



MARINE MAMMAL COMMISSION

7 May 2010

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

Re: Request for Comments on the Preliminary Revised 5-Year Outer Continental Shelf Oil and Gas Leasing Program for 2007–2012 (75 Fed. Reg. 16833)

Regulations.gov Docket ID: MMS-2009-OMM-0016

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 Preliminary Revised 5-Year Outer Continental Shelf Oil and Gas Leasing Program for 2007–2012. 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—

- consider the potential impact of its activities on present and future Cook Inlet beluga whale habitat in the lower Cook Inlet before it approves any proposed leasing or exploratory activity in the Cook Inlet Program Area;
- work with the National Marine Fisheries Service to conduct the studies needed to evaluate the potential individual and cumulative risks to the North Atlantic right whale and ensure that the necessary protective measures are in place before it decides to proceed with Mid-Atlantic Sale 220 offshore of Virginia;
- defer its determination on whether to proceed with all lease sales in the Central and Western Gulf of Mexico until the current oil spill has been stopped, the circumstances surrounding the spill have been reviewed, and the Service is convinced that any further development will include provisions to prevent recurrence of such a spill and mechanisms to enable a more effective response when the next catastrophic spill occurs;
- provide a more detailed description of the analytical data and methods used in its environmental sensitivity analysis to allow readers to follow the line of reasoning that leads to a particular conclusion, highlight the gaps in important information, and ultimately provide a stronger justification for the Secretary's proposed final program; and
- on behalf of the Secretary, expand the directive to the U.S. Geological Survey to conduct an independent evaluation of the resiliency of all U.S. marine ecosystems where oil and gas operations are being conducted, planned, or contemplated.

RATIONALE

Proposed Revisions of the 2007–2012 Program

In its *Federal Register* notice, the Minerals Management Service sought comments on the extent to which the Secretary's revisions to the 2007–2012 leasing schedule reflect an appropriate balancing of the potential for discovery of petroleum with the potential for harm to the environment and coastal zone. First, the Secretary proposes to remove Beaufort Sales 209 and 217 and Chukchi Sales 212 and 221 from the 2007–2012 leasing schedule. The Secretary based these decisions on uncertainty regarding removal of spilled oil from icy waters, the lack of support infrastructure in these regions, and environmental considerations such as climate change. The Commission concurs with the Secretary's decision and also suggests that protecting these waters from significant adverse effects of oil and gas development is important for maintaining the subsistence cultures of aboriginal people along the northwestern and northern coasts of Alaska. The Commission also believes that efforts to collect baseline information for these regions have not yet been adequate for most topics of concern and that the current process of collecting baseline information concurrent with development is often insufficient for that purpose. Considering the amount of interannual variation in environmental parameters in polar regions and the overall paucity of systematically collected data, several years of baseline data should be collected before permitting activities that pose specific risks.

Second, the Secretary proposes to remove North Aleutian Basin Sale 214 because of its unique value to Alaska and the Nation. Here, too, the Commission concurs with the Secretary's proposal. In addition to the reasons stated (e.g., fishery resources, national monuments, wildlife reserves), this region is habitat for a rich diversity of marine life including a considerable number of depleted, threatened, or endangered marine mammals (e.g., North Pacific right whale, Steller sea lion, northern sea otter, northern fur seal). The site is also known for its harsh physical (i.e., oceanic and atmospheric) conditions, and it may well be subject to an increase in vessel traffic as the commercial shipping industry seeks an Arctic route to and from the Bering Sea and North Pacific.

