

EXXON COMPANY, U.S.A.

IBLA 98-389

Decided July 11, 2002

Appeal from a decision of the Acting Associate Director for Policy and Management Improvement, Minerals Management Service, denying an appeal of a decision of the Regional Director, Gulf of Mexico Outer Continental Shelf Region, that determined that an offshore oil and gas lease had expired prior to approval of a proposed unit which included the lease. MMS-96-0191-OPS. 1/

Affirmed.

1. Oil and Gas Leases: Expiration—Outer Continental Shelf Lands Act: Oil and Gas Leases

When production ceases on an oil and gas lease issued pursuant to section 8 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1337(b) (1994), which has been continued beyond its 5-year initial period by production, the lease expires by operation of law if production, drilling, or well-reworking operations have not resumed within 90 days of the date of the last production from the lease.

2. Oil and Gas Leases: Expiration—Oil and Gas Leases: Unit and Cooperative Agreements—Oil and Gas Leases: Unitization—Outer Continental Shelf Lands Act: Oil and Gas Leases—Outer Continental Shelf Lands Act: Unit Plans

1/ The appeal to the Director, Minerals Management Service (MMS), was originally assigned Docket No. MMS-96-0191-OCS. See April 22, 1996, MMS Letter, attached to the Mar. 13, 1997, Report and Recommendation from the Regional Director, Gulf of Mexico Outer Continental Shelf (OCS) Region, to the Associate Director (MMS Report), as Ex. 1.M. The Associate Director's decision, however, identified the appeal as "MMS-96-0191-OPS", and this is the MMS docket number used by the parties before us.

Approval of an offshore unit does not occur until MMS receives and approves the duly executed unit agreement and other required documents. When production has ceased on an offshore lease in a proposed unit area which has been extended beyond its primary period by production, that lease will not be continued by operations on another lease in the proposed unit area, even though MMS has determined that the proposed unit area is a logical area for unitization, if MMS does not receive and approve the executed unit agreement before the lease expires for lack of production.

APPEARANCES: Joseph J. White II, Esq., Houston, Texas, for Exxon Company, U.S.A.; Geoffrey Heath, Esq., and Barry E. Crowell, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Exxon Company, U.S.A. (Exxon), has appealed the October 6, 1997, decision of the Acting Associate Director for Policy and Management Improvement, Minerals Management Service (MMS), denying Exxon's appeal of the March 6, 1996, decision of the Regional Director, Gulf of Mexico OCS Region, MMS, determining that offshore lease OCS-G 4733, High Island Block 170 (lease OCS-G 4733), had terminated on September 14, 1994, prior to approval of the proposed High Island Block A-6 Unit.

Exxon obtained lease OCS-G 4733 in 1981. The lease issued with an effective date of September 1, 1981, and a 5-year initial period and, pursuant section 3 of the lease, would continue "so long thereafter as oil or gas is produced from the leased area in paying quantities, or drilling or well reworking operations, as approved by the Lessor are conducted thereon." (MMS Report, Ex. 2.) Shell Oil Company (now Shell Offshore Inc.) (Shell), Florida Exploration Company, Fluor Oil and Gas Corporation, Crown Central Petroleum Corporation, and Apache Corporation (referred to collectively as Shell, *et al.*) contemporaneously acquired adjacent lease OCS-G 4734, High Island Block A-6 (OCS-G 4734). (MMS Report, Ex. 3.) By letter dated September 14, 1982, MMS advised Exxon that the High Island Block 170 discovery well No. 1 qualified OCS-G 4733 as a lease capable of producing gas in paying quantities. In that same year, MMS informed Shell, *et al.*, that the High Island Block A-6 No. 1 discovery well similarly qualified OCS-G 4734. (MMS Report at 4.)

In 1983, Exxon and Shell, *et al.*, entered into a "Heads of Agreement" in which the parties acknowledged that High Island Block 170 and High Island Block A-6 contained common hydrocarbon reservoirs, stated their desire to develop the reservoirs in such a manner as to conserve natural resources and avoid waste, and expressed their intent to enter into a unit agreement and unit operating agreement. (MMS Report, Ex. 4.) This agreement, which was made effective retroactively to September 1, 1982, designated Shell as the

unit operator. Id. at 1, 3. Pursuant to the agreement, in 1984 Shell drilled Well A-11, the only development well on lease OCS-G 4733, from a surface location on lease OCS-G 4734. Production from Well A-11 commenced on January 2, 1985. (MMS Report at 4.)

