

Reality Check ? Political and Economic Realities Hamper Efforts to Reopen U.S. Waters to Offshore Drilling

January 18, 2018 Chris Reagen

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On January 4, 2018, the U.S. Department of the Interior ("Department") announced its draft proposal of the 2019-2024 Outer Continental Shelf ("OCS") Oil and Gas Leasing Program that would reopen nearly all federal waters to offshore leasing for new oil and gas operations. This proposal responds to President Trump's April 2017 executive order directing the Department to review restrictions on offshore oil and gas development established under the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program. The 2017-2022 leasing program focused on areas in the Gulf of Mexico that were not under Congressional moratorium and closed drilling in new regions of the Arctic Ocean while continuing the policies of earlier administrations under which the Atlantic and Pacific Oceans were off limits to new oil and gas operations. In a monumental reversal from prior plans, the 2019-2024 draft program proposes to make more than 90 percent of the total OCS acreage available for future exploration and development, opening large areas of the Pacific, Atlantic, and parts areas of the Arctic Oceans to exploration.

Not surprisingly, the announcement of the unrestrained reopening of nearly all of the offshore planning areas in federal waters has drawn the ire of coastal lawmakers - notably and perhaps not surprisingly, even some staunch GOP members - in addition to environmental groups. Upon the Department's announcement, the governors of California, Oregon and Washington stated their resolute opposition to the Department's proposal, criticizing the proposal for opening up an area for leasing where new leases had not been issued since 1984. After meeting with Florida's Republican Governor Rick Scott, Secretary of the Interior Ryan Zinke agreed to exempt Florida from the 2019-2024 draft program sparking demands from coastal governors, both Democrat and Republican, for meetings with Secretary Zinke to request drilling exemptions for their states. On January 11, a bipartisan group of senators from northeastern states introduced a bill that would prohibit oil and gas leasing off the coast of New England.

Of surprising importance, there is an issue largely overlooked by many amidst this political and media cacophony. Specifically, there nearly has been a total failure to acknowledge how the economic realities of operating in the OCS in increasingly deepwater environments at a time of low oil and gas prices impacts the Department's stated goal of achieving "American Energy Dominance." Any new offshore leases will be subject to ever-increasing costs caused by decommissioning obligations and the growing risk that lessees must post financial assurances for these liabilities established by Notice to Lessees ("NTL") No. 2016-N01. Once a serious concern only to small and mid-sized operators, the existence of mounting decommissioning liabilities to new lessees and predecessors-in-interest has stunned the offshore industry where some companies are discovering that their decommissioning liabilities are greater than existing assets.

Although the Bureau of Ocean Energy Management ("BOEM") announced in June 2017 that implementation of NTL No. 2016-N01 had been stayed while the Department completes its review of the NTL, lessees and operators of OCS wells, platforms, and other facilities have struggled to address their decommissioning liabilities and the impending risk to provide supplemental financial assurances. If new deepwater properties are developed, which are increasingly comprised of

complicated and integrated systems installed and operating deeper in the sea, the major question is the appetite of lessees and operators to post sufficient security for decommissioning obligations.

This new reality in the OCS has created barriers to entry for all but the super-majors as new, small, and mid-sized independents face impossible-to-satisfy demands for many operators and leases. If and when BOEM resumes NTL 2016-N01, bankruptcies may impact many lessees and operators as they struggle to allocate massive amounts of dead-capital in bonds and other securities for many and immediate burdens for legacy lessees.

The draft program is not final and is subject to review and revisions beginning with a 60-day public comment period triggered once the draft program is published in the Federal Register. Given the outcry from officials from both parties and at all levels of government on behalf of many coastal states, as well as environmental groups, some of the planning areas, particularly in the Atlantic and Pacific oceans, may be removed from the final action. Even if the inclusion of these planning areas survives public and political opposition, significant headwinds confront potential lessees in the form legal challenges as well as the growing costs to develop OCS properties outside of the well-developed infrastructure in the Gulf of Mexico along with the staggering decommissioning obligations.

[View the January 4 announcement.](#)