# Committee on Natural Resources
## Rob Bishop Chairman
## Markup Memorandum

September 12, 2018

**To:** All Members of the House Committee on Natural Resources

**From**: Majority Committee Staff – Kate Juelis (x6-9837)
Subcommittee on Energy and Mineral Resources

**Markup:** **H.R. 6771 (Rep. Graves, LA-06),** To amend the Gulf of Mexico Energy Security Act of 2006, and for other purposes.
**September 13, 2018, at 10:45 AM; 1324 Longworth House Office Building**

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**H.R. 6771, "*Domestic Offshore Energy Reinvestment Act of 2018*"**

**Summary of the Bill**

This bill amends the *Gulf of Mexico Energy Security Act of 2006* (43 U.S.C. 1331 note) to increase the State share of offshore oil and gas revenues from 37.5% to 50%, expands the authorized uses of shared revenues, and eliminates the limitations on revenues shared with Gulf producing States and the Land and Water Conservation Fund.

**Cosponsors:**

Rep. Abraham (LA), Rep. Babin (TX), Rep. Byrne (AL), Rep. Higgins (LA), Rep. Johnson (LA), Rep. Richmond (LA), Rep. Scalise (LA), Rep. Weber (TX).

**Background**

For decades, the Gulf coast has served as the home for one of the most prolific oil and gas basins in the world. In 2017 alone, it averaged nearly 1.7 million barrels of oil per day, resulting in $3.8 billion in revenue to the U.S. Treasury. [1] Coupled with the millions of barrels imported and exported through the Texas port districts of Port Arthur and Houston-Galveston, Gulf coast oil and gas operations play an important role in the economic health of this country.

Despite the national and international importance of this region, the Gulf coastline faces an environmental crisis, precipitated by river control systems, severe weather, and hydrocarbon infrastructure development. The "*Domestic Offshore Energy Reinvestment Act of 2018*" will increase revenues shared with Gulf States to restore the health of the Gulf coast, and preserve the offshore energy industry into the future.

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[1] U.S. Department of the Interior, Office of Natural Resource Revenue, Natural Resources Revenue Data, Explore Data – Gulf of Mexico (https://revenuedata.doi.gov/explore/offshore-gulf/)

*Environmental Crisis*

Gulf communities must contend with mounting environmental and infrastructure vulnerabilities. These vulnerabilities, as highlighted by the 2005 hurricane season, are constantly stressed by land subsidence and major storm events. If left unchecked, land loss and storm damage threaten up to $136 billion in economic activity, [2] and could result in the exposure of 610 miles of pipeline by 2040.[3] Although thick swamp, natural marshland, and barrier islands collectively absorb severe flooding and storm surges, human engineering has resulted in the weakening of these systems.

In 2006, Congress recognized the needs of the Gulf by enacting the Gulf of Mexico Energy and Security Act (GOMESA, Public Law 109-432), which established a revenue sharing program for the Gulf producing States of Texas, Louisiana, Mississippi, and Alabama. Under GOMESA, revenues shared with the Gulf producing States must be used for coastal restoration and related purposes. Louisiana has taken this mandate even further, dedicating all GOMESA revenues towards coastal restoration, to be performed by the State's Coastal Protection and Restoration Authority (CPRA).[4] According to the CPRA Master Plan, $17.7 billion will be dedicated towards marsh creation, $19 billion towards structural reinforcements, and $5.1 billion towards sediment diversion. Louisiana planned on GOMESA serving as the funding mechanism for the lion's share of coastal restoration, but due to the qualified nature of shared revenues under GOMESA, it has served as an unreliable source of revenue.

*Sharing the Offshore Revenue*

GOMESA requires 37.5% of all qualified Gulf revenues to be directed to the four States in accordance with a formula based on OCS lease block distance from each State's coast. The qualifications for revenue disbursements are associated with two phases under GOMESA. Phase I, which began in fiscal year 2007, limited disbursements to revenues generated by select leases. Phase II, which began in fiscal year 2017, expands the definition of revenues eligible for disbursement to include all revenues generated by leases issued after 2006.[5] Consequently while Gulf States received only minor disbursements under Phase I, Phase II was anticipated to produce much larger checks to the Gulf States.

