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VIA EMAIL (pr1.alaskaeis@noaa.gov)

July 30, 2007

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 20910-3225

Re: Seismic Surveys in the Beaufort and Chukchi Seas, Alaska – Draft Programmatic
Environmental Impact Statement (OCS EIS/EA MMS 2007/001)

Dear Mr. Payne:

This letter provides the comments of ConocoPhillips Alaska, Inc. (CPAI) regarding the Minerals Management Services' (MMS) Draft Programmatic Environmental Impact Statement (DPEIS), OCS EIS/EA MMS 2007/001. The DPEIS addresses the potential environmental impacts that may result from seismic surveys in the Beaufort Sea and Chukchi Sea during the 2007 to 2012 five-year period, as well as a range of alternative mitigation measures intended to address potential impacts to the Bering-Chukchi-Beaufort (BCB) Seas bowhead whale population.

CPAI is Alaska's largest oil and gas producer. As the owner of the most state and federal exploration leases in Alaska, and a major owner in the two largest production fields on Alaska's North Slope, CPAI is a long-standing and active participant in oil and gas exploration and development activities in Alaska. Among other ongoing activities, CPAI conducted seismic exploration in federal Outer Continental Shelf (OCS) waters of the Chukchi Sea in 2006. CPAI agreed with another company to pay part of the costs to obtain additional seismic data in the Chukchi Sea OCS in 2007. CPAI has been an active participant in prior decisions of MMS and the National Marine Fisheries Service (NMFS) regarding seismic exploration in Alaska's OCS, including MMS' national plan for the 2007-2012 oil and gas leasing program in the OCS.

The Alaska Oil and Gas Association (AOGA), the American Petroleum Institute (API) and the International Association of Geophysical Contractors (IAGC) have submitted a separate comment letter regarding the DPEIS ("AOGA's comments"). CPAI participated in the development of AOGA's comments. CPAI concurs in, and expressly adopts by reference, AOGA's comments submitted on July 30, 2007 by AOGA, API and IAGC regarding the DPEIS. The following additional comments are intended to amplify and to supplement AOGA's comments as adopted by CPAI.

1. CPAI strongly concurs in the comment that the DPEIS reflects an unrealistic worst-case scenario effects analysis. *See* AOGA's comments at pages 11 and 12. Among other things, CPAI agrees that the assumption of twelve concurrent seismic surveys in the Beaufort and Chukchi Seas is entirely unrealistic, rather than "foreseeable." It is known that there will be only one non-concurrent seismic survey in the Chukchi and Beaufort Seas this year. In future years, it is foreseeable that the number of surveys will range from year to year from a minimum of zero to a maximum of six total surveys; however it is not foreseeable that the maximum of six total surveys will be conducted in all (or even in most) years. The prediction of twelve concurrent surveys in each year in the DPEIS, or any similar number of seismic surveys, cannot be reconciled with the availability and cost of seismic survey vessels, crew and logistical support, sonic interference resulting from concurrent surveys, and existing limits on the timing and proximity of seismic surveys resulting from either or both regulatory requirements and weather/ice patterns.

2. There is no evidence at all that seismic activities in the Beaufort and Chukchi Seas, with the use of the 190/180 dB exclusion zone and other routine mitigation and monitoring, will have an adverse population-level impact on the BCB Seas stock of bowhead whales. There is no evidence that seismic exploration has ever resulted in a reduction of any marine mammal stock.

3. The 120 dB safety zone identified in some of the alternatives in the DPEIS cannot be safely or effectively monitored and there is a lack of scientific evidence to support the implementation of the 120 dB safety zone.¹ In connection with CPAI's 2006 seismic program, formal declarations were submitted by CPAI regarding the safety and feasibility of monitoring the 120 dB zone.² The information provided in these declarations remains accurate. Aerial monitoring of the 120 dB zone is unsafe due to the vast size of the zone, and to extreme and unpredictable weather conditions in a very remote area. In addition, monitoring the 120 dB zone using existing Passive Acoustic Monitoring (PAM) technology has no credible prospect of being effective. It serves no rational purpose to require use of PAM technology when the resulting information is not a credible basis for detecting or locating whales in the 120 dB isopleth.

4. The impracticalities of implementing the 160 dB safety zone also identified in some of the DPEIS alternatives are similar to those for the 120 dB zone. A 160 dB safety zone is very large, resulting in increased human safety risks and very substantial increased costs. Existing data do not support the presence of large whale aggregations in this zone, indicating that the cost is disproportionate to any theoretical potential benefit. Moreover, as with monitoring the 120 dB zone, existing PAM technology cannot credibly detect or locate whales in the 160 dB zone.

