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Offshore Oil and Gas: Biden Administration's Leasing "Pause" and Review

On January 27, 2021, President Joe Biden issued Executive Order (E.O.) 14008, directing multiple administrative actions to address climate change. Section 208 of the order directed the Secretary of the Interior to "pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices," to the extent that such actions were "consistent with applicable law." The leasing pause was blocked by a court order in June 2021.

The leasing review called for in the E.O., however, was completed in November 2021. The E.O. directed that the review evaluate "potential climate and other impacts" associated with oil and gas leasing, as well as whether to adjust royalties paid to the federal government from onshore and offshore oil and gas production to account for "climate costs."

Status of Leasing Pause and Review

As implemented by the Department of the Interior (DOI), the leasing pause consisted of a halt on sales of new onshore and offshore oil and gas leases following issuance of the E.O. Exploration and development of existing leases were not halted. Some stakeholders contended the pause would affect long-term prospects for oil and gas investment, production, and revenues, while others asserted it would have few such impacts, given that activities on existing leases were continuing.

On June 15, 2021, in response to a lawsuit filed by multiple state attorneys general, the U.S. District Court for the Western District of Louisiana issued a preliminary injunction (___—F. Supp. 3d—___, 2021 WL 2446010 (W.D. La. June 15, 2021)) prohibiting DOI from implementing the leasing pause with respect to both onshore and offshore lease sales that the agency had halted. The court found, among other things, that DOI had acted in an "arbitrary and capricious" manner, in violation of the Administrative Procedure Act (5 U.S.C. §§551 et seq.), by halting the lease sales solely on the basis of the E.O.

DOI complied with the court order by resuming work on leasing activities, including planning for two offshore lease sales. DOI also completed its review of the federal oil and gas leasing program and issued a report on November 26, 2021, with recommendations concerning offshore and onshore lease sales and fiscal terms.

Offshore Lease Sales Resumed

Pursuant to the E.O.'s leasing pause, DOI's Bureau of Ocean Energy Management (BOEM) had postponed two lease sales that were scheduled for 2021 under the agency's five-year oil and gas leasing program for 2017-2022. BOEM had paused Lease Sale 257 in the Gulf of Mexico, originally scheduled for March 17, 2021, and had paused its early planning work for Lease Sale 258 in Alaska's Cook Inlet. Also, BOEM made no announcements and initiated no planning regarding Lease Sale 259, a second lease sale planned for the Gulf of Mexico later in 2021.

DOI resumed work on lease sales to comply with the legal injunction on implementing the pause. DOI submitted a record of decision for Lease Sale 257 in the Gulf of Mexico on August 31, 2021, and the sale was held on November 17, 2021. The sale yielded $192 million in high bids on 1.7 million acres. Compared with other Gulf sales held in the 2017-2022 leasing program, this was the second-highest return in terms of bid revenues and the highest acreage bid on. DOI further announced that BOEM would issue and take comments on a draft environmental impact statement for the lease sale in Alaska's Cook Inlet.

BOEM has not announced action on Lease Sale 259, the other lease sale scheduled for the Gulf for 2021, or on the final lease sale in the current five-year program (Gulf Lease Sale 261, scheduled for 2022). Not all sales scheduled in a five-year leasing program are necessarily held; for instance, a scheduled sale could be canceled based on sale-specific environmental review under the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.).

DOI's Review and Future Lease Sales

DOI's November 2021 review of the federal oil and gas leasing program recommended some changes for offshore lease sales going forward. Specifically, DOI recommended that BOEM consider alternatives to its current practice of area-wide leasing, under which all available (i.e., not previously leased or withdrawn) lease blocks within a given offshore planning area or broader offshore region are offered in a single lease sale. DOI cited studies finding that area-wide leasing reduced "the amount of competition and the value of bids for each lease tract." Instead, DOI recommended offering "smaller areas" at each lease sale, narrowed through criteria related to environmental protection, subsistence uses, resource potential, and financial considerations. Some industry commentators have opposed this idea, suggesting that resource access restrictions could result in unfulfilled oil and gas demand and a greater need for energy imports.

DOI's recommendations could affect BOEM's work on the upcoming five-year offshore oil and gas leasing program. BOEM's current five-year program ends in June 2022. During the Trump Administration, BOEM released a draft of a new five-year program, but BOEM has not announced further steps during the Biden Administration. Questions remain about area leasing decisions for the next five-year program and about the timing of the program's publication. For more information, see CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief*.

