

established in Title 15 Code of Federal Regulations Part 10, Procedures for the Development of Voluntary Product Standards, and administered by NIST, the American Lumber Standard Committee acts as the Standing Committee for PS 20–99, American Softwood Lumber Standard, responsible for maintaining, revising, and interpreting the standard. The Committee is comprised of producers, distributors, users, and others with an interest in the standard.

Voluntary Product Standard (PS) 20–05 establishes standard sizes and requirements for developing and coordinating the lumber grades of the various species of lumber, the assignment of design values, and the preparation of grading rules applicable to each species. Its provisions include implementation of the standard through an accreditation and certification program; establishment of principal trade classifications and lumber sizes for yard, structural, and factory/shop use; classification, measurement, grading, and grade-marking of lumber; definitions of terms and procedures to provide a basis for the use of uniform methods in the grading inspection, measurement, and description of softwood lumber; commercial names of the principal softwood species; definitions of terms used in describing standard grades of lumber; and commonly used industry abbreviations. The standard also includes the organization and functions of the American Lumber Standard Committee, the Board of Review, and the National Grading Rule Committee.

In addition to format, terminology, updates and general clarification, this revision makes the following major recommendations: (1) Section 2.2, Board measure, adds calculation of board feet for pieces of lumber less than 1" in thickness; (2) Section 2.12, Heat treated (HT), adds a definition for heat treated lumber; (3) Table 3, Nominal and minimum-dressed sizes of boards, dimensions, and timbers, adds dry timber sizes as shown in amended Table 3; (4) Sections 6.2.3.1, and 6.2.5.1, on dry and green size requirements, respectively, adds language that recognizes that lumber shrinks or expands depending on its moisture content; (5) Section 7.3.3, concerning grade marking, defines bundled lumber; (6) Section 10, Board of Review, is reformatted; (7) Section 11.3, Composition of National Grading Rule Committee, deletes old building code organizations and adds new building code organizations represented on the Committee and adds membership to the Committee as indicated; and (8)

Appendix A, Commercial Names of the Principal Softwood Species, deletes species groups and adds additional species.

All public comments will be reviewed and considered. The American Lumber Standard Committee and NIST will revise the standard accordingly.

Dated: April 28, 2005.

**Hratch G. Semerjian,**

*Acting Director.*

[FR Doc. 05–9115 Filed 5–5–05; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 040805A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Barges through the Beaufort Sea between West Dock and Cape Simpson or Point Lonely, Alaska

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

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

**SUMMARY:** NMFS has received a request from FEX L.P. (FEX), a subsidiary of Talisman Energy, Inc for an authorization to take small numbers of marine mammals by harassment incidental to conducting a barging operation within the U.S. Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize FEX to incidentally take, by harassment, small numbers of bowhead whales, beluga whales, ringed seals, bearded seals, and spotted seals in the above mentioned area between approximately July 1 and November 30, 2005.

**DATES:** Comments and information must be received no later than June 6, 2005.

**ADDRESSES:** Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is [PR1.040805A@noaa.gov](mailto:PR1.040805A@noaa.gov). NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not

exceed a 10–megabyte file size. 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](http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications). Documents cited in this notice may be viewed, by appointment, during regular business hours, at this address.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, ext 128, or Brad Smith, Alaska Region, NMFS, (907) 271–3023.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of 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), 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. Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

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

### Summary of Request

On March 29, 2005, NMFS received an application from FEX for the taking of several species of marine mammals incidental to the movement of two tugs towing barges from West Dock, Prudhoe Bay, Alaska to Cape Simpson or Point Lonely in the U.S. Beaufort Sea. The Kavik River (1100 horsepower (h.p.)) and the Sag River (1100 h.p.) or comparable class tugs, will each tow a single barge to Cape Simpson or Pt. Lonely. Approximately 8 round-trips will be required for project mobilization. Actual barging would be completed in an approximate 20-day period depending on ice conditions and sea states. Two barges would make the initial run to Cape Simpson/Point Lonely, and one would be left at one of those locations to serve as a temporary dock-head. The other barge would then make approximately 6 round trips. At the end of the barging operation, the barge serving as a temporary dockhead and the second barge would return to West Dock. FEX will make every effort to avoid periods of whale migration and subsistence activities and to complete the barging by August 15th, but no later than September 1st. If necessary, a late season barging effort may be required between October 15 and November 30, 2005.