Third, the Secretary proposes to retain two sales in Cook Inlet. The Commission has concerns about oil and gas development in this region because of its potential effects on the endangered Cook Inlet population of beluga whales as well as other marine mammals. These include harbor seals, sea otters, and killer whales that, although not endangered or threatened, are protected under the Marine Mammal Protection Act and, in the case of harbor seals and sea otters, are important for maintaining the subsistence cultures of aboriginal people in the region. The National Marine Fisheries Service considers the best estimate of historical abundance of Cook Inlet beluga whales to be 1,300 based on data collected in 1979. By the end of the 1990s the population had declined by almost 75 percent to about 350. The portion of the decline occurring in the 1990s was due primarily to hunting. Hunting was stopped by 2000, but since then, the population has not recovered as expected. The National Marine Fisheries Service listed the population as endangered in 2008 and is now in the process of designating critical habitat (74 Fed. Reg. 63080). The population currently occupies the northern reaches of the inlet, but the whales once were abundant in the lower inlet (which comprises the Cook Inlet Program Area) during summer months. The whales' use of the lower inlet when their numbers were larger suggests that the upper portion of the inlet is not

adequate to sustain a recovered population. The National Marine Fisheries Service recognized as much in its proposed designation rule stating that “[a]n expanding population would likely use the lower inlet more extensively.” The Marine Mammal Commission therefore wrote to the Service on 3 March 2010 (copy enclosed) to recommend that it review the existing data on beluga whale habitat use in the lower inlet, identify those areas that were used before the population’s recent precipitous decline and are likely to be essential for recovery, and include them in the final critical habitat designation. To ensure that your agency’s planning activities take this same information into account, the Marine Mammal Commission recommends that the Minerals Management Service consider the potential impact of its activities on present and future Cook Inlet beluga whale habitat in the lower Cook Inlet before it approves any proposed leasing or exploratory activity in the Cook Inlet Program Area.

Fourth, the Secretary proposes to retain the Mid-Atlantic Sale 220 offshore of Virginia. Here, too, the Commission is concerned about oil and gas development because of its potential effect on another highly endangered marine mammal species—in this case, the North Atlantic right whale. Each year North Atlantic right whales move between reproductive grounds off coastal Florida and Georgia to feeding grounds in the Great South Channel, Massachusetts Bay, Cape Cod Bay, the Bay of Fundy, and the Scotian Shelf. Despite extensive research, the offshore limits of the species’ reproductive and feeding grounds and its migratory paths between them are poorly understood. Oil and gas development in this region would expose North Atlantic right whales (and multiple other cetaceans) to the noise from seismic surveys, construction, and operations; the risk of ship strikes from support vessels; and contamination and other hazards related to oil spills. The species is already at high risk from ship strikes and entanglement in fishing gear. Development of a Navy training range and associated exercises off the U.S. East Coast soon may compound those risks, and the possibility of adding oil and gas development needs to be considered in the context of cumulative impacts of human activities on a species that is already showing signs of being taxed to its limits by existing threats. Furthermore, any economic benefits to be derived from oil and gas operations in this region would have to be weighed against possible adverse effects not only on right whales, but also on the other industries (e.g., fishing, shipping) that are already bearing the burden of restrictions to promote right whale recovery. With those concerns in mind, the Marine Mammal Commission recommends that the Minerals Management Service work with the National Marine Fisheries Service to conduct the studies needed to evaluate the potential individual and cumulative risks to the North Atlantic right whale and ensure that the necessary protective measures are in place before it decides to proceed with Mid-Atlantic Sale 220 offshore of Virginia.

Fifth, the Secretary proposes to retain all lease sales in the Central and Western Gulf of Mexico, arguing that the region is supported by vast infrastructure, has a record of safe activity, and is well supported by state and local governments and citizens. Although each of these statements is largely true, the current grave situation in the Gulf suggests that nothing can be taken for granted. Based on this unfortunate spill, the Commission questions whether now is the appropriate time to make a determination regarding additional lease sales in the Central and Western Gulf. Rather, it may be prudent to bring the current situation under control, conduct an objective review of the circumstances surrounding this spill, and then make a final determination that takes into account the factors that led to this spill and the industry’s and Service’s ability to implement (1) the needed

preventative measures to minimize the probability that such a spill will occur again, and (2) response activities that will control such a spill and minimize the resulting environmental damage. Historically, response measures have been largely ineffective with large spills, which emphasizes the importance of preventative measures. With that in mind, the Marine Mammal Commission recommends that the Minerals Management Service defer its determination on whether to proceed with all lease sales in the Central and Western Gulf of Mexico until the current oil spill has been stopped, the circumstances surrounding the spill have been reviewed, and the Service is convinced that any further development will include provisions to prevent recurrence of such a spill and mechanisms to enable a more effective response when the next catastrophic spill occurs.

