



Institute for Policy Integrity

new york university school of law

February 7, 2011

Steven Textoris, 5-Year Program Manager
Bureau of Ocean Energy Management
381 Elden Street, (MS-4010), Room 3120
Herndon, Virginia 20170

Mr. Textoris:

The Institute for Policy Integrity at New York University School of Law, a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy, respectfully submits the following comments and associated documents.

The Outer Continental Shelf Lands Act (OCSLA) requires the Secretary of the Interior to develop five-year schedules that specify the “timing” for offshore leasing activity, after weighing the “economic, social, and environmental values of the renewable and nonrenewable resources.”¹ When making these decisions, the agency should strive to consider all relevant factors, and to quantify all costs and benefits as fully and as accurately as possible—these norms are enshrined in legal precedents² and executive orders.³

In its current Leasing Program,⁴ however, the Interior Department treats the government’s choice to lease as a now-or-never decision, ignoring the option value of waiting to lease and drill in the future. The importance of option value to evaluate decisions under uncertainty has been widely recognized in the economics community for several decades.⁵ By not using standard economic methodologies that would incorporate the option value of a resource, the current Leasing Program overlooks a key factor in the decision, does not quantify all economic and environmental costs and benefits as accurately as possible, and ultimately may not make the optimal choices on the timing of leases.

Under OCSLA,⁶ the Secretary is required to adopt a leasing program only after a wide range of social factors have been adequately considered. The agency should revise its draft leasing program to account for the option value of offshore resources when weighing the costs and benefits of opening areas for leasing. For more details on the justification and methodology for adopting an options framework for leasing decisions,

¹ 43 U.S.C. § 1344(a) (2010).

² *California v. Watt*, 688 F.2d 1290, 1317 (D.C. Cir. 1981) (holding courts can review Interior’s leasing discretion for arbitrariness and failure to consider relevant factors); *Motor Veh. Mfrs. Ass’n v. State Farm Ins.*, 463 U.S. 29, 43 (1983) (agency decisions are arbitrary if they entirely fail to consider an important aspect of the problem).

³ Exec. Order No. 12,866 § 1(a), 58 Fed. Reg. 51,735, 51,735 (Oct. 4, 1993) (codified at 45 C.F.R. pt. 88); Exec. Order No. 13,563 § 1(a), 76 Fed. Reg. 3821, 3821 (Jan. 18, 2011) (affirming cost-benefit principles specified in Exec. Order 12,866).

⁴ Bureau of Energy Mgmt., Proposed Outer Continental Shelf Oil and Gas Leasing Program (2012-2017) (2011).

⁵ See generally, AVINASH K. DIXIT & ROBERT S. PINDYCK, *INVESTMENT UNDER UNCERTAINTY* (1994).

⁶ 43 U.S.C. § 1344(e).

please see the attached paper, *Patience is a(n Economic) Virtue: Real Options, Natural Resources, and Offshore Oil* (Policy Integrity Working Paper No. 2012/1).

By building an options framework into all leasing decisions, the agency can ensure that over-early exploitation of the nation's mineral resources does not occur, and that the American public receives a fair value for leasing the government's offshore oil, leading to smarter use of our offshore resources and fewer risks imposed on the public.

Respectfully submitted,

Michael A. Livermore, Executive Director
Institute for Policy Integrity
New York University School of Law

Enclosure: *Patience is a(n Economic) Virtue: Real Options, Natural Resources, and Offshore Oil* (Policy Integrity Working Paper No. 2012/1).