



## INTRODUCTION

1. This supplemental complaint (Third Supplemental Complaint) challenges the decision of the Secretary of the Interior, issued in a March 31, 2015, Record of Decision, to affirm Chukchi Sea Outer Continental Shelf Lease Sale 193 (Lease Sale 193), which offered approximately 29.4 million acres of public lands on the outer continental shelf of the Chukchi Sea for oil and gas leasing. The decision, together with the Final Second Supplemental Environmental Impact Statement, Chukchi Sea Planning Area, Oil and Gas Lease Sale 193, in the Chukchi Sea, Alaska (OCS EIS/EA BOEM 2014-669) (Second SEIS), violates the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA).

2. Plaintiffs initially filed a Second Amended and Supplemental Complaint for Declaratory and Injunctive Relief (Complaint) on October 17, 2008, challenging the Secretary's original Lease Sale 193 decision to issue oil and gas leases in the Chukchi Sea on February 6, 2008. Doc. 58. In an order dated July 21, 2010, and amended on August 5, 2011, this Court adjudicated Counts I, II, III, V, and VI of the Complaint, remanding the lease sale decision to the Secretary. Docs. 136 & 164. Plaintiffs did not pursue Count IV and did not oppose dismissal of Counts VII and VIII as moot.

3. Following Federal Defendants' completion of a Supplemental Environmental Impact Statement (SEIS) and issuance of a Record of Decision on October 3, 2011, reaffirming the Lease Sale 193 decision, Plaintiffs filed a Second Supplemental Complaint on November 22, 2011 (Supplemental Complaint). Doc. 252. The Supplemental Complaint introduced two additional claims, Counts IX and X, based on the SEIS and October 3, 2011, Record of Decision. In an order dated February 13, 2012, this Court adjudicated Counts IX and X of the Supplemental Complaint, upholding the agency decision. Doc. 269.

4. Plaintiffs appealed the Court's orders with respect to Counts III and IX. Doc. 271. On January 22, 2014, the Ninth Circuit Court of Appeals adjudicated Counts III and IX, holding the agency decision unlawful. Doc. 275. This Court then remanded the decision to the agency on April 24, 2014. Doc. 284. This Third Supplemental Complaint challenges the agency's decision on remand to affirm the Chukchi Sea Lease Sale 193 and the Second SEIS on which the decision is based.

### **JURISDICTION**

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2002. Judicial review is available under the APA, 5 U.S.C. §§ 701-706. Venue is appropriate under 28 U.S.C. § 1391(e).

### **PLAINTIFFS**

6. Paragraphs 12-14, 16-18, and 20-26 of the Complaint are incorporated herein by reference.

7. Plaintiff Friends of the Earth is a non-profit membership organization consisting of over 33,000 members and over 440,000 activists nationwide, including 474 members who live in Alaska. Its mission is to protect the natural environment, including air, water, and land, to create a more healthy and just world. It utilizes public education, advocacy, legislative processes, and litigation to achieve its organizational goals. Friends of the Earth is concerned about the potential adverse impacts caused by industrial activities from oil and gas exploration and drilling on the people, marine mammals, fish, seabirds, and other wildlife that rely on the Chukchi Sea habitat and adjoining coastal areas. It is therefore actively engaged in actions to prevent exploring and drilling for oil and gas in the Chukchi Sea.

## **DEFENDANTS**

8. Defendant Sally Jewell is sued in her official capacity as the Secretary of the United States Department of the Interior.

9. Defendant Abigail Ross Hopper is sued in her official capacity as Director of the Bureau of Ocean Energy Management (Bureau).

10. Defendant the Bureau, formerly the Minerals Management Service and the Bureau of Ocean Energy Management, Regulation and Enforcement, is an agency of the United States Department of the Interior entrusted with management of the mineral resources of the Chukchi Sea outer continental shelf.

## **SUPPLEMENTAL FACTS**

11. The October 2008 Complaint describes the Chukchi Sea, oil and gas activities in and around the Chukchi Sea, the Lease Sale 193 Environmental Impact Statement (EIS), and Lease Sale 193. Plaintiffs incorporate by reference those allegations from paragraphs 1-5, 31-37, 39-44, 88-92, 97-101.

