104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 104–312

ALASKA POWER ADMINISTRATION SALE AND EXPORTS OF ALASKAN NORTH SLOPE OIL

NOVEMBER 6, 1995.—Ordered to be printed

Mr. YOUNG of Alaska, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 395]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 395), to authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and to authorize the export of Alaska North Slope crude oil, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

Amendment numbered 1:

That the Senate recede from its disagreement to the amendment of the House numbered 1, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be stricken by the House amendment, insert the following:

TITLE I—ALASKA POWER ADMINISTRATION ASSET SALE AND TERMINATION

SEC. 101. SHORT TITLE.

This title may be cited as the "Alaska Power Administration Asset Sale and Termination Act".

SEC. 102. DEFINITIONS.

For purposes of this title:

(1) The term "Eklutna" means the Eklutna Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Eklutna Purchase Agreement.

(2) The term "Eklutna Purchase Agreement" means the August 2, 1989, Eklutna Purchase Agreement between the Alaska

Power Administration of the Department of Energy and the Eklutna Purchasers, together with any amendments thereto adopted before the enactment of this section.

(3) The term "Eklutna Purchasers" means the Municipality of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc. and the Matanuska Electric Association, Inc.

(4) The term "Snettisham" means the Snettisham Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Snettisham Purchase Agreement.

(5) The term "Snettisham Purchase Agreement" means the February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Alaska Power Authority and its successors in interest, together with any amendments thereto adopted before the enactment of this section.

(6) The term "Snettisham Purchaser" means the Alaska Industrial Development and Export Authority or a successor State agency or authority.

SEC. 103. SALE OF EKLUTNA AND SNETTISHAM HYDROELECTRIC PROJECTS.

(a) SALE OF EKLUTNA.—The Secretary of Energy is authorized and directed to sell Eklutna to the Eklutna Purchasers in accordance with the terms of this Act and the Eklutna Purchase Agreement.

(b) SALE OF SNETTISHAM.—The Secretary of Energy is authorized and directed to sell Snettisham to the Snettisham Purchaser in accordance with the terms of this Act and the Snettisham Purchase Agreement.

(c) COOPERATION OF OTHER AGENCIES.—The heads of other Federal departments, agencies, and instrumentalities of the United States shall assist the Secretary of Energy in implementing the sales and conveyances authorized and directed by this title.

(d) PROCEEDS.—Proceeds from the sales required by this title shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to prepare, survey, and acquire Eklutna and Snettisham for sale and conveyance. Such preparations and acquisitions shall provide sufficient title to ensure the beneficial use, enjoyment, and occupancy by the purchasers.

(f) CONTRIBUTED FUNDS.—Notwithstanding any other provision of law, the Alaska Power Administration is authorized to receive, administer, and expend such contributed funds as may be provided by the Eklutna Purchasers or customers or the Snettisham Purchaser or customers for the purposes of upgrading, improving, maintaining, or administering Eklutna or Snettisham. Upon the termination of the Alaska Power Administration under section 104(f), the Secretary of Energy shall administer and expend any remaining balances of such contributed funds for the purposes intended by the contributors.

SEC. 104. EXEMPTION AND OTHER PROVISIONS.

(a) FEDERAL POWER ACT.—(1) After the sales authorized by this Act occur, Eklutna and Snettisham, including future modifications, shall continue to be exempt from the requirements of Part I of the Federal Power Act (16 U.S.C. 791a et seq.), except as provided in subsection (b).

(2) The exemption provided by paragraph (1) shall not affect the Memorandum of Agreement entered into among the State of Alaska, the Eklutna Purchasers, the Alaska Energy Authority, and Federal fish and wildlife agencies regarding the protection, mitigation of, damages to, and enhancement of fish and wildlife, dated August 7, 1991, which remains in full force and effect.

(3) Nothing in this title or the Federal Power Act preempts the State of Alaska from carrying out the responsibilities and authorities of the Memorandum of Agreement.

(b) SUBSEQUENT TRANSFERS.—Except for subsequent assignment of interest in Eklutna by the Eklutna Purchasers to the Alaska Electric Generation and Transmission Cooperative Inc. pursuant to section 19 of the Eklutna Purchase Agreement, upon any subsequent sale or transfer of any portion of Eklutna or Snettisham from the Eklutna Purchasers or the Snettisham Purchaser to any other person, the exemption set forth in paragraph (1) of subsection (a) of this section shall cease to apply to such portion.

(c) REVIEW.—(1) The United States District Court for the District of Alaska shall have jurisdiction to review decisions made under the Memorandum of Agreement and to enforce the provisions of the Memorandum of Agreement, including the remedy of specific performance.

