

OFFSHORE OIL DRILLING IN THE UNITED STATES AND THE EXPANSION OF CUBA'S OIL PROGRAM:

A DISCUSSION OF ENVIRONMENTAL POLICY

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I. INTRODUCTION

Dating back to the mid-nineteenth century, environmental advocacy in the United States is certainly nothing new. However, the modern environmental movement did not take hold in the United States until the 1970s.¹ Up until the 1970s, followers of the environmental movement consisted only of wealthy political elitists advocating mainly for conservation.² The modern environmental movement, on the other hand, began as a social movement garnering deeper concern and more popular support.³ The oil spill that occurred in 1969 off the coast of Santa Barbara, California devastated the American public and spawned modern environmental advocacy in the United States, especially as related to water pollution and offshore oil drilling in its coastal waters.⁴ In January of 1969, a natural gas blowout on an oil platform owned by Union Oil Co. , located six miles off the coast of Santa Barbara, created a huge hole in the oil pipeline.⁵ Oil workers struggled for nearly two weeks attempting to repair the rupture.⁶ During that time 200,000 gallons of crude oil rose to the surface of the ocean and spread across thirty-five miles of California coastline.⁷ The spill devastated the environment and tarnished the reputation of the oil industry.⁸

Oil spills continued to occur at alarming rates in the years following the

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1. See Wisconsin Historical Society, *The Modern Environmental Movement*, (2007), available at <http://www.dnr.state.wi.us/org/caer/cea/media/articles/WHSEssay.pdf>.

2. Nationmaster.com, *Environmental Movement in the United States*, para.13, <http://www.nationmaster.com/encyclopedia/Environmental-movement-in-the-United-States> (last visited Nov. 24, 2009).

3. *Id.*

4. Santa Barbara Wildlife Care Network, *Santa Barbara's 1969 Oil Spill*, para. 1, <http://www.sbwcn.org/edu/spill.php> (last visited Nov. 24, 2009).

5. *Id.* at para. 1.

6. *Id.* at para. 2.

7. *Id.* at para. 2.

8. *Id.* at para. 13.

1969 tragedy and peaked in the late 1970s.⁹ The International Tanker Owners Pollution Federation (“ITOPF”), a non-profit organization involved in responding to ship-source oil spills, has studied and provided statistics regarding the frequency of oil spills on an international scale.¹⁰ According to the studies conducted by ITOPF, between 1970 and 1979 there was a yearly average of 25.2 oil spills.¹¹ As a result of the alarming frequency of oil spills during the 1970s, public sentiment against offshore oil drilling near the coastal areas of the United States reached its peak as well. In response, Congress adopted the Outer Continental Shelf (“OCS”) Moratorium in 1981.¹² However, the latest study conducted by ITOPF found the average number of oil spills per year has decreased dramatically since the 1970s.¹³ For example, between 2000 and 2007 an average of 3.4 oil spills occurred per year.¹⁴ This dramatic decrease in the frequency of oil spills indicates that there is less reason for public concern about the coastal environment and supportive of the OCS Moratorium.

As enacted in 1981, the OCS Moratorium only restricted drilling off the coast of California, but it has been extended several times since enactment. In its current form, the OCS Moratorium prevents the leasing of waters for fossil fuel development off the Atlantic and Pacific coasts and Alaska’s Bristol Bay.¹⁵ In 1990, the Bush Administration extended the OCS Moratorium once again to include the coasts of Florida, California, and New England.¹⁶ Since its passage in 1981, Congress has annually renewed the Moratorium.¹⁷ However, the ban has recently been threatened and has become the topic of heated political debate.¹⁸ Those in favor of lifting the OCS Moratorium argue that it would solve the “energy crisis” in the United States.¹⁹ Proponents argue further that lifting the drilling ban would allow for greater energy independence and would

9. The Mariner Group, *Oil Spill History*, <http://www.marinergroup.com/oil-spill-history.htm> (last visited Jan. 1, 2010).

10. ITOPF, *About ITOPF*, para.1, <http://www.itopf.com/about/> [hereinafter ITOPF] (last visited Jan. 1, 2010). The International Tanker Owners Pollution Federation was established in 1968 to administer the voluntary compensation agreement which assured the adequate and timely payment of compensation to those affected by oil spills. *Id.* ITOPF now devotes considerable effort to a wide range of technical services, of which the most important is responding to spills of oil and chemicals. *Id.*

11. ITOPF, *Data & Statistics*, at Figure 1, <http://www.itopf.com/information-services/data-and-statistics/statistics/index.html> [hereinafter ITOPF Study] (last visited Jan. 1, 2010).

12. Tom Valtin, *Offshore Drilling Moratorium Threatened*, Sierra Club, para. 3., <http://www.sierraclub.org/planet/200603/offshore.asp> (last visited Nov. 24, 2009).

13. ITOPF Study, *supra* note 11.

14. *Id.*

15. Valtin, *supra* note 12, at para. 3.

16. PlanMyGreen.com, *Offshore Drilling Resistance Evaporating*, para. 1, <http://www.planmygreen.com/?p=171> (last visited Nov. 24, 2009).

17. Valtin, *supra* note 12, at para. 3.

18. *See id.*

19. PlanMyGreen.com, *supra* note 16, at para. 3.

drive down gas prices.²⁰ Opponents, on the other hand, argue that the miniscule impact that lifting the ban would have on gas prices would not be worth all of the negative effects on the environment that would result from drilling in coastal waters.²¹ However, the environmental arguments against offshore oil drilling in the Gulf Coast have recently been weakened by Cuba's plan to expand its oil program.

The expansion of Cuba's oil program is a major threat against the OCS Moratorium. Throughout history, oil production in Cuba has been very limited and confined to the lands around Havana and the neighboring Matanzas province.²² Recently, Cuba has begun to significantly expand its oil program into the waters that separate it from the United States.²³ Although a 1977 treaty²⁴ between Cuba and the United States limits the proximity of Cuba's oil wells to the United States, Cuba can still legally build offshore wells within a mere fifty miles of the coast of Florida.²⁵ The 1977 treaty divided the Florida straits in order to preserve the economic rights of each country, including access rights to extensive oil and gas fields on both sides of the divide.²⁶ Cuba's ability to legally build offshore oil drilling wells within fifty miles of the coast of Florida is concerning because this close distance will not protect Florida from suffering the ill effects associated with Cuban offshore oil exploration.

While the environmental laws in the United States prohibit drilling within at least 100 miles of its coasts, there is little the United States can do to control how Cuba utilizes its portion of the water rights acquired by the 1977 treaty. Currently Cuba does not have the economic capacity to exploit the oil and gas fields in these waters. However, Cuba plans to sell rights to its fifty-nine offshore leasing blocs to various international partners who will then extract the oil and gas and give Cuba a share in the profits.²⁷ In fact, Cuba has already

20. *Id.*

21. Valtin, *supra* note 12, at para. 5.

22. David J. Lynch, *Cuba's Known for Cigars Now, but Oil Could Change that*, USA TODAY, Feb. 22, 2007, available at <http://usatoday.com/money/world/2007-02-22-cuba-usa.tx.htm>.

23. *Id.*

24. Exchange of Letters Constituting an Agreement on a Modus Vivendi Relating to Maritime Boundary, U.S.-Cuba, No. 18222 (Apr. 27, 1977), available at http://untreaty.un.org/unts/60001_120000/2/34/00003673.pdf. This treaty, establishing the maritime boundary between the United States and Cuba, was as a result of the enactment of Public Law 94-265 by the United States Government on April 3, 1976 and by the Government of Cuba of Decree-Law No. 2 on February 24, 1977. *Id.* The treaty was signed at Washington on December 16, 1977. U. S. DEPT. OF STATE, *Treaties Pending in the Senate*, Sept. 26, 2008, <http://www.state.gov/s/l/treaty/pending>.

25. Michael Janofsky, *Cuba Plans Offshore Wells Banned in U. S. Waters*, N. Y. TIMES, at para. 1, (May 9, 2006), available at <http://www.nytimes.com/2006/05/09/washington/09drill.html>.

26. *Id.*

27. Paul Hooson, *Big Oil Could Fuel End To Embargo On Cuba*, para. 4, <http://wizbangblue.com/2008/08/04/big-oil-could-fuel-end-to-embargo-on-cuba.php> (last visited

sold the rights to approximately one-third of its offshore leasing blocs to foreign nations that have agreed to cover their own fossil fuel exploration costs and to share the profits of any production with Cuba.²⁸ Foreign nations, including India and China, hope to develop the 9.3 billion barrels of crude oil and 21.8 trillion cubic feet of natural gas that were recently found in the North Cuban Basin by a U. S. Geological Survey.²⁹ Given that the United States has historically been very dependent on foreign oil, U.S. Chief Executive Officers (“CEOs”), oil companies, and much of the American public alike have begun to urge Congress to lift the OCS Moratorium and allow the United States to become more self-sufficient.³⁰ In the alternative, U. S. oil companies have urged Congress to end the economic embargo against Cuba so that they can at least compete with other foreign nations for rights to Cuba’s offshore leasing blocs.³¹ Although economic arguments in favor of lifting the OCS Moratorium in the United States play some role, environmental arguments remain central to the debate over offshore drilling near the coasts. The coastal waters surrounding Florida are especially at issue because the expansion of Cuba’s oil program so close to the Florida coast would yield the same environmental detriments that would result if the United States were doing the drilling itself.³² Thus, if the United States is going to suffer negative environmental effects anyway, it might as well take advantage of the economic gains associated with expanded offshore oil drilling.

