

**Sierra Club – Natural Resources Defense Council – World Wildlife Fund
Republicans for Environmental Protection - Environmental Defense Center
Environment Florida - International Fund for Animal Welfare
Ocean Mammal Institute
Earth Island Institute - Terra Nature Fund
OceanCare - European Coalition for Silent Oceans
LegaSea - Seaflow – Ocean Protection Coalition
The Ocean Conservancy - California Coastal Protection Network
Appalachian Voices - The Whaleman Foundation
Planning and Conservation League - Arctic Connections
Pacific Coast Federation of Fishermen's Associations
Institute for Fisheries Resources - US PIRG
Center for Biological Diversity - Pacific Environment**

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Directed to:

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And:

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5-Year Draft EIS Comments
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**Re: Comments on the Proposed Five-Year OCS Oil and Gas Leasing
Program for 2007-2012 and on the accompanying NEPA proceedings.**

Dear 5-Year Program Managers:

On behalf of the millions of members represented by our organizations, we hereby submit these formal comments on the Proposed Five-Year OCS Oil and Gas Leasing Program for 2007-2012, and on the accompanying DEIS. We appreciate this opportunity to provide comments on this proposal, as follows:

- 1) **Arbitrarily-Imposed “Seaward Boundary Lines” Cannot Govern Five-Year OCS Program Planning or Accompanying National Environmental Policy Act (NEPA) Documents:** The Proposed Five-Year OCS Oil and Gas Leasing Program for 2007-2012 cannot legally be based upon the final rule promulgated by the Secretary of Interior in Federal Register Notice Volume 71, No. 1, pages 127-131 titled “Federal Outer Continental Shelf (OCS) Administrative Boundaries Extending from the

Submerged Lands Act Boundary Seaward to the Limit of the United States Outer Continental Shelf". These arbitrary seaward boundaries are inequitable and have been previously rejected during consideration of the 2005 Energy Policy Act by the Congress, have effectively blocked progress on any 2006 House-Senate Conference Committee resolution between HR 4761 and S 3711, and these boundaries remain unacceptable to many coastal states. No proposed rule or ANPR regarding these boundary changes was published by the Agency, no public or state comments were accepted, and no due process was followed by MMS in adopting the final rule. This flawed procedure and subsequent actions are in violation of the critical balancing provisions of the OCS Lands Act as Amended (OCSLAA). Further, these inequitable seaward boundaries cannot be utilized by the Department of Interior to delineate the proposed boundaries of any MMS lease sale, any scheme for sharing of federal revenues from OCS activities, nor for any Coastal Zone Management Act (CZMA) or other jurisdictional authority to be exercised on behalf of any coastal state. Coastal states with sensitive coastal economies, fragile shoreline parklands, productive estuaries, and critical wildlife habitats now find themselves in the path of oil spill trajectories from offshore industrialization located off of adjacent states, over which their own state would have no authority. This is a denial of longstanding legitimate states' rights under the OCSLAA and the CZMA. Pending legislative proposals to again arbitrarily expand the Seaward Boundary jurisdiction off of the Commonwealth of Virginia at the expense of causing adverse impacts on nearby coastlines and denying legitimate control by adjacent states over their own coastal economies would likewise be in violation of OCSLAA, NEPA, and CZMA and have not been analyzed nor subjected to "critical balancing" in MMS' Proposed OCS Program, nor in the DEIS.

- 2) **Any Areas Protected by Congressional OCS Moratorium or Executive OCS Withdrawals Should Not Be Considered in the Five-Year OCS Leasing Program:** The congressional moratorium for fiscal year 2006, now well along in the process of being renewed by the Congress for FY 2007, currently makes it clear that the use of appropriated funds for leasing, pre-leasing, and related activities is in violation of current federal law, and the preparation of the Proposed Five-Year OCS Leasing Program and the accompanying DEIS should be considered to be part of such precluded activities. The White House Budget released in January of 2006 included a continuation of the OCS Moratorium for fiscal year 2007, and the full House and the Senate Appropriations Committee have now concurred. Further, the Presidential OCS Withdrawals presently in effect prevent any leasing in certain specified areas until after 2012, which is subsequent to the expiration of the Proposed 2007-2012 Five-Year OCS Leasing Program. The Five-Year OCS Leasing Program inappropriately continues to assume in advance that the Presidential OCS Withdrawals could hypothetically be prematurely rescinded within the North Aleutian OCS Planning Area (including Bristol Bay) and proposes two contingent lease sales there. The Proposed Five-Year OCS Leasing Program, further, inappropriately assumes in advance that both the Presidential OCS Withdrawals and the Congressional OCS Moratorium might be reversed, and further incorrectly presumes the early conduct of new lease sales within long-protected waters in the mid-Atlantic OCS Planning Area