(2) An action seeking review of a Fish and Wildlife Program ("Program") of the Governor of Alaska under the Memorandum of Agreement or challenging actions of any of the parties to the Memorandum of Agreement prior to the adoption of the Program shall be brought not later than 90 days after the date on which the Program is adopted by the Governor of Alaska, or be barred.

(3) An action seeking review of implementation of the Program shall be brought not later than 90 days after the challenged act implementing the Program, or be barred.

(d) EKLUTNA LANDS.—With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

(1) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers—

(A) at no cost to the Eklutna Purchasers;

(B) to remain effective for a period equal to the life of Eklutna as extended by improvements, repairs, renewals, or replacements; and

(C) sufficient for the operation of, maintenance of, repair to, and replacement of, and access to, Eklutna facilities located on military lands and lands managed by the Bureau of Land Management, including lands selected by the State of Alaska.

(2) Fee title to lands at Anchorage Substation shall be transferred to Eklutna Purchasers at no additional cost if the

Secretary of the Interior determines that pending claims to, and selections of, those lands are invalid or relinquished.

(3) With respect to the Eklutna lands identified in paragraph 1 of Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey to the State, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85–508; 72 Stat. 339), and the North Anchorage Land Agreement dated January 31, 1983. This conveyance shall be subject to the rights-of-way provided to the Eklutna Purchasers under paragraph (1).

(e) SNETTISHAM LANDS.—With respect to the Snettisham lands identified in paragraph 1 of Exhibit A of the Snettisham Purchase Agreement and Public Land Order No. 5108, the State of Alaska may select, and the Secretary of the Interior shall convey to the State of Alaska, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85–508; 72 Stat. 339).

(f) TERMINATION OF ALASKA POWER ADMINISTRATION.—Not later than one year after both of the sales authorized in section 103 have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary of Energy shall—

(1) complete the business of, and close out, the Alaska Power Administration;

(2) submit to Congress a report documenting the sales; and

(3) return unobligated balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

(g) REPEALS.—(1) The Act of July 31, 1950 (64 Stat. 382) is repealed effective on the date that Eklutna is conveyed to the Eklutna Purchasers.

(2) Section 204 of the Flood Control Act of 1962 (76 Stat. 1193) is repealed effective on the date that Snettisham is conveyed to the Snettisham Purchaser.

(3) The Act of August 9, 1955, concerning water resources investigation in Alaska (69 Stat. 618), is repealed.

(h) DOE ORGANIZATION ACT.—As of the later of the two dates determined in paragraphs (1) and (2) of subsection (g), section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended—

(1) in paragraph (1)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E) respectively; and

(2) in paragraph (2) by striking out "and the Alaska Power Administration" and by inserting "and" after "Southwestern Power Administration,".

(i) DISPOSAL.—The sales of Eklutna and Snettisham under this title are not considered disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622).

SEC. 105. OTHER FEDERAL HYDROELECTRIC PROJECTS.

The provisions of this title regarding the sale of the Alaska Power Administration's hydroelectric projects under section 103 and the exemption of these projects from Part I of the Federal Power Act under section 104 do not apply to other Federal hydroelectric projects.

And the House agree to the same.

Amendment numbered 2:

That the Senate recede from its disagreement to the amendment of the House numbered 2, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

TITLE II—EXPORTS OF ALASKAN NORTH SLOPE OIL

SEC. 201. EXPORTS OF ALASKAN NORTH SLOPE OIL.

Section 28 of the Mineral Leasing Act (30 U.S.C. 185) is amended by amending subsection (s) to read as follows:

"EXPORTS OF ALASKAN NORTH SLOPE OIL

"(s)(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

"(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

"(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

"(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

"(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply

agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).

"(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271–76) to prohibit exports.

"(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

"(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

"(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.".

SEC. 202. GAO REPORT.

(a) REVIEW.—The Comptroller General of the United States shall conduct a review of energy production in California and Alaska and the effects of Alaskan North Slope oil exports, if any, on consumers, independent refiners, and shipbuilding and ship repair yards on the West Coast and in Hawaii. The Comptroller General shall commence this review three years after the date of enactment of this Act and, within twelve months after commencing the review, shall provide a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources and the Committee on Commerce of the House of Representatives.

(b) CONTENTS OF REPORT.—The report shall contain a statement of the principal findings of the review and recommendations for Congress and the President to address job loss in the shipbuilding and ship repair industry on the West Coast, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, that the Comptroller General attributes to Alaska North Slope oil exports.

And the House agree to the same.

Amendment numbered 3:

That the Senate recede from its disagreement to the amendment of the House numbered 3, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be stricken by the House amendment, insert the following:

SEC. 203. GRANT AUTHORITY.

(a) IN GENERAL.—The Secretary of Transportation ("Secretary") may make grants to the Multnomah County Tax Supervising and Conservation Commission of Multnomah County, Oregon ("Commission") in accordance with this section, not to exceed the amount determined in subsection (b)(2).

