



June 23, 2015

VIA EMAIL AND MAIL

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240
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Dear Secretary Jewell,

On behalf of Alaska Wilderness League, Audubon Alaska, Center for Biological Diversity, Greenpeace, League of Conservation Voters, Natural Resources Defense Council, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, and Sierra Club we request that you take immediate action to address a fundamental flaw in Shell Gulf of Mexico Inc.'s (Shell) proposal to conduct exploration drilling in the Chukchi Sea this summer that affects multiple agency decisions. As you know, the Bureau of Ocean Energy Management (BOEM) has conditionally approved Shell's Revised Outer Continental Shelf Lease Exploration Plan, Chukchi Sea, Alaska (March 2015) (Exploration Plan). Currently, the Bureau of Safety and Environmental Enforcement (BSEE) is in the process of reviewing Shell's applications for permits to drill (APDs) to begin simultaneous drilling operations at two well sites this summer. Additionally, the U.S. Fish and Wildlife Service (FWS) is reviewing Shell's request for Letters of Authorization (LOAs) for the take of polar bears and Pacific walrus by harassment that will occur during the drilling operations. For the reasons explained below, the conditional approval of the Exploration Plan must be rescinded and the APDs and LOAs cannot be granted because the proposed drilling operations are inconsistent with the governing incidental take regulations issued by the FWS.

In 2013, FWS promulgated an incidental take regulation under the Marine Mammal Protection Act that governs exploration drilling activities in the Chukchi Sea. *See* 78 Fed. Reg. 35,364 (June 12, 2013). In that regulation, FWS imposed a requirement of "a minimum spacing" of 15 miles between drill rigs "[t]o avoid significant synergistic or cumulative effects from multiple oil and gas exploration activities on foraging or migrating walrus." 50 C.F.R. § 18.118(a)(4)(ii). As the agency explained: "A 15-mile (24-km) separation must be maintained between all active seismic survey source vessels and/or drill rigs during exploration activities to mitigate cumulative impacts to resting, feeding, and migrating walrus." 78 Fed. Reg. at 35,391.

In 2014, Shell submitted the Exploration Plan, which is premised upon simultaneous drilling operations using the *Polar Pioneer* and the *Noble Discoverer* at specifically identified drill sites, none of which is 15 miles apart from any other. *See* Exploration Plan at 1-16, 1-6, 1-9; BOEM,

Shell Gulf of Mexico Inc., Revised Outer Continental Shelf Lease Exploration Plan, Chukchi Sea, Alaska Environmental Assessment at 84 (May 2015) (Environmental Assessment) (explaining the distance between the drill sites ranges from approximately 2 to 13 miles, depending on which sites are drilled). This means that any drilling by two rigs would violate the incidental take regulation. Although Shell’s Exploration Plan includes a back-up provision under which it might use a single drill rig in the Chukchi and position another as far away as Dutch Harbor for spill response purposes, BOEM refused even to analyze a one drilling rig alternative in its environmental assessment, in part because the resulting prolongation of exploration drilling out over more years would lead to “greater overall adverse environmental effects” Environmental Assessment at 10. Thus, the premise of BOEM’s decision to approve the Exploration Plan—that two wells per season would be drilled in the normal course—directly contradicts a key requirement of the previously promulgated FWS incidental take regulation to protect walrus. BOEM’s decision and the accompanying Finding of No Significant Impact, therefore, are predicated on a presumed drilling scenario that is unlawful and must be rescinded.

To the best of our knowledge, Shell has submitted APDs to conduct simultaneous drilling operations at the Burger J and V drill sites this summer, which are approximately 9 miles apart. *See* Exploration Plan at 1-6, 1-9. BSEE cannot issue the required APDs because the Exploration Plan upon which they would be based was arbitrarily approved. And, in any event, APDs cannot be issued for two drill sites in one season because that would conflict with the 15-mile requirement of the FWS regulations. *See* 50 C.F.R. § 18.118(a)(4)(ii).

Finally, Shell’s request for LOAs from FWS cannot be granted. Shell applied for LOAs covering the simultaneous drilling at any two of the six well sites identified in the Exploration Plan. Shell, Polar Bear, Pacific Walrus and Grizzly Bear Avoidance and Human Encounter/Interaction Plan, Exploration Drilling Program Chukchi Sea, Alaska at 1-2-3 (Sept. 2014). All of those wells would be at drill sites that are less than 15 miles apart. *See id.* at 1-3. FWS cannot issue the LOAs to Shell because they would violate an explicit condition of the governing incidental take regulations.

We ask you to take immediate action to address this basic deficiency in Shell’s drilling plan and permit applications, protect the Pacific walrus, and ensure agency decisions resulting from the review of Shell’s drilling proposal are defensible and lawful. We thank you for your consideration of this request.

Sincerely,



Holly Harris
Eric Jorgensen
Erik Grafe
EARTHJUSTICE

cc:

Daniel Ashe, Director U.S. Fish and Wildlife Service

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