

*Affected Public:* State or local governments, businesses, or other for profit or non-profit institutions or organizations.

*Estimated Number of Respondents*

Utilities (Standard form)—7,700  
 Utilities (Short form)—(none)  
 Transportation (Standard form)—168,000  
 Transportation (Short form)—51,000  
 Finance and Insurance (Standard form)—240,000  
 Finance and Insurance (Short form)—83,000  
 Real Estate, Rental and Leasing (Standard form)—237,000  
 Real Estate, Rental and Leasing (Short form)—93,000  
 Estimated total number of respondents for these four sectors: 879,700

*Estimated Time Per Response*

Utilities (Standard form)—1.9 hours  
 Utilities (Short form)—(none)  
 Transportation (Standard form)—1.1 hours  
 Transportation (Short form)—0.2 hours  
 Finance and Insurance (Standard form)—1.4 hours  
 Finance and Insurance (Short form)—0.2 hours  
 Real Estate, Rental and Leasing (Standard form)—1.1 hours  
 Real Estate, Rental and Leasing (Short form)—0.2 hours

*Estimated Total Burden Hours*

Utilities (Standard form)—14,630  
 Utilities (Short form)—(none)  
 Transportation (Standard form)—184,800  
 Transportation (Short form)—10,200  
 Finance and Insurance (Standard form)—336,000  
 Finance and Insurance (Short form)—16,600  
 Real Estate, Rental and Leasing (Standard form)—260,700  
 Real Estate, Rental and Leasing (Short form)—18,600  
 Estimated total burden hours for these four sectors: 841,530

*Estimated Total Annual Cost*

Utilities (Standard form)—\$266,266  
 Utilities (Short form)—(none)  
 Transportation (Standard form)—\$3,363,360  
 Transportation (Short form)—\$185,640  
 Finance and Insurance (Standard form)—\$6,115,200  
 Finance and Insurance (Short form)—\$302,120  
 Real Estate, Rental and Leasing (Standard form)—\$4,744,740

Real Estate, Rental and Leasing (Short form)—\$338,520  
*Respondent's Obligation:* Mandatory Legal Authority: Title 13, U.S.C., Sections 131 and 224.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2001.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 083000A]

**Small Takes of Marine Mammals Incidental to Specified Activities; Oil and Gas Exploration Drilling Activities in the Beaufort Sea**

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

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

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals by harassment incidental to conducting exploration drilling activities during the winter in the U.S. Beaufort Sea, offshore Prudhoe Bay, has been issued to Phillips Alaska, Inc. (Phillips).

**DATES:** Effective from February 1, 2001, until August 1, 2001.

**ADDRESSES:** The application, authorization, monitoring plan, and a list of references used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, ext. 128, or Brad Smith, Western Alaska Field Office, 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 small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters, including requirements for peer-review of a monitoring program and a plan of cooperation between the applicant and affected subsistence users. For additional information on the procedures to be followed for this authorization, please refer to that document.

**Summary of Request**

On August 1, 2000, NMFS received an application from Phillips requesting a 1-year authorization for the possible harassment of small numbers of marine mammals incidental to constructing an ice road and an ice island at the McCovey Prospect Area and incidental to drilling one or more oil exploration wells at that location during the winter,

2000/2001. The drilling location at McCovey is approximately 14 mi (22.5 kilometers (km)) north of East Dock at Prudhoe Bay, 7 mi (11.3 km) northwest of Cross Island, and 12 mi (19.3 km) east of the Northstar Unit.

The purpose of the operation is to evaluate the oil and gas potential of Phillips' operated leases in the McCovey area. The well will be drilled from an ice island constructed at the beginning of the winter drilling season. Some equipment may be staged on Reindeer Island prior to freeze-up; however, a majority of the equipment will be staged using the ice road.

Ice island construction is expected to begin when ice conditions are thick enough to allow heavy equipment to be transported to the location via the ice road (approximately December 2000). One well is planned to be drilled from a surface location in Outer Continental Shelf Lease Block Y-1577. Depending on the results found from this well, well tests may be performed and a sidetrack may be drilled as length of season permits. All drilling and well-testing operations will be performed only during the 2000-2001 winter drilling season and will be discontinued in May 2001 before ice break-up (which usually occurs in late June or July). Drilling and testing operations will not be conducted in broken ice or open water periods. The McCovey exploration well will be plugged and abandoned regardless of any commercial value demonstrated during well testing and reservoir evaluation. The exploration well is expected to be moved back down the ice road after operations are completed. This is expected to occur between approximately April 20 and May 2.

Prior to freeze-up in late October, 2000, materials will be barged to Reindeer Island for staging. This includes pumps, rolligons and diesel fuel in storage tanks. The storage tanks will be in a containment capable of holding 110 percent of the capacity of the tanks. An ice pad will be constructed at Reindeer Island. A 12 to 14 mi (19.3 to 22.5 km) ice road will be constructed from either West Dock or East Dock in Prudhoe Bay out to the McCovey location. The actual location and length of the ice road will depend on ice conditions prior to commencing operations. The ice road will then be used to transport the ice island construction equipment and the drilling rig out to the McCovey location.

