

DRILLING THE CHUKCHI SEA?



Dave Owen

Coastal Zone Law

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INTRODUCTION

Northwest of Alaska, and north the Arctic Circle, is the Chukchi Sea. For much of the year, ice covers the sea, and winter storms can be intense. It is a harsh environment. But beneath the sea floor lie oil fields, and despite the harsh conditions, oil companies covet access to those fields. As a recent news story explained (quoting a Shell geologist),

Armed with promising new seismic science, a sort of undersea sonogram of the earth's belly, [Shell Oil Company] says Burger¹ is a signature find. It's the spark for ramping up controversial efforts to drill off the northernmost coast of the U.S. in some of the most extreme conditions on Earth.

"This is the stuff that most of the world was finding in the 1930s, the 1950s, the 1960s, in places like Saudi Arabia and the Middle East, Nigeria," Phelps said. "This one potential resource far outweighs any single field we've got in the Americas' portfolio."²

Shell has spent billions of dollars trying to convert those ambitions into reality.



Not surprisingly, Shell's aspirations have generated opposition. After the Deepwater Horizon disaster, widespread attention turned to offshore drilling in the Arctic, where, some claim, a combination of remoteness, harsh conditions, and sensitive environmental receptors make drilling an even riskier proposition than it was in the gulf. Those fears, combined with environmental groups' general hostility to the development of any new fossil fuel sources, have led to significant opposition to Shell's plans.

Nevertheless, there is also significant public pressure in favor of drilling. Increasing domestic energy production has been a national priority for decades, with administration after administration promising, usually ineffectually, to reduce American dependence on foreign oil. Recent turbulence in Venezuela, the Niger Delta, and the Middle East has done little to diminish arguments for increased domestic production. Americans also continue to consume huge amounts of oil, and expect to do so affordably. For the Obama Administration, rising gas prices loom as an economic drag and a potentially significant political liability. Exploratory drilling probably will have no short-term effect (and probably very slight long term effects) on gas prices, but the appearance of action may be politically important.³

¹ "Burger" refers to the Burger Oil field beneath the Chukchi Sea.

² Lisa Demers, *Shell Oil Bets Billions on Arctic Alaska Plan*, ANCHORAGE DAILY NEWS, Dec. 5, 2011.

³ The period between approvals of exploratory drilling and actual production can be years, which means that any effect on gas prices will likely be quite delayed. Additionally, because oil is a globally traded commodity, increases in U.S. production will not have proportional impacts on U.S. prices.

That controversy has generated Congressional interest and a set of competing proposals. Some members of Congress have argued for reinstating the deepwater drilling moratorium, and for doing so through legislation rather than executive order.⁴ Others argue in favor of reducing regulatory constraints on new drilling.

To air those concerns, the U.S. Senate Committee on Energy and Natural Resources has decided to hold hearings. It has invited representatives from the oil industry, environmental groups, and the state of Alaska to testify about whether an offshore drilling moratorium should apply to the Chukchi Sea. Some Democrats on the committee perceive the hearings as an opportunity to explore whether the existing legal regime provides adequate protection, or whether, as they suspect, a moratorium should be imposed until a more protective regime is in place, if not indefinitely. Committee Republicans have signaled their intent to use the hearings quite differently. Many argue that the Obama Administration already has been overly restrictive of drilling, and they hope the hearings will highlight the need for regulatory relief.

THE TEAMS

Environmental Groups: The environmental team jointly represents the Natural Resources Defense Council, the Sierra Club, Trustees for Alaska, and a variety of other environmental groups. They generally oppose oil drilling, both because of potential impacts in the direct vicinity of the oil fields and because of the contributions of fossil fuel combustion to climate change.

Alaska: The state of Alaska has multiple interests at stake. The oil industry is a major employer, and the industry has traditionally exercised significant influence on state politics (see Exhibit A). While the drilling will not produce royalties for the state (unless Congress enacts new legislation changing the allocation of royalties), Alaskan politicians expect the drilling to produce jobs and other economic benefits. But Alaska also has significant industries, including fishing and tourism (which occurs primarily in other parts of the state), that depend on environmental quality.

Shell: Shell's primary interests are generating profits, both in the short and long term, and thus maintaining or increasing its stock price and benefiting its shareholders.

The Senate Energy and Natural Resources Committee: Committee members bring a diversity of interests to the table. If you are on the committee team, please choose a committee member whose part you will play.⁵ You cannot all be from the same political party, and only one person can be Al Franken.