The purpose of this Note is threefold. First, this Note will discuss the arguments in favor of lifting the OCS Moratorium in the United States. Second, this Note will compare environmental and energy policy in the United States to that of Cuba. Examination and comparison of the history and current state of environmental law in both nations will provide insight as to why offshore oil drilling is such a contested issue in the United States but not in Cuba. Third, this Note will offer recommendations regarding how the environmental laws and policies of the United States and Cuba could be amended in order to allow for the safest possible means for expanding oil production.

Specifically, Part I of this Note provides a historical background of environmental law and policy in the United States and discusses how laws and policies against OCS oil drilling developed. This Part of the Note also discusses the sentiment of the American public toward offshore oil drilling.

Part II discusses arguments for and against lifting the OCS Moratorium in the United States as well as a discussion, in greater detail, of the environmental arguments provided in opposition to the expansion of offshore drilling in the United States. This Part also discusses recent developments in technology

Jan. 1, 2010).

28. LatinBusinessChronical.com, *Cuba’s Oil Partners*, (Jan. 1, 2010), <http://www.latinbusinesschronical.com>.

29. Hooson, *supra* note 27, at para. 3.

30. *Id.*

31. *Id.*

32. Janofsky, *supra* note 25, at para. 1.

associated with offshore oil drilling.

Part III of this Note provides a historical background of environmental law and policy in Cuba and analyzes those laws and policies. In this Part of the Note, environmental law in the United States will be compared to environmental law in Cuba. A discussion of environmental interest group activity will also be provided in this section. The aim of the comparative analysis provided in this part of the Note is to explain why obstacles to offshore drilling exist in the United States but not in Cuba. This section of the Note seeks to explain why the United States has had a moratorium on offshore drilling for nearly twenty-eight years and remains apprehensive to expand its oil program despite the many economic and political arguments in support of doing so.

Part IV of this Note provides recommendations regarding how environmental policy could be adjusted in order to yield the optimum result in both the United States and Cuba. Included in these recommendations is a discussion of the possible repercussions of maintaining the status quo in both of these nations. This Part of the Note also discusses the possible impacts of these recommendations to the United States and Cuba and collateral effects on other nations.

Part V of this Note provides a brief conclusion of the arguments surrounding the issue of the OCS Moratorium in the United States and how the laws and policies associated have influenced those arguments. This part also examines how the laws and policies could be changed to provide for a better solution and a conclusive proposal is offered regarding the best approach to the problems surrounding the offshore oil drilling.

II. A BACKGROUND OF ENVIRONMENTAL LAW AND POLICY IN THE UNITED STATES

Many wonder why there is such strong environmental advocacy against offshore oil drilling in the United States yet very little in Cuba and other nations. The exploration blocs to be leased out by Cuba will be developed just as close, if not closer, to Cuba as to the United States.³³ Therefore, Cuba would suffer the same environment effects that the United States is so concerned about. This Part of the Note focuses on environmental law and advocacy in the United States in detail, and this discussion will be expanded further in Part III with a comparative analysis in an attempt to answer the question posed above.

A. The Emergence of the Modern Environmental Movement

The modern environmental movement in the United States did not actually take hold until the mid 1970s, but Congress laid some of the

33. *See supra* Introduction.

foundation in the decades prior.³⁴ In 1948, Congress first showed interest in and concern about water pollution by passing the Federal Water Pollution Control Act³⁵. In 1972, Congress expounded upon the Federal Water Pollution Control Act and enacted the Clean Water Act (“CWA”)³⁶ which is currently the primary federal law in the United States governing water pollution.³⁷ It aims to eliminate the release of high amounts of toxic substances into bodies of water in and surrounding the United States.³⁸ Following two of the most catastrophic oil spills in United States history, discussed in the introduction of this Note, two very significant environmental protection measures were adopted: the Environmental Protection Agency (“EPA”) and Earth Day.³⁹ The adoption of Earth Day symbolized the new found commitment and dedication to protecting the environment.⁴⁰ The creation of the EPA is notable because it is now the agency with the primary responsibility of generating and enforcing environmental regulations.⁴¹

Essentially, the EPA implements the environmental laws written by Congress by writing them into regulations.⁴² The EPA also awards grants to state agencies to fund their environmental programs, studies environmental issues, educates the public about environmental issues, and sponsors partnerships for protecting the environment.⁴³ The National Environmental Policy Act (“NEPA”)⁴⁴ is one source from which the EPA is granted regulatory authority.⁴⁵ In general, “NEPA requires federal agencies to integrate environmental values into their decision making process by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.”⁴⁶ To meet NEPA requirements, federal agencies must prepare a detailed statement describing a proposed action and outlining the action’s anticipated effects on the environment—this statement is known as the Environmental Impact Statement (“EIS”).⁴⁷ The EPA has promulgated these

34. Water Encyclopedia, *Role of Water in the Environmental Movement*, para.13, <http://www.waterencyclopedia.com/Da-En/Environmental-Movement-Role-of-Water-in-the.html> (last visited Oct. 25, 2009).

35. 33 U.S.C. §1251 (2008).

36. Water Encyclopedia, *supra* note 34, at para.13.

37. U.S. Env'tl. Prot. Agency, Introduction to the Clean Water Act (CWA), <http://www.epa.gov/watertrain/cwa> (last visited Nov. 24, 2009).

38. *Id.*

39. Water Encyclopedia, *supra* note 34, at para. 17. The EPA was created and Earth Day was adopted in 1970. *Id.*

40. *See id.*

41. U.S. Env'tl. Prot. Agency, What We Do, <http://www.epa.gov/epahome/whatwedo.htm> [hereinafter EPA.gov] (last visited Nov. 24, 2009).

42. *Id.*

43. *Id.*

44. 42 U.S.C. § 4321 (2008).

45. U. S. Env'tl. Prot. Agency, National Environmental Policy Act (NEPA), para. 1, <http://www.epa.gov/Compliance/nepa/> (last visited Nov. 24, 2009).

46. *Id.*

47. *Id.*

general requirements as proactive steps to prevent environmental degradation.

In 1990, Congress took additional steps to combat environmental disasters specifically tied to offshore oil drilling by enacting the Oil Pollution Act (“OPA”)⁴⁸. The OPA was enacted following the infamous 1989 Exxon Valdez oil spill that was detrimental to the ecosystems in the waters surrounding Alaska.⁴⁹ The OPA strengthens the requirements and penalties related to accidents resulting from offshore oil exploration.⁵⁰ The OPA, together with NEPA, the Clean Water Act of 1972,⁵¹ Clean Air Act of 1970,⁵² and the Coastal Zone Management Act of 1972,⁵³ “implement[s] controls on the discharge of water and air pollution applicable to the offshore industry.”⁵⁴ Specifically, the Coastal Zone Management Act “coordinates environmental and other programs between federal and state governments and provides states with monetary grants and technical assistance in implementing environmental management programs.”⁵⁵ Thus, the United States has several statutes in place which are designed to address any collateral damage caused during offshore oil drilling exploration. In fact, offshore drilling activity and the marine industry in the United States have been regarded, by attorneys and other professionals, as highly regulated.⁵⁶

However, it is argued that the enforcement efforts behind these strict regulations could be stronger in the United States. The EPA is the primary entity responsible for regulating offshore oil drilling and issuing sanctions for non-compliance with environmental regulations.⁵⁷ In the past, the EPA has monitored oil companies and often imposed heavy sanctions on those companies when they failed to comply with environmental laws and regulations.⁵⁸ For example, in August of 2008, the EPA slapped Exxon Mobil with a 2.64 million dollar penalty after Exxon ignored a polychlorinated biphenyl (“PCB”) leak for two years.⁵⁹ The leak allowed 400 gallons of PCB to seep into the Pacific Ocean in violation of the Federal Toxic Substances Control Act (“TSCA”).⁶⁰ The TSCA mandates that the “EPA may issue a civil administrative complaint” which “may impose a civil penalty, including

48. 33 U.S.C. § 2701 (2008).

49. Michael J. McHale, *An Introduction to Offshore Energy Production-A Florida Perspective*, 39 J. MAR. L. & COM. 571, 585 (2008).

50. *Id.*

51. 42 U.S.C. § 7401 (2008).

52. 33 U.S.C. § 1251 (2008).

53. 16 U.S.C. § 1451 (2008).

54. McHale, *supra* note 49, at 583.

55. *Id.*

56. *Id.* at 585.

57. EPA.gov, *supra* note 41, at para. 1.

58. *Id.*

59. ContractorMisconduct.org, *Federal Contractor Misconduct Database*, para. 23, <http://www.contractormisconduct.org/index.cfm/1,73,221,html?ContractorID=23&ranking=42> (last visited Nov. 24, 2009).

60. *Id.*

recovery of any economic benefit of non-compliance, and may also require correction of the violation” by any “manufacturer, processors, distributors, or users of the chemical substance.”⁶¹ Many argued that the 2.64 million dollar penalty, which is under one percent of the \$11.68 billion in profits earned by Exxon Mobil in just one quarter alone, was just a slap on the wrist and that the EPA exercised only a small fraction of the enforcement authority it is afforded under the TSCA.⁶² In addition to violations found under the TSCA and other statutes purporting to control the release of toxic substances, accidents that have occurred during offshore drilling have led to oil companies being found guilty of violations of the Clean Water Act.⁶³ For example, in 1992, Chevron USA pled guilty to sixty-five violations of the Clean Water Act and paid a total of eight million dollars in fines for illegal discharges from the company’s production platform located off the California coast.⁶⁴ Although these multi-million dollar fines appear harsh to the layperson, experts argue that the fines are not strict enough to serve as a deterrent. The argument in favor of deterrence, however, can be countered by the argument that deterrence is only effective with regard to intentional violations of these environmental acts. The majority of these major chemical spills are as a result of accidents.⁶⁵

Although environmentalists argue that enforcement of environmental regulations could be strengthened, it cannot be argued that environmental regulations and public awareness of environmental issues is completely lacking in the United States. As compared to environmental regulations in Cuba, regulations in the United States have proved to be much more organized and much easier to interpret and implement in practice.⁶⁶

B. Environmental Interest Group Activity

Recently, environmental advocacy groups have been capitalizing on the public’s growing interest in global warming and other environmental issues, as well as the “Green Movement” that has permeated the nation.⁶⁷ Increased energy use by developing countries, like China, has increased the world’s demand for and dependence on fossil fuels. Energy use has also affected the amount of toxins released into the environment.⁶⁸ Environmental groups, who advocate the development of alternative fuel sources and cleaner energy, have

61. U.S. Env’tl. Prot. Agency, TSCA Statute, Regulations, and Enforcement, <http://www.epa.gov/compliance/civil/tsca/tscaenfstatreq.html> (last visited Nov. 24, 2009).