12. On January 22, 2014, the Ninth Circuit Court of Appeals issued an order finding that Federal Defendants had acted arbitrarily in analyzing in the EIS only the effects of exploring for, developing, and producing one billion barrels of oil from Lease Sale 193. Doc. 275. The order remanded this matter to this Court, and on April 24, 2014, this Court issued an order remanding the lease sale decision to the Federal Defendants and enjoining drilling on the leases pending the Federal Defendants' reconsideration of the leases. Doc. 284.

13. On April 18, 2014, the Federal Defendants announced their intent to prepare a Second SEIS for Lease Sale 193. Doc. 283 at 2.

14. Notice of Availability of the draft Second SEIS and of the public comment period was published in the Federal Register on November 7, 2014. Doc. 291 at 2, ¶2.

15. Plaintiffs submitted written and oral comments on the draft Second SEIS.

16. Plaintiffs' comments raised the issues addressed in this Third Supplemental Complaint.

17. Notice of Availability of the final Second SEIS was published in the Federal Register on February 20, 2015.

18. The Federal Defendants issued a Record of Decision affirming Lease Sale 193 on March 31, 2015.

### **The Second SEIS**

19. The Second SEIS was prepared on a very short time-frame.

20. At the same time as the Bureau was preparing the Second SEIS, it also was reviewing a draft plan from Intervenor-Defendant Shell Gulf of Mexico Inc. (Shell) to explore for oil on several of its Lease Sale 193 leases.

21. The Bureau prepared the Second SEIS on a schedule specifically aimed at completing the document and reaching a decision in time to allow Shell to explore its leases during the 2015 open water drilling season (July through October).

### ***Alternatives***

22. When the Bureau's predecessor agency originally held Lease Sale 193, much information about the Chukchi Sea and its wildlife was missing.

23. For example, the existence and location of important offshore habitat for a variety of species were largely unknown.

24. Based on limited information that indicated coastal areas are important for many species of marine mammals and birds and for subsistence activities, the Bureau's predecessor agency developed three action alternatives in the original lease sale EIS that contained different-sized coastal deferral areas but did not otherwise defer leasing from offshore areas.

25. Since the Bureau originally held the lease sale, much new information about the Chukchi Sea has been developed.

26. Though still incomplete, the new information has identified offshore areas outside of the coastal deferral areas that provide important habitat for a variety of species.

27. Many of the species that use these offshore areas are sensitive to noise and disturbance and could be harmed by Lease Sale 193 oil and gas activities.

28. For example, recent information indicates that the Hanna Shoal region provides important habitat for a number of species, including Pacific walruses.

29. The Bureau did not develop any new alternatives in the Second SEIS. It carried forward for analysis the same alternatives as in the original EIS and SEIS.

30. The Bureau took as its starting point for analysis in the Second SEIS the existing leases in the Chukchi Sea. The alternatives developed in the Second SEIS consisted of affirming all, affirming none, or affirming all but five of the leases issued pursuant to the lease sale.

### *Climate Change*

31. The EIS for the original 2008 lease sale addresses greenhouse gas emissions from combustion of the lease sale's oil as a cumulative impact of the sale. The EIS states that the increase in supply resulting from the lease sale likely would not change aggregate oil

consumption or change greenhouse gas emissions from oil consumption. It states this was because the level of oil consumed in the United States, with or without the lease sale, likely would not change and, further, if Alaska energy sources were not to be developed in the future, resources would have to be produced in other areas of the globe and, therefore, the impacts from greenhouse gas emissions would be very similar, regardless of the location of the energy source.

32. The 2011 SEIS following the first remand decision to affirm the lease sale states that no reliable methodologies existed to estimate the response of oil and gas markets to new supplies. It additionally states that the burning of oil and gas for energy is not a reasonably foreseeable or proximate consequence of the lease sale under NEPA and, therefore, the larger climate impacts of producing oil and gas from the lease sale did not need to be addressed.

33. Since the prior analyses, a new scientific consensus has developed that most fossil fuels—including in particular Arctic fossil fuels—must remain undeveloped to avoid the worst consequences of climate change.

34. The international scientific community has concluded that global temperature rise must be kept within 2 degrees Celsius of preindustrial levels to avoid the worst effects of climate change. The United States has recognized this scientific consensus. The United States has signed an international agreement and committed to take steps to contribute to the global effort to remain within the 2 degrees Celsius cap.

