avoided through the incorporation of the required mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, a small percent of any of the estimated population sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to L-DEO for conducting a marine geophysical survey in the Pacific Ocean and Caribbean Sea off Central America from February-April, 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 14, 2008.

**James H. Lecky,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF10**

### Taking of Marine Mammals Incidental to Specified Activities; An On-ice Marine Geophysical and Seismic Programs in the U.S. Beaufort Sea

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

**ACTION:** Notice of issuance of three incidental harassment authorizations.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that Incidental Harassment Authorizations (IHAs) to take marine mammals, by Level-B harassment, incidental to conducting on-ice marine geophysical research and seismic surveys by CGGVeritas (Veritas) and Shell Offshore, Inc. (SOI) in the U.S. Beaufort Sea, have been issued for a period of one year from the IHAs effective date.

**DATES:** These authorizations are effective from February 15, 2008, until February 14, 2009.

**ADDRESSES:** Copies of the applications, IHAs, the *Environmental Assessment (EA) on Regulations Governing the Taking of ringed and Bearded Seals Incidental to On-ice Seismic Activities in the Beaufort Sea* (NMFS' 1998 EA), the 2008 *Supplemental Environmental Assessment on the Issuance of Three Incidental Harassment Authorizations to Take Marine Mammals by Harassment Incidental to Conducting On-ice Seismic Survey Operations in the U.S. Beaufort Sea* (SEA), and/or a list of 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 one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137 or Brad Smith, Alaska Region, NMFS, (907) 271–5006.

**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.

Permission 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 if 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 for certain categories of 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 approve or disapprove the request for authorization.

**Summary of Request**

On August 8 and 14, 2007, NMFS received two applications from Veritas for the taking, by harassment, of three species of marine mammals incidental to conducting on-ice seismic surveys in Smith Bay and Pt. Thomson areas of the U.S. Beaufort Sea. On September 10, 2007, NMFS received an application from SOI for the taking, by harassment, of three species of marine mammals incidental to conducting an on-ice marine geophysical survey program offshore west of Simpson Lagoon, U.S. Beaufort Sea. Veritas plans to acquire 3D seismic data within the months of February – May, 2008. The energy source for the proposed activity will be vibroseis. The proposed SOI on-ice seismic survey will also use vibroseis as energy sources, and is scheduled to begin in early March 2008 with camp mobilization expected to begin approximately March 11 from Oliktok Point. No under-ice acoustic sources would be deployed during the on-ice marine seismic program. Data acquisition will begin in mid-March and continue for approximately 60 days until mid-May, followed by camp demobilization to Oliktok Point.

**Description of the Activity**

*Veritas*

The first specified geographic region of Veritas activities is a 569–km² (220–mi2) area extending across Smith Bay from point of entry from the west at approximately 71°06'00.05″ N, 154°30'21.00″ W to the east at point of exit to land at approximately 70°54'37.03″ N, 153°46'43.43″ W. Water depths in most (≤ 80 percent) of the area are less than 10 ft (3 m) based on bathymetry charts. The second specified geographic area is a 276–km² (107–mi²)

area extending across the Beaufort Sea from point of entry from the southwest corner at approximately 70°10'41.84″N, 146°43'03.36″W to the northwest corner at approximately 70°14'52.92″N, 146°42'15.21″W to the southeast corner at approximately 70°08'43.98″N, 145°58'10.70″W to the northeast corner off of Flaxman Island at approximately 70°11'28.82″N, 145°54'11.46″W. Water depths in most (> 75 percent) of the area are less than 10 ft (3 m) based on bathymetry charts. The proposed vibroseis operations for the Veritas' on-ice seismic project is expected to cover 1,345 line-miles (2,164 km).

*SOI*

The proposed SOI on-ice marine geophysical (seismic) program would be conducted over 10 to 20 MMS Outer Continental Shelf (OCS) lease blocks located offshore from Oliktok Point in the Alaskan Beaufort Sea. The proposed program location is in the vicinity of Thetis and Spy Islands, north-northwest of Oliktok Point. The majority of the OCS blocks covered in the proposed program are surrounding the 33 ft (10 m) water depth contour. Assuming seismic acquisition occurred over up to 20 OCS blocks, the proposed on-ice seismic project would cover a maximum estimated 3,000 line-miles (4,828 km) of surveying within a 265 mi2 (686 km2) area.

Detailed descriptions of these activities were published in the **Federal Register** on November 30, 2007 (72 FR 67713). No changes have been made to these proposed on-ice seismic survey activities.

**Comments and Responses**

A notice of receipt and request for public comment on the application and proposed authorization was published on November 30, 2007 (72 FR 67713). During the 30–day public comment period, NMFS received the following comments from the Marine Mammal Commission (Commission), the North Slope Borough (NSB), the North Alaska Environmental Center (NAEC), and the Center for Biological Diversity (CBD). Overall, the NSB supports the efforts to collect geological data from the ice instead of during the open water period when bowhead whales (Balaena mysticetus) and other marine mammals might be present and significant subsistence activity takes place.

*Comment 1:* The Commission recommends that NMFS issue the IHAs subject to the mitigation measures proposed in the November 30, 2007, **Federal Register** notice (72 FR 67713). The Commission recommends further that any authorization issued specify that, if a mortality or serious injury of a marine mammal occurs that appears to be related to the applicants' operations, activities will be suspended until NMFS has (1) reviewed the situation and determined that further deaths or serious injuries are unlikely or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

*Response:* NMFS agrees with the Commission's comments and recommendation that the applicants must implement monitoring and mitigation measures to achieve the least practicable impact on marine mammals species or stocks that may be exposed to the on-ice seismic activities. As described below, NMFS is requiring the applicants to implement a number of measures to reduce the level of impact on seals, which may be found within the vicinity of the projects.

NMFS agrees further with the Commission that on-ice seismic operations must be suspended immediately if a dead or injured marine mammal is found in the vicinity of the project areas and the death or injury of the animal could be attributable to the applicants' activities. This requirement is a condition in the IHA.

*Comment 2:* The Commission recommends that if other species marine mammals (e.g., beluga whales or bowhead whales) are observed in the vicinity of the surveys, activities be suspended until the animals depart or authorization to take such species is issued.

*Response:* NMFS agrees with the Commission's recommendation that if marine mammals not covered by these IHAs are observed within the vicinity of the survey areas and it is determined that on-ice seismic activities could adversely affect these marine mammals, the activities be suspended until the animals depart or authorization to take such species is granted. NMFS considers it is extremely unlikely, however, that beluga whales or bowhead whales will be present in the vicinity of the on-ice seismic operations. Due to safety reasons, these on-ice seismic operations can only be conducted in areas with ice thickness of at least 50 in (1.3 m) to support the heavy equipment and personnel, and the nearest lead would be at least 10 mi (16 km) away. This is not typical habitat for cetacean species, including bowhead and beluga whales and it is very unlikely cetacean species would be found near the project locations.

