


United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
Fairbanks Fish and Wildlife Field Office
101 12th Avenue, Room 110
Fairbanks, Alaska 99701
May 8, 2012



MEMORANDUM

To: Bureau of Ocean Energy Management & Bureau of Safety and Environmental Enforcement, Alaska OCS Region

From: Sarah C. Conn, Fairbanks Field Office Supervisor 

Subject: Revised Biological Opinion and Conference Opinion for Oil and Gas Activities in the Beaufort and Chukchi Sea Planning Areas

This memo transmits the U.S. Fish and Wildlife Service's (Service) biological opinion (BO) in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*, ESA), on effects to polar bears (*Ursus maritimus*), polar bear critical habitat, spectacled eiders (*Somateria fischeri*), spectacled eider critical habitat, and Alaska-breeding Steller's eiders (*Polysticta stelleri*) of the Bureau of Ocean Energy, and Management's (BOEM; formerly Bureau of Ocean Energy, and Management, Regulation, and Enforcement [BOEMRE]) proposed Action on the Arctic Outer Continental Shelf (Arctic OCS) Chukchi and Beaufort Sea Planning Areas. This document also serves as a conference opinion on the effects of the proposed Action on Kittlitz's murrelet (*Brachyramphus brevirostris*) and yellow-billed loon (*Gavia adamsii*), which are candidate species under the ESA. Because BOEMRE initiated this consultation, its resulting agencies BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) are covered by this consultation.

BOEM has statutory authority to complete its OCS energy development actions as incremental step consultations under the ESA. This BO authorizes activities under the first incremental step (leasing and exploration) and provides an incidental take statement for activities in this step. Further, we have considered if future project actions would violate section 7(a)(2) of the ESA; i.e., jeopardize the continued existence of species or destroy or adversely modify critical habitat.

First Incremental Step – Leasing and Exploration

Based on the information provided on the potential activities during leasing and exploration, data currently available on the status of candidate species, listed species, and designated critical habitats, the environmental baseline, an assessment of the effects of the proposed Action, and cumulative effects, the Service has determined that it is unlikely that activities occurring in the first incremental step will violate section 7(a)(2) of the ESA. However, incidental take of listed species is anticipated. While this take is authorized for listed eiders, it will be minimized through the reasonable and prudent measures and terms and conditions described below. These terms and conditions are mandatory for BOEM and BSEE to implement.

Future Actions

While the nature and location of future activities is unknown, development scenarios were used to identify the types and potential scale of impacts on listed and avian candidate species and critical habitat. Potential adverse effects may result from the proposed Action. These impacts range from minor to potentially significant depending on their location and magnitude in relation to listed species distribution and life history. However, while a small subset of potential future activities may have significant impacts, they cannot be said to be reasonably certain to occur. Therefore, the Service concludes that at this time future incremental steps are *not likely to jeopardize listed and candidate species, nor are activities that may occur anticipated to destroy or adversely modify designated critical habitat*. However, prior to authorizing any activities not described in the first incremental step of this BO, BOEM must conduct additional section 7 consultation. While not likely, it is possible that as the status of species and critical habitats and their environmental baseline changes and as additional information about the nature, location, and timing of proposed oil and gas activities becomes available, the Service may determine that proposed activities are likely to jeopardize listed species or result in destruction or adverse modification of critical habitat.

Terms and Conditions

As described above, incidental take has been authorized for activities which may occur during leasing and exploration. Associated with this incidental take authorization are terms and conditions. These are described below and are non-discretionary, and must be undertaken by BOEM and BSEE so they become binding conditions or stipulations of leases, permits, or other documents (e.g., in Notice/Information to Lessees) issued to a lessee or its agent, as appropriate, for the exemption in section 7(o)(2) to apply. These Terms and Conditions also apply to non-permitted activities such as ancillary activities. BOEM has a continuing duty to regulate activities covered by this incidental take statement. **If the BOEM (1) fails to implement the terms and conditions, or (2) fails to require any lessee or its agent to adhere to the terms and conditions of the incidental take statement through enforceable terms/stipulations that are added to the permit/lease or the protective coverage of section 7(o)(2) may lapse.** To monitor the impact of incidental take, BOEM and BSEE must report the progress of the Action and its impact on the species to the Service as specified in the ITS.

