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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

NATIVE VILLAGE OF POINT HOPE, *et al.*,

Plaintiffs,

v.

SALLY JEWELL, *et al.*,

Defendants.

No. 1:08-cv-00004-RRB

FEDERAL DEFENDANTS' FIRST
BIMONTHLY STATUS REPORT
PURSUANT TO REMAND ORDER, ECF
NO. 284

Hon. Ralph R. Beistline

Native Village of Point Hope, et al. v. Jewell, et al., No. 1:08-cv-00004-RRB
Federal Defendants' First Bimonthly Status Report Pursuant to Remand Order, ECF No. 284

Federal Defendants¹ submit their First Bimonthly Status Report Pursuant to the Court's Order in Light of Remand ("Remand Order"), ECF No. 284 (Apr. 24, 2014). The Remand Order directs the Federal Defendants to conduct "further analysis consistent with the Ninth Circuit's decision on appeal at Docket 275." *Id.* ¶ 1. The Ninth Circuit found that the Agency's "reliance in the [Final Environmental Impact Statement] on a one billion barrel estimate of total economically recoverable oil was arbitrary and capricious." *Native Village of Point Hope v. Jewell*, 740 F.3d 489, 505 (9th Cir. 2014). The Ninth Circuit concluded that "NEPA require[s] [the Agency] to base its analysis on the full range of likely production if oil production were to occur." *Id.* This Court's Remand Order further provided that "[p]ending the Federal Defendants' decision on remand, the Federal Defendants will keep in place directed suspensions that prohibit drilling activities on Sale 193 leases. . . [and that] [w]hile the suspensions are in place, Federal Defendants will not approve or 'deem submitted' any proposed exploration plans for Sale 193 leases." *Id.* ¶ 4. Further, the Bureau of Ocean Energy Management ("BOEM") "will be allowed to continue to process routine agency paperwork, including lease assignments and relinquishments[,]" during that time. *Id.* That includes authorization "to receive, accept, and review any exploration plans provided by lessees[,]" which "Federal Defendants may review, but cannot deem submitted nor approve, . . . prior to Federal Defendants' decision on remand." *Id.* ¶ 5. The Court also clarified that its Remand Order "is not intended to prevent ancillary activities or studies conducted pursuant to Geological and Geophysical Permits issued under 30 C.F.R. part 551 in the Chukchi Sea. . . [and that] [t]herefore, during the remand period, BOEM may authorize ancillary activities and permitted studies in the Chukchi Sea and such ancillary activities and permitted studies may occur." *Id.* ¶ 6.

¹ Pursuant to Fed. R. Civ. P. 25(d), Walter D. Cruickshank, Acting Director of the Bureau of Ocean Energy Management, is substituted for the former Director, Tommy P. Beaudreau.

A. Status of Chukchi Sea Activity

Since the Ninth Circuit's decision, no new exploration plans, ancillary activity notices, or Geological and Geophysical permit applications related to activities in the Chukchi Sea have been submitted to BOEM for review. On May 2, 2014, Shell Gulf of Mexico, Inc. ("Shell") delivered to BOEM its response to a January 14, 2014 BOEM Request for Additional Information concerning Shell's November 6, 2013 Revised Exploration Plan for the Chukchi Sea. Pursuant to this Court's Remand Order, BOEM is currently reviewing the response but will not deem submitted the Revised Exploration Plan prior to the Federal Defendants' decision on remand. The suspensions issued by the Bureau of Safety and Environmental Enforcement between March 28, 2014, and April 1, 2014, and effective beginning January 22, 2014, to all Lease Sale 193 lessees remain in place.

B. Status of Agency Remand

Soon after the Ninth Circuit's decision remanding this matter, BOEM began taking steps necessary to expeditiously remedy the deficiencies found by that Court. In determining what actions were necessary, BOEM carefully considered how best to develop additional production scenarios and how those changes would impact the existing BOEM environmental analysis. In estimating potential production as contemplated by the Ninth Circuit opinion, it became apparent that changes to production volumes would require an expanded exploration and development ("E&D") scenario that would, in turn, require certain changes and updates throughout much of the current EIS. Accordingly, as previously reported, the agency decided that a Supplemental EIS ("SEIS") was required to correct the deficiencies. Scoping is not required for an SEIS, and BOEM determined that none was required in this instance given the explicit directive provided by the Ninth Circuit on the deficiency needed to be addressed. However, BOEM has committed to conduct public hearings and government-to-government consultation.