On February 2, 1990, Exxon, Shell, and Apache Corporation met with MMS personnel to discuss the formation of a reservoir unit in the High Island Area, and Exxon presented for MMS review a letter dated February 2, 1990, containing the proposal for the Block A-6 Unit for the "C" and "D" Sand Series, Blocks A-6 (OCS-G 4734) and 170 (OCS-G 4733), High Island Area, Offshore Texas. (MMS Report, Ex. 1.A.) In addition to advising MMS that Shell was Exxon's designated operator for the southern one-third of lease OCS-G 4733 and the proposed operator of the unit, Exxon provided drafts of the proposed unit agreement and initial plan of operations and asked MMS to make a determination that the proposed unit area was a logical area for unitization. The letter further stated that "[s]ubmittal of this letter and attachments do[es] not constitute final submittal of the Block A-6 Unit." Id. at 5. By letter dated February 13, 1990, Shell informed MMS that, as the operator of High Island Block A-6 (OCS-G 4734) and the designated operator of the southern one-third of High Island Block 170 (OCS-G 4733), it fully supported the unitization plan. (MMS Report, Ex. 1.B.)

By letter dated March 14, 1991, Shell submitted a revised unit proposal for the Block A-6 Unit, along with a modified unit agreement. Shell requested that MMS determine that the proposed unit area was a logical area for unitization and review and comment on the draft unit agreement. (MMS Report, Ex. 1.C.) This letter also stated that it did not constitute final submittal of the Block A-6 Unit. Id. at 2. By letter dated September 4, 1991, Shell provided MMS with a draft initial plan of operations for the proposed unit as a supplement to the information furnished with the March 14, 1991, letter. (MMS Report, Ex. 1.D.)

By letter dated September 17, 1991, MMS advised Shell that the proposed unit area consisting of portions of High Island Blocks 170 (OCS-G 4733) and A-6 (OCS-G 4734) was

considered as a logical area for unitization and meets the criteria of 30 CFR 250.190 [2/] for the prevention of waste, conservation of the natural resources of the Outer Continental Shelf, and protection of correlative rights. We suggest revising the Unit Agreement by inserting "High Island" in the unit name on the third line immediately before "Block" on the cover page. The

2/ The regulations in 30 CFR Part 250 have been changed in format and numbering, although not in substance, since the activities at issue here occurred. For simplicity and consistency, we will cite the regulations existing in 1996 as both Exxon and MMS did in their appeal submissions.

proposed form of your Unit Agreement with our suggested revision and the draft initial plan of operations are acceptable to this office.

Upon receipt of five duly executed Unit Agreements, three duly executed Unit Operating Agreements, and two copies of your initial plan of operations, the proposed High Island Block A-6 Unit will be certified and approved. * * *.

(MMS Report, Ex. 1.E.)

On June 16, 1994, Well A-11, the sole producing well on lease OCS-G 4733 ceased production. ^{3/} Although, under 30 CFR 250.13(a), cessation of production on a lease extended beyond its primary term by production will not cause the lease to expire as long as production, drilling, or well-reworking operations commence before the end of the 90th day after the date of last production, in this case September 14, 1994, none of those activities occurred on lease OCS-G 4733.

In an October 4, 1995, letter addressed to the Section Chief, Development and Unitization Section, Office of Production and Development, MMS, Exxon requested a written acknowledgment of MMS' prior approval of the formation of the High Island Block A-6 Unit in September 1991, or alternatively, that lease OCS-G 4733 be ratified and Exxon granted a suspension of production (SOP) for the lease until January 1, 1997. (MMS Report, Ex. 1.F.) Exxon averred that MMS' September 17, 1991, letter had decided that the unit area was appropriate for unitization and that the unit agreement, with one stylistic change in the unit name, and the initial plan of operations were acceptable. Exxon asserted that, although it, Shell, and MMS had proceeded with operations on a unit basis, Shell had recently informed Exxon that the operator had inadvertently failed to submit final copies of the modified unit agreement and the unit operating agreement and to obtain MMS documentation of its prior approval. Exxon added that it had requested that Shell file those documents with MMS.

^{3/} Although 30 CFR 250.23 required the operator or lessee of a lease in its extended term to submit a report to MMS within 15 days after the end of the first month in which no production from the last well on the lease occurred, Shell waited until October 27, 1995, to notify MMS that Well A-11 had ceased production on June 16, 1994. See MMS Report, Ex. 1.G. On November 6, 1995, after receiving Shell's belated notice that production from the last producing well on lease OCS-G 4733 had ceased on June 14, 1994, the District Supervisor, MMS, advised the Regional Supervisor, MMS, that lease OCS-G 4733 had expired on September 14, 1994, because of the cessation of production. (MMS Report, Ex. 5 at p. 4.)