(b) FINDING AND DETERMINATION.—Before making any grant under this section not earlier than one year after exports of Alaskan North Slope oil commence pursuant to section 201, the Secretary shall—

(1) find on the basis of substantial evidence that such exports are directly or indirectly a substantial contributing factor to the need to levy port district ad valorem taxes under Oregon Revised Statutes section 294.381; and

(2) determine the amount of such levy attributable to the export of Alaskan North Slope oil.

(c) AGREEMENT.—Before receiving a grant under this section for the relief of port district ad valorem taxes which would otherwise be levied under Oregon Revised Statutes section 294.381, the Commission shall enter into an agreement with the Secretary to—

(1) establish a segregated account for the receipt of grant funds;

(2) deposit and keep grant funds in that account;

(3) use the funds solely for the purpose of payments in accordance with this subsection, as determined pursuant to Oregon Revised Statutes sections 294.305–565, and computed in accordance with generally accepted accounting principles; and

(4) terminate such account at the conclusion of payments subject to this subsection and to transfer any amounts, including interest, remaining in such account to the Port of Portland for use in transportation improvements to enhance freight mobility.

(d) REPORT.—Within 60 days of issuing a grant under this section, the Secretary shall submit any finding and determination made under subsection (b), including supporting information, to the Committee on Energy and Natural Resources of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation to carry out subsection (a), $15,000,000 for fiscal year 1997, to remain available until October 1, 2003.

And the House agree to the same.

Amendment numbered 4:

That the Senate recede from its disagreement to the amendment of the House numbered 4, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be stricken by the House amendment, insert the following:

TITLE IV—MISCELLANEOUS

SEC. 401. EMERGENCY RESPONSE PLAN.

(a) IN GENERAL.—Within 15 months after the date of the enactment of this Act, the Commandant of the Coast Guard shall submit a plan to Congress on the most cost-effective means of implementing an international private-sector tug-of-opportunity system, including a coordinated system of communication, using existing towing vessels to provide timely emergency response to a vessel in distress transiting the waters within the boundaries of the Olympic Coast National Marine Sanctuary or the Strait of Juan de Fuca.

(b) COORDINATION.—In carrying out this section, the Commandant, in consultation with the Secretaries of State and Transportation, shall coordinate with the Canadian Government and the United States and Canadian maritime industries.

(c) ACCESS TO INFORMATION.—If necessary, the Commandant shall allow United States nonprofit maritime organizations access to United States Coast Guard radar imagery and transponder information to identify and deploy towing vessels for the purpose of facilitating emergency response.

(d) TOWING VESSEL DEFINED.—For the purpose of this section, the term "towing vessel" has the meaning given that term by section 2101(40) of title 46, United States Code.

And the House agree to the same.

Amendment numbered 5:

That the Senate recede from its disagreement to the amendment of the House numbered 5, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be stricken by the House amendment, insert the following:

TITLE III—OUTER CONTINENTAL SHELF DEEP WATER ROYALTY RELIEF

SEC. 301. SHORT TITLE.

This title may be referred to as the "Outer Continental Shelf Deep Water Royalty Relief Act".

SEC. 302. AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT.

Section 8(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(a)(3)), is amended—

(1) by designating the provisions of paragraph (3) as subparagraph (A) of such paragraph (3); and

(2) by inserting after subparagraph (A), as so designated, the following:

"(B) In the Western and Central Planning Areas of the Gulf of Mexico and the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, the Secretary may, in order to—

"(i) promote development or increased production on producing or non-producing leases; or

"(ii) encourage production of marginal resources on producing or non-producing leases;

through primary, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease(s). With the lessee's consent, the Secretary may make other modifications to the royalty or net profit share terms of the lease in order to achieve these purposes.

"(C)(i) Notwithstanding the provisions of this Act other than this subparagraph, with respect to any lease or unit in existence on the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act meeting the requirements of this subparagraph, no royalty payments shall be due on new production, as defined in clause (iv) of this subparagraph, from any lease or unit located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, until such volume of production as determined pursuant to clause (ii) has been produced by the lessee.