Consistent with the ESA and regulations at 50 CFR 402.14(i), incidental take statements for marine mammals are not included in formal consultations until regulations, authorizations, or permits under the Marine Mammal Protection Act (MMPA) 101(a)(5) are in effect. The Service is not including an incidental take statement for polar bears at this time because the incidental take of marine mammals has not been authorized under the above statute. However, authorization for incidental take under the MMPA is available for all of the proposed Action's oil and gas activities throughout the entire Action Area via the Chukchi Sea (73 FR 33212) and Beaufort Sea (76 FR 47010) Incidental Take Regulations (ITRs). Intentional take is also available under the MMPA.

The Service previously consulted on and reached a non-jeopardy conclusion for these ITRs and does not expect take associated with the proposed Action to exceed the maximum allowed under these ITRs. Because lessees will likely obtain LOAs pursuant to ITRs on which we have previously reached a non-jeopardy conclusion, we expect all incidental take associated with the

proposed Action to be authorized under the MMPA and thus the ESA. BOEM and BSEE cannot authorize activities that do not comply with the MMPA and ESA; however, BOEM and BSEE cannot require that a lessee or permittee (or the agent of a lessee or permittee) request an LOA under the MMPA. Should the lessee or permittee (or the agent of a lessee or permittee) decline to apply for an LOA, BOEM would need to consult separately under the ESA if the proposed activity may affect polar bears.

Because the date for completion of the annual report (March 30th) has passed, the first report should be provided by BOEM and BSEE on or before June 15, 2012.

Terms and Conditions:

RPM 1 – Work jointly with the Service to develop and implement strategies to avoid and minimize bird collisions.

T&C 1a. BOEM and BSEE will require lessees and their contractors to implement on drilling rigs lighting protocols aimed at minimizing the radiation of light outward from exploratory drilling structures. These requirements establish a coordinated process for a performance-based objective rather than pre-determined prescriptive requirements. The performance-based objective is to minimize the radiation of light outward from exploration structures while operating on a lease or if staged within nearshore Federal waters pending lease deployment. Lessees must provide BOEM with a written statement of measures that will be or have been taken to meet the lighting objective, and must submit this information with an EP when it is submitted for regulatory review and approval pursuant to 30 CFR 550.203.

T&C 1b. BOEM and BSEE will require their lessees, permittees or agents of their lessees and permittees to minimize the use of high-intensity work lights on vessels, especially within the 20-m bathymetric contour. Exterior lights will only be used as necessary to illuminate active, on-deck work areas during periods of darkness or inclement weather; otherwise they will be turned off. Interior and navigation lights should remain on as needed for safety.

T&C 1c. BOEM and BSEE will require their lessees, permittees, and agents of their lessees and permittees to report avian collisions with vessels or drilling structures within three days to BOEM/BSEE (whichever authorized the activity) who will then provide these avian collision reports to the Endangered Species Branch Chief, USFWS, Fairbanks Fish & Wildlife Field Office (FFWFO) within 7 days. Minimum information for strike reporting will include species, date/time, location, weather, and identification of the vessel or drilling structure involved and its operational status when the strike occurred. Bird photographs are not required, but would be helpful in verifying species. The FFWFO should be contacted regarding the recovery or transport of dead birds.

RPM 2 – Work jointly with the Service to avoid and minimize impacts of disturbance from aircraft, vessels, and drilling operations on listed eiders.

T&C 2a. 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 spring lead system between April 1 and June 10 and over the LBCHU between July 1 and November 15. If weather prevents attaining this altitude, aircraft will use pre-designated flight routes. Predesignated flight routes will be established by the lessee/permittee and BOEM, in collaboration with the FWS, during review of the exploration activity. This requirement applies during the performance of marine deep penetration surveys, high-resolution survey activities, and exploration drilling activities. Low-level flights associated with a medical or other emergency must be reported within 24 hours to BOEM or BSEE (whichever authorized the activity), who will then provide these reports to the Endangered Species Branch Chief, USFWS FFWFO within 7 days. Any lessee, permittee or agent of a lessee or permittee that does not report a low-level flight (≤ 1500 ft) within 24 hours to BSEE will be considered out of compliance with this condition.

