

Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on UNE dogfish possession EFP proposal" Comments may also be sent via facsimile (fax) to (978) 281-9135.

**FOR FURTHER INFORMATION CONTACT:**

Ryan Silva, Fishery Management Specialist, phone: 978-281-9326, fax: 978-281-9135.

**SUPPLEMENTARY INFORMATION:** The FMP implemented a semi-annual quota. When a semi-annual quota is projected to be harvested, NMFS closes the fishery until the next semi-annual quota opens. During a dogfish closure, no vessel may fish for or possess dogfish. The dogfish fishery was closed on December 19, 2006 (71 FR 76222), and will not re-open until May 1, 2007. As part of a continuing research project, UNE, in collaboration with the University of New Hampshire (UNH), is investigating Gulf of Maine dogfish age and growth, and size at sexual maturity characteristics. The applicant states that current dogfish life history data need updating, particularly in light of recent stock declines and potential regional variability in life history traits. The project investigators are attempting to develop a more accurate aging tool, which will improve age and size at sexual maturity determinations. The applicant notes that these data will provide critical life history information needed for effective dogfish management decisions, particularly for the Gulf of Maine.

The applicant would start collecting dogfish samples upon approval of the EFP and continue through June, 2007. The applicant would collect 15 dogfish per gender per 5-cm size class (<35 cm - >100 cm), for a total of 450 dogfish. Samples would be collected during commercial NE multispecies fishing trips in areas open to commercial NE multispecies regulations in statistical areas 125 and 132. Vessels would be fishing with otter trawl and gill net gear that is fully compliant with NE multispecies regulations. The applicant has indicated that up to 50 dead dogfish would be kept each trip, and that dogfish will not be targeted during the fishing trips. All live dogfish bycatch would be returned to the ocean as quickly as possible; only dead dogfish would be retained.

If approved, participating vessels would not be allowed to possess or retain more than 50 dogfish on any trip, and no dogfish may be sold.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on

applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 1, 2007.

**James P. Burgess,**

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

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 011807A]

**Taking of Marine Mammals Incidental to Specified Activities; An On-ice Marine Geophysical Research and Development Program 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 Shell Offshore, Inc. (SOI) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting an on-ice marine geophysical research and development (R&D) program in the U.S. Beaufort Sea from March to May, 2007. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to SOI to incidentally take, by harassment, small numbers of three species of pinnipeds for a limited period of time this year.

**DATES:** Comments and information must be received no later than March 8, 2007.

**ADDRESSES:** Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here. The mailbox address for providing email comments is [PR1.011807A@noaa.gov](mailto:PR1.011807A@noaa.gov). Comments

sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application and other supporting material related to this proposed action may be obtained by writing to this address or by telephoning the first contact person listed here and is also available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>

**FOR FURTHER INFORMATION CONTACT:**

Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext 137 or Brad Smith, Alaska Region, NMFS, (907) 271-5006.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines "harassment" as:

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

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an

application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

### Summary of Request

On January 17, 2007, NMFS received an application from SOI for the taking, by harassment, of three species of marine mammals incidental to conducting an on-ice marine geophysical R&D program. The proposed seismic survey would occur on U.S. Beaufort Sea. Sources and receivers would be placed above and below the ice in attempts to find pairings that provide the best mitigation of seismic noise in a shallow marine environment where conventional seismic vessels cannot operate. A variety of instruments will be used to create a complete catalogue of data for development of noise mitigation techniques. Sources include standard and lightweight vibrators, accelerated weight drop (impact) sources on the ice, and small volume airgun arrays deployed through holes augered in the ice. Receivers will be deployed both on the ice surface, as well as below the ice suspended in the water column and on the ocean floor. The program will also require a temporary camp facility geared to accommodate up to 100 people. The proposed program is expected to begin in March and last till May, 2007.

### Description of the Activity

The proposed R&D program would occur on the U.S. Minerals Management Service (MMS) Outer Continental Shelf (OCS) lease blocks located offshore from Oliktok Point, Milne Point, West Dock, or Endeavor Islands, in the Alaskan Beaufort Sea. This on-ice R&D will consist of 35 linear miles (56 km) of surveying with a 16 km<sup>2</sup> (6.2 mi<sup>2</sup>) area. The prospective locations have been selected on the basis of suitability for the scientific testing and proximity to facilities to help minimize impact on the region. The water depth at each location is less than 20 m (66 ft); deep enough that the ice is not grounded. Ice condition within the proposed survey area will determine the area selected, and SOI will consult with MMS and NMFS before the selection is made.

