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December 18, 2006

Mr. P. Michael Payne
Chief, Permits, Conservation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Comments re NOI to Prepare a Programmatic Environmental Impact Statement
Taking Marine Mammals Incidental to Conducting Oil and Gas Exploration Activities in the
Arctic Ocean off Alaska

Via E-Mail to: PR1.101906B@noaa.gov

Dear Mr. Payne:

The American Petroleum Institute ("API"), and the National Ocean Industries Association ("NOIA") wish to take this opportunity to respond to the National Marine Fisheries Service's ("NMFS") request for public comment on the scope of the Programmatic Environmental Impact Statement ("PEIS") for incidental harassment of marine mammals by operators conducting offshore geophysical seismic surveys in the Chukchi and Beaufort Seas off Alaska pursuant to permits issued by the Minerals Management Service ("MMS"). Our organizations represent more than 400 companies that are involved in various aspects of the geophysical, oil and natural gas exploration, production and service industries, and we are committed to continuing to supply the energy that American consumers and businesses rely on to keep our economy growing. Because of the importance of offshore oil and natural gas resources to our nation's economy, API and NOIA members have a direct interest in the issues presented in the documentation presented for the draft recovery plan.

API and NOIA wish to express our appreciation to NMFS and MMS for initiating this effort to ensure credible environmental assessment of proposed oil and natural gas exploration and production activities, noting the resources that will be required to complete this work along with other pressing regulatory demands. API and NOIA members are keenly interested in the timely completion of the PEIS that relies on credible science because of our concern over the very conservative mitigation measures adopted by MMS and NMFS in the conditions to the Geological and Geophysical Exploration and Incidental Harassment Authorization ("IHA") permits issued in 2006. We continue to believe that there was not a strong basis in science to support the imposition of measures required by these permits, and that the IHA did not have an adequate acknowledgement of risk to human safety resulting from these measures. We are also concerned that this important PEIS may not be completed in time to support permitting decisions both NMFS and MMS are likely to face for the 2007 open water exploration season in the Beaufort and

Chukchi Seas, and recommend that the two agencies develop a contingency plan to support the issuance of permits for this activity by July 1.

In its preparation of the PEIS, NMFS should provide a detailed summary all of the scientific studies and monitoring programs that have been conducted in the past few years and those that are planned for the next several years in the Arctic. The summary of scientific studies and monitoring programs will help the readers understand the objectives and priorities of efforts by the government in trying to address key information needs about marine mammal species found in Arctic marine waters to avoid regulatory delays in the search for new energy resources in this very prospective region. Such research efforts can be costly; therefore the expected cost of these programs should be included to help raise awareness and to assure the allocation of appropriate resources.

One of the most critical data needs is the distribution and abundance of various marine mammal species in the Chukchi Sea during the fall migration before the pack ice sets in. The PEIS should summarize current efforts to tag bowhead whales, including available data developed to date from these tagging and tracking programs. This approach is one of the few ways to understand the annual migratory tracks, identify feeding areas, and assess deviations relative to industry activities.

As part of the review, there should be a detailed recap of all of the offshore activity in the Arctic over the past several decades. The oil and natural gas industry has conducted a variety of marine seismic programs and other offshore exploration activities in both the Chukchi and Beaufort Seas. These exploration activities have used offshore drill ships, work boats, ice breakers and other marine vessels. Tugs with supply barges have been delivering fuel and supplies to the coastal villages in the region for years. All of these activities should be thoroughly summarized, and correlated with the bowhead hunt success by village, as well as the overall marine mammal population changes over that same period of time.

The MMS Lease Sale 193 Draft EIS is quite comprehensive, and encompasses over 1,100 pages of information and impact assessment. This PEIS should fully utilize that body of work .

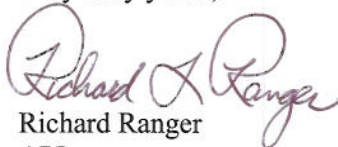
NMFS should confer with both MMS and the industry to try and delineate what are realistic scenarios for the next decade. The EIS should cover the range of scenarios, from the least activity to the most.

