

> to further discussion next week.
>
>
> Greg J. Horner
> Offshore Regulatory Team Lead
> Shell Exploration & Production Company
> 3601 C Street, Suite 1000, Anchorage, Alaska 99503
> *Tel:* +1 907 646-7131 x131
> *Cell: *+ 1 907 227-1065
> *Cell (2): *+1 907 250-0868
> *Email:* greg.horner@shell.com
> <javascript:_e(%7B%7D,'cvml','greg.horner@shell.com');>
>
>
>
>
>
>
>
> --
> Mary Colligan
> U.S. Fish and Wildlife Service
> Marine Mammals Management, Polar Bears
> 1011 E. Tudor Road, MS-341
> Anchorage, AK 99503
> 907-786-3668
> <Disturbance Footprint By Drill Rig Spacing Document_22May2015_Printed.docx>

"Putnam, Christopher" <christopher_putnam@fws.gov>

From: "Putnam, Christopher" <christopher_putnam@fws.gov>
Sent: Tue May 26 2015 16:42:08 GMT-0600 (MDT)
To: "Colligan, Mary" <mary_colligan@fws.gov>
Subject: Re: Shell Document to Supplement Request for Chukchi Sea Exploration Drilling LOA

Mary,

Here are my thoughts regarding the latest "disturbance footprint" document from Shell. As we are all aware, there simply is no new information available, thus, what this document provides is a further analysis of Shell's proposed activities, and some clarification of those activities. The analysis in this latest document primarily models a hypothetical week's worth of "average activity" with Shell's proposed equipment, ships, and aircraft and compares the modeled activity and sound "footprint" between a 15-mile separation and an 8.9-mile separation of the drill rigs. Shell concludes that the two distances are essentially identical in terms of potential impacts to walrus. This latest document from Shell does not address potential noise levels from helicopter traffic, only the activity level, which is significant.

I evaluated this latest document on its own merits, no less and no more. While the analysis superficially appears to indicate that an 8.9-mile separation of drill rigs allows for a similar level of potential impacts to walrus as a 15-mile separation, in the context of our more broad concerns, significant uncertainties, and the variability of the conditions in the Chukchi Sea, it is not convincing. It is not surprising that Shell is able to produce an analysis that, superficially, seems reasonable, particularly since from the beginning of our dialogue Shell has endeavored to reduce our broad questions and uncertainties to absolute minimums by providing very specific, tailored responses. Shell continues to interpret some fundamental underlying assumptions differently than do we, and always in the most favorable way for themselves. In fact, Shell continues to interpret some of our questions and requests for information in a self-serving and favorable manner. Shell is disingenuous in how it accounts for uncertainty and variability in this analysis. While there is brief mention of uncertainty and variability, it is ultimately downplayed and deemed insignificant. Further, how can we independently verify any of this information? We don't know what source data were used in this modeling analysis, what modeling and data tools were used, or how the data were manipulated, among other things. All this beyond the fact that there are issues that Shell simply does not address, such as helicopter noise.

Shell's history in the Chukchi Sea is an important guide for evaluating their current request. Shell's prior attempt at exploration in the Chukchi Sea in 2012 was a disaster. Then, as now, Shell provided project descriptions, activities, plans, and made many claims and assurances that they could do everything in the best way possible for all of the authorizations and permits they needed. The aftermath of 2012 left Shell having accomplished almost none of their stated objectives; with numerous violations of several of their permits, including some felonies; safety violations; equipment failures, including a drill rig so badly damaged that it was sent to port overseas for salvage; and the undeniable fact that many of their assumptions and assurances were wrong. For example, Shell estimated a certain level of ice handling vessel activity for 2012, but the actual level of that activity was far greater. One of the primary reasons for needing more ice handling activity was because their estimates for ice conditions were wrong. In fact, Shell had to temporarily move their drill ship and support fleet away from the drill site because of sea ice encroachment in 2012. Keep in mind that 2012 ended up with the record lowest Arctic sea ice minimum. So, in a record year for Arctic sea ice loss, the Chukchi Sea had ice conditions that required Shell to temporarily abandon their drill site. This is also the same area that Shell repeatedly says is not likely to have walrus present because they predict ice will not be present. There are numerous other examples of how Shell said or anticipated one thing, and did or experienced another. We must remember Shell's historical performance while evaluating their current request.

I have several serious concerns regarding Shell's request, proposed activities, and how this review process has occurred. At no point in this process has Shell indicated it is willing to comply with the 15-mile separation distance mitigation measure that the regulation requires for their activity. Shell was fully aware of what the incidental take regulation required of them, yet they developed an exploration plan that increased activity levels and placed their drill rigs closer than 15-miles from each other. Shell has clearly stated that they think minimizing disturbance to walrus is irrelevant to where they place their drill rigs, and that only their exploration needs should be considered for where and how far apart their drill rigs should be placed. Shell insists it is not they who must comply

with Federal regulations, but we who should change the regulations to accommodate Shell.

We can certainly revisit the regulations and propose modifications, but that must be done through the public rule making process. As you are aware, the current incidental take regulations for the Chukchi Sea went through the public process, including a proposed rule, public comments, review and recommendations from the Marine Mammal Commission, legal review, and more. I am deeply concerned that what is being discussed now as a response to Shell's demands is to alter the regulations without the public process. I am also concerned that, to date, all of the discussions, deliberations, and negotiations with and about Shell on this issue have been behind closed doors in a non-public process. I am concerned and disappointed by those voices within the Service and DOI that suggest there is a way to change the regulations and eliminate the 15-mile separation requirement in order to accommodate Shell without public awareness or review. I think it would be disingenuous, mendacious, and unethical were we to consider such a course of action without the transparency of public awareness. Such a course of action may even be illegal. We are required to seek, and need, input from the public, stakeholders, and the Marine Mammal Commission in order to make such a change to the regulations. There are many resource users, stakeholders, and otherwise interested citizens concerned about oil and gas exploration impacts to walrus in the Chukchi Sea. When we drafted the final rule and promulgated the current Chukchi Sea regulations, we attempted to strike a balance between all the voices speaking on the issue. Our statutory mandate under the MMPA to meet the required determinations was not easy to accomplish for the Chukchi Sea regulations. We assumed that we would require full implementation of all the mitigation measures under the regulations when we conducted our analyses and made our determinations. If our fundamental assumption is invalidated, our subsequent analysis, our determinations, and the regulations themselves must be questioned. If this is what we are being asked to do, then we must do so in a transparent manner and use the public process and review.

I am also deeply concerned by the precedent that would be created should we alter our regulations to accommodate Shell. I am concerned that such a precedent would severely impair our ability to manage the incidental take of our trust resources, to influence, mitigate, and hold oil and gas activities accountable through the regulatory process. As you are aware, Shell's exploration plans involve up to six drill sites that they intend to explore over the next several years. While we are currently evaluating two sites approximately nine miles apart, some of the other proposed Shell drill sites are located even closer to each other. Are we prepared to simply eliminate our separation requirement altogether, or are we prepared to go through this review and negotiate process again, *ad infinitum*? If we create the precedent to alter our regulations and mitigation measures upon request, what does that portend for the future? What will we do when Shell, or any other company, decides that some other requirement is not acceptable? Will it be aircraft altitudes? Separation distances? Noise thresholds for disturbance? Monitoring or reporting requirements? Where would it end? Would such a precedent extend to the Beaufort Sea regulations and polar bear issues there, such as mitigation measures for denning female polar bears? Further, since we've been willing to meet privately with Shell to discuss their issue, if we create a precedent and acquiesce to Shell's demands, are we also willing to meet with other citizens or groups and discuss changes to the regulations they wish? Would we meet privately with environmental NGOs or Alaska Native subsistence hunter groups and discuss adding new mitigation

measures or otherwise altering the regulations in a non-public process? Would we request additional information from them and consider additional analyses as we have done with Shell? Or is Shell demanding special treatment, privileged access to the regulatory process, and a subversion of public awareness and input? I am concerned it is the latter.

In conclusion, I am not swayed in favor of Shell's argument by the analysis in the current document, nor any of the previous documents. I still have serious doubts and concerns about Shell's proposal should the separation distance requirement be reduced. I am still convinced that the 15-mile separation of drill rigs requirement provides better mitigation of potential impacts to walrus than what Shell proposes. Shell's reduced separation distance proposal does not adequately account for uncertainty, variability, cumulative effects. My recommendation remains unchanged. I recommend issuing Shell a LOA under the current Chukchi Sea ITR with all mitigation measures required, including the 15-mile separation of drill rigs. If Shell indicates they are not willing to comply with all the requirements, we should not issue them a LOA. If Shell wishes us to reconsider the 15-mile separation of drill rigs requirement, we can certainly do so, but only through the public rule making process.

Christopher Putnam
Wildlife Biologist
Marine Mammals Management
U.S. Fish & Wildlife Service
1011 East Tudor Rd, MS 341
Anchorage, AK 99503-6199
907-786-3844 office
907-268-0577 mobile
907-786-3816 fax

"All that is gold does not glitter, not all those who wander are lost; the old that is strong does not wither, deep roots are not reached by the frost."
-- J.R.R. Tolkien

On Fri, May 22, 2015 at 4:31 PM, Colligan, Mary <mary_colligan@fws.gov> wrote:

----- Forwarded message -----

From: <Greg.Horner@shell.com>

Date: Friday, May 22, 2015

Subject: Shell Document to Supplement Request for Chukchi Sea Exploration Drilling LOA

To: mary_colligan@fws.gov

Cc: louis.brzuzy@shell.com, a.macrander@shell.com, Erling.Westlien@shell.com