
From: Lewandowski, Jill
Sent: Wednesday, December 26, 2007 12:04 PM
To: Crayton, Wayne; Cranswick, Deborah
Cc: Denton, Jeffrey W; Bennett, James F
Subject: RE: Potential Delay in Release of Final PEIS

Debbie and Wayne,

I thought I would take the time to explain my stance on this topic since there has been some confusion. Take a look at what I have provided below, and let me know if you have any questions. It is only meant to provide a thorough explanation of my thoughts on the topic of the peer review of industry's 2006 comprehensive report. The topic is certainly open for discussion.

As you know, the 2006 IHAs require all holders to develop a comprehensive report showing monitoring results. Section 8(a) of the 2006 IHAs includes the requirement for the comprehensive research monitoring plan. Section 9(d) and (e) cover the requirements for the report and a peer review of the report as follows:

(d) A draft comprehensive report describing the acoustic, vessel-based, and aerial monitoring programs will be prepared and submitted within 240 days of the effective date of this Authorization. The comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of all industry activities and their impacts on marine mammals in the Arctic Ocean during 2006.

(e) The draft comprehensive report will be reviewed by participants at the 2007 Open Water Scientific Meeting to be held in Anchorage AK in April, 2007. The draft comprehensive report will be accepted by the National Marine Fisheries Service as the final comprehensive report upon incorporation of recommendations by the workshop participants.

As you see, Section 9(e) includes the requirement for the peer review. However, the report was not completed for the 2007 Open Water meeting although some preliminary and draft information was reviewed at the meeting. Therefore, the requirement under 9(e) was not met at the 2007 Open Water meeting and continues to be unmet.

I believe that Ken was hoping the report would become available during the DEIS comment period so that the peer review required under 9(e) could be done concurrently with submission of comments for the DEIS. Again, industry did not complete the report in time. The NGOs consequently requested extensions to the DEIS comment periods in order to allow time for the completion and review of the report. Neither NMFS nor MMS wanted to extend the comment period a third time. I believe that it was then that Ken committed to ensure that sufficient time would be allowed for the peer review and finalization of the report before the FEIS was completed. This is where it is a bit

fuzzy since no one at MMS was aware of this commitment. Regardless, I believe that Ken is justified in this stance for the following reasons:

- NEPA requires an analysis based on the best available information. The contents of the report are available and need to be considered in our FEIS. The complicating factor here is that industry has not met the 9(e) IHA requirement until NMFS considers the report final and this requires peer review. It would also not benefit MMS to move forward with the report when NMFS is stating the report is still not final (and obviously we cannot do so when we are jointly preparing the FEIS).
- The requirement for the submission of the report for peer review was no later than 240 days since issuance of the IHA. This puts the submission of the report around Feb 2007. Then, stakeholders at the 2007 Open Water meeting, including MMS, would have had time to review the report in advance of the meeting. The report was not submitted until September 2007. Delays in finalizing this report are directly linked to industry's delays in submitting the report.
- The G&G permits that MMS issued in 2006 clearly state that any requirements issued under an IHA take precedence over the related conditions in MMS permits. This should not only include mitigation and monitoring measures but also reporting requirements as reporting is a critical mechanism for NMFS and MMS to know what impacts are occurring and if the mitigation and monitoring are effective.
- MMS should always critically review any and all reports we receive from regulated entities as part of our obligations under the OCSLA and other acts (i.e., the ESA where MMS has reporting requirements). This should include a peer review of the methods and contents backing any report and not an assumption that the contents are fine 'as is' and can then be used readily in our analyses. How do we ensure compliance if we do not do this? By not critically reviewing the contents and validating the information we will only be faced with more problems and litigation.
- MMS has not, to date, had any involvement in reviewing or commenting on contents of this report and our involvement is noticeably absent. We need to play a larger part in ensuring the report is useful before it is incorporated into our analyses.
- I believe that use of this report in the FEIS without peer review (and thus not meeting the 9(e) IHA requirement) puts our FEIS in jeopardy. We need this FEIS to be solid or we run the risk of doing it over.

So, where do we go from here? No one has surplus time, and we are all under the gun. I am willing to review the report (once I get a copy) but I think it is of greater importance that someone in AKR LE (Jeff?) provide the main review of the report just as AKR LE reviews all other reports (i.e., daily in season, 90-day reports). I did assume this would happen when the report was submitted and certainly that MMS would weigh in on the stakeholder review of the report. We should discuss the timeline for completing review comments when we meet with Ken in early January.