"(ii) Upon submission of a complete application by the lessee, the Secretary shall determine within 180 days of such application whether new production from such lease or unit would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph. In making such determination, the Secretary shall consider the increased technological and financial risk of deep water development and all costs associated with exploring, developing, and producing from the lease. The lessee shall provide information required for a complete application to the Secretary prior to such determination. The Secretary shall clearly define the information required for a complete application under this section. Such application may be made on the basis of an individual lease or unit. If the Secretary determines that such new production would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph, the provisions of clause (i) shall not apply to such production. If the Secretary determines that such new production would not be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i), the Secretary must determine the volume of production from the lease or unit on which no royalties would be due in order to make such new production economically viable; except that for new production as defined in clause (iv)(I), in no case will that volume be less than 17.5 million barrels of oil equivalent in water depths of 200 to 400 meters, 52.5 million barrels of oil equivalent in 400–800 meters of water, and 87.5 million barrels of oil equivalent in water depths greater than 800 meters. Redetermination of the applicability of clause (i) shall be undertaken by the Secretary when requested by the lessee prior to the commencement of the new production and upon significant change in the factors upon which the original determination was made. The Secretary shall make such redetermination within 120 days of submission of a complete application. The Secretary may extend the time period for making any determination or redetermina-

tion under this clause for 30 days, or longer if agreed to by the applicant, if circumstances so warrant. The lessee shall be notified in writing of any determination or redetermination and the reasons for and assumptions used for such determination. Any determination or redetermination under this clause shall be a final agency action. The Secretary's determination or redetermination shall be judicially reviewable under section 10(a) of the Administrative Procedures Act (5 U.S.C. 702), only for actions filed within 30 days of the Secretary's determination or redetermination.

"(iii) In the event that the Secretary fails to make the determination or redetermination called for in clause (ii) upon application by the lessee within the time period, together with any extension thereof, provided for by clause (ii), no royalty payments shall be due on new production as follows:

"(I) For new production, as defined in clause (iv)(I) of this subparagraph, no royalty shall be due on such production according to the schedule of minimum volumes specified in clause (ii) of this subparagraph.

"(II) For new production, as defined in clause (iv)(II) of this subparagraph, no royalty shall be due on such production for one year following the start of such production.

"(iv) For purposes of this subparagraph, the term 'new production' is—

"(I) any production from a lease from which no royalties are due on production, other than test production, prior to the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or

"(II) any production resulting from lease development activities pursuant to a Development Operations Coordination Document, or supplement thereto that would expand production significantly beyond the level anticipated in the Development Operations Coordination Document, approved by the Secretary after the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act.

"(v) During the production of volumes determined pursuant to clauses (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for light sweet crude oil exceeds $28.00 per barrel, any production of oil will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clause (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds $28.00. After the end of the calendar year, when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

"(vi) During the production of volumes determined pursuant to clause (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for natural gas exceeds $3.50 per million British thermal units, any production of natural gas will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume deter-

mined pursuant to clauses (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds $3.50. After the end of the calendar year, when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

"(vii) The prices referred to in clauses (v) and (vi) of this subparagraph shall be changed during any calendar year after 1994 by the percentage, if any, by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.".

SEC. 303. NEW LEASES.

Section 8(a)(1) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1337(a)(1)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (I);

(2) by striking "or" at the end of subparagraph (G); and

(3) by inserting after subparagraph (G) the following new subparagraph:

"(H) cash bonus bid with royalty at no less than 12 and ½ per centum fixed by the Secretary in amount or value of production saved, removed, or sold, and with suspension of royalties for a period, volume, or value of production determined by the Secretary, which suspensions may vary based on the price of production from the lease; or".

SEC. 304. LEASE SALES.

For all tracts located in water depths of 200 meters or greater in the Western and Central Planning Area of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, any lease sale within five years of the date of enactment of this title, shall use the bidding system authorized in section 8(a)(1)(H) of the Outer Continental Shelf Lands Act, as amended by this title, except that the suspension of royalties shall be set at a volume of not less than the following:

(1) 17.5 million barrels of oil equivalent for leases in water depths of 200 to 400 meters;

(2) 52.5 million barrels of oil equivalent for leases in 400 to 800 meters of water; and

(3) 87.5 million barrels of oil equivalent for leases in water depths greater than 800 meters.

SEC. 305. REGULATIONS.

The Secretary shall promulgate such rules and regulations as are necessary to implement the provisions of this title within 180 days after the enactment of this Act.

SEC. 306. SAVINGS CLAUSE.

Nothing in this title shall be construed to affect any offshore pre-leasing, leasing, or development moratorium, including any moratorium applicable to the Eastern Planning Area of the Gulf of Mexico located off the Gulf Coast of Florida.

And the House agree to the same.

Amendment to title:

That the House recede from its amendment to the title of the bill.

For consideration of House amendment No. 1:

DON YOUNG,
KEN CALVERT,
TOM BLILEY,

For consideration of House amendment No. 2:

DON YOUNG,
KEN CALVERT,
WILLIAM THOMAS,
TOM BLILEY,
HOWARD COBLE,
LEE H. HAMILTON,
JIM OBERSTAR,

For consideration of House amendment No. 3:

FLOYD SPENCE,
JOHN R. KASICH,

For consideration of House amendment No. 4:

HOWARD COBLE,
TILLIE K. FOWLER,
JIM OBERSTAR,

For consideration of House amendment No. 5:

DON YOUNG,
KEN CALVERT,

Managers on the Part of the House.