Fiscal Terms of Offshore Leases

DOI's November 2021 review recommended revisions to the fiscal terms of offshore oil and gas leases, such as royalty rates, "to monetarily account for the costs of carbon dioxide, methane, and nitrous oxide." DOI has discretion to regulate such fiscal terms under the Outer Continental Shelf Lands Act (OCSLA; 43 U.S.C. §§1331-1356b) and other authorities. The review did not recommend specific changes but instead stated that BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) would study the matter. Some bills in the 117th Congress would mandate specific changes. For instance, House-passed budget reconciliation legislation—H.R. 5376—includes provisions to raise the minimum royalty rate for offshore oil and gas leases to 14%. (The current minimum is 12.5%, and royalty rates established by BOEM for existing leases range from 12.5% to 18.75%, depending on the lease date and water depth.) H.R. 5376 also would establish new fees for offshore oil and gas leases and would make other changes to offshore fiscal terms.

The DOI review indicated that BOEM and BSEE would reevaluate guidance on granting offshore operators *royalty relief*—a reduction or waiver of royalties, typically to promote increased production—"insofar as royalty relief can have the effect of subsidizing uneconomic production at taxpayers' expense." The House-passed version of H.R. 5376 would go further by prohibiting the Secretary of the Interior from offering royalty relief on offshore leases. Also, the DOI review noted BOEM's and BSEE's work on a proposed rulemaking to strengthen companies' financial assurance coverage, and the review recommended establishment of a "fitness to operate" standard to ensure offshore operators can meet their safety, environmental, and financial responsibilities.

Opponents of such changes in offshore fiscal terms contend the changes would discourage investment in federal offshore oil and gas development, thus resulting in greater reliance on foreign oil and gas developed with fewer environmental safeguards than the United States requires. Some argue that increases in the costs of development would be reflected in lower bids at offshore lease auctions, so that the changes might not achieve the goal of accounting for climate impacts by raising the overall costs of leasing in federal waters. Supporters of the changes state that they would provide a fairer return to taxpayers and would address concerns raised by the Government Accountability Office, among others, about decommissioning liabilities and fiscal returns from the offshore leasing program. Others, including many environmental groups, support the recommended changes but contend they are insufficient to address climate impacts from offshore oil and gas leasing. Some express the view that the Biden Administration's emission reduction goals could be met only by ending federal offshore oil and gas leasing altogether.

Offshore Revenue Considerations

Offshore oil and gas revenues provide most or all of the funding for several federal conservation and restoration programs, including the Land and Water Conservation Fund (54 U.S.C. §§200301 et seq.), the Historic Preservation Fund (54 U.S.C. §§303101-303103), and the National Parks and Public Land Legacy Restoration Fund (54 U.S.C. §200402). Also, under the OCSLA and the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. §1331 note), a portion of offshore oil and gas revenue is shared with coastal states, with most of the funds going to Alabama, Louisiana, Mississippi, and Texas for coastal protection and restoration.

Federal offshore oil and gas revenues fluctuate from year to year based on multiple factors and totaled $4.1 billion in FY2021. More than 90% of this total came from royalties, with the remainder from bonus bids at lease sales, rents paid prior to production, and other sources. Fiscal reforms such as those discussed above could affect offshore revenues going forward, with uncertain outcomes. For example, if offshore royalty rates for new leases increased, this could result in higher federal revenues available for disbursement to state and federal programs. Alternatively, if the royalty rates were high enough that operators were discouraged from investing in new leases, lower federal revenues and disbursements could result.

Additional Reading

For additional information related to the E.O. 14008 leasing pause, see CRS Legal Sidebar LSB10627, *Unpaused: District Court Enjoins Biden Administration from "Pausing" Oil and Gas Leasing on Federal Land*, by Adam Vann. For information on offshore oil and gas lease sales and planning, see CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief*, by Laura B. Comay CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program for 2019-2024: Status and Issues in Brief*, by Laura B. Comay; and CRS Report R44504, *Five-Year Program for Offshore Oil and Gas Leasing: History and Program for 2017-2022*, by Laura B. Comay, Marc Humphries, and Adam Vann. For information on offshore revenues and royalty relief, see CRS Report R46195, *Gulf of Mexico Energy Security Act (GOMESA): Background, Status, and Issues*, by Laura B. Comay and Marc Humphries; and CRS Insight IN11380, *Offshore Royalty Relief: Status During the COVID-19 Pandemic*, by Laura B. Comay.

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