THE PROCESS

We'll start class with ten minutes during which you and your team should review your presentation and ask my any last-minute questions. Each team then will have fifteen minutes to

⁴ The references to Congressional debates and proposals are all fictional. As far as I know, no such hearing is actually planned.

⁵ The committee's website is <http://www.energy.senate.gov/public/>.

present its initial testimony. That time will include eight minutes for uninterrupted testimony and seven minutes for questions and answers. We'll then take a five minute break, during which you'll discuss with your team (and, if you wish, other teams) claims you want to respond to and additional arguments you want to raise. Each team will have five minutes to present rebuttal testimony.⁶ The committee may ask questions throughout the rebuttal period. We'll then have an open discussion of the case study.

FACTUAL BACKGROUND

Though oil exploration and production have occurred on Alaska's North Slope for decades, the Chukchi Sea has not previously been exploited. For years, the reserves were perceived to be too far offshore for economically viable exploration. Technological advances eventually generated new interest from oil companies, however, and in 2007, the Department of the Interior leased several areas in the Chukchi Sea.



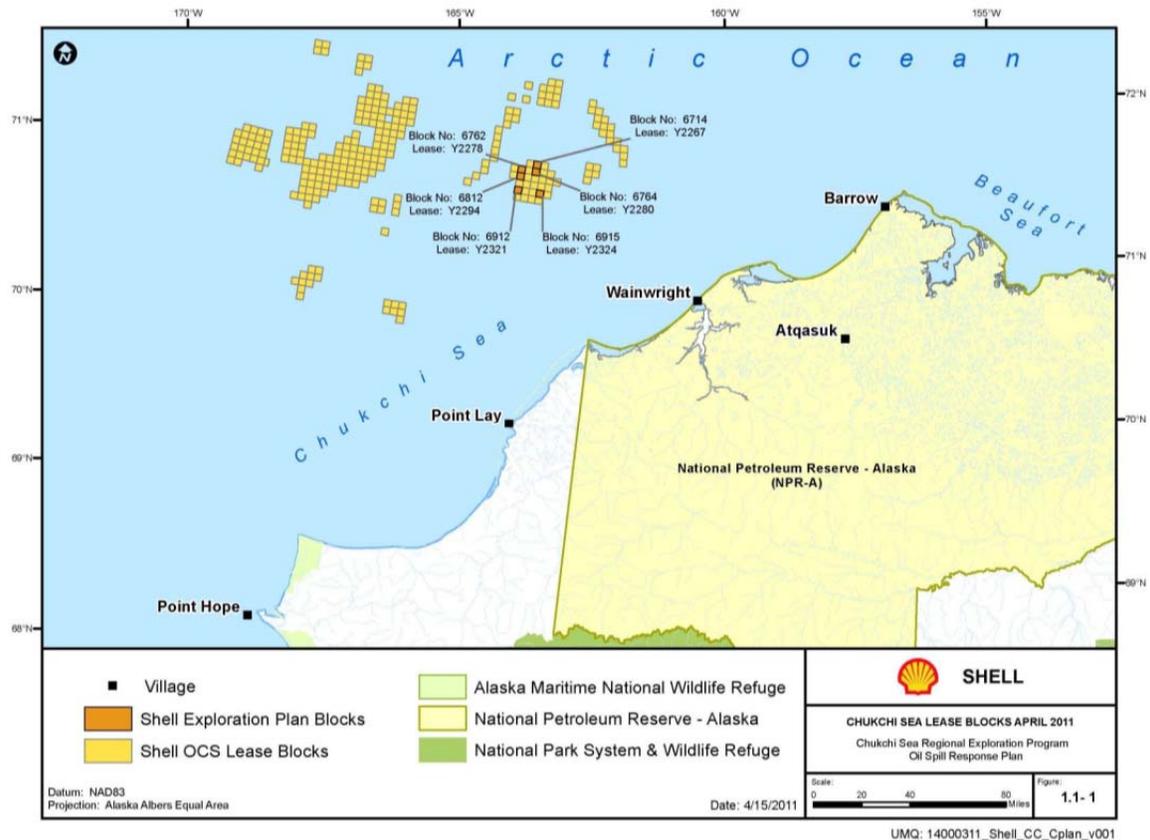
Oil fields on Alaska's northern coastal plain. The area shown is east of the Chukchi Sea. Note that oil companies already are tapping offshore oil fields, but the drilled areas are closer to shore than the proposed Chukchi Sea wells.