The ice roads are expected to be completed and ready for heavy traffic by mid-February. Following construction, the road will be maintained using graders with snow wings and front-end loaders with snow blowers until ice-

road travel is no longer possible, typically in mid-May.

The McCovey Ice Island will be located in 37 ft (11.2 m) of water. Pumps will be used to spray seawater into the cold air to form ice-crystals. The sprayed seawater is first used to thicken the ice at the island location to 2 to 3 m (6.6 to 9.8 ft). Then the water will be redirected to the center of the island to ground the island core. The ice island diameter is expected to be 950 ft (290 m) at the waterline and 700 ft (213.4 m) at the working surface above the water.

After completion of the ice road and island, a land-based drilling rig will be transported to the location. The support camp will be located on an ice pad constructed on Reindeer Island throughout the drilling operations. Reindeer Island is approximately 4.5 mi (7.2 km) from the ice island location. All drilling materials will be transported to the ice island by ice road and staged on the ice island. Muds and cuttings will be discharged to the sea ice in accordance with the General Offshore National Pollution Discharge Elimination System permit requirements.

A more detailed description of the work planned is contained in the application (Phillips, 2000) and is available upon request (see ADDRESSES).

#### Comments and Responses

On October 11, 2000 (65 FR 60407), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. During the 30-day public comment period, comments were received from the Marine Mammal Commission (MMC), the Alaska Eskimo Whaling Commission (AEWC) and Phillips. In addition, Phillips provided technical data to assist NMFS in its response to certain technical comments. Finally, on November 8 and 9, 2000, NMFS convened a peer review workshop in Seattle, WA, to discuss appropriate monitoring for marine mammals by the oil and gas industry during the winter season in the Beaufort Sea. The recommendations of that workshop are reflected in the requirements for Phillips' monitoring its activity's impact on marine mammals. This monitoring is discussed later in this document.

*Comment 1:* Phillips notes that the proposed activity has been modified in the following aspects. First, because Reindeer Island has eroded, Phillips plans to locate the support camp during ice road and island construction at the Prudhoe Bay West Dock Staging Pad instead of the ice pad at Reindeer Island. The ice pad at Reindeer Island

will still be used for staging equipment. Second, the diameter of the ice island work surface has been increased from 600 ft (182.9 m) to 700 ft (213.4 m). Although this increases the diameter of the island at the water line from 850 ft (259.1 m) to 950 ft (290 m), this increase in size (.005 km<sup>2</sup> ( mi<sup>2</sup>)) does not change the original estimate of the number of ringed seals that may potentially be harassed. Also, Phillips has now obtained a Letter of Authorization (LOA) from the U.S. Fish and Wildlife Service (USFWS) for the unintentional taking of polar bears incidental to its proposed activity.

*Response:* Thank you for updating the status of your activity. These modifications have been noted in this document. NMFS believes that these amendments will not result in any increase or decrease in the number of seals potentially impacted by the proposed exploratory drilling project.

*Comment 2:* Phillips expresses concern that NMFS has stated that it may suspend or terminate the IHA if it determines that dogs are available but are not used by Phillips. Phillips states that IHAs can only be suspended after notice and opportunity for public comment, except in an emergency where a "significant risk to the well-being of the species or stocks of marine mammals concerned" exists. Given the expected low density of ringed seals and the unlikelihood of a biologically significant take, an "emergency" of this sort is unlikely. Second, the intent behind the suspension clause is to protect marine mammals (50 CFR 216.107(f))- it would seem inappropriate to suspend an IHA merely because one monitoring method was used over another, as regulations do not require the use of dogs and when our operations are not expected to have any biological significance on ringed seals.

*Response:* Phillips is correct that suspension or termination of an IHA requires public notice and opportunity for comment, unless an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals involved. However, failure to comply with the conditions and/or the requirements of an authorization, such as monitoring, taking unauthorized marine mammals, or taking marine mammals in a manner not authorized, may result not only in a modification, suspension or termination of an authorization (after public notice and opportunity for comment), it may also result in subjecting affected individuals to the penalties provided under the MMPA (50 CFR 216.107(h)). Employing alternative monitoring, especially monitoring

identified as being less effective, without either verbal or written approval by NMFS, and, steps being taken by NMFS to modify the IHA (if the monitoring requirement is in the IHA), is viewed by NMFS as a violation of the permit conditions.

*Comment 3:* The MMC notes that the discussion of harassment in the proposed authorization document (65 FR 60407, October 11, 2000), does not accurately reflect the statutory definition of that term. Currently there is nothing in the definition of Level B harassment that requires a determination of behavioral significance for any disruption of behavioral patterns that may occur to constitute a taking. In fact, it was precisely the lack of a significance threshold that led the Administration to propose amending the definition (of harassment in the MMPA) earlier this year. While the MMC agrees that the element of significance (e.g., effects on reproductive success) is appropriate to consider in making a negligible impact determination, the MMC does not believe that using it as the threshold for determining whether there is the potential for taking by harassment comports with the statutory definition. The MMC recommends that NMFS correct this misinterpretation of the statute in future documents.

