



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT
Alaska Outer Continental Shelf Region
3801 Centerpoint Drive, Suite 500
Anchorage, Alaska 99503-5823

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Regional Director, Alaska OCS
Bureau of Ocean Energy Management
Anchorage, Alaska

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Memorandum

To: Regional Supervisor, Leasing and Plans

From: Regional Supervisor, Environment *Sharon Johnson*

Subject: Completion of Endangered Species Act Section 7 Consultation with the USFWS

A copy of the May 8, 2012, Programmatic Biological Opinion (BO) issued by the U.S. Fish and Wildlife Service (USFWS) on the BOEM Program in the Chukchi Sea and Beaufort Sea planning areas has been provided under separate cover. We remain fully compliant with the Endangered Species Act (ESA) regarding ESA-listed species and designated critical habitat under jurisdiction of the USFWS.

Please note Term and Condition (T&C) 2b on page 131 of the BO:

“To prevent impacts to molting spectacled eiders that are likely less mobile and more energetically stressed during this flightless period, BOEM and BSEE will impose mitigation measures on their lessees, permittees and agents of their lessees and permittees requiring that no marine deep penetration survey, high-resolution survey, or exploratory drilling vessels (and any vessels supporting, accompanying, or otherwise assisting them) operate in the LBCHU [Ledyard Bay Critical Habitat Unit] after July 1 of each year.”

Under this non-discretionary requirement, Shell or their subcontractors would not be authorized to install or retrieve passive acoustic monitoring devices within the LBCHU as part of their proposed Marine Mammal Monitoring and Mitigation Plan (4MP). We understand that the Incidental Harassment Authorization (IHA) for the Shell exploration activities directed Shell to: “...deploy acoustic recorders widely across the U.S. Chukchi Sea... To the extent practicable, this program must be implemented as detailed in the 4MP.”

There is no ESA consultation coverage for these activities and such activities are not practicable under our consultation.

Similarly, the IHA directs Shell to conduct low-level (<1,500 ft) marine mammal survey flights over the LBCHU; however, T&C 2a (page 131 of the Programmatic BO) states:

“To prevent impacts to molting spectacled eiders that are likely less mobile and energetically stressed during this flightless period, BOEM and BSEE will require their lessees, permittees, and agents of their lessees and permittees to implement mitigation measures requiring that aircraft not fly below 1,500 ft over ... the LBCHU between

July 1 and November 15. If weather prevents attaining this altitude, aircraft will use pre-designated flight routes.”

On page 115 of their May 2012 Final Environmental Assessment, the National Marine Fisheries Service indicated Shell is not precluded “...from abiding by more stringent restrictions imposed by other agencies in certain areas to mitigate impacts to marine and coastal birds (or other species).” To comply with non-discretionary T&C 2a of the Programmatic BO, low-level marine mammal survey flights over the LBCHU conducted under Shell’s 4MP are not authorized.