Additionally, GOMESA directs 12.5% of those qualified offshore revenues to the Land and Water Conservation Fund (LWCF) to be used for State programs. It should be noted that the $900 million annual authorization level of the LWCF Fund is met almost exclusively by offshore energy revenues, and the GOMESA dedication is on top of the $900 million annual authorization.[6]

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[2] "*Louisiana fights the sea, and loses*," The Economist, Aug 26, 2017 (https://www.economist.com/news/united-states/21727099-has-lessons-americas-climate-change-policy-louisiana-fights-sea-and-loses)

[3] "*Economic Evaluation of Coastal Land Loss in Louisiana*," Louisiana State University – E.J. Ourso College of Business, Dec 2015 (http://coastal.la.gov/wp-content/uploads/2015/12/LSU-Rand_Report_on_Economics_of_Land_Loss-2.pdf), p.33

[4] "Coastal Protection and Restoration Authority Gulf of Mexico Energy Security Act- Infrastructure Funding Program", (http://coastal.la.gov/wp-content/uploads/2016/08/Final-GOMESA-Infrastructure-Process.pdf)

[5] Bureau of Ocean Energy Management, Gulf of Mexico Energy Security Act (GOMESA), (https://www.boem.gov/Revenue-Sharing/)

[6] Hardy-Vincent, Carol, "*Land and Water Conservation Fund: Overview, Funding History, and Issues,*" Sep 6, 2016 (http://www.crs.gov/Reports/RL33531?source=search&guid=995b8347d35543cba6a9650d2f3da87b&index=2)

*Revenue-Sharing Statutes*

The 1953 Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. 1331 et seq.) governs the management of the minerals within federal offshore territory. However, unlike this statute's onshore equivalent, the Minerals Leasing Act of 1920 (MLA, 30 U.S.C. 181 et seq.), OCSLA did not establish a revenue-sharing scheme for mineral revenues to affected States. Under the MLA, 50% of revenues generated from hydrocarbon production are shared with the producing State.[7] Due to the phase-ins and statutory caps of GOMESA (and the lack of an historic revenue sharing structure under OCSLA), a disparity exists between the revenues received by States for onshore production and offshore production. Hence, in fiscal year 2016, Wyoming received $670 million in disbursements, while Louisiana's check was roughly $320,000.[8] Figure 1, below, illustrates this disparity.

**Disbursements by fund for 2017**

| Fund | All funds | From onshore revenue | From offshore revenue |
|---|---|---|---|
| **General Fund of the Treasury**<br>The federal government's basic operating fund pays for roughly two-thirds of all federal expenditures, including the military, national parks, and schools. | $2,512,808,178 | $496,239,192 | $2,016,568,987 |
| **States**<br>Funds disbursed to states fall under the jurisdiction of each state, and each state determines how the funds will be used. | $1,438,483,019 | $1,427,205,064 | $11,277,955 |
| **Land and Water Conservation Fund**<br>Provides matching grants to states and local governments to buy and develop public outdoor recreation areas across the 50 states. See below for more information about this fund. | $958,811,210 | $0 | $958,811,210 |

*Figure 1: ONRR Disbursements 2017*[9]

Furthermore, payments under GOMESA to Gulf producing States and LWCF are capped at $500 million per year.[10] As such, Gulf producing States are only eligible to receive up to $375 million per year, split among the four Gulf producing States, with the remaining $125 million disbursed to LWCF. Although GOMESA disbursements have not remotely approached the levels envisioned by the cap, there have been numerous legislative efforts to raise or eliminate these caps to establish parity with the onshore revenue sharing structure.

[7] 30 U.S.C. 191
[8] The Department of the Interior, Office of Natural Resource Revenue, "*Analysis of NR disbursements FY2003-2017*"; Comay, Laura, "*Louisiana FY2017 OCS Revenues*" Email Correspondence, Apr 20, 2018
[9] U.S. Department of the Interior, Office of Natural Resource Revenue, Natural Resources Revenue Data, (https://revenuedata.doi.gov/explore/#federal-disbursements.)
[10] Public Law 109-432

With so much offshore revenue directed away from the coast, ongoing restoration projects are severely threatened. Amending GOMESA's revenue sharing structure to increase support to producing States will ensure the long-term health of the Gulf and will help secure this critical federal income stream into the future.

**Major Provisions of H.R. 6771**

*Section 2. Amendments to the Gulf of Mexico Energy Security Act of 2006.*

- Amends GOMESA to increase the percentage of revenues shared with Gulf producing States from 50% to 62.5%.
- Preserves allocation of 12.5% of qualified revenues to the Land and Water Conservation Fund.
- Expands "Authorized Uses" of shared revenues to include the design and planning of ecosystem restoration, hurricane protection, or flood damage prevention.
- Requires not less than 25% of revenues shared be dedicated towards planning, engineering, design, construction, operations, and maintenance of one or more projects that are specifically authorized by any other Act for ecosystem restoration, hurricane protection, or flood damage prevention.
- Eliminates limitations (the cap) on revenues distributed to Gulf producing States and LWCF.

