(2) Should IA promulgate regulations establishing procedures for its investigations of allegations of fraud or false statements, including administrative sanctions against persons found to have committed fraud during antidumping or countervailing duty proceedings?
(3) What should be the definition or scope of the terms ''fraud'' or ''false statements'' as they may relate to any regulations which IA may promulgate? Should there be a requirement of actual knowledge, or would a lesser intent requirement suffice? Should there be a standard for materiality, and what should it be? Must the regulations be limited to written materials certified and submitted to the Department, or may oral statements, such as at verifications, be covered as well?
(4) Who should be subject to these regulations? Should they cover only fraud or false statements committed by attorneys and other professionals appearing before the agency, or should they also cover the foreign and domestic companies subject to IA's determinations?
(5) What should be the standard for initiation of an investigation?
(6) Should IA conduct any such investigation, or should another unit outside IA but within the Department conduct the investigation? If within IA, should a special unit be established, or should the existing APO unit assume this task? If outside IA but within the Department, where should the responsibility be placed?
(7) Should there be discovery? What rules would govern discovery, and who would adjudicate any disputes that arise during discovery? Should the Department and the suspected individual have the right to compel witnesses and production of documents?
(8) Should any adjudicatory proceedings include a hearing? Who would preside at a hearing? Would this person be the final decision-maker in the proceeding? What rules would govern a hearing? If there is no hearing, who would be the decision-maker?
(9) What type of remedial sanctions should be imposed upon a finding that a person committed a fraud? Is disbarment from practice before the agency an appropriate remedy in some cases? What type of sanction would apply to non-attorneys or to company officials?
(10) Should the regulations establish a procedure for an appeal within the Department? Who would hear such appeals?
(11) Should the regulations contain a procedure by which disbarred persons may seek reinstatement? What standards should govern adjudications of reinstatement?
(12) Should final adjudicatory decisions be confidential or public?
(13) Please provide any additional views on any other matter commenters would like to raise, including the necessity of regulations and what these regulations should address, as well as comments on whether any statutory changes are needed. References to the recently amended statutory and regulatory procedures for certification at the Securities and Exchange Commission, pursuant to sections 302 and 906 of the Sarbanes-Oxley Act of 2002, might be useful, as well as any other agency enforcement schemes which might be instructive.

[FR Doc. 04–1573 Filed 1–23–04; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011304C]

Taking of Marine Mammals Incidental to Specified Activities; On-Ice Seismic Operations in the Beaufort Sea

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

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

SUMMARY: NMFS has received an application from ConocoPhillips Alaska (CPA) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting on-ice seismic operations from Cape Halkett to Oliktok Point in the Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to CPA to incidentally take, by harassment, small numbers of two species of pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than February 25, 2004.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at:*http://www.nmfs.noaa.gov/prot__res/PR2/Small__Take/smalltake__info.htm#applications*

Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

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 may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the 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. Under section 3(18)(A), 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; 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.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B

harassment'' means harassment described in subparagraph (A)(ii).

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

Summary of Request

On November 12, 2003, NMFS received an application from CPA for the taking, by harassment, of two species of marine mammals incidental to conducting an on-ice seismic survey program. As presently scheduled, the seismic operations will be conducted at Cape Halkett to Oliktok Point to approximately 20 nautical miles offshore in the Beaufort Sea in Alaska.

The purpose of the project is to gather information about the subsurface of the earth by measuring acoustic waves, which are generated on or near the surface. The acoustic waves reflect at boundaries in the earth that are characterized by acoustic impedance contrasts.

Description of the Activity

The seismic surveys use the ''reflection'' method of data acquisition. Seismic exploration uses a controlled energy source to generate acoustic waves that travel through the earth, including sea ice and water, as well as sub-sea geologic formations, and then uses ground sensors to record the reflected energy transmitted back to the surface. When acoustic energy is generated, compression and shear waves form and travel in and on the earth. The compression and shear waves are affected by the geological formations of the earth as they travel in it and may be reflected, refracted, diffracted or transmitted when they reach a boundary represented by an acoustic impedance contrast. Vibroseis seismic operations use large trucks with vibrators that systematically put variable frequency energy into the earth. At least 1.2 m (4 ft) of sea ice is required to support the various equipment and vehicles used to transport seismic equipment offshore for exploration activities. These ice conditions generally exist from 1 January until 31 May in the Beaufort Sea. Several vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the energy input points. Crews with wheeled vehicles often require trail clearance with bulldozers for adequate access to and within the site. Crews with tracked vehicles are typically limited by heavy snow cover and may require trail clearance beforehand.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line and begin recording data. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles. In a typical survey, each vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g. 67 m, or 220 ft, in most applications) and repeats the process. In a typical 16- to 18–hour day, a surveys will complete 6–16 km (4 to 10 linear miles) in 2–dimensional seismic operations and 24 to 64 km (15 to 40 linear miles) in a 3–dimensional seismic operation.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996, 2001). A detailed description of the seismic survey activities and its associated marine mammals can be found in the CPA application and a number of documents referenced in the CPA application (see **ADDRESSES**), and is not repeated here. Two marine mammal species are known to occur within the proposed study area and are included in this application: the ringed seal (*Phoca hispida*) and the bearded seal (*Erignathus barbatus*). Ringed seals are year-round residents in the Beaufort Sea. The worldwide population is estimated to be between 6 and 7 million seals (Stirling and Calvert 1979). The Alaska stock of the Bering-Chukchi-Beaufort area is estimated at 1 to 1.5 (Frost 1985) or 3.3 to 3.6 million seals (Frost *et al.* 1988). Although there are no recent population estimates in the Beaufort Sea, Bengston *et al.* (2000) estimated ringed seal abundance from Barrow south to Shismaref in a portion of the Chukchi Sea to be 245,048 animals from aerial surveys flow in 1999. The NMFS 2001 Stock Assessment Report states that there are at least as many ringed seals in the Beaufort Sea. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Papov 1976, Burns 1981). Reliable estimates of bearded seal abundance in Alaska are unavailable. However, since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will rarely be encountered during seismic operations. Additional information on these species is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*.

