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Administration may have more time to review oil-drilling proposals than it says

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Ever since BP's Deepwater Horizon oil rig exploded in the Gulf of Mexico on April 20, Obama administration officials have argued that their ability to subject potential drilling operations to extensive environmental reviews has been limited by a federally established deadline. That deadline, they say, requires them to decide on oil companies' exploration proposals within 30 days. But a 2008 court ruling suggests they have far more discretion to extend it.

As recently as Sunday, the Interior Department -- which includes the regulatory Minerals Management Service -- said it has only one month to assess a drilling proposal's environmental impact. The administration wants to extend the decision-making process from 30 days to at least 90 days as part of the oil spill response bill sent to Congress last month "to complete additional environmental and safety reviews, as needed," the statement said.

But in a November 2008 ruling on a Shell Oil permit application to drill in Alaska, the U.S. Circuit Court of Appeals for the 9th Circuit said: "There is flexibility built into the regulatory scheme so that the agency can perform its full duties [under the National Environmental Policy Act]. The thirty-day clock begins to run only when an exploration plan is deemed complete."

The ruling continued: "If the agency is able to identify gaps before that point, then it can request that information be added before the proposal is finalized. . . . Additionally, at the end of the thirty-day review period, the agency may opt to require modifications to an [exploration plan] if there are concerns that it does not comport with environmental standards."

"These options give the agency additional time to consider a plan and compile an environmental impact statement, if necessary," Senior Circuit Judge Dorothy W. Nelson wrote in the ruling. "To say simply that the agency only has thirty days to complete a full [environmental impact statement] is misleading."

Shell later withdrew the permit application, prompting the court to vacate the ruling. Kieran Suckling, executive director of the Center for Biological Diversity, said there is no reason why the Minerals Management Service couldn't take more than 30 days to issue a decision if it needs more environmental information.

"There's no legal reason whatsoever to exempt oil drilling from environmental review," Suckling said. "The Department of Interior has been murky and misleading at every stage of its description of the environmental review and moratorium process since this explosion."

Interior spokeswoman Kendra Barkoff wrote in an e-mail that once MMS receives an exploration plan, it has 15 days to decide whether it meets criteria established by law and regulation. At that point, it can either start the 30-day clock or ask for more information.

"The BP Deepwater Horizon spill, however, raises fundamental questions, and we have asked Congress to amend the laws governing MMS review of exploration plans to ensure that MMS has the flexibility it needs to ensure safety and environmental protection," Barkoff wrote. She added that the department conducts environmental reviews at other stages of the leasing process, such as when it drafts a regional five-year leasing plan and conducts lease sales.

Several administration officials -- including Interior Secretary Ken Salazar and Nancy Sutley, chairman of the Council on Environmental Quality -- have testified before Congress that federal regulators have been limited by the 30-day deadline. In the case of BP's exploration plan for Lease 206, the area that later housed the Deepwater Horizon rig, MMS officials gave the company a "categorical exclusion" so it did not have to conduct a full environmental review.

Testifying before the Senate Environment and Public Works Committee on May 18 about how the administration has issued categorical exclusions for operations such as Deepwater Horizon's, Sutley told the panel: "But as the [interior] secretary alluded to, one of the real constraints that MMS faces is this 30-day requirement to act on permits." That same day, Deputy Interior Secretary David Hayes specifically blamed this month-long deadline for why the administration exempted BP from a more extensive review of its Deepwater Horizon operation.

"There's been a lot of discussion about the fact there was a categorical exclusion at the end of the process here for the exploration plan," he told the Senate Energy and Natural Resources Committee. Part of the problem, he said, is that "the governing statute only allows 30 days for approval of that, and the president has requested congressional change of that."