Marine barge transit of a drilling rig, consumables, fuel, essential construction equipment and supplies from West Dock to Cape Simpson or Pt. Lonely is proposed. Equipment will be staged and stored in preparation for the upcoming winter on-shore oil and gas drilling and testing season. All drilling activities and bottom hole locations will be located on Federal Northwest National Petroleum Reserve Oil and Gas Leases.

### Description of Marine Mammals Affected by the Activity

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including bowhead whales (*Balaena mysticetus*), beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). A brief description of the biology, distribution, and current

status of these species can be found in the FEX application. More detailed descriptions can be found in NMFS Stock Assessment Reports. Please refer to those documents for more information on these species. The latter document can be downloaded electronically from: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html#Stock\\_Assessment\\_Reports](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html#Stock_Assessment_Reports). The FEX application is also available on-line (see ADDRESSES).

### Potential Effects of Tug/Barge Operations and Associated Activities on Marine Mammals

Potential harassment of marine mammals will result from the noise generated by the operation of towing vessels during barge movement. The physical presence of the tugs and barges could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between tug vessels and whales will be essentially zero due to the slow tow speed (2 knots) and visual monitoring by on-board marine mammal observers.

Marine mammal species with the highest likelihood of being harassed during the tug and barge movements are: beluga whales, ringed seals, and bearded seals. Spotted seals are less likely to be harassed during the tug/barge movement because they normally reside closer to the shore. Bowhead whales are the only species listed under the Endangered Species Act (ESA) that could potentially be affected by these activities. However, they are not expected to be encountered in more than very small numbers during the planned period of time for the tug/barge movement because the majority of bowhead whales will be on their summer feeding grounds in Canadian waters. A few transitory whales may be encountered during the transits. Beluga whales occur in the Beaufort Sea during the summer, but are expected to be found near the pack ice edge north of the proposed movement route. Depending on seasonal ice conditions, it is possible that belugas may be encountered during the transits.

Based on past surveys, ringed seals should represent the vast majority of marine mammals encountered during the transits. Ringed seals are expected to be present all along the tug/barge transit routes. There is the possibility that bearded and spotted seals will also be harassed during transit. Spotted seals may be present in the West Dock/Prudhoe Bay, but it is likely that they may be closer to shore and therefore are not expected to be harassed during transit phase.

### Numbers of Marine Mammals Expected to Be Taken

The number of marine mammals that may be taken as a result of the tug/barging operation is unpredictable. Operations are scheduled to occur prior to the westward migration and associated subsistence bowhead whale hunts to purposely avoid any take of this species. Noise disturbance from vessels might qualify as harassment to seals, but previous surveys have indicated little behavioral reaction from these animals to slow-moving vessels.

### Effects on Subsistence Needs

Residents of the village of Barrow are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Barrow hunters may hunt year round; however in more recent years most of the harvest has been in the summer during open water instead of the more difficult hunting of seals at holes and lairs (McLaren 1958, Nelson 1969). The Barrow fall bowhead whaling grounds, in some years, includes the Cape Simpson and Point Lonely areas (e.g. the 1990 season, when a large aggregation of feeding bowheads were pursued by Barrow hunters).

The most important area for Nuiqsut hunters is off the Colville River Delta in Harrison Bay, between Fish Creek and Pingok Island (149°40' W). Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns are reflected in harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997).

