

requirement for electric program distribution, generation, and transmission borrowers to develop an ERP or expand an existing ERP and to provide RUS with a written certification that they have an ERP based upon a VRA.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 30 minutes per response.

*Respondents:* Not for profit.

*Estimated Number of Respondents:* 676.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 338 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis at (202) 720-0812. FAX: (202) 720-8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 31, 2007.

**James M. Andrew,**

*Administrator, Rural Utilities Service.*

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BILLING CODE 3410-15-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 050307A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Barges through the Beaufort Sea between West Dock and Cape Simpson or Point Lonely, Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received a request to authorize FEX L.P. (FEX) to take small numbers of marine mammals by harassment incidental to conducting a barging operation within the U.S. Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize FEX to incidentally take, by harassment, small numbers of bowhead whales, gray whales, beluga whales, ringed seals, bearded seals, and spotted seals in the above mentioned area between approximately July 1 and November 30, 2007.

**DATES:** Comments and information must be received no later than July 9, 2007.

**ADDRESSES:** Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed here. The mailbox address for providing email comments is [PR1.050307A@noaa.gov](mailto:PR1.050307A@noaa.gov). Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at this address.

#### FOR FURTHER INFORMATION CONTACT:

Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext 137, or Brad Smith, Alaska Region, NMFS, (907) 271-3023.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can

apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

#### Summary of Request

On April 26, 2007, NMFS received an application from FEX to take several species of marine mammals incidental to the movement of two tugs towing barges in the U.S. Beaufort Sea. Marine barges would be used to either resupply or demobilize from their ongoing drilling activities on the Northwest National Petroleum Reserve-Alaska Oil and Gas Leases. For a resupply operation, consumables, fuel, and essential pad construction equipment would be marine lifted from West Dock (Prudhoe Bay) to the Cape Simpson operational staging area, where it would be stored in preparation of the 2007 - 2008 winter exploration season. Barges proposed for the marine lift from the West Dock Causeway include but are not limited to: Crowley Marine *Kavik River* and the *Sag River* (1,100 horsepower each) tugs, and *Bowhead Stryker* or *Garrett* (two engines x 220 horsepower each) barges or comparable class vessels. Additional barges and support vessels may be utilized as available and needed. Barges would be moving at a speed at about 5 knots.

Barge traffic between West Dock and Cape Simpson or Pt. Lonely is scheduled to occur during the 2007 open-water season. The distance between West Dock and Cape Simpson is approximately 240 km (149 mi). From West Dock Causeway, it would take approximately 17.5 hours one way for a barge to reach Point Lonely and 22 hours to Cape Simpson. Typically the open-water season begins mid- to late July. Every effort will be made to complete the barging activities prior to August 15, but no later than September 1, 2007. A late season barge effort after

the annual bowhead whale hunt (late September/early October) and before freeze-up (late October/early November) may occur if necessary and would be addressed in the Conflict Avoidance Agreement (CAA). The 2007 open-water marine component will be complete after the supplies are stored at Cape Simpson in the case of a resupply, or moved back to West Dock or Pt. Lonely in the case of demobilization.

#### **Description of Marine Mammals Affected by the Activity**

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including Western Arctic bowhead whales (*Balaena mysticetus*), Eastern North Pacific gray whale (*Eschrichtius robustus*), Beaufort Sea and Eastern Chukchi Sea stocks of beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Only the bowhead whale is listed as endangered under the Endangered Species Act (ESA) and designated as "depleted" under the MMPA. The Western Arctic stock of bowhead whales has the largest population size among all 5 stocks of this species (Angliss and Outlaw, 2007). A brief description of the distribution, movement patterns, and current status of these species can be found in the FEX application. More detailed descriptions can be found in NMFS Stock Assessment Reports (SARs). Please refer to those documents for more information on these species. The SARs can be downloaded electronically from: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2006.pdf>. The FEX application is also available on-line (see ADDRESSES).

#### **Potential Effects of Tug/Barge Operations and Associated Activities on Marine Mammals**

Level B harassment of marine mammals may result from the noise generated by the operation of towing vessels during barge movement. The physical presence of the tugs and barges could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between vessels and whales will be essentially zero due to the slow tow speed (approximately 5 knots) and visual monitoring by on-board marine mammal observers (MMOs).