Surface sources will be a variety of industry-standard vehicles and weigh drops. On-ice vibroseis will be conducted using 2 vibrators: a 68,000 lb gross vehicle weight (GVW) wheeled vibrator capable of 49,440 foot-pounds (ft-lbs) of force and a 14,400 lb GVW

wheeled mini-vibrator capable of 12,000 ft-lbs of force. A minimum ice thickness of 4 ft (1.2 m) is required in order to support the vibrators and recording equipment. Impact sources to be used include 2 weigh drops: a Digipulse 1180 with peak force output of 1,200,000 ft-lbs at base plate, and a Polaris Explorer 860 with peak force output of 866,000 ft-lbs at base plate. Both weigh drop impact sources have dominant frequency ranges from 10 to 90 Hz. No measurements of acoustic energy source levels have been taken in industry using these equipments, however, in air and underwater sound levels resulted from weigh drops will be measured and monitored during the proposed survey.

An airgun array with 1 or 2 210 in<sup>3</sup> Generator/Injector (GI) airguns would also be used and can produce between 345,000 and 560,000 ft-lbs of force at 2,000 and 3,000 pounds per square inch (PSI), respectively. The source level of the airgun, measured at 1 m from the source, ranges from 228 - 232 dB re: 1 microPa, when fired in open water without sea ice coverage. The dominant frequency of the airgun is below 188 Hz.

The recording unit is comprised of 13 tracked vehicles for crew transport and technical support, 2 tracked recording trailers, and 2 ice drilling units.

The program will also require a temporary camp facility geared to accommodate up to 200 people and will be composed of purpose-built accommodations which are largely self-sufficient for normal operations. Camp facilities may include as many as 35 sled trailers including medical facilities, crew quarters, offices, kitchen and dining facilities, laundry facilities, technical work spaces, generators, and fuel storage units. Two tracked vehicles will be available for camp site support and access trail maintenance.

Prospective camp locations will be chosen based on ice conditions and safety of access to ice. SOI will consult with MMS and NMFS before moving camp location within the proposed project area. Mobilization and demobilization will take place from West Dock, Oliktok Point, Milne Point, or Endeavor Island. Given the logistics, it is unlikely that the operations would utilize each of the 4 prospective camp locations. The camp will be stationed on grounded ice beside the access route. Kuukpik Veritas will begin conducting surveys and ice checks and move the camp 7 to 12 days ahead of the seismic survey along the route away from the mobilization point. Re-supply operations will periodically be required for fuel and provisions. These operations will be based out of West

Dock, Oliktok Point, Milne Point, or Endeavor Island.

Camp mobilization is expected to begin on March 10, 2007. By March 15, the camp would be established and seismic acquisition will begin on or about March 17. Data acquisition will continue until May 5 to 10, followed by camp demobilization to Oliktok Point, Milne Point, West Dock, or Endeavor Island. Operations are expected to be occurring 24 hours a day through the entire survey period. The program is projected to take 30 to 40 days to acquire the necessary data.

### Description of Marine Mammals Affected by the Activity

Four marine mammal species are known to occur within the proposed survey area: ringed seal (*Phoca hispida*), bearded seal (*Erignathus barbatus*), spotted seal (*Phoca largha*), and polar bear (*Ursus maritimus*). None of these species are listed under the Endangered Species Act (ESA) as endangered or threatened species. Other marine mammal species that seasonally inhabit the Beaufort Sea, but are not anticipated to occur in the project area during the proposed R&D program, include the bowhead whales (*Balaena mysticetus*) and beluga whales (*Delphinapterus leucas*). SOI will seek a take Authorization from the U.S. Fish and Wildlife Service (USFWS) for the incidental taking of polar bears because USFWS has management authority for this species. A detailed description of these species can be found in Angliss and Outlaw (2005), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2005.pdf>. Additional information on the 3 pinniped species is presented below:

#### Ringed Seals

Ringed seals are widely distributed throughout the Arctic basin, Hudson Bay and Strait, and the Bering and Baltic seas. Ringed seals inhabiting northern Alaska belong to the subspecies *P. h. hispida*, and they are year-round residents in the Beaufort Sea.