FRANK H. MURKOWSKI,
PETE V. DOMENICI,
J. BENNETT JOHNSTON,
WENDELL FORD,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 395) to authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and to authorize the export of Alaska North Slope crude oil, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

House amendment numbered 1 struck title I of the Senate bill. House amendment numbered 2 struck sections 201 through 204 of the Senate bill and inserted the text of H.R. 70, as passed by the House. House amendment numbered 3 struck section 205 of the Senate bill. House amendment numbered 4 struck section 206 of the Senate bill. House amendment numbered 5 struck title III of the Senate bill.

With respect to House amendment numbered 1, 2, 3, 4, and 5, and Senate receded from its disagreement to each House numbered amendment with an amendment.

The differences between the Senate bill, the House amendments, and the amendment agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—ALASKA POWER ADMINISTRATION ASSET SALE AND TERMINATION

SENATE BILL

Title I of the Senate bill provides for the sale of the Alaska Power Administration's (APA) assets, an the termination of the APA once the sale occurs. It also provides for the exemption of the two hydroelectric projects from the licensing requirements of Part I of the Federal Power Act.

HOUSE AMENDMENT NUMBERED 1

The House amendment struck Title I of the Senate bill.

CONFERENCE AGREEMENT

The House receded to the Senate with an amendment.

The Conference Report adopts the Senate language with minor changes. The APA's assets will be sold pursuant to the 1989 purchase agreements between the Department of Energy and the purchasers. The Snettisham hydroelectric project and related assets will be sold to the State of Alaska. the Eklutna hydroelectric project and related assets will be sold jointly to the Municipality of Anchorage, the Chugach Electric Association, and the Matanuska Electric Association. For both projects, the sale price is determined by calculating the net present value of the remaining debt service payments the Treasury would receive if the Federal Government retained ownership.

This provision and the separate formal agreements provide for the full protection of fish and wildlife. The purchasers, the State of Alaska, the National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS) have entered into a formal agreement providing for post-sale protection, mitigation, and enhancement of fish and wildlife resources affected by Eklutna and Snettisham. This provision makes that agreement legally enforceable.

As a result of the formal agreements, the Department of Energy, the Department of the Interior, and NMFS all agree that the two hydroelectric projects warrant exemption from the Federal Energy Regulatory Commission (FERC) licensing under Part I of the Federal Power Act. The August 7, 1991, formal purchase agreement states:

> NMFS, USFWS and the State agree that the following mechanism to develop and implement measures to protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat) *obviate the need for the Eklutna Purchasers and AEA to obtain FERC licenses.* [Emphasis supplied.]

The Alaska Power Administration has 34 people located in the State of Alaska. The purchasers of the two projects have pledges to hire as many of these as possible. For those who do not receive offers of employment, the Department of Energy has pledged it will offer employment to any remaining APA employees, although the DOE jobs are expected to be in the lower 48 States.

The House-passed bill did not contain any comparable provisions. The Conference Agreement adopts the Senate-passed bill with two material changes.

First, section 104(a)(1) of the Conference Agreement provides an exemption for Eklutna and Snettisham only from Part I of the Federal Power Act (hydroelectric licensing), not from the entire Federal Power Act. That was intended by the Senate. By making this change, the Conferees do not intend to imply that the purchasers who are already exempt from other aspects of the Federal Power Act lose that broader exemption. Nor do the Conferees intend to imply that merely by reason of this provision the other parts of the Federal Power Act apply to Eklutna and Snettisham. They apply if they would have applied in the absence of this provision.

Second, new section 104(b) provides that upon sale or transfer of any portion of Eklutna or Snettisham from the purchasers to any person (i.e. a person other than a purchaser defined in section 102), the exemption from Part I of the Federal Power Act shall cease to apply to that portion of Eklutna or Snettisham. However, the exemption from Part I will continue to apply if the sale or transfer is from one purchaser to another purchaser, as defined in section

102. The elimination of exemption from Part I for a sold or transferred portion of Eklutna or Snettisham does not mandate the licensing of that portion, it only eliminates the exemption from the application of Part I. If licensing is not otherwise required under Part I of the Federal Power Act for that portion, it is not required by reason of section 104(b). The disposition of a portion of the Eklutna or Snettisham assets does not affect the remaining portions. The one exception to this rule is a subsequent assignment of interests in Eklutna by the Eklutna Purchasers to the Alaska Electric Generation and Transmission Cooperative Inc. pursuant to section 19 of the Eklutna Purchase Agreement will not result in the elimination of the exemption from Part I of the Federal Power Act for that interest.

Sections 104(d) and 104(e) address selection and transfer of Eklutna and Snettisham lands. It is the intent of these provisions that notwithstanding the expiration of the right of the State of Alaska to make selections under section 6 of the Alaska Statehood Act, the State may select lands pursuant to this provision and the Eklutna and Snettisham Purchase Agreements. Likewise, it is the intent of this legislation that the Secretary of the Interior shall convey lands selected by the State of Alaska, notwithstanding any limitations contained in section 6(b) of the Alaska Statehood Act.

The Conferees agree that the circumstances justifying exemption from licensing under Part I of the Federal Power Act for these two Federally-owned hydroelectric projects are unique, and that they would not justify a similar exemption for any other Federally-owned hydroelectric project if sold. The Conferees agree that if other Federally-owned hydroelectric projects whose generation is marketed by other Federal power marketing administrations are privatized, these circumstances would not justify an exemption from Part I. This is reflected in section 105 of the Conference Agreement.

TITLE II—EXPORTS OF ALASKAN NORTH SLOPE OIL

SENATE BILL

Sections 201 through 204 of Title II of the Senate bill authorized exports of Alaskan North Slope (ANS) crude oil; mandated the filing of additional information in an annual report under the Energy Policy and Conservation Act; and required a study by the General Accounting Office (GAO).

HOUSE AMENDMENT NUMBERED 2

The House amendment similarly authorized exports of ANS crude oil and provided for a GAO study.

CONFERENCE AGREEMENT

The Senate receded to the House language with an amendment.

Under section 201, Committee of Conference recommends authorizing exports of ANS oil under terms substantially similar to, and drawn from, both the Senate bill and the House amendment.

Paragraph (1) authorizes ANS exports, making inapplicable the general and specific restrictions on these exports in Section 7(d) of the Export Administration Act of 1979 (50 U.S.C. App. § 2406(b)), Section 28(u) of the Mineral Leasing Act of 1920 (30 U.S.C. § 185), Section 103 of the Energy Policy and Conservation Act (42 U.S.C. § 6212), and the Short Supply regulations issued thereunder. However, the export of the oil can be stopped if the President determines (within five months of the date of enactment) that they would not be in the national interest. (Other statutory restrictions on the export of U.S. crude oil either inapplicable or superseded with respect to ANS exports are 10 U.S.C. § 7430 and 29 U.S.C. § 1354, restricting exports of crude oil from the Naval Petroleum Reserve and the outer continental shelf.)

Before making the national interest determination, the President must consider an appropriate environmental review (to be completed within four months of enactment). Consistent with the 1973 Trans-Alaska Pipeline Authorization Act, the President also must consider whether exports would diminish the total quantity or quality of petroleum available to the United States. The President must also consider whether exports are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, in particular in noncontiguous States and Pacific territories.

In a comprehensive report submitted to Congress, the Department of Energy found "no plausible evidence of any direct negative environmental impact from lifting the ANS crude export ban." Based on this finding and the weight of the testimony, section 201 of the Conference Agreement directs, as the "appropriate environmental review," an abbreviated four-month study. The environmental review is intended to be thorough and comprehensive, but in light of the prior Department of Energy findings and the compressed time frame, neither a full Environmental Impact Statement nor even a more limited Environmental Assessment is contemplated. If any potential adverse effects on the environment are found, the study is to recommend "appropriate measures" to mitigate or cure them.

In making the national interest determination, the President is authorized to impose appropriate terms and conditions, other than a volume limitation, on ANS exports. However, nothing in this section or Title IV of the Conference Agreement authorizes the imposition of new requirements for oil spill prevention and response in locations which would not be affected by ANS exports, such as the Strait of Juan de Fuca or within the boundaries of the Olympic Coast National Marine Sanctuary.

The Conference Agreement takes cognizance of the changed condition of national oil demand and available oil resources. Title II is intended to permit ANS crude oil to compete with other crude oil in the world market under normal market conditions. To facilitate this competition and in recognition that section 201 specifically precludes imposition of a volume limitation, the President should direct that exports proceed under a general license. In further recognition that some information (such as volume and price) will be needed to monitor exports, the President may wish to impose after-the-fact reporting requirements as may be deemed appropriate by the Secretary of Commerce.

Given the anticipated substantial benefits to the Nation of ANS exports, the Conferees urge the President to make the national interest determination as promptly as possible. If the President fails to make the required national interest determination within the statutorily imposed deadline, ANS oil exports are authorized without intervening action by the President or the Secretary of Commerce.

Section 201 requires, with limited exceptions, that ANS exports be carried in U.S.-flag vessels. The only exceptions are exports to Israel under the terms of a specific bilateral treaty that entered into force in 1979 and exports to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency. The Committee of Conference concurs with the Administration's assessment that the U.S.-flag cargo reservation requirement is consistent with U.S. international obligations and is supported by ample precedent, including in particular a comparable provision in the U.S.-Canada Free Trade Agreement, as implemented under U.S. law.