Marine mammal species with the highest likelihood of being harassed during the tug and barge movements are: beluga whales, ringed seals, spotted seals, and bearded seals.

Bowhead whales are not expected to be encountered in more than very small numbers during the planned period of

time for the tug/barge movement because the most of them will be on their summer feeding grounds in the eastern Beaufort Sea and Amundsen Gulf of the Canadian waters (Fraker and Bockstoce, 1980; Shelden and Rugh, 1995).

A few transitory whales may be encountered during the transits. Most summering gray whales congregate in the northern Bering Sea, particularly off St. Lawrence Island and in the Chirikov Basin (Moore et al., 2000), and in the southern Chukchi Sea. In August 2001, Williams and Coltrane (2002) reported a single sighting of a gray whale near the Northstar production facility, indicating that small numbers do travel through the waters offshore from the Prudhoe Bay region during some summers, however, given their rare occurrence in the eastern portion of the Beaufort Sea in summer, no more than a few are expected during the summer and early fall.

Beluga whales occur in the Beaufort Sea during the summer, but are expected to be found near the pack ice edge north of the proposed movement route. Depending on seasonal ice conditions, it is possible that belugas may be encountered during the transits.

Based on past surveys, ringed seals should represent the vast majority of marine mammals encountered during the transits. Ringed seals are expected to be present all along the tug/barge transit routes. There is the possibility that bearded and spotted seals would also be taken by Level B harassment during transit. Spotted seals may be present in the West Dock/Prudhoe Bay area, but it is likely that they may be closer to shore.

#### **Numbers of Marine Mammals Expected to Be Taken**

The number of marine mammals that may be taken as a result of the tug/barge operation is unpredictable since there is a lack of abundance estimate data for these species within the transit route. However, based on prior barging activities in 2005 and 2006, it is expected that a small number of marine mammals could be exposed to barging noise levels at 120 dB re 1 microPa and above.

Harassment of cetaceans is possible by the 2007 planned barging operations based on the fact that bowhead whales, gray whales, and beluga whales were all observed during the 2005 operations (although no cetaceans were observed during 2006). Gray whales in 2005 were observed near Pt. Barrow, outside the West Dock/Cape Simpson operating lane, during periods the vessels traveled to Elson Lagoon to avoid foul weather.

No gray whales have been observed between West Dock and Cape Simpson, and are not expected to be encountered unless weather conditions once again dictate the safety need of the vessels anchoring at Elson Lagoon.

Beluga distribution is difficult to predict. Sightings are always possible, especially if the pack ice is nearby.

The barging travel route between West Dock and Cape Simpson approximately follows the 7.5 m (25-ft) isobath. This nearshore depth zone represents the southern edge of the bowhead fall migration route. Aerial surveys conducted by Treacy (2002) between 1982 and 2001 found bowheads migrating in water this shallow in only 5 (25 percent) of the 20 years of survey. Thus, given the shallow water barging travel route, and the inter-annual differences in whale use of these waters, the number of whale sightings expected to be encountered might vary from 0 (as in 2006) to 9 (in 2005).

Some of the whales observed in 2005 may have briefly occurred in the 120-dB sonification zone (1 km or 0.62 mi radius), therefore, Level B harassment of bowhead whales is possible. However, given the shallow water travel route, the low whale use of this shallow water area, the presence of marine mammal observers onboard the barges to detect whales early and help direct the barge away from the whales, the relatively short distances to the 120-dB isopleths, especially for the half the time the vessel are traveling unloaded, and based on cetacean encountering rates during the 2005 barging activity, NMFS expects that at maximum 9 bowhead whales, 8 beluga whales, and 4 gray whales could be exposed to sound levels greater than 120 dB during the 2007 barging season. These take numbers would represent approximately 0.09 percent of the Western Arctic bowhead whales (population estimated at 10,545), 0.02 percent of the Beaufort Sea beluga whales (population estimated at 39,258) or 0.21 percent of the Eastern Chukchi Sea beluga (population estimated at 3,710), and 0.02 percent of the Eastern North Pacific gray whales (population estimated at 18,178).