Potential Effects on Marine Mammals

Incidental take is anticipated to result from short-term disturbances by noise and physical activity associated with on-ice seismic operations. These operations have the potential to disturb and temporarily displace some seals. Pup mortality could occur if any of these animals were nursing and displacement was protracted. However, it is unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities and the typical movement patterns of ringed sea pups among different holes. Seals also use as many as four lairs spaced as far as 3437 m (11276 ft) apart. In addition, seals have multiple breathing holes. Pups may use more holes than adults, but the holes are generally closer together. 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 activity, impacts are expected to be negligible for the ringed and bearded seal populations.

In the winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

Please see the **Federal Register** notice from the 2003 CPA activities (68 FR 14401, March 25, 2003) for more information regarding the potential effects on marine mammals during on-ice seismic operations.

Potential Effects on Subsistence

Residents of the village of Nuiqsut are the primary subsistence users in the activity area. The subsistence harvest

during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Nuiqsut hunters may hunt year round; however, in more recent years 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). The most important area for Nuiqsut hunters is off the Colville River Delta, between Fish Creek and Pingok Island, which corresponds to approximately the eastern half to the activity area. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. 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) Operations would temporarily displace relatively few seals, since most of the habitat in the activity area is marginal to poor and supports relatively low densities of seals during winter. Displaced seals would likely move a short distance and remain in the area for potential harvest by native hunters (Frost and Lowry, 1988; Kelly et al., 1988).

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

(4) To the maximum extent practicable, offshore vibroseis activities in Harrison Bay would progress in a westward direction and from deeper water shoreward to minimize disturbance to any subsistence hunting that may occur during seismic operations. If subsistence hunting occurred during winter, it would primarily be in the eastern half of Harrison Bay.

In order to ensure the least practicable adverse impact on the species and the subsistence use of ringed seals, all activities will be conducted as far as practicable from any observed ringed seal structure, and crews will be required to avoid hunters and the locations of any seals being hunted in the activity area, whenever possible. Finally, the applicant will consult with subsistence hunters of Nuiqsut and provide the community, the North Slope Borough, and the Inupiat Community of the North Slope with information about its planned activities (timing and extent) before initiating any on-ice seismic activities.

Mitigation

The following mitigation measures are proposed for the subject surveys: (1) All activities will be conducted as far as practicable from any observed ringed or bearded seal lair and no energy source will be placed over a ringed or bearded seal lair; (2) only vibrator-type energy-source equipment shown to have similar or lesser effects will be used; and (3) CPA will provide training for the seismic crews so they can recognize potential areas of ringed seal lairs and adjust the seismic operations accordingly.

CPA will also continue to work with NMFS, other Federal agencies, the State of Alaska, Native communities of Barrow and Nuiqsut, and the Inupiat Community of the Arctic Slope (ICAS) to assess measures to further minimize any impact from seismic activity. A Plan of Cooperation will be developed between CPA and Nuiqsut to ensure that seismic activities do not interfere with subsistence harvest of ringed or bearded seals.

If seismic operations go beyond March 20, in waters deeper than 3 meters (9.8 ft), a survey using trained dogs will be completed to identify active seal holes/birthing lairs or hole/lair habitats so they can be avoided by seismic operations to the greatest extent practicable. If trained dogs are not available, potential habitat will be identified by trained marine mammal biologists based on the characteristics of the ice (i.e., deformation and cracks).