By letter dated January 12, 1996, Shell forwarded five executed copies of the unit agreement, three executed copies of the unit operating agreement, and two copies of the unit plan of operations to the Regional Supervisor, MMS, and requested that MMS certify the High Island Block A-6 Unit Agreement. (MMS Report, Ex. 1.H.) Shell explained that, since issuance of MMS' September 17, 1991, approval letter, it, Exxon, and Apache had "continued extended negotiations to resolve the retroactive balancing of capital, operating costs, and production, due to a retroactive working interest determination. * * * The delay in the submission of the enclosed agreements was due to these unavoidable negotiations." Id. at 2. Appended to the letter were copies of the Unit Agreement, signed by the parties in January 1996, and the Unit Operating Agreement, executed by the parties in 1994 with an effective date of September 1, 1982.

By separate letter dated January 12, 1996, to the Regional Director, Gulf of Mexico OCS Region, MMS, Exxon again requested written acknowledgment of MMS' September 1991 approval of the formation of the High Island Block A-6 Unit. (MMS Report, Ex. 1.I.) Exxon stated that it had learned in August 1995 both that Well A-11 had not produced since June 1994 and that the documents requested in MMS' September 17, 1991, letter had not been filed. The company asserted that, despite the cessation of production, lease OCS-G 4733 nevertheless continued in full force and effect in accordance with 30 CFR 250.190(h) because of the operations of the High Island Block A-6 Unit. Exxon contended that 30 CFR 250.192(c) provided for two separate and independent approvals related to unitization, *i.e.*, the approval of the unitization proposal and the approval of the various required agreements. Exxon maintained that MMS' September 1991 letter signified the agency's approval of the unitization proposal and argued that the failure to file executed copies of the unit agreement and unit operating agreement and initial plan of operations did not vitiate that approval, especially given the lack of a strict deadline for filing those documents in either the regulations or the September 17, 1991, letter and MMS' knowledge of the parties' negotiations. Exxon added that the requested written acknowledgment of the prior approval of the unit conformed to its, Shell's, and MMS' past actions and was justifiable under the law.

By letter dated March 6, 1996, the Regional Director, MMS, disagreed with Exxon's characterization of the September 17, 1991, letter as approving the High Island Block A-6 Unit, concluding instead that the letter simply advised Shell, Exxon's designated operator, that the proposed area was considered a logical area for unitization and that, upon receipt of the requisite number of copies of the executed unit agreement, the executed unit operating agreement, and the initial plan of operations, MMS would certify and approve the proposed unit. (MMS Report, Ex. 1.J.) According to the Regional Director, the letter clearly informed Shell that the formation and recognition of the unit were contingent upon timely submission of the required executed documents, and Shell's failure to submit those documents

prior to the automatic termination of lease OCS-G 4733 on September 14, 1994, precluded any further MMS action on the matter. The Regional Director also rejected Exxon's request for lease ratification and SOP because the circumstances surrounding the termination of the lease did not justify granting that request.

Exxon appealed the Regional Director's March 6, 1996, determination to the Director, MMS. See MMS Report, Exs. 1.K, 1.L, and 1.N. The Regional Director submitted a response refuting Exxon's allegations.

In his October 6, 1997, decision, the Acting Associate Director for Policy and Management Improvement, MMS, denied Exxon's appeal. He explained that, in order to more properly conserve the natural resource, lessees may form a unit in an area which MMS determines is suitable for operating as a unit. According to the Acting Associate Director, once MMS accepts a proposal to unitize a specific area, the unit's proponents must recruit all parties having mineral interests in the area, including lessees of record, over-riding royalty interest owners, and working interest owners, to join in the unit agreement and unit operating agreement and to signify their commitment by signing those agreements. He concluded that, although the provisions of 30 CFR 250.192(c) clearly directed lessees, after approval of the unitization proposal, to execute the unit agreement and file the requisite number of copies of the unit agreement, unit operating agreement, and initial plan of operations with the Regional Supervisor for approval, the record in this case demonstrated that the unit agreement was not formally executed, filed with MMS, and approved by MMS before the expiration of 90 days following the cessation of production from lease OCS-G 4733, i.e., September 14, 1994. Since there was no unit agreement at that time, he found that the lease was not subject to unitization and the provisions of 30 CFR 250.190(h) did not apply. He therefore concurred in the Regional Director's decision and denied Exxon's appeal.

On appeal, Exxon restates and expands on the points it made before the Director, MMS. ^{4/} Exxon maintains that lease OCS-G 4733 continued in full force and effect by the operation of the High Island Block A-6 Unit in accordance with 30 CFR 250.190(h). Citing the portion of 30 CFR 250.190(a) providing that "lessees may agree among themselves to unitization, subject to the Regional Supervisor's approval," Exxon avers that it and Shell, et al., agreed to such unitization both in the "Heads of Agreement" signed in May 1983 and in the superceding unit operating agreement executed in

^{4/} Exxon's statement of reasons (SOR) expressly incorporates its April 9, 1996, letter to the Regional Director, its May 10, 1996, letter supplementing the April 9 letter, and its April 25, 1997, letter to the Acting Associate Director containing policy reasons for reversal of the Regional Director's decision, copies of which it appends to its SOR. We will attribute each of Exxon's arguments to the appropriate source.