and in portions of what is being termed by MMS the Central Gulf of Mexico Planning Area along the coast of Southeast Florida and off of Florida's Gulf Coast and Panhandle. These protected geographic areas have no place in the current draft Five-Year OCS Leasing Program, and cannot be included in the Five-Year OCS Leasing Program under current federal law now in effect.

- 3) **All Congressional OCS Moratorium and Executive OCS Withdrawal Areas Should Be Granted Permanent Protection from Offshore Oil and Gas Leasing:** Since fiscal year 1982, annual legislative OCS Moratoria have been renewed each year with broad bipartisan support from the Congress and, during the current Administration and past Administrations, from the White House as well. It is time for the Department of Interior to recognize the sensitivity of coastal waters within the OCS Moratorium and the Presidential OCS Withdrawal areas and the bipartisan, bicameral, and bicoastal legislative and public mandate for their continued protection, and to now grant permanent protection for these areas.
- 4) **Hazards of Proposed Airgun "Inventory":** Energy legislation signed into law during 2005 set the stage for a geologic "inventory" of potential drilling targets on the entire OCS, including within sensitive coastal waters long protected by the bipartisan congressional OCS Moratorium and by the Executive OCS Withdrawals first enacted by former president George H.W. Bush in 1991. Proposed OCS "inventory" activities associated with this Five-Year OCS Leasing Program are now in substantial conflict with the designation documents and regulatory framework of most of America's National Marine Sanctuaries, which are charged by the National Marine Sanctuary Act with sustainable stewardship of the living marine resources and ecosystems within Sanctuary boundaries. No permits or contracts for seismic airgun "inventory" activities should be issued by the Department of Interior in any area prior to the completion and full consideration by MMS of the requisite National Academy of Sciences study on the impacts of sound in the marine environment, the evaluation of the recent National Science Foundation study on the impacts of geophysical activities used in scientific research, and the consideration of all recent peer-reviewed international studies on damage to fisheries and marine mammals caused by airgun impacts. A comprehensive NEPA process, with a full EIS and requisite public review, must be completed prior to the issuance of any permit or regulations pursuant to the execution of any seismic "inventory" of the OCS. The Five-Year OCS Program DEIS fails to provide any meaningful NEPA analysis of seismic airgun impacts in the marine environment. While this Proposed Program DEIS does not deal with the impacts of seismic airgun arrays for oil and gas prospecting offshore, such seismic surveys are inevitable as part of the oil and gas leasing process. Mounting evidence shows the use of such intense noise devices can cause harm to marine mammals and fisheries.
- 5) **"Gas-Only-Leasing" Proposals are Inappropriate and Deceptive:** The Five-Year OCS Leasing Program should not presume the incorporation of so-called "natural-gas-only" leasing as a viable scenario. Exploration and development of gas resources produces routine discharges of spent drilling muds, contaminated produced waters,

and highly-toxic metals and hydrocarbon compounds into the marine environment, in addition to creating a demand for onshore gas processing facilities in sensitive portions of the coastal zone. Spills of natural gas condensates are highly toxic to virtually all forms of marine life. Further, legislative and administrative proposals for what is being called “gas-only” drilling inappropriately incorporate provisions for the subsequent development of oil, should it be found in conjunction with gas on a “gas-only” OCS lease. Thus, what is being misrepresented as “gas-only” leasing simply opens the door for oil drilling, with its attendant risk of oil spills, and it is disingenuous to suggest otherwise in the Five-Year OCS Oil and Gas Leasing Program, in the DEIS, nor in any legitimate MMS rulemaking or regulatory action.