During winter and spring, ringed seals inhabit landfast ice and offshore pack ice. Seal densities are highest on stable landfast ice but significant numbers of ringed seals also occur in pack ice (Wiig *et al.*, 1999). Seals congregate at holes and along cracks or deformations in the ice (Frost *et al.*, 1999). Breathing holes are established in landfast ice as the ice forms in autumn and are maintained by seals throughout winter. Adult ringed seals maintain an average of 3.4 holes per seal (Hammill and Smith, 1989).

Some holes may be abandoned as winter advances, probably in order for seals to conserve energy by maintaining fewer holes (Brueggeman and Grialou, 2001). As snow accumulates, ringed seals excavate lairs in snowdrifts surrounding their breathing holes, which they use for resting and for the birth and nursing of their single pups in late March to May (McLaren, 1958; Smith and Stirling, 1975; Kelly and Quakenbush, 1990). Pups have been observed to enter the water, dive to over 10 m (33 ft), and return to the lair as early as 10 days after birth (Brendan Kelly, pers comm to CPA, June 2002), suggesting pups can survive the cold water temperatures at a very early age. Mating occurs in late April and May. From mid-May through July, ringed seals haul out in the open air at holes and along cracks to bask in the sun and molt.

The seasonal distribution of ringed seals in the Beaufort Sea is affected by a number of factors but a consistent pattern of seal use has been documented since aerial survey monitoring began over 20 years ago. Recent studies indicated that ringed seals showed a strong seasonal and habitat component to structure use (Williams *et al.*, 2006), and habitat, temporal, and weather factors all had significant effects on seal densities (Moulton *et al.*, 2005). The studies also showed that effects of oil and gas development on local distribution of seals and seal lairs are no more than slight, and are small relative to the effects of natural environmental factors (Moulton *et al.*, 2005; Williams *et al.*, 2006).

A reliable estimate for the entire Alaska stock of ringed seals is currently not available (Angliss and Outlaw, 2005). A minimum estimate for the eastern Chukchi and Beaufort Sea is 249,000 seals, including 18,000 for the Beaufort Sea (Angliss and Outlaw, 2005). The actual numbers of ringed seals are substantially higher, since the estimate did not include much of the geographic range of the stock, and the estimate for the Alaska Beaufort Sea has not been corrected for animals missed during the surveys used to derive the abundance estimate (Angliss and Outlaw, 2005). Estimates could be as high or approach the past estimates of 1 - 3.6 million ringed seals in the Alaska stock (Frost, 1985; Frost *et al.*, 1988).

Frost and Lowry (1999) reported an observed density of 0.61 ringed seals/km<sup>2</sup> on the fast ice from aerial surveys conducted in spring 1997 of an area (Sector B2) overlapping the activity area, which is in the range of densities (0.28–0.66) reported for the Northstar development from 1997 to 2001 (Moulton *et al.*, 2001). This value (0.61)

was adjusted to account for seals hauled out but not sighted by observers ( $\times 1.22$ , based on Frost *et al.* (1988)) and seals not hauled out during the surveys ( $\times 2.33$ , based on Kelly and Quakenbush (1990)) to obtain the 1.73 seals/km<sup>2</sup>. This estimate covered an area from the coast to about 2 - 20 miles beyond the activity area; and it assumed that habitat conditions were uniform.

#### *Bearded Seals*

The bearded seal has a circumpolar distribution in the Arctic, and it is found in the Bering, Chukchi, and Beaufort seas (Jefferson *et al.*, 1993). Bearded seals are predominately benthic feeders, and prefer waters less than 200 m (656 ft) in depth. Bearded seals are generally associated with pack ice and only rarely use shorefast ice (Jefferson *et al.*, 1993). Bearded seals occasionally have been observed maintaining breathing holes in annual ice and even hauling out from holes used by ringed seals (Mansfield, 1967; Stirling and Smith, 1977).

Seasonal movements of bearded seals are directly related to the advance and retreat of sea ice and to water depth (Kelly, 1988). During winter they are most common in broken pack ice and in some areas also inhabit shorefast ice (Smith and Hammill, 1981). In Alaska waters, bearded seals are distributed over the continental shelf of the Bering, Chukchi, and Beaufort seas, but are more concentrated in the northern part of the Bering Sea from January to April (Burns, 1981). Recent spring surveys along the Alaskan coast indicate that bearded seals tend to prefer areas of between 70 and 90 percent sea ice coverage, and are typically more abundant greater than 20 nm (37 km) off shore, with the exception of high concentrations nearshore to the south of Kivalina in the Chukchi Sea (Bengtson *et al.*, 2000; Simpkins *et al.*, 2003). Since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will be rarely encountered during seismic operations.

