

EVENT MEMORANDUM FOR THE SECRETARY

MEETING WITH MARVIN ODUM, PRESIDENT, SHELL OIL COMPANY, AND JOHN PODESTA, COUNSELOR TO THE PRESIDENT

DATE: April 16, 2014
LOCATION: White House – Ward Room
TIME: 2:45PM – 3:45PM
FROM: Tommy Beaudreau, Director, BOEM (202)208-6300

I. PURPOSE

You will be meeting with Marvin Odum, President of Shell Oil Company, and John Podesta, Counselor to the President. The purpose of this meeting is to discuss the Lease Sale 193 status and its impact on Shell.

II. PARTICIPANTS

- Marvin Odum, President, Shell Oil Company
- John Podesta, Counselor to the President
- Tommy Beaudreau

III. DISCUSSION

Chukchi Sea Lease Sale 193, held in 2008, reflected renewed industry interest in the Arctic and resulted in 487 leases sold for approximately \$2.7 billion. Shell alone purchased 275 Chukchi Sea leases for about \$2.1 billion. However, from the start, the underpinning environmental analysis supporting that sale has been subject to litigation.

Ahead of the actual sale in 2008, in 2007, the Interior Department's Minerals Management Service (MMS, now Bureau of Ocean Energy Management, or "BOEM") issued its EIS for Sale 193. Contemporaneously, NMFS and FWS each issued lengthy Biological Opinions concluding that the proposed Chukchi Sea lease sale was not likely to jeopardize any threatened or endangered species, or adversely modify any associated critical habitat.

Challenging Sale 193 and alleging violations of NEPA and the Endangered Species Act, a coalition of environmental organizations and certain Alaska Native communities filed suit in federal District Court in Alaska. In July 2010, the District Court issued an order rejecting (among other things) the plaintiffs' claim that MMS failed to utilize a reasonable scenario for eventual oil development. However, the District Court ruled that the EIS failed to analyze the environmental impact of natural gas development and failed to make the particular determinations required by CEQ regulations when relevant information is incomplete or unavailable. The court directed the agency to fix these deficiencies through a Supplemental EIS (SEIS), and enjoined DOI from acting upon any proposed exploration plans or to permit drilling. The District Court did allow certain "ancillary activities" to continue, including lease transfers,

scientific studies, and the informal review of draft exploration plans, pending completion of this SEIS.

Under this Administration, BOEM completed the first SEIS that addressed the specific deficiencies identified by the District Court. In addition, BOEM also used the SEIS to update its risk assessments in light of the *Deepwater Horizon* spill and included a new analysis of the potential impacts of a very large oil spill. BOEM issued the final SEIS in August 2011, and followed by a new Record of Decision reaffirming Lease Sale 193 in October 2011.

The original plaintiffs challenged the new Record of Decision under NEPA. But the District Court rejected this challenge, finding that BOEM had complied with NEPA in all respects. Instead, that court lifted the injunction of exploration activity under the Sale 193 leases, and Shell formally submitted its Chukchi exploration plan to the Interior Department for the 2012 season.

Shell's operational challenges derailed its 2012 plans.

Over the course of 2012, the Interior Department and other relevant agencies completed their permitting processes in anticipation of Shell's proposed activities for that summer (*i.e.*, to drill two exploratory wells in the Beaufort Sea and three exploratory wells in the Chukchi Sea this summer). In 2012, Shell experienced a number of high profile problems with its Arctic exploration drilling program, including the loss of tow and grounding of the Kulluk drilling rig during demobilization around New Year's 2013.

Although Shell's difficulties prevented the company from fully executing its drilling plans, the company successfully completed certain significant elements of its drilling program. In particular, Shell succeeded in drilling "top hole" sections of two wells in the Arctic Ocean, and it did so safely without any significant injuries to workers or spills.

The Ninth Circuit's recent decision concerning the original EIS relating to the 2008 Sale 193 has pushed back Shell's plans further.

Although the District Court had lifted its injunction of exploratory activities, which Shell pursued to limited success in 2012, plaintiffs had appealed to the Ninth Circuit, arguing that the EIS and SEIS were deficient. This past January, a split three-judge panel of the Ninth Circuit agreed with part of the plaintiffs' argument. Specifically, the majority found that it was arbitrary for the EIS to estimate the likely amount of recoverable oil in the lease sale area by estimating production only from the first offshore oil field to be developed (amounting to 1 billion barrels) without considering recoverable oil from additional fields that might subsequently be developed. The majority concluded that "NEPA required BOEM to base its analysis on the full range of likely production if oil production were to occur." Judge Rawlinson dissented as to this ruling, finding that it was within BOEM's expert discretion to find that one billion barrels was a reasonable benchmark for analyzing environmental effects of likely development.

Although the plaintiffs had asked for the leases to be invalidated, or at least for all activity under the leases to be enjoined, the Court of Appeals did not address these remedy issues. Instead, the

court merely remanded the case back to the District Court “for further proceedings consistent with this opinion.” A little over a week after the Ninth Circuit decision, Shell decided to cancel its 2014 plans for exploratory activities.

Although Shell had indicated that it might be inclined to appeal, ultimately no party to the litigation sought further judicial review of the Ninth Circuit’s opinion, and the matter was remanded to the District Court in Alaska in early March. Pursuant to the District Court’s order to file a status report by the end of March, the government along with Shell and the other intervening defendants filed a joint report asking that the matter be remanded to BOEM so that it could undertake corrective NEPA analysis. Among other things, BOEM committed to provide the Court periodic status reports, the first of which would be due next month and would provide an estimated timeline for completion of the curative NEPA.

BOEM intends to prepare an SEIS that will use updated information and a thorough exploration and production scenario, as well as analyze the potential environmental effects under that scenario, including from a spill. Work has already begun internally on preparing the SEIS. BOEM is still preparing a timeline for completion of the SEIS, but it may be able to complete the document and issue a decision on remand within a year. Shell has stated that it would like the NEPA work, including issuance of a record of decision affirming the Sale 193 leases, to be completed no later than January 2015 to preserve the option of a 2015 drilling program.

Pending the completion of this corrective NEPA work, DOI determined that the interests of the Parties and the lessees would be best protected by issuing directed suspensions that would remain in place until BOEM completes its SEIS. These directed suspensions, which were issued on April 1, prohibit drilling activities on Sale 193 leases pending the Federal Defendants’ completion of the SEIS and its new decision on remand.

We are still negotiating with plaintiffs and Shell to determine if the parties can arrive at a mutually agreeable remand order for the District Court to issue. We must report back to the court by April 18. All parties agree that an SEIS is appropriate, and that BOEM will regularly provide status reports on the progress the SEIS. The parties are still discussing areas of disagreement, including what actions (such as seismic surveys by lessees and preliminary exploration plan review by BOEM) should be allowed pending completion of the SEIS. BOEM has asserted that the limitations on activities under the Sale 193 leases should be the same limitations in place during the period of the first SEIS, which would allow certain ancillary activities such as the review (but not approval) of draft exploration plans.