

16/DEIS in November 2007. The Council and its Scientific and Statistical Committee will review the draft Snapper-Grouper Amendment 16/DEIS at the December 2007 Council meeting. If the Council approves the document, public review will take place beginning in January 2008. A comment period on the DEIS is planned, which will include public hearings to receive comments. Availability of the DEIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in local news media.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 10, 2007.

**Emily Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7-16010 Filed 8-14-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XB57**

#### 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 issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a barging operation within the U.S. Beaufort Sea has been issued to FEX L.P. (FEX) for a period of 1 year.

**DATES:** Effective from August 9, 2007 through August 8, 2008.

**ADDRESSES:** The authorization and application containing a list of the references used in this document may be obtained by writing 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 application 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. A detailed description of the barging activities is provided in the June 7, 2007, **Federal Register** notice (72 FR 31550) and is not repeated here.

#### 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 (*Eschrichius 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**).

#### Comments and Responses

A notice of receipt and request for 30-day public comment on the application and proposed authorization was published on June 7, 2007 (72 FR 31550). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (the Commission), the

North Slope Borough (NSB), and a private citizen.

*Comment 1:* The Commission recommends issuance of the IHA provided that

(1) All reasonable measures be taken to ensure the least practicable impact on the subject species, and

(2) The required mitigation and monitoring activities (i.e., the use of native advisors, the comprehensive training of all marine mammal observers, and on-board monitoring throughout the transit operations) are carried out as described in NMFS' June 7, 2007, **Federal Register** notice (72 FR 32550) and the application.

*Response:* NMFS agrees with the Commission's recommendation and has incorporated these mitigation and monitoring measures in the IHA.

In its comments, the Commission commends FEX for seeking authorization to take marine mammals incidental to the proposed activities and for consulting with Alaska Native groups whose subsistence use could be affected.

*Comment 2:* A private citizen is concerned that barges may kill whales and recommends that barges only go out when the sea is calm and the vessels can be safely maneuvered to avoid hitting anything.

*Response:* NMFS does not believe that these barges moving at a speed of 4–5 knots would cause any marine mammal strikes. In addition, marine mammal observers (MMOs) will be placed on each vessel for marine mammal monitoring during the barging activities. Therefore, as stated in this document, no Level A harassment or mortality will occur as a result of this barging activity in the U.S. Beaufort Sea.

*Comment 3:* The NSB inquires about the number of barges that would be involved, and the number of trips that the barges would make.

*Response:* As stated in the June 7, 2007, **Federal Register** notice (72 FR 31550), approximately 2 tugs and 2 barges would be involved in the proposed activity. There will be a total of up to 16 barge trips expected for the 2007 activity.

*Comment 4:* The NSB states that it is unacceptable for estimates of potential harassment of marine mammals to be based on marine observer results from two previous years of data, especially when one of the two years encountered no marine mammals. The NSB further states that the lack of data for one of those years shows that the data has the potential to be extremely variable. Therefore, NSB recommends that the potential effects from the barging operations should be calculated in the

same manner in which effects are calculated for seismic and drilling activities and sound radii should be determined from barges both under load and not under load, as well as from barges with propellers in different conditions. And that the estimated mammal densities should then be applied to these radii to estimate take.

*Response:* As stated in the previous **Federal Register** notice (72 FR 31550, June 7, 2007) the number of marine mammals that may be taken as a result of the tug/barging operation is unpredictable since there is a lack of abundance estimate data for these species within the transit route. Therefore, the marine mammal sighting data during the 2005 and 2006 barging operations were used to proximate the estimated take, as stated in the June 7, 2007, **Federal Register** notice (72 FR 31550). NMFS considered this to be the best available data to be used in estimation of marine mammal takes. The NSB is mistaken when stating that one of the two years encountered no marine mammals. In fact, as described in the June 7, 2007 **Federal Register** notice (72 FR 31550), marine mammals were sighted during both 2005 and 2006 barging operations. Numbers and behavioral reaction of these marine mammals sighted in the 2005 and 2006 barging operations were provided in detail in the previous **Federal Register** notice (FR 72 31550, June 7, 2007). Given that marine mammal abundance data is limited for the proposed project area, NMFS believes that using the sighting data from the previous barging activities, which occurred in the same area as the proposed action, is the best way to estimate numbers of Level B harassment of marine mammals that could be incidentally taken by barging activities.

