



# MARINE MAMMAL COMMISSION

21 September 2009

Ms. Renee Orr  
5-Year Program Manager  
Minerals Management Service (MS-4010)  
381 Elden Street  
Herndon, Virginia 20170

Re: Request for Comments on the Draft Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for 2010-2015, and Notice of Intent to Prepare an Environmental Impact Statement for the Proposed 5-Year Program (74 Fed. Reg. 3631).

Regulations.gov Docket ID: MMS-2008-OMM-0045

Dear Ms. Orr:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Minerals Management Service's request for comments regarding its proposal for a new five-year leasing program for oil and gas activities on the outer continental shelf. When appropriate, the Commission will comment in more detail on specific lease sales associated with this program. For now, the Commission offers the following recommendations and rationale.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the Minerals Management Service—

- establish buffer zones prohibiting oil and gas production on and around sensitive areas based on existing local, state, and federal marine protected areas, national monuments, essential fish habitats, designated critical habitats for rare, depleted, endangered, or otherwise protected species, and biological “hotspots” or areas of particular biological richness;
- base buffer zones or areas given special protection using at least the minimal considerations listed on pages two and three of this letter;
- review the inventory of marine protected areas found on the Web site of the Department of Commerce's National Marine Protected Areas Center (<http://mpa.gov/>) as one source of information regarding sites that may warrant special protection and work closely with the National Marine Fisheries Service and the Fish and Wildlife Service to take advantage of their expertise in identifying areas that may warrant special protection;
- work with the Department of Energy to integrate its new 5-year oil and gas leasing plan into a long-term energy conservation plan. The integrated version should include (a) a projection of the country's long-term energy needs based on expected population growth and economic expansion, (b) a description of all existing and potential sources of energy and trends in the development of those sources, (c) alternative approaches for meeting projected needs, including conservation, and the potential environmental impacts associated with those alternatives, and (d) a significant large-scale program aimed at reducing per capita energy

- demand, achieving greater efficiency in ongoing energy use, developing alternate energy sources, and reducing greenhouse gas production; and
- in consultation with the National Marine Fisheries Service, Fish and Wildlife Service, and Marine Mammal Commission, develop a set of standards for information to be obtained prior to the initiation of new energy-related operations.

## **RATIONALE**

### **Buffer zones and sensitive areas**

In its *Federal Register* notice, the Minerals Management Service asked reviewers to consider several questions, including the following:

- Should there be buffer zones (i.e., areas where certain activities are prohibited or restricted)? If so, how large should they be and what criteria should be used for setting them? Should they be uniform in all new areas or vary according to issues of concern and/or technical constraints?
- Are there specific areas or subareas that should be excluded because they are particularly sensitive or because oil and gas activities may significantly conflict with other uses for which the area or subarea might be better suited?

The Commission believes that the Service should establish buffer zones to exclude oil and gas activities from, and ensure the protection of, certain sensitive areas. To that end, the Marine Mammal Commission recommends that the Minerals Management Service establish buffer zones prohibiting oil and gas production on and around sensitive areas based on existing local, state, and federal marine protected areas, national monuments, essential fish habitats, designated critical habitats for rare, depleted, endangered, or otherwise protected species, and biological “hotspots” or areas of particular biological richness. The buffer zones need not be uniform in size and, based on the criteria described below, they would not be uniform. Rather, the Marine Mammal Commission recommends that the Minerals Management Service base buffer zones or areas given special protection at least on the following minimal considerations:

- the location of proposed oil and gas operations and interdependent and interrelated activities (e.g., platforms, pipelines, seismic studies, vessel and aircraft traffic, support infrastructure);
- the area vulnerable to potential “downstream” effects of an accident based on coastal features, depth, winds, tides, currents, storms, and other physical features of the environment (i.e., spilled oil may be dispersed by winds, waves, or currents and affect areas far removed from drilling sites or pipelines);
- any particularly vulnerable habitat that occurs in the identified sensitive areas and that requires special protection;
- any particularly vulnerable species that occur in the identified sensitive areas and that require special protection;

- the capacity of the responsible companies and agencies to respond to all potential hazards, such as platform blowouts, pipeline leaks or ruptures, and vessel accidents (i.e., operations should not be planned in the absence of suitable response capability) in the conditions that occur in the proposed areas (e.g., marine areas that are covered with ice in winter months);
- the availability of baseline information for the proposed areas of operation (i.e., operations should not be considered for such areas until suitable baseline information has been collected on the important biological features);
- the potential environmental consequences of an accident (e.g., the complete or partial loss of a protected biological resource) and the environment's capacity for restoring itself; and
- the potential economic consequences if the environment is unable to provide essential services (e.g., habitat to support the biological community of the affected ecosystem, clean water, subsistence, recreation, fisheries).

As the federal agency responsible for managing energy-related use of the outer continental shelf, the Minerals Management Service bears responsibility for identifying especially sensitive sites and sites that may be used for alternative energy sources. For that purpose, the Marine Mammal Commission recommends that the Minerals Management Service review the inventory of marine protected areas found on the Web site of the Department of Commerce's National Marine Protected Areas Center (<http://mpa.gov/>) to identify sites that may warrant special protection. The Web site provides a complete list of all marine protected areas in U.S. waters. The Service also should work closely with the National Marine Fisheries Service and the Fish and Wildlife Service to identify sites that may warrant special protection. Finally, we expect that the Service is assisting the Administration in its efforts to develop an ocean zoning strategy. Until that strategy is completed, the Service should refrain from making final decisions regarding areas that are or are not suitable for oil and gas development, alternative energy sources, or other human activities. Indeed, the Service's plans for oil and gas development should be considered in the development of that strategy.