*Comment 3:* CBD argued that NMFS cannot lawfully issue IHAs because the proposed activities ''have the potential to result in serious injury or mortality to marine mammals.'' Rather, NMFS is required to promulgate regulations pursuant to 16 U.S.C. 1371(a)(5)(A) to authorize take by injury or mortality. Specifically, CBD notes that because these activities will occur during the pupping season for ringed seals, there is a likelihood they will be killed by vehicles or they will be driven into the water prematurely, and therefore, unable to survive. (CBD cited a 2003 NRC report that at least one ringed seal pup was killed by a bulldozer clearing seismic lines on the shore-fast.

*Response:* NMFS does not agree with CBD's argument and believes the risk of injury or mortality from these activities is minimal. The **Federal Register** notice published on November 30, 2007 (72 FR 67713), provided a detailed description of the proposed activities, the potential impacts to marine mammals resulting from on-ice seismic surveys, and the proposed mitigation and monitoring measures. All project areas with water deeper than 3 m (9.9 ft) would be surveyed by trained seal lair sniffing dogs to locate ringed seal (not ''ring seal'' as mentioned in the CBD's comment) lairs prior to the start of any activities. All locations of seal structure would be marked and protected by a 150 m (490 ft) exclusion zone, within which seal structures could suffer damages (NMFS, 1998). The applicants would be prohibited therefore, from conducting any on-ice seismic activities within these areas. Trained seal lair sniffing dogs were used in previous on-ice activities in the U.S. Beaufort Sea (e.g., Smith and Codere, 2007) and have proven to be an effective way to locate seal structures during pre-activity surveys, thereby helping to avoid pinniped injuries or deaths that may result from moving vehicles running over seal lairs (Smith and Codere, 2007). The NRC (2003) example in CBD's comment that a ringed seal pup was killed by a bulldozer was due to ice road construction. The proposed on-ice seismic surveys would not require the construction of ice roads and that the affected footprint is small. In addition, as mentioned in the **Federal Register** notice (72 FR 67713), the applicants' vehicles would be required to avoid any pressure ridges, ice ridges, and ice deformation areas where seal structures may be present. With these monitoring and mitigation measures, it is extremely unlikely that marine mammals could be injured or killed as a result of the proposed on-ice seismic survey.

*Comment 4:* CBD states that the proposed authorizations ''are legally infirm as they rely on a regulatory definition of 'small numbers' that is at odds with the statute and has been

struck down by the courts.'' CBD states further that by relying on the existing definition, NMFS is ''committing prejudicial error rendering the IHAs invalid.''

*Response:* NFMS does not agree with CBD's statement. The ''small numbers'' of ringed, bearded, and spotted seals that could be affected by the proposed on-ice seismic operations were analyzed and these numbers were compared to the relative population size of these species. As discussed in the previous **Federal Register** notice (72 FR 67713, November 30, 2007), it is estimated that up to 984 ringed seals (0.39 percent of estimated total Alaska population of 249,000) could be taken by Level B harassment due to Veritas' Smith Bay on-ice seismic survey, up to 477 ringed seals (0.19 percent of the total Alaska population) by Veritas' Pt. Thomson on-ice seismic surveys, and up to 1,187 ringed seals (0.47 percent of the total Alaska population) by SOI's on-ice geophysical program. Due to the unavailability of reliable bearded and spotted seals densities within the proposed project area, NMFS is unable to estimate take numbers for these two species. However, it is expected that much fewer bearded and spotted seals would be subject to takes by Level B harassment since their occurrence is very low within the proposed project areas, especially during spring (Moulton and Lawson, 2002; Treacy, 2002a; 2002b; Bengtson *et al.*, 2005). Consequently, the levels of take of these two pinniped species by Level B harassment within the proposed project areas would represent only small fractions of the total population sizes of these species in Beaufort Sea.

*Comment 5:* CBD states that NMFS did not make a separate finding that only ''small numbers'' of ringed seals, spotted seals, and bearded seals would be harassed by Veritas and Shell's planned activities in the proposed IHAs. NSB also states that without density information for bearded and spotted seals within the proposed project area, NMFS cannot grant IHAs under the MMPA.

*Response:* NMFS does not agree with CBD's statement. The November 30, 2007, **Federal Register** notice for the proposed IHAs identified the number of ringed seals expected to be taken by these activities. NMFS estimates that up to 984 ringed seals (0.39 percent of the estimated total Alaska population of 249,000) could be taken by Level B harassment due to Veritas' Smith Bay on-ice seismic survey; up to 477 ringed seals (0.19 percent of the estimated total Alaska population) by Veritas' Pt. Thomson on-ice seismic surveys; and up to 1,187 seals (0.47 percent of the estimated total Alaskan population) by SOI's on-ice geographical program. While NMFS was not able to develop a specific estimate of take for spotted and bearded seals due to data limitations, NMFS described, as highlighted below, that take of these other species is likely to be extremely low due to their infrequent occurrence in the project area.

NMFS has evaluated the projects and the level of take that could result from each on-ice seismic activity. NMFS finds, based on its evaluation of each of the three activities and the best available information that the number of ringed seal take is small relative to the overall affected population of the species.

Regarding NSB's concern, the **Federal Register** notice stated that ''it is expected much fewer bearded and spotted seals would subject to takes by Level B harassment since their occurrence is very low within the proposed project areas, especially during spring (Moulton and Lawson, 2002; Treacy, 2002a; 2002b; Bengtson *et al.*, 2005). Consequently, the levels of take of these two pinniped species by Level B harassment within the proposed project areas would represent only small fractions of the total population sizes of these species in Beaufort Sea.'' NMFS relied on the best available information to determine the overall density estimates of spotted and bearded seals. Specifically, early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981), and for spotted seals in the Bering Sea was 335,000 to 450,000 (Burns, 1973). In addition, these seals tend to congregate in areas with broken pack ice or along the ice edge, which are to be avoided by the proposed on-ice seismic operations due to safety reasons. Therefore, NMFS believes any take, if any, of spotted and bearded seals would be small relative to their overall estimated population. Please refer to the **Federal Register** notice for detailed information regarding the number of marine mammals expected to be taken for the proposed activities and the methods of calculating these numbers.

*Comment 6:* Citing NMFS' Stock Assessment Reports (SAR), CBD asserts that NMFS cannot make a ''negligible impact'' finding for the Veritas and SOI projects because NMFS does not have accurate information on the status of spotted seals, bearded seals, and ringed seals. NSB and NAEC are also concerned that no adequate information is available on bearded and spotted seals.

