



MARINE MAMMAL COMMISSION

3 January 2011

Mr. Joseph Christopher
Regional Supervisor, Leasing and Environment
Gulf of Mexico Outer Continental Shelf Region
Bureau of Ocean Energy Management, Regulation, and Enforcement
1201 Elmwood Park Boulevard, MS-5410
New Orleans, LA 70123-2394

Dear Mr. Christopher:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Bureau of Ocean Energy Management, Regulation, and Enforcement's 10 November 2010 and 16 November 2010 *Federal Register* notices regarding its intent to prepare a supplemental environmental impact statement for the remaining Western Planning Area and Central Planning Area lease sales in the 2007–2012 leasing program (75 Fed. Reg. 69122 and 75 Fed. Reg. 70023, respectively). The Commission provides the following recommendations and rationale.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the Bureau of Ocean Energy Management, Regulation, and Enforcement—

- consult with the National Marine Fisheries Service, the Fish and Wildlife Service, and the Marine Mammal Commission to develop a set of standards for baseline information needed to assess the effects of oil and gas operations on marine mammals and their environment;
- initiate research on these topics prior to the resumption of lease sales in the Gulf of Mexico;
- consider ways to improve oil spill prevention and response capabilities by (1) requiring the industry to provide the resources for related research and technology development and (2) adding performance-based incentives for the industry; and
- prepare for public review a detailed description of the lessons learned and adjustments made to improve management of offshore oil and gas operations based on experience from the BP oil spill.

RATIONALE

The former Minerals Management Service proposed to hold 11 lease sales in the Gulf of Mexico during the 2007–2012 leasing program: five in the Western Planning Area (204, 207, 210, 215, and 218) and six in the Central Planning Area (205, 206, 208, 213, 216, and 222). By April 2010, when the BP Deepwater Horizon spill began, the Service had conducted seven of these lease sales (204, 205, 206, 207, 208, 210, and 213). In July 2010 the Bureau cancelled lease sale 215 and delayed action on the remaining sales. The Bureau has now issued a notice of intent to prepare a supplemental environmental impact statement for the remaining lease sales in the Central and Western Planning Areas. The notice indicates that the Bureau deemed a supplemental environmental impact statement necessary to “consider new circumstances and information arising, among other things, from the Deepwater Horizon blowout and spill.”

The BP spill is a stark reminder of the risks associated with offshore drilling. It was unprecedented in duration, volume of oil spilled, depth at which the spill occurred, and volume of dispersant used. It raised critical questions regarding the ability of the oil and gas industry to prevent and respond to a major spill, particularly in deep water. It also exposed inadequacies in drilling safety practices and equipment, and it raised important concerns regarding the adequacy of government oversight and planning for such a worst-case scenario. The Commission agrees that the Bureau should consider the new information resulting from the spill before continuing any remaining lease sales because much insight can be gained from a careful analysis of the Deepwater Horizon oil spill.

Limitations in Baseline Information

Among other things, the BP oil spill highlighted how little we know about the Gulf of Mexico marine ecosystem, its various biological components, and their vulnerability to spilled oil. Marine mammal stock assessment reports prepared by the National Marine Fisheries Service indicate that the Gulf is habitat for 58 marine mammal stocks. Abundance estimates are deemed acceptable, by that agency's standards, for only six of those stocks. In all but a few cases, the general lack of adequate pre-spill information will preclude a meaningful assessment of the effects of the spill on the marine mammal stocks. Such an assessment is mandated by the Oil Pollution Act of 1990 and is part of the basis for determining the damage done when a spill occurs and for compensating the public and restoring the environment to the extent possible.

Prior to the spill (i.e., in 2008¹), the Bureau described, as follows, the potential impacts of oil and gas operations on marine mammals. The description recognized the need for baseline scientific information and stated²:

Routine events related to a proposed action [in the Central or Western Planning Areas], particularly when mitigated as required [by the Minerals Management Service], are not expected to have long-term adverse effects on the size and productivity of any marine mammal species or population endemic to the northern Gulf of Mexico. Characteristics of impacts from accidental events depend on chronic or acute exposure, resulting in harassment, harm, or mortality to marine mammals, while exposure to dispersed hydrocarbons is likely to result in sublethal impacts. The effects of the incremental contribution of a proposed action, including the 181 South Area, combined with [other] activities may be deleterious to cetaceans occurring in the Gulf of Mexico. Biological significance of any mortality would depend, in part, on the size and reproductive rates of the affected stocks, as well as the number, age, and size of animals affected.

