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Offshore Oil and Gas: Leasing "Pause," Federal Leasing Review, and Current Issues

Offshore oil and gas leasing has been affected by executive branch actions pertaining to energy leasing on all federal lands. On January 27, 2021, President Joe Biden issued Executive Order (E.O.) 14008, directing multiple 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 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."

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 that 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.

The leasing pause was enjoined by a court order in June 2021. Subsequently, DOI's Bureau of Ocean Energy Management (BOEM) held an offshore lease sale for the Gulf of Mexico, but the lease sale was later vacated by another court decision. Separately, the leasing program review called for in the E.O. was completed in November 2021 and recommended changes to the fiscal terms for onshore and offshore oil and gas leasing on federal lands. Issues for Congress include the impacts of the executive and judicial actions—and the implications of the proposed fiscal changes—for future offshore oil and gas leasing on the U.S. outer continental shelf.

Leasing Pause Ends, But Sale Invalidated

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 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.

BOEM complied with the court order by resuming work on offshore lease sales that had been scheduled under the agency's five-year oil and gas leasing program for 2017-2022. First, BOEM held Lease Sale 257 in the Gulf of Mexico (originally scheduled for March 2021) 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. However, on January 27, 2022, the U.S. District Court for the District of Columbia vacated the November lease sale, finding fault with aspects of the sale's environmental analysis concerning the greenhouse gas emissions impacts of Gulf leasing.

Separately, on October 22, 2021, BOEM published a draft environmental impact statement (EIS) for another lease sale scheduled under the 2017-2022 leasing program—Lease Sale 258 in Alaska's Cook Inlet. The comment period for the draft EIS closed on December 13, 2021. DOI has not yet published a final EIS or decision regarding this sale.

BOEM has made no announcements and initiated no planning regarding Lease Sales 259 and 261, the final lease sales (both in the Gulf of Mexico) scheduled for the 2017-2022 program. Given timing considerations associated with lease sales and their environmental analysis, it appears that BOEM would not have time to plan and conduct these sales before the leasing program's June 30, 2022, expiration.

DOI's Review Recommends Changes for Future Lease Sales

DOI 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. Regarding offshore leasing, 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.

The DOI review also 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). The review did not recommend specific changes but stated that BOEM and DOI's Bureau of Safety and Environmental Enforcement (BSEE) would study the matter.

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." Also, the review noted BOEM's and BSEE's work on a proposed rulemaking to strengthen companies' financial assurance coverage, and it recommended establishment of a "fitness to operate" standard to ensure offshore operators can meet their safety, environmental, and financial responsibilities.

Issues for Congress

Lease Sale Schedule

The leasing pause, program review, and subsequent judicial actions have affected the timing of oil and gas lease sales under the 2017-2022 offshore leasing program. It appears that some sales originally scheduled in the program could not be prepared and held before the program expires in June 2022. Further, the pause and review—including the review's recommendation to end the practice of area-wide leasing—could affect BOEM's decisions and timing for the next five-year offshore oil and gas leasing program. The Biden Administration has not yet published a draft of a new program, and timing requirements associated with program preparation suggest that a new program could not be finalized before the current program's expiration. For more information, see CRS Report R44692, *Five-Year Offshore Oil and Gas Leasing Program: Status and Issues in Brief*.

Some bills in the 117th Congress (e.g., H.R. 7012, H.R. 7094, H.R. 7292, S. 3214, S. 3762, S. 3822) would require BOEM to hold the remaining lease sales in the 2017-2022 program despite its expiration, and/or would give specific deadlines for releasing a new five-year program. Some of these bills would require lease sales in certain offshore areas at regular intervals. By contrast, other bills (e.g., H.R. 2519, H.R. 3764, H.R. 5376, S. 1115) would prohibit any further leasing in certain offshore areas or throughout the U.S. outer continental shelf.

Recommended Fiscal Changes

As discussed, BOEM and BSEE are studying potential fiscal changes to offshore oil and gas royalty rates and other fiscal terms based on DOI's November 2021 review. 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.) House-passed H.R. 5376 also would establish new fees for offshore oil and gas leases and would prohibit the Secretary of the Interior from offering royalty relief on offshore leases.

Opponents of such changes contend that they would discourage investment in federal offshore oil and gas development, thus resulting in a greater reliance on foreign oil and gas. Such a situation, they contend, leaves the nation more vulnerable to international market disruptions, and could have negative environmental consequences to the extent that foreign resources are developed with fewer environmental safeguards than the United States requires. Some argue, too, that increases in the costs of U.S. offshore development would result 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 proposed fiscal reforms state that they would provide a fairer return to taxpayers and would address issues raised by the Government Accountability Office, among others, about decommissioning liabilities and achieving fair market value from the offshore leasing program. They contend that some current fiscal arrangements, such as royalty relief for some leases, represent subsidies to the oil and gas industry that should be eliminated, particularly in light of concerns about the climate costs of oil and gas development. Some, including many environmental groups, support the recommended changes but see them as 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 account for 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.

Laura B. Comay, Specialist in Natural Resources Policy

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