NATURAL RESOURCES
COMMITTEE • DEMOCRATS
RANKING MEMBER, PETER DeFAZIO

January 8, 2014

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C St. NW
Washington, D.C. 20240

The Honorable Kathryn Sullivan
Acting Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Ave, NW
Washington, DC 20230

Dear Secretary Jewell and Administrator Sullivan,

We are writing today to express our concern over, and request information regarding, the impacts of offshore oil and gas exploration and development activities on our living marine resources. Recent reports have shown that these activities can have significant impacts on marine mammals, fish, and their habitats, yet it is not at all clear that these impacts are being given serious consideration when decisions about offshore resource development are being made. This is of particular concern given our recent history with respect to offshore energy development.

In May of 2010, in the aftermath of the *Deepwater Horizon* disaster, the Committee on Natural Resources wrote to the Department of the Interior and the National Oceanic and Atmospheric Administration (NOAA) requesting all documents related to potential impacts to endangered species, marine mammals and fisheries, and all formal or informal consultations and official and unofficial comments under the Endangered Species Act and Marine Mammal Protection Act, as a result of energy development activities in the Gulf of Mexico, including leasing plans, lease sales, geological or geophysical exploration, exploration or development plans and drilling permits.

After many months, it became clear that few if any documents existed because few if any assessments, consultations, or comments had been carried out or provided. In other words,

energy development decisions in the Gulf of Mexico were being made by the Department of Interior with little or no input from NOAA, the agency responsible for protecting marine mammals, fish, and other marine species, and with little concern for impacts to these resources.

While we understand that there have been many changes in the administration of the offshore resource development program, we seek your assurances that NOAA is now a full partner in decisions related to this development, that this development does not adversely affect the ocean environment, and that the Memorandum of Understanding signed on May 19, 2011 between the Department of the Interior and the Department of Commerce is being adhered to. As we continue to gain more information about potential impacts of energy development offshore, these considerations will be critical.

For instance, last fall scientists published a new Natural Resource Damage Assessment (NRDA) study associated with the 2010 BP oil spill. As you know, the study is the first to assess the impact of the spill on deep-water marine life communities in the Gulf of Mexico, and the findings are sobering. While investigations of other offshore drilling sites have found pollution 300-600 yards from the wellhead, scientists studying the area around the *Deepwater Horizon* disaster site documented severe impacts to bottom-dwelling marine communities almost 2 miles from the wellhead in all directions and moderate impacts as far as 10 miles from the wellhead. Further, low water temperatures and primary productivity mean that it will likely take decades for these deep water communities and habitats to recover.[1] This should serve as a stark reminder to take a conservative, precautionary approach to offshore drilling, especially in the Arctic where the environment is most fragile and the operating conditions are most difficult and dangerous.

Also last fall, an independent scientific review panel commissioned by the International Whaling Commission determined that the likely cause of a mass stranding of roughly 100 melon-headed whales on the coast of Madagascar in 2008 was a multi-beam echosounder being operated by a subsidiary of ExxonMobil. This is the first evidence that this specific hydrocarbon exploration technology has a negative impact on marine mammals.[2] As oil companies continue to push the limits of technology, responsibility, and safety, we need to understand the consequences of permitting their activities before we allow them to move ahead, rather than rubber stamping inadequate plans.

Numerous studies have shown that seismic surveys using air guns have severe effects on fish, but the Bureau of Ocean Energy Management ignored these potential impacts in its Draft Programmatic EIS for geological and geophysical (G&G) activities in the Atlantic Ocean.[3]

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[1] Montagna PA, Baguley JG, Cooksey C, Hartwell I, Hyde LJ, et al. (2013) Deep-Sea Benthic Footprint of the Deepwater Horizon Blowout. PLoS ONE. August 7, 2013. Available online: http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0070540

[2] Southall, B.L., Rowles, T., Gulland, F., Baird, R.W., and Jepson, P.D. 2013. Final report of the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales. (Peponocephala electra) in Antsohihy, Madagascar. Available online: http://iwc.int/cache/downloads/4b0mkc030sg0gogkg8kog4o4w/Madagascar%20ISRP%20FINAL%20REPORT.pdf