The information referenced in that statement is not available for the majority of the Gulf's marine mammals, although some information is available for a few stocks (i.e., sperm whales,

¹ Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales: 2009–2012, Central Planning Area Sales 208, 213, 216, and 222 and Western Planning Area Sales 210, 215, and 218 – Final Supplemental Environmental Impact Statement OCS EIS/EA MMS 2008-041)

² At section 4.1.6

pantropical spotted dolphins, and a few bottlenose dolphin stocks). The Marine Mammal Commission has written to the Bureau on several occasions recommending that it work with the oil and gas industry, the National Marine Fisheries Service, and the Fish and Wildlife Service to collect better baseline information to enable the Service to determine if oil and gas activities, including accidents, cause harm to marine mammals and their habitat. Although the Minerals Management Service made efforts to do so (e.g., cetacean surveys in the mid-1990s, recent studies of sperm whale responses to seismic surveys) and although those efforts provided much valuable information, they did not produce enough of the right kind of data to ensure an adequate baseline for assessing the effects of oil and gas development. More information is needed on abundance, distribution, movement patterns, vital rates, foraging patterns, contaminant loads, health and condition, and vulnerability to various threats for the marine mammals that are at risk from oil and gas operations in the Gulf.

Therefore, the Marine Mammal Commission repeats its recommendation that the Bureau of Ocean Energy Management, Regulation, and Enforcement consult with the National Marine Fisheries Service, the Fish and Wildlife Service, and the Marine Mammal Commission to develop a set of standards for baseline information needed to assess the effects of oil and gas operations on marine mammals and their environment. The Commission considers this an urgent priority. Indeed, the need for better baseline information is one of the main lessons that should have been learned from the *Exxon Valdez* spill more than two decades ago. To that end, the Marine Mammal Commission also recommends that the Bureau of Ocean Energy Management, Regulation, and Enforcement initiate research on these topics prior to the resumption of lease sales in the Gulf of Mexico.

Responsibilities for Developing Prevention and Response Capabilities

Ongoing investigations of the causes of the Deepwater Horizon oil spill by the Bureau, the Coast Guard, the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, the National Academy of Engineering, and others will provide information to assist the Bureau in addressing the root causes of the oil spill. If comprehensive, the investigations also will provide recommendations for revising Bureau regulations, practices, and procedures to reduce the probability of another major oil spill and enhance oil spill response capabilities. Implementing these recommendations will likely require substantial investments in research and development of new technology by the Bureau and by the oil and gas industry.

However, the resources for such research and development often are simply not available. To address that problem, the Marine Mammal Commission has long emphasized two methods for supporting research needed to ensure protection of the marine environment. The first involves requiring the proponents for actions that pose risks to the environment to provide the resources needed to study and manage those risks. In this case, the Commission believes that the industry should be required to provide missing support for research and development of oil spill prevention and response technology. Addressing those risks in a responsible manner should be considered one of the industry's costs of doing business. The second involves incorporating performance-based incentives for action proponents to improve safety and protection methods. Such incentives could be incorporated into the leasing process to encourage the industry to expand or strengthen oil spill

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prevention and response capabilities. For example, the leasing process could be modified to give credit to firms with exemplary safety records or active, productive environmental safety research and development programs. Conversely, strong economic disincentives might be used to discourage poor performance, such as restricting the access to lease sales of firms that have poor safety records or inadequate resources to respond to a worst-case scenario spill.

To improve safety and environmental protection associated with offshore oil and gas development, the Marine Mammal Commission recommends that the Bureau of Ocean Energy Management, Regulation, and Enforcement consider ways to improve oil spill prevention and response capabilities by (1) requiring the industry to contribute the additional financial resources needed for related research and technology development and (2) adding performance-based incentives for the industry.

Lessons Learned and Adjustments Made

Finally, despite all the reviews of the BP spill and its causes, and all the new measures that have been considered, proposed, or implemented, it is difficult to judge whether sufficient new safeguards have been added to address the risks of another spill. Undoubtedly, a great deal was learned from the *Exxon Valdez* spill and was included in the Oil Pollution Act of 1990. In many regards, that Act provides a clear record of lessons learned and adjustments made to reduce the risks of further oil spills. The BP spill has stressed the Gulf region socially, economically, and ecologically, and this most recent catastrophic spill in U.S. waters should be used as an opportunity to learn how to reduce the risks from oil and gas operations. Although much work related to the BP spill is still underway and more information will be forthcoming, it is not clear if or how the Bureau has incorporated the lessons learned into its regulatory practices and what specific adjustments have been made or are being considered. Thus, it is important to document and explain how oil and gas management will be different in the future and to determine whether changes in management will reduce significantly the probability of further spills. Therefore, the Marine Mammal Commission recommends that the Bureau of Ocean Management, Regulation, and Enforcement prepare for public review a detailed description of the lessons learned and adjustments made, based on experience from the BP oil spill, to improve management of offshore oil and gas operations.

The Commission hopes you find these recommendations helpful. Please contact me if you have questions about our recommendations or if we can provide any further assistance.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director