

**ALASKA WILDERNESS LEAGUE
NATURAL RESOURCES DEFENSE COUNCIL
NORTHERN ALASKA ENVIRONMENTAL CENTER
PACIFIC ENVIRONMENT
REDOIL (Resisting Environmental Destruction on Indigenous Lands)**

Minerals Management Service
ATTN: Regulations and Standards Branch (RSB)
381 Eldon Street, MS-4024
Herndon, VA 20170-4817
RE: Royalty Relief – Ultra-Deep Gas Wells on OCS Oil and Gas Leases;
Extension of Royalty Relief Provisions to OCS Leases Offshore of Alaska,
RIN 1010-AD33

Dear MMS:

We are providing these comments on behalf of our members, many of whom who live in Alaska, on your proposed rule-making to implement Section 346 of the Energy Policy Act of 2005 which extends the Secretary's discretionary authority to grant royalty relief to leases offshore of Alaska (30 CFR Parts 203 and 260; 72 FR 28396-28423, May 18, 2007).

We are concerned that there has been little publicity within Alaska regarding what may result as a significant public subsidy encouraging more offshore OCS oil drilling and production in sensitive waters that support endangered species, marine mammals and migratory birds, polar bears, wilderness coastal areas, and subsistence by Alaska Native communities. These regulations may have major implications and increased profits by multinational oil company for risky operations in sensitive OCS areas where most oil spills cannot be effectively cleaned up including Bristol Bay (North Aleutian Basin), Chukchi Sea, Beaufort Sea, and Cook Inlet including Shelikof Strait.

We are unaware of any public meetings which have addressed this issue in Alaska, and request that MMS hold a meeting in each of the coastal areas of Alaska that will be affected by these regulations and fulfill its environmental justice responsibilities. In order for the public to better understand the implications of this proposed rule-making on the public interest for maintaining the ecosystem and human health of the marine resources in the Outer Continental Shelf, we request that MMS extend the comment period for 30 days.

There have been major problems with the existing Gulf of Mexico deep-water royalty provisions that led to loss of at least \$1 billion in revenues to the federal treasury already and that total foregone royalties may reach \$80 billion (GAO, 2007). Recent Congressional hearings discussed some of these problems, and the House of Representatives passed an energy bill, H.R. 6 which appealed the EPCA Section 346

(see House Votes to Repeal Big Oil Subsidies, January 18, 2007, Press Release Committee on Natural Resources, U.S. House of Representatives; <http://resourcescommittee.house.gov/news/PRArticle.aspx?NewsID=5> , accessed July 17, 2007). This section is very controversial, and therefore MMS needs to ensure that it has adequately scrutinized all of the regulation's effects to the public interest both in protecting the environment of the OCS and adjacent coastal environment, and to ensure that the public yields a fair price for the exploitation of the oil and natural gas resources from federal OCS waters.

MMS provides very little discussion of the new extension of this program for royalty relief to Alaska, and no substantiation of its assumptions. It states that 66 active leases would be added that could apply for a Royalty Suspension Volume (for both oil and gas) before production (72 FR 28409), but it does not explain that 9 new lease sales are planned off Alaska's coasts in MMS's 2007-2012 Five-Year Plan (covering 70 million acres for the Chukchi and Beaufort Sea areas alone) and therefore many more lease blocks may be added to the program. MMS claims that because section 346 of EPCA "mandates this expansion of existing discretionary royalty relief" that "the implementation provisions in this proposed rule would add no economic effect to the effect that necessarily results from section 346." (72 FR 28409). Certainly, if MMS must respond to requests for relief for an additional vast area in Alaska encompassed by four different planning areas (at this time), and then must audit and account for the relief granted, it is illogical to assume that MMS will not face costs in implementing this section, and that there would be no economic effect.

MMS did not conduct any economic analysis projecting the total loss of potential royalties to the taxpayer nationally, or from the new Alaska OCS royalty holiday. MMS does not make clear in the rule-making the maximum loss of royalties that could occur. MMS states that historically they have received less than one application per year in the Gulf of Mexico, and that these resulted in \$30 million annually in royalty reductions since 1999 (72 FR 28409), for a total of \$240 million. However, MMS did not evaluate whether economic conditions such as the greatly increased price per barrel of oil since 1999 would significantly change the situation now and whether this could lead to substantially increased losses to the public.

MMS procedures for granting Alaska OCS royalty relief appear to be arbitrary and not founded on any economic modeling, or have any specific criteria for Alaska that it will use to base its decisions. Given that this is a vast expansion of the program to tens of millions of acres off Alaska, and that it is not based on the same factors of economic, environmental, and technological risk as the deep water Gulf of Mexico where the existing program has taken place, MMS needs to conduct a comprehensive analysis of the proposed program, including its costs to the taxpayer and to the environment. No criteria are discussed specific to the Alaska OCS regarding MMS's basis for granting royalty relief on leases.

