amend the Outer Continental Shelf Lands Act**

March 6, 2003

Madame Chair and Members of the Committee, thank you for this opportunity to appear before you today to present testimony on HR 793. My name is Peter Shelley. I am a Vice President of the Conservation Law Foundation, directing CLF's Rockland, Maine Advocacy Center. CLF is the oldest and largest regional environmental advocacy organization in the nation. I have worked extensively on marine issues at CLF, including landmark cases on fisheries management, the pollution of Boston Harbor, and Outer Continental Shelf oil and gas leasing proposals.

I am pleased to be here to testify on behalf of CLF, the Union of Concerned Scientists (UCS), Environmental Defense, and the Natural Resources Defense Council.

UCS is a nonprofit organization of more than 60,000 citizens and scientists working for practical environmental solutions. For more than two decades, UCS has combined rigorous analysis with committed advocacy to reduce the environmental impacts and risks of energy. UCS' energy program focuses on encouraging the development of clean and renewable energy resources, such as solar, wind, geothermal and biomass energy, and on improving energy efficiency.

Environmental Defense, a leading national nonprofit organization based in New York, represents more than 300,000 members. Since 1967 Environmental Defense has linked science, economics, and law to create innovative, equitable, and cost-effective solutions to the most urgent environmental problems.

Our organizations are committed to ensuring that environmentally important renewable energy development occurs in a timely manner, in the right locations, subject to terms that fully protect the public interest, and through processes that ensure ample public input. To that end, we believe that Congress should establish a comprehensive statutory framework for offshore renewable energy development, and we stand ready to assist Congress in whatever way appropriate to develop and enact such legislation.

As much as our organizations want to see the promotion of timely and environmentally responsible renewable energy projects on the Outer Continental Shelf ("OCS"), we cannot support HR 793. This piece of legislation is fundamentally flawed and should not be supported by the members of this

Subcommittee. The proposed legislation fails to strike an appropriate balance between industrial development of the coastal marine system and protection of its invaluable living marine resources; it grants broad jurisdiction to an agency without expertise in the requisite areas of marine policy and regulation; and it would require substantial modification before it could serve as an appropriate framework for offshore renewable energy development.

HR 793 is substantially identical to HR 5156, legislation that was introduced and failed in the last session as a result of widespread opposition. In its current form, HR 793 grants unprecedented jurisdiction to the Secretary of the Interior over future permitting and rights of way for virtually all energy and energy-related activities on the OCS, mixing together renewable energy projects with unrelated fossil fuel facilities and activities. While we salute the fact that this bill recognizes offshore renewable energy development as important, a bad bill in this area is worse than no bill at all.

Rather than simply registering our objections to HR 793, however, we would like to provide the members of the Subcommittee with an affirmative view of what a regulatory framework for offshore renewable energy projects should look like and what form the federal legislation creating such a framework should take.

Any legislation of this kind should be informed by the findings and reports of the U.S. Commission on Ocean Policy and the Pew Oceans Commission on Ocean Zoning, which are due to be released this year. Both Commissions are expected to make critical strategic recommendations on this Nation's ocean policy, including the siting of renewal energy projects on the Outer Continental Shelf. In light of the high relevance of these studies to marine protection and siting issues inherent in offshore renewable energy development, it seems premature to go forward with legislation before knowing the outcomes of these studies.

That said, I would like briefly to present some core principles on which we believe any statutory framework for offshore wind, wave, and tidal energy projects should be based. These principles are complimentary to existing federal law, as many of them are derived from existing federal schemes including the Ocean Thermal Energy Conversion Act (OTEC Act):

1. Offshore renewable energy (wind, wave, and tidal energy) development is fundamentally different from oil and gas extraction and related activities, and therefore should be subject to a separate statutory framework. Impacts

of offshore renewable energy projects are generally limited to the installation and dismantling of structures that are attached to the seabed. Once in operation, renewable energy projects have minimal impacts and risks compared to oil and gas operations.