*Response:* Although the statutory definition of Level B harassment does not contain an explicit significance threshold, NMFS believes that there is a minimum significance level inherent in the definition, which only prohibits actions with the potential to "caus[e] disruption of marine mammal behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering." In other words, a simple change in a marine mammal's actions does not always rise to the level of disruption of its behavioral patterns. If an activity that is not directed at a marine mammal has the potential to incidentally cause a disruption in one of these patterns, the participants should either modify the activity so that it doesn't disrupt that behavioral pattern, or apply for a small take exemption. If the only reaction to the activity on the part of the marine mammal is within the normal repertoire of actions that are required to carry out that behavioral pattern, NMFS considers the activity not to have caused a disruption of the behavioral pattern, provided the animal's reaction is not otherwise significant enough to be considered disruptive due to length or severity. Therefore, for example, a short-term change in breathing rates or a somewhat shortened or lengthened dive

sequence that are within the animal's normal range and that do not have any biological significance (i.e., do not disrupt the animal's overall behavioral pattern of breathing under the circumstances), do not rise to a level requiring a small take authorization. Under the current action, NMFS noted that neither simply hearing a noise from ice road construction (and not having a reaction) nor having a minor startle reaction such as looking toward the sound source (but no other behavioral response) to the noise from ice road construction or operation rise to a level to be considered a disruption of a behavioral pattern and therefore constitute harassment.

The National Research Council (NRC, 2000) states that NMFS should promulgate uniform regulations based on their potential for a biologically significant impact on marine mammals. NMFS concurs and that is precisely the reason NMFS and other Federal agencies, including the MMC, proposed amending the definition of harassment currently found in the MMPA.

*Comment 4:* The AEWG states that the McCovey Prospect is in an area known for heavy ice conditions, near the "shear zone" of the arctic ice pack. While Phillips' drilling operations are proposed for the winter and early spring months, unprecedented arctic weather and ice conditions in recent years have reduced the reliability of any projections regarding the behavior of arctic sea ice during this time. Fast-moving ice, driven by a combination of ocean currents and winds, is a powerful and common force in the Beaufort Sea. Any of the elements individually has the capacity to start the "ice override conditions" that frequently occur offshore in the Arctic. Such events can occur at any time when ice is present, subjecting all human activities in the vicinity to great danger.

*Response:* The Minerals Management Service (MMS) has statutory authority over the McCovey Ice Island to ensure the safety of personnel and protection of the environment. The applicant is required to design, install and maintain the ice island to insure island structural integrity, against environmental conditions at the island location, for the duration of the exploration activities.

Phillips submitted the McCovey Ice Island design to the MMS and the MMS Certified Verification Agent (CVA) for review and comment. The CVA is an independent third-party expert that reviews the applicant's design, provides quality assurance and verification during island construction and monitoring during drilling. Of particular concern is the island's ability to

withstand the forces from sea ice pushing against the island and sea ice overriding the island working surface. All critical equipment, fuel storage, structures, etc. will be setback at least 50 feet (15 m) from the edge of working surface of the island. The MMS, CVA and Phillips must all agree on the island design, construction and monitoring before the MMS will approve the island. It is NMFS' understanding that the McCovey Ice Island design has been approved by MMS.

Phillips explains that ice override occurs when a thick sea ice sheet moves landward across the shore zone, such as Cross Island, as an unbroken sheet. Ice override is not a condition seen when ice moves against ice; instead this results in pressure ridges and rubble fields. Once the McCovey Ice Island is constructed and grounded, it will be a large solid mass of ice weighing about 370 million lbs (135,080,000 kg). Therefore, if sea ice should move, it will not move across the island, instead, because the outer perimeter is constructed of ice, the sea ice will produce "rubbling." The more rubbling that occurs, the better protected the island will be against future movements.

*Comment 5:* The AEWG believes that, because the McCovey Prospect is an exploration well, the risk of an uncontrolled release of oil is even greater than the risk created by a production site like Northstar. The AEWG is especially concerned that an oil spill at the McCovey Prospect, even during the winter and early spring, could threaten the availability of bowhead whales and other marine resources for subsistence use.

*Response:* When making a determination that an activity will have no more than a negligible impact on a species or stock of marine mammal and that the taking will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, NMFS may find that these determinations are appropriate, if the probability of a take occurring is low even though the potential effects may be significant should that event occur. In these cases, NMFS must balance the probability of occurrence of impacts with the potential severity of harm both to the species or stock of marine mammal affected, and to the Inupiat communities that depend upon the bowhead whale to meet its subsistence needs (see 54 FR 40338, September 29, 1989). Such determinations must be made based on the best scientific information available.