- 6) **Eastern Gulf of Mexico OCS Concerns:** The Eastern Gulf of Mexico OCS Planning Area has long been protected as a way to preserve the very substantial coastal-dependent economy on Florida’s Gulf Coast and Panhandle. The proposed Five-Year OCS Oil and Gas Leasing Program for 2007-2012 inappropriately suggests that a pre-existing Environmental Impact Statement (EIS), promulgated for a prior Lease Sale #181 proposal, could somehow be retroactively applied by MMS for a series of new leasing actions within the Sale #181 area. It is apparent that such a reuse of a prior EIS prepared for a different leasing proposal cannot be construed to adequately address the critical NEPA and related economic and environmental impact issues in play in this region. This “shortcut” approach fails to consider the cumulative impacts of a series of sequential leasing actions, of cumulative infrastructure requirements and impacts associated with increased leasing activity in multiple lease sales, and the cumulative routine and accidental discharges and air emissions associated with multiple lease sales generating multiple drilling operations. The proposed Five-Year OCS Oil and Gas Leasing Program for 2007-2012 and accompanying documentation, and the prior Lease Sale #181 EIS, both fail to adequately address the well-known “Loop Currents” in the Gulf of Mexico, and the propensity of these powerful ocean currents to rapidly transport any oil spill originating on Florida’s Gulf Coast through the Florida Keys and onto the shores of Florida’s Atlantic Coast. Further, the proposed Five-Year OCS Oil and Gas Leasing Program for 2007-2012 anticipates, for the first time, new OCS leasing in areas lying South of 26 degrees North Latitude, i.e.; off of Florida’s Marco Island and the Ten Thousand Islands, in high-risk areas long protected by Congressional OCS Moratoria and Presidential OCS Withdrawals. The Proposed Five-Year OCS Oil and Gas Leasing Program for 2007-2012 and accompanying DEIS documentation provide nothing to indicate compliance with NEPA with respect to the special, and entirely new, range of issues associated with proposed leasing in these sensitive areas, nor with the anticipated implications for the Florida Keys National Marine Sanctuary. No NEPA process whatever has been initiated for the Lloyd Ridge area, or what is being called “Lease Sale 181 South”, and this region has not been evaluated in any DEIS, nor subjected to any relevant OCSLAA analysis.
- 7) **Alaska OCS Issues Continue to Be Unresolved:** We remain deeply concerned about the undue risks posed to sensitive marine and coastal environments from the proposed expansion of offshore oil and gas activities throughout the Alaska OCS.

The nation's most productive and richest fishing grounds are found in Alaska, and the economies of coastal communities along the Gulf of Alaska, Cook Inlet, the Bering Sea, and the Beaufort and Chukchi Seas rely on commercial and subsistence fishing. Statewide in Alaska, the fishing industry provides more private sector jobs than any other source. Subsistence use of fish and other marine animals is both an established economy of Native coastal communities and is absolutely central to the survival of Alaska's indigenous cultures and these uses are not adequately addressed by the Proposed Program and the accompanying DEIS. Productive marine ecosystems, marine mammals, seabirds, and coastal communities are all at risk from potential blowouts, vessel spills, and both terrestrial and subsea pipeline oil spills.

Specifically, with regard to Alaskan waters, a hold on any further OCS leasing in Alaskan waters should be put in place because:

- The Interior Department is leasing too much too rapidly in Alaska in the face of increased development proposals on existing state and federal offshore leases in the Beaufort Sea. The Beaufort Sea is home to Polar bears, seals, migratory birds, threatened species and Steller's eiders and endangered Bowhead whales' spring migration pathways east of Barrow and fall migration and feeding areas located offshore the Arctic National Wildlife Refuge. Oil spills and pressure for onshore support facilities and pipelines threaten the coastline of the Arctic National Wildlife Refuge and Teshekpuk Lake Special Area.
- The Interior Department's Proposed Plan for accelerated leasing in the Bering, Chukchi, and Beaufort Seas threatens many of America's most sensitive marine and coastal ecosystems, and would adversely impact subsistence resources and the local economies and communities.
- The North Aleutian Basin, the Chukchi and Beaufort Seas and the Lower Cook Inlet/Shelikof Strait should be removed entirely from the 5-Year plan and the Presidential Withdrawal affecting Bristol Bay should be retained and respected by Program managers.
- Continued protection for the entire North Aleutian Basin under the Presidential Withdrawals must be kept in place. Bristol Bay should not be opened to oil and gas leasing because such activity in this environment poses unacceptable risks to the world's largest Sockeye salmon run and to large populations of marine mammals, seabirds, crab, and fish.
- The entire Chukchi Sea area should be removed from the plan and Lease Sale 193 should be cancelled. Noise disturbance, drilling discharges, and other industrial activities threaten critical spring and fall migration routes for Bowhead and Beluga whales, especially in the Chukchi Polynya. In addition, the Chukchi provides important feeding areas for Gray whales, Pacific walrus and Polar bears; migratory bird habitat including feeding areas used by seabirds nesting in the cliffs of the Alaska Maritime National Wildlife Refuge and Spectacled eider critical habitat; and important subsistence resources. The rapid effects of climate change to the Chukchi Sea habitats and wildlife need to be assessed prior to any consideration of leasing in this region.
- The Lower Cook Inlet / Shelikof Strait area should not be subjected to leasing as to do so risks critical habitat for endangered Steller's sea lions, and the sensitive Katmai

