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January 6, 2005

Minerals Management Service
381 Elden Street, MS 4024
Herndon, VA 20170-4817

Attention: Rules Processing Team (RPT)

Ref: Minerals Management Service Notice of Proposed Rulemaking
Oil and Gas and Sulfur Operations on the Outer Continental Shelf
Plans and Information
Protection of Marine Mammals and Threatened and Endangered Species
RIN 1010-AD10
70 Federal Register 52953-52956 (September 6, 2005)

Exxon Mobil Corporation is pleased to have this opportunity to comment on the proposed rule under 30 CFR Part 250, Subpart B, Plans and Information.

The proposed rule would require lessees of federal oil and gas leases in the Outer Continental Shelf (OCS) to provide information on how they will meet the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) to enable the Minerals Management Service (MMS) to fulfill its responsibilities under the ESA and MMPA. Companies that operate on the Outer Continental Shelf already provide site specific information in Exploration Plans, Development and Production Plans and Development Operations Coordination Documents describing the biological environment, and environmental monitoring and mitigation measures to be undertaken to minimize impacts, along with environmental impact analysis and post-approval monitoring as appropriate.

ExxonMobil is concerned that the proposed rule assumes that offshore oil and gas activities will result in "takes" of marine mammals and endangered species. Further, it places the burden of defining what a "take" is for purposes of the MMPA and ESA on oil and gas lessees and operators. This assumption is expressed most succinctly in the rule itself where MMS requires an applicant to "describe your monitoring program for incidental takes of marine mammals, as appropriate, if you have not already received authorization for incidental take as may be required under the Marine Mammal Protection Act." [Proposed rule 250.221(a)]. However, nowhere in the notice does MMS set forth a scientific risk assessment for this assumption, nor has MMS defined what constitutes a "take" in this instance to enable the regulated community to comply with the rule. MMS should base its rules on scientific assessment of risk to marine mammals from industry operations and on a sound, scientific demonstration of impact on populations rather than relying on arbitrary assumptions that such impacts occur.

We understand that the definition of a take with respect to oil and gas activities is to be set forth in regulations NOAA issues under MMPA. The incidental take regulations define what

mitigation efforts, if any, need to be undertaken to assure compliance with MMPA and then recommendations are made in applicable biological opinions issued under the ESA.

MMS filed a request with NOAA over two years ago for an incidental take regulation applicable to industry seismic activities on the OCS, but it does not appear that any of these regulatory steps with respect to incidental take regulation issuance or recommendations have taken place. In addition, NOAA is in the process of promulgating an incidental take regulation at the request of MMS and industry with respect to platform removal. Notwithstanding this regulatory activity and prior to the promulgation of either of these NOAA regulations, MMS would require lessees and operators to implement monitoring and mitigation measures "as appropriate" through this proposed rule. We suggest that MMS and industry work together to obtain the promulgation of the incidental take regulations and then determine what further actions, if any, need to be taken with respect to the MMS regulatory program in connection with MMPA and ESA.

In the discussion in the Notice under the sub-heading "Procedural Matters," MMS has provided an explanation of why this proposed rule is not procedurally defective, but the reasons given do not specifically address the provisions of this rule. For example, MMS states that the rule does not affect how lessees or operators interact with other agencies, nor does the rule affect how MMS will interact with other agencies. We do not understand how this can be true. Assuming enactment of the proposed rule, a lessee or operator must describe how mitigation will reduce the potential for takes under ESA and MMPA. In the absence of regulations that define what constitutes a "take," the lessee or operator will not know how to comply with the proposed rule without interacting with the ESA/MMPA regulatory agencies. Clearly, there is a significant interaction with other agencies that has not been acknowledged by MMS if the rule, as proposed, is adopted.

The proposed rule also does not address the time required for interaction with these other regulatory agencies. If a consequence of this rule is to impose additional workload on another agency, there well may be significant delays in exploring for and developing oil and natural gas supplies in waters of the United States while this interaction occurs. In contrast to the Notice's conclusions related to Executive Order 13211, MMS has not addressed these possible delays and their impact on the nation's energy supply as part of the proposed rule.

ExxonMobil believes MMS should, along with industry, focus its efforts on the development of the incidental take regulations requested from NOAA, and on clarifying the respective roles of MMS and NOAA with respect to offshore oil and gas activities. We submit that the Notices to Lessees that MMS has issued with respect to marine mammal and endangered species issues is a proper MMS response to MMPA and ESA requirements pending NOAA's promulgation of incidental take regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. E. Hasmus". The signature is fluid and cursive, with a large loop at the end.