NMFS recognizes that, while there is considerable disagreement as to the effects of an oil spill on bowhead

whales and other marine mammals in the Alaskan Beaufort Sea, to date no blowouts have occurred during drilling exploratory wells in Alaskan waters. The MMS uses an Oil Spill Risk Analysis to estimate the probability of an oil spill on bowhead whales and other marine mammals and concluded that, for the base-case the probability for an oil spill of 1,000 barrels or more to occur and contacting bowhead whale habitat when bowhead whales were present, from all activities associated with Lease Sale 124 (both exploration and potential development) was low. Because this probability is based on a significant amount of activity, the potential for an individual activity must be considered even less. However, some data on the anatomy and migratory behavior of bowhead whales suggest that impacts from a large oil spill could pose a threat to this species, especially if substantial amounts of oil got into the lead system during the spring migration (Albert 1981, Shotts *et al.* 1990). However, using the information provided in MMS' Final Environmental Impact Statement for Lease Sale 124 (MMS, 1990), which fully describes this scenario, NMFS does not find evidence that there would be more than a minimum potential for an oil spill to occur as a result of a single exploratory well and even less potential for that spill to reach the bowhead whale spring or fall migrations. This supports NMFS' conclusion that the activity will not have more than a negligible impact on marine mammals, including the bowhead whale, inhabiting the Beaufort Sea.

*Comment 6:* The AEWG strongly opposes the issuance of a small take authorization to Phillips for exploratory drilling at the McCovey Prospect at this time, since there are no measures in place to mitigate the impacts to Native Alaskan subsistence hunting if an oil spill were to occur as a result of the proposed activities. The AEWG also believes that, because only a small number of exploratory wells (possibly only two) have ever been drilled from ice islands in the Beaufort Sea, the AEWG's confidence is further reduced that Phillips and its contractors have the experience or the capability to address the potential risks that would be created by the proposed activity. Finally, the AEWG believes that Phillips does not have a plan to expeditiously complete a relief well to control a blowout at the McCovey site.

*Response:* Bugno *et al.* (1990) indicate that, as of 1988, 34 exploratory wells have been drilled in the Beaufort Sea using floating ice platforms and two using grounded ice platforms.

Apparently, few have been drilled since that time. However, Phillips has provided an Oil Discharge Prevention and Contingency Plan (ODPCP) to the MMS. The ODPCP is an extensive document that addresses oil spill response, logistics, several spill scenarios, cleanup activities, and numerous other aspects of oil spill prevention and response. It is NMFS' understanding that the ODPCP has been approved by MMS and that the ODPCP contains a plan to expeditiously complete a relief well.

In addition, as noted in Phillips application, the North Slope operators and several other firms have jointly formed an oil spill response cooperative (ACS), which is based in Deadhorse, AK. ACS is contractually obligated to provide response services for the McCovey operations. ACS maintains one of the world's largest inventories of spill contaminant and cleanup equipment there for use by all members. ACS also has a full time staff trained in operation and maintenance of the cooperative's spill equipment. Additionally, Phillips has its own inventory of spill response equipment on the North Slope in each current or soon-to-be producing sites, such as Kuparuk and Alpine, as part of its development field operations. Other oilfield operators also have spill response equipment located at their field and are available to provide support pursuant to a Mutual Aid Agreement between all North Slope operators. This equipment can be mobilized for spill response as needed. Finally, the Deadhorse, AK service contractors maintain a crew of personnel trained in oil spill response activities that can be utilized as needed.

While NMFS recognizes the difficulties in responding to an oil spill under the ice or in broken ice, as demonstrated recently at the Northstar test, because, as mentioned in response to comment 5, the potential is low for (1) an oil spill to occur from a single exploratory well, (2) any of that spilled oil to either reach the offshore spring leads, or (3) spilled oil to remain in the area to intercept the westward migrating bowheads several months later, NMFS is unable to concur with the AEWG that the drilling one or more exploratory wells during the winter, 2000/2001 will have an unmitigable adverse impact (as defined in 50 CFR 216.103) on the availability of the marine mammals species or stock for subsistence uses.

This, NMFS believes, is further supported by: (1) the issuance of a land use permit to Phillips by the North Slope Borough (NSB) to conduct this activity and (2) the lack of concern

expressed by NSB that Phillips and the NSB had not concluded a Conflict Avoidance Agreement (CAA). NMFS notes that the NSB has, in the past, either denied permits, or amended the scope of work through a CAA, when it determined that the activity had a potential to affect the subsistence harvest.

*Comment 7:* The AEWG notes that since the OCS tract containing the McCovey prospect was leased, the MMS and the State of Alaska have recognized the unacceptable level of risk created by proposed development in the area of Cross Island. As a result, both agencies have created lease sale stipulations that prohibit the siting of production facilities within a 10-mile (16-km) radius of Cross Island, unless the lessee demonstrates to the satisfaction of the MMS Regional Director, in consultation with the NSB and the AEWG, that the development will not preclude reasonable subsistence access to bowhead whales.