*Response:* NMFS does not agree with CBD's argument that a ''rational negligible impact finding'' cannot be made because of a lack of accurate or reliable data. Although the SAR stated that no up-to-date population estimates are available for these three species, recent population estimates from many studies point out that the population levels of these species are healthy and stable (e.g., ringed seal: Moulton *et al.*, 2002; Frost *et al.*, 2002; 2004; Bengtson *et al.*, 2005; spotted seal: Frost *et al.*, 1993: spotted seal; Lowry *et al.*, 1994; bearded seal: Bengtson *et al.*, 2000; Bengtson *et al.*, 2005). In addition, none of the species in question is listed under the Endangered Species Act, and the SAR clearly states that due to a very low level of interactions between U.S. commercial fisheries and ringed, bearded, and spotted seals, the species are not considered a strategic stock (Angliss and Outlaw, 2007).

Moreover, NMFS has reviewed each of the applications carefully and determined that no more than Level-B harassment of pinnipeds for each on-ice seismic survey would occur. Any animals that could be exposed to vibroseis would likely experience short-term annoyance as supported by prior studies (Burns and Kelly, 1982; Lyderseen and Hammill, 1993), because seals will not be physically harmed by on-ice seismic operations. In addition, because of the required mitigation and monitoring measures, NMFS is confident that any impacts, if at all, to pinnipeds resulting from the on-ice seismic surveys would be short-term and of little consequence.

NMFS has reviewed Veritas' applications carefully and it is clear that Veritas did request both of their IHAs to have Level B harassment of up to 10 bearded seals for each on-ice seismic activity. Please refer to Response to Comment 5 for additional information regarding take information for bearded and spotted seals.

*Comment 7:* CBD comments that in making its ''negligible impact'' determinations, NMFS must give the benefit of the doubt to the species. CBD implies that NMFS should adopt a precautionary approach when dealing with situations in which the population status of a species is unknown, and therefore, the true impacts of a project on the species cannot be ascertained.

*Response:* NMFS does not agree with CBD's argument that a precautionary approach should be employed for the on-ice seismic surveys. Moreover, CBD has not presented NMFS with any data to support its contention that the precautionary approach should apply in this case.

NMFS has reviewed the available literature and concluded that the most recent population estimate for ringed seals in Alaska is 249,000 animals. As described in Response to Comment 5, NMFS determined that take, by Level-B harassment of ringed seals within the project areas would result in no more than a negligible impact, because the number of seals that would be taken by Level B harassment represents only a small fraction of the Alaska population. Although there is no up-to-date assessment of the population level of Alaska ringed seal stock, there is no reason to believe that this population is declining or would be adversely affected by the proposed activities (Angliss and Outlaw, 2007).

Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981), and for spotted seals in the Bering Sea was 335,000 to 450,000 (Burns, 1973). Although there is no reliable recent population estimates for these two species, there is no reason to believe that these populations suffered significant decline. Therefore, according to NMFS' Stock Assessment Reports, it is recommended that the pinniped maximum theoretical net productivity rate of 12 percent be employed for these stocks (Wade and Angliss, 1997). In addition, since bearded and spotted seals occur mainly in areas with broken pack ice or along the ice edge (Burns, 1967; Lowry *et al.*, 1998), which are areas avoided by the proposed on-ice seismic operations for safety reasons, it is expected that Level B harassment from the proposed on-ice activities would be rare. Therefore, the precautionary approach is not appropriate given their infrequent occurrence in the project areas.

Moreover, NMFS will require the IHA holders to implement specific mitigation and monitoring measures, which are expected to avoid the possibility of injury or mortality and reduce the likelihood of behavioral harassment. Please refer to the **Federal Register** for detailed information on the impact analyses and a detailed description on the proposed monitoring, mitigation, and reporting measures for the Veritas and SOI's planned on-ice activities.

*Comment 8:* CBD argues that further cumulative environmental impact analysis would be particularly important for species such as the spotted seal, which has a very small Beaufort Sea population.

*Response* Regarding the cumulative environmental impact analysis, please refer to *Response* to *Comment 9* below. NMFS has also assessed the potential cumulative impacts of these IHAs in conjunction with other industrial activities in our Supplemental Environmental Assessment for the 2008 On-Ice Seismic Activities.

There is no scientifically-recognized Beaufort Sea population of spotted seals. The Alaska spotted seal stock is the only population found in U.S. waters and recognized under the MMPA (Angliss and Outlaw, 2007). Based on satellite tagging studies, spotted seals migrate south from the Chukchi Sea in October and pass through the Bering Strait in November and overwinter in the Bering Sea along the ice edge (Lowry *et al.*, 1998). During spring they tend to prefer small floes (i.e., < 20 m in diameter), and inhabit mainly the southern margin of the ice, with movement to coastal habitats after the retreat of the sea ice (Fay 1974; Shaughnessy and Fay, 1977; Simpkins *et al.*, 2003), therefore, they are rarely found within the proposed on-ice project areas which require ice thickness of at least 4 ft (1.2 m) for safety reasons.

*Comment 9:* CBD asserts that NMFS' negligible impact finding for pinnipeds under the MMPA is ''suspect'' because NMFS has failed to consider the cumulative impacts of numerous industrial activities (including other Arctic oil and gas development activities) and global warming.

*Response:* Section 101(a)(5)(D) of the MMPA allows citizens of the United States to take by harassment, small numbers of marine mammals incidental to a specified activity (other than commercial fishing) within a specified geographical region if NMFS is able to make certain findings. NMFS must issue an incidental harassment authorization if 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 if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth.

Pursuant to NEPA, NMFS is required to analyze the potential environmental effects of its actions. As part of the NEPA analysis (e.g., an EIS or EA), NMFS is required to consider the direct, indirect and cumulative impacts resulting from the proposed action along with a reasonable range of alternatives, including the proposed action.

NMFS has decided to issue 3 incidental harassment authorizations to Veritas and SOI, to take, by no more than Level B harassment, small numbers of marine mammals incidental to their proposed on-ice seismic surveys in the U.S. Beaufort Sea. After careful consideration of the proposed activities, and having considered the context in which these activities would occur, NMFS has determined that the proposed activities: (1) would not result in more than behavioral harassment (i.e., Level B) of small numbers of marine mammal species or stocks; (2) would not result in more than a negligible impact; (3) would not lead to an unmitigable adverse impact on subsistence uses; and (4) would be unlikely to directly, indirectly or cumulatively cause significant impacts to the human environment.

In reaching these conclusions, NMFS gave careful consideration to a number of issues and sources of information. In particular, NMFS assessed the potential direct impacts of the 2008 on-ice seismic surveys, the cumulative impacts from multiple activities in the U.S. Beaufort Sea, and the effects of climate change in the context of the specified activity and other activities occurring in the Beaufort Sea.