March 1994, both of which occurred before the alleged lease expiration date of September 14, 1994. (Apr. 9, 1996, letter at 2.) While acknowledging that the regulations require that MMS approve the unitization, Exxon avers that they do not mandate the filing or the approval of an executed unit agreement, unit operating agreement, and initial plan of operations as a pre-condition of MMS' approval of the unit. Id. at 2-3. According to Exxon, the regulations governing voluntary unitization provide for two separate and independent approvals: first, the approval of the unitization proposal submitted pursuant to 30 CFR 250.192(a) which directs a lessee seeking approval of unitization to file a request accompanied by a draft proposed unit agreement, a proposed initial operating plan, and other information showing that the proposal meets the regulatory requirements; and second, after approval of the unitization proposal, the approval of the executed unit agreement, unit operating agreement, and initial plan of operations filed with the Regional Director for approval in accordance with 30 CFR 250.192(c). Id. at 3. Exxon insists that MMS' September 17, 1991, letter embodied its approval of the unitization proposal (and a variation from the model unit agreement), an approval which the failure to file the final executed documents cannot vitiate. Id.

Exxon considers MMS' position that Shell's delay in filing the executed unit agreement with one minor change in the unit name and the other unit documents thwarted the approval of the unit to be arbitrary and capricious, arguing that the approval of the unit documents is not a regulatory requirement for approval of the unitization. Exxon argues that neither the applicable regulations nor MMS' September 17, 1991, letter imposed a strict deadline for filing the final, executed agreement and notes that MMS was advised in 1994 of the status of the working interest owners' ongoing negotiations and voiced no objection. Id. At 3-4. Given MMS' approval of the unitization proposal in September 1991, Exxon avers that the agency's current position is completely unreasonable. Id. Exxon alleges that MMS' insistence that lease OCS-G 4733 expired on September 14, 1994, conflicts with the agency's August 4, 1995, final notice of lease sale which listed the block at issue as currently under lease. Id. Accordingly, Exxon insists that the lease did not terminate on September 14, 1994, because the facts show that MMS approved the formation of the High Island Block A-6 Unit prior to that date, thus enabling production from the unit to maintain the lease. Id. Exxon further claims that MMS' decision is arbitrary, capricious, and in contravention of law because the agency had failed to follow its consistent pattern of sending the lessee notice that the last production on the lease had ceased, citing Coastal Oil & Gas Corp., 135 IBLA 6 (1996). (May 10, 1996, letter). Exxon also contends that the Board precedent cited by the Acting Associate Director is distinguishable from this case because the parties here had clearly committed to the unitization. (SOR at 1-2.)

In addition to its legal arguments, Exxon contends that various policy reasons support overturning MMS' decision. See April 25, 1997, letter. Specifically, Exxon maintains that MMS should not interpret the regulations to negate the existence of the unit for failure to file an executed unit agreement absent a clear regulatory provision directing this result; that MMS should communicate with each lessee, not just the designated operator, with regard to matters pertaining to unitization and lease maintenance; that, given MMS' approval of the unitization, it should not now construe its regulations to result in a forfeiture of a lease for a mere administrative error when that error did not prejudice MMS; and that MMS should promote conservation and the prevention of waste through unitization in-stead of creating administrative barriers. Id. at 1-3.

In its Answer, MMS argues that the High Island Block A-6 Unit was never approved. MMS explains that the procedures for voluntary unitization found at 30 CFR 250.192 require a lessee to file a request with the Regional Supervisor, accompanied by a draft unit agreement, a proposed initial plan of operations, and other information showing that the regulatory criteria for unitization have been met. If the proposal meets those criteria and the draft agreement and proposed plan of operations are acceptable, MMS advises the unit proponents that the proposed area is a logical area for unitization. MMS asserts that lessees must then execute and submit for approval the unit agreement and other required unit documents as mandated in 30 CFR 250.192(c). MMS states that approval of the unit agreement is incorporated into a Certification-Determination document which is appended to the unit agreement. According to MMS, the issuance of the Certification-Determination signifies approval of the unit agreement and the establishment of the offshore Federal unit, with the terms of the agreement legally effective between the parties and MMS. Answer at 6-7.

MMS characterizes the unit agreement as the critical document for the creation and establishment of an offshore unit, averring that, absent this document, it has no way of ascertaining whether the unit was ever formed, whether the final document contains the appropriate parties and provisions, when the unit became effective, how royalties are to be allocated among the parties, and whether the original rights and liabilities of the parties contained in the leases have been modified to reflect the terms of the unit agreement. (Answer at 7.) MMS contends that, without a duly executed unit agreement confirming the commitment of all the lessees to unitize their interests, the lessees do not have the Government's consent to modify the rights and obligations established by the regulations and the basic Federal offshore lease. Id. at 7-8. Accordingly, MMS maintains that submittal of the executed unit agreement and MMS' issuance of the Certification-Determination document, long with the assignment of a unit number to the unit, create the unit. Id. at 8.