[3] Popper, N.A. and M.C. Hastings, The Effects of Human-Generated Sound on Fish, *Integrative Zoology* (2009) 4:43-52; Popper, N.A. and M.C. Hastings, The Effects of Anthropogenic Sources of Sound on Fish, *Journal of Fish Biology* (2009) 75: 455-489

Similarly, Biological Opinions produced this year by the National Marine Fisheries Service (NMFS) for Atlantic and Arctic G&G activities acknowledge significant scientific uncertainty about how the increased use of sonar and seismic will affect protected species of whales and sea turtles, yet go on to say that these activities will not jeopardize threatened or endangered marine life. NMFS came to this conclusion in spite of the agency's own estimate that Atlantic G&G activities would result in 957 incidents of harassment of the roughly 400 critically endangered North Atlantic right whales that still survive today. That means that every single North Atlantic right whale could be harmed by seismic blasts and other operations at least twice during the proposed survey period. In light of this, the NMFS finding of no jeopardy is confusing at best.

We are encouraged by the terms of a settlement agreement reached earlier this year that has resulted in a 30-month ban on seismic testing in certain areas of the Gulf of Mexico. However, it is clear that more must be done to understand how offshore hydrocarbon prospecting and extraction is affecting marine ecosystems and the businesses that depend on them.
Most importantly, we urge you to work together to ensure that no new G&G activities are permitted until NOAA finalizes its acoustic guidance for assessing the impacts of anthropogenic sound on marine mammals. NOAA recently released a draft for public comment, and without detailed guidance, we find it difficult to see how either of your agencies can make informed decisions about how seismic testing and other acoustic tools affect marine mammals. In addition to this request, we would appreciate prompt responses to the following questions:

1. In 2012, the Mid-Atlantic Fishery Management Council submitted comments opposing the use of seismic surveys in the Atlantic Ocean. Given the scientific evidence that seismic testing and oil spills negatively impact fish, what role have you given the Regional Fishery Management Councils in helping to determine whether or not offshore exploration or extraction is permitted?

2. In recent biological opinions issued by NMFS, the sound volume threshold for changing the behavior (level B harassment) of whales is 160 decibels (dB) but the threshold for injuring (level A harassment) whales is 180 dB. Given that this is a relatively small difference when considering that blasts from seismic testing can exceed 250 dB, and that only a slight downward revision of the thresholds would result in dramatic changes to the projected number of whales that would be injured, shouldn't we wait for NOAA's new acoustic guidelines before permitting take of these species?

3. In light of the NRDA report referenced above, what efforts are your agencies making to assess the baseline conditions of benthic communities in areas proposed for offshore oil and gas leasing, and how do you propose to monitor changes in those baseline conditions over time?

4. How will your agencies' recent decision to co-lead preparation of a Programmatic EIS for G&G activities in the Gulf of Mexico improve coordination and assessment of the potential impacts not only to protected resources, but to the entire marine environment?

Why was the EIS for the Atlantic not approached similarly? Do you see co-development of offshore energy environmental assessments as a new model that will be applied elsewhere, including with the use of Supplemental Environmental Impact Statements such as the one issued earlier this year for the Arctic?

5. In its soon to be released 2015-2019 Strategic Plan, the Marine Mammal Commission (MMC) outlines as one of its five priority projects an effort to "Promote, facilitate, and encourage the development of comprehensive, long-term monitoring programs for marine mammals to better understand potential impacts of offshore energy activities." How are your agencies coordinating with the MMC to ensure that emerging science is incorporated into your offshore energy programs?

Thank you for your consideration of this important matter. We would appreciate a response to the above questions by January 24, 2014. If you have questions or concerns regarding information in this letter, please have your staff contact Matt Strickler of the Natural Resources Committee Democratic Staff at (202) 225-6065.

Sincerely,

Peter DeFazio
Ranking Member
Committee on Natural Resources

Rush Holt
Ranking Member
Subcommittee on Energy and Mineral Resources

Frank Pallone, Jr.
Member of Congress

Joe Garcia
Member of Congress