NMFS relied upon a number of scientific reports, including its most recent Alaska marine mammal stock assessment to support its findings (Angliss and Outlaw, 2007). The stock assessment contains a description of each marine mammal stock, its geographic range, a minimum population estimate, current population trends, current and maximum net productivity rates, optimum sustainable population levels and allowable removal levels, and estimates of annual human-caused mortality and serious injury through interactions with commercial fisheries and subsistence hunters. NMFS also considered, to the extent the data exists, the potential impacts of climate change on pinniped populations. NMFS recognizes that climate change is a concern for the sustainability of the entire Arctic ecosystem and has reviewed the available literature and stock assessment reports to support its negligible impact determination and finding of no significant impact. Moreover, according to a number of scientific studies, population levels of ringed, spotted and bearded seals are healthy and stable, with none being listed under the ESA or considered strategic stocks for purposes of the MMPA. This information affirms NMFS' position that these pinniped populations can sustain the short-term, localized impacts from the 2008 on-ice seismic surveys.

In addition, NMFS analyzed in its NEPA documents the effects of the proposed 2008 on-ice seismic surveys and the cumulative effects of past, present and reasonably foreseeable activities conducted in the Arctic

region, and concluded that impacts to marine mammals, particularly pinnipeds would be insignificant. NMFS anticipates that any pinnipeds exposed to vibroseis would be annoyed for a short period of time and would not experience physical harm. While there is a greater likelihood that larger numbers of ringed seals could be exposed to vibroseis (principally because of their higher occurrence in the project area and dependence upon thicker ice than spotted or bearded seals), NMFS does not believe that this species would be negatively impacted by the on-ice seismic surveys. Furthermore, the required mitigation and monitoring measures are expected to reduce the likelihood or severity of any impacts to pinnipeds over the course of the 2008 survey season. With respect to cumulative impacts, NMFS evaluated a number of other activities that could impact marine mammals, and concluded that the incremental impact of the on-ice seismic surveys, combined with these other activities are not likely to result in a significant impact on the human environment. Finally, NMFS considered whether climate change could impact ice-dependent species such as ringed, spotted and bearded seals and acknowledged that reductions in sea ice could adversely affect pinniped production. However, it is unclear at this time the extent to which climate change contributes to a reduction in pinniped habitat or pinniped productivity. Any future oil and gas exploration or extraction activities and permit reviews would likely need to undertake similar analyses to determine how global warming may affect marine mammals in the Arctic region.

*Comment 10:* CBD asserts that NMFS cannot make a finding that on-ice seismic activities would not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence uses by Alaska Natives.

*Response* NMFS disagrees with CBD. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Nuiqsut hunters may hunt year round; however, most of the harvest has been in open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). Subsistence patterns may be reflected through the harvest data collected in 1992, when 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). Only a small number of ringed seals was harvested during the winter to early spring period, which corresponds to the time of the proposed on-ice seismic operations.

Based on harvest patterns and other factors, on-ice seismic operations in the activity area are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because:

(1) Operations would end before the spring ice breakup, after which subsistence hunters harvest most of their seals.

(2) The areas where seismic operations would be conducted are small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

*Comment 11* CBD cites to the SOI IHA application and criticizes what it believes to be ''nonsensical'' mitigation measures, i.e., timing and locations for active seismic work during a time of year that has the least potential to affect marine mammals.

*Response* NMFS agrees with CBD's assessment that the timing of Veritas and SOI's on-ice seismic surveys should not be viewed as a mitigation measure. Therefore, NMFS has not factored this element into its required mitigation and monitoring requirements. It is worth noting, however, that in the context of Arctic oil and gas exploration, NMFS believes on-ice vibroseis activities during the winter and spring have the potential to result in substantially fewer adverse effects to marine mammal species or stocks compared with open water seismic surveys.

*Comment 12:* CBD points out the difference between **Federal Register** notice (72 FR 67713, November 30, 2007) and Veritas' IHA application regarding spaces between transect lines for pre-activity seal lair surveys. The **Federal Register** states that the transect lines will be spaced 250 m (820 ft) apart, while in Veritas' application the transect lines are proposed to be a quarter mile (402 m or 1,320 ft) apart. CBD also states that there is no explanation of the exclusion of seal-sniffing dog surveys in waters less than 3 meters deep.

*Response* As stated in the November 30, 2007, **Federal Register** notice (72 FR 67713), NMFS proposed that pre-activity seal lair surveys be conducted with transect lines spaced 250 m (820 ft) apart. NMFS will require the applicants to conduct surveys with transect lines spaced 250 m apart.

Based on aerial surveys of seals near BP's Northstar and Liberty sites between May and June, 2000, ringed seal densities in water depth between 0 - 3 m (0 - 9.8 ft) were much lower than densities observed in deeper strata (Moulton *et al.*, 2001). All these ringed seals were observed from a fixed-wing aircraft during surveys. Moulton *et al.* (2001) also noted that most of the 0 - 2 m (0 - 6.6 ft) portion of the 0 - 3 m (0 - 9.8 ft) would be frozen solid in spring and could not be used by seals, not to mention seal lairs, and that the 2 - 3 m (6.6 - 9.8 ft) portion would be marginal habitat at best. Therefore, NMFS does not believe seal lair surveys by trained dogs are warranted. All seals hauled out on ice would be spotted before the on-ice activities and thus Level A harassment can be avoided. In addition, as mentioned in the **Federal Register** notice (72 FR 67713), the applicants' vehicles would be required to avoid any pressure ridges, ice ridges, and ice deformation areas where seal structures may be present, though unlikely in shallow water areas.

*Comment 13:* CBD states that it submitted comments to the Minerals Management Services' (MMS') draft *Programmatic Environmental Assessment for Arctic Outer Continental Slope Seismic Surveys* (OCS EIS/EA MMS 2006–019) (PEA) on May 10, 2006, and argues that NMFS cannot adopt that draft PEA because it had serious legal deficiencies.

*Response* CBD must have commented on an outdated early draft version of the document, which has since been updated and superseded by the Final Programmatic Environmental Assessment (FPEA) on the *Arctic Ocean Outer Continental Shelf Seismic Surveys – 200*6 (OCS EIS/EA MMS 2006–038) in June 2006. The draft PEA CBD commented on is not the correct document that NMFS listed in its November 30, 2007, **Federal Register** notice (72 FR 67713), therefore, its comments are irrelevant to the proposed IHAs. In addition, NMFS plans to use, instead, its 1998 Environmental Assessment (EA) for a similar action with a Supplemental EA (SEA) for the 2008 proposed on-ice seismic operations. Please refer to the ''National Environmental Policy Act'' section below for detailed information.

*Comment 14:* NSB and NAEC point out that the MMS FPEA on the *Arctic Ocean Outer Continental Shelf Seismic Surveys – 2006* is for open water seismic surveys, instead of on-ice vibroseis.

*Response* NMFS agrees with NSB and NAEC's comment that the MMS FPEA

on the *Arctic Ocean Outer Continental Shelf Seismic Surveys – 2006* focuses on open water seismic instead of on-ice vibroseis. Therefore, based upon further consideration, NMFS has decided to rely on the EA prepared in 1998 with an newly prepared SEA for the analysis under the National Environmental Policy Act (NEPA). Please refer to the NEPA section below for a detailed description.