62. ContractorMisconduct.org, *supra* note 59.

63. Change.org, Committee Against Oil Exploration, para. 7, <http://www.culturechange.org/caoe.html> (last visited Nov. 24, 2009).

64. *Id.*

65. ITOPF.com, *supra* note 10.

66. *See infra* Part III.

67. Chantelle Marcelle, *Green Movement Continues to Grow in U.S.*, INDEP. FLA. ALLIGATOR, para. 2, July 31, 2008, available at, http://www.alligator.org/articles/2008/07/31/news/features/080731_green.txt.

68. *Id.* at para. 8.

highlighted the risks associated with the increased dependence on fossil fuels and increased production of oil.⁶⁹ This has helped raise awareness about environmental issues and has caused many more Americans to become a part of the Green Movement.⁷⁰ Without the presence of such staunch environmental advocacy groups in the United States, many Americans would not even be aware of current environmental issues.⁷¹ Most Americans still have little personal knowledge of environmental issues and this creates an opportunity for manipulation. The average American's lack of knowledge allows environmental interest groups, with help from the mass media, to easily instill fear in American citizens and sway their opinions toward favoring additional environmental protections.⁷² Thus, it is important to pinpoint the source of any current opposition to offshore drilling because negative attitudes could be based on media hype rather than studies and facts.

C. Recent Congressional Proposals and Resolutions Regarding Offshore Oil Drilling

After President George W. Bush lifted the executive ban on oil and gas development in the Outer Continental Shelf, pressure mounted on Congress to follow the President's footsteps and lift the legislative ban as well.⁷³ President Bush had previously stated that he would only lift the executive ban after Congress did so legislatively; but after stagnation from Congress, President Bush finally decided to take action.⁷⁴

Congress has recently considered several proposals and resolutions which have included offshore drilling provisions packaged with other, more environmentally friendly, provisions.⁷⁵ In September of 2008, the United States House of Representatives passed H. R. 6899, more commonly known as the "Comprehensive American Energy Security & Consumer Protection Act."⁷⁶ The Bill would have allowed drilling 100 miles off of the Atlantic, Florida Gulf, and Pacific coasts.⁷⁷ And it would have provided coastal states with the

69. *Id.* at para. 10.

70. *Id.*

71. *Id.*

72. *Id.* at para. 25.

73. See generally Marc Humphries, *CRS Report for Congress-Outer Continental Shelf Leasing: Side by Side Comparison of Five Legislative Proposals*, Sept. 16, 2008, <http://opencrs.com/document/RL34667/2008-09-16/>.

74. *Id.*

75. Kate Sheppard, *Where There's a Drill, There's a Way*, GRIST, para. 6, Sept. 16, 2008, <http://gristmill.grist.org/story/2008/9/16/195746/709>.

76. *Id.* On September 16, 2008, the United States House of Representatives passed the Comprehensive American Energy Security & Consumer Protection Act by a vote of 236 to 189. Nine representatives did not vote on the bill. Govtrack.us, H.R. 6899: Comprehensive American Energy Security and Protection Act, (Dec. 21, 2008), <http://www.govtrack.us/congress/bill.xpd?bill=h110-6899> (last visited Oct. 11, 2009).

77. Sheppard, *supra* note 75, at para. 7.

option of reducing the buffer zone to just fifty miles.⁷⁸ But to balance the scales, the Bill also included a number of environmentally friendly provisions, such as tax credits for using renewable sources of energy, in an attempt to foster bi-partisan support.⁷⁹ Since the Bill was introduced in a previous session of Congress, no more action can be taken on it.⁸⁰ Still, a discussion of the Bill illustrates the nature of the political environment surrounding offshore drilling and provides an example of the types of proposals that are likely to be seen in the effort to expand offshore oil drilling in the United States.

At first glance, it appears that the Comprehensive American Energy Security & Consumer Protection Act would have imposed major changes on America's offshore oil drilling program. Contrary to the beliefs of many environmentalists, however, the Bill would not have actually changed the current state of offshore drilling in the coastal waters surrounding the United States.⁸¹ Opponents of the Bill have questioned it: "How could a 'comprehensive' energy bill be introduced one day and voted on the next with almost no debate or discussion? Because it [is not] a comprehensive energy bill at all, but rather a ploy by the liberals to limit drilling to areas farther than fifty miles from shore."⁸² The contention surrounding this Bill, like many other bills attempting to settle the offshore oil drilling issue, might be based on mere confusion over what exactly the Bill even says. It is important that legislation regarding offshore drilling be clear and concise, rather than clouded by exceptions and earmarks.⁸³

Furthermore, in a Statement of Administrative Policy, the Office of Management and Budget (OMB) strongly opposed the Bill for several reasons.⁸⁴ According to the OMB, "though H. R. 6899 would open the OCS to oil and gas exploration in some circumstances, it would do so only in combination with other provisions rendering this opening ineffective... this bill does not allow for revenue sharing with the states, eliminating a critical incentive for them to permit exploration off their shores."⁸⁵ The OMB also stated that President Bush's advisors would have recommended that the bill be

78. *Id.*

79. *Id.* at para. 6.

80. Govtrack.us, *supra* note 76.

81. Tom Myers, Letter: *No Solution At All*, CAP. J., (Topeka, KS), Sept. 26, 2008, at para. 2, available at http://cjonline.com/stories/092608/opi_337021841.shtml.

82. *Id.*

83. *Id.*

84. OFFICE OF MGMT. AND BUDGET, STATEMENT OF ADMINISTRATIVE POLICY, Sept. 16, 2008, <http://www.whitehouse.gov/omb/legislative/sap/110-2/saphr6899-h.pdf>. [hereinafter OMB Statement]. The OMB is the White House Office that is responsible for devising and submitting the President's annual federal budget proposal to Congress. The OMB evaluates the effectiveness of agency programs, policies, and procedures, assesses competing funding demands among agencies, and sets funding priorities. For more information on the Office of Management and Budget, see OFFICE OF MGMT. AND BUDGET, *About OMB*, http://www.whitehouse.gov/omb/organization_role/ (last visited Nov. 24, 2009).

85. OMB Statement, *supra* note 84.

vetoed.⁸⁶ H. R. 6899, if it had passed, would not really have helped the United States become less dependent on foreign oil and would not have solved the issue regarding the coastal areas of Florida that would be affected by Cuba's leasing program anyway. Still, the fact that this and many other pieces of legislation have recently been put on the table indicates the importance of the issue of offshore oil drilling. Rather than focusing on legislation that will never be enacted, the OMB suggested that Congress:

(1) lift the current legislative ban on exploration of the OCS, which could eventually produce the equivalent of [ten] years of the Nation's current annual oil production (the President lifted the executive ban in July); (2) lift the current restriction on oil shale leasing to allow the development of this vast resource that, if fully realized, could produce the equivalent of more than a century's worth of oil imports at current levels; and (3) extend and improve existing renewable energy tax credits by creating a single tax incentive program that would be carbon-weighted, technology-neutral, and long-lasting.⁸⁷

The discussions surrounding the Bill illustrate that the contentious issue of offshore drilling in the OCS does not seem to be going anywhere anytime soon. The suggestions offered by the OMB will be discussed in greater detail in Part IV of this Note.

D. United States Federal Court Decisions

Federal court decisions have also impacted and intensified the offshore oil drilling debate in the United States. For example, in June of 2008, the United States Supreme Court handed down a decision⁸⁸ reducing the punitive award against Exxon Mobil for the damage it caused in the 1989 oil spill off of the coast of Alaska.⁸⁹ The Court held that "punitive damages should roughly match actual damages from the environmental disaster. . ."⁹⁰ The decision was considered a victory for big business.⁹¹ The decision indicated that the Supreme Court is unwilling to award excessive punitive damages awards against oil companies. While the court recognized that the oil spill was harmful, it refused to award excessive damages to the plaintiffs, likely because the reality is that the United States is still heavily dependent on the oil companies and still needs those companies to thrive economically. The

86. *Id.*

87. *Id.*

88. *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2634 (2008).

89. CNN, *High Court Reduces Exxon Oil Spill Damages*, para. 1, June 25, 2008, http://money.cnn.com/2008/06/25/news/companies/SCOTUS_exxon/index.htm?cnn=yes.

90. *Id.* at para. 2.

91. *Id.* at para. 17.

decision also indicated that courts have, perhaps due to the shift in public sentiment, become less concerned about environmental risks associated with oil spills.