*Response:* NMFS understands that the MMS did not find there was an unacceptable risk from development in the Cross Island area. For Lease Sale 170, MMS considered both a lease stipulation to minimize effects to whales from noise and space use conflicts (subsistence activities) and a deferral area (remove the area from any leasing). The MMS opted to adopt the lease stipulation, as noted in the AEWG comment, which prohibits permanent production facilities within a 10-mile (16-km) radius of Cross island, unless the lessee can demonstrate to the satisfaction of the MMS Regional Director, in consultation with the NSB and the AEWG, that the development would not preclude reasonable subsistence access to the whales. If McCovey is a commercial discovery, MMS would do a full environmental review (likely an environmental impact statement) and would further evaluate these issues based on a project specific development plan. The stipulation, however, is directed only at permanent production facilities, not temporary exploratory activities, such as McCovey. According to the MMS, the driving issue was noise and space use conflicts, not oil spills.

*Comment 8:* The AEWG recommends that NMFS not issue the IHA to Phillips while meetings are ongoing to develop mitigation measures to help address adverse impacts to coastal subsistence communities in the event of an offshore oil spill or an event with similar effects on subsistence lifestyle.

*Response:* The meetings between the oil industry and the AEWG/NSB concern long-term mitigation

agreements for offshore oil development activities, not, in particular, the offshore oil exploration industry. Considering that the last meeting of the group was held in Anchorage, AK in July, 2000, and that no meetings are currently planned, NMFS cannot accept this recommendation. NMFS believes that the principal mitigation measures proposed for this activity, which are: (1) the activity will be conducted in winter time to avoid impacts to the fall bowhead whale hunt, (2) an approved ODPCP to address oil spill response and cleanup activities and will be in place, and (3) the ACS has been established to respond to an oil spill, is sufficient for NMFS to determine that the oil exploration activity at McCovey will not have an unmitigable adverse impact on subsistence needs for bowhead whales or other marine mammal species.

*Comment 9:* The MMC believes not only that the use of trained dogs to locate ringed seal lairs and other structures is the preferred method, it is the only reliable method for doing so. The MMC, therefore, supports NMFS' proposal to condition the requested IHA to require the use of dogs for monitoring.

*Response:* Thank you for the comment.

*Comment 10:* Phillips notes that its proposed monitoring plan includes the use of trained dogs to locate seal structures due to discussions at the 1999 on-ice workshop and the subsequent LOAs that were issued that year. However, the proposal to use dogs does not reflect Phillips' support for this monitoring method. Phillips notes that the use of dogs to locate seal structures may cause harm to ringed seals. Phillips states that a study was recently published which indicates that dogs may transmit disease to ringed seals, and that at least one Alaskan island has banished dogs for this very reason. Also, it is likely that a ringed seal would consider a dog to be a predator, and a predator's approach to a ringed seal's lair could result in a behavioral response that may have biological significance on the part of the animal. While Phillips is committed to reducing any impact of its operations on ringed seals, for these reasons it would prefer not to use trained dogs in the future.

*Response:* NMFS recognizes Phillips' reluctance to using dogs on the ice and in that context, strongly recommends the oil industry promote research on alternate, effective, means to locate ringed seal structures. However, as noted in the previous comment, the use of trained dogs to locate seal structures is the only reliable method known at this time to accurately locate seal

structures in the Beaufort Sea. While domestic dogs carry some diseases (e.g., canine distemper) which have been found in seals, and there have been some who have hypothesized that dogs transmit these diseases to seals, other carnivores also carry these diseases, so it is not clear whether dogs were actually the vector. In addition, the trained Labrador retrievers used in this monitoring program are routinely vaccinated for the types of diseases which are of the greatest concern. While dogs have been prohibited on the Pribilof Islands for many years, this prohibition is to prevent the harassment, injury and mortality of the northern fur seals on the Islands. Since the Arctic fox, which is indigenous to these Islands, is also a vector for transmission of disease to marine mammals, prohibiting dogs for this reason would not have any beneficial value.

*Comment 11:* Phillips is concerned because NMFS notes that it intends to continue to require applicants to use dogs "until such time as NMFS has clear evidence that ice roads and other activities taking place during the winter are not having a cumulative impact on ringed seals..." Phillips states that NMFS recently stated that it does not have statutory or regulatory authority to require applicants to monitor for cumulative impacts. Thus, Phillips believes that it is inappropriate to require it to use dogs to determine whether cumulative impacts are occurring.

*Response:* Trained dogs will be required as part of the IHA issued to Phillips for work at McCovey. Since an IHA is valid for no more than a single year, NMFS cannot require monitoring for a period of time after expiration of the IHA. However, NMFS can require monitoring be designed and implemented to detect cumulative impacts if a project is either proposed to take place over several years (such as the Northstar oil production facility) or when an individual activity is receiving an annual IHA for conducting essentially the same activity every year, such as seismic work in the Beaufort Sea. At this time, it is the opinion of the scientists attending the November 6-9, 2000, Beaufort Sea Marine Mammal Monitoring Workshop in Seattle, WA that site specific monitoring efforts are critical components of any cumulative impacts monitoring program.