There are no reliable population estimates for bearded seals in the Beaufort Sea or in the proposed project area (Angliss and Outlaw, 2005). Aerial surveys conducted by MMS in fall 2000 and 2001 sighted a total of 46 bearded seals during survey flights conducted between September and October (Treacy, 2002a; 2002b). Bearded seal numbers are considerably higher in the Bering and Chukchi seas, particularly during winter and early spring. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981).

Surveys flown from Shismaref to Barrow during May-June 1999 and 2000 resulted in an average density of 0.07 seals/km<sup>2</sup> and 0.14 seals/km<sup>2</sup>, respectively, with consistently high densities along the coast of the south of Kivalina (Bengtson *et al.*, 2005). These densities cannot be used to develop an abundance estimate because no correction factor is available.

#### *Spotted Seals*

Spotted seals occur in the Beaufort, Chukchi, Bering, and Okhotsk seas, and south to the northern Yellow Sea and western Sea of Japan (Shaughnessy and Fay, 1977). Based on satellite tagging studies, spotted seals migrate south from the Chukchi Sea in October and pass through the Bering Strait in November and overwinter in the Bering Sea along the ice edge (Lowry *et al.*, 1998). In summer, the majority of spotted seals are found in the Bering and Chukchi seas, but do range into the Beaufort Sea (Rugh *et al.*, 1997; Lowry *et al.*, 1998) from July until September. The seals are most commonly seen in bays, lagoons, and estuaries and are typically not associated with pack ice at this time of the year.

A small number of spotted seal haulouts are documented in the central Beaufort Sea near the deltas of the Colville and Sagavanirktok rivers (Johnson *et al.*, 1999). Previous studies from 1996 to 2001 indicate that few spotted seals (a few tens) utilize the central Alaska Beaufort Sea (Moulton and Lawson, 2002; Treacy, 2002a; 2002b). In total, there are probably no more than a few tens of spotted seals along the coast of central Alaska Beaufort Sea.

A reliable abundance estimate for spotted seal is not currently available (Angliss and Outlaw, 2005), however, early estimates of the size of the world population of spotted seals was 335,000 to 450,000 animals and the size of the Bering Sea population, including animals in Russian waters, was estimated to be 200,000 to 250,000 animals (Burns, 1973). The total number of spotted seals in Alaskan waters is not known (Angliss and Outlaw, 2005), but the estimate is most likely between several thousand and several tens of thousands (Rugh *et al.*, 1997). Using maximum counts at known haulouts from 1992 (4,135 seals), and a preliminary correction factor for missed seals developed by the Alaska Department of Fish and Game (Lowry *et al.*, 1998), an abundance estimate of 59,214 was calculated for the Alaska stock (Angliss and Outlaw, 2005).

### Potential Effects on Marine Mammals and Their Habitat

Seismic surveys using acoustic energy, such as airguns and weigh drop impact sources, may have the potential to adversely impact marine mammals in the vicinity of the activities (Gordon *et al.*, 2004). The sound source level of the GL airgun to be used in the proposed project is 228 dB re: 1 microPa at 1 m, which is strong enough to cause hearing threshold shift (TS) in pinnipeds when exposed for an extended duration (Kastak *et al.*, 1999).

However, it is extremely unlikely that any animals would be exposed to a sound level of this magnitude since acoustic energy is attenuated as it propagates through the water column. Preliminary results of the acoustic modeling, which did not take the ice effects into consideration, shows that the received sound pressure levels (SPLs) dropped down to 190, 180, and 160 dB re: 1 microPa root mean square (RMS) at distances of 120 m (394 ft), 330 m (1,083 ft), and 2.22 km (1.38 mi), respectively. However, with the sea ice dampening effects, actually received SPLs at these distances are expected to be lower (Richardson *et al.*, 1995). In addition, most acoustic energy from an airgun is directed downward, and the short duration of each pulse limits the total energy (Richardson *et al.*, 1995).