III. ARGUMENTS IN FAVOR OF LIFTING THE OCS MORATORIUM IN THE UNITED STATES

A. *Public Sentiment Arguments*

Public sentiment favoring environmental protection drove Congress to pass the OCS Moratorium in 1981.⁹² However, the American public is now much less concerned about the potential environmental effects that offshore oil drilling has on the environment.⁹³ In fact, a recent public opinion poll showed that as many as sixty-seven percent of voters were in favor of resuming offshore oil drilling off the coast of Florida and other states.⁹⁴ Recently, offshore oil drilling has garnered greater support due to the struggling U. S. economy and rising energy costs.⁹⁵ Thus, one argument that must be considered in support of lifting the OCS Moratorium is that it was largely driven by public sentiment that no longer exists. This is not to say that Americans are no longer concerned about the environment, in fact, the Green Movement has swept the nation.⁹⁶ Rather, technological advancement and other factors have offset these concerns.⁹⁷

B. *Economic Arguments*

Another argument made by proponents of lifting the OCS Moratorium is that doing so will stimulate the economy. Approval is still needed from state governments for offshore drilling to take place within a certain proximity to coastlines.⁹⁸ However, gaining state approval is unlikely to persist as an obstacle.⁹⁹ There are many incentives for states to follow suit and allow offshore drilling near their coasts. For example, "new drilling in Florida would

92. Melissa Nelson, *Drillers Begin Quest for Oil, Gas Off Coast of Florida*, L.A. TIMES, at para. 7, (July 5, 2008), available at <http://articles.latimes.com/2008/jul/05/business/fi-drilling5>.

93. Rasmussen Reports, *67% Support Offshore Drilling*, para. 1, June 17, 2008, http://www.rasmussenreports.com/public_content/politics/general_politics/67_support_offshore_drilling_64_expect_it_will_lower_prices.

94. *Id.* at para. 2.

95. *See id.* at para. 4.

96. Marcelle, *supra* note 67, at para. 2.

97. *See infra* note 111.

98. *See* Ben Arnoldy & Amy Green, *On U.S. Coasts, a Rethinking on Oil Drilling*, CHRISTIAN SCI. MONITOR, Jun. 20, 2008, at para. 6, available at <http://www.csmonitor.com/2008/0620/p02s02-usgn.html>.

99. *Id.* at para. 12.

add jobs and infuse the state economy with oil leasing money.”¹⁰⁰ For these reasons, Florida Governor Charlie Crist now supports lifting the Moratorium.¹⁰¹

The stances of politicians in coastal states and their constituents were once a major obstacle to lifting the OCS Moratorium.¹⁰² However, an increasing number of politicians are changing their minds about offshore drilling and have become more willing to consider allowing offshore drilling near their coasts.¹⁰³

U. S. CEOs are also urging that Congress lift the OCS Moratorium for economic reasons.¹⁰⁴ CEOs of leading American corporations cite fuel costs as “among the highest cost pressures they face.”¹⁰⁵ The Business Roundtable¹⁰⁶ argues that increased production of oil is the main solution to such cost pressures: “Production will shrink further unless we take steps to increase it. Moreover, the U. S. cannot credibly advocate increased production elsewhere in the world while refusing to increase its own domestic supply.”¹⁰⁷ Most forecasts suggest that the United States will rely on oil and natural gas as its primary energy sources for at least the next thirty years.¹⁰⁸ Thus, lifting the OCS Moratorium would allow the United States to increase domestic production of oil, provide jobs, and ease the fuel demands of domestic corporations.

In response to the alleged economic benefits, opponents to lifting the ban have argued that increasing production would have no impact on the domestic energy market in the United States for at least ten years.¹⁰⁹ However, if the United States had lifted the ban ten years ago it would not be in its current predicament. The United States continues to become more and more dependent on foreign oil and will need to take action. The political battle over the issue has pervaded for years, continues to stagnate economic progress, and is unlikely

100. *Id.*

101. *Id.* at para. 9.

102. *Id.* at para. 11.

103. *See id.* at para. 10, 12.

104. Bill Loveless, *U. S. CEO's Ask Congress to Follow Bush By Lifting OCS Moratorium*, PLATTS, para. 1, Sept. 4, 2008, available at <http://www.platts.com/Natural%20Gas/News/6947091.xml?src=Natural%20Gasrssheadlines1>.

105. *Id.* at para. 6.

106. The “Business Roundtable is an association of chief executive officers of leading U.S. companies with more than \$5 trillion in annual revenues and nearly 10 million employees. Member companies comprise nearly a third of the total value of the U. S. stock markets and pay nearly half of all corporate income taxes paid to the federal government.” Business Roundtable, *About Us: Overview*, para. 1., <http://www.businessroundtable.org/about> (last visited Nov. 24, 2009). The Business Roundtable serves as a catalyst, stimulating business leaders to take an active role in public policymaking and to influence members of Congress. *Id.* at para. 9.

107. Loveless, *supra* note 104, at para. 6. Although the world’s largest consumer, domestic production has steadily declined since the 1980s. *See id.* at para. 2.

108. Energy Tomorrow, OCS Moratoria Fact Sheet, para. 3, http://www.energytomorrow.org/energy/OCS_Moratoria_Fact_Sheet.aspx. (last visited Oct. 11, 2009).

109. *Id.* at para. 2.

to disappear without a major change.¹¹⁰

C. Environmental Arguments

The strongest arguments for maintaining the OCS Moratorium have revolved around environmental concerns. However, these arguments have been weakened by news of Cuba's plan to expand its oil program. Environmentalists argue that we cannot allow offshore drilling near our coastlines because it would be detrimental to coastal ecosystems and tourism. However, these same environmental effects will be felt regardless when lessees of Cuba's exploration blocs begin operating their offshore wells as close as fifty miles to the Florida coast.¹¹¹ Because the United States cannot regulate how Cuba utilizes or exploits its own territory, the United States simply cannot prevent Cuba from taking advantage of offshore oil. Given Cuba's close proximity to Florida and other states bordering the Gulf Coast, the OCS Moratorium provides no actual protection over this area. Effectively, the expansion of Cuba's oil program makes the OCS Moratorium a lose-lose situation for the United States. The United States is at risk for environmental disasters without attaining any benefit from offshore drilling.

In the age of modern technology, it should be possible to engage in offshore oil drilling exploration with minimal negative environmental effects. Steps have already been taken in the United States to improve the technology associated with offshore oil drilling, which has already made the industry much safer.¹¹² Continued research and development will help improve technology even further.¹¹³ "With the appropriate government oversight and regulation, it may be possible to drill off the coasts of Florida and California without covering the beaches with sludge and killing thousands of seabirds."¹¹⁴ This is a goal worth working toward. The safety systems now required to be implemented by oil companies have greatly improved and in recent years the oil industry has had a good safety record.¹¹⁵ Additional regulations will be mandated in the near future as well. For example, beginning in 2015 all tankers

110. See Tyler Priest, *If the Great Debate Over Offshore Drilling Sounds Vaguely Familiar-It Should-But Its Time For a Happier Ending*, HISTORY NEWS NETWORK, para. 5, May 30, 2007, available at <http://hnn.us/articles/54465.html> (stating that "The political polarization over offshore drilling is reminiscent of the debate between Eisenhower and Stevenson fifty-six years ago regarding coastal state versus federal control over the Outer Continental Shelf. Both sides had hardened and compromise was impossible.").

111. Rush PRNews, *Offshore Drilling is an Ugly Reality*, para. 4, Aug. 15, 2008, <http://www.rushprnews.com/2008/08/15/offshore-drilling-is-an-ugly-reality>.

112. Kent Garber, *Oil Drilling Debate Rages on, 20 Years after the Valdez Spill*, U.S. NEWS, (Mar. 24, 2009), available at <http://www.usnews.com/articles/news/energy/2009/03/24/oil-drilling-debate-rages-on-20-years-after-the-valdez-spill.html>.

113. *Id.*

114. Andrew Leonard, *Slick John McCain and the Offshore Oil Ruse*, SALON, para. 7, June 25, 2008, http://www.salon.com/tech/feature/2008/06/25/mccain_offshore_oil.

115. Garber, *supra* note 112.

in United States' waters will be required to be double-hauled vessels which are designed to prevent spills if an accident occurs.¹¹⁶

Moreover, the ITOPF has conducted studies and found that it is the accidental causes; such as collisions and groundings that give rise to the larger, more catastrophic oil spills.¹¹⁷ In fact, eighty-four percent of the large oil spills are attributed to these causes.¹¹⁸ According to Bruce Bullock, Director of the Maguire Energy Institute at Southern Methodist University in Dallas, in the context of offshore drilling near Florida, "[t]here's probably more of a risk of an incident from a tanker going down the coast to get into the Gulf or vice versa than there is putting a well in 1,000 feet of water."¹¹⁹ And Bullock also points out that the nation's worst spill on record—the Exxon Valdez spill—involved a tanker rather than an offshore drilling platform.¹²⁰ Thus, it cannot be said that offshore drilling platforms are the main contributors to the environmental degradation caused by the oil industry.

D. Oil Consumption in the United States & Foreign Relations

Recent statistics reveal that the United States consumes 19.6 million barrels of oil per day.¹²¹ This comprises more than one quarter of the world's total oil consumption and much more than Cuba consumes.¹²² Demand for oil in the United States is expected to continue to steadily increase.¹²³ This growing demand has contributed to foreign dependence on oil and has led to increased global conflict.¹²⁴ Recently, the U.S. Council on Foreign Relations established an independent task force to examine the consequences of the dependence on foreign oil in the United States and to compile its findings in a report.¹²⁵ In its Report, the task force has identified five reasons why dependence on foreign oil is a concern for U. S. foreign policy:

116. *Id.*

117. ITOPF, *supra* note 10, at Table 4.

118. *Id.*

119. Bob Keefe, *Modern Technology Makes Offshore Drilling Cleaner, Industry Claims*, ATLANTA J. CONST., AUG. 1, 2008, at para. 25, available at http://www.ajc.com/services/content/shared/news/stories/2008/07/TECH_DRILLING01_AUS.html?cxntlid=inform_artr.