Environmental Sensitivity Analysis

The Commission has reviewed the Service's environmental sensitivity analysis with great interest and commends the Service for its broad but also somewhat detailed approach to marine spatial planning. The analysis compares relative sensitivity to risks associated with oil and gas development across a wide range of habitats and ecosystems in multiple marine regions under U.S. jurisdiction. As such, it appears to offer considerable potential as a framework for balancing resource extraction with associated risks on a national rather than regional scale. That being said, the presentation of the analysis lacks sufficient detail to allow a reader to evaluate fully the rationale for resulting decisions; thus, the presentation lacks transparency. Transparency is important because the analytical framework may provide a useful structure for national-scale analyses, but it is not possible to evaluate whether the baseline formation incorporated into the analysis is adequate for the intended purpose. The resulting uncertainty raises questions about the reliability of the analytical results and undoubtedly the results will come under close scrutiny by those who live in areas judged less sensitive. For that reason, the Marine Mammal Commission recommends that the Minerals Management Service provide a more detailed description of the data and methods used in its environmental sensitivity analysis to allow readers to follow the line of reasoning that leads to a particular conclusion, highlight the gaps in important information, and ultimately provide a stronger justification for the Secretary's proposed final program.

Baseline Information

Ultimately, the current Gulf of Mexico spill will be best measured by its effects on the social and economic condition of the Gulf states and on the natural environment. How will the spill affect the coastal wetlands that are vital not only to the fishing industry, but also to Gulf marine ecosystems generally? What will the effects be on marine mammal, sea turtle, seabird, fish, and invertebrate populations in offshore, nearshore, and inshore regions? To what extent will the marine, estuarine, and freshwater ecosystems be able to return to a more natural state and how long will it take? The ability of scientists to answer these and other questions with confidence will depend in large part on the availability of baseline information that can be used to characterize the Gulf's marine ecosystems before this spill.

For the most part, the current approach to characterizing baseline conditions relies on limited studies conducted concurrent with the exploration phase of oil and gas development (i.e.,

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during seismic studies and exploratory drilling) or, in the case of the Gulf of Mexico, long after oil and gas production was initiated. Unfortunately, such studies often fail to provide the information needed for reliable before-and-after comparisons because they provide simple snapshots of dynamic environments. Unless they are repeated over appropriate temporal and spatial scales, such snapshots are not sufficient for assessing central tendency (e.g., mean, median, or modal conditions), natural variability, and long-term trends. Nor are they sufficient for assessing the concurrent effects of other human activities (e.g., climate change). Certainly there are limits to the amount of baseline information that can and should be collected, but the Commission questions whether baseline investigations to date have achieved their purpose under current practices. If done well, the environmental sensitivity analyses described in the Service's *Federal Register* notice should highlight gaps in the baseline information needed to evaluate ecological sensitivity before oil and gas operations begin and monitor for potential adverse effects after those operations are underway.

The Commission therefore supports Secretary Salazar's directive to the U.S. Geological Survey to conduct an initial independent evaluation of the science that is needed to understand the resilience of Arctic coastal and marine ecosystems to resource extraction activities. However, the Commission also believes that a similar evaluation is needed for all marine ecosystems under U.S. jurisdiction and that the Survey should work cooperatively with the appropriate partner agencies to ensure a comprehensive approach to these evaluations. With that in mind, the Marine Mammal Commission recommends that the Minerals Management Service, on behalf of the Secretary, expand the directive to the U.S. Geological Survey to conduct a similar independent evaluation of the resiliency of all U.S. marine ecosystems where oil and gas operations are being conducted, planned, or contemplated.

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

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a large, sweeping "T" and "R".

Timothy J. Ragen, Ph.D.
Executive Director

Enclosure