With regard to ocean zoning, some sites clearly will be better suited to alternative energy sources and other uses that generally pose less risk than oil and gas operations. Nonetheless, even alternative energy projects may have unacceptable effects in some areas or with some species. These may stem from noise generated by seismic surveys prior to site selection and construction; noise and habitat destruction from pile-driving and other construction; noise and risks of collisions from vessels involved in construction, maintenance, inspection, and resupply of alternative energy structures; chemical contamination from fuel and lubricating oils, paints, coatings, and cleaning products; thermal effects from cooling or heating systems; alteration of habitats through the introduction of added hard substrate; and transfer of marine organisms in ballast water or on vessel hulls. In many respects, planning for use of the oceans (e.g., fisheries, aquaculture, shipping and transportation, subsistence, recreation and tourism, national security) may pose risks similar to those encountered in planning for land use.

## **Energy planning**

The creation of yet another 5-year lease plan, however, does not provide sufficient basis for guiding our nation's future use of energy. We need a longer, more comprehensive vision of our energy future and, as one of the lead agencies involved in the regulation of energy production, the Minerals Management Service should be promoting the development of such a vision. On 15 September 2008 the Commission wrote to you that—

The United States has faced an impending energy crisis for decades but has neither responded with adequate foresight and commitment to address the crisis in its earlier stages nor shown the foresight to reduce our national dependence on hydrocarbons and minimize the production of greenhouse gases. Records of the production and use of oil and gas since the enactment of the Outer Continental Shelf Lands Act in 1953 illustrate historical patterns in oil and gas production and use, as do similar records for other energy sources. Those historical records, combined with anticipated population and economic growth, should be sufficient to project future patterns and potential consequences of continuing with a “business as usual” approach. A thoughtful and farsighted plan is needed to move the nation beyond efforts simply to find the next oil field. If left unchanged, the present course would have a number of undesirable consequences, including the acceleration of climate change and its multitude of adverse effects.

Our views on the need for a long-term, comprehensive energy plan have not changed and, therefore, we reiterate one of the recommendations in our 15 September 2008 letter. The Marine Mammal Commission recommends that the Minerals Management Service work with the Department of Energy to integrate its new 5-year oil and gas leasing plan with a long-term energy conservation plan. The integrated version should include (a) a projection of the country's long-term energy needs based on expected population growth and economic expansion, (b) a description of all existing and potential sources of energy and trends in the development of those sources, (c) alternative approaches for meeting projected needs, including conservation, and the potential environmental impacts associated with those alternatives, and (d) a significant large-scale program aimed at reducing per capita energy demand, achieving greater efficiency in ongoing energy use, developing alternate energy sources, and reducing greenhouse gas production.

## **Baseline information**

In recent years the Marine Mammal Commission also has written to the Minerals Management Service to recommend that it work with the oil and gas industry, the National Marine Fisheries Service, and the Fish and Wildlife Service to collect the baseline information needed to determine if oil and gas activities (or activities associated with alternative energy sources) have significant effects on marine mammals and their habitat. The information also is needed to develop effective mitigation measures. The Service has made considerable effort to do so. For example, the Service engaged in extensive site evaluation off California, Oregon, and Washington in the 1970s and, more recently, has conducted or is conducting extensive studies of the sperm whale in the Gulf

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of Mexico and of bowhead and beluga whales in the Alaska region. These efforts have provided valuable information regarding the potential effects of oil and gas production on marine mammals. In our view, more of these studies are needed, particularly in areas like the Gulf of Mexico, Cook Inlet in Alaska, the southwestern Bering Sea (or North Aleutian Basin) and the Chukchi Sea. Despite considerable effort by the Service, the information collected prior to the instigation of oil and gas activities varies significantly by site and, in many cases, falls short of providing the baseline needed to (1) assess effects, particularly cumulative effects or (2) implement effective mitigation measures. Given the need for such baseline information and the growing demand for oil and gas resources, perhaps the most useful approach would be to develop a set of information standards that would guide the Service's efforts related to energy development.

Analyses conducted under the National Environmental Policy Act should fulfill that need, but those analyses often simply reflect what is known about an area and do not necessarily address the question of whether existing information provides a sufficient baseline for assessing potential effects. Risk assessments based on insufficient information should not be any more acceptable for marine activities than for land-based activities (e.g., logging or grazing on public lands). Our society recognizes the responsibility of action proponents to monitor the well-being of the land environments in which they work, implement needed mitigation measures to protect those environments, and clean up and restore them when they are done. We should hold industries active in the marine environment to the same standards. Meeting those standards requires that the environment be characterized before the actions are initiated, whether those actions be oil and gas operations or alternative energy production. For that reason, the Marine Mammal Commission recommends that the Minerals Management Service, in consultation with the National Marine Fisheries Service, Fish and Wildlife Service, and Marine Mammal Commission, develop a set of standards for information to be obtained prior to the initiation of new energy-related operations.

Finally, the Commission requests a response to our recommendations. The Marine Mammal Protection Act specifically requires that "[a]ny recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted." Whether you agree or disagree with our recommendations, your response will help inform us of your perspective on these matters, and therefore should lead to more constructive dialogue between the Service and the Commission.

Please contact me if you have questions regarding these recommendations and comments.

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director