120. *Id.* at para. 24.

121. MarkTaw.com, *Global Oil Production and Consumption*, para. 3, http://www.marktaw.com/culture_and_media/politics/GlobalOil.html (last visited Nov. 24, 2009).

122. *Id.*

123. *Id.*

124. Robert Bryce, *After Invading One of the Most Petroleum Rich Countries on Earth, the U. S. Military is Running on Empty*, THE AM. CONSERVATIVE, Mar. 10, 2008, at para. 5, available at <http://www.amconmag.com/article/2008/mar/10/00006/>.

125. Press Briefing, Council on Foreign Relations, *National Security Consequences of U.S. Oil Dependency*, at xi, (2006), available at http://www.cfr.org/content/publication/11777/national_security_consequences_of_us_oil_dependency.html.

(1)[T]he control over enormous oil revenues gives exporting countries the flexibility to adopt policies that oppose U. S. interests and values. . . (2) oil dependence causes political realignments that constrain the ability of the United States to form partnerships to achieve common objectives. . . (3) high prices and seemingly scarce supplies create fear. . . that the current system of open markets is unable to ensure secure supply. . . (4) revenues from oil and gas exports can undermine local governance. . . (5) a significant interruption in oil supply will have adverse political and economic consequences in the United States and in other importing countries.¹²⁶

As a result of these foreign policy concerns, the Task Force “encourage[s] supply of oil from sources outside the Persian Gulf.”¹²⁷ It would seem that increasing domestic production of oil would integrate foreign policy objectives and energy policy objectives. Lifting the OCS Moratorium is the key to obtaining oil supply from sources outside the Persian Gulf without simply becoming dependant on alternative foreign nations.

IV. A HISTORICAL BACKGROUND OF ENVIRONMENTAL LAW AND POLICY IN CUBA AND A COMPARATIVE ANALYSIS OF THE DIFFERENCES IN ENVIRONMENTAL POLICY IN THE UNITED STATES AND CUBA

The United States is deeply concerned with the expansion of Cuba’s oil program because of the possible ill effects it will have on the environment surrounding the coast of Florida.¹²⁸ Given that the partitioned offshore blocs that Cuba plans to lease and exploit are located equidistant to Cuban and American coasts, it is not easily understood why Cuban environmental policy has not been an obstacle to expanded offshore drilling in Cuba.

A. Background of Environmental Policy in Cuba

As a signatory of several international accords for environmental conservation and protection, Cuba has created an external image for itself as a country with strong environmental policy.¹²⁹ However, environmental law in Cuba has long been criticized for lacking teeth to ensure compliance.¹³⁰ During

126. *Id.* at 26-29.

127. *Id.* at 31.

128. *Cf.* Jeremy Morrison, *Drilling Might Stay Away from the Florida Coast*, NEWS HERALD, Sep. 15, 2008, available at <http://www.newsherald.com/news/panama-68155-city-florida.html>.

129. *See* Gilberto Romero Jr. (Jose Valdes trans.), *Cuba’s Environmental Crisis*, CONTACTO MAGAZINE, 1994-96, para. 1, available at <http://www.fiu.edu/~fcf/enviromental.crisis.html>.

130. PAMELA STRICKER, *TOWARD A CULTURE OF NATURE: ENVIRONMENTAL POLICY AND SUSTAINABLE DEVELOPMENT IN CUBA* 81 (Lexington Books 2007) (2007).

Cuba's colonial period, environmental law was essentially non-existent because it was "largely ignored and rarely enforced."¹³¹ Even in the "institutionalization stage," there were countless violations of established environmental regulations by government institutions and their officers.¹³² Six milestones characterize the "institutionalization stage" in environmental law, which were developed beginning in the 1970s through the early 1990s.¹³³ The six milestones identified by Cubans are as follows: (1) Article 27 of the Cuban Constitution of 1976, amended in 1992, which called generally for the protection of the environment and linked it with the concept of sustainable economic development; (2) Law 1323 establishing the National Commission for the Protection of the Environment and Conservation of Natural Resources ("COMARNA") in 1976; (3) Law 33 on the protection of the environment and the rational use of resources in 1981; (4) Decree-Law 118, establishing the National System for the Protection of the Environment and charging the National Commission for the Protection of the Environment and Rational Use of Resources with the responsibility for developing environmental policies at the national level and overseeing compliance; (5) the establishment of the National Environment and Development Program in 1993 which aligned with acceptance of the United Nations' Agenda 21; and (6) the creation of the Ministry of Science, Technology, and the Environment in 1994.¹³⁴ Soon after these milestone environmental policies were established, Cubans identified several problems with them.¹³⁵ For example:

Roberto Acosta, an expert in oil and hydrocarbon pollution who served on COMARNA and the National Environmental Commission pointed in particular to a contradiction in the former management structure of environmental policy in the country, in which certain ministries were administrators of environmental matters of the same resource that they exploited in order to fulfill their productive objectives. As a consequence of this situation, these administrators played the roles of "judge" and "party to the action" simultaneously, which led, on occasion, to faulty decisions and to little enforcement of the conditions established in the environmental evaluations that had been developed.¹³⁶

Thus, even as late as the 1990s, the environmental protections in place in Cuba were effectively meaningless because of conflict of interest problems.

131. *Id.* at 68. The colonial period in Cuba dates from 1492 to 1898. *Id.*

132. Romero, *supra* note 129, at para. 3.

133. STRICKER, *supra* note 130, at 70.

134. *Id.* at 70-71.

135. *Id.* at 73.

136. *Id.*

These six milestones eventually led to the passing of the Framework Law on the Environment (Law Number 81) of 1997 by the Cuban government.¹³⁷ Law 81 strengthened the environmental impact assessment procedures.¹³⁸ The law requires “a detailed description of the characteristics of a planned project or activity, including a description of its technology, which is submitted for approval through a process of environmental impact assessment. Well-founded information must be provided. . .”¹³⁹ The law still allows, however, for projects that could have significant environmental effects and for projects that require certain controls in order to meet the standards of the law as long as an environmental license is issued by the Ministry of Science, Technology, and the Environment.¹⁴⁰ Thus, it appears to remain relatively easy to move forward with a project that would negatively impact the environment in Cuba.

Oliver A. Houck¹⁴¹, Professor of law and director of the Environmental Law Program at Tulane University, argues that Law 81:

is more ambitious in its goals and its details than any comparable legislation in the United States or Western Europe because, among other reasons, it was started relatively *de novo*. Its 163 separate articles embrace what would be, in the United States and the European Union, separate programs. . . It is hard to think of a significant environmental issue omitted—which makes the task ahead, the implementation of these provisions, all the more daunting.¹⁴²

Furthermore, Law 81 has been described as a collection of expressions of political will and government officials have struggled to translate these expressions into rules and regulations that can be practically carried out.¹⁴³ Therefore, although Cuba’s environmental policy appears to be more stringent than that of the United States, it is actually weaker due to inability of the Cuban

137. *Id.* at 70.

138. *Id.* at 75.

139. *Id.*

140. *Id.* at 76.

141. Professor Oliver A. Houck is a professor of law at Tulane University Law School and teaches several courses in the environmental law discipline. See Tulane University Law School, Faculty, Oliver A. Houck, <http://www.law.tulane.edu/tlsfaculty/profiles.aspx?id=430&vpubcat=General%20Publications#menu> (last visited Nov. 24, 2009). Professor Houck received his Juris Doctorate from Georgetown University. For additional biographical information, see *Id.* Professor Houck participated in an environmental law exchange with the Cuban government from 1997-2000. STRICKER, *supra* note 130, at 79; Professor Houck has authored additional articles on environmental law in Cuba. See generally e. g., Oliver A. Houck, *Thinking About Tomorrow: Cuba's "Alternative Model" for Sustainable Development*, 16 TUL. ENVTL. L. J. 521 (2003); Oliver A. Houck, *International Tourism and the Protection of Cuba's Coastal and Marine Environments*, 16 TUL. ENVTL. L. J. 533 (2003).

142. STRICKER, *supra* note 130, at 78-79.

143. *Id.* at 81.

agencies to implement and enforce such a comprehensive initiative.

One aspect that Cuba has recognized as a problem with respect to implementation of its environmental policies is the environmental education sector.¹⁴⁴ In the same year that Cuba devised Law 81, it also promulgated its national environmental education strategy with the goal of educating students, professionals, and the public at large about the environmental laws in place.¹⁴⁵ Under the strategy, an environmental dimension school system is introduced in order to educate students; and workers and professionals are educated through programs at the sectoral level.¹⁴⁶ The public at large would be educated through public campaigns and mass media coverage.¹⁴⁷ Since environmental education has been “generally viewed as divorced from the historical social, political, and economic realities of Latin America,” the process of educating and empowering Cubans will likely take place slowly.¹⁴⁸ However, the fact that Cubans are beginning to recognize the root of the implementation problem denotes progress.¹⁴⁹ Still, in comparison to America, Cuba is far less sophisticated with regard to education about environmental issues and the Green Movement.¹⁵⁰

B. The Cuban Economy as a Factor

The economic situation in Cuba is a contributing factor to the sluggish development of its environmental policy.¹⁵¹ After the United States declared an economic embargo against Cuba, Cuba developed a relationship with the former Soviet Union and relied upon the Council of Mutual Economic Assistance rather than focusing on becoming more self-sufficient.¹⁵² As a result, research about agricultural and renewable energy sources and other advancements did not occur until the socialist bloc collapsed and Cuba suffered an all-out economic and political crisis.¹⁵³ Since the collapse, Cuba’s economy has suffered and Cuba has been forced to rely mainly on foreign investment as a source of capital accumulation.¹⁵⁴ For example:

The Cuban government has entered into a variety of pacts with foreign investors in creating co-owned enterprise . . . [w]hile certain social service-related industries are not permitted to be

144. *Id.* at 93.

