

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re:	)	
	)	
Shell Gulf of Mexico Inc.	)	OCS Appeal Nos. 10-01 through 10-04
Shell Offshore Inc.	)	
Frontier Discoverer Drilling Unit	)	
	)	
OCS Permit No. R10OCS/PSD-AK-09-01	)	
OCS Permit No. R10OCS/PSD-AK-2010-01)	)	

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**SHELL GULF OF MEXICO INC.'S AND SHELL OFFSHORE INC.'S  
RESPONSE TO PETITIONERS' JOINT NOTICE OF RELATED ORDER**

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Petitioners have jointly filed a Notice of Related Order, providing the Ninth Circuit's June 24, 2010 order in *Native Village of Point Hope v. Salazar*, No. 09-73942, notifying the parties that one judge on the court has issued a *sua sponte* call to reconsider the case en banc.

Shell Gulf of Mexico Inc. and Shell Offshore Inc. (collectively, "Shell") anticipate that the ensuing review process will ultimately uphold the panel's well-reasoned opinion in that case. Any judge may *sua sponte* call for a vote on rehearing the case en banc within seven days of the expiration of the time for filing petition for panel rehearing or rehearing en banc. Ninth Circuit General Orders 5.4(c)(1), (3) (March 2008). Once a call has been made, it can be withdrawn, in which case there will be a seven day period provided for another judge to make a call; if none is made, the process stops. *Id.* 5.4(c)(4). The standard practice where a judge makes a *sua sponte* call, which has been followed in this case, is to require the parties to file simultaneous briefing within 21 days setting forth their respective positions on the issue of taking the case en banc. *Id.* 5.4(c)(3). Once the briefs are filed, a 21-day intra-court memorandum period will follow in which judges may respond by memorandum to the call for en banc review. *Id.* 5.5(a). At the conclusion of that time, a 14-day voting period will ensue. *Id.* 5.5(b). If a majority of the judges eligible to vote on the en banc call vote to take the case en banc, the Chief Judge will issue an order to that effect; if the call fails to command a majority of the judges eligible to vote, the panel will assume control of the case. *Id.* 5.5(c), (d). Thus, the court's decision on whether to take the case en banc can be expected approximately eight weeks from the date of the court's order. At that time, for the reasons it will provide to the Ninth Circuit in the simultaneous briefing, Shell anticipates that the court will not vote to rehear the case en banc and will instead let the panel decision stand.

Respectfully submitted,

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Dated: July 6, 2010

## CERTIFICATE OF SERVICE

I herby certify that I have caused a copy of the foregoing Response to Petitioners' Joint Notice of Related Order to be served by electronic mail upon:

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