¹ *See CPAI v. NMFS*, Case No. 3:06-cv-0198: Declaration of Jay Brueggeman (with attachments). This declaration has previously been provided by CPAI to MMS and NMFS on multiple occasions and is incorporated into these comments by reference.

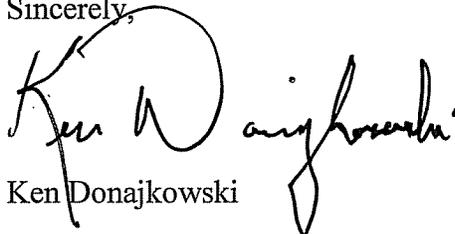
² *See CPAI v. NMFS*, Case No. 3:06-cv-0198: Declaration of Jay Brueggeman (with attachments); Declaration of Bruce St. Pierre (with attachments); Declaration of Michael J. Faust; Second Declaration of Michael J. Faust; Declaration of Dave Smith (with attachment). These declarations have previously been provided by CPAI to MMS and NMFS on multiple occasions and are incorporated into these comments by reference.

5. CPAI opposes adoption of Alternative 8, which would require implementation of unspecified blackout dates (time and area closures). As detailed in AOGA's letter in § V.D.3, which summarizes CPAI's analysis of sea ice patterns in the Chukchi and Beaufort Seas, and provides CPAI's lost opportunity costs and monitoring cost projections, blackout dates would reduce the already limited window for seismic data acquisition in the remote and unpredictable Beaufort and Chukchi Seas to the point that the costs and risks would outweigh the required financial investment. These concerns are *not* hypothetical. As MMS well knows, in 2006 Shell agreed to abide by blackout dates only to have its entire seismic survey program in the Beaufort Sea precluded by the ice conditions. These same considerations were in part responsible for the withdrawal of CPAI's and GXT's 2007 G&G permit applications. NMFS has an obligation to balance competing public needs. "Under the Marine Mammal Protection Act and the Endangered Species Act, NOAA's National Marine Fisheries Service recovers protected marine species (i.e. whales, turtles) without unnecessarily impeding economic and recreational opportunities."³ Not being able to economically develop these resources is in direct conflict with both the NMFS's and MMS's missions to provide for a balanced approach to resource exploration and environmental protection.

Geophysical surveys using seismic reflection are an essential, state-of-the-art, component of oil and gas exploration in the OCS. As one of the earliest components of the lengthy and costly process leading from leasing of lands, to exploration, development and production of hydrocarbon resources, seismic surveys are both critical to OCS resource development mandated by Congress through the Outer Continental Shelf Lands Act and, in the marine environment, a low impact activity with no detectable long-term effects. *See* MMS 2006 PEA p.3 ("The MMS needs geological and geophysical seismic-survey information to fulfill its statutory responsibilities to ensure safe operations, support environmental impact analyses, . . . and perform other statutory responsibilities."). Given the importance of geophysical survey data, there is sincere need for MMS and NMFS to realistically assess probable impacts. Instead, the worst-case scenario impacts analysis presented in the DPEIS stacks up a series of unreasonable assumptions and speculation to the point that unwarranted and impracticable restrictions have been proposed to mitigate against improbable adverse impacts for which there is a profound lack of supporting scientific evidence. However well-intended this kind of analysis may be, it is contrary to law and very misguided.

In sum, for the reasons detailed in AOGA's comments and this letter, CPAI urges MMS and NMFS to adopt Alternative 6 as the preferred alternative. Thank you for your consideration of our comments on the DPEIS.

Sincerely,

A handwritten signature in black ink that reads "Ken Donajkowski". The signature is written in a cursive style with a large, looping initial "K".

Ken Donajkowski

³ See NMFS Internet website at <http://www.nmfs.noaa.gov/aboutus.htm>.

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cc: Mayor Edward Itta, NSB Mayor
Mr. Jim Lecky, NMFS
Mr. John Goll, Regional Director MMS

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bcc: Erec Isaacson, VP Exploration
Steve deAlbuquerque, Director, Permits and Science
Caryn Rea, Environmental Coordinator
Bruce St. Pierre, Environmental Coordinator
Jill McLeod, Legal
Jeff Leppo, Stoel Rives