145. *Id.* at 95.

146. *Id.*

147. *Id.*

148. *See id.* at 97-98.

149. *Id.* at 98.

150. Marcelle, *supra* note 67, at para. 2.

151. STRICKER, *supra* note 130, at 122.

152. *Id.*

153. *Id.*

154. *Id.* at 123.

owned by foreign investors[;] two of Cuba's largest industries, tourism and mining (and the most potentially environmentally destructive), fall within the public-foreign ownership sector.¹⁵⁵

The expansion of Cuba's oil program is consistent with this heavy reliance on foreign investment. Because Cuba is too economically poor to exploit the oil found in the OCS, it seeks foreign partners who will purchase leasing blocs and drill the oil and then share the profits with Cuba.¹⁵⁶ Many economists in the United States urge that the economic embargo be lifted against Cuba in the alternative if Congress refuses to lift the OCS Moratorium here.¹⁵⁷

C. Energy Policy in Cuba

The future of Cuba's current energy sector looks dismal. In the 1970s and 80s, Cuba depended on a single foreign source with contractual payment terms and subsidized pricing for over fifty percent of its oil supply.¹⁵⁸ This is still true.¹⁵⁹ Similar to the United States, Cuba must also achieve energy independence in order to make a transition and improve its economic situation. As of 2006, Cuba had a domestic demand for approximately 160,000 barrels of crude oil per day.

Due to the absence of heavy oil refining, the 68,250 barrels per day produced by Cuba's present onshore/coastal efforts is used directly as boiler fuel for its electric, nickel, and cement industries.¹⁶⁰ To make up for the 90,000 barrels per day shortfall, Cuba imports from Venezuela's national oil company.¹⁶¹ According to economists, if Cuba makes a transition to a market economy, its oil consumption would more than double.¹⁶² These Economists suggest that Cuba's future energy plan be focused on modernization of energy infrastructure and on a balanced sourcing of oil, natural gas, and ethanol.¹⁶³ If Cuba becomes oil self-sufficient and a net crude oil exporter it may change U. S. economic policy toward Cuba.¹⁶⁴

155. *Id.* at 123-24.

156. *See supra* Part II.

157. *See supra* Part II.

158. Jorge R. Pinon, *Cuba's Energy Future*, Cuba Transition Project-Institute for Cuban-American Studies, University of Miami, at para. 11, (May 2007), available at http://ctp.iccas.miami.edu/FOCUS_Web/Issue85.htm.

159. *Id.*

160. *Id.* at para. 8.

161. *Id.* at para. 9.

162. *Id.* at para. 10.

163. *Id.* at para. 15.

164. *Id.* at para. 16.

D. Comparative Analysis

In the last decade, Cuba has made some effort to reform its environmental law and educate its public about environmental issues. However, Cuba's environmental and economic policies remain stages behind the United States and other industrialized nations. This accounts for the vast differences in policy between Cuba and the United States specific to the issue of offshore oil drilling.

1. Implementation of Environmental Laws

In comparison to the United States, Cuba got a much later start to developing an effective system of environmental laws.¹⁶⁵ Although Cuba began enacting environmental laws in the 1970s, the same time that the modern environmental movement took hold in the United States, these laws were largely ineffective.¹⁶⁶ Cuba did not reform its environmental laws until the late 1990s, and implementation remains an obstacle.¹⁶⁷ This obstacle persists because, as experts argue, Cuba's main environmental initiative, Law 81, is an "over-ambitious sweeping policy."¹⁶⁸ Cuban lawmakers threw everything they could possibly think of into Law 81 in an attempt to make up for years of stagnation in environmental law. This has made Cuba appear to be an aggressive protector of its environment, but in reality even attributing meaning to many of the Law 81 provisions has proven to be a struggle.¹⁶⁹ Implementation, then, is an even bigger struggle if clear rules and regulations cannot even be extracted from the sweeping text of the law. In contrast to having one sweeping environmental law as a cornerstone, the United States has separate initiatives geared toward more specific environmental issues; for example, one act focusing on air pollution, another on water pollution, and so forth.¹⁷⁰ As a result, it has been much easier for environmental agencies in the United States to determine the intent behind the statutes and effectively implement them. This is not to say that the United States is without its enforcement problems. As previously discussed in Part I of this Note, sanctions for non-compliance have been criticized as being the equivalent of a slap on the wrist. Still, the organization of environmental laws in the United States is more conducive to effective implementation compared to Cuba's sweeping initiative.

Furthermore, even substantively speaking, Cuba's environmental policy is much more tolerant of industrial projects which would negatively impact the environment. Cuba's history of economic impoverishment further contributes to this higher tolerance. As previously discussed, although Law 81 seems to

165. *See supra* Part III.A.

166. *See supra* Part III.A.

167. *See supra* Part III.A.

168. *See supra* Part III.A.

169. *See supra* Part III.A.

170. *See supra* Part I.A.

strictly require environmental impact statements for any project, a further read indicates that a project that degrades the environment will likely still be allowed to proceed upon obtaining of an environmental license.¹⁷¹ Thus, it is much easier to move forward with projects that would have negative environmental effects in Cuba than in the United States. Based on the economic situation in Cuba,¹⁷² projects that would greatly stimulate the Cuban economy would be allowed to proceed despite their impact on the environment. In contrast, as an economically prosperous nation, the United States is less tolerant. Typically, the United States has the means to create environmentally friendly substitutes for projects that would have too great a negative effect on the environment. This comparison explains why the Cuban government is willing to expand its oil program in the Gulf Coast, and why the United States government has been apprehensive.

2. *Public Sentiment*

Public sentiment first prompted the United States Congress to take a closer look at offshore oil drilling and its impact on the environment.¹⁷³ Several devastating oil spills presented the American public with images depicting deceased marine animals and wildlife—much like an act of genocide.¹⁷⁴ These images elicited an emotional response and American constituents demanded that Congress tighten the leash on oil companies. Oil spills of such a magnitude did not impact Cuba; thus, such strong public sentiment against offshore oil drilling did not arise early on.¹⁷⁵ The most recent notable oil spill near the coast of Cuba occurred in March of 1998 in Matanzas Bay.¹⁷⁶ The spill occurred when two oil tankers collided.¹⁷⁷ Although the spill polluted Cuba's coastline, a BBC News correspondent in Cuba reported that "so far the white sand beaches and crystal blue waters seem to have escaped any pollution."¹⁷⁸ Thus, the Cuban people have not yet seen the full extent of the harm that an oil spill can do to a coastline. Perhaps if the oil spill had impacted Cuba's tourism industry to a great extent the Cuban people would have pushed for more restrictions on offshore oil drilling.

Public sentiment in Cuba regarding offshore oil drilling has never been strong one way or another because historically the Cuban public has not been very educated on environmental issues.¹⁷⁹ Although Cuba has taken strides

171. *See supra* Part III.A.

172. *See supra* Part III.B.

173. *See supra* Part II.

174. *See supra* Part II.

175. BBC News, *Oil Spill on Cuba's Northern Coast*, para. 2, Mar. 28, 1998, <http://news.bbc.co.uk/2/hi/americas/70779.stm>.

176. *Id.*

177. *Id.* at para. 1.

178. *Id.* at para. 5.

179. *See supra* Part III.A.

toward educating its citizens, it has a long way to go before its citizens will be able to fully understand environmental issues and their global impact.¹⁸⁰ This lack of environmental education among Cuban citizens is an impediment to compliance with the regulations set forth in Law 81.¹⁸¹ If Cubans had a better understanding of their environmental laws and an appreciation for the purpose behind the laws, they would have more of a desire to comply with the laws.¹⁸² In turn, they may even begin to demand stricter regulations much like United States' citizens have done in the past. Therefore, public pressure regarding the offshore oil drilling issue in Cuba will not be as prevalent as it is in the United States. Because public sentiment seems to be a major driving force behind environmental laws in the United States, lawmakers have a much more difficult time trying to relax environmental policy.¹⁸³ Such a hurdle does not exist in Cuba. This helps to explain why the issue of offshore oil drilling and the effects it can have on the environment is much less contentious in Cuba as compared to the United States.

V. RECOMMENDATIONS FOR APPROACHING THE FUTURE OF OFFSHORE OIL DRILLING

Commentators on both sides of the political spectrum have weighed in on the issue, with environmentalists arguing to keep the status quo and the pro-energy independence side urging Congress to lift the ban. Thus far, such extreme positions have yielded little action. This Part of the Note will offer suggestions and assess the possibility of finding a middle ground.

A. Recommendations Offered by the Office of Management and Budget

After former President George W. Bush lifted the executive ban on offshore drilling in July of 2008, Congress considered several resolutions related to the legislative ban.¹⁸⁴ These resolutions, which included countless earmarks, proved to be very contentious and ultimately failed.¹⁸⁵ Commentators noted that, in considering these resolutions, Congress was simply wasting time on legislation that did not stand a chance of becoming enacted.¹⁸⁶ In response to Congress's stagnation, the OMB issued a statement making recommendations for how best to confront the OCS drilling issue.¹⁸⁷

Foremost, the OMB recommends that Congress lift the legislative ban on

180. See *supra* Part III.A.

181. See *supra* Part III.A.

182. See *supra* Part III.A.

183. See *supra* Part I.

184. Nicole Daigle, *President Bush Lifts Executive Moratorium on Drilling in OCS*, WASH. REP., para. 1, July 15, 2008, available at <http://www.ipaa.org/news/wr/WR-2008-07-15.pdf>.