The list below provides a high-level summary of actions that BOEM has already undertaken to complete the required analysis and comply with the Ninth Circuit's decision and this Court's Remand Order:

1. Formed an internal task force assigned to address the scope of work required by the remand, the additional analysis by BOEM necessary to accomplish that work, and the coordination of that analysis;
2. Determined that an SEIS is required to consider impacts associated with the full range of likely production as mandated by the Ninth Circuit's opinion;
3. Began the drafting of Chapters I–III of the SEIS. These chapters cover the Proposed Action (Chapter I), Alternatives and Mitigation (Chapter II), and Description of the Environment (Chapter III);
4. Conducted economic simulations using BOEM models to derive new production estimates;
5. Collected and analyzed information necessary to create an expanded E&D scenario for the BOEM analysis on remand;
6. Contacted and verified contractor availability for development of updated analyses needed to assess the probability of an oil spill occurring and contacting a coastline segment or mapped resource area;
7. Began updating the Oil Spill Risk Analysis (“OSRA”) trajectory modeling by converting the study area locations into digital Mercator projections for purposes of OSRA computer modeling and incorporated additional, current information regarding environmental resources acquired since the prior OSRA was conducted for Lease Sale 193; and
8. Prepared a draft E&D Schedule that includes estimated levels and timing of potential exploration, development, and production activities.

C. Estimated Schedule for Remand Analysis and Decision

In addition to the above actions, BOEM has developed an estimated schedule for the completion of the remand analysis and decision. The schedule envisions an expedited process that also allows time for the necessary quality of analysis by conducting parallel analyses where possible, expediting review periods both within the agency and by cooperating agencies, and devoting substantial agency resources to the project.

The schedule also recognizes the reality that the necessary corrective work is very time- and labor-intensive. The OSRA work is a prime illustration. BOEM assesses oil-spill risks associated with offshore energy activities off the U.S. continental coast and Alaska by calculating spill trajectories and contact probabilities. These analyses address the likelihood of spill occurrences, the transport and fate of any spilled oil, and the environmental impacts that might occur as a result of the spill. BOEM's OSRA model combines the probability of spill occurrence with a statistical description of hypothetical oil-spill movement on the ocean surface. Modeling results are then used for preparation of the EIS.

Updating the OSRA model given a new E&D scenario requires multiple steps. One step is the preparation of an updated "fault-tree analysis." The fault-tree analysis, part of the OSRA, is a method for estimating a large (greater than or equal to 1,000 barrels) spill rate by evaluating various causal factors contributing to a large oil spill or spills and using the number of wells and pipeline miles as a division factor. Here, the resource volume used to create the updated E&D scenario exceeds 1 billion barrels and therefore the fault-tree analysis will necessarily change to accommodate the increased number of wells and miles of pipelines necessary to explore for, find, and develop a larger resource volume over the life of the E&D scenario. The fault-tree analysis, when considered with the separate OSRA trajectory analysis, gives a combined probability of an oil spill occurring and contacting a coastline segment or mapped resource area for purposes of analysis in the SEIS. This sophisticated modeling process is time and labor intensive, but is necessary to complete an oil-spill analysis comparable to that done for past EISs.

The prerequisite to completing the OSRA modeling — the development of the E&D scenario — is also a labor-intensive process. The E&D scenario is derived from production estimates and results from BOEM experts' projections of the likely means by which this production would be accomplished, including the number of platforms and wells and miles of pipeline. Until the E&D scenario is complete, the subject matter experts are unable to complete either (a) the estimated impacts from routine development and production activities or (b) the oil-spill modeling.

Taking all these factors into account, the following schedule represents Federal Defendants' effort to, as expeditiously as possible while undertaking the necessary analyses to address the defects identified by the Ninth Circuit, complete the remand analysis by developing an SEIS, reconsidering Lease Sale 193, and issuing a new record of decision ("ROD"). The estimated schedule provides for:

1. Completion of the Fault-tree Analysis (contractor), August 2014;
2. Completion of the OSRA oil-spill trajectory runs and calculation of conditional and combined probabilities (BOEM), August 2014;
3. Publication of Draft SEIS, early October 2014;
4. Public comment (45 days), public hearings, and government-to-government consultation, October–November 2014;
5. Publication of Final SEIS, including analysis of comments, early February 2015;
6. Mandatory 30-day waiting period after publication of Final SEIS; and
7. Issue the ROD, March 2015.

To meet each of the scheduled completion dates above, BOEM is committing the maximum resources available to it and authorizing additional hours of work, including overtime, toward completion of the SEIS and ROD. BOEM understands that it is important to all parties involved to accomplish the analysis on remand thoroughly and to reach a decision regarding the status of the existing leases sold in Lease Sale 193 expeditiously. Federal Defendants will make every effort to proceed according to this estimated schedule and will update the Court on the

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remand progress in its next Status Report, on July 22, 2014.

DATED: May 23, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David B. Glazer, hereby certify that I have caused the foregoing to be served upon counsel of record through the Court's electronic service system.

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 23, 2014

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