*Comment 15:* NSB states that none of the applications provided sufficient detail as to the exact locations where seismic activity would occur, and that Veritas' applications failed to include the attached program area maps. NSB further points out that depending on within which portion of this large proposed area would seismic operations be conducted, the impacts to marine mammal will be different as animals are not distributed evenly within the proposed project area.

*Response* NMFS does not agree with NSB's comment. All applicants provided detailed information on the locations of their proposed on-ice seismic surveys, along with maps with clear boundaries. Although NMFS failed to post the maps of the Veritas' proposed on-ice activities, NMFS did make all documents available to the public through its November 30, 2007, **Federal Register** (72 FR 67713) notice announcing receipt of the applications and request for public comments. NSB should have contacted NMFS if it was interested in viewing the maps.

The exact location of the on-ice seismic surveys and transect routes will depend on suitable ice conditions and operational efficiency during the time of the activity, and the presence and absence of seal lairs after pre-activity surveys. The estimated takes are calculated and analyzed based on the maximum availability of marine mammals in the entire project areas. Since the actual on-ice activities would be conducted within portions of these areas that are analyzed, the actual impacts to marine mammals are expected to be lower.

*Comment 16:* NSB is concerned that bowhead whales and belugas (*Delphinapterus leucas*) could be potentially taken as a result of the proposed action. NSB states that bowheads and belugas typically begin passing by Barrow in mid-April, and that in a typical year, bowheads and belugas could be off the project area by mid-April within several days of passing Barrow.

*Response* NMFS does not agree with NSB's assessment. The nature of the proposed on-ice seismic R&D program would require ice thickness of at least 50 in (1.3 m) to support the heavy equipment and personnel, and the nearest lead would be at least 10 mi (16 km) away. This is not typical habitat for cetacean species, including bowhead and beluga whales, thus, no cetacean species are likely to be found in the vicinity of the project area. Therefore, NMFS does not believe the proposed project would affect bowhead or beluga whales. Due to safety concerns, Veritas and SOI will not operate in an area where the ice condition is thin enough to allow an open lead to develop.

*Comment 17:* NSB states that it is not clear that all the seal breathing holes or lairs would be located. NSB states that not enough information is provided in the application to determine how frequently the surveys would be conducted and whether enough passes would be conducted to locate all the lairs. NSB further states that if birthing lairs are not located, it is possible that seals could be injured or killed by being crushed by seismic equipment. NSB requests NMFS to complete a statistical analysis of the detection rate of dogs in a given area relative to observed, or estimated, population densities.

*Response* A detailed seal breathing holes and lairs survey protocol by trained seal lair sniffing dogs by transects that are spaced 250 m (820 ft) apart was described in the **Federal Register** notice (72 FR 67713, November 30, 2007), and is not repeated here. A more detailed report using seal lair-detecting dogs by Smith and Codere (2007) is available upon request. This report states that at distances of more than 0.25 miles (400 m, or 1,320 ft) the dogs can detect 80 percent or more of the seal structures in an area. Since the seal structure transects are more closely spaced for the Veritas and SOI's on-ice program (250 m, or 820 ft), the detection rate will be over 90 percent (T. Smith. Eco Marine. Pers. Comm. March, 2007). In addition, this project will use multiple dogs, which would further increase the detection rate. It is also important to understand that even though 100 percent of the ringed seals would not be detected within the proposed project area, the site where the equipment will be placed and the route where vehicles travel will be adequately surveyed and marked so that Level A harassment will be prevented. A statistical analysis of the detection rate of dogs in a given area relative to observed, or estimated, population densities is beyond the scope of the issuance of the IHAs; however, NMFS will consider this analysis when adequate data become available.

*Comment 18:* NSB states that it is possible that ringed seals could sustain hearing damage from the proposed on-ice seismic operations. NSB is also concerned that female ringed seals will likely remain near their pups even with considerable amounts of human activities, and could, therefore, be within the 190 dB zone of seismic activities if all lairs are not found. NSB points out that it is not possible to determine whether the 150 m (492 ft) exclusion zone from seal structures is sufficient.

*Response* NMFS does not agree with NSB's assessment that ringed seals or any other pinnipeds could sustain hearing damage from exposure of sounds resulting from on-ice vibroseis. Although effective source levels of vibroseis arrays for horizontal propagation in water under the ice are uncertain, estimates range from at least 185 dB to 212 dB re 1 microPa (Holliday *et al.*, 1984; Malme *et al.*, 1989, Richardson et al., 1995), which is considerably lower than source levels for large arrays of airguns. Therefore, it is highly unlikely that the received levels at 150 m (492 ft) would be close to 190 dB re 1 microPa and cause hearing damage or hearing threshold shifts to pinnipeds. In addition, the strongest energy is produced at frequencies sweeping from 10 to 70 Hz (Holliday *et al.*, 1984), which are below pinnipeds' hearing range. The 150 m (492 ft) exclusion zone is mainly used to reduce any Level B harassment caused by the vibration of the seismic vehicles and the presence of the survey crew, and it has been shown to be effective in providing protections to seal structures in several studies (e.g., Burns and Kelly, 1982) and previous on-ice seismic activities.

*Comment 19:* NSB points out that Veritas failed to provide any information about whether a field camp would be used and how, where and when the seismic equipment and/or camps would travel.

*Response* Although Veritas did not provide any information about whether a field camp would be used, the IHAs issued to Veritas and SOI require that no camps are allowed to be established within 150 m (492 ft) of seal lairs. All on-ice seismic operations (camp included) shall be conducted as far away as possible from seal structures.

In addition, the IHAs further require that no ice road may be built between the mobile camp and work site. Travel between the mobile camp and work site shall also be monitored for marine mammals and be done by vehicles driving through on a snow road. Vehicles must avoid any pressure ridges, ice ridges, and ice deformation

areas where seal structures are likely to be present.

*Comment 20:* NAEC points out that the proposed IHA for SOI did not mention any other types of geophysical activities to be conducted by SOI, either during the winter or later in the year, therefore no other surveys can be covered by this proposed IHA.

*Response* The proposed IHA to SOI would only cover SOI's on-ice geophysical program described in the **Federal Register** notice (72 FR 67713, November 30, 2007), within 10 to 20 MMS OCS lease blocks located offshore from Oliktok Point in the Alaskan Beaufort Sea, in the vicinity of Thetis and Spy Islands, north-northwest of Oliktok Point.

*Comment 21:* NAEC points out that SOI plans to conduct a number of additional geotechnical surveys this coming year, including during the time period of February to May 2008, which could add to the incidental take and activities which need to be addressed in NMFS proposed IHA review and NEPA analysis.

