

the North-South ¼ line of said Section, 1310.21 feet to the centerline of Lake Lansing Road and to the point of beginning; thence S 48°58'00" W, along the centerline of Lake Lansing Road, 9.46 feet; thence S 89°46'42" W, along the North line of the Plat of Park Manor Heights, 224.75 feet; thence N 18°44'17" 100.00 feet; thence N 08°10'31" W, 7097 feet; thence N 02°35'23" W, 379.08 feet; thence N 88°30'21" E, 291.32 feet; thence S 00°00'01" E, along the North-South ¼ line of said section, 544.16 feet to the point of beginning; said parcel contains the 3.45 acres of land which is intended for deletion.

The ROD, based on information provided in the Remedial Investigation (RI), included a provision for the collection and treatment of contaminated groundwater from an on-site perched aquifer and from the glacial aquifer below and in the near vicinity of the Site. The ROD also indicated the potential for additional remediation to address any contamination which may have entered the bedrock aquifer.

A special notice letter was issued to the PRP's on December 10, 1991. The negotiations which followed the PRP's good faith offer, resulted in an agreement to proceed with a Remedial Design (RD) under an Administrative Order on Consent (May 26, 1992); a letter of intent from PRP's to enter into the negotiated Remedial Action (RA) Consent Decree; and extension of the moratorium to accommodate the Respondents desire to resolve internal allocation issues through arbitration prior to signing the Consent Decree. This agreement also included the PRP's declared intention to continue investigation of water quality in the bedrock aquifer and to address contamination in the bedrock aquifer, if any, in this action. The RA Consent Decree was entered April 22, 1994.

Groundwater investigations conducted in conjunction with pre-design studies indicated a more extensive area of groundwater contamination within the glacial aquifer extending about 7200 feet down gradient from the Site and geologic conditions which showed a potential pathway for migration of contaminants from the glacial to the bedrock aquifer.

An additional investigation of water quality in the bedrock aquifer was also a part of the pre-design study. Results of this investigation summarized in The Investigation of the Saginaw Aquifer at the Motor Wheel Disposal Site, November 1996 indicated that levels of some site related contaminants in the bedrock aquifer exceed drinking water standards. On the basis of this information the design of the

groundwater collection and treatment system was expanded to accommodate the expected volume from the bedrock aquifer. The RI did not show contaminated groundwater beneath the 3.45 acres.

The RD conducted in accordance with the ROD and the approved RD Work Plan was approved by EPA and the RA was formally initiated by PRP contractors July 25, 1997. All remedial activities were conducted as planned. EPA and the State conducted pre-final inspections. The inspection report includes a description and a schedule for correcting minor construction items by the PRP contractor. EPA and the State determined that the following RA activities were completed according to ROD design specifications:

- Construction of an engineered cap which meets applicable or relevant and appropriate requirements over the on-site waste disposal area;
- Construction of an extraction and collection system to contain groundwater in the perched, glacial and bedrock aquifers which contain site related hazardous constituents;
- Construction of an on-site facility for treatment of contaminated groundwater; and
- Construction of a main system for discharge of treated groundwater.

The groundwater extraction and treatment system began operation November 20, 1997 and is scheduled to continue until cleanup standards have been achieved.

#### V. Action

EPA, with the State of Michigan concurrence, has determined that no responses are necessary at the 3.45 acres which comprise a portion of the Motor Wheel Disposal Site, and no further CERCLA response is appropriate or necessary in order to provide protection of human health and the environment other than the ongoing inspection, maintenance and monitoring activities. Therefore, EPA is deleting that portion of the Site which is comprised of 3.45 acres from the NPL.

This action will be effective August 21, 2000. However, if EPA receives dissenting comments by July 24, 2000, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

Dated: June 7, 2000.

**Robert Springer,**

*Acting Regional Administrator, Region 5.*

Part 300, Title 40 of Chapter 1 of the Code of Federal Regulations is amended as follows:

#### PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

**Authority:** 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

#### Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the entry for Motor Wheel, Inc., Lansing, MI.

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#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1815, 1816, 1819, 1831, and 1852

#### Miscellaneous Administrative Revisions to the NASA FAR Supplement

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the NASA FAR Supplement (NFS) to revise numbering and ombudsman information as a result of FAC 97–17; revises regulations to indicate that award fee determinations are no longer exempt from the Disputes clause as a result of FAC 97–15; revises regulations to indicate that precontract costs are applicable to awards resulting from broad agency announcements; and makes an editorial correction to other regulations.

