

Post-Election Update: Offshore Energy

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President Obama describes his energy policy as an "All of the Above" approach that encourages production of traditional fossil fuels while supporting the growth of renewables. Despite an increase in overall U.S. energy production over the past four years, output in federal waters of the Gulf of Mexico has dropped well below recent government projections and onshore energy production from federal lands remains minuscule. Under a second Obama term, will federal waters and lands play a leading role in U.S. energy production, or will they continue to lag behind their potential?

How federal lands policy - and related energy policy - develops under the President's second term will reflect the dueling instincts within the Administration: the desire to push an active, even aggressive regulatory-reform program, and the desire to create a more bipartisan legacy on issues such as energy independence. We suspect we'll see elements of both as the administration continues a reformist Executive Branch regulatory agenda while exploring more common ground among Democrats and Republicans in Congress and the caucuses.

Other changes we see on the horizon:

Leadership

Aside from responding to the Macondo blowout, delaying the decision on the Keystone pipeline and dealing with the fallout from the bankruptcy of Solyndra, energy issues have rarely appeared at the forefront of the Administration's political agenda. Low-key leaders such as Interior Secretary Ken Salazar and Energy Secretary Steven Chu have contributed to the backseat posture of the Administration's energy policy. In a next term, look for the following changes:

- DOI Secretary Salazar likely to be replaced by someone with environmental and public-lands credibility (a la David Hayes);
- DOE Secretary Chu likely to be replaced: look for someone with technology credibility, like Secretary Chu, but with more experience dealing with the energy industry and Congress.

Offshore Leasing

Future production begins with leases to develop. During each of the past four years, scheduled offshore lease sales steadily diminished. The Administration's 2012-2017 oil and gas leasing plan fell short of industry expectations, failing to open up new tracts in the Eastern Gulf and along the U.S. East and West coasts, while providing limited offerings in the Alaskan OCS. In the

next term, look for the Administration to:

- Stay the course on the current Five-Year Program;
- Hold tight on the development of offshore Alaska pending more science on impacts, sensitive receptors, and technology;
- Push out consideration of mid-Atlantic O&G development until more offshore renewable energy projects get under way;
- Develop the next Five-Year Program shaped strongly by the latest scientific impact studies; since the next Program will be developed during Obama's second term but implemented during the succeeding administration, it's a chance for Obama to leave a ten-year legacy of offshore leasing.

Offshore Exploration and Permitting

In the wake of Macondo, exploration plan approvals and permits to drill dropped to low levels while rules for offshore development were hastily revamped. Over the past six months, the flow of permits and approvals has moved toward pre-Macondo levels, albeit amidst markedly more regulation and less certainty of approval timing and outcome. Look for the following developments during the next four years:

- Promulgate additional regulations governing offshore equipment (e.g., BOPs), offshore safety management systems (e.g., SEMS), and leading/lagging performance indicators of process safety;
- "Set" the current permitting regime as the new normal;
- Initiate possible major initiatives around claims for natural resource damages (NRDs) from Macondo;
- Migrate regulatory concepts from onshore to offshore, and vice versa (e.g., disclosure, safety-case);
- Move increasingly toward performance standards, while also ratcheting up existing prescriptive standards;
- Continue to advance ocean zoning as a new gating function.

Offshore Enforcement and Liability

Part and parcel of ramping up production in the Gulf following Macondo has been the Administration's emphasis on toughened enforcement of offshore regulations, marking a deliberate departure from the tarnished oversight reputation of the former Minerals and Management Service. In continuing to pursue this aim, look for the Administration to:

- Complete the development of the Investigations and Review Unit (IRU), the enforcement arm of the Interior Department's Bureau of Safety and Environmental Enforcement;
- Continue to back-fill justifications for the current position on contractor liability;

- Seek expanded Congressional authority for offshore penalties;
- Spotlight the Macondo litigation.

Onshore Federal Lands Development

The Administration will continue to feel pressure to increase energy production on federal lands, particularly to exploit the considerable shale gas reserves on BLM land. Yet the Administration is on a go-slow strategy with federal shale gas development and is busy pursuing solar and wind opportunities. In the days ahead, look for the Administration to:

- Approve new, large renewable energy projects on federal lands;
- Finalize BLM's rules governing hydraulic fracturing on federal and Indian lands, followed by progress in shale gas development premised on increased regulatory requirements;
- Explore ways to streamline opportunities for energy corridors (transmission lines, pipelines) across federal lands.

Presidential Legacy

In a President's final term, leaving a legacy becomes a high priority. Look for the Administration to:

- Create new National Monuments under the Antiquities Act;
- Complete the President's Great Outdoors initiative with a flagship effort of conservation or public access to the nation's natural heritage.