35. The Intergovernmental Panel on Climate Change (Panel) has concluded that there is an overall limit to the amount of fossil fuels that can be developed and burned if the world is to remain within the 2 degrees Celsius cap. It has concluded that to provide a 66 percent chance of limiting warming to 2 degrees Celsius, additional carbon dioxide emissions must be limited to 1,000 GtCO<sub>2</sub>. It estimates that there are about 3,670-7,100 GtCO<sub>2</sub> in fossil fuel

reserves remaining in the ground. This is 4 to 7 times the amount of reserves that can be burned to have a 66 percent chance of remaining within the 2 degrees Celsius warming goals. The Panel has concluded the majority of these fuel reserves must remain undeveloped to have a two-thirds chance to stay within the 2 degrees Celsius cap. It has concluded even more of the more speculative fossil fuel resources must remain undeveloped to remain within the cap.

36. Scientists have identified the development of Arctic fossil fuel resources as incommensurate with efforts to limit average global warming to 2 degrees Celsius.

37. The Bureau did not analyze this new information in the Second SEIS.

38. The Bureau did not analyze the effects of the burning of the lease sale's oil and gas on climate change. The Bureau justified its refusal to analyze the effects of the end use of oil and gas from the lease sale in the Second SEIS on the same bases articulated in the 2011 SEIS.

### ***The Record of Decision***

39. Federal Defendants filed a Record of Decision with the Court on March 31, 2015.

40. The Record of Decision affirms Chukchi Sea Lease Sale 193 as it was originally held in 2008.

## **COUNT XI**

41. Plaintiffs repeat and incorporate by reference the allegations contained in the preceding paragraphs.

42. NEPA requires the Bureau to design alternatives that would avoid or minimize adverse effects to the environment and to make an informed comparison of potential alternatives to Lease Sale 193. 40 C.F.R. §§ 1502.1, 1502.14.

43. NEPA requires the Bureau to rigorously explore all reasonable alternatives.



44. The Bureau included in the Second SEIS only the same alternatives analyzed in the EIS and SEIS. Since the Bureau developed the alternatives analyzed in the earlier environmental impact statements, new information about Chukchi offshore habitat has been developed that has a bearing on the lease sale's impacts.

45. The Bureau failed to develop and compare reasonable alternatives in light of this new information that would avoid or minimize adverse effects.

46. The Bureau's failure to analyze reasonable alternatives violates NEPA, 42 U.S.C. § 4332, and the APA, 5 U.S.C. §§ 702-706, and renders unlawful the Second SEIS and the Federal Defendants' decision to affirm Lease Sale 193.

## COUNT XII

47. Plaintiffs repeat and incorporate by reference the allegations contained in the preceding paragraphs.

48. NEPA requires the Bureau to engage in a reasonable discussion of the climate change effects of the end-use or downstream consumption of lease sale oil and gas.

49. The Bureau did not analyze the climate change effects of oil and gas produced as a result of the lease sale in the Second SEIS.

50. The Bureau did not analyze the new scientific information regarding climate change effects of fossil fuel development.

51. The Bureau's failure to analyze the climate change effects of the consumption of oil and gas from Lease Sale 193 violated NEPA, 42 U.S.C. § 4332, and the APA, 5 U.S.C. §§ 702-706, and renders unlawful the Second SEIS and the Federal Defendants' decision to affirm Lease Sale 193.

## **PRAYER FOR RELIEF**

Therefore, Plaintiffs respectfully request that the Court:

1. Declare that Federal Defendants have violated NEPA and that the actions as set forth above are arbitrary, capricious, and not in accordance with law;
2. Vacate the Record of Decision and all leases issued and affirmed pursuant to Lease Sale 193;
3. Enter appropriate injunctive relief preventing activity under the leases at issue to prevent irreparable harm to the Plaintiffs and to the environment pending compliance with NEPA;
4. Award Plaintiffs the costs of this action, including reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
5. Grant such other relief as the Court deems just and proper.

Dated: August 28, 2015.

*s/ Erik Grafe*

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## CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2015, a copy of the foregoing THIRD SUPPLEMENTAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF was served electronically on David B. Glazer, Kyle W. Parker, Jeffrey W. Leppo, Ryan P. Steen, Martin T. Schultz, Steven E. Mulder, Rebecca Kruse, and James N. Leik.

*s/ Erik Grafe*

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