Due to the transient and temporary nature of the barge operation, impacts upon these seals are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because: (1) transient operations would temporarily displace relatively few seals; (2) displaced seals would likely move only a short distance and remain in the area for potential harvest by native hunters; (3) studies at the Northstar development found no evidence of the development activities affecting the availability of seals for subsistence hunters; however, the Northstar vicinity is outside the areas

used by subsistence hunters (Williams and Moulton, 2001); (4) the area where barge operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals; and (5) the barging, as scheduled, will be completed prior to beginning of the fall westward migration of bowhead whales and the associated subsistence activities by the local whalers.

In order to further minimize any effect of barge operations on the availability of seals for subsistence, the tug boat owners/operators will follow U.S. Coast Guard rules and regulations near coastal water, therefore avoiding hunters and the locations of any seals being hunted in the activity area, whenever possible.

While no impact is anticipated on the availability of marine mammal species and stocks for subsistence uses, FEX is currently discussing its proposed barging plan with the Alaska Eskimo Whaling Commission (AEWC). Meeting schedules are being finalized with the subsistence communities, the AEWC and the Whaling Captains Association. FEX plans an interactive dialogue in the communities and will provide project details and specifications during the meetings. The meetings will be conducted to resolve potential conflicts with either the project operation or the plan of cooperation. FEX will provide details of those meetings and will provide a copy of the draft Plan of Cooperation to NMFS.

The FEX's activities will comply with an agreed-upon Conflict Avoidance Agreement (CAA) prior to the autumn bowhead hunt by the residents of Kaktovik (Barter Island), Nuiqsut (Cross Island) and Barrow Native villages. Ice, bad weather conditions, and other possible operational considerations may affect the timing of the barge activity and may require that some activities take place beyond the scheduled target dates, but not during the September 1 - October 15 period.

#### **Mitigation**

FEX proposes to mitigate any potential negative impacts from its barging operation by planning the timing of operations in such a way as to reduce the production of noise during the fall bowhead whale migration. This includes not operating barges during the time bowheads are migrating and feeding in the western Beaufort Sea (approximately late-August through mid-October). In addition to these mitigation measures, FEX is working with the AEWC, North Slope Borough, and other whaling communities to complete a new CAA to eliminate

impacts to subsistence hunting of bowheads and thereby on bowheads themselves.

#### **Monitoring**

During all tug/barging operations, FEX will have on-board marine mammal monitors throughout the transit. As part of its application, FEX proposes to conduct a visual monitoring program for assessing impacts to marine mammals during the barge transits. FEX proposes to initiate a comprehensive training program for all potential marine mammal observers that includes learning the identification and behavior of all local species known to use the areas where FEX will be operating. This training would be conducted by professional marine biologists and experienced Native observers participating in the monitoring program. The observer protocol would be to scan the area around vessels with binoculars of sufficient power. Range finding equipment will be supplied to observers in order to better estimate distances. Observers would collect data on the presence, distribution, and behavior of marine mammals relative to FEX activities as well as climatic conditions at the time of marine mammal sightings. Observations would be made on a nearly 24-hour basis.

#### **Reporting**

All monitoring data collected would be reported to NMFS on a weekly basis. FEX must provide a final report on 2005 activities to NMFS within 90 days of the completion of the activity. This report will provide dates and locations of all barge movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including estimates of the level and type of take, numbers of each species observed, direction of movement of all individuals, and any observed changes or modifications in behavior.

#### **ESA Consultation**

The effects of oil and gas exploration activities in the U.S. Beaufort Sea on listed species, which includes the proposed activity, were analyzed as part of a consultation on oil and gas leasing and exploration activities in the Beaufort Sea, Alaska, and authorization of small takes under the MMPA. A biological opinion on these activities was issued on May 25, 2001. The only species listed under the ESA that might be affected during these activities are bowhead whales. The effects of the

proposed IHA on bowhead whales will be compared with the analysis contained in the 2001 biological opinion. If NMFS determines that the effects of the current activity are consistent with the findings of that biological opinion, and if an authorization to incidentally harass marine mammals listed under the ESA is issued for this activity under the MMPA, NMFS will issue an Incidental Take Statement under section 7 of the ESA.

