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Jaron Ming, Pacific Region Director
Bureau of Safety and Environmental Enforcement
770 Paseo Camarillo, 2nd Floor
Camarillo, CA 93010-6064
jaron.ming@bsee.gov

Ellen Aronson, Regional Director
Bureau of Ocean Energy Management
Pacific OCS Region
770 Paseo Camarillo, 2nd Floor
Camarillo, CA 93010-6064
ellen.aronson@boem.gov

Re: Key Recommendations to Ensure Disclosure and Regulation of Offshore Fracking in the Pacific Region

Because of the significant dangers of offshore hydraulic fracturing (fracking), I am writing to urge the Bureaus to take five key actions:

1. Deny applications for permits to drill that involve fracking or other unconventional well stimulation, and rescind any permits for those activities that have yet to be completed;
2. Require companies to revise their oil and gas development plans before engaging in fracking activities;
3. Submit all revised plans to the California Coastal Commission for oversight and consistency review;
4. Conduct a full environmental review of any offshore fracking activities; and
5. Provide public access to information about Pacific OCS plans, permits, and environmental compliance.

These steps are necessary to protect wildlife and public health while ensuring full compliance with environmental laws. However, the best approach to avoid harm to California's coastal environment is to prohibit offshore fracking altogether.

I am also writing in support of the letter from the California Coastal Commission dated June 16, 2014. That letter requested that the Bureaus provide greater transparency and consistency review of federal approvals of activities that involve fracking. The five actions requested here complement the Commission's requests.

1. Deny and rescind applications for permits to drill that involve fracking

The Bureaus must not approve any applications for permits to drill that include fracking or other unconventional well stimulation activities because of their potential to harm the environment. In general, offshore oil and gas "operations shall be conducted in a manner to protect against harm or damage to life (including fish and other aquatic life), property, natural resources of the OCS … or the marine, coastal, or human environment." 30 C.F.R. §§ 250.500, 250.600.

Fracking has significant environmental impacts including water pollution, air pollution, and seismic activity.[1] The chemicals used in fracking are toxic to humans and wildlife. The platforms where fracking has occurred discharge produced waters, including fracking waste, into the ocean.[2] Fracking chemicals have been found to have ecological effects, indicating that they can harm aquatic and other wildlife. Scientific studies indicate that at least 10 chemicals used in offshore fracking in California could kill or harm a broad variety of marine organisms, including sea otters, fish, and invertebrates, if released into the environment. There is also an increased risk of a chemical or oil spill occurring as a consequence of fracking activities. Fracking also increases air pollution and the risk of earthquakes. Additionally, these consequences of fracking harm threatened and endangered species and degrade their habitat.

Records show that the Bureau of Ocean Energy Management (BOEM) has approved at least 15 applications for permits to drill that include fracking.[3] Not only are these permits inconsistent with the Outer Continental Shelf (OCS) Lands Act because they do not protect against harm to the environment, the permits are also inconsistent with the applicable Development and Production Plans. The plans for the platforms Gail, Gilda, and Hidalgo — where BOEM has approved fracking activities — are silent on fracking.[4] Because fracking is not described as part of the drilling procedures under these plans, the permits that allow fracking fail to "conform to the activities described in detail in [the] approved [Development and Production Plan]." 30 C.F.R. § 550.281(b). Moreover, the OCS Lands Act requires that operators conduct all activities according to their approved Development and Production Plans or be subject to enforcement and lease cancellation. 30 C.F.R. § 550.280.

For these reasons, BOEM may not issue permits for fracking and must rescind any approvals of applications for permits to drill that include fracking activities because they violate the OCS

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[1] Center for Biological Diversity, Troubled Waters: Offshore Fracking's Threat to California's Ocean, Air and Seismic Stability (Sept. 2014) available at http://www.biologicaldiversity.org/campaigns/california_fracking/pdfs/ShakyGroundReport-March2014.pdf.

[2] Envtl. Prot. Agency, Reissuance of National Pollutant Discharge Elimination System (NPDES) General Permit for Offshore Oil and Gas Exploration, Development and Production Operations Off Southern California, 79 Fed. Reg. 1643 (Jan 9, 2014).

[3] Presentation of Alison Dettmer, California Coastal Commission, Briefing on Offshore Fracking and Other Well Stimulation Treatments (Feb. 12, 2014).

[4] Chevron U.S.A., Supplement To Santa Clara Unit Development And Production Plan: Platform Gall And Associated Pipelines (Jan. 1986); Union Oil of California, Santa Clara Unit Amended Plan Of Development Lease OCS P-0216 (Nov. 1979); Standard Oil of California, Santa Clara Unit Plan of Development Parcel OCS P-0215, 0216, 0217 (Oct. 1976); Chevron, Development And Production Plan: Platform Hidalgo And Associated Pipelines OCS Lease P 0450 (May 1984).

Lands Act and its regulations. As of February 2014, operators had not yet used four permits for fracking,[5] and these permits should be cancelled.

2. Require companies to revise their oil and gas development plans

Second, because the Development and Production Plans in the Pacific do not adequately cover fracking and other unconventional well stimulation techniques, BOEM may not allow fracking until and unless those plans are revised. The Bureaus have a duty to periodically review and require revision of plans:

> The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

43 U.S. C. § 1351(h)(3); *see also,* 30 C.F.R. § 550.284.

With the increasing use of fracking by the industry and recent developments in fracking techniques, the Bureaus must require Pacific operators to revise their plans. Moreover, most of the Pacific OCS plans are woefully outdated in many other respects beyond their treatment of fracking. Thus, the Bureaus must review each and every Pacific OCS plan and make a determination whether revision is required.

For platforms where fracking has occurred or has been approved, the Bureaus must require a revision of the plan or cancel the lease pursuant to 43 U.S. C. § 1351(j). BOEM may not approve applications for permits to drill that include fracking or other unconventional well stimulation without requiring revision or supplemention of each of the applicable development plans. A plan must be revised under several circumstances enumerated in 30 C.F.R. § 550.283:

> (a) *Revised OCS plans.* You must revise your approved EP, DPP, or DOCD when you propose to:
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> (1) Change the type of drilling rig (e.g., jack-up, platform rig, barge, submersible, semisubmersible, or drillship), production facility (e.g., caisson, fixed platform with piles, tension leg platform), or transportation mode (e.g., pipeline, barge);
> (2) Change the surface location of a well or production platform by a distance more than that specified by the Regional Supervisor;
> (3) Change the type of production or significantly increase the volume of production or storage capacity;
> (4) Increase the emissions of an air pollutant to an amount that exceeds the amount specified in your approved EP, DPP, or DOCD;
> (5) Significantly increase the amount of solid or liquid wastes to be handled or discharged;

[5] Presentation of Alison Dettmer, *supra* note 3.

(6) Request a new H2S area classification, or increase the concentration of H2S to a concentration greater than that specified by the Regional Supervisor;
(7) Change the location of your onshore support base either from one State to another or to a new base or a base requiring expansion; or
(8) Change any other activity specified by the Regional Supervisor.

(b) *Supplemental OCS plans.* You must supplement your approved EP, DPP, or DOCD when you propose to conduct activities on your lease(s) or unit that require approval of a license or permit which is not described in your approved EP, DPP, or DOCD. These types of changes are called supplemental OCS plans.

Fracking implicates several of the enumerated factors that require plan revision, including changing the type of drilling, type of production, air emissions, and volume of liquid wastes. Fracking is also an activity that was not previously described thus requiring a supplemental plan.

Accordingly, the Bureaus must require revised or supplemented development plans for any operators that intend to use fracking or other unconventional well stimulation.

3. Submit permits and revised plans to the California Coastal Commission for consistency review

The Bureaus should submit applications for permits to drill that involve fracking to the California Coastal Commission for consistency review. The Coastal Zone Management Act requires that applicants for federal permits to conduct an activity affecting a natural resource of the coastal zone of a state "shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program." 16 U.S.C. § 1456(c)(3)(A).

The Bureaus have failed to fulfill their duties to coordinate offshore oil and gas permitting activities with the California Coastal Commission to ensure consistency with the state's coastal management program. The Bureaus must, at minimum, notify the Commission about fracking permits under 15 C.F.R. § 930.79(b). But they must also ensure consistency through a full and thorough consistency review process.

The Commission has not previously been afforded the opportunity to review fracking for consistency with its coastal management program, including the Coastal Act. Although the Coastal Commission currently reviews OCS exploration, development, and production plans for consistency, 15 C.F.R. § 930.73, a review of the plans of companies that have engaged in fracking in federal waters reveals that these *none* of these plans specifically mention fracking.[6] In

[6] BOEM's regulations implementing OSCLA state that applications for permits to drill and other "permits to conduct activities under...approved [exploration and development plans]...are not subject to separate State CZMA consistency review." 30 C.F.R. § 550.281(c). However, the regulation requires the activities proposed in such applications "to conform to the activities *described in detail*" in approved plans. *Id.* § 550.281(d) (emphasis added). Any activity that is *not* described in detail in an approved plan must therefore be subject to consistency review under the CZMA – the exemption for consistency review does not cover fracking because the practice is not described in detail in exploration or development plans. *See* 15 C.F.R. § 930.71 (defining "federal license or permit in context of

other words, fracking is not an activity contemplated under any of these plans. As such, the Commission has not previously reviewed these activities for consistency.

Furthermore, the Bureaus must submit any revised or supplemental OCS plans to the California Coastal Commission for consistency review as required by the Coastal Zone Management Act and the OCS Lands Act. 30 C.F.R. § 550.285(c); 16 U.S.C. § 1456(c)(3)(b); 43 U.S.C. § 1351(d); 15 C.F.R. § 930.83. The Bureaus must also allow consistency review for amended plans, 15 C.F.R. § 930.82, and major amendments to permits. 15 C.F.R. § 930.51.

Here, the Bureaus must provide for Coastal Commission oversight. The Coastal Zone Management Act's consistency review requirements apply since fracking has never been reviewed by the Commission and because fracking activities have the potential to harm coastal resources.

4. Conduct a full environmental review of any offshore fracking activities in compliance with NEPA and the ESA

The Bureaus must disclose all environmental effects of its approvals of fracking activities, which include many significant adverse water, air, wildlife, and public health effects. The National Environmental Policy Act (NEPA) requires agencies to prepare an environmental impact statement to consider the effects of each "major Federal action[ ] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C)(i). At each stage of the OCS drilling process, the agency must comply with NEPA. *See Village of False Pass v. Clark*, 733 F.2d 605, 609 (9th Cir. 1984).

The Bureaus have never adequately analyzed the environmental impacts of offshore fracking. Prior to approving fracking activities, the Bureaus were required to prepare an environmental impact statement under NEPA, 42 U.S.C. § 4332(2)(C); consult under the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2); National Marine Sanctuaries Act, 16 U.S.C. § 1431 *et seq.*; and Magnuson Stevens Fisheries Conservation Act, 16 U.S.C. §§ 1801-1884; and obtain any necessary permits under the ESA and MMPA, 16 U.S.C. §§ 1361 *et seq*. These shortcomings were described in the Center's letter dated October 3, 2013, which is incorporated here by reference.

5. Provide public access to Pacific OCS permits, plans, and environmental documents

The Bureaus should provide public access to information about drilling permits, plans, and environmental compliance in the Pacific OCS. The ability of the state and public to participate and provide oversight of drilling activities in federal waters off the coast of California has been frustrated by the Bureaus' lack of transparency.

In a new report by the Office of the Inspector General, the auditing agency found that the Bureaus had failed to implement important procedures to provide greater consistency, oversight

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OSCLA as "any activity requiring a federal license or permit...*described in detail within an OCS plan*.") (emphasis added).

and transparency of offshore drilling.[7] Specifically, the report found inconsistent approval of permitting actions among regions, ineffective training of employees, and a failure to implement electronic permit systems. For the Pacific Region there is almost no information online and available to the public, which is inconsistent with the public data available for activities in the Gulf of Mexico.

The Pacific Region has conducted its regulatory duties without sufficient public and state oversight. The California Coastal Commission expressed concerns in its letter that the Bureaus had not informed staff of applications to frack or the Bureaus' final decisions. It emphasized that "it is incumbent on BOEM and BSEE to conduct more detailed scrutiny of the available procedural review mechanisms, and to do so in a manner that will provide greater transparency of decision-making and information-sharing."[8] Accordingly, the Bureaus should make permitting, planning, and environmental compliance information available online to the public.

Conclusion

In summary, fracking is a dangerous technology that threatens the California coastal environment. We recommend the five actions here because it is essential that the Bureaus provide environmental compliance and full transparency of their approval of fracking activities. However, the only way to fully ensure that California's coastal resources are adequately protected is to prevent offshore fracking in the first place.

If you would like to discuss these matters or provide an update on the Bureaus' activities related to fracking, please contact me at miyoko@biologicaldiversity.org.

Sincerely,

/s/Miyoko Sakashita
Miyoko Sakashita
Oceans Director

[7] Office of the Inspector General, Offshore Oil and Gas Permitting U.S. Department of the Interior (Sept. 2014).
[8] Letter from Alison Dettmer to BSEE/BOEM, Bureau of Safety and Environmental Enforcement (BSEE) and Bureau of Ocean Energy management (BOEM) Coordination with the Coastal Commission Under the Coastal Zone Management Act (CZMA) for Activities Involving Hydraulic Fracturing and Other Well Stimulation Techniques on the Outer Continental Shelf (OCS) at 6 (June 16, 2014).