

### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.214(h).

Dated: November 9, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[I.D. 101906B]

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Oil and Gas Exploration Activities in the Arctic Ocean off Alaska

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

**ACTION:** Notice of Intent to prepare a Programmatic Environmental Impact Statement; request for comments.

**SUMMARY:** NMFS and the Minerals Management Service (MMS) announce their intention to prepare a Programmatic Environmental Impact Statement (PEIS) pursuant to the National Environmental Policy Act of 1969 (NEPA). This PEIS is being prepared to assess the impacts of MMS' annual authorizations under the Outer Continental Shelf Lands Act (OCSLA) to the U.S. oil and gas industry to conduct offshore geophysical seismic surveys in the Chukchi and Beaufort seas off Alaska, and NMFS' authorizations under the Marine Mammal Protection Act (MMPA) to incidentally harass marine mammals while conducting those surveys. Publication of this notice begins the official scoping period that

will help clarify previously identified issues and alternatives to be considered in the PEIS. The NMFS and MMS will consider comments received in response to this notice in determining the scope of the PEIS. The public will have additional opportunities to comment on the draft PEIS and any applications received under the MMPA as part of this action.

**DATES:** Written comments and information must be received no later than December 18, 2006.

**ADDRESSES:** Comments on the contents of the Draft PEIS should be addressed to Mr. P. Michael Payne, Chief of the Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is [PR1.101906B@noaa.gov](mailto:PR1.101906B@noaa.gov). Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

A copy of MMS' Programmatic Environmental Assessment (PEA) for seismic survey operations in Arctic Alaska waters for the 2006 open water season is available on-line at: [http://www.mms.gov/alaska/ref/pea\\_be.htm](http://www.mms.gov/alaska/ref/pea_be.htm).

**FOR FURTHER INFORMATION CONTACT:**

Kenneth R. Hollingshead, NMFS, 301-713-2289, ext 128 or Jill Lewandowski, MMS at 703-787-1703

**SUPPLEMENTARY INFORMATION:**

**Background**

In 2006, the MMS prepared a Draft PEA for the 2006 Arctic Outer Continental Shelf (OCS) Seismic Surveys. The MMS assumed in this PEA that up to eight marine seismic surveys (4 each in the Chukchi and Beaufort seas) were likely to occur in 2006 in the Arctic Ocean. NMFS was a cooperating agency in the preparation of the MMS Draft and Final PEAs and made the Draft PEA available upon request (e.g., 71 FR 26055, May 3, 2006). A Final PEA was published and released on June 20, 2006. In accordance with NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS subsequently determined that the MMS Final PEA contained an in-depth and detailed description of the affected environment, a reasonable range of alternatives to the proposed action, mitigation and monitoring measures to reduce impacts on the human environment to non-significant levels, and an analysis of the potential effects of the action and alternatives on the human environment. In view of the information and the analyses contained

in the supporting Final PEA, on June 28, 2006, NMFS adopted the Final PEA, issued its own Finding of No Significant Impact (FONSI) and determined that issuance of Incidental Harassment Authorizations (IHAs), under section 101(a)(5)(D) of the MMPA, to oil-and-gas companies for conducting seismic surveys in 2006 in the Arctic Ocean would have a negligible impact on affected marine mammal stocks and not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses of marine mammals.

This FONSI determination was predicated on full implementation of standard mitigation measures for preventing injury or mortality to marine mammals, in addition to area-specific mitigation measures, which included but were not limited to:

(1) a 120-dB rms (root-mean-squared) monitored safety zone for fall migrating cow/calf pairs of bowhead whales in the Beaufort and Chukchi seas;

(2) a 160-dB rms monitored safety zone for aggregations of feeding bowhead and gray whales in the Beaufort and Chukchi seas;

(3) a 180-dB rms exclusion zone for all cetaceans and a 190-dB rms exclusion zone for pinnipeds except the walrus;

(4) seismic shut-down criteria to protect bowhead and/or gray whales, under specific circumstances, when inside the 120-dB or 160-dB monitoring-safety zones; and for all cetaceans within the 180-dB zone and all pinnipeds, except walrus, within the 190-dB zone); and,

(5) a joint industry cooperative program on marine mammal research in the Chukchi Sea.

These mitigation measures were incorporated into NMFS' Selected Alternative and IHA conditions for the 2006 seismic survey operations. Accordingly, NMFS adopted MMS' Final PEA and determined that the preparation of an EIS for this action was not necessary.