Legal impediments—temporary, it turns out—soon emerged. Environmental groups challenged the lease sales, arguing that DOI's efforts at National Environmental Policy Act and Endangered Species Act compliance were deficient. The environmental groups prevailed on their NEPA claims, and the Department of the Interior was ordered to supplement its environmental analysis. Following the Deepwater Horizon spill, the Obama Administration also imposed a categorical moratorium on deepwater drilling. However, that moratorium has since been lifted, and the Department of the Interior updated its environmental documentation in response to the court order. In recent years, Shell has progressed through several steps in a process it hopes will lead to drilling as soon as this summer.

While the Chukchi Sea controversy has been unfolding, the Department of the Interior has been engaged in an extensive set of regulatory reforms designed to upgrade the United States' systems

⁶ A real legislative committee hearing wouldn't involve rebuttal testimony, but rebuttals are fun, so we're including them.

for regulating offshore oil drilling. Exhibit B summarizes some of the key reforms. Whether those changes go too far, as the oil industry and its Congressional supporters contend, or not far enough, as many environmental groups allege, is hotly debated.



The timeline below summarizes the process to date:

- In 2008, the Department of the Interior completed lease sale 193, with Shell as the high bidder.
- Also in 2008, environmental groups challenged lease sale 193, arguing, among other claims, that DOI had not adequately complied with NEPA. They prevailed, and DOI was compelled to supplement its environmental impact statement.
- On April 20, 2010, the Deepwater Horizon exploded and the Gulf of Mexico oil spill began.
- In 2010, following the Deepwater Horizon explosion, the Department of Interior imposed a moratorium on deepwater oil drilling. A federal district court ordered the moratorium lifted, but DOI subsequently reinstated it in slightly different form. DOI also accelerated its efforts to reform regulation of offshore drilling.

- In October, 2010, citing reforms designed to reduce the risk of future accidents, the Department of Interior lifted the deepwater drilling moratorium.
- In August, 2011, the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) released its final supplemental Environmental Impact Statement for lease sale 193 in the Chukchi Sea. The executive summary from that EIS is Exhibit C.
- In December, 2011, the Department of the Interior approved Shell's exploration plan. DOI's approval letter is Exhibit D, and a news story describing reactions to the approval is Exhibit E.
- In February, 2012, the Department of the Interior approved Shell's spill prevention and response plan. A fact sheet describing the approval is Exhibit F.

Shell argues that it has taken extraordinary safety measures, many designed to ensure that the Deepwater Horizon blowout would not be repeated in the Arctic, and that any spill that does occur would be successfully contained. It also points out that the drilling areas are much shallower than the Gulf of Mexico around the Macando well. A short video summarizing Shell's proposed response plans is available at http://www.shell.us/home/content/usa/aboutshell/projects_locations/alaska/. The Department of the Interior has imposed additional safety requirements beyond those proposed by Shell, and it argues that these measures, in combination with a suite of general reforms implemented following the Gulf of Mexico spill, provide adequate assurance to justify proceeding with drilling.

Notwithstanding these reforms and Shell's assurances, the program continues to be controversial. Environmental and liberal advocacy groups argue that the Chukchi Sea is too harsh, remote, and sensitive an environment for drilling to take place (Exhibit G).

EXHIBITS

A. Amanda Coyne, *Begitch Calls on Alaska Legislature to Prepare for Arctic Boom*, ALASKA DISPATCH, March 5, 2012.

B. Bureau of Ocean Energy Management, Regulation, and Enforcement, *Regulatory Reform*, <http://www.boemre.gov/reforms.htm>.

C. U.S. DEPARTMENT OF THE INTERIOR, FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT, OIL AND GAS LEASE SALE 193 (2011) (Executive summary only).

D. U.S. Dept. of the Interior, Bureau of Ocean Energy Management, Letter to Ms. Susan Childs, Shell Gulf of Mexico, Dec. 16, 2011.

E. Nick Snow, *BOEM Conditionally Approves Shell's Chukchi Sea Exploration Plan*, OIL & GAS JOURNAL (December, 2011).

F. Bureau of Safety and Environmental Enforcement, Office of Public Affairs, Fact Sheet: Shell Chukchi Sea Oil Spill Response Plan (February, 2012).

G. KILEY KROH ET AL., CENTER FOR AMERICAN PROGRESS, PUTTING A FREEZE ON ARCTIC DRILLING: AMERICA'S INABILITY TO RESPOND TO A SPILL IN THE ARCTIC (2012).