**Cost**

CBO has not scored this legislation.

**Administration Position**

Unknown.

**Anticipated Amendments**

None.

**Effect on Current Law (Ramseyer)**

## Showing Current Law as Amended by H.R. 6771

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in blue]

**Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. 1331 note)**

SEC. 101. SHORT TITLE.

"This title may be cited as the 'Gulf of Mexico Energy Security Act of 2006'.

SEC. 102. DEFINITIONS.

In this title:

(1) 181 area.-The term '181 Area' means the area identified in map 15, page 58, of the Proposed Final Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002, dated August 1996, of the Minerals Management Service, available in the Office of the Director of the Minerals Management Service, excluding the area offered in OCS Lease Sale 181, held on December 5, 2001.

(2) 181 south area.-The term '181 South Area' means any area-

(A) located-

(i) south of the 181 Area;

(ii) west of the Military Mission Line; and

(iii) in the Central Planning Area;

(B) excluded from the Proposed Final Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002, dated August 1996, of the Minerals Management Service; and

(C) included in the areas considered for oil and gas leasing, as identified in map 8, page 37 of the document entitled 'Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012', dated February 2006.

(3) Bonus or royalty credit.-The term 'bonus or royalty credit' means a legal instrument or other written documentation, or an entry in an account managed by the Secretary, that may be used in lieu of any other monetary payment for-

(A) a bonus bid for a lease on the outer Continental Shelf; or

(B) a royalty due on oil or gas production from any lease located on the outer Continental Shelf.

(4) Central planning area.-The term 'Central Planning Area' means the Central Gulf of Mexico Planning Area of the outer Continental Shelf, as designated in the document entitled 'Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012', dated February 2006.

(5) Eastern planning area.-The term 'Eastern Planning Area' means the Eastern Gulf of Mexico Planning Area of the outer Continental Shelf, as designated in the document entitled 'Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012', dated February 2006.

(6) 2002–2007 planning area.-The term '2002–2007 planning area' means any area-

(A) located in-

(i) the Eastern Planning Area, as designated in the Proposed Final Outer Continental Shelf Oil and Gas Leasing Program 2002–2007, dated April 2002, of the Minerals Management Service;

(ii) the Central Planning Area, as designated in the Proposed Final Outer Continental Shelf Oil and Gas Leasing Program 2002–2007, dated April 2002, of the Minerals Management Service; or

(iii) the Western Planning Area, as designated in the Proposed Final Outer Continental Shelf Oil and Gas Leasing Program 2002–2007, dated April 2002, of the Minerals Management Service; and

"(B) not located in-

(i) an area in which no funds may be expended to conduct offshore preleasing, leasing, and related activities under sections 104 through 106 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Public Law 109–54; 119 Stat. 521) (as in effect on August 2, 2005);

(ii) an area withdrawn from leasing under the 'Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition', from 34 Weekly Comp. Pres. Doc. 1111, dated June 12, 1998; or

(iii) the 181 Area or 181 South Area.

(7) Gulf producing state.-The term 'Gulf producing State' means each of the States of Alabama, Louisiana, Mississippi, and Texas.

(8) Military mission line.-The term 'Military Mission Line' means the north-south line at 86°41′ W. longitude.

(9) Qualified outer continental shelf revenues.-

(A) In general.-The term 'qualified outer Continental Shelf revenues' means-

(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 [Dec. 20, 2006] 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.

(B) Exclusions.-The term 'qualified outer Continental Shelf revenues' does not include-

(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)).

(10) Coastal political subdivision.-The term 'coastal political subdivision' means a political subdivision of a Gulf producing State any part of which political subdivision is-

(A) within the coastal zone (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)) of the Gulf producing State as of the date of enactment of this Act [Dec. 20, 2006]; and

(B) not more than 200 nautical miles from the geographic center of any leased tract.

(11) Secretary.-The term 'Secretary' means the Secretary of the Interior.

SEC. 103. OFFSHORE OIL AND GAS LEASING IN 181 AREA AND 181 SOUTH AREA OF GULF OF MEXICO.

(a) 181 Area Lease Sale.-Except as provided in section 104, the Secretary shall offer the 181 Area for oil and gas leasing pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) as soon as practicable, but not later than 1 year, after the date of enactment of this Act [Dec. 20, 2006].

(b) 181 South Area Lease Sale.-The Secretary shall offer the 181 South Area for oil and gas leasing pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) as soon as practicable after the date of enactment of this Act [Dec. 20, 2006].

(c) Leasing Program.-The 181 Area and 181 South Area shall be offered for lease under this section notwithstanding the omission of the 181 Area or the 181 South Area from any outer Continental Shelf leasing program under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344).