National Park and Kodiak, Becharof, Alaska Peninsula, and Alaska Maritime National Wildlife Refuge, portions of the shorelines of which were oiled by the Exxon Valdez spill and which have not all completely recovered.

- 8) **Lack of Attention to Protecting Living Resources:** This year's British Petroleum "Caribou Crossing" terrestrial pipeline-derived oil spill, the largest among the numerous spills occurring throughout the history of North Slope operations, once again demonstrates that even state-of-the-art equipment is susceptible to accidental releases of oil, and that such releases are sometimes not quickly detected and remedied. The subsequent revelations about the oil industry's lack of due diligence in maintaining a safe workplace for employees and in failing to deliver on promised and required environmental protections has added to this controversy, along with the discovery of unprecedented corrosion damage to BP feeder pipelines on Alaska's North Slope resulting from criminal negligence in not applying "smart pig" monitoring of pipeline corrosion conditions for decades. The separate criminal investigation by the State of Alaska DEC of the 2003 Nabors Industries, Ltd./Pioneer Natural Resources drilling fluid spill provides further evidence of the risks associated with ice-island drilling near Kuparuk in the Beaufort Sea shallows and the apparent propensity of some operators not to report such incidents in a timely fashion. It has, unfortunately, also been conclusively and repeatedly demonstrated that no oil spill cleanup technology exists that can recover spilled oil among broken sea ice, and under the ice sheet, oil spills cannot even be detected or tracked. A range of unaddressed site-specific wildlife sensitivity issues and other economic and environmental concerns arise with regard to continued new leasing in Cook Inlet, and also in the context of new OCS leasing proposed for the Gulf of Alaska, the Norton and Hope Basins, the Beaufort Sea, and in the Chuckchi Sea. The North Aleutian Basin, now protected by the Presidential OCS Withdrawals through June 30, 2012, is one of the most biologically productive areas of the U.S. OCS and is valuable to the surrounding local communities for its abundant subsistence resources that sustain traditional cultures and ways of life. Several endangered species depend on the waters of Bristol Bay, including the northern Right whale. The region is surrounded by unparalleled estuaries critical to the region's ecological productivity and to sustaining the region's fisheries of national significance, including pollock, cod, red king crab, herring, and the world's largest salmon run.

- 9) **No Acknowledgement of the Carbon-Constrained Future:** The Proposed Program and the DEIS make no attempt to make any responsible analysis of the implications for the climatological impact of the estimated amount of carbon to be released into the atmosphere as a result of the proposed extraction, transportation, refining, and burning of the prospective hydrocarbon resources estimated to be represented by the activities proposed in the Proposed OCS Leasing Program and the DEIS. Particularly in Alaska, where the serious and dramatic adverse implications of climate change on ecosystems and communities are already readily apparent, this oversight on the part of the Proposed Program and DEIS is unacceptable. No scenario for offsetting or sequestering an equivalent amount of carbon has been offered by the Proposed Program or the DEIS.

- 10) **Growing Scandals Over MMS' Giveaway of Taxpayer-Owned U.S. Resources to the Oil Industry:** Past OCS "royalty relief" for deepwater natural gas deposits, and recent additional OCS "royalty forgiveness" adopted for shallow water, deep-geologic-horizon, natural gas in the Gulf of Mexico, and for relatively shallow water oil and gas throughout the Alaska OCS, enacted as part of the Energy Policy Act of 2005, fails to meet the test of ensuring fair return for the U.S. taxpayer for sale their resources as specifically required by the OCSLAA. The Five-Year OCS Oil and Gas Leasing Program cannot assume that these special-interest giveaways of our collective domestic resources, free of charge, to the petroleum industry will be permitted to continue unabated.

Thank you for this opportunity to provide comments on the Proposed Five-Year OCS Oil and Gas Leasing Program for 2007-2012, and the accompanying DEIS.

Sincerely,

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