MMS needs to describe the price thresholds for all the royalty relief provisions and for Alaska leases specifically, including how it will determine this basis and what the

expected results are. Failure to issue regulations or leases with proper price thresholds led to a “costly mistake” and loss of billions in royalties in the Gulf of Mexico, according to Congressional testimony by the Interior Department’s Inspector General (Testimony of Earl E. Devaney, Before the Committee on Natural Resources, U.S. House of Representatives, February 14, 2007; <http://resourcescommittee.house.gov/Media/File/Hearings/20070216/20070214TESTIMONYofEarlEDevaneyFinal.pdf>, accessed July 17, 2007). The IG’s testimony in 2007 also noted that in 1993, the IG also had testified that MMS also had problems with royalty collections and audits. So this is a long-standing problem and there is no evidence that MMS has adequate systems in place to assure a fair system is in place that does not harm the U.S. taxpayers generally.

All that MMS states is that “the award of royalty relief is discretionary, and MMS would only approve relief in the appropriate amount if MMS deemed the project uneconomic absent relief. Thus, there would be no negative effect on federal revenue from this rulemaking proposal.” (72 FR 28409) Because the relief is “discretionary” MMS needs to ensure that its decision to grant it is not arbitrary, and describe the basis upon which it will determine whether or not a project is “economic” or “uneconomic” without the relief. What information will the applicant need to provide? There may be unique information needs for the Alaska OCS but MMS does not provide require these. Why shouldn’t the applicant have to provide its assessment of the profit it would take out of the leases with and without the royalty relief requested? Please provide the analysis used to determine that there would be “no negative effect on federal revenue” from this rulemaking. If there is royalty relief granted, those revenues will not come to the federal treasury.

The Government Accountability Office has raised questions of the financial impact of MMS’s deep water royalty relief program earlier this year (Government Accountability Office, January 18, 2007, Royalty relief will cost the federal government billions but the final costs have yet to be determined, GAO-07-369T; see full testimony at <http://www.gao.gov/new.items/d07369t.pdf> and summary at <http://www.gao.gov/highlights/d07369thigh.pdf>, accessed July 17, 2007). However, MMS’s draft rulemaking does not explain in detail how the past problems will be avoided by the new regulations, nor how it will avoid new problems by the extension of the program to Alaska.

MMS needs to analyze the environmental impacts of this royalty relief in order to determine if the subsidy is in the public interest. For example, if taxpayer help is needed in order for an oil field to be developed in sensitive Alaska waters that threaten endangered species, subsistence, marine mammals, polar bears, migratory birds, etc., we question that such action is really in the public interest.

Unfortunately, due to the proprietary nature of economic information for oil and gas exploration, development, or production projects, it means that even if the MMS does obtain such information, the public will not have access to it to evaluate the fairness or adequacy of MMS’s decisions over the royalty holidays that are granted.

Would this royalty relief for the Alaska OCS have any implications for revenue distribution from leases in the 8g zone? These were not addressed by your proposal.

MMS states that “this rulemaking raises novel legal or policy issues” (72 FR 28409) yet does not discuss these legal or policy issues in any depth with respect to Alaska. Given the Congressional Act wherein the House of Representatives passed H.R. 6, legislation that repealed Sec. 346 of EPCA 2005, the expansion to the Alaska OCS, we find that thorough discussion of the issues needs to be provided.

The royalty relief issue was not evaluated in the Beaufort Sea Sale 186, 195, or 202 Environmental Impact Statements, or the current Chukchi Sea Sale 193 EISs, even though these subsidies may apply to those leases. Therefore, if MMS states that the fields for which it would grant royalty relief would not be developed without the subsidy, it must be anticipating additional oil field development beyond what was described in those environmental reviews, and therefore it cannot grant this relief for those leases due to the lack of this issue being addressed, or alternatively, MMS must provide supplemental environmental review prior to granting any royalty relief for those leases from prior sales in Alaska.

In Sec. 203.78 of the draft regulations, the base price threshold for leases offshore Alaska is to be “indicated in your original lease agreement of Notice of Sale” given to the oil company (72 FR28423). MMS has not explained anywhere in the draft regulations its procedure for implementing this base price threshold, nor how the public will assess it prior to new lease sales.

Thank you for this opportunity to comment.

Sincerely,

Pamela A. Miller, Arctic Coordinator
Northern Alaska Environmental Center
830 College Road, Fairbanks, AK 99708
pam@northern.org

On Behalf of:

Betsy Beardsley
Arctic Environmental Justice Director
Environmental Justice Center
Alaska Wilderness League
411 West 4th Ave, Ste 200
Anchorage, AK 99501
betsy@alaskawild.org

Charles M. Clusen, Director,
National Parks and Alaska Projects
Natural Resources Defense Council
1200 New York Avenue N.W.
Washington, DC 20005
cclusen@nrdc.org

Rachel James
Alaska Program Associate
Pacific Environment
308 G Street Suite 202
Anchorage, Alaska 99501
rjames@pacificenvironment.org

Faith Gemmill
Outreach Coordinator
REDOIL (Resisting Environmental Destruction on Indigenous Lands)
Redoil@acsalaska.net