(d) Conforming Amendment.-[Amended section 105 of Pub. L. 109–54, 119 Stat. 522 .]

SEC. 104. MORATORIUM ON OIL AND GAS LEASING IN CERTAIN AREAS OF GULF OF MEXICO.

(a) In General.-Effective during the period beginning on the date of enactment of this Act [Dec. 20, 2006] and ending on June 30, 2022, the Secretary shall not offer for leasing, preleasing, or any related activity-

(1) any area east of the Military Mission Line in the Gulf of Mexico;

(2) any area in the Eastern Planning Area that is within 125 miles of the coastline of the State of Florida; or

(3) any area in the Central Planning Area that is-

(A) within-

(i) the 181 Area; and

(ii) 100 miles of the coastline of the State of Florida; or

(B)(i) outside the 181 Area;

(ii) east of the western edge of the Pensacola Official Protraction Diagram (UTM X coordinate 1,393,920 (NAD 27 feet)); and

(iii) within 100 miles of the coastline of the State of Florida.

(b) Military Mission Line.-Notwithstanding subsection (a), the United States reserves the right to designate by and through the Secretary of Defense, with the approval of the President, national defense areas on the outer Continental Shelf pursuant to section 12(d) of the Outer Continental Shelf Lands Act (43 U.S.C. 1341(d)).

(c) Exchange of Certain Leases.-

(1) In general.-The Secretary shall permit any person that, as of the date of enactment of this Act [Dec. 20, 2006], has entered into an oil or gas lease with the Secretary in any area described in paragraph (2) or (3) of subsection (a) to exchange the lease for a bonus or royalty credit that may only be used in the Gulf of Mexico.

(2) Valuation of existing lease.-The amount of the bonus or royalty credit for a lease to be exchanged shall be equal to-

(A) the amount of the bonus bid; and

(B) any rental paid for the lease as of the date the lessee notifies the Secretary of the decision to exchange the lease.

(3) Revenue distribution.-No bonus or royalty credit may be used under this subsection in lieu of any payment due under, or to acquire any interest in, a lease subject to the revenue distribution provisions of section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)).

(4) Regulations.-Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations that shall provide a process for-

(A) notification to the Secretary of a decision to exchange an eligible lease;

(B) issuance of bonus or royalty credits in exchange for relinquishment of the existing lease;

(C) transfer of the bonus or royalty credit to any other person; and

(D) determining the proper allocation of bonus or royalty credits to each lease interest owner.

SEC. 105. DISPOSITION OF QUALIFIED OUTER CONTINENTAL SHELF REVENUES FROM 181 AREA, 181 SOUTH AREA, AND 2002–2007 PLANNING AREAS OF GULF OF MEXICO.

(a) In General.-Notwithstanding section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338) and subject to the other provisions of this section, for each applicable fiscal year, the Secretary of the Treasury shall deposit-

(1) [50] 37.5 percent of qualified outer Continental Shelf revenues in the general fund of the Treasury; and

(2) [50] 62.5 percent of qualified outer Continental Shelf revenues in a special account in the Treasury from which the Secretary shall disburse-

(A) [75] 80 percent to Gulf producing States in accordance with subsection (b); and

(B) [25] 20 percent to provide financial assistance to States in accordance with section 200305 of title 54, United States Code, which shall be considered income to the Land and Water Conservation Fund for purposes of section 200302 of that title.

(b) Allocation Among Gulf Producing States and Coastal Political Subdivisions.-

(1) Allocation among gulf producing states for fiscal years 2007 through 2016.-

(A) In general.-Subject to subparagraph (B), effective for each of fiscal years 2007 through 2016, the amount made available under subsection (a)(2)(A) shall be allocated to each Gulf producing State in amounts (based on a formula established by the Secretary by regulation) that are inversely proportional to the respective distances between the point on the coastline of each Gulf producing State that is closest to the geographic center of the applicable leased tract and the geographic center of the leased tract.

(B) Minimum allocation.-The amount allocated to a Gulf producing State each fiscal year under subparagraph (A) shall be at least 10 percent of the amounts available under subsection (a)(2)(A).

(2) Allocation among gulf producing states for fiscal year 2017 and thereafter.-

(A) In general.-Subject to subparagraphs (B) and (C), effective for fiscal year 2017 and each fiscal year thereafter-

(i) the amount made available under subsection (a)(2)(A) from any lease entered into within the 181 Area or the 181 South Area shall be allocated to each Gulf producing State in amounts (based on a formula established by the Secretary by regulation) that are inversely proportional to the respective distances between the point on the coastline of each Gulf producing State that is closest to the geographic center of the applicable leased tract and the geographic center of the leased tract; and

(ii) the amount made available under subsection (a)(2)(A) from any lease entered into within the 2002–2007 planning area shall be allocated to each Gulf producing State in amounts that are inversely proportional to the respective distances between the point on the coastline of each Gulf producing State that is closest to the geographic center of each historical lease site and the geographic center of the historical lease site, as determined by the Secretary.