Marine Mammal Monitoring

Ringed seal pupping occurs in lairs from late March to mid-to-late April (Smith and Hammill, 1981). Prior to commencing on-ice seismic surveys after March 20th, a survey using experienced field personnel and trained dogs will be conducted to identify potential seal structures along the planned on-ice seismic transmission routes. The seal structure survey will be conducted before selection of precise transit routes to ensure that seals, particularly pups, are not injured by equipment. The locations of all seal structures will be recorded by a Global Positioning System (GPS), staked, and flagged with surveyor's tape. Surveys will be conducted 150 m (492 ft) to each side of the transit routes. Actual width of the route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs locating seal structures. The survey will be conducted in only the portions of the activity area where water depths exceed 3 m (9.8 ft). Few, if any, seals inhabit ice-covered waters below 3 m (9.8 ft) due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water.

The impact of take, while anticipated to be negligible, will be assessed by conducting a second seal structure survey immediately after the end of the seismic surveys. A single on-ice survey will be conducted by biologists on snowmachines using a GPS to relocate and determine the status of seal structures located during the initial survey. The status (active vs. inactive) of each structure will be determined to assess the level of incidental take by seismic operations. The number of active seal structures abandoned between the initial survey and the final survey will be the basis for enumerating take. If dogs are not available for the initial survey, take will be determined by using observed densities of seal on ice reported by Moulton *et al.* (2001) for the Northstar project, which is approximately 37 km (20 nm) from the eastern edge of the proposed activity area.

In the event that seismic surveys can be completed in that portion of the activity area ≥ 3 m (9.8 ft) before mid-March, no field surveys would be conducted of seal structures. Under this scenario, surveys would be completed before pups are born and disturbance would be negligible. Therefore, take estimates would be determined for only that portion of the activity area exposed to seismic surveys after March 20, which would be in water 3 m (9.8 ft) or less deep. Take for this area would be estimated by using the observed density (13/100 km2) reported by Moulton *et al.* (2001) for water depths between 0 to 3 m (0 to 9.8 ft) in the Northstar project area, which is the only source of a density estimate stratified by water depth for the Beaufort Sea. This would be an overestimation requiring a substantial downward adjustment to

reflect the actual take of seals using lairs, since few if any of the structures in these water depths would be used for birthing, and Moulton et al. (2001) estimate includes all seals. This monitoring program was reviewed at the fall 2002 on-ice meeting sponsored by NMFS' National Marine Mammal Laboratory in Seattle and found acceptable.

Reporting

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

Endangered Species Act (ESA)

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing an authorization under section 101(a)(5)(D) of the MMPA.

National Environmental Policy Act (NEPA)

The information provided in Environmental Assessments (EAs) prepared in 1993 and 1998 for winter seismic activities led NOAA to conclude that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. The proposed action discussed in this document is not substantially different from the 1992 and 1998 actions, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation. Accordingly, this action is categorically excluded from further review under NOAA Administrative Order 216–6.

Preliminary Conclusions

The anticipated impact of winter seismic activities on the species or stock of ringed and bearded seals is expected to be negligible for the following reasons:

(1) The activity area supports a small proportion (<1 percent) of the ringed and bearded seal populations in the Beaufort Sea.

(2) Most of the winter-run seismic lines will be on ice over shallow water where ringed seals are absent or present in very low abundance. Over 60 percent of the activity area is near shore and/or in water less than 3 m (9.8 ft) deep, which is generally considered poor seal habitat. Moulton et al. (2001) reported that only 6 percent of 660 ringed seals observed on ice in the Northstar project area were in water between 0 to 3 m (0 to 9.8 ft)deep.

(3) Seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous, for reasons of safety and because of normal operational constraints.

(4) Many of the on-ice seismic lines and connecting ice roads will be laid out and explored during January and February, when many ringed seals are still transient, and considerably before the spring pupping season.

(5) The sounds from energy produced by vibrators used during on-ice seismic programs typically are at frequencies well below those used by ringed seals to communicate (1000 Hz). Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.

(6) There has been no major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals near the Northstar Project. Studies at Northstar have shown a continued presence of ringed seals throughout winter and creation of new seal structures (Williams *et al.*, 2001).

(7) Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quakenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones is an ongoing natural occurrence, with or without human presence. Link et al. (1999) compared ringed seal densities between areas with and without vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in vibroseis area), suggesting other factors beyond the seismic activity likely influenced seal use patterns. Consequently, a wide variety of natural factors influence this patterns of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability and predators as well as ring seal behavior and populations dynamics.

In winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

As a result, CPA believes the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. NMFS has preliminarily determined, based on information in the application and EA, that these changes in behavior will have no more than a negligible impact on the affected species or stocks of ringed and bearded seals (NMFS, 1998). Also, the potential effects of the proposed on-ice seismic operations during 2004 are unlikely to result in more than small numbers of seals being affected and will not have an unmitigable adverse impact on subsistence uses of these two species.

Proposed Authorization

NMFS proposes to issue an IHA to CPA for conducting seismic surveys at Cape Halkett to Oliktok Point in the Beaufort Sea in Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: January 16, 2004.

Laurie K. Allen,

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

[FR Doc. 04–1569 Filed 1–23–04; 8:45 am]

BILLING CODE 3510–22–S