Intense acoustic signals from seismic surveys are also known to cause behavioral alteration in marine mammals such as reduced vocalization rates (Goold, 1996), avoidance (Malme *et al.*, 1986, 1988; Richardson *et al.*, 1995; Harris *et al.*, 2001), and changes in blow rates (Richardson *et al.*, 1995) in several marine mammal species. One controlled exposure experiment using small airguns (source level: 215 224 dB re 1 microPa peak-to-peak (p-p)) was conducted on harbor seals (*Phoca vitulina*) and gray seals (*Halichoerus grypus*) that had been fitted with telemetry devices showed fright responses in two harbor seals when playback started (Thompson *et al.*, 1998). Their heart rate dropped dramatically from 35 45 beats/min to 5 10 beats/min. However, these responses were short-lived and following a typical surfacing tachycardia; there were no further dramatic drops in heart rate. Harbor seals showed strong avoidance behavior, swimming rapidly away from the source. Stomach temperature tags revealed that they ceased feeding during this time. Only one seal showed no detectable response to the airguns and approached to within 300 m (984 ft) of the sound source. The behavior of harbor seals seemed to return to normal

soon after the end of each trial. Similar avoidance responses were also documented in gray seals. By contrast, sighting rates of ringed seals from a seismic vessel in shallow Arctic waters showed no difference between periods with the full array, partial array, or no airguns firing (Harris *et al.*, 2001).

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

The seismic surveys would only introduce acoustic energy into the water column and no objects would be released into the environment. In addition, the total footprint of the proposed seismic survey area covers approximately 16 km<sup>2</sup> (6.2 mi<sup>2</sup>), which represents only a small fraction of the Beaufort Sea pinniped habitat. Sea-ice surface rehabilitation is often immediate, occurring during the first episode of snow and wind that follows passage of the equipment over the ice.

There is a relative lack of knowledge about the potential impacts of seismic energy on marine fish and invertebrates. Available data suggest that there may be physical impacts on eggs and on larval, juvenile, and adult stages of fish at very close range (within meters) to seismic energy source. Considering typical source levels associated with seismic arrays, close proximity to the source would result in exposure to very high energy levels. Where eggs and larval stages are not able to escape such exposures, juvenile and adult fish most likely would avoid them. In the cases of eggs and larvae, it is likely that the

numbers adversely affected by such exposure would be very small in relation to natural mortality. Studies on fish confined in cages that were exposed under intense sound for extended period showed physical or physiological impacts (Scholik and Yan, 2001; 2002; McCauley *et al.*, 2003; Smith *et al.*, 2004). While limited data on seismic surveys regarding physiological effects on fish indicate that impacts are short-term and are most apparent after exposure at very close range (McCauley *et al.*, 2000a; 2000b; Dalen *et al.*, 1996), other studies have demonstrated that seismic guns had little effect on the day-to-day behavior of marine fish and invertebrates (Knudsen *et al.*, 1992; Wardle *et al.*, 2001). It is more likely that fish will swim away upon hearing the seismic impulses (Engas *et al.*, 1996).

Limited studies on physiological effects on marine invertebrates showed that no significant adverse effects from seismic energy were detected for Squid and cuttlefish (McCauley *et al.*, 2000) or in snow crabs (Christian *et al.*, 2003).

Based on the foregoing discussion, NMFS finds preliminarily that the proposed seismic surveys would not cause any permanent impact on the physical habitats and marine mammal prey species in the proposed project area.

### Number of Marine Mammals Expected to Be Taken

NMFS estimates that up to 28 ringed seals and much fewer bearded and spotted seals could be taken by Level B harassment as a result of the proposed on-ice geophysical R&D program. The estimate take number is based on consideration of the number of ringed seals that might be disturbed within the 16 km<sup>2</sup> proposed project area, calculated from the adjusted ringed seal density of 1.73 seal per km<sup>2</sup> (Kelly and Quakenbush, 1990). This number represents less than 0.1 percent of the total ringed seal population (estimated at 18,000) for the Beaufort Sea (Angliss and Outlaw, 2005).

Due to the unavailability of reliable bearded and spotted seals densities within the proposed project area, NMFS is unable to estimate take numbers for these two species. However, it is expected much fewer bearded and spotted seals would be subject to takes by Level B harassment since their occurrence is much lower within the proposed project area, especially during spring (Moulton and Lawson, 2002; Treacy, 2002a; 2002b; Bengtson *et al.*, 2005). Consequently, the levels of take of these 2 pinniped species by Level B harassment within the proposed project

area would represent only small fractions of the total population sizes of these species in Beaufort Sea.