T&C 2b. 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 LBCHU¹ after July 1 of each year. The only exceptions for such vessels to enter the LBCHU after July 1 are to support any exploratory wells that could be drilled on a lease block in the LBCHU or for reportable marine casualties as defined in 46 CFR 4.05-1 or hazardous conditions as defined by 33 CFR 160.204. Entries into the LBCHU after July 1 due to marine casualties or hazardous conditions will be reported to BSEE within 24 hours, and BSEE will report the activity to the Endangered Species Branch Chief, USFWS FFWFO, within 7 days. Any lessee, permittee or agent of a lessee or permittee that does not report an entry into the LBCHU within 24 hours to BSEE will be considered out of compliance with this condition.

T&C 2c. To prevent impacts to migrating listed eiders in the spring, BOEM and BSEE will require their lessees, permittee, and agents of their lessees or permittees to impose and implement mitigation measures requiring that no marine deep penetration survey, high-resolution survey, or exploratory drilling vessels (and any vessels supporting, accompanying, or otherwise assisting them) may operate in the spring lead system³ between April 1 and June 10 of each year. The only exceptions for such vessels to enter the spring lead system between April 1 and June 10 are to support exploratory wells that could be drilled on a lease block in the spring lead system or for reportable marine casualties as defined in 46 CFR 4.05-1 or hazardous conditions as defined by 33 CFR 160.204. Entries into the spring lead system between April 1 and June 10 due to marine casualties or hazardous conditions will be reported to BSEE within 24 hours, and BSEE will report the activity to the Endangered Species Branch Chief, USFWS FFWFO, within 7 days. Any lessee, permittee or agent of a lessee or permittee that does not report vessel

¹ If the final 2012-2017 OCS Oil and Gas Leasing Program or subsequent sales excludes LBCHU, there would be no expressed need for lessees or their agents to enter the LBCHU for exploration drilling purposes.

entries into the spring lead system between April 1 and June 10 within 24 hours to BSEE will be considered out of compliance with this condition.

T&C 2d. For any drill sites located within the LBCHU³, drill ships and supporting, assisting, or accompanying vessels are required to enter and exit the LBCHU in a manner that minimizes travel within the LBCHU. Supporting, assisting, or accompanying vessels are required to remain in close association with the drill ship, for reportable marine casualties as defined in 46 CFR 4.05-1 or hazardous conditions as defined by 33 CFR 160.204. BOEM and BSEE will require their lessees, permittees, and agents of their lessees and permittees to regularly report any eiders observed within the LBCHU during drilling operations to the BSEE. BSEE will provide these reports to the Endangered Species Branch Chief, USFWS FFWFO on a monthly basis.

For the purposes of **T&C 2a** (minimizing disturbance by aircraft) and **T&C 2c** (minimizing disturbance by drilling activities within the LBCHU), the spring lead system is defined as the area landward of a line drawn from Point Hope to the corner of the LBCHU at 69°12'00"N x 163°13'00"W, to the corner of the LBCHU at 70°20'00"N x 164°00'00"W to 71°39'35"N x 156°00'00"W (Figure 1).