**Notice of Intent**

During the public comment period on MMS' Draft PEA, several comments were received recommending preparation of a Draft EIS under NEPA for this action. While preparation of an EIS on this action was considered, NMFS and MMS determined that the goals and objectives of NEPA could be met, given the level of proposed activities for 2006, by completing a Final PEA and implementing a mitigated FONSI for 2006 that would ensure that all authorized activities would not have a significant effect on

the human environment. At the time, NMFS also began to explore the need to prepare an EIS for future years, if seismic operations were to continue and expand in scope as anticipated.

It is important to note that subsequent to issuance of the IHAs for the 2006 seismic season to Shell (71 FR 50027, August 24, 2006), ConocoPhillips Alaska (CPAI) (71 FR 43112, July 31, 2006), and GX Technology (GXT) (71 FR 49418, August 23, 2006), a District Court Judge in Anchorage in the case of *ConocoPhillips Alaska, Inc v. National Marine Fisheries, et al.* issued an order on September 18, 2006, granting a motion to stay the implementation of the CPAI IHA condition requiring a 120-dB monitoring safety zone to protect bowhead whale cow/calf pairs during their annual fall migration out of the Arctic Ocean. The Court agreed that CPAI raised a "serious question" regarding the propriety of this additional requirement, meaning that the IHA condition requiring a 120-dB monitoring safety zone would be suspended until the Court is able to fully resolve the dispute. However, the 120-dB mitigation measure was essential to allow NMFS to conclude with a FONSI, especially given the level of uncertainty on the effects of seismic surveys on bowhead whales in Arctic waters. This measure, therefore, became a basic condition for NMFS being able to issue IHAs to Shell, CPAI and GXT in the 2006 seismic season.

It should be recognized that the MMS PEA analyzed the effects of 4 concurrent seismic surveys in the Chukchi Sea and 4 concurrent seismic surveys in the Beaufort Sea during the bowhead migration while in fact, in 2006, only a single company operated at any one time in the Chukchi Sea during the bowhead migration (CPAI from September 25 - October 12 and GXT from October 13 - present). As a result, this significant reduction in the anticipated amount of seismic activity around the bowhead whale migration reduced NMFS' concern this year that the suspension by the Court of one measure by one company would result in an increase of negative impacts to bowhead whales or subsistence hunters. However, there are indications that a similar (4 and 4) or even an increased level of seismic activity may occur in 2007 and beyond. These events may lead to an increased impact to marine mammals, particularly to fall migrating bowhead whale cow/calf pairs. Moreover, if in 2007 or beyond, the level of seismic survey activity in the Chukchi and Beaufort seas increases, it may exceed the level analyzed in the Final PEA. As a result, NMFS has

determined that it needs to analyze impacts resulting from a higher level of potential seismic activity over a longer time frame than was addressed in the Final PEA and to reanalyze the range of practical mitigation measures for protecting marine mammals in more detail through preparation of a Draft PEIS for issuing: (1) permits for oil and gas exploration in the Arctic Ocean by MMS, and (2) authorizations to the seismic industry from NMFS to take marine mammals incidental to oil and gas seismic surveys in the Arctic Ocean.

#### **Description of the Specified Activity**

Marine geophysical seismic surveys are conducted to obtain information on surface and near-surface geology (high-resolution surveys) and on subsurface structures and formations (2-D and 3-D seismic surveys and vertical seismic profile surveys). Airguns are the acoustic source for 2D and 3D seismic surveys. Their individual size can range from tens to several hundred cubic inches (in<sup>3</sup>). A combination of airguns is called an array, and operators vary the source-array size during the seismic survey to optimize the resolution of the geophysical data collected. Airgun array sizes for 2D/3D seismic surveys in Arctic waters have ranged from 1,800–4,000 in<sup>3</sup> but may range up to 6,000 in<sup>3</sup>.

These arrays emit pulsed rather than continuous sounds. While most of the energy is directed downward and the short duration of each pulse limits the total energy, the sound can propagate horizontally for several kilometers (Greene and Richardson, 1988; Hall et al., 1994).