185. See *supra* Part I.C.

186. See *supra* Part I.C.

187. See OMB Statement, *supra* note 84.

OCS offshore drilling.¹⁸⁸ Based on the arguments set forth in Part I of this Note, and the consideration of the environmental effects that the expansion of Cuba's oil program will have on the United States, this is the best course of action. As previously discussed, the most persuasive arguments against lifting the OCS Moratorium are environmental.¹⁸⁹ These arguments, however, no longer hold up because Cuba's oil leasing program would result in the same environmental degradation that opponents claim would result if the United States were to allow offshore drilling in the OCS. Even if the threat of Cuba's expansion did not exist, the environmental arguments are still weak. Although opponents of lifting the OCS Moratorium argue that offshore drilling contributes to global warming, risks oil spills, and releases toxic chemicals into the ocean, these arguments are outdated and have been confronted by recent studies showing that the environmental footprint of offshore oil drilling is negligible.¹⁹⁰ Furthermore, offshore oil drilling may actually decrease the occurrence of oil spills in the coastal waters surrounding the United States.¹⁹¹ As discussed in Part II of this Note, the majority of oil spills are a result of tanker accidents.¹⁹² If the United States keeps the OCS Moratorium in force, it will mean more oil will need to be transported to the United States via oil tankers.¹⁹³ Since the United States is one of the top oil consuming nations, oil tanker traffic will remain the same or even increase around the United States.¹⁹⁴

Thus, keeping the OCS Moratorium intact does not serve as a preventative for oil spills at all; rather, it may even increase the odds for major oil spills surrounding the United States.

Studies have shown that the environmental effects of offshore drilling are insignificant.¹⁹⁵ Other nations, such as Canada and Norway, known for being far more environmentally friendly in comparison to the United States, allow offshore drilling.¹⁹⁶ "Offshore oil and natural gas production operations have a

188. *Id.*

189. *See supra* Part I.

190. Suzanne Sitherwood, *Let Coastal States Drill Offshore if they Want to*, J. CONST., July 17, 2008, at para. 5, available at <http://www.ajc.com/opinion/content/opinion/stories/2008/07/17/gased.html>.

191. *See An Outdated Ban*, WASH. POST, June 28, 2008, at A24, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/27/AR2006062701646.html>.

192. *See id.*; *see also supra* Part II.

193. *See An Outdated Ban*, *supra* note 192.

194. *See id.*

195. *See Sitherwood*, *supra* note 191.

196. *See* Frank T. Manheim, U. S. *Offshore Oil Industry: New Perspectives on an Old Conflict*, GEOTIMES, Dec. 2004, available at http://www.geotimes.org/dec04/feature_Norway.html (discussing the approaches to offshore oil drilling taken by nations known for being more environmentally friendly). "Norway has evolved toward integrated systems that foster continuously increasing standards and efficiency and an environmentally aware public...its economic and technical success...provides new perspectives that may help the United States break out of the historic clash between industry and environmentalists." *Id.* Since the early 1980s, Norway made a decision to develop offshore sources of oil rapidly rather than conserve reservoirs for the future. *Id.* To rationalize this, part of the profits from exports were

long history of environmentally sensitive and safe performance. No other nation in the world has such fertile offshore resources yet rules them off limits.”¹⁹⁷ If limitations are placed on offshore drilling, it can be done in an environmentally safe manner. Proponents of lifting the OCS Moratorium, including the OMB, are not simply suggesting that the ban be lifted and that oil companies be allowed to drill free from any regulations. Rather, the ban can be lifted and offshore drilling can be coupled with aggressive renewable energy policies or specific types of drilling technology can be required.¹⁹⁸ For example, the OMB recommends that Congress extend and improve existing renewable energy tax credits in addition to lifting the OCS Moratorium.¹⁹⁹ This would allow the United States to begin producing oil domestically while still encouraging increased use of renewable energy sources.

B. Limitations and Regulations Upon Lifting the OCS Moratorium

Proponents of lifting the OCS Moratorium altogether have proposed other limitations and regulations on offshore drilling so that drilling can be done in the safest manner possible. As previously stated, if the United States will suffer the negative environmental effects from Cuba’s exploration anyway, it can cut its losses by lifting its own ban and imposing the regulations chosen by its agencies.²⁰⁰ As compared to Cuba and the foreign nations that Cuba plans to lease exploration blocs to, the United States is in a better position and has a greater incentive to make certain that offshore drilling surrounding its coasts is operated in the safest possible manner.²⁰¹ One option is for the United States Congress to lift the OCS Moratorium but mandate that “directional drilling” be the method used to develop the offshore oil resources.

Directional drilling, often referred to as slant drilling, is the practice of drilling non-vertical wells.²⁰² This drilling method has many benefits. Using the directional drilling technique, oil companies can drill a number of wells from a single starting point.²⁰³ This decreases the number of well pads required to drain an oil or gas field, and thus, decreases the overall surface disturbance caused by offshore drilling.²⁰⁴ Directional drilling is also beneficial because it

allocated to a fund which was designed to help transition to the time when offshore resources eventually become depleted. *Id.*

197. See Sitherwood, *supra* note 191.

198. Dan Eggan & Steven Mufson, *Bush Rescinds Father’s Offshore Oil Ban*, WASH. POST, July 15, 2008, at A08, available at http://www.washingtonpost.com/wp-dyn/content/article/2008/07/14/AR2008071401049.html?nav=rss_email/components&sid=ST2008071401842&pos=&s_pos=.

199. OMB Statement, *supra* note 84.

200. See *supra* Part II.B.

201. See *supra* Parts II, III.

202. Gerson Lehrman Group, Definition: Directional Drilling, <http://www.glgroup.com/Dictionary/EI-Directional-Drilling.html> (last visited Nov. 24, 2009).

203. NaturalGas.org, Directional and Horizontal Drilling, at para. 2, <http://www.naturalgas.org/naturalgas/extraction.directional.asp> (last visited Nov. 24, 2009).

204. Earthworks, Directional Drilling, at para. 2, <http://www.earthworksaction.org/>

allows oil companies to divert wells away from sensitive ecosystems; and companies can access oil by drilling a well that is miles away from the intended site.²⁰⁵ Although this drilling method is more expensive than the traditional method of drilling vertical wells, according to the EPA, “[I]ncreased costs of directional drilling are often more than offset by increased production and the reduced need for drilling multiple wells.”²⁰⁶ Reducing the number of wells reduces the number of sites where oil drilling discharge might be released or where other accidents might occur.

Another option that can be coupled with lifting the OCS Moratorium is to update current infrastructure. Current oil platforms and infrastructure are out of date and have not kept up with technological advancements. For example, Platform B, located off of the coast of Santa Barbara, has barely changed since it was placed in the ocean forty-one years ago. This was the platform involved in one of the most devastating oil spills in history.²⁰⁷ In recent years, high-tech computers, automatic shut-off valves, and tougher building materials on oil platforms have been developed to make drilling much safer.²⁰⁸ However, given that most of the platforms surrounding the United States have remained unchanged for approximately the past forty years, these technological advancements have not been utilized and the industry is not as clean possible.²⁰⁹

Thus, simply implementing the technology that has already been developed would be an easy way to make offshore drilling safer.

Along with updating the oil platforms, an extensive training program for workers on oil rigs and platforms should be mandated. This would help target those spills that occurred due to human error.²¹⁰ In addition, the platforms should be inspected in regular intervals to ascertain that they are in full operating condition and that the imposed technological advancements are present and in working order.²¹¹ While these measures are costly, they attack the main concern surrounding offshore drilling, which is the environmental impact.²¹²

The OMB has also recommended that the current restriction on oil shale development in parts of the Mountain West be lifted because doing so would produce a century's worth of oil imports for the United States.²¹³ This

bpdirectionaldrilling2.cfm (last visited Nov. 24, 2009).

205. *Id.* at para. 4.

206. *Id.* at para. 6.

207. Zeke Barlow, *Drilling, Controversy Since 1969: Environmental Movement 40 Years Old*, VENTURA COUNTY STAR (California), Feb. 1, 2009, at para. 1-2, available at <http://www.venturacountystar.com/news/2009/feb/01/political-will-and-public-sentiment-seem-to-ebb/>.

208. Keefe, *supra* note 119, at para. 10-14.

209. *Id.*

210. Matthew Donatoni, *Offshore Drilling*, <http://cseserv.engr.scu.edu/StudentWebPages/MDonatoni/ResearchPaper.htm> (last visited Nov. 24, 2009).

211. *Id.*

212. *See supra* Part II.B.

213. JAMES T. BARTIS, ET. AL., *OIL SHALE DEVELOPMENT IN THE UNITED STATES: PROSPECTS AND POLICY ISSUES* 48, (2005), available at <http://www.rand.org/pubs/monographs/2005/>

recommendation indicates that the OMB is not just relying on offshore drilling in the OCS as the sole means of increasing domestic oil production. However, oil shale development in the Mountain West has been very controversial because America's most vast and cherished national parks are located in this region. Environmentalists are also concerned about the amount of water and energy it would require to extract from the oil shale, and where the water would come from. Recently, the Obama Administration blocked more Bush-era oil shale development leases.²¹⁴ This recommendation by the OMB, thus, seems to be even more contentious than lifting the OCS Moratorium. This makes sense considering that the major concern associated with offshore drilling in the OCS is the negative impact on coastal environments surrounding the United States; and oil shale development actually brings oil extraction inland. Although the risk of major oil spill accidents is slim with regard to oil shale development, the high levels of air and water pollution inland bring environmental risks closer to home and outrage environmentalists. Environmentalists claim that oil shale development "releases more greenhouse gases than traditional fuels."²¹⁵ Thus, increased oil shale development seems to be a less favorable option than opening up the OCS to offshore drilling.