*Comment 12:* Phillips notes that monitoring requirements on the industry have only increased over the years, despite a lack of a more-than-negligible effect on ringed seals and other marine mammals. Under these

circumstances, Phillips believes that it is more reasonable to decrease the monitoring burdens imposed on it than to continually increase them.

*Response:* NMFS disagrees that monitoring has increased significantly for the oil and gas exploration industry conducting winter operations. Since neither Phillips nor its predecessor have applied for IHAs for constructing ice roads and an ice island previously, NMFS questions its concern that monitoring requirements on it be reduced. Prior to 1999, ice-road construction authorizations simply required the use of biologically trained, on-site individual(s), approved in advance by NMFS, to conduct on-ice searches for ringed seal lairs. Marine mammal scientists determined that such monitoring was ineffective in locating seal structures. That type of monitoring has been replaced by the use of trained dogs to locate seal structures. Although all indications to date are that on-ice activities are not having more than a negligible impact on ringed seal populations, monitoring and research to conclusively verify or refute this assumption has not been designed or implemented. Requiring the use of trained dogs to monitor impacts on ringed seal structures, is a first step to obtaining that information.

*Comment 13:* The MMC recommends that NMFS should not accept human monitoring (i.e., without the use of trained dogs) until it has been demonstrated that such monitoring is as effective as that carried out using dogs.

*Response:* NMFS notes that there are only a limited number of dogs trained to locate seal structures currently available in Alaska. These dogs are mostly used in conducting scientific research. In addition, some industry components are proposing to use dogs trained in Canada, but even those are limited in number and periods of availability. With increasing levels of activity in the Beaufort Sea, for which NMFS is requiring trained dogs to monitor for ringed seal structures, NMFS needs to reserve the right to waive this form of monitoring, if dogs are not available. NMFS prefers to return to requiring human searches using avalanche probes prior to either not requiring any monitoring, or worse, allowing the use of untrained dogs (which would have the potential to increase the level of ringed seal disturbance).

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

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several

documents (Corps of Engineers, 1999; Minerals Management Service (MMS), 1990, 1992, 1996; NMFS, 1997).

### Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species, as well as others, can be found in several other documents (Hill *et al.*, 1999; Hill and DeMaster, 1999, 1998; NMFS, 1997). Please refer to those documents for information on the biology, distribution and abundance of these species. However, because the proposed oil exploration activity will take place only during the winter, only ringed seals and, possibly, a few bearded seals have any potential to be impacted by the project. A description of the biology and abundance of these two seal species are addressed in NMFS' Environmental Assessment (EA) on Winter Seismic Activities (NMFS, 1998). The documents mentioned here and in other parts of this document are considered part of this decision-making process.

In addition to the species mentioned in the preceding paragraph, polar bears (*Ursus maritimus*) also have the potential to be taken incidental to the proposed activity. This species is under the jurisdiction of the USFWS. As a result, Phillips has applied for a LOA from the USFWS for the taking of this species incidental to the McCovey drilling project.

### Potential Impacts on Marine Mammals

Disturbance by noise is the principal means for potential takings by harassment by this activity. The marine mammal most likely to be impacted by construction of the ice road and ice island is the ringed seal. A slight possibility exists to impact bearded seals. While the applicant noted that there is a chance that a ringed seal could be killed during ice road construction (and ice island construction), NMFS believes that noise from road and island construction activity, the timing of the construction in December, and the monitoring described later in this document will make the injury or mortality of ringed seals very unlikely. However, the ice island location cannot be moved due to the engineering required for ice island design and construction. As a result, breathing holes or structures located within the footprint of the island will be covered

by ice and the seals would need to relocate. However, constructing the island in December will mitigate the potential for damage to birthing lairs since most ringed seal birth lairs are not built until later in the winter, pups are not born until mid-March in this area, and several structures would be available for each seal by that time for use as birthing and pupping lairs.

Site specific ringed seal survey work was conducted by Western Geophysical at the McCovey location during April 2000 (Coltrane and Williams, 2000). A total of 22 seal structures were found in the core survey area and the surrounding 1 km (0.62 mi) monitoring zone. An additional 21 structures were found in the transit survey route. Seventeen of the structures were breathing holes, 20 were lairs, and 6 were unidentified; none of the identified lairs were birthing lairs. Coltrane and Williams (2000) reported that 28 structures were revisited later. The remaining 15 structures were not rechecked as these structures were either of unknown status or frozen at the time of the initial search. Four breathing holes were found to be abandoned since the initial search (one was abandoned due to research, not industrial activity). The total abandonment rate of active seal structures after shallow hazards survey operations was 11 percent (3 of 28). In addition, the initial survey revealed that 19 percent (8 of 43) of the structures located had already been abandoned prior to any industrial searches. Coltrane and Williams (2000) believe that this natural abandonment rate was comparably higher than the abandonment rate after industrial activities in the area (19 percent compared to 11 percent). As noted at the 2000 Seattle On-Ice Workshop however, others believe that these rates cannot be compared because the periods during which the holes could have become abandoned are drastically different. Therefore, it may be unknown whether abandonment rate due to shallow hazard survey is the same as the natural abandonment rate (Angliss, pers. comm., 2001).