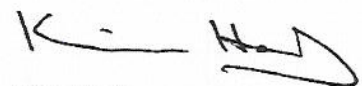
More detailed comments are provided on the attachment to this letter.

We thank you for the opportunity to provide these scoping comments. Please include this letter and the attachment in the administrative record for the PEIS.

Should you have any questions, please contact Richard Ranger at 202.682.8057.

Very truly yours,


Richard Ranger
API


Kim Harb
National Ocean Industries Association

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66912/3/2/1	(1)“a 120–dB rms (root-mean-squared) monitored safety zone for fall migrating cow/calf pairs of bowhead whales in the Beaufort and Chukchi seas;”	<p>This mitigation measure should be thoroughly discussed, and the scientific rationale behind it spelled out in detail and documented in the PEIS. It should be careful address the issue as it relates to the health and survival of the species, and at the population level. It is a separate issue from the success of failure of the subsistence hunt. In the Chukchi, the southward migrating bowheads are not actively pursued during the fall migration by the coastal residents. Their subsistence hunt for bowheads is generally restricted to the spring lead hunt.</p> <p>Included in the discussion of the implications of the 120 dB “monitored safety zone” should be a detailed discussion of the logistics, practicality, costs, and safety considerations. The zone of 120 dB ensonification area, based on modeling and actual measurements in 2006 is greater than previously thought. This creates an extremely large area that would require several aircraft and boats to monitor. An analysis of customary prevailing weather conditions for this region should be included to put in perspective the feasibility of trying to monitor this large an area.</p> <p>The PEIS should discuss the suitability of using the sound pressure level threshold to express the complex relationships of physical, environmental and species-specific and other biological effects from marine sound sources and to ascertain acoustic risks to marine mammals from these sources, and evaluate the utility of other approaches, such as a matrix of source-specific parameters, environmental parameters, and species-specific variables, that have been considered in the literature or tested in other jurisdictions.</p>
66912/3/7/5	“NMFS adopted MMS’ Final PEA	The MMS PEA was very

Comment numbering is page/column #/paragraph #/line number. Partial paragraphs at the top of a column are designated paragraph zero (0).

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	<p>and determined that the preparation of an EIS for this action was not necessary. ”</p>	<p>comprehensive. The proposed NMFS PEIS should build on the MMS PEA and provide for a longer range assessment, taking into consideration the range of reasonably likely scenarios for offshore exploration and production activity that could occur over the next decade (e.g., change in the acoustic criteria; successful exploration and a development phase)</p>
<p>66913/1/1/10</p>	<p>“It is important to note that subsequent to issuance of the IHAs for the 2006 seismic season to Shell (71 FR 50027, August 24, 2006), ConocoPhillips Alaska (CPAI) (71 FR 43112, July 31, 2006), and GX Technology (GXT) (71 FR 49418, August 23, 2006), a District Court Judge in Anchorage in the case of <i>ConocoPhillips Alaska, Inc v. National Marine Fisheries, et al.</i> issued an order on September 18, 2006, granting a motion to stay the implementation of the CPAI IHA condition requiring a 120-dB monitoring safety zone to protect bowhead whale cow/calf pairs during their annual fall migration out of the Arctic Ocean. The Court agreed that CPAI raised a “serious question” regarding the propriety of this additional requirement, meaning that the IHA condition requiring a 120-dB monitoring safety zone would be suspended until the Court is able to fully resolve the dispute.”</p>	<p>The PEIS should provide detailed data to support the necessity of a 120 dB monitoring safety zone. Studies and research that evaluate the sensitivity of cow/calf pairs relative to other the sensitivity of other classes of individuals from the same species should be discussed. If the cow/calf pairs are slightly more sensitive to sound, then they would just give the operations a wider berth on their migration south, thus keeping them actually further away from any detrimental effects of the sound. There is no data to suggest that it would stop the migration. If NMFS or MMS contemplate additional scientific research to address this issue, the PEIS should describe the scope of such research plans.</p>
<p>66913/1/1/24</p>	<p>“However, the 120-dB mitigation measure was essential to allow NMFS to conclude with a FONSI, especially given the level of uncertainty on the effects of seismic surveys on bowhead whales in Arctic waters. This measure, therefore, became a basic condition for NMFS being able to issue IHAs to Shell, CPAI and GXT in the 2006 seismic season.”</p>	<p>Based on over 20 years of observations, studies, and ongoing industry activities, including seismic, there has never been a demonstrated impact or effect on bowhead whales. Over that time interval, in spite of the 40-60 whales killed annually as part of the subsistence hunt, the bowhead whale population has continued to grow.</p> <p>The PEIS should clearly identify health and population effects to marine mammals from oil and natural gas exploration activities versus the effects on these species from subsistence</p>

