



# Institute for Policy Integrity

*new york university school of law*

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Secretary Kenneth Salazar  
U.S. Department of the Interior  
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Secretary of the Interior:

Pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344(e), the Administrative Procedure Act, 5 U.S.C. § 553(e), and the Department of the Interior's regulations, 43 C.F.R. § 14.2, the Institute for Policy Integrity petitions the Department of the Interior to:

- 1) Use its statutory authority to revisit and revise its current Outer Continental Shelf Oil and Gas Leasing Program (2007-2012), to account for the option value of offshore resources when weighing the costs and benefits of leasing;
- 2) Alternatively, initiate a rulemaking to repeal and replace those sections of the current Leasing Program that would be altered by an analysis that incorporates option value; and
- 3) Utilize a complete and balanced cost-benefit analysis, accounting for option value, in all future leasing decisions and future iterations of the Leasing Program, especially the planned 2012-2017 Program.

The Institute for Policy Integrity at New York University School of Law is 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.

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.”<sup>1</sup> 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 precedents<sup>2</sup> and executive orders.<sup>3</sup>

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<sup>1</sup> 43 U.S.C. § 1344(a) (2010).

<sup>2</sup> *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).

<sup>3</sup> 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).

In its current Leasing Program,<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> the Secretary may revise and reapprove the leasing program at any time. The agency should use this statutory authority to revisit its leasing program and account for the option value of offshore resources when weighing costs and benefits. For more details on the justification and methodology for adopting an options framework for leasing decisions, please see the attached Policy Integrity Regulatory Report, *The BP Gulf Coast Oil Spill, Option Value, and the Offshore Drilling Debate*.

In the alternative, under the Administrative Procedure Act, 5 U.S.C. § 553(e), and the Department of the Interior's regulations, 43 C.F.R. § 14.2, the Institute for Policy Integrity petitions the agency to initiate a rulemaking to repeal and replace those sections of the current Leasing Program that would be altered by an analysis that incorporates option value.

Finally, the Interior Department should incorporate option value into its cost-benefit analysis for future leasing decisions and programs, especially the planned 2012-2017 Program.

By building an options framework into all leasing decisions, these steps will ensure 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,  
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Enclosure: *The BP Gulf Coast Oil Spill, Option Value, and the Offshore Drilling Debate* (2011).

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<sup>4</sup> Bureau of Energy Mgmt., Reg. & Enforcement, Revised Program—Outer Continental Shelf Oil and Gas Leasing Program (2007-2012) (2010).

<sup>5</sup> See generally, AVINASH K. DIXIT & ROBERT S. PINDYCK, INVESTMENT UNDER UNCERTAINTY (1994).

<sup>6</sup> 43 U.S.C. § 1344 (e).