*Comment 5:* The NSB states that the statement made in the previous **Federal Register** notice (FR 72 31550, June 7, 2007) that studies at Northstar found no evidence of development activities affecting the availability of seals for subsistence hunters is misleading, because NMFS acknowledges that the Northstar vicinity is outside the areas used by subsistence hunters. The NSB states that there is little to no information available about the effects that the proposed barging would have on subsistence hunting.

*Response:* The Northstar example in the previous **Federal Register** notice (FR 72 31550, June 7, 2007) is based on research in the vicinity of Northstar that long-term oil and gas activities did not show any significant impacts on the distribution and abundance of ringed seals (Williams *et al.*, 2001; 2006).

NMFS believes that such evidence is a good indication that the proposed barging operations, which would occur in a smaller scale for a much shorter period, would not have an unmitigable effect on subsistence uses of marine mammals. In addition, FEX and the Alaska Eskimo Whaling Commission (AEWC) signed the Conflict Avoidance Agreement (CAA) on June 11, 2007. FEX will continue to work with Alaskan Natives to ensure that the proposed barging operations would not have unmitigable impacts to subsistence use of marine mammal species and stocks.

*Comment 6:* The NSB requests that FEX conduct sound signature tests (SSTs). The NSB states that last year's test indicated that pushing heavy barge loads produced greater sound levels than unloaded barges. The NSB states that they understand that FEX will not be loading the barges to full capacity, the information gleaned from tests of barges running at even half capacity would be valuable. The NSB further requests that SSTs should measure down to the 120 dB level. The NSB states that using a model to estimate the 120 dB level is not appropriate because last year the models underestimated distances by 2 - 3 times.

*Response:* FEX states that they met with representative of the NSB on June 21, 2007, and discussed the SST. FEX explained that while the report from JASCO Research noted that the barges were "partially loaded," in fact they were fully loaded to meet the draft restrictions of getting into Cape Simpson. FEX states that the one time a vessel was listed as fully loaded, it was actually fully loaded by volume, not by weight. FEX further states that the reason for the noise increase was due to a damaged propeller. FEX states that it has discussed the SST with the NSB regarding the SST, and that some good data on vessel noise were collected in 2006 for the same barges that would be used for the proposed operations. NMFS agrees with FEX that since extensive acoustic measures were obtained from these barges a year earlier, there is no need to conduct additional measurement.

#### 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 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.

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), harassment of cetaceans is possible by the 2007 planned barging operations. 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 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 of the 20 years of survey (25 percent). 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 within 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 is 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 sightings 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 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 operations, impacts on 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 *et al.*, 2001; 2006); 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.

In addition, FEX and the AEWC signed the CAA on June 11, 2007. FEX will continue to maintain interactive dialogue to resolve conflicts and to notify communities of any changes in the operations.

#### **Mitigation, Monitoring, and Reporting**

As in 2005 and 2006, FEX will conduct a marine mammal monitoring program as part of the 2007 program. This program will place 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.

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 in 2001, and updated in 2006. The only species listed under the ESA that might be affected during these activities are bowhead whales. The effects of this IHA on bowhead whales has been compared with the analysis contained in the 2006 biological opinion. NMFS has determined that the effects of the current activity is not likely to jeopardize the existence of ESA-listed marine mammal species, and are consistent with the findings of that biological opinion. Accordingly, NMFS has issued an Incidental Take Statement under section 7 of the ESA.

#### **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 (Final EIS) 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 Final EISs, and subsequently, on May 18, 2000, adopted the Corps' Final EIS as its own document. That Final EIS described impacts to marine mammals from Northstar construction activities, which included vessel traffic similar to the currently proposed action by FEX. No additional NEPA analysis is required for the following reasons: (1) The barging activity discussed in the Final EIS is not substantially different from the proposed action by FEX; and (2) no significant new scientific information had been identified that alters the affected environment.

#### **Conclusions**

NMFS has determined that the impact of conducting a short-term barging operation between West Dock, Prudhoe Bay and Cape Simpson or Point Lonely, in the U.S. Beaufort and associated activities will result, at worst, in a temporary modification in behavior by a small number of certain species of whales and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues from the barging operation, this behavioral change is expected to have a negligible impact on the annual rate of survival and recruitment of marine mammal stocks. In addition, no take by injury and/or death is anticipated, 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 relocation route.

The principal measures undertaken to ensure that the barging operation will not have an unmitigable adverse impact on subsistence activities is a CAA between FEX and the AEWC, a Plan of Cooperation, and an operation schedule that will not permit barging operations during the traditional bowhead whaling season.

#### **Determinations**

NMFS has issued an IHA for the harassment of marine mammals incidental to FEX conducting a barging operation from West Dock, Prudhoe Bay Alaska, through the U.S. Beaufort Sea to Cape Simpson or Point Lonely. This IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has determined that this activity would result in the harassment of small numbers of bowhead whales, gray

whales, beluga whales, ringed seals, bearded seals and spotted seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence.

Dated: August 9, 2007.

**James H. Lecky,**

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

[FR Doc. E7-16011 Filed 8-14-07; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 050107H]

#### Incidental Takes of Marine Mammals During Specified Activities; Seismic Testing and Calibration in the Northern Gulf of Mexico

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

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Lamont-Doherty Earth Observatory (L-DEO) to take small numbers of marine mammals, by Level B Harassment only, incidental to conducting an acoustic calibration and seismic testing program in the northern Gulf of Mexico.

**DATES:** Effective from July 31, 2007 through July 30, 2008.

**ADDRESSES:** A copy of the IHA, the application, and the associated Environmental Assessment (EA) and Supplemental EA are available by writing to 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. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online 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 the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext 166.

#### 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.

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 issuance of the authorization.

#### Summary of Request

On June 2, 2006, NMFS received an application from L-DEO for the taking, by Level B harassment, of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), an acoustic calibration and seismic testing program in the northern Gulf of Mexico in Fall, 2006. This project will be conducted with L-DEO's new seismic vessel, the *R/V Marcus G Langseth (Langseth)*, which will deploy different configurations of airguns and a different bottom-mapping sonar than used previously by L-DEO. L-DEO requests that it be issued an IHA allowing Level B Harassment takes of marine mammals incidental to the planned seismic surveys in the Gulf of Mexico. A detailed description of the purpose of the calibration and testing program was outlined in the NMFS notice of the proposed IHA (71 FR 58790, October 5, 2006).

#### Description of the Specified Activity

The *Langseth* is expected to depart Mobile, AL in July, 2007 (at the earliest) and will transit to the survey area in the northern Gulf of Mexico. The survey will encompass an area between 24°N. and 31°N. and between 83°W. and 96°W., which is within the Exclusive Economic Zone (EEZ) of the U.S.A. The study will consist of three phases: (1) an initial testing/shakedown phase, (2) measurements of the sounds produced by various airgun arrays to be used by the *Langseth* (calibration), and (3) a three-dimensional (3D) seismic testing phase. The entire survey, calibration and testing included, will take approximately 25 days and include approximately 1420 km (174 hours) of airgun operation. Measurements will be made during seismic operations in three categories of water depth: shallow (<100 m or <328 ft), intermediate/slope (100–1000 m or 328–3281 ft), and deep (>1000 m or >3281 ft). The vessel will transit to Galveston after the study is completed. The exact dates of the activities will depend on logistics and weather conditions.

The full airgun array on the *Langseth* consists of 36 airguns, with a total discharge volume of 6600 in<sup>3</sup>. The array is made up of four identical linear arrays or strings, with 10 airguns on each string. For each operating string, nine airguns will be fired simultaneously, while the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The calibration phase will use the full 36-airgun array and subsets thereof. The subsets will consist of either 1 string (9