Aerial surveys of seal density and abundance, conducted in 1997 in support of the Northstar project (which is approximately 9 miles (14.5 km) to the west from the proposed McCovey Prospect), indicated an average density over the area (including the McCovey Prospect area) of 0.43 ringed seals/km<sup>2</sup>. The overall observed density on landfast ice, over water depths of 5-20 m (16.4-65.6 ft), was 0.42 ringed seals/km<sup>2</sup> (Miller *et al.*, 1998). Surveys conducted in 1999 by Richardson and Williams (2000) indicated an overall observed

density of 0.56 seals/km<sup>2</sup>. Excluding waters less than 3 m (9.8 ft) deep where ringed seals were rarely seen, the overall observed density was 0.63 seals/km<sup>2</sup>. The overall observed density in areas greater than 3 m (9.8 ft) deep was higher in 1999 than in either 1997 or 1998 (0.39 seals/km<sup>2</sup>).

Based on the methodology for assessing ringed seal takes by industrial activities at Northstar (see BP Exploration (Alaska), 1998), Phillips estimates that less than 31 ringed seals may be within an area where harassment takings might potentially occur. This estimate is based on the assumptions that any ringed seals within 0.4 mi (0.644 km) of the ice road and within 2.3 mi (3.7 km) of the ice island may be able to hear the noise associated with the McCovey Prospect. This estimate is based on the density recorded during the 1997 aerial survey of 0.42 seals/km<sup>2</sup> (Miller *et al.* 1998). Phillips believes that this estimate of take is very conservative since the noise associated with ice island construction should be less than the noise associated with construction of the gravel island at Northstar. The 2.3 mi (3.7 km) was based on noise measurements made by Greene (1983) for construction of Seal Island in 1982. Also, the estimated "take" is based on the entire ice road length of 12.5 miles (20.12 km) with no deduction for areas where the ice road may cross grounded ice (with no ringed seal presence).

Bearded seals are not expected to be in the area except in very small numbers and, therefore, should not be affected by the activity. Bearded seal preference for open water further limits the potential for their being in this area at this time of the year.

Therefore, based on the preceding discussion, NMFS concludes that the taking by noise harassment incidental to construction of the ice road and ice island will result in no more than a few dozen harassment takings by this activity.

### Potential Effects on Subsistence Needs

NMFS has not identified any unmitigable adverse impacts by this activity that are likely to occur and thereby affect the availability of marine mammals for subsistence needs. While there is a potential for a significant impact on the availability of bowhead whales for subsistence needs should a large oil spill occur and not be cleaned up prior to either reaching the spring leads or remaining in the area all summer to intercept the westward migrating bowheads, the potential for that occurring from a single activity is considered remote.

### Potential Effect on Habitat

The ice island will be a temporary structure on the winter ice. The temporary loss of this area is negligible when compared with the size of the nearshore Beaufort Sea. When drilling and well-testing operations are completed, the well will be plugged and abandoned in accordance with MMS and Alaska Oil and Gas Conservation Commission regulations. This abandonment will leave the project area in essentially an unmodified condition since no wellhead or other structures will remain above the ocean floor.

In the unlikely event that there is an oil spill, Phillips has prepared an oil discharge prevention and contingency plan (ODPCP) specifically for this activity. The ODPCP is an extensive document that addresses spill response, several spill scenarios, cleanup activities, and numerous other aspects of oil spill prevention and response. Oil spill response teams are located in Deadhorse, AK. Phillips and other operators have oil spill response equipment available in each current or soon-to-be oil-producing area on the North Slope.

### Mitigation

Several mitigation measures to reduce the potential for marine mammal harassment will be implemented by Phillips as part of its proposed activity. These include:

- (1) Conducting a winter drilling program using a land-based rig instead of using the Concrete Island Drilling System platform, a floating platform, or a semisubmersible platform. The latter two platforms would require the need for icebreaker vessels;
- (2) Conducting drilling operations during winter months instead of during the open water season, and
- (3) Constructing the ice road and ice island in December before seal structures are made into fully developed lairs and especially before ringed seals birthings begin in mid-March.

### Marine Mammal Monitoring

Phillips will utilize trained dogs and visual observations to assess the level of take of, and impact to, ringed seals during project activities. Prior to commencing ice road or ice island construction, trained dogs will be used to locate seal breathing holes and lairs along the proposed footprint of the ice road route and ice island pad. An adjacent 150-m (492-ft) buffer along the ice road route and a 1-km (0.62-mi) buffer around the ice island will also be surveyed by dogs. Although Phillips has arranged for trained dogs to be available

for this activity, in the event that these dogs are not available for the survey (incapacitated, ill, etc), after review and approval by NMFS, Phillips would be allowed to employ a visual survey prior to onset of construction activities. The visual survey would involve searching the designated area for breathing holes and examining pressure ridges, ice hummocks, and deep ice cracks for lairs. Attempts will be made to confirm the presence of lairs by using an aluminum rod to locate the breathing hole or lair access hole where practical. Success in visually locating lairs will be limited by the relatively low density of ringed seals combined with the difficulty of finding breathing holes or lairs on snow-covered ice during winter conditions. A professional marine mammal biologist and an Inupiat hunter would be conducting the visual survey.

