

This preliminary determination is supported by the fact that UAGI and NSF have worked closely with the AEWC and NSB to ensure that the proposed activities are not co-located with annual subsistence activities. Additionally, the proposed seismic survey will occur more than 200 km (124 mi) offshore of the North Slope and to the west of the communities that conduct fall bowhead whale subsistence hunts. This means that the whales will reach the communities prior to entering into the proposed survey area. The Chukchi Sea beluga hunts are typically completed prior to the time the *Langseth* would be transiting through the Chukchi Sea to the survey site. Should late summer or early fall hunts of certain species be occurring at the time of transit of the vessel, the hunts occur closer into shore than the proposed transit route of the *Langseth*.

Based on the measures described in UAGI's POC, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined preliminarily that there will not be an unmitigable adverse impact on subsistence uses from UAGI's marine seismic survey.

#### *Endangered Species Act (ESA)*

Three of the marine mammal species that could occur in the proposed seismic survey area are listed under the ESA: Bowhead whale; humpback whale; and fin whale. Under Section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS's Office of Protected Resources, Permits, Conservation and Education Division, has also initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on ESA-listed marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, UAGI, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's Biological Opinion issued to both NSF and NMFS's Office of Protected Resources. Although the ringed seal and bearded seal have been proposed for listing under the ESA, neither of the listings will be finalized prior to conclusion of

the proposed seismic survey. Therefore, consultation pursuant to section 7 of the ESA is not needed for these species.

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

With its complete application, UAGI and NSF provided NMFS an EA analyzing the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL on behalf of NSF is entitled "Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Arctic Ocean, September–October 2011." Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the NSF EA for consistency with the regulations published by the Council on Environmental Quality and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the NSF EA and make a decision of whether or not to issue a Finding of No Significant Impact.

#### *Proposed Authorization*

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to UAGI's proposed marine seismic survey in the Arctic Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 11, 2011.

**James H. Lecky,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RIN 0648–XA562]

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility off Massachusetts**

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

**ACTION:** Notice of issuance of a Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to Neptune LNG LLC (Neptune) to take marine mammals, by harassment, incidental to port commissioning and operations, including maintenance and repair activities, at the Neptune Deepwater Port (the Port) in Massachusetts Bay.

**DATES:** Effective from July 12, 2011, through July 10, 2016.

**ADDRESSES:** The LOA and supporting documentation may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, calling the contact listed under **FOR FURTHER INFORMATION CONTACT**, or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours at the above address.

The Final Environmental Impact Statement (Final EIS) on the Neptune Deepwater Port License Application authored by the Maritime Administration (MARAD) and U.S. Coast Guard (USCG) is available for viewing at <http://www.regulations.gov> by entering the search words "Neptune LNG." **FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental takings may be granted for periods up to 5 years, after notification and opportunity for public comment, 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 (where relevant), and if 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.”

Regulations governing the take of 14 species of marine mammals, by Level B harassment only, incidental to operation and repair and maintenance activities at the Neptune Port off Massachusetts were issued on June 13, 2011 (76 FR 34157). These regulations are effective from July 11, 2011, through July 10, 2016 (76 FR 35995, June 21, 2011). The species which are authorized for taking are: North Atlantic right whale; humpback whale; fin whale; sei whale; minke whale; long-finned pilot whale; killer whale; Atlantic white-sided dolphin; harbor porpoise; common dolphin; Risso’s dolphin; bottlenose dolphin; harbor seal; and gray seal. For detailed information on this action, please refer to the final rule and correction to the final rule (76 FR 34157, June 13, 2011; 76 FR 35995, June 21, 2011). These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during operation and repair and maintenance activities at the Neptune Port.

This LOA is effective from July 12, 2011, through July 10, 2016, and authorizes the incidental take of the 14 marine mammal species listed above that may result from port commissioning and operations, including maintenance and repair activities, at the Neptune Deepwater Port off Massachusetts. Once the Port is fully operational, it is anticipated that there may be up to 50 shuttle regasification vessel (SRV) trips per year.

Potential effects of Neptune’s port operations and maintenance/repair activities would most likely be acoustic in nature. LNG port operations and maintenance/repair activities introduce sound into the marine environment. Potential acoustic effects on marine mammals relate to sound produced by thrusters during maneuvering of the SRVs while docking and undocking, occasional weathervaning at the port, and during thruster use of dynamic positioning maintenance vessels should a major repair be necessary. Marine mammals may experience masking and behavioral disturbance.

Take of marine mammals will be minimized through the implementation of the following mitigation measures: (1) Restricting repair and maintenance activities to the period between May 1 and November 30, to the greatest extent practicable, so that acoustic disturbance to the endangered North Atlantic right whale can largely be avoided; (2) using NMFS-approved protected species observers (PSOs) onboard vessels and bioacoustic technicians; (3) taking appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots or less in certain seasons and areas and alerting personnel responsible for navigation and lookout duties to concentrate their efforts when a marine mammal is sighted; (4) remaining 1 km (0.6 mi) away from North Atlantic right whales and other whales to the extent possible while moving, and PSOs will direct a moving vessel to slow to idle if a baleen whale is seen less than 1 km (0.6 mi) from the vessel; (5) remaining 91 m (100 yd) away from all other marine mammal species; (6) ceasing any noise emitting activities that exceed a source level of 139 dB re 1  $\mu$ Pa if a right whale is sighted within or approaching to a distance of 457 m (500 yd); (7) ceasing any noise emitting activities that exceed a source level of 139 dB re 1  $\mu$ Pa if a marine mammal other than a right whale is sighted within or approaching to a distance of 91 m (100 yd); and (8) implementing passive acoustic monitoring of marine mammals to supplement the effectiveness of visual sightings. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. No injury or mortality is anticipated, and none is authorized.

Through this LOA, Neptune is required to monitor for marine mammals using both visual observers (*i.e.*, PSOs) and passive acoustic monitoring systems. Neptune is required to submit an annual report to NMFS on August 1 of each year. The report will include data collected for each distinct marine mammal species observed in the LNG facility area during the period of January 1 through December 31 of the previous year of activity. Additional information on the mitigation, monitoring, and reporting requirements can be found in the final rule (76 FR 34157, June 13, 2011). Neptune is also required to submit a comprehensive report, which shall provide full documentation of methods, results, and interpretation of all

monitoring during the period of effectiveness of this LOA.

Dated: July 11, 2011.

**James H. Lecky,**

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

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## CONSUMER PRODUCT SAFETY COMMISSION

[CPSA Docket No. 11-C0006]

### Macy’s, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Macy’s, Inc., containing a civil penalty of \$750,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 29, 2011.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11-C0006, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 820, Bethesda, Maryland 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** Seth B. Popkin, Lead Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7612.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

July 11, 2011.

**Todd A. Stevenson,**  
*Secretary.*

### Settlement Agreement

1. In accordance with 16 CFR 1118.20, Macy’s, Inc. (“Macy’s”) and the U.S. Consumer Product Safety Commission (“Commission”) staff (“Staff”) enter into this Settlement Agreement (“Agreement”). The Agreement and the