MMS contends that the September 17, 1991, letter did not constitute approval of the High Island Block A-6 Unit, but instead advised Exxon's designated operator, Shell, that the proposed area was considered a logical area for unitization and that certification and approval of the unit was contingent upon MMS' receipt of the required duly executed agreements, including the unit agreement. Shell failed to send the requisite documents to MMS, and, according to MMS, the unit therefore was never approved and certified. Id. MMS asserts that neither Shell's oral notification to it of the negotiations among the parties nor the de minimus nature of the requested unit name change undermines the conclusion that the unit was never approved because the regulations and the September 17, 1991, MMS letter explicitly require MMS receipt of the duly executed unit documents before the unitization would be finalized. Id. at 8-9.

MMS disputes Exxon's claim that the parties have acted as if there were an approved unit. MMS points out that its royalty records indicate that production was never allocated between the two leases in the proposed High Island Block A-6 Unit and that royalty for the two leases was paid in accordance with each lease's individual production. Id. at 11. MMS further notes that the operator's reports, including well completion reports, not only do not reference a unit number but contain the notation "N/A" meaning "not applicable" in the block asking for that number. MMS submits that these actions clearly signify Shell's awareness that no approved unit existed. Id. Additionally, MMS asserts that Exxon and Shell both admit that no duly executed unit agreement or other document was sent to MMS before January 12, 1996, when Shell forwarded the documents requested in the September 17, 1991, letter, with the explanation that the filing delay had been occasioned by the parties' negotiations over retroactive balancing of capital, operating costs, and production. Id. at 11-12. According to MMS, the parties' dispute not only prevented the execution of the unit agreement and the concomitant formation of the unit until 1996, over a year after Exxon's lease expired, but also explains why Shell did not comply with the requirements necessary to receive final approval and acted as if no unit existed.

MMS stresses that the duly executed unit agreement and other documentation must be sent to MMS before the term of an included lease expires in order for a unit to be approved. MMS argues that, contrary to Exxon's assertions, the regulations clearly require the filing of the duly executed documents before a unit can be approved, pointing out that a determination that a unit proposal is logical does not constitute MMS approval and the legal establishment of an offshore Federal unit. Id. at 13. Adopting Exxon's construction of 30 CFR 250.192, which considers submittal of the unitization proposal and draft documents pursuant to 30 CFR 250.192(a) as sufficient to form an approved unit, MMS submits, would render superfluous the provisions of 30 CFR 250.192(c) mandating the filing for MMS approval of the duly executed unit documents and create the anomalous situation of

MMS committing itself to recognize a unit without knowing whether the affected interest owners ultimately committed to forming the unit. Id. at 14.

MMS construes the regulations as providing for only one approval of unitization occurring at the end of the entire process after the filing of the final executed unit documents. Id. at 15. Since the parties can abandon the process at any time prior to the endorsement of the final unit agreement and remain bound by the terms of their individual leases, MMS avers that approval of the unit occurs only when all the regulatory requirements have been met, i.e., after the duly executed unit agreement evidencing the parties' commitment to establish the unit, the unit operating agreement, and the initial plan of operations have been submitted to MMS. Id. at 15-16. Although no strict deadline for filing final executed copies of unit agreements exists because unitization pursuant to 30 CFR 250.192 is voluntary and the lessees can eschew the process at any time, MMS submits that lessees nevertheless are on notice that the original lease terms apply until the steps required for unit formation have been taken. Id. Since only leased land can be included in a unit, MMS asserts that a lessee must maintain a lease in its extended term proposed for inclusion in a unit until the unit is established, pointing out that, absent a finalized unit agreement, a lease will not benefit from operations within the proposed unit area and may end by its own lease terms if no qualifying leasehold operations are taking place. In this case, Shell did not submit the documents necessary to create the unit until after lease OCS-G 4733 expired on September 14, 1994, by its lease terms, and MMS argues that the lease expiration nullified Shell's January 12, 1996, filing of the duly executed unit and other agreements and prevented the establishment of an approved unit. Id. at 16-17.