#### **National Environmental Policy Act (NEPA)**

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency (EPA) noted the availability of a Final Environmental Impact Statement (Final EIS) prepared by the U.S. Army Corps of Engineers under NEPA on Beaufort Sea oil and gas development at Northstar. NMFS was a cooperating agency on the preparation of the Draft and Final EISs, and subsequently, on May 18, 2000, adopted the Corps' Final EIS as its own document. That Final EIS described impacts to marine mammals from Northstar construction activities, which included vessel traffic similar to the currently proposed action by FEX. NMFS is currently reviewing this Final EIS and will make a final NEPA determination on this action prior to making a determination on the issuance of the IHA to FEX.

#### **Preliminary Conclusions**

NMFS has preliminarily determined that the short-term impact of conducting a barging operation between West Dock, Prudhoe Bay and either Cape Simpson or Point Lonely, in the U.S. Beaufort and associated activities will result, at worst, in a temporary modification in behavior by certain species of whales and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues from the barging operation, this behavioral change is expected to have a negligible impact on the survival and recruitment of marine mammal stocks.

While the number of potential incidental harassment takes will depend on the year-to-year distribution and abundance of marine mammals in the area of operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the

activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the relocation route.

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

#### Proposed Authorization

NMFS proposes to issue an IHA for the harassment of marine mammals incidental to FEX conducting a barging operation for approximately 20 days from West Dock, Prudhoe Bay Alaska, through the U.S. Beaufort Sea to either Cape Simpson or Point Lonely. This proposed IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of bowhead whales, beluga whales, ringed seals, bearded seals and spotted seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses once the Plan of Cooperation is submitted to NMFS and the previously described CAA is signed.

#### Information Sought

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see ADDRESSES).

Dated: May 2, 2005.

**P. Michael Payne,**

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

[FR Doc. 05-9127 Filed 5-5-05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 050305A]

#### New England Fishery Management Council; Public Meetings

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

**ACTION:** Public meeting

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in May, 2005. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will held on Wednesday, May 25, 2005, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245-9300.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** There will be a committee review of several cooperative research project final reports and the development of any associated advice for use by the Council. There will be an update on NOAA Fisheries Service plans to issue a Request for Proposals for short-term research projects; and review of the status of projects affected by the policy to use "A" days-at-sea to account for catch and associated fishing mortality during cooperative research efforts.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting dates.

Dated: May 3, 2005.

**Emily Menashes,**

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

[FR Doc. E5-2209 Filed 5-5-05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. 2005-P-059]

#### Changes to the Transitional Procedures for Limited Examination After Final Rejection in Certain Applications Filed Before June 8, 1995

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Uruguay Round Agreements Act (URAA) provided for a transitional procedure for the limited examination after final rejection in certain applications filed before June 8, 1995. The United States Patent and Trademark Office (Office) is changing its final action practice for the Office action immediately following a submission under the URAA transitional limited examination procedure. The Office is changing this final action practice to conform with the intent of the URAA and to facilitate the completion of prosecution of applications to which the URAA transitional limited examination procedure applies.

**DATES:** *Effective Date:* The change in practice in this notice applies to any submission under 37 CFR 1.129(a) filed on or after June 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272-8800, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or by facsimile to (571) 273-7735, marked to the attention of Robert W. Bahr.

**SUPPLEMENTARY INFORMATION:** The URAA provided (among other things) for the Office to prescribe regulations to provide further limited (re)examination after final rejection of applications that have been pending for two years or longer as of June 8, 1995, taking into account any reference made in such application to any earlier filed applications under 35 U.S.C. 120, 121, or 365(c). See Pub. L. 103-465, § 532(a)(2)(A), 108 Stat. 4809, 4985 (1994). The Statement of Administration Action that accompanied the URAA indicated that the purpose of this transitional procedure for the limited examination of certain applications filed before June 8, 1995, was to facilitate the completion of the prosecution of applications pending in the Office as of June 8, 1995. See *Uruguay Round Agreements Act: Statement of Administrative Action*, H.R. Doc. No.