In order to obtain an indication of ringed seal response to Phillips' operations, a second seal structure survey will be conducted near the end of the McCovey project activities. The second survey will be conducted by biologists on snow machines using Differential Global Positioning System units to relocate and determine the presence or absence of seals in lairs identified during the first survey. Any new holes would also be noted.

Once drilling begins, a designated polar bear watch (typically an Inupiat hunter) will also look for and record seal activities. Because of the low expectation of interactions during the winter with marine mammals that are under the jurisdiction of NMFS, dedicated observers are not considered necessary on the ice island. As a result, NMFS is requiring, as part of the IHA, that Phillips instruct the polar bear watchperson to maintain a sightings-and-behavior log for seals that is separate from the Polar Bear Sightings Log. This latter reporting requirement is mandated by 50 CFR 18.27. Failure to use dogs when available may be in violation of the IHA and may result in suspension or termination of that IHA.

### Reporting

The IHA requires Phillips to submit one report under this proposed authorization. This report will be required 90 days after completion of activities authorized for marine mammal takings. That report will be reviewed by NMFS prior to formal acceptance and modifications may be required to that report as a result of its review.

### National Environmental Policy Act

The activity proposed by Phillips was the subject of a Final Environmental

Impact Statement prepared by MMS in conjunction with Lease Sale 124 (MMS, 1990).

### Endangered Species Act (ESA)

No species listed as either threatened or endangered under section 4 of the ESA are likely to be taken as a result of either the activity described in this document or the issuance of an IHA under section 101(a)(5)(D) of the MMPA.

### Conclusions

Based upon the information contained in the application, in this document, and in supplemental documentation, NMFS has determined that the short-term impact of exploration drilling and related activities in the U.S. Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species of marine mammals to avoid the resultant noise from ice road and ice island construction, or from the transportation of the oil rig and supplies on the ice road, or from drilling activities, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the activity area, the number of potential harassment takings is estimated to be small. In addition, no take by injury or death is anticipated, and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

### Authorization

Accordingly, NMFS issued an IHA on the date of this document to Phillips for

the possible harassment of small numbers of ringed seals and bearded seals incidental to constructing an ice road and ice island and drilling an ice exploration well at the McCovey Prospect during the winter 2000/01, provided the previously mentioned mitigation, monitoring, and reporting requirements are carried out.

Dated: February 1, 2001.

**Wanda Cain,**

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

[FR Doc. 01-3182 Filed 2-6-01; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Science Board**

**ACTION:** Cancellation of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Options for Acquisition of the Advanced Targeting Pod and Advanced Technology FLIR Pod (ATP/ATFLIR) meeting scheduled for January 26, 2001, was not held.

Dated: February 1, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-3138 Filed 2-6-01; 8:45 am]

BILLING CODE 5001-10-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Science Board**

**ACTION:** Meeting date change of advisory committee meeting.

**SUMMARY:** The Defense Science Board (DSB) Task Force on Systems Technology for the Future U.S. Strategic Posture closed meeting scheduled for February 13-14, 2001, has been changed to February 7-8, 2001. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: February 1, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-3139 Filed 2-6-01; 8:45 am]

BILLING CODE 5001-10-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Threat Reduction Advisory Committee**

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** On December 29, 2000 (65 FR 82984), the Department of Defense published an announcement of a closed Threat Reduction Advisory Committee meeting to be held on February 15, 2001. The meeting is hereby postponed until a later date. A new notice announcing will be published in the future.

**FOR FURTHER INFORMATION CONTACT:**

Major Don Culp 703-767-5717.

Dated: February 1, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-3140 Filed 2-6-01; 8:45 am]

BILLING CODE 5001-10-M

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of the Army is amending five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on March 9, 2001 unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060-5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390 or Ms. Christie King at (703) 806-3711 or DSN 656-3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth

below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

February 1, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0027 DAJA**

**SYSTEM NAME:**

Civil Process Case Files (July 15, 1997, 62 FR 37891).

**CHANGES:**

\* \* \* \* \*

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Add to entry "E.O. 9397 (SSN)".

\* \* \* \* \*

**STORAGE:**

Delete entry and replace with 'Paper records and cards in file cabinets and electronic storage media.'

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Disposition pending (until NARA disposition is approved, treat as permanent)'

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander, Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09104-0007.'

\* \* \* \* \*

**A0027 DAJA**

**SYSTEM NAME:**

Civil Process Case Files.

**SYSTEM LOCATION:**

Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09014-0007.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military members of the Armed Forces, civilian employees of the U.S. Government, and their dependents upon whom service is made of documents issued by German civil courts, customs and taxing agencies, and other administrative agencies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish