

**Comments on the Notice of Intent to Prepare
an Environmental Impact Statement on the
Effects of Oil and Gas Activities in the Arctic Ocean
(75 Fed. Reg. 6175, Feb. 8, 2010)**

**At the Public Scoping Hearing in Anchorage, Alaska
March 23, 2010**

William G. Kelly, Jr.
General Counsel and Western Representative
Center for Regulatory Effectiveness

Good evening. I am General Counsel and Western Representative for the Center for Regulatory Effectiveness, which is headquartered in Washington, DC.

The Center will be filing detailed written comments by April 9, and tonight I will summarize some of the key portions of those comments.

First, especially given the delays so far, the EIS should be completed expeditiously. The CEQ regulations emphasize the need to avoid and minimize delays, and the Outer Continental Shelf Lands Act calls for expeditious development. The CEQ regulations provide specifically, in section 1501.8, that agencies are encouraged to set time limits for the EIS process, that they shall set time if requested by an applicant, and that a member of the public may request time limits. CRE is hereby requesting that the agencies set such time limits.

Also, rather than preparing a new draft EIS, NOAA and MMS should prepare a supplemental or revised draft EIS, retaining the original draft. The supplemental or revised EIS should be a separate document that explains the

Center for Regulatory Effectiveness

changes made to the original draft and details the new information on which those changes are based. This is the procedure most consistent with the CEQ regulations and precedent.

Second, the Minerals Management Service should continue to be a joint lead agency rather than a cooperating agency. NOAA does not have a more important role than MMS in the proposed federal actions and in analyzing their potential effects, and the indicated change in status of MMS might create the appearance of political bias, which would be contrary to both the CEQ directives for objectivity and the Outer Continental Shelf Leasing Act. MMS has special expertise in expected levels of future exploration activities, technical aspects of the exploration methods likely to be employed, the technical feasibility, practicability, and safety of those methods and mitigation measures, and economic impacts. MMS also has broad responsibility under OCSLA for analyzing and taking into consideration environmental impacts.

Third, NOAA and MMS should promptly issue a *Federal Register* Notice of Data Availability that provides stakeholders and the public with details of the new information that is said to necessitate a new draft EIS. The Notice of Intent does not provide any details at all on this "new information." Particularly if there are significant new scientific studies, stakeholders and the public will likely need more time than will be provided by the comment period on the new draft EIS to review, analyze, and comment on those studies. Also, the policies of the current Administration on openness and collaboration in governmental activities appear to direct disclosure of that data as soon as possible.

Center for Regulatory Effectiveness

Fourth, the new draft EIS will contain "influential scientific information" and "highly influential scientific assessments," and therefore that information and assessments must be subjected to independent, external peer review under the Information Quality Act's binding guidance on peer review. At present, NOAA is planning peer review of a generic criteria document for acoustic impacts on marine mammals and has posted that plan. Because peer review of the draft EIS will be required, and will be narrower than for the generic criteria document, that peer review can be conducted sooner and can then contribute to a draft generic criteria document. In conducting the peer review of the draft EIS, NOAA and MMS should ensure that the public has adequate opportunity to comment on the peer review plan and to participate in the peer review, as required by the OMB guidelines. The peer review plan for the draft EIS should be developed and posted for public comment as soon as possible.

Finally, the EIS must be based on the applicable regulatory standards and not on speculation or policy bias.

Thank you. If you have any questions, I would be pleased to attempt to answer them.