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**Alaska Wilderness League * Earthjustice * Natural Resource Defense Council *
Northern Alaska Environmental Center * Pacific Environment * The Wilderness Society**

February 15, 2007

Sent via email and regular mail

Re: Shell's proposed drilling in the Beaufort Sea

John Goll, Regional Director
Minerals Management Service
3801 Centerpoint Drive, Suite 500
Anchorage, Alaska 99503
Emailed to robin.cacy@mms.gov

Dear Mr. Goll,

Our groups are writing to express their concern over Shell's planned exploratory drilling in the Beaufort Sea and request that the Mineral Management Service (MMS) conduct a full public process before approving any exploration plan. We strongly believe that this proposed action will have potentially significant direct, indirect, and cumulative environmental and socioeconomic impacts and therefore, MMS is obligated to prepare a detailed environmental impact statement. At a minimum, MMS must provide the public an opportunity to review and comment on its NEPA analysis.

Shell's plan to drill several deep oil wells on multiple leases in the Beaufort may significantly affect the environment and, accordingly, must be analyzed in a detailed environmental impact statement before it may be authorized. NEPA requires federal agencies to prepare an EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The scope of this requirement is "exceptionally broad," *Found. for N. Am. Wild Sheep v. United States Dep't of Agric.*, 681 F.2d 1172, 1177 (9th Cir. 1982), and it is intended to "compel agencies . . . to take seriously the potential environmental consequences of a proposed action." *Ocean Advocates v. United States Army Corps of Eng'rs*, 402 F.3d 846, 864 (9th Cir. 2005).

The Council on Environmental Quality regulations specify factors that must be considered in determining whether a proposed action may "significantly" affect the environment. See 40 C.F.R. § 1508.27. The regulations require consideration of both the "context" and "intensity" of the proposed action. *Id.* The most significant context in which the effects of a site-specific action such as this must be evaluated is "the locale rather than in the world as a whole." *Id.* § 1508.27(a).

Here, the "locale" that will be affected is broad and is vital to various important wildlife species and subsistence users. The proposed action could significantly affect polar bears, a species that has been recently proposed for leasing under the Endangered Species Act. The bowhead whale, a listed species, uses the project area in high numbers and is likely to be affected by noise and disturbance from

industrial activity in the area. Moreover, this bowhead population is a vital subsistence resource for many North Slope communities. In addition to disrupting important biological functions, the proposed activity has the potential to force the whales further offshore making them more difficult for subsistence hunters to reach.

In addition, various species of migratory birds are present in and around the project area in the summer. Some of these species are vulnerable to striking drill rigs and an oil spill could have a devastating effect on birds.

NEPA regulations also provide a series of factors that “should be considered in evaluating intensity” of those impacts in the locale. *Id.* § 1508.27(b). Four of these factors are of particular significance in this case:

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

Id. The Ninth Circuit has found that any “one of these factors may be sufficient to require preparation of an EIS in appropriate circumstances.” *Ocean Advocates*, 402 F.3d at 865; *see also Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001).

These criteria indicate that an EIS is warranted here. The Arctic Ocean is clearly a critical and unique area. The effects of this proposal on this unique resource, its proximity to the Arctic National Wildlife Refuge, and the potential impacts of this proposal will all make it highly controversial. There are unknown risks involved both because there is a lack of basic information about many of the potentially effected resources and because global climate change is leading to complex impacts that are not fully understood. Finally, the proposal includes multiple activities to take place over multiple years over a vast area that is also subject to increasing levels of industrial activity. These previously unanticipated cumulative impacts must be considered in an EIS.


In the event that MMS decides to prepare an environmental assessment to determine whether Shell's proposal will potentially have a significant impact on the environment, MMS should provide a public comment period on its environmental assessment before completing it and before any agency decision to approve the exploration proposal. Where a project has potentially significant impacts on areas of public concern, NEPA principles and CEQ regulations indicate MMS should allow public participation in the process. Indeed the Ninth Circuit has determined that “a complete failure to involve or even inform the

public about an agency's preparation of an EA and a FONSI ... violates [the CEQ regulations]. ... Moreover, it undermines the very purpose of NEPA, which is to 'ensure[] that federal agencies are informed of environmental consequences before making decisions and that the information is available to the public.'" *Citizens for Better Forestry v. Dep't of Agriculture*, 341 F. 3d 961, 970-71 (9th Cir. 2003). *See also Anderson v. Evans*, 314 F.3d 1006, 1016 (9th Cir.2002); 40 C.F.R. § § 1501.4(b) and 1506.6. Consistent with this requirement, Department of the Interior agencies regularly provide formal comment periods on EAs. For instance, the following list includes only a few of the 2004-05 BLM proposed actions noticed in the Federal Register where the public was invited to comment on the EA:

- Proposed Mining and Reclamation in Juniper Flats,
- Furnace Creek Road,
- Proposal to Drill in Canyon of the Ancients, EA # CO 800-2004-062,
- North Mail Trail Drilling,
- Bald Lick Project,
- Five Rogues Timber Sale

The importance of the resources in the area and the controversy surrounding potential impacts associated with Shell's exploration proposal require MMS to prepare a full EIS for Shell's exploration project. We are very concerned about the potential impacts to this ecologically invaluable area and look forward to participating in an EIS process. If MMS decides first to prepare an EA, we urge MMS to publicly release the EA and subject it to a formal 30-day comment period, before completing the EA and before any decision to approve the Shell exploration plan.

Respectfully Submitted,


for Deirdre McDonnell
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c: Johnnie Burton