During the 2005 and 2006 barging season, 2,419 seals representing three species (ringed, spotted, and bearded seals) were recorded. Approximately 90 percent of these animals were ringed seals.

In 2006, reactions were recorded for 1,020 of the ringed seal sightings. Of these, 48 percent (490) had no reaction, 37 percent (381) reacted mildly, and 15 percent (148) more strongly and showed startling behavior. The percentage of ringed seals that reacted strongly is very

similar to the 17 percent recorded in 2005.

Of the 23 spotted seal sighting for which reactions were recorded in the 2006 barging season, 30 percent (9) showed behavioral changes.

Eighteen (24 percent) of the 75 unidentified phocids and 2 (7 percent) of 28 bearded seals sighted showed behavioral reactions as a result of the 2006 barging activity.

Based on the 2005 and 2006 barging activities, NMFS estimates that approximately 530 ringed seals, 10 spotted seals, 2 bearded seals, and 9 unidentified phocids could be taken by Level B harassment as a result of the proposed 2007 barging activity. These numbers represent less than 0.02, 0.02, and 0.0008 percent of ringed, spotted, and bearded seals in the proposed barging route, respectively. The population estimates for these animals are approximately 249,000, 59,214, and 250,000 - 300,000 for ringed, spotted, and bearded seals, respectively.

#### Effects on Subsistence Needs

Barrow residents are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Barrow hunters may hunt year round; however, in more recent years most of the harvest has been in the summer during open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). The Barrow fall bowhead whaling grounds, in some years, takes in the Cape Simpson and Point Lonely areas.

The most important area for Nuiqsut hunters is off the Colville River Delta in Harrison Bay, between Fish Creek and Pingok Island. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns are reflected in harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997).

Due to the transient and temporary nature of the barge operation, impacts upon these seals are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because: (1) transient operations would temporarily displace relatively few seals; (2) displaced seals would likely move only a short distance and

remain in the area for potential harvest by native hunters; (3) studies at the Northstar development found no evidence of the development activities affecting the availability of seals for subsistence hunters; however, the Northstar vicinity is outside the areas used by subsistence hunters (Williams and Moulton, 2001); and (4) the area where barge operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In order to further minimize any effect of barge operations on the availability of seals for subsistence, the tug boat owners/operators will follow U.S. Coast Guard rules and regulations near coastal water, therefore avoiding hunters and the locations of any seals being hunted in the activity area, whenever possible.

The barging, as scheduled, would be completed before the westward migration of bowhead whales in the fall and the associated subsistence activities by the local whalers. Finally,

the travel route occurs west of Cross Island (Nuiqsut fall bowhead camp) and east of Barrow, therefore it does not pass by any of the whaling base camps.

#### Mitigation, Monitoring, and Reporting

As in 2005 and 2006, FEX propose to conduct a marine mammal monitoring program as part of the 2007 program. This program would involve the placement of an MMO onboard each vessel to conduct continuous monitoring for marine mammals. The MMOs will be trained by a qualified marine mammal biologist and be approved by NMFS.

The observers will scan the area around tug/barge with 7 x 50 reticule binoculars during the daylight hours, and document the presence, distribution, behavior, and reaction of marine mammals sighted from project-associated vessels. The primary purpose of the marine mammal monitoring program is to monitor the reaction of marine mammals to the presence of the vessels, and to detect early any whales occurring in the barge path thereby allowing the vessel captain time to avoid a close approach to the animals.

FEX is also working with the Alaska Eskimo Whaling Commission (AEWC) to develop a CAA. FEX met with the AEWG on May 24 and agreed upon the contents of the CAA. The CAA is expected to be signed in early June. FEX will continue to maintain interactive dialogue to resolve conflicts and to notify communities of any changes in the operations.

Reports for each roundtrip will be prepared and provided to NMFS and

AEWC at the end of each trip. If a coordination center is opened by other North Slope operators and operated during FEX's monitoring operations, marine mammals trip sighting reports will be provided to that location.