(B) Minimum allocation.-The amount allocated to a Gulf producing State each fiscal year under subparagraph (A) shall be at least 10 percent of the amounts available under subsection (a)(2)(A).

(C) Historical lease sites.-

(i) In general.-Subject to clause (ii), for purposes of subparagraph (A)(ii), the historical lease sites in the 2002–2007 planning area shall include all leases entered into by the Secretary for an area in the Gulf of Mexico during the period beginning on October 1, 1982 (or an earlier date if practicable, as determined by the Secretary), and ending on December 31, 2015.

(ii) Adjustment.-Effective January 1, 2022, and every 5 years thereafter, the ending date described in clause (i) shall be extended for an additional 5 calendar years.

(3) Payments to coastal political subdivisions.-

(A) In general.-The Secretary shall pay 20 percent of the allocable share of each Gulf producing State, as determined under paragraphs (1) and (2), to the coastal political subdivisions of the Gulf producing State.

(B) Allocation.-The amount paid by the Secretary to coastal political subdivisions shall be allocated to each coastal political subdivision in accordance with subparagraphs (B), (C), and (E) of section 31(b)(4) of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a(b)(4)).

(c) Timing.-The amounts required to be deposited under paragraph (2) of subsection (a) for the applicable fiscal year shall be made available in accordance with that paragraph during the fiscal year immediately following the applicable fiscal year.

(d) Authorized Uses.-

(1) In general.-Subject to paragraph (2), each Gulf producing State and coastal political subdivision shall use all amounts received under subsection (b) in accordance with all applicable Federal and State laws, only for 1 or more of the following purposes:

(A) Projects and activities for the purposes of coastal protection, including conservation, coastal restoration, hurricane protection, and infrastructure directly affected by coastal wetland losses.

(B) Mitigation of damage to fish, wildlife, or natural resources.

(C) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan.

(D) Mitigation of the impact of outer Continental Shelf activities through the funding of onshore infrastructure projects.

(E) Planning assistance and the administrative costs of complying with this section.

(F) Planning, engineering, design, construction, operations, and maintenance of one or more projects that are specifically authorized by any other Act for ecosystem restoration, hurricane protection, or flood damage prevention.

[(2) Limitation.-Not more than 3 percent of amounts received by a Gulf producing State or coastal political subdivision under subsection (b) may be used for the purposes described in paragraph (1)(E).]

(2) LIMITATION.—Of the amounts received by a Gulf producing State or coastal political subdivision under subsection (b)—

(A) not more than 3 percent may be used for the purposes described in paragraph (1)(E); and

(B) not less than 25 percent may be used for the purposes described in paragraph (1)(F), and shall be applied proportionally to the applicable Federal and non-Federal share pursuant to such specific project authorization.

(e) Administration.-Amounts made available under subsection (a)(2) shall-

(1) be made available, without further appropriation, in accordance with this section;

(2) remain available until expended; and

(3) be in addition to any amounts appropriated under-

(A) the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.);

(B) chapter 2003 of title 54, United States Code; or

(C) any other provision of law.

(f) Limitations on Amount of Distributed Qualified Outer Continental Shelf Revenues.-

[(1) In general.-Subject to paragraph (2), the total amount of qualified outer Continental Shelf revenues made available under subsection (a)(2) shall not exceed-

"(A) $500,000,000 for each of fiscal years 2016 through 2019;
"(B) $650,000,000 for each of fiscal years 2020 and 2021; and
"(C) $500,000,000 for each of fiscal years 2022 through 2055.]

[(2)] (1) Expenditures.-For the purpose of paragraph (1), for each of fiscal years 2016 through 2055, expenditures under subsection (a)(2) shall be net of receipts from that fiscal year from any area in the 181 Area in the Eastern Planning Area and the 181 South Area.

[(3)] (2) Pro rata reductions.-If paragraph (1) limits the amount of qualified outer Continental Shelf revenue that would be paid under subparagraphs (A) and (B) of subsection (a)(2)-

(A) the Secretary shall reduce the amount of qualified outer Continental Shelf revenue provided to each recipient on a pro rata basis; and

(B) any remainder of the qualified outer Continental Shelf revenues shall revert to the general fund of the Treasury.