Marine-streamer 3D seismic surveys vary markedly depending on client specifications, subsurface geology, water depth, and geological target reservoir. The vessels conducting these surveys generally are 70–90 meters (m) (230–295 ft) long. A 3D source array typically consists of two to three subarrays of six to nine airguns each, and is about 12.5–18 m (41–59 ft) long and 16–36 m (52–118 ft) wide. Vessels tow one to three source arrays, depending on the technical survey-design specifications required for the geologic target, to generate the acoustic energy. The sound-source level (zero-to-peak) associated with 3D seismic surveys ranges between 233 and 240 decibels re 1 microPascal at 1 m. The arrays usually are aligned parallel with one another and towed 50–200 m (164–656 ft) behind the vessel. Following behind the source arrays by another 100–200 m (328–656 ft) are multiple (4–12) streamer-receiver cables, and each streamer can be 3–8 kilometers (km; 1.86–5 mi) long and spread out over a

width of 400–900 m (1312–2953 ft). Streamers are passive listening equipment consisting of multiple hydrophone elements.

The airgun array produces a burst of underwater sound by releasing compressed air into the water column that creates an acoustic energy pulse. The release of compressed air every several seconds creates a regular series of strong acoustic impulses separated by silent periods lasting 7–16 seconds, depending on survey type and depth to the target formations. Acoustic signals are reflected off the subsurface sedimentary layers and recorded near the water surface by hydrophones spaced within the streamer cables. Some surveys employ ocean-bottom seismometers as the receiving instrument. Vessel speed is typically 4.5–6 knots (about 4–8 mph) with gear deployed.

Three-Dimensional (3-D) seismic surveying enables a more accurate assessment of potential hydrocarbon reservoirs to optimally locate exploration and development wells, and minimize the number of wells required to develop a field. State-of-the-art interactive computer mapping systems can handle much denser data coverage than older 2-D seismic surveys. Multiple-source and multiple-streamer technologies are used for 3-D seismic surveys. A typical 3-D survey might employ a dual array of up to 18 guns per array. Each array might emit a 3,000 cubic-inch burst of compressed air at 2,000 kilojoule (kJ) of acoustic energy for each burst. The hydrophone streamer array might consist of 6–8 parallel cables, each 6–8 km (3.7–5 mi) long, spaced 75 m (246 ft) apart. A series of 3-D surveys collected over time (4-D seismic survey) is used for reservoir monitoring and management (the movement of oil, gas, and water in the reservoirs can be observed over time). The overall energy output for the permitted activity will be the same, but the firing of the source arrays on the individual vessels will be alternated.

A source array is activated approximately every 10–15 seconds, depending on vessel speed. The timing between activations varies between surveys to achieve the desired spacing required to meet the geological objectives of the survey; typical spacing is either 25 or 37.5 m (82 or 123 ft). Depending on the shotpoint interval, airguns are fired between 20 and 70 times per mile.

#### **Characteristics of Airgun Pulses**

Discussion on the characteristics of airgun pulses have been provided in the Final PEA and in previous **Federal**

**Register** notices (see 69 FR 31792 (June 7, 2004)). Reviewers are referred to those documents for additional information.

### Scoping

The environmental review of the offshore seismic industry activity and related IHA applications will be conducted in accordance with the requirements of NEPA, its regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and the NMFS policies and procedures for compliance with those regulations (NOAA Administrative Order 216–6–Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999).

The activities that will be analyzed in the Draft PEIS will include conducting marine-streamer 3D and 2D seismic surveys, high-resolution site seismic surveys, and ocean-bottom-cable seismic surveys. NMFS and MMS will analyze the effects of seismic noise on marine mammals, fish and fishery resources, and marine birds found in the Chukchi and Beaufort seas. An analysis of the potential socioeconomic impacts, including potential impacts on subsistence uses of marine mammal resources, will also be included. The Draft PEIS' cumulative activities scenario and cumulative impact analysis will focus on oil and gas-related and non-oil and gas-related noise-generating events/activities in both Federal and State of Alaska waters that have been authorized or conducted in the past and that are reasonably likely and foreseeable. Noise contributions from community and commercial development, military activities, and arctic warming will also be considered. Additional issues may be identified as a result of written scoping comments.

The Draft PEIS will analyze the potential adverse impacts of the proposed activities and other non-seismic related activities on environmental resources, and will identify and describe any mitigation measures that could be adopted to avoid and/or minimize those impacts. The Draft PEIS will include, but not be limited to the following issues and concerns: (1) Protection of subsistence resources and the Inupiat culture and way of life; (2) impacts to marine mammals including disturbance to bowhead whale migration patterns; (3) impacts of seismic survey operations on marine fish reproduction, growth, and development; (4) harassment and potential harm of wildlife, including marine birds, