

**TESTIMONY OF ROBERT B. WIYGUL
BEFORE THE U.S. COMMISSION ON OCEAN POLICY**

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My name is Robert Wiygul, and I am an attorney currently practicing in Biloxi, Mississippi. I appreciate the opportunity to speak to the Commission today. I have been practicing law for about 18 years now, and I have had the opportunity to represent oil companies, individuals, and environmental groups. For the past dozen years a significant part of my practice has involved representation of individuals and conservation groups in environmental matters, including those involving fisheries and the Outer Continental Shelf. These groups include the Sierra Club, the Audubon Society, Oceana, the Louisiana Environmental Action Network, the Gulf Islands Conservancy, and many others. I am not here today speaking on behalf of any particular group, but rather to give you an overview of some current concerns about Outer Continental Shelf development.

I would like to start out by talking about the implications of John Wesley Powell for Outer Continental Shelf management. Although I have spent much of my life here on the Gulf of Mexico, I also spent about six years living and working in the dry reaches of the intermountain west. John Wesley Powell looms large out there, and eventually I realized that he has an important point to teach us about management of the Outer Continental Shelf. Powell, who as you know was the Civil War veteran and explorer who led the first expedition down the Colorado river, had the fundamental insight that natural resources do not respect political boundaries. Thus he advocated the states of the west being established on watershed lines rather than according to arbitrary geographical boundaries.

Powell's insight fully applies to the resources of the Outer Continental Shelf – whether they be commercial fisheries, oil and gas, or endangered species. Everything that happens on the federal OCS affects state waters, and the land and people of the adjoining states. Yet rather than being managed as a whole system – which is what it is – the Outer Continental Shelf, state waters, coastal wetlands, and rivers running into the Gulf are managed under a welter of federal and state statutes and customs. It is too late to undo the strange mix of common law, presidential proclamations and Congressional actions that have drawn the lines of ownership and jurisdiction on the OCS, but perhaps it is not too late to begin thinking about the impacts of OCS development in a coordinated way.

I do not need to repeat the statistics, and I believe we can start with the common understanding that the Central Gulf of Mexico contains the vast majority of OCS oil and gas development in this country. This has been true for about 50 years, and today the Gulf of Mexico is seeing vastly increased deepwater activity. You have heard, both in your previous hearings and other fora, that the citizens of Florida, North Carolina, California and other coastal states simply do not want Outer Continental Shelf mineral development, based on the risk to other resources that they hold dear. The appropriate debate in those places is whether Outer Continental Shelf Oil and Gas development should even occur. I do not endorse Outer Continental Shelf leasing and development, particularly when conservation strategies to reduce our dependence on fossil fuels have not been fully exploited, but as a practical matter the debate in the Central Gulf of Mexico must be over how to live with the leases and development that are already there.

I would like to address three issues here. First is the onshore, cumulative impacts of OCS development. The 4000 or so platforms that dot the Gulf have enormous impacts on land. Pipelines to bring in oil and gas must cross fragile wetlands. Support facilities for supply rigs must be built in coastal areas, often on filled wetlands. Working boats require dredged channels for access to the Gulf. Each of these impacts has contributed in the past and continues to contribute to the catastrophic coastal land loss now occurring in coastal Louisiana. As you know from other panels, arresting that land loss is expected to have a multi-billion dollar price tag.

You will hear different estimates of the amount of wetlands loss attributable to OCS oil and gas impacts. I don't think that this Commission needs to resolve that debate. What is critical is that the cumulative contribution of OCS development to onshore impacts be assessed, and fully taken into account in making decisions on OCS leasing and development.

I do not believe that those cumulative onshore impacts are being fully evaluated now. I am not aware of any source that evaluates the full onshore impacts of OCS development in the kind of systematic manner that is required if those impacts are to be fully mitigated. Although National Environmental Policy Act documentation is prepared at the stage of the five year leasing plan, the individual lease, as well as exploration and development planning, none of these documents capture the full cumulative impacts of OCS development.

Some of this is attributable to the balkanization of responsibility for managing the related resources of the coast and the OCS. If I may give you one concrete example with which I am quite familiar, in LaFourche Parish there is a large port development known as the Port of Fourchon. With the increase in deepwater drilling in the Gulf, activity at places like Fourchon has exploded. At present the Port – which is located almost entirely on wetlands or filled waterbottoms – plans to triple in size in the coming years. That expansion will fill about two square miles of wetlands and water bottoms. Fill on this scale is almost unheard of in other parts of the country. Yet this expansion – which is directly tied to Outer Continental Shelf activity – is discussed only in a skeletal environmental assessment prepared by the U.S. Army Corps of Engineers. This EA mentions little or nothing about the OCS activity that led to this expansion

of the Port. This is despite the fact that at about the same time, the Minerals Management Service published something called LaFourche Parish, Louisiana and Port Fourchon: Effects of the Outer Continental Shelf Petroleum Industry on the Economy and Public Services. Likewise, MMS documents with at least some discussion of other onshore impacts are not even mentioned. Clearly, there is some kind of disconnect when the information that one agency is gathering is not used by another in directly related permitting activities.

A second area I would like to discuss has to do with the overall approach to the impacts, and potential impacts, of OCS development. Many of you have seen a series of articles in the Mobile Register dealing with mercury pollution around drilling platforms. Based on MMS studies and other testing, the Register determined that there was significant mercury contamination around many platforms, and that some creatures in the food chain around the rigs showed elevated levels of mercury. So elevated, in fact, that many of them would be subject to health advisories.

There is some scientific back and forth about exactly what the mercury data does and does not prove, and this is another situation in which I do not believe that this Commission need resolve the debate. I believe what the Commission can state with assurance is that we all ought to be extremely concerned about even the possibility that mercury from discharge of drilling muds is becoming bioavailable and moving up the food chain. These rigs have been touted as artificial reefs for many years, and they certainly concentrate fishing effort.

The oil and gas industry states that the discharges that led to this mercury contamination were within regulatory limits, and this is true. It is also not the point. I have spent many hours fishing around rigs, and I have eaten many a snapper and cobia that came from the base of those rigs. Discharge of mercury laden drilling muds was legal, but it should not have been.

When the consequences of a wrong judgment on the safety of a practice are so great, it is appropriate to err on the side of caution. You can call this approach applying the precautionary approach, or you can call it simply being careful. With commercial and recreational fisheries at stake, the burden of proof should be on an activity to prove that it will not be harmful. This principle should apply not just to discharges of pollutants, but across the board. For example, with respect to onshore impacts to wetlands, mitigation should be proven to work, or the impact should not be permitted.

Utilizing a precautionary approach in management of ocean resources is not without precedent in law. The Magnuson Sustainable Fisheries Act applies the precautionary approach as a matter of law in fisheries management. One of the mechanisms through which the Sustainable Fisheries Act implements the precautionary approach to fisheries management is through designation of Essential Fish Habitat, and in fact many areas of the OCS will in time be designated as EFH for various species. The Sustainable Fisheries Act includes a requirement that federal agencies consult with the National Marine Fisheries Service concerning impacts of their actions on EFH. This consultation process is not binding on the action agency, but will

furnish one mechanism through which the MMS can begin to implement a more cautious approach to the impacts of OCS activities. Implementation of the precautionary approach under the Sustainable Fisheries Act has not been without controversy, but is fully justified given the importance of fisheries resources. OCS mineral development, and its impact on fisheries and other resources of equal importance, and application of a precautionary approach is fully justified there as well.

One area in which application of a precautionary approach will be particularly important is the removal of existing platforms. Many of the thousands of platforms in the Gulf will have to be removed in the coming decades, and the manner of their removal is a matter of great concern. Rig removal must be carried out in a manner that protects the marine species – including threatened and endangered sea turtles that are found around them. In particular, the use of explosives for rig removal should be restricted to insure that harm to marine life is minimized.

Applying a precautionary approach to dealing with the existing OCS development in the Gulf will no doubt be expensive, and some may object to it on that account. I believe, however, that we can afford to be careful. The federal government and private companies have taken tens of billions of dollars out of the Central Gulf. Such great rewards surely imply a correspondingly great obligation to protect the area from which they came.