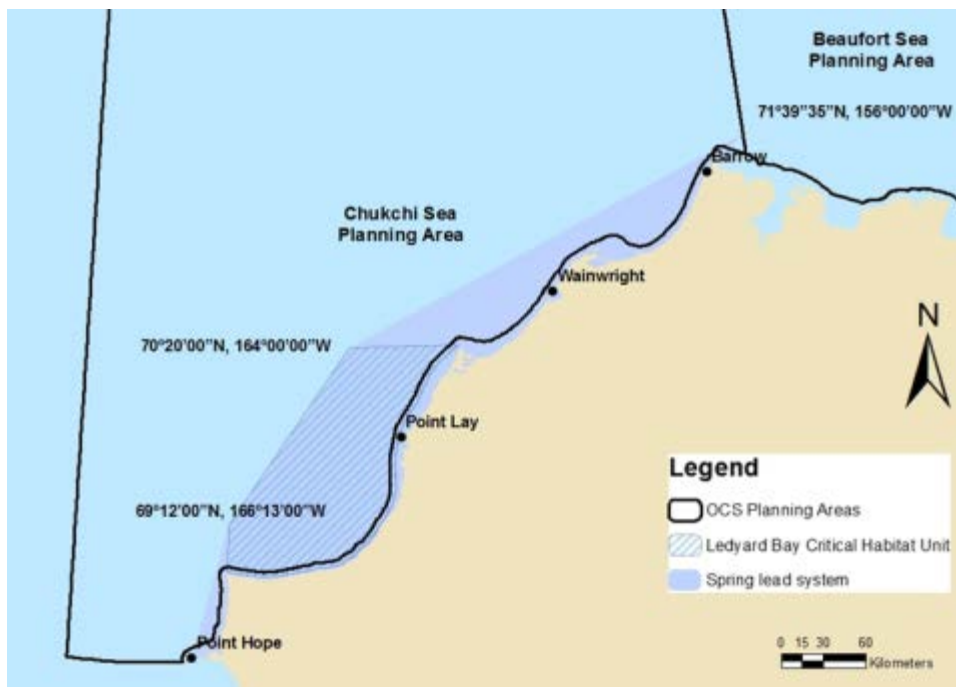


Figure 1. Spring lead system for the purposes for the *Terms and Conditions* section.

RPM 3 – Avoid or minimize oil spills during the first incremental step.

T&C 3. BSEE shall report oil spills \geq 1 barrel as defined by 30 CFR 254.46, if the spill contacted water or ice, to the Endangered Species Branch Chief, USFWS FFWFO within 7 days. A follow-up report by BSEE is required within 30 days after the first report if the oil contacted any birds in the area. The follow-up report should describe the nature of that contact (e.g., swam or dove into it).

Reporting Requirements

The BSEE, Alaska OCS Region, must submit an Annual Monitoring Report by March 30th of each year to the Endangered Species Branch Chief, USFWS, FFWFO, and the Regional Supervisor – Environment, BOEM, Alaska OCS Region. The purpose of this report is to monitor the effectiveness of RPMs/T&Cs and effects of the first incremental step on critical habitat. The Annual Monitoring Report will include the following information:

- A summary of avian collisions reported to BSEE during the previous calendar year (RPM 1).
- A summary of low-level flights over LBCHU and spring lead system reported by the lessees, permittees of BOEM or BSEE or the agents of lessees or permittees for medical or other emergency (RPM 2/LBCHU);
- A summary of vessel entries into LBCHU after July 1 for marine casualty or hazardous conditions (RPM 2/LBCHU);
- A summary of vessel entries into spring lead system from April 1th to June 10th (RPM 2/LBCHU);
- A summary of the location and number of OCS wells drilled in the preceding calendar year (RPM 2/LBCHU); and
- A summary of all reported spills \geq 1 barrel for the preceding calendar year (RPM 3)

Please see the *Conservation Recommendation* section for recommended measures that will likely minimize effects on polar bear critical habitat. To monitor impacts on critical habitat we request reporting of:

- number of days during drilling operations where ice management is required; please report any ice seal sightings, and effect ice breaking has on these species during these operations (Polar Bear Critical Habitat).

The Annual Monitoring Report should also include:

- A summary of any notices of non-compliance issued to the lessees and permittees of BOEM or BSEE and the agents of their lessees and permittees for activities conducted in the preceding year. If new incidents of non-compliance from previous years emerge, report these incidents in the next annual report.
- A summary of how BOEM and BSEE are implementing conservation recommendations (see below).

Thank you for your cooperation in the development of this BO. If you have any comments or require additional information, please contact Sarah C. Conn, Field Office Supervisor, Fairbanks Fish and Wildlife Field Office, 101 12th Ave., Fairbanks, Alaska, 99701.