In addition, NMFS expected that the actual take of Level B harassment by the proposed geophysical program would be much lower with the implementation of the proposed mitigation and monitoring measures discussed below. Therefore, NMFS believes that any potential impacts to ringed, bearded, and spotted seals to the proposed on-ice geophysical seismic program would be insignificant, and would be limited to distant and transient exposure.

#### 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, most of the harvest has been in open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). Subsistence patterns may be reflected through the harvest data collected in 1992, when Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997). Only a small number of ringed seals was harvested during the winter to early spring period, which corresponds to the time of the proposed on-ice seismic operations.

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

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

(2) The 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.

In order to ensure the least practicable adverse impact on the species and the subsistence use of ringed seals, SOI has notified and provided the affected subsistence community with a draft plan of cooperation. SOI held community meeting with the affected Beaufort Sea communities in mid-October 2006 and will hold meetings

again in early 2007 to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation.

#### Mitigation and Monitoring

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

SOI will employ trained seal lair sniffing dogs to locate seal structures under snow (subnivean) before the seismic program begins. The recommended prospective area for the proposed project will be surveys for the subnivean seal structures using 3 trained dogs running together. Transects will be spaced 250 m (820 ft) apart and oriented 90° to the prevailing wind direction. The search tracks of the dogs will be recorded by GPS units on the dogs and the tracks will be downloaded daily. Subnivean structures located will be probed by steel rod to check if each is open (active), or frozen (abandoned). Structures will be categorized by size, structure and odor to ascertain whether the structure is a birth lair, resting lair, resting lair of rutting male seals, or a breathing hole. Locations of seal structures will be marked and monitored and adjustment to the seismic operation will be made to avoid the lairs.

Seismic sources for the program will be recorded into 5 sensor groups: analog surface receivers, digital surface receivers, hydrophones in the water column, and 3 different types of 4-component ocean bottom sensors on the seafloor. Each source will be recorded into the 5 receiver groups. Water column monitoring of sound levels will be most directly accomplished by monitoring sound levels from the hydrophones. Density of receivers is very high, with spacing of 5 m (16.4 ft), so a detailed characterization of the sound levels can be accomplished. A range of receiver offsets will be available up to the maximum program offset of 4,000 m (13,123 ft). Additionally, the surface and ocean bottom sensors can be used as supplemental information in the determination of source levels and propagation distances for the experiment.

NMFS and SOI are proposing a 500 m (1,640 ft) exclusion zone around all located active subnivean seal structures, which no seismic or impact surveys will be conducted. During active seismic and impact source testing an on-ice 500 m (1,640 ft) safety zone will be established. The size of the safety zone shall then be

adjusted to match the 190 dB<sub>rms</sub> re: 1 microPa isopleth based on seismic source monitoring. On ice monitoring must be conducted by a trained, NMFS-approved marine mammal observer (MMO) for entry by any marine mammal. No seismic or impact surveys will be conducted if a marine mammal is observed entering the monitored safety zone.

To further reduce the potential impacts to marine mammals, SOI will implement soft-start (ramp-up) procedure when starting operations of the airgun or impact sources. Airgun and impact sources will be initiated at 50 percent of its full level and slowly (not more than 6 dB per 5 minutes) increase their power to full capacity.

#### Reporting

An annual report must be submitted to NMFS within 90 days of completing the year's activities. The report must contain detail description of the any marine mammal, by species, number, age class, and sex if possible, that is sighted in the vicinity of the proposed project area; whether the animal is harassed; and the context of behavior change due to Level B harassment.

#### Endangered Species Act (ESA)

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

#### National Environmental Policy Act (NEPA)

The information provided in the Final Programmatic Environmental Assessment (EA) on the *Arctic Ocean Outer Continental Shelf Seismic Surveys - 2006* prepared by the Mineral Management Service (MMS) in June 2006 led NMFS 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 2006 actions, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years that would warrant new NEPA documentation.

#### Preliminary Conclusions

The anticipated impact of the proposed on-ice seismic program on the

species or stock of ringed, bearded, and spotted seals is expected to be negligible for the following reasons:

(1) The proposed activity would only occur in a small area which supports a small proportion (<0.1 percent) of the ringed seal populations in the Beaufort Sea. The numbers of bearded and spotted seals within the proposed project area is expected to be even lower than that of ringed seals.

(2) The following mitigation and monitoring procedures will be implemented: (a) using trained seal lair sniffing dogs to conduct pre-operational survey and monitoring of ringed seal lairs and breathing holes within the proposed action area; (b) conducting activities as far away from any observed seal structures as possible; (c) establishing safety zone based on isopleth of 190 dB<sub>rms</sub> re: 1 microPa and (d); monitoring safety zones during operations of airgun and impact sources by a trained MMO, and soft-start (ramp-up) procedure when initiating airgun.

As a result, NMFS believes the effects of on-ice geophysical R&D program are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of ringed seals, and may also potentially affect any bearded and spotted seals in the vicinity. NMFS has preliminarily determined, based on information in the application and supporting documents, that these changes in behavior will have no more than a negligible impact on the affected pinniped species and populations within the proposed action area. Also, the potential effects of the proposed on-ice geophysical project during 2007 will not have an unmitigable adverse impact on subsistence uses of these species.

#### Proposed Authorization

NMFS proposes to issue an IHA to SOI for conducting on-ice geophysical R&D program in the U.S. Beaufort Sea, 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 ringed seals, and potentially any bearded and spotted seals in the vicinity; would have no more than a negligible impact on the affected pinniped species and stocks; and would not have an unmitigable adverse impact on the availability of seals for subsistence uses.

Dated: January 31, 2007.

**James H. Lecky,**

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

[FR Doc. E7-1875 Filed 2-5-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Draft Framework for Developing the National System of Marine Protected Areas

**AGENCY:** National Ocean Service, NOAA, Department of Commerce.

**ACTION:** Extension of Public Comment Period on the Draft Framework for Developing the National System of Marine Protected Areas.

**SUMMARY:** The Department of Commerce published a notice in the **Federal Register** on September 22, 2006 (71 FR 55432) announcing a 145-day public comment period on the Draft Framework for Developing the National System of Marine Protected Areas (Draft Framework). Copies of the Draft Framework can be requested via the contact information below or downloaded from <http://www.mpa.gov>. The deadline for public comment on the draft Framework is hereby extended.

**DATES:** The extended deadline for public comment on the draft Framework is 11:59 p.m. Eastern Time on February 28, 2007.

**ADDRESSES:** Comments should be sent to Joseph Uravitch, National Oceanic and Atmospheric Administration, National Marine Protected Areas Center, 1305 East West Highway, N/ORM, Silver Spring, MD 20910. Fax: (301) 713-3110. E-mail: [mpa.comments@noaa.gov](mailto:mpa.comments@noaa.gov). Comments will be accepted in written form by mail, e-mail, or fax.

**FOR FURTHER INFORMATION CONTACT:** Refer to the **Federal Register** notice of September 22, 2006, or contact Jonathan Kelsey at (301) 563-1130, or via e-mail at [mpa.comments@noaa.gov](mailto:mpa.comments@noaa.gov).

Dated: January 31, 2007.

**David M. Kennedy,**

*Director, Office of Ocean and Coastal Resource Management.*

[FR Doc. E7-1896 Filed 2-5-07; 8:45 am]

**BILLING CODE 3510-08-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Legal Processes

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to

comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 9, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* [Susan.Fawcett@uspto.gov](mailto:Susan.Fawcett@uspto.gov). Include "0651-0046 comment" in the subject line of the message.
- *Fax:* 571-273-0112, marked to the attention of Susan Brown.

- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Shirley Hassan, Office of General Law, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-3000; or by e-mail at [Shirley.Hassan@uspto.gov](mailto:Shirley.Hassan@uspto.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The purpose of this collection is to cover information requirements related to civil actions and claims involving current and former employees of the United States Patent and Trademark Office (USPTO). The rules for these legal processes may be found under 37 CFR Part 104, which outlines procedures for service of process, demands for employee testimony and production of documents in legal proceedings, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. 2672) and the corresponding Department of Justice regulations (28 CFR Part 14). The public may also petition the USPTO Office of General Counsel under 37 CFR 104.3 to waive or suspend these rules in extraordinary cases.

The procedures under 37 CFR Part 104 ensure that service of process intended for current and former employees of the USPTO is handled properly. The USPTO will only accept service of process for an employee acting in an official capacity. This