**EFFECTIVE DATE:** June 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–1645, e-mail: [celeste.dalton@hq.nasa.gov](mailto:celeste.dalton@hq.nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

FAC 97–17, dated April 25, 2000, revised FAR 16.504 and 16.505, including the requirement to identify the facsimile and e-mail address of agency task and delivery ombudsman.

This final rule revises numbering within NFS 1815, 1816, 1819, and 1852 to reflect the FAC 97-17 changes and update the agency ombudsman information. This final rule also revises sections 1852.216-76 and 1852.216-77 to indicate that award fee determinations are no longer exempt from the Disputes clause as a result of FAC 97-15. Changes unrelated to FAC 97-15 and 97-17 are made to allow precontract costs for awards resulting from broad agency announcements (BAA). The use of precontract costs is currently allowed for sole source contracts, except those resulting in firm fixed-price or fixed-price contracts. Contracts awarded under BAAs are considered competitive based on FAR 6.102(d). However, the award process for BAAs is similar to that for sole source awards since negotiations with the contractor occurs after source selection, rather than prior to selection in the normal competitive contract award process. Because of the selection process under BAAs, it is reasonable to allow the approval of precontract costs. Additionally, an editorial change is made to correct the title of paragraph (i)(3) to section 1815.370.

#### B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Parts 1815, 1816, 1819, 1831, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1816, 1819, 1831, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1815, 1816, 1819, 1831, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

#### PART 1815—CONTRACTING BY NEGOTIATION

2. In section 1815.370, revise the title of paragraph (i)(3) to read as follows:

#### 1815.370 NASA source evaluation boards.

\* \* \* \* \*

(i) \* \* \*

(3) *Evaluation factors and subfactors.*

\* \* \*

\* \* \* \* \*

3. Revise section 1815.7003 to read as follows:

#### 1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215-84, Ombudsman, in all solicitations (including draft solicitations) and contracts. Use the clause with its Alternate I when a task or delivery order contract is contemplated.

#### PART 1816—TYPES OF CONTRACTS

4. Amend section 1816.504 by adding paragraph (a)(4)(v) to read as follows:

#### 1816.504 Indefinite quantity contracts.

\* \* \* \* \*

(a)(4)(v) See 1815.7003.

5. Amend section 1816.505 by redesignating paragraph (b)(6) as (b)(5).

#### PART 1819—SMALL BUSINESS PROGRAMS

6. Amend paragraph (f)(1) in section 1819.201 by removing the words "Deputy Associate Administrator for Procurement (Code H)" and inserting the words "Director of the Contract Management Division (Code HK)" in its place.

#### PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

7. In section 1831.205-32, revise paragraph (1) to read as follows:

#### 1831.205-32 Precontract costs.

(1) Precontract costs are applicable only to—

(i) Sole source awards, except those resulting in firm-fixed price or fixed-price with economic price adjustment contracts; or

(ii) Awards resulting from broad agency announcements.

\* \* \* \* \*

#### PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. In section 1852.215-84, revise the clause and add Alternate I to read as follows:

#### 1852.215-84 Ombudsman.

\* \* \* \* \*

#### Ombudsman

June 2000

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, \_\_\_\_\_ [Insert name, address, telephone number, facsimile number, and e-mail address]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202-358-0422, facsimile 202-358-3083, e-mail sthomp1@hq.nasa.gov. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

#### Alternate I

June 2000

As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

9. In section 1852.216-76, revise the date of the clause; remove the last sentence of paragraph (f)(3); and revise paragraph (g) to read as follows:

#### 1852.216-76 Award Fee for service contracts.

\* \* \* \* \*

#### Award Fee for Service Contracts

June 2000

\* \* \* \* \*

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

\* \* \* \* \*

10. In section 1852.216-77 revise the date of the clause; delete the last sentence of paragraph (c)(3); and revise paragraph (d) to read as follows:

**1852.216-77 Award Fee for end item contracts.**

\* \* \* \* \*

**Award Fee for End Item Contracts**

June 2000

\* \* \* \* \*

(d) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 216, 223, and 224**

[Docket No. 000613174-0174-01; I.D. 032399A]

RIN 0648-XA53

**Regulations Governing the Taking and Importing of Marine Mammals; Endangered and Threatened Fish and Wildlife; Cook Inlet Beluga Whales**

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

**ACTION:** Notice of determination; status review.

**SUMMARY:** NMFS received two petitions in March 1999 to list the Cook Inlet (CI), Alaska, stock beluga whales as endangered under the Endangered Species Act (ESA). The most immediate threat to the stock identified by the petitioners was the high level of harvest that was occurring under the Alaska Native exemption of the Marine Mammal Protection Act (MMPA). Since the receipt of the petition to list this species, legislative and management actions have been taken to reduce the subsistence harvest to levels that will allow the beluga whale stock to recover. NMFS has evaluated the factors cited in the petitions, the best available scientific information, and management actions that have occurred since the receipt of the petition to list the stock. NMFS has determined that listing the Cook Inlet stock of beluga whales under the ESA is not warranted at this time.