C. Sanctions

Increasing sanctions against oil companies is another option that could be coupled with lifting the OCS Moratorium. If oil companies do not comply with the mandated drilling methodology or fail to adopt the technological advancements that make offshore drilling safer, they must be subject to harsh sanctions. However, because oil companies often turn such great profits, imposing a fine on the companies may not serve as a strong enough deterrent. For example, the \$2.64 million dollar penalty imposed against Exxon Mobil in August of 2008 following a massive PCB leak in the Pacific Ocean, was under one percent of the \$11.68 billion in profits earned by Exxon Mobil last quarter alone.²¹⁶ While these relatively small punitive awards do not have a big financial impact on the oil companies, media coverage of the judgments can be damaging to the reputations of the companies. This contributes to

RAND_MG414. pdf. This report was prepared for the National Energy Technology Laboratory of the United States Department of Energy. *Id.* For more information on oil shale development studies, see generally EDWARD W. MERROW, CONSTRAINTS ON THE COMMERCIALIZATION OF OIL SHALE (1978), available at <http://www.rand.org/pubs/reports/2006/R2293.pdf>; JAMES T. BARTIS, ET. AL., NEW FORCES AT WORK IN MINING: INDUSTRY VIEWS OF CRITICAL TECHNOLOGIES (2001), available at <http://www.rand.org/pubs/monograph-reports/2007/MR1234.pdf>.

214. Jim Tankersley & Nicholas Riccardi, *Administration Blocks More Bush-era Oil Shale Development Leases*, L.A. TIMES, Feb. 26, 2009, at para. 2, available at <http://articles.latimes.com/2009/feb/26/nation/na-oil-shale26>.

215. Ayesha Rascoe, *U. S. Interior Scraps Bush Research Oil Shale Leases*, REUTERS, Feb. 25, 2009, at para. 5, <http://www.reuters.com/article/environmentNews/idUSTRES1078020090225>.

216. See *supra* Part I.

deterrence.²¹⁷ If combined with other recommendations discussed above, the deterrent effect of sanctions has the potential to become greater yet. For example, if more frequent and thorough inspections of oil rigs and platforms are ordered, oil companies are at risk for more frequent imposition of sanctions.

D. Middle Ground

Allowing offshore drilling in the OCS, together with heightened safety regulations and other clean energy mandates, is the optimal solution because it reaches a middle ground. In the past, this issue has been addressed with extreme polarity. Political debate has turned the issue into a game with winners and losers rather than fostering discussion of all options and encouraging compromise. Amidst the 2008 presidential election, politicians and policymakers were even more reluctant to suggest more moderate solutions. This has been referred to as the “everywhere versus nowhere” trap.²¹⁸

The “everywhere versus nowhere” trap results when aggressive energy developers demand the unconstrained right to drill everywhere while environmental extremists assert that drilling can occur nowhere. This is the stalemate we currently have in the United States, with disastrous consequences. Emotion trumps science. Regulation blocks innovation. And sound methods of achieving energy independence are overlooked and underdeveloped.²¹⁹

It is suggested that the United States develop a policy in which environmental concerns are carefully balanced with energy needs. Some areas could be off limits for offshore drilling, and drilling could be carefully circumscribed in other areas. It is argued that environmental concerns should inform the oil and gas industry rather than preempt it.²²⁰

Lifting the OCS Moratorium and directing oil companies to abide by heightened environmental and safety regulations is the appropriate compromise and allows the United States to finally climb out of the “everywhere versus nowhere” trap. If offshore drilling can be done in the OCS with minimal negative impact on the environment then there is not any reason for environmentalists to be concerned. Lifting the OCS Moratorium will allow U. S. oil companies to turn profits and will lessen the United States’ reliance on

217. See generally Kenyon Fields, *The Painful Effects of Oil Dependency: Exxon's Human Toll* WHATCOM WATCH ONLINE, Jan. 2002, http://www.whatcomwatch.org/old_issues/v11i01.html.

218. Newt Gingrich, *Report from Norway: Why They Don't Have an Energy Crisis and We Do*, HUMAN EVENTS, June 10, 2008, at para. 2, <http://www.humanevents.com/article.php?id=26931>.

219. *Id.* at para. 3.

220. See *id.*

foreign nations for oil. Complying with the heightened regulations will not be too burdensome on the industry. Therefore, it is possible for industry and environmentalism to compromise.

D. Transition Fund

Another recommendation worth considering, aimed at comforting those who wonder what will happen when offshore drilling resources in the OCS become depleted, is for the United States to establish a fund with money reserved for the transition from offshore resources (once depleted) to another resource.²²¹ Other nations have used profits from exporting oil obtained from the offshore resources to build such a fund.²²² Establishing a transitional fund²²³ is a wise back up plan. Several other nations are also considering establishing such a fund premised on the idea that it is important to invest in the “urgent, widespread transition to a sustainable energy system,” to “ensure that future generations would benefit once the oil was gone,” and to “tackle climate change.”²²⁴ Thus, the United States should still consider and plan for alternative energy sources while pursuing offshore drilling so that it does not end up in an energy crisis upon the depletion of offshore drilling resources.

E. Relations with Cuba

As an alternate option to the United States’ lifting its OCS Moratorium, policy analysts have suggested that the United States keep the Moratorium in place but lift the economic embargo against Cuba in order to enable the United States to bid on the offshore blocs that Cuba plans to lease out to foreign nations.²²⁵ While a discussion of the economic embargo goes well beyond the scope of this Note, it is important to take notice that it is an option that has been placed on the table. Even without a full discussion of this option, the main concerns with it can shed some light on its viability. As discussed in Part I of this Note, it makes little sense for the United States to lift an economic embargo, which has been in place since 1962, just to lease Cuban offshore drilling blocs that are so close to the U. S. coast that they would subject the United States to the same risks of environmental degradation.²²⁶ Granted, lifting the economic embargo on Cuba would be beneficial in other areas of

221. This is modeled after a fund created in Norway. *See supra* note 196 and accompanying text.

222. *Id.*

223. *See* New Economics Foundation, ‘Windfall Tax’ Call on Oil Companies As Profits Announced, para. 6, http://www.neweconomics.org/gen/hookedonoil_231006.aspx. (last visited Nov. 24, 2009). These transitional funds are often referred to as “Oil Legacy Funds.” *Id.*

224. *Id.* at para. 6-9.

225. *See supra* Part II.

226. Doug Palmer, *Business Urges Obama to Loosen Cuban Embargo*, REUTERS, Dec. 4, 2008, para. 7, <http://www.reuters.com/article/vcCandidateFeed2/idUSTRE4B379120081204>.

trade, but if the primary motive for lifting the embargo is offshore oil drilling related then it makes very little sense.²²⁷ There are much more accessible, less controversial avenues for allowing offshore drilling in the United States. By lifting the OCS Moratorium the United States would achieve the same benefits as it would if it leased drilling blocs from Cuba, but would also achieve greater control and oversight over the industry.²²⁸

VI. CONCLUSION

If the United States does not take action and lift the OCS Moratorium, in combination with imposing the other recommended environmental and safety regulations, it will remain heavily dependant on foreign nations for oil. Even more daunting, the United States will be forced to sit back and watch as Cuba and other nations reap the economic benefits of a substantial supply of oil so close to its own coastline. After years of debate amongst extremists on both sides of the political spectrum, the issue of offshore drilling in the OCS has been stagnated. In light of Cuba's plans to expand its oil program and with the introduction of improved technology, the environmental arguments, once convincing against offshore drilling, are now weak. After all, lifting the OCS Moratorium does not give oil companies free reign; American oil companies will be subject to strengthened technological and safety regulations, more frequent inspections, and more severe sanctions in the event of non-compliance. Because there is little the United States can do to prevent Cuba from leasing out offshore exploration blocs, located within forty-five miles of the U. S. coastline, it is wise for the United States to be proactive. If offshore drilling is to be done so close to the United States, it should be done the United States' way. As discussed in Part III of this Note, environmental policy in Cuba has historically lacked enforcement and the public has little knowledge of and appreciation for the environmental risks associated with offshore drilling.²²⁹ Thus, the regulations over offshore drilling imposed by the Cuban government would likely be much less stringent than regulations imposed by the U. S. Government.

The American public, American businesses, and even some environmentalists have become increasingly supportive of opening up the OCS for offshore oil drilling.²³⁰ Drilling technology and methodology have made major advancements, and the oil industry's reputation has become cleaner since the 1980s when the OCS Moratorium was first enacted. The United States' economy would be stimulated by participation in offshore oil drilling. The benefits are growing, and the risks have minimized. Thus, the optimal solution would be for the United States to lift the OCS Moratorium, with the directional

227. *Id.* at para. 2.

228. *See supra* Part I.

229. *See supra* Part III.

230. *See supra* Part II.

drilling method mandated where possible, increase the frequency of inspections, strengthen enforcement, make sanctions more severe, and create an “oil legacy” fund in preparation for a transition into more sustainable energy development.²³¹ The United States should continue to research other renewable, alternative energy sources as well. Taking these steps will allow the United States to remain competitive in the international marketplace, develop a self-sufficient energy sector, solve a political battle that has been looming for years, and minimize any negative impact associated with Cuba’s offshore exploration bloc leasing program.

231. *See supra* Part IV.