*Response* SOI has no other projects planned for the time period of February through May 2008 within the on-ice marine seismic program boundary. SOI does plan on deploying Argos data buoys beginning mid-late January 2008 on Beaufort Sea ice in the Sivulliq area, which is approximately 60 mi (97 km) east of the 2008 on-ice marine seismic program area. At various times during the 2008 open water season, SOI also plans on conducting marine surveys, 3D seismic surveys, potentially a geotechnical survey, and an exploration-drilling program. However, those additional activities would be based on separate analyses on the potential impacts on marine mammals.

Under the MMPA, if SOI plans to conduct future activities and wishes to obtain ''take'' coverage under section 101(a)(5) of the statute, SOI would need to contact NMFS and apply for incidental take permits of marine mammals if future activities could result in the take of marine mammal species or stocks. Any subsequent IHA applications from SOI for taking of marine mammals would be evaluated and reviewed on a case-by-case basis.

*Comment 22:* NAEC points out that the MMS and NMFS have co-authored a draft programmatic Environmental Impact Statement, *Seismic Surveys in the Beaufort and Chukchi Seas, Alaska* (OCS EIS/EA MMS 2007–001), and that since this NEPA process is still on-going, it needs to be completed with a Final EIS and decision prior to issuance of these incidental take authorizations.

*Response* NMFS does not agree with NAEC's assessment. The draft programmatic Environmental Impact Statement, *Seismic Surveys in the Beaufort and Chukchi Seas, Alaska* (OCS EIS/EA MMS 2007–001) covers open water seismic surveys, not on-ice vibroseis. Please refer to *Response* to *Comment 14* above and the NEPA section below for additional information regarding NEPA review.

*Comment 23:* NAEC states that even though polar bears are regulated by the USFWS, NMFS still has the obligation to consider the ecological relationships between this species and its primary food source, the ringed seals.

*Response* Comment noted. However, as mentioned in the November 30, 2007, **Federal Register** notice (72 FR 67713) Veritas and SOI are seeking a take authorization from the U.S. Fish and Wildlife Service (USFWS) for the incidental taking of polar bears because USFWS has management authority for this species. A detailed analysis on ecological relationships between polar bears and their ringed seals are beyond the scope of the proposed IHAs. However, NMFS notes that no ringed seals will be removed from the population from the proposed action.

*Comment 24:* NAEC states that NMFS has underestimated the impacts of the seismic surveys on ringed seals and ignored important documented impacts from past surveys and the effects to subsistence. NAEC states that NMFS did not mention that ringed seal lairs and pups have been crushed and the pups killed by past seismic surveys and other on-ice activities according to monitoring done for the Northstar project, and other scientific studies conducted by Dr. Brendan Kelly.

*Response* NMFS does not agree with NAEC's statement. NAEC provided an incomplete description on NMFS analysis of the potential effects on marine mammals from on-ice seismic activities. In the ''Potential Effects on Marine Mammals and Their Habitat'' section of the November 30, 2007, **Federal Register** notice (72 FR 67713), NMFS stated that ''[i]ncidental harassment to marine mammals could result from physical activities associated with on-ice seismic operations, which have the potential to disturb and temporarily displace some seals. For ringed seals, pup mortality could occur if any of these animals were nursing and displacement were protracted.''

The analyses provided in the **Federal Register** notice (72 FR 67713, November 30, 2007) are based on the best scientific information available, including on-ice activities according to monitoring done for BP's Northstar project (e.g., William *et al.*, 2001; Moulton *et al.*, 2001; 2005; Williams *et al.*, 2006). In the report *Monitoring of Industrial Sounds, Seals, and Whale Calls During Construction of BP's Northstar Oil Development, Alaskan Beaufort Sea, 2000* (Richardson and Williams, 2001), the authors concluded that ''[d]uring the 1999 – 2000 ice-covered season, no evidence of seal injuries or fatalities was evident, nor was it expected,'' and that the expected 99 seals within the potential impact zone were taken by Level B harassment only. The report further stated that the monitoring results, ''along with the presence of active structures near Northstar during the dog-assisted search in May 2000, indicate that effects of industrial activities were likely minor and localized.'' In addition, the most recent studies by Moulton *et al.* (2005) and Williams *et al.* (2006) also showed that effects of oil and gas development on local distribution of seals and seal lairs are no more than slight, and are small relative to the effects of natural environmental factors.

Although NMFS recognizes that in the past seal lairs have been crushed and at least one seal pup was killed by a bulldozer (NRC, 2003), however, those were caused by lack of adequate pre-activity seal lair surveys by trained dogs, as mentioned previously. The proposed monitoring and mitigation measures, described in this document below, will prevent serious injury and mortality to marine mammals and are also expected to reduce the potential for behavioral harassment.

In calculating the estimated take of marine mammals, NMFS did use Dr. Brenden Kelly's research data (Kelly and Quakenbush, 1990).

*Comment 25:* NAEC states that it is unclear whether the entire seismic survey line areas will be surveyed using trained dogs to identify lairs and how NMFS will ensure that this is done prior to the surveys.

*Response* NMFS does not agree with NAEC's statement. As stated in the November 30, 2007, **Federal Register** notice (72 FR 67713), only areas with water and ice deeper than 3 m (9.8 ft) will be surveyed for seal lairs using trained dogs. Please refer to the **Federal Register** notice for a detailed description regarding on the pre-activity seal survey would be conducted. The IHAs to Veritas and SOI will require that they complete these pre-activity surveys before any on-ice seismic activities are carried out.

*Comment 26:* NAEC states that NMFS failed to provide any analysis describing the subsistence use areas and nature of use for the Alaska Natives in Nuiqsut,

Kaktovik, and Barrow. NAEC further states that there are no analysis of local or regional impacts to the seals or an assessment of the harm to the animals used by each community and the cumulative impacts.

*Response* NMFS does not agree with NAEC's statement. As analyzed in the November 30, 2007, **Federal Register** notice (72 FR 67713), the on-ice seismic operations are not expected to have an unmitigable adverse impact on availability of marine mammal species and stocks for taking for subsistence uses because: (1) operations would end before the spring ice breakup, when most subsistence harvest activities occur; and (2) the areas where on-ice seismic operations would be conducted are small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

NMFS further described in the **Federal Register** notice (72 FR 67713, November 30, 2007) that Nuiqsut, Kaktovik, and Barrow communities have been working closely with Veritas and SOI to ensure that there will be no unmitigable adverse impact to subsistence use of marine mammals as a result of the proposed on-ice seismic operations. Specific measures include hiring native advisors for the proposed on-ice seismic operations, and implement mitigation and monitoring measures to ensure the availability of seals to subsistence use. Please refer to ''Potential Effects on Subsistence'' section for a detailed description and update.