**DATE:** Effective: June 22, 2000.

**ADDRESSES:** Requests for copies of this determination should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. Thomas Eagle, Office of Protected Resources, (301) 713-2322, ext. 105, Mr. Brad Smith, Alaska Regional Office-Anchorage, (907) 271-3023, or Mr. Michael Payne, Alaska Regional Office-Juneau, (907) 586-7235.

**SUPPLEMENTARY INFORMATION:****Background**

Prompted by a sharp decline in the estimated abundance of CI beluga whales between 1994 (653 animals) and 1998 (347 animals), a reduction of nearly 50 percent, NMFS initiated a status review of the CI beluga whale stock on November 19, 1998 (63 FR 64228). In the status review, NMFS evaluated the present status of CI beluga whales and made recommendations regarding a designation as depleted under the MMPA and listing as threatened or endangered under the ESA.

The comment period on the status review, which was initiated at the same time that workshops were convened to review beluga whale stocks throughout Alaska, extended from November 19, 1998, through January 19, 1999. The workshops were held by the Alaska Beluga Whale Committee (November 16-17, 1998) and the Alaska Scientific Review Group (November 18-20, 1998), a body established under the MMPA to provide scientific advice regarding marine mammals to NMFS and the U.S. Fish and Wildlife Service (FWS).

NMFS received two petitions in March 1999 to list CI beluga whales as endangered under the ESA. One petition requested an emergency listing under section 4(b)(7) of the ESA and the designation of critical habitat. Both petitions requested immediate promulgation of regulations to govern the subsistence harvest. NMFS determined that the petitions contained substantial scientific or commercial information indicating that the petitioned actions may be warranted (64 FR 17347, April 9, 1999).

To ensure that the status review was comprehensive and based on the best available scientific information, the comment period was followed by a NMFS-sponsored workshop on March 8-9, 1999, in Anchorage, Alaska, that reviewed relevant scientific information on this stock. At this workshop, NMFS received additional public comments and recommendations. The abstracts of presentations from this workshop are summarized in a NMFS report (NMFS, 1999) and are available to the public.

Following these reviews and taking into account the best information available at that time, NMFS proposed designating the CI stock of beluga

whales as depleted on October 19, 1999 (64 FR 56298). NMFS also conducted a public hearing on November 22, 1999, on the proposed designation of the CI stock of beluga whales as depleted under the MMPA. NMFS issued a final rule on May 31, 2000, (65 FR 34590) designating CI beluga whales as depleted under the MMPA based on its determination that the stock is below its Optimum Sustainable Population (OSP) level.

NMFS had not made a final decision on the ESA petitions at the time of the depleted determination. The ESA petitions have now been reviewed in light of the best available scientific information. This review considered the significant legislative and management actions that have occurred since NMFS received the petitions.

**Recent Conservation Actions**

Prior to the receipt of the petitions, NMFS, Alaska Region, Protected Resources Division, recommended to the Regional Administrator (in a memorandum dated February 23, 1999) that NMFS seek legislative action to prohibit the sale of CI beluga products under the subsistence provisions of the MMPA and/or impose a moratorium on the hunting of CI beluga whales in 1999. The recommendation included advice that NMFS designate the stock as depleted under the MMPA or list it as threatened or endangered under the ESA. These recommendations were based on the then unsustainable level of the subsistence harvest and the fact that no regulations were in place to restrict the harvest because the harvest was believed to be the most important factor linked to the decline of the stock. The MMPA and ESA provide a specific process for limiting Alaska Native subsistence harvest. This process begins with the designation of a stock as depleted under the MMPA or listing as threatened or endangered under the ESA.

Results of the 1998 surveys were not completed at the date of the Division's memorandum. Because the stock was declining and there was no immediate mechanism to limit the harvest, the Protected Resources Division recommended that NMFS consider a proposed listing under the ESA.

The following events had a significant bearing on NMFS' determination not to list CI beluga whales as endangered or threatened under the ESA:

(1) Congress passed legislation to prohibit the taking of CI beluga whales for Native subsistence use unless authorized by a cooperative agreement between NMFS and affected Alaska Native organizations (ANOs). On May