2. The purpose of offshore renewable energy legislation should be to establish a comprehensive regime to permit and promote development of appropriate wind, wave, and tidal energy projects in a manner that minimizes harm to the environment and provides proper mitigation of unavoidable harms.
3. The Department of the Interior/Minerals Management Service (MMS) should not be the principal federal agency overseeing offshore renewable energy.
4. Oversight of offshore renewable energy projects in the oceans should include a leading role for federal agencies with a direct marine regulatory and habitat protection mission, including the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS).
5. Project-specific reviews and permitting processes should include state environmental and marine resource agencies and governors from affected states.
6. Construction of an offshore renewable energy project should be fully subject to existing federal law, including the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Magnuson-Stevens Fisheries Conservation and Management Act.
7. Any financial obligations that come from renewable leasing arrangements should be appropriate for renewable energy applications, which differ from conventional resource projects, are non-extractive, and have lower environmental impacts and risks than other offshore facilities based on extractive industries.
8. Siting of renewable energy projects should be avoided in areas on the Outer Continental Shelf that meet the definition of a Marine Protected Area (MPA) contained in Executive Order 13158 (65 Fed. Reg. 34909 (May 26, 2000))

(“any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein”) and in areas that contain biologically or physically unique or sensitive marine habitats.

9. Offshore renewable energy legislation should authorize term-limited leases, rather than easements or rights of way, for eligible offshore energy projects.
10. Leases for offshore renewable energy projects should be assigned on a basis that considers factors including the following: minimum environmental detriment, timely commencement of operation, maximum net energy impact, and lower initial installation and operations and maintenance costs to the extent that such differentials may significantly affect the ultimate cost to the consumer.

Measured against these principles, HR 793 falls far short of the mark and should be rejected by the Subcommittee.

While we would support legislation that incorporated these principles and promoted the findings of the U.S. Commission on Oceans and the Pew Oceans Commission on Ocean Zoning, I want to clarify that our organizations do not believe that Congress should impose an economically and potentially environmentally damaging moratorium on offshore wind development pending enactment of such a comprehensive statutory framework.

The absence of a federal asset management framework for renewable energy does not compromise environmental protection of the OCS and its resources from the impacts of development. Given existing permitting authority and environmental regimes, it would be a mistake to put review of offshore wind proposals on hold. Together with the National Environmental Policy Act, the Army Corps of Engineers' Section 10 regulations provide clear authority to conduct a comprehensive environmental review process and to issue permits after consultation with all relevant agencies and entities. If these authorities are used together, and used thoughtfully and in combination with state environmental reviews, we believe they provide an adequate process until appropriate legislation can provide additional clarity and establish a process for addressing various aspects of a developer's relationship with the federal government, such as leases and royalties.

Timely development of wind energy is imperative in light of dramatic current and future damage caused by power plant emissions and the importance of wind energy as a means of mitigating that damage. In New England, for example, wind power represents about three-fourths of the region's renewable energy potential and is considered a critical component to the region's strategy to combat global warming.

Specific concerns about HR 793

As I mentioned, we are very concerned about HR 793 because it would grant unprecedented jurisdiction to the Secretary of the Interior over future permitting and rights of way for virtually all energy and energy-related activities on the Outer Continental Shelf (OCS). The Department of Interior's record in managing the nation's offshore oil and gas program and in preventing that program from damaging our environment is, unfortunately, not one we would like to see emulated for other types of offshore energy development. We are particularly concerned that this bill would provide a shortcut mechanism by which proponents of a wide range of commercial-scale projects could circumvent existing federal jurisdictions and sidestep longstanding requirements for appropriate environmental review of the full range of energy facilities and activities in the marine environment.

It appears this bill would not only grant Interior/MMS jurisdiction over offshore wind generation, wave energy, and other "alternative" energy projects, but also significantly expand and centralize Interior/MMS jurisdiction over new types of offshore hydrocarbon facilities such as at-sea floating and stationary marine terminals, gasification plants, and subsea pipelines. This new authority would be created over and above the new jurisdiction for the Department of Interior that was established only last year over Liquefied Natural Gas (LNG) facilities in the adopted amendments to the Deepwater Ports Act.

In addition, it appears that HR 793 would establish broad, open-ended Interior/MMS authority over a range of additional unidentified "support" facilities associated with offshore oil and gas development, such as offshore floating oil storage and processing facilities. In this regard, HR 793 could create a regulatory "end run" for many types of offshore activities that are otherwise subject to the jurisdictional protections of the present Presidential OCS Deferrals and the long-established bipartisan legislative OCS moratorium provisions.

On behalf the Conservation Law Foundation, the Union of Concerned Scientists, and Environmental Defense, we urge the members of this Subcommittee to reject

this bill as written. Any legislation governing offshore renewable energy projects should be separate and apart from legislation affecting oil and gas activities on the OCS, and should strike an appropriate balance between promoting offshore renewable energy development and protecting the resources of our marine environment. HR 793 fails to do so.

Thank you for the Committee's attention to these matters.