MMS rejects Exxon's claims that the decision conflicts with prior actions and regulations, asserting that it had erroneously identified Exxon's lease as currently existing in the 1995 Final Notice of Sale only because Shell had failed to timely notify the agency that the lease had gone off production. Id. at 19. MMS further denies that it had a duty to keep Exxon informed as to matters relating to the unitization, pointing out that not only did the agency have no obligation to inform Exxon that the lease had ceased production, but to the contrary, the regulations squarely place the responsibility on the lessee or designated operator to notify MMS when production terminates. Id. at 20-21. MMS maintains that it followed its normal procedure of verifying the status of a lease with the operator by contacting Shell upon receipt of the October 1995 monthly lease status report indicating no activity on lease OCS-G 4733 from the time it went off production to September 14, 1994. MMS argues, however, that since it did not learn of the cessation of production until over a year after the event occurred, notification to Exxon would have served no purpose because the lease had already expired. Id. at 21. MMS further insists that it properly gave Shell adequate notice regarding unitization, as Shell was Exxon's designated operator. Id. In any event, MMS asserts that Exxon was actively involved in the early unitization meetings, knew about the September 17, 1991, letter even though MMS properly sent it only to Shell as the designated operator of the proposed unit, and was ultimately responsible for

compliance with the regulations and terms of its lease, which the company understood would expire if production from it ceased. Id. at 21-22.

MMS also considers Exxon's policy arguments unpersuasive, reiterating that the unit was never approved, that failure to file the required executed unit agreement was not a mere administrative error, and that Exxon could have saved the lease by diligently overseeing lease activities. In short, MMS maintains that Exxon's failures, rather than any actions on the agency's part, led to the expiration of the lease. Id. at 23-24.

[1] The Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. §§ 1331-1356 (1994), empowers the Secretary of the Interior to lease offshore tracts for the exploration and development of mineral resources, including oil and gas. See Taylor Energy Co., 148 IBLA 286, 290 (1999). Oil and gas leases issued pursuant to section 8 of the OCSLA, 43 U.S.C. § 1337 (1994), have an initial period of 5 years and continue "as long after such initial period as oil or gas is produced from the area in paying quantities, or drilling or well reworking operations approved by the Secretary are conducted thereon." 43 U.S.C. § 1337(b)(2) (1994); see lease OCS-G 4733, Sec. 3. The applicable regulation, 30 CFR 250.13(a), provides:

A lease continued beyond its primary term by production, drilling, or well-reworking operations shall be continued in effect by production, drilling, or well-reworking operations which are commenced on or before the 90th day after the date of completion of the last production, drilling, or well-reworking operation. No time lapse in production, drilling, or well-reworking operations of greater than 90 days shall continue the lease in effect unless production or other operations on the lease have been suspended pursuant to [30 CFR] 250.10.

There is no dispute that Well A-11, the only producing well on lease OCS-G 4733 ceased production on June 16, 1994, and that no further production, drilling, or well-reworking operations occurred on the lease after that date. Therefore, since neither production nor operations on the lease had been suspended pursuant to 30 CFR 250.10, 5/ lease OCS-G 4733 expired by operation of law on September 14, 1994.

Exxon attempts to avoid the expiration of lease OCS-G 4733, however, by asserting that the lease had been committed to an approved unit, i.e., the High Island Block A-6 Unit, before lease production ended and that, therefore, in accordance with 30 CFR 250.190(h), production from the unit served to continue the lease regardless of the cessation of production

5/ In its October 4, 1995, letter requesting MMS' written acknowledgment of the agency's prior approval of the formation High Island Block A-6 Unit, Exxon asked, alternatively, that MMS ratify lease OCS-G 4733 and grant an SOP for the lease. The Regional Director denied the SOP in his March 6, 1996 letter, and Exxon has not pursued this issue before this Board.

from the well on the lease. Resolution of this appeal therefore turns on whether MMS approved the formation of the High Island Block A-6 Unit in September 1991, before production terminated on lease OCS-G 4733.

[2] Section 5(a)(4) of the OCSLA, as amended, 43 U.S.C. § 1334(a)(4) (1994), authorizes the Secretary to prescribe necessary rules and regulations relating to offshore leasing, including provisions "for unitization, pooling, and drilling agreements." The regulations in 30 CFR Subpart 250.190 implement this statutory directive. ^{6/} Pursuant to 30 CFR 250.190(a), the Regional Supervisor may approve or require unitization "for the prevention of waste, the conservation of the natural resources of the Outer Continental Shelf (OCS), or for the protection of correlative rights therein * * *. Lessees may agree among themselves to unitization, subject to the Regional Supervisor's approval (voluntary unitization) * * *." See also 30 CFR 250.190(b). Once a unit has been formed and approved, "[d]rilling, production, and well-reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all leases that are subject in whole or in part to the unit agreement," 30 CFR 250.190(f), and each of those leases "shall continue in force for the term provided in the lease * * * and as long as there are operations which serve to continue the unit in effect." 30 CFR 250.190(h).

The regulations governing voluntary unitization, 30 CFR 250.192, provide:

(a) Lessees who seek approval of unitization shall file a request with the Regional Supervisor accompanied by a draft of the proposed unit agreement; a proposed initial plan of operation[,] supporting geological, geophysical, and engineering data; and any other information that may be necessary to show that the unitization meets the criteria of [30 CFR 250.190].

* * * * *

(c) After the Regional Supervisor approves the unitization proposal, lessees shall execute the unit agreement and file with the Regional Supervisor for approval such copies of the unit agreement, unit operation agreement, and the initial plan of operations as the Regional Supervisor may require.

^{6/} The regulations dealing with unitization formerly found in 30 CFR 250.190-259.94 have been amended and redesignated as 30 CFR 250.1300-250.1304. See 62 FR 5331 (February 5, 1997); 63 FR 29479 (May 29, 1998). See also note 2, supra.

The MMS procedures established pursuant to these regulatory provisions require lessees who seek approval of unitization to present a unitization proposal to the Regional Supervisor, accompanied by a draft unit agreement, a proposed initial plan of operations, and any other necessary information. If the proposal meets the regulatory criteria for unitization and the draft agreements and proposed initial operating plan are acceptable, MMS advises the lessees by letter that the proposed unit area is a logical area for unitization ^{7/} and directs the lessees to file for MMS approval a specified number of copies of the executed unit agreement, the executed unit operating agreement, and the initial plan of operations. Upon receipt of these documents, MMS approves and certifies the unit, incorporating the approval into a Certification-Determination document appended to the unit agreement. The Certification-Determination, which also assigns the unit a number to be used in the place of the lease number for operations-related reports and royalty payments, signifies MMS' approval of the unit agreement and the establishment of the Federal offshore unit, and the terms of the approved unit agreement become legally effective between the parties and MMS. ^{8/} See MMS Answer at 7-8; MMS Report at 8, 10. Cf. 43 CFR 3183.4 (an onshore Federal unit will not be effective until the authorized officer has approved the executed unit agreement and executed a Certification-Determination document incorporating the approval).

Exxon insists that MMS' approval of the unitization proposal and acceptance of the draft unit agreement and other documents establish the unit. MMS, on the other hand, maintains that the duly executed unit agreement is the key document for the formation of an offshore Federal unit. We agree with MMS.

^{7/} We note that both Exxon in its February 2, 1990, letter (MMS Report, Ex. 1.A at 1, 3) and Shell in its Feb. 13, 1990 letter (MMS Report, Ex. 1.B) and Mar. 14, 1991, letter (MMS Report, Ex. 1.C at 1) sought MMS' determination that the proposed unit area was a logical area for unitization, thus evidencing their familiarity with MMS' unitization process. We further observe that Exxon's February 2, 1990, letter (MMS Report, Ex. 1.A at 5) and Shell's March 14, 1991, letter (MMS Report, Ex. 1.C at 2) clearly stated that those letters did not constitute final submittal of the Block A-6 Unit for approval.

^{8/} These procedures parallel those controlling the approval of onshore oil and gas unitization by the Bureau of Land Management (BLM) found at 43 CFR Subpart 3183. The requirement that approval of the unit agreement be incorporated into a certificate appended to the unit agreement was included in the regulations addressing the formation of onshore oil and gas units when Congress enacted the OCSLA on August 7, 1953. See 30 CFR 226.8 (1953). We note parenthetically that, in enacting section 5 of the OCSLA, 43 U.S.C. § 1334, Congress intended to authorize the Secretary to incorporate and modify the existing provisions of the Mineral Leasing Act, including those addressing onshore unitization, into the Department's offshore regulations. See Solicitor's Opinion, M-36927, 87 I.D. 616, 622-25 (1980); see also *Shell Offshore, Inc.*, 107 IBLA 165, 170-171 (1989).

We find Exxon's reliance on MMS' September 17, 1991, letter, to be entirely misplaced. That letter, by its own terms, did not approve the unit; rather, it informed Shell, as Exxon's designated operator, ^{9/} that the proposed unit area was a logical area for unitization and met the regulatory criteria and that the unit agreement with one revision to the unit name and the proposed initial plan of operations would be acceptable. Consistent with the procedures established by 30 CFR 250.192, that letter also explicitly advised Shell that "[u]pon receipt of five duly executed Unit Agreements, three duly executed Unit Operating Agreements, and two copies of your initial plan of operations, the proposed High Island Block A-6 Unit will be certified and approved." MMS Report, Ex. 1.E (emphasis added). Thus, that letter, rather than constituting approval of the unit, clearly notified the parties that additional documents had to be submitted before the unit would be approved.

Exxon's attempts to minimize the importance of the executed final unit agreement by suggesting that the "Heads of Agreement" clearly demonstrated the parties' intent to form a unit and that the de minimus nature of the change to the unit name sought by MMS render the agency's approval of the draft unit agreement tantamount to approval of a final unit agreement incorporating that change ignore the critical role the executed unit agreement plays in the formation of a unit. The unit agreement is a contract between private parties for the development and operation of oil and gas reservoirs, approved by the Department when Federal mineral interests are present, setting forth the rights and liabilities of the parties to the agreement. See Rio De Viento, Inc., 153 IBLA 32, 40 (2000); Burlington Resources Oil & Gas, 150 IBLA 178, 185-86 (1999); Orvin Froholm, 132 IBLA 301, 305 (1995). In addition to embodying the parties' commitment to operate their leases as a unit in accordance with the terms of the agreement, the unit agreement also sets the allocation formula by which production will be apportioned among the leases for royalty purposes. See MMS Report at 10.