Section 201 preserves any authority the President may have under the Constitution and the enumerated statutes to prohibit ANS exports in an emergency.

Section 201 also directs the Secretary of Commerce to issue any rules necessary to govern ANS exports within 30 days of the President's national interest determination. In light of the clear benefits to the Nation of ANS exports, the Conferees urge the Secretary of Commerce to promulgate any rules necessary to implement that determination, including any licensing requirements and conditions, contemporaneously with the determination.

Section 201 further provides that, if the Secretary of Commerce (after consulting with the Secretary of Energy) later finds that exports have caused sustained material oil shortages or sustained prices significantly above the world level and that the shortages or high prices have caused or are likely to cause sustained material job losses, the Secretary must recommend appropriate action, including modification or revocation of the authority to export ANS oil. The President has the discretion to adopt, reject, or modify any recommendation made by the Secretary. In recognition that prices fluctuate and supply patterns change under normal market conditions, the authority of the Secretary is limited to addressing activity that causes the specified sustained unanticipated price and supply effects.

Finally, section 201 provides that administrative action is not subject to notice and comment rulemaking requirements or other requirements of the Administrative Procedures Act.

Under section 202, the Committee of Conference recommends that a GAO report be submitted four years after the date of enactment. The report must contain a statement of principal findings and recommendations to address job loss in the shipbuilding and ship repair industry on the West Coast and Hawaii, if any, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, if any, that the Comptroller General attributes to ANS exports. The Committee believes that the market should be given a reasonable period of time to operate before submission of the report. The Conferees want to be sure the Comptroller General has a solid basis on which to make his analysis and offer any recommendations for Congress and the President.

SENATE BILL

Section 205 of Title II provided for the retirement of certain costs incurred for the construction of a non-Federal publicly-owned shipyard.

HOUSE AMENDMENT

House amendment numbered 3 struck section 205 of the Senate bill.

CONFERENCE AGREEMENT

The Senate receded from its disagreement with an amendment (now designated as section 203).

Under section 203(a) of the conference amendment, the Secretary of Transportation is authorized to make grants to the Multnomah County Tax Supervising and Conservation Commission of Multnomah County, Oregon. The grants may be used only for the relief of port district ad valorem taxes that would otherwise be levied under Oregon law. In addition, at the conclusion of the grant payments under this section, any remaining funds (plus interest) would be transferred to the Port of Portland for making transportation improvements to enhance freight mobility.

Under subsection (b), before issuing any grant, the Secretary must find on the basis of substantial evidence that Alaskan North Slope oil exports are a contributing factor to the need to levy certain port district taxes. In addition, the Secretary must determine the amount of the tax levy attributed to the oil exports. The amount of the grants is limited to the amount of the tax levy attributed to the oil exports.

Before receiving any grant under this section, subsection (c) requires the Commission (by agreement with the Secretary) to establish a separate account for the funds, to use the funds as directed, and to terminate the account and transfer any remaining funds to the Port of Portland at the conclusion of the grants.

Under Subsection (d), the Secretary must report to the relevant Congressional Committees on any findings and determinations made under subsection (b) within 60 days of issuing a grant under this section.

Subsection (e) provides an authorization for appropriations of up to $15 million for fiscal year 1997, to remain available until October 1, 2003.

SENATE BILL

Section 206 of the Senate bill included a provision that would amend Title VI of the Oil Pollution Act of 1990 (OPA '90) by adding a new section 6005 that would impose a requirement for an additional towing vessel to be listed in, and available to respond under, vessel response plans developed in accordance with section 311(j) of the Federal Water Pollution Control Act (FWPCA), as amended by OPA '90, for tank vessels operating within the boundaries of the Olympic Coast National Marine Sanctuary or the Strait of Juan de Fuca near the coastline of the State of Washington. In particular, the provision would require an emergency response tugboat capable of towing tank vessels, initial firefighting, and initial oil spill response to be repositioned in the area of Neah Bay, the westernmost harbor in the Strait.

HOUSE AMENDMENT

The House amendment numbered 4 struck section 206 of the Senate bill.

CONFERENCE AGREEMENT

The Senate receded from its disagreement with an amendment (now designated as Title IV of this Act). See explanation below.

TITLE III—OUTER CONTINENTAL SHELF DEEP WATER ROYALTY RELIEF

SENATE BILL

Title III of the Senate bill would provide royalty relief for leases on Outer Continental Shelf tracts in deep water in certain areas of the Gulf of Mexico.

HOUSE AMENDMENT

The House amendment numbered 5 struck title III of the Senate bill.

