

**Opening Statement**  
**Ranking Member Holt**  
**Subcommittee on Energy and Mineral Resources**  
*“Impacts to Onshore Jobs, Revenue, and Energy: Review and Status of Sec. 390  
Categorical Exclusions of the Energy Policy Act of 2005.”*

**September 12, 2011**

**Thank you, Mr. Chairman.**

**The National Environmental Policy Act (NEPA) allows Americans from all across the Nation to have their voices heard on how their public lands are managed and allows for agencies like the Bureau of Land Management to make informed decisions about potential environmental impacts of their actions. When the Congress takes steps to limit NEPA review, what often results is unanticipated environmental harm, less public participation in land management decisions, and more litigation challenging agency decisions.**

**Section 390 of the Energy Policy Act of 2005 is an example of this kind of bad policy. The categorical exclusions established in Section 390 to expedite the approval of oil and gas drilling permits were unnecessary and unwise. They are unnecessary because industry is producing oil and gas on less than 30 percent of the public lands under lease onshore. For example, in 2010, the BLM**

**approved approximately 4,100 new permits to drill, but the oil and gas industry only drilled 1,500 wells. There is no shortage of places where the oil and gas industry could start drilling right now.**

**Section 390 was also unwise because oil and gas exploration has real environmental impacts. Under NEPA, the BLM has the authority to establish categorical exclusions for activities that do not “individually or cumulatively have a significant effect on the human environment.” However, in section 390 of EPACT, Congress established a set of legislative categorical exclusions for activities that have been documented by the Government Accountability Office (GAO) to cause environmental impacts, such as ozone levels that have reached or exceeded allowable levels and habitat fragmentation that has harmed elk, antelope and other wildlife in the West.**

**The GAO has documented that BLM’s implementation of Section 390 was inconsistent from one office to another and resulted in violations of NEPA. The Bush Administration also actually prohibited the BLM from considering “extraordinary circumstances” when deciding whether a categorical exclusion applies.**

**As a result of the deficiencies found by the GAO, the Obama administration in 2010 issued a new policy on Section 390 that vastly improved the BLM's implementation of that provision of the law. The 2010 policy required the BLM to make sure that no extraordinary circumstances are present, like threats to public health or threats to endangered species, prior to granting a categorical exclusion under NEPA for a drilling permit. Where extraordinary circumstances exist, the BLM is required to conduct a more rigorous environmental review.**

**As a result of the Obama Administration's policy, and better planning from the start, protests of leases have declined. Only 12.5 percent of tracts have been contested in 2011 as compared with 47 percent in 2009 and 40 percent in 2010.**

**However, earlier this year Obama Administration's policy was struck down by a Federal Court for procedural reasons. I am pleased that the BLM is announcing today that it will conduct a formal rulemaking process for using the Section 390 categorical exclusions. However, I am concerned that the BLM must now revert to using the Bush administration's policy, which the GAO had concluded was grossly inadequate in ensuring that the BLM meets its obligations under NEPA, while that rulemaking is ongoing.**

**As a result, today Ranking Member Markey and I are sending a letter to the Department of Justice urging an appeal of this decision. An appeal and stay of the court's ruling would remove any uncertainty while the BLM completes its rulemaking, which will ensure that the BLM can conduct oil and gas drilling in an environmentally responsible manner.**

**I look forward to hearing from our witnesses.**