As for completing the FEIS, I think we all agree that we will be moving mountains to do so in time for the 2008 open water season. We can work on this review concurrently with the DEIS comment review and FEIS completion. Perhaps it will come down to priorities, given everyone's workload, and upper management will need to decide what gets worked on first. Maybe we can put together a workload conflicts list (briefing?) for AKR and HQ management to lay out the issue?

Thanks,
Jill

From: Crayton, Wayne
Sent: Friday, December 21, 2007 12:49 PM
To: Cranswick, Deborah; Lewandowski, Jill
Cc: Denton, Jeffrey W
Subject: RE: Potential Delay in Release of Final PEIS

My thoughts...our marine mammals person, Jeff Denton, has a copy and will likely use the info as needed to update the information in the draft seismic PEIS, his informal consultations with NMFS (Brad Smith), and in his 2008 G&G permit reviews. However, given his other tasks (Arctic Multisale, North Aleutian Basin, etc) it doesn't appear to me that he has quality time to formally review the report and participate in any follow-up tasks. If Ken indeed promised to not finalize the seismic PEIS until after a peer-review is performed, then let's call it as it is, and that is that seismic PEIS will not be finalized according to our already-tight and jeopardized schedule. Ken must make his peer-review intentions very clear including who he formally wants to review it, what the review-schedule will be, who will review the comments, and what will be done with the comments. While this is going on, however, we can still proceed with other tasks for the seismic PEIS. Wayne

From: Cranswick, Deborah
Sent: Wednesday, December 19, 2007 3:24 PM
To: Lewandowski, Jill; Crayton, Wayne
Subject: RE: Potential Delay in Release of Final PEIS

Jill,

We have a copy of the report. It came to us directly from LGL. There is no indication that this is a draft report for review. There was no request from LGL, the operators, NMFS, FWS, or HQ to review and comment. As this appears to

be a FINAL report, why would we be reviewing and commenting?

If Ken and you are asking for MMS review comments on this report, what is the purpose and scope of our review?

Debbie

-----Original Message-----

From: Lewandowski, Jill

Sent: Wednesday, December 19, 2007 5:49 AM

To: Crayton, Wayne; Cranswick, Deborah

Subject: RE: Potential Delay in Release of Final PEIS

Debbie and Wayne,

I spoke with Ken yesterday at length. I also do not have a recollection of MMS committing to a peer review before finalizing the PEIS. I do remember Ken saying that he agreed to incorporate the results of the report into the final EIS as a NMFS promise to the NGOs when they were requesting (and NMFS denied) a third extension of the comment period. [If you remember, the NGOs wanted this extension in order to review and consider the report which had not yet been finalized.] In Ken's mind, I guess this also meant a peer review of the report although this was not clear to MMS. It is also not clear right now as to the extent of the peer review. This could range simply from **an MMS and NMFS internal review (which is currently taking place)** to convening a group of independent experts. My sense from Ken is that if the internal review does not raise any significant issues with the report then we will proceed. If it does raise issues, then NMFS will want to send this out for a larger review and comment.

Ken is sending me a copy of the report for review. Is anyone in AKR looking reviewing the report? If not,

someone there should try and do so. I understand that Shell did send a copy to MMS AKR.

I also have some other info that I will call you about today or tomorrow. In the meantime, please respond to me email on availability for the comment review meeting. I am working now on reviewing and consolidating my thoughts on the comments.

Thanks,

Jill

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Jill Lewandowski  
Protected Species Biologist  
Minerals Management Service  
Environmental Assessment Branch  
381 Elden Street  
Herndon, VA 20170  
(703) 787-1703  
fax (703) 787-1026  
[Jill.Lewandowski@mms.gov](mailto:Jill.Lewandowski@mms.gov)

-----Original Message-----

From: Crayton, Wayne

Sent: Friday, December 14, 2007 2:03 PM

To: Cranswick, Deborah; Lewandowski, Jill

Subject: FW: Potential Delay in Release of Final PEIS

Debbie and Jill...I don't remember being involved in any discussion about the subject report and it's association with an open-water meeting and the release of the Final PEIS. I think other pressing factors are more likely to cause us to miss the May release. Wayne

-----Original Message-----

From: Ken.Hollingshead@noaa.gov  
[<mailto:Ken.Hollingshead@noaa.gov>]

Sent: Friday, December 14, 2007 9:56 AM

To: Crayton, Wayne; Lewandowski, Jill

Subject: Potential Delay in Release of Final PEIS

I want to remind MMS that in discussion with MMS we agreed to close the comment period on the Draft PEIS with the understanding that the 2006 Comprehensive Report would be finalized and "peer-reviewed." If we wait until the open-water meeting for this peer-review, we can essentially forget meeting a May 1 release date.

Watch this space to see what I do next to expedite it.

Ken