*Comment 27:* NAEC points out that the NMFS failed to provide documentation that Shell or Veritas held plan of cooperation meetings in the affected communities for the seismic program proposed in the **Federal Register** notice, nor the results of those meetings or that plans of cooperation were agreed to by these communities to the agency.

*Response* NMFS does not agree with NAEC's statement. In the **Federal Register** notice (72 FR 67713, November 30, 2007), NMFS stated that ''Veritas will consult with the potentially affected subsistence communities of Barrow, Nuiqsut, Kaktovik, and other stakeholder groups to develop a Plan of Cooperation,'' and that ''Plan of Cooperation meetings in the communities of Nuiqsut and Barrow are being held during October 2007 by SOI.'' An update of additional meetings and their results are described in the ''Potential Effects on Subsistence'' section of this document.

*Comment 28:* NAEC points out that the monitoring plans described by Veritas in its August 14, 2007, application are vague and NMFS should include additional requirements in Veritas' IHA.

*Response* NAEC should refer to the November 30, 2007, **Federal Register** notice (72 FR 67713) and this document for a detailed description of monitoring measures.

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

Four marine mammal species are known to occur within the proposed survey area: ringed seal (*Phoca hispida*), bearded seal (*Erignathus barbatus*), spotted seal (*Phoca largha*), and polar bear (*Ursus maritimus*). Although polar bears are now proposed to be listed as threatened, none of these species are listed under the Endangered Species Act (ESA) as endangered or threatened species. Other marine mammal species that seasonally inhabit the Beaufort Sea, but are not anticipated to occur in the project area during the proposed R&D program, include bowhead whales and beluga whales. Veritas and SOI will seek a take Authorization from the USFWS for the incidental taking of polar bears because USFWS has management authority for this species. A detailed description of these species can be found in Angliss and Outlaw (2007), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2006.pdf*. A more detailed description of these species and stocks within the proposed action area provided in the November 30, 2007, **Federal Register** (72 FR 67713). Therefore, it is not repeated here.

**Potential Effects on Marine Mammals and Their Habitat**

Incidental harassment to marine mammals could result from physical activities associated with on-ice seismic operations, which have the potential to disturb and temporarily displace some seals. For ringed seals, pup mortality could occur if any of these animals are nursing and displacement is protracted. However, it is unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities, potential predators, and the typical movement patterns of ringed seal pups among different holes. Ringed seals also use as many as four lairs spaced as far as 3,437 m (11,276 ft) apart. In addition, seals have multiple breathing holes. Pups may use more holes than adults, but the holes are generally closer together than those used by adults. This indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given those considerations, combined with the small proportion of the population potentially disturbed by the proposed activities, impacts to ringed seals from each project are expected to be negligible.

The seismic surveys would only introduce low level acoustic energies into the water column and no objects would be released into the environment. In addition, the total footprint of the proposed seismic survey areas represent only a small fraction of the Beaufort Sea pinniped habitat. Sea-ice surface rehabilitation is often immediate, occurring during the first episode of snow and wind that follows passage of the equipment over the ice.

**Number of Marine Mammals Expected to Be Taken**

NMFS estimates that up to 984 ringed seals (0.39 percent of estimated total Alaska population of 249,000) could be taken by Level B harassment due to Veritas' Smith Bay on-ice seismic survey, up to 477 ringed seals (0.19 percent of the total Alaska population) by Veritas' Pt. Thomson on-ice seismic surveys, and up to 1,187 ringed seals (0.47 percent of the total Alaska population) by SOI's on-ice geophysical program. The estimated take numbers are based on consideration of the number of ringed seals that might be disturbed within each of the proposed project areas, calculated from the adjusted ringed seal density of 1.73 seal per $km^2$ (Kelly and Quakenbush, 1990).

Due to the unavailability of reliable bearded and spotted seals densities within the proposed project area, NMFS is unable to estimate take numbers for these two species. However, since bearded and spotted seals mainly occur in areas with broken pack ice and along the ice edge (Burns, 1967; Lowry *et al.*, 1998), which are avoided by on-ice seismic operations for safety reasons, it is expected that significantly fewer, if any, bearded and spotted seals would be subject to takes by Level B harassment since their occurrence in these areas is very low (Moulton and Lawson, 2002; Treacy, 2002a; 2002b; Bengtson *et al.*, 2005). Consequently, the levels of take of these two pinniped species by Level B harassment within the proposed project areas would represent only small fractions of the total population sizes of these species in Beaufort Sea.

In addition, NMFS expects that the actual take by Level B harassment from the proposed on-ice seismic programs would be much lower than the estimates due to the implementation of the proposed mitigation and monitoring

measures discussed below. Therefore, NMFS believes that any potential impacts to ringed, bearded, and spotted seals to the proposed on-ice geophysical seismic program would be no more than negligible, and would be limited to distant and transient exposure.

**Potential Effects on Subsistence**

The affected pinniped species are all taken by subsistence hunters of the Beaufort Sea villages. However, on-ice seismic operations in the activity areas are not expected to have an unmitigable adverse impact on availability of these stocks for taking for subsistence uses because:

(1) Operations would end before the spring ice breakup, after which subsistence hunters harvest most of their seals; and

(2) The areas where on-ice seismic operations would be conducted are small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In addition, trained dogs will be used to locate ringed seal lairs before the onset of seismic activities. Subsistence advisors will be used as marine mammal observers during performance of the seismic program. During the seal pupping season, planned seismic line segments will be surveyed via the research biologists teamed with lair sniffing dogs; these teams will be accompanied by Inupiat subsistence hunters experienced in the area of the project.

For the two proposed Veritas on-ice seismic projects, most of the anticipated program areas are within 3 – 4 miles (4.8 – 6.4 km) of the coast on the proposed surveys. The proposed on-ice seismic surveys are not thought to hinder subsistence harvest greatly during the timing of the programs. For the proposed Smith Bay project, Nuiqsut and Barrow are the closest communities to the area of the proposed activity, and Veritas has held the following Plan of Cooperation meetings:

(1) Veritas presented the proposed on-ice program in Wainwright on November 1, 2007, in Barrow on November 8, 2007, and in Atqasuk on November 9, 2007.

(2) Veritas presented the proposed on-ice program to the Native Village of Barrow (NVB) and to the Inupiat Community of the Arctic Slope (ICAS) in November 2007; and to the Kuukpik Subsistence Oversight Panel (KSOP) and Subsistence Oversight Panel in Nuiqsut on December 6, 2007.

(3) The Arctic Slope Regional Corporation (ASRC) and NVB were contracted for the hiring of subsistence representatives for the proposed Veritas on-ice seismic program.

For the proposed Pt. Thomson project, Kaktovik is the closest community to the area of the proposed activity, and Veritas has held the following Plan of Cooperation meetings:

(1) Veritas presented the proposed on-ice program in Kaktovik on December 17, 2007.