A report documenting and analyzing any harassment or other "takes" of marine mammals that occur as part of this monitoring program will be provided to NMFS within 90 days of completion of the monitoring activities. Copies will be provided to other qualified interested parties. This report will provide dates and locations of all barge movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including numbers of each species observed, location (distance) of animals relative to the barges, direction of movement of all individuals, and description of any observed changes or modifications in behavior.

#### ESA Consultation

The effects of oil and gas exploration activities in the U.S. Beaufort Sea on listed species, which includes barging transportation activity, were analyzed as part of a consultation on oil and gas leasing and exploration activities in the Beaufort Sea, Alaska, and authorization of incidental takes under the MMPA. A biological opinion on these activities was issued on May 25, 2001. The only species listed under the ESA that might be affected during these activities are bowhead whales. The effects of this proposed IHA on bowhead whales will be compared with the analysis contained in the 2001 biological opinion. NMFS will determine whether the effects of the proposed activity are consistent with the findings of that biological opinion, and, accordingly, NMFS will decide whether an Incidental Take Statement under section 7 of the ESA will be issued prior to making a final determination of issuing the IHA.

#### National Environmental Policy Act (NEPA)

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency (EPA) noted the availability of a Final Environmental Impact Statement (FEIS) prepared by the U.S. Army Corps of Engineers under NEPA on Beaufort Sea oil and gas development at Northstar. NMFS was a cooperating agency on the preparation of the Draft and FEISs, and subsequently, on May 18, 2000, adopted the Corps' FEIS as its own document. The FEIS described impacts to marine

mammals from Northstar construction activities, which included vessel traffic similar to the currently proposed action by FEX. NMFS is currently evaluating the FEIS to determine whether the proposed activity and its likely effects have been analyzed in the FEIS adopted in 2000. NMFS will make a determination as to the need for additional NEPA analysis prior to issuing the IHA.

### Preliminary Conclusions

NMFS has determined preliminarily that the short-term impact of conducting a barging operation between West Dock and either Cape Simpson or Point Lonely, in the U.S. Beaufort and associated activities will result, at worst, in a Level B harassment of temporary modification in behavior by a small number of certain species of whales and pinnipeds.

In addition, no take by injury and/or death is anticipated or authorized, and there is no potential for temporary or permanent hearing impairment as a result of the activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the barge transit route.

The principal measures undertaken to ensure that the barging operation will not have an unmitigable adverse impact on subsistence activities are a CAA between FEX, the AEWC and the Whaling Captains Association; a Plan of Cooperation; and an operation schedule that avoids barging operations during the traditional bowhead whaling season as much as possible.

### Proposed Authorization

NMFS proposes to issue an IHA for the harassment of marine mammals incidental to FEX conducting a barging operation from West Dock through the U.S. Beaufort Sea to either Cape Simpson or Point Lonely. This proposed IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: June 1, 2007.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 010207A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Surveys in the Beaufort and Chukchi Seas off Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed incidental take authorization; request for comments.

**SUMMARY:** NMFS has received an application from Shell Offshore, Inc. (SOI) and WesternGeco for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting marine geophysical programs, including deep seismic surveys, on oil and gas lease blocks located on Outer Continental Shelf (OCS) waters in the mid and eastern Beaufort and on pre-lease areas in the Northern Chukchi Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to SOI and WesternGeco to incidentally take, by harassment, small numbers of several species of marine mammals between mid-July and November, 2007 incidental to conducting seismic surveys.

**DATES:** Written comments and information must be received no later than July 9, 2007.

**ADDRESSES:** Written comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing e-mail comments is [PR1.010207A@noaa.gov](mailto:PR1.010207A@noaa.gov). Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application (containing a list of the references used in this document) may be obtained by writing to this address or by telephoning the contact listed here and are also available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha>. Documents cited in this document, that are not available through standard public library access methods, may be viewed, by appointment, during regular business hours at the address provided here.

A copy of the NMFS/Minerals Management Service's (MMS) Draft Programmatic Environmental Impact Statement (Draft PDEIS) is available on CD from the person listed below (see **ADDRESSES**) and at: <http://www.mms.gov/alaska/>.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713-2289 or Brad Smith, NMFS Anchorage (907) 271-3023.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which

(i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of a complete application followed by a 30-