CONFERENCE AGREEMENT

The Senate recedes from its disagreement with the House with an amendment.

The amendment agreed to by the committee of conference is the text of Title III of S. 395 as passed by the Senate with several technical corrections and a new provision clarifying that nothing in this title shall be construed to affect any offshore pre-leasing, leasing, or development moratorium, including any moratorium applicable to the Eastern Planning Area of the Gulf of Mexico located off the Gulf Coast of Florida.

TITLE IV—MISCELLANEOUS

OPA '90 contemplates a comprehensive approach to oil spill prevention and response, with the Coast Guard given an instrumental role in implementing all aspects of that Act. In addition to establishing a new liability and compensation scheme for oil spills, OPA '90 amended existing law to broaden the Coast Guard's authority under the Ports and Waterways Safety Act (PWSA) regarding navigation and vessel safety and protection of the marine environment and the FWPCA regarding oil spill prevention and response. Under OPA '90 (as delegated by the President), the Coast Guard is the principal Federal agency charged with conducting Federal removal and prevention activities in coastal areas. Accordingly, the Committee of Conference believes that the Coast Guard is the most appropriate agency to evaluate emergency response services in the Olympic Coast National Marine Sanctuary and the Strait of Juan de Fuca.

Subsection (a) of title IV requires the Commandant of the Coast Guard to submit to Congress within fifteen months of enactment a plan on the most cost effective means of implementing an international private-sector tug-of-opportunity system to utilize existing towing vessels to provide emergency response services to any vessel (including a tank vessel) in distress transiting the waters within the boundaries of the Olympic Coast National marine Sanctuary or the Strait of Juan de Fuca.

Subsection (b) provides that the Commandant, in consultation with the Secretaries of the State and Transportation, is to coordinate with the Canadian Government and with both Canadian and American maritime industries.

Subsection (c) provides that if necessary, the Commandant is to allow United States non-profit maritime organizations access to Coast Guard radar imagery and transponder information to identify and deploy towing vessels for the purpose of facilitating emergency response.

Subsection (d) provides for the definition of "towing vessel" as that term is defined under title 46, United States Code. Section 2101(40) of title 46, United States Code, defines towing vessels to mean "a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling alongside." The reference to this section ensures that, at a minimum, all commercial towing vessels are included in the definition and, therefore, are covered by the provisions of this section.

Section 206 of the Senate bill was developed to respond to a perceived threat to the marine environment of Puget Sound and the Straits of Juan de Fuca from tank vessel traffic. The Committee of Conference believes that, absent convincing information to the contrary, the marine environment of Puget Sound is adequately protected under the existing vessel response plan requirement found in FWPCA, as amended by OPA '90. The Senate provision is therefore unnecessary because the Coast Guard's existing authority under OPA '90 to prevent and respond to oil spills, as well as under PWSA and FWPCA (particularly as those two statutes have been amended by the OPA '90), to evaluate and to impose vessel operating requirements to minimize the risks of navigation and vessel safety and risks to the marine environment is fully sufficient to address the needs of the waterways of the United States, including Puget Sound and the Strait of Juan de Fuca.

Accordingly, the Committee of Conference does not believe that the mandate implicit in the Senate provision is required nor is it related to any authorization to export Alaskan North Slope crude oil. The Committee believes that the more appropriate step is to require the Coast Guard to examine the most cost-effective method to use existing towing vessel resources in a tug-of-opportunity system within the authority of existing law to respond to any vessel (including a tank vessel in distress). Consequently, nothing in this section or in section 201 is intended to authorize the President or the Coast Guard to impose additional oil spill preventing and response requirements in the Strait of Juan de Fuca or within the boundaries of the Olympic Coast National Marine Sanctuary in excess of those in the relevant Area Contingency Plan for those areas as a result of requiring the Commandant to submit this plan to Congress nor to impose requirements under any national interest determination or implementing regulations regarding the export of Alaskan oil.

For consideration of House amendment No. 1:

DON YOUNG,
KEN CALVERT,
TOM BLILEY,

For consideration of House amendment No. 2:

DON YOUNG,
KEN CALVERT,
WILLIAM THOMAS,
TOM BLILEY,
HOWARD COBLE,
LEE H. HAMILTON,
JIM OBERSTAR,

For consideration of House amendment No. 3:

FLOYD SPENCE,
JOHN R. KASICH,

For consideration of House amendment No. 4:

HOWARD COBLE,
TILLIE K. FOWLER,
JIM OBERSTAR,

For consideration of House amendment No. 5:

DON YOUNG,
KEN CALVERT,

Managers on the Part of the House.

FRANK H. MURKOWSKI,
PETE V. DOMENICI,
J. BENNETT JOHNSTON,
WENDELL FORD,

Managers on the Part of the Senate.

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