(2) Veritas representatives met with the Kaktovik Inupiat Corporation (KIC) and the Subsistence Oversight Panel in Nuiqsut on December 6, 2007, regarding the proposed on-ice seismic program.

(3) Veritas has contracted with KIC for the hiring of subsistence representatives for the on-ice seismic program.

In any of these affected villages, Veritas stated that there was no negative feedback that expected or requested additional mitigation measures other than Veritas' standard operating procedures and mitigation measures.

For the proposed SOI on-ice geophysical program, the following Plan of Cooperation meetings were held:

(1) SOI held Plan of Cooperation meetings on November 1, 2007, with the community of Nuiqsut, and the KSOP for the purpose of presenting the proposed 2008 on-ice marine seismic program.

(2) SOI has hired a local subsistence advisor for Nuiqsut, in addition to the other North Slope communities of Barrow, Kaktovik, Wainwright, Pt. Lay, and Pt. Hope. The roles of these subsistence advisors are to present maps and subsistence questionnaires which ask subsistence related questions to the residents and subsistence hunters of each community. Subsistence advisors are available during the performance of each SOI program/project in order to effectively communicate between the community and SOI where subsistence activities are on-going, or proposed. This enables SOI to conduct activities with prepared mitigation measures that lessen and avoid impacts to subsistence activities.

**Mitigation and Monitoring**

The following mitigation and monitoring measures are required for the subject on-ice seismic surveys. All activities will be conducted as far as practicable from any observed ringed seal lair and no energy source will be placed over a seal lair.

Trained seal lair sniffing dogs will be employed by Veritas and SOI for areas of sea ice beyond 3 m (9.8 ft) depth contour to locate seal structures under snow (subnivean) before the seismic program begins. The areas for the proposed projects and camp sites must be surveyed for the subnivean seal structures using trained dogs running together. Transects will be spaced 250 m (820 ft) apart and oriented 90o to the prevailing wind direction. The search tracks of the dogs shall be recorded and marked. Subnivean structures shall be probed by a steel rod to check if each is open (active), or frozen (abandoned).

Veritas and SOI must also use trained dogs to survey the snow road and establish a route where no seal structure presents. The surveyed road must be entered into GPS and flagged for vehicle to follow.

Any locations of seal structures must be marked and protected by a 150–m (490–ft) exclusion distance from any existing routes and on-ice seismic activities. During active seismic vibrator source operations, the 150–m (490–ft) exclusion zone shall be monitored for entry by any marine mammals.

No ice road may be built between the mobile camp and work site. Travel between mobile camp and work site shall also be monitored for marine mammals and be done by vehicles driving through on a snow road. Vehicles must avoid any pressure ridges, ice ridges, and ice deformation areas where seal structures are likely to be present.

**Reporting**

NMFS requires that annual reports must be submitted to NMFS within 90 days of completing the year's activities. The reports shall include any seal structures, categorized by size and odor to indicate whether the structure is a birth lair, resting lair, resting lair of rutting male seals, or a breathing hole. The reports shall also contain detailed descriptions of any marine mammal, by species, number, age class, and sex if possible, that is sighted in the vicinity of the proposed project areas; description of the animal's observed behaviors and the activities occurring at the time.

**Endangered Species Act (ESA)**

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing the incidental harassment authorizations under section 101(a)(5)(D) of the MMPA to Veritas and SOI for these three proposed on-ice seismic survey projects.

**National Environmental Policy Act (NEPA)**

In 1998, NMFS prepared an *Environmental Assessment on Regulations Governing the Taking of Ringed and Bearded Seals Incidental to On-ice Seismic Activities in the Beaufort Sea* (NMFS' 1998 EA). The information

provided in NMFS' 1998 EA led NMFS to conclude that implementation of the preferred alternative identified in the EA would not have a significant impact on the human environment. In considering the adequacy of NMFS' 1998 EA for analysis of potential environmental consequences associated with the 2008 proposed authorizations, NMFS conducted an informal review and analysis of that EA and prepared a supplemental EA (SEA) to address the following specific issues: (1) purpose and need; (2) affected environment to include spotted seals; (3) environmental consequences to include spotted seals; (4) cumulative impacts analysis; and (5) revised mitigation and monitoring measures. NMFS believes that the information in NMFS' 1998 EA remains valid, except as noted or modified in the SEA. Therefore, an Environmental Impact Statement was not prepared. NMFS issued a Finding of No Significant Impact Statement on February 14, 2008.

**Determinations**

For the reasons discussed in this document and in the identified supporting documents, NMFS has determined that the impact of the on-ice marine geophysical and seismic surveys by Veritas and SOI would result, at worst, in Level B harassment of small numbers of ringed seals, and that such taking will have no more than a negligible impact on this species. In addition, NMFS has determined that bearded and spotted seals, if present within the vicinity of the project area could also be taken incidentally, by no more than Level B harassment and that such taking would have a negligible impact on such species or stocks. Although there is not a specific number assessed for the taking of bearded and spotted seals due to their rare occurrence in the project area, NMFS believes that any take would be significantly lower than those of ringed seals and would be small relative to the overall population of spotted and bearded seals. NMFS also finds that the action will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses.

In addition, no take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

**Authorization**

NMFS has issued two IHAs to Veritas and one IHA to SOI for the potential Level B harassment of small numbers of ringed seals, and potential Level B harassment of small numbers of bearded and spotted seals incidental to conducting on-ice marine geophysical and seismic surveys in the U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 14, 2008.

**James H. Lecky,**

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

[FR Doc. E8–3257 Filed 2–20–08; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

February 15, 2008.

**AGENCY:** The Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement

**EFFECTIVE DATE:** February 21, 2008.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) has determined that certain composite fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

**FOR FURTHER INFORMATION ON-LINE:** http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.Reference number: 38.2007.12.26.Fabric.Columbia SportswearCo.

**SUPPLEMENTARYINFORMATION:**

**Authority:** Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA) accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

**BACKGROUND:**

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of the CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256).

On December 26, 2007, CITA received a commercial availability request from Columbia Sportswear Company (Columbia) for a composite fabric consisting of a woven face fabric and a knit backing fabric laminated together by means of a chemical adhesive, of the specifications detailed below. On December 28, 2007, in accordance with CITA's procedures , CITA notified interested parties of, and posted on its website, the accepted petition and requested that interested entities provide by January 10, 2008, a response advising of its objection to the commercial availability request or its ability to supply the subject product. CITA also explained that rebuttals to responses were due to CITA by January 16, 2008.

On January 7, 2008, Polartec, LLC (Polartec) submitted a response with an offer to supply, advising CITA of its objection to the request and explaining its ability to supply the fabric as specified in the request in commercial quantities in a timely manner. In its response, Polartec explained that it had been contacted by Columbia and that it had engaged in extensive discussions regarding development and production of the fabric. Polartec claimed that the sample fabric it had provided Columbia in November 2007 was a substitutable product and a reasonable alternative to