

CONGRESS' 30-DAY DEADLINE FOR RUBBER- STAMPING EXPLORATION PLANS

The other day, when Sheldon Whitehouse asked Secretary of Interior Ken Salazar why BP had gotten an exemption from the full-blown NEPA process from which it presumably should have been categorically excluded, Salazar referenced a 30-day deadline from Congress to approve exploration plans.

Senator, there has been significant environmental review, including Environmental Impact Statements that has been conducted with respect to this activity in the Gulf of Mexico. It is an area where we know a lot about the environment, we know a lot about the infrastructure that is there. **The question of the categorical exclusion in part relates to the Congressional 30-day requirement that MMS has to approve or disapprove an exploration plan.** [my emphasis]

Mineral Management Service Director Elizabeth Birnbaum elaborated on this 30-day deadline on Wednesday.

Under the National Environmental Policy Act we're required to examine the environmental impacts of any major federal actions, certainly the oil and gas leasing is a major federal action. We have conducted many Environmental Impact Statements before we get to the point of an individual well drilling decision. We conduct an EIS on the full 5-Year Plan for oil and gas drilling, We have conducted EIS on the lease sales in the Gulf and then separately in Alaska.

We also conducted some separate Environmental Impact Reviews on leasing in the particular area—drilling in the particular area in the Mississippi Canyon here in the Gulf. When we get to the point of deciding on an individual exploration plan for a particular permit, we are under a statutory obligation under the Outer Continental Shelf Lands Act to make a decision within 30 days. That very much limits our ability to conduct environmental reviews. Many of our environmental reviews are categorical exclusions. We review that to determine whether there's a trigger for us to do a full Environmental Assessment, which we did actually on exploration plans for Arctic drilling. But we're still limited to that 30-day decision, and we have to still make a decision on whether to go forward with an exploration plan within 30 days, which limits the amount of environmental review we can conduct. In the package that the Administration sent up to provide additional appropriations, we also asked to lift that limit in the Outer Continental Shelf Lands Act to allow 90 days or more to provide more full analysis of exploration plans before drilling.

Here's a history of the OCSLA. The 30-day requirement itself is described in the plan approval process of the OCSLA.

(1) Except as otherwise provided in this subchapter, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this subchapter, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of

lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this subchapter, regulations prescribed under this subchapter, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334 (a) of this title, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. **The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that**

(A) any proposed activity under such plan would result in any condition described in section 1334 (a)(2)(A)(i) of this title, and

(B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding sentence, he may, subject to section 1334 (a)(2)(B) of this title, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 1334 (a)(2)(C)(i) or (ii) of this title. [my emphasis]

And that sets the standard for rejecting an application in 1334 (a)(2)(A)(i) this way:

(i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

Now, I would have to do a lot more review of legislative history of the OCSLA to see where that 30-day deadline came from, though so many of the deadlines in the OCSLA are set at 30 days, it might just have been arbitrary (or, it might have been what appeared to be a reasonable deadline to make sure the process kept moving forward—you gotta Drill Baby Drill, dontcha know).

But given Salazar's and Birnbaum's statements, the effect appears to be clear. That 30-day deadline appears to ensure that the MMS only looks closely at these exploration plans if there's a blinking red flag in the plan, and not something trivial like drilling in extremely deep waters and/or innovative drilling plans—the things Whitehouse noted that should have prevented this exploration plan from being exempted from an individual assessment, the things that are causing such acute problems now.

And of course, to actually change this 30-day rubber stamp process, the legislation is going to have to get by industry shills like Lisa Murkowski and James Inhofe. Something to look forward to, I guess.

Oh, one more thing. The Congressman who raised concerns about the Arctic drilling? That's the normally loathsome Heath Shuler. Just an indication of how a giant disaster can turn even the bluest of dogs into hippie environmentalists.