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		<p>hunting. The Conflict Avoidance Agreements between companies engaged in offshore exploration and production and traditional villages in the region are required and intended to address any possible conflicts on subsistence hunting.</p>
66913/2/0/5	<p>“...Final PEA and to reanalyze the range of practical mitigation measures for protecting marine mammals in more detail through preparation of a Draft PEIS for issuing: (1) permits for oil and gas exploration in the Arctic Ocean by MMS, and (2) authorizations to the seismic industry from NMFS to take marine mammals incidental to oil and gas seismic surveys in the Arctic Ocean.”</p>	<p>This should include a thorough discussion of any scientific information available on the effectiveness of measures. The practicability, cost, and human safety associated with mitigation measures should also be considered.</p> <p>There should also be a thorough discussion of the environmental effects of the subsistence hunt on bowheads and other marine mammals. Issues such as effects on migratory patterns, increased sensitivity to boat sounds, harpoon bombs, etc., should be discussed.</p> <p>A recap of annual migratory patterns should be conducted relative to annual weather and ice conditions.</p>
66913/2//2/5	<p>“the sound can propagate horizontally for several kilometers (Greene and Richardson, 1988; Hall et al., 1994).”</p>	<p>The latest information on frequency and intensity of lateral sound propagation should be discussed in the PEIS. There is more current information than the 1994 reference.</p>
66914/1/3/8	<p>“The Draft PEIS will include, but not be limited to the following issues and concerns: (1) Protection of subsistence resources and the Inupiat culture and way of life; (2) impacts to marine mammals including disturbance to bowhead whale migration patterns; (3) impacts of seismic survey operations on marine fish reproduction, growth, and development;”</p>	<p>The PEIS should consider the effects of other activities in the Beaufort and Chukchi marine environment that are likely to occur concurrently with marine seismic operations.</p> <p>Item #3, especially for open ocean, is dubious . There is no data to suggest that there is any impact in this category, especially in an area that is 20-50 miles offshore in the open ocean where there are essentially no commercial fisheries.</p>
66914/2/1/1	<p>“NMFS will explore and evaluate a reasonable range of alternatives in the Draft PEIS, including the proposed action and the no-action alternative.”</p>	<p>The draft PEIS should take into consideration the new acoustic criteria and the difference that they might make to the proposed safety and exclusion zones. The criteria have been unofficially set, and NMFS has submitted a paper to the Journal of the</p>

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		Acoustical Society of America for peer review publication. If the new criteria set higher thresholds, then they should be incorporated as alternatives for this PEIS.
66915/1/2/1	(5)“ <i>Aerial Surveys</i> —Aerial surveys are flown in advance of initiating seismic surveys and related ice-breaking activities over an area that includes the area to be surveyed.”	The PEIS should carefully consider the practicability of aerial monitoring and the risk to human life. The use of unmanned aerial vehicles (UAVs) and passive acoustic monitoring (PAM) should be considered to supplant aerial manned monitoring.
66915/1/3/12	(6)“(c) under specific circumstances to protect feeding aggregations of bowhead and/or gray whales, the standard 180–dB exclusion zone for cetaceans is extended to a monitored 160–dB safety zone.”	Bowheads have been shown to be less sensitive to sound when they are in a feeding mode. Therefore, this mitigation measure is questionable.