In this case, although Exxon claims that Shell inadvertently forgot to send the executed documents requested in MMS' September 17, 1991, letter, prior to the cessation of production on lease OCS-G 4733, the unit agreement Shell submitted to MMS on January 12, 1996, was not signed by the parties until January 1996, long after the June 16, 1994, termination of production

^{9/} Although Exxon argues that MMS was obligated to communicate with Exxon, as lessee, not just Shell, concerning lease matters, Exxon's designation of Shell as the operator of affected portion of lease OCS-G 4733, as well as of the proposed High Island Block A-6 Unit, authorized Shell to act on Exxon's behalf regarding the lease and unit. See 30 CFR 250.8; see also Firstland Offshore Exploration Co., 149 IBLA 117, 128 (1999). Accordingly, we find that MMS properly communicated with Shell about matters within its purview as Exxon's designated operator. In any event, it is clear that Exxon actually knew about the September 17, 1991, letter and was not prejudiced in any way by MMS' failure to send it a separate copy of the letter.

from Exxon's lease. See MMS Report, Ex. 1.H. ^{10/} The fact that the unit agreement was not executed until January 1996, coupled with Shell's explanation that negotiations among the parties had delayed the adoption of the unit and unit operating agreements, indicate that the belated filing of the required documents was not due to inadvertence, but was occasioned by disagreements among the parties over the terms of those agreements. The parties' failure to contractually agree to form the unit by signing the unit agreement before the expiration of lease OCS-G 4733 thwarted the establishment of the High Island Block A-6 Unit because one of the two leases comprising the proposed unit no longer existed. Since no unit existed when the last production ended on Exxon's lease, that lease could not have been continued by unit operations and MMS properly determined that the lease had expired by operation of law. Cf. Lario Oil and Gas Co., 92 IBLA 46, 53 (1986) (citing with approval the statement in the concurrence in F.J. Tully, 37 IBLA 62, 66 (1978), that for onshore Federal units, a lease cannot be validly committed to a unit until the unit agreement has been approved).

None of Exxon's other arguments persuades us that the Acting Associate Director's decision should be reversed. The fact that the operator and royalty reports for lease OCS-G 4733 and lease OCS-G 4734 contained in the record fail to reference a unit number contradict Exxon's claim that, after the September 17, 1991, letter, the parties acted as if there were a finalized unit. The 1995 Final Notice of Sale's listing of Exxon's lease as currently under lease does not demonstrate MMS' acknowledgment that the lease had not expired since MMS' unawareness at that time that production on the lease had ceased was caused by Shell's failure to timely advise MMS of that fact as required by 30 CFR 250.23. ^{11/} When Shell belatedly informed MMS of the cessation of production on October 27, 1995 (MMS Report, Ex. 1.G), MMS corrected its records to reflect the expiration of the lease. (MMS Report, Ex. 5.) Although Exxon complains that MMS failed to follow its usual procedures of informing the lessee when production ceases on a lease, even assuming such a procedure exists, notice in this case would have been futile because the lease had already expired by the time Shell, as Exxon's designated operator, informed MMS of the last production. Thus, it was the dereliction of Shell, not MMS, which arguably harmed Exxon's interests. In any event, we note that Exxon, as the lessee, was ultimately responsible for complying with the regulations and lease terms even though

^{10/} We note that the unit agreement, unlike the unit operating agreement which, although not signed until March, April, and August 1994, nevertheless stated that it was effective retroactively to September 1, 1982, specifically provided in Article XIII that it would be effective on the first day of the month in which the Regional Supervisor approved the unit. This language supports the conclusion that the parties were aware that MMS had not yet approved the unit.

^{11/} It appears that Shell did not notify Exxon until August 1995 that lease production had terminated.

both Exxon and Shell, as the operator, were authorized to fulfill statutory and regulatory obligations associated with the lease. See Union Pacific Resources Co., 149 IBLA 294, 306 (1999); Jerry Chambers Exploration Co., 107 IBLA 161, 163 (1989); see also 30 CFR 250.8. Exxon's policy arguments similarly cannot overcome the simple facts that lease OCS-G 4733 was not committed to an approved unit at the time its production ceased and that it therefore expired by operation of law in accordance with the OCSLA, the applicable regulations, and its own terms.

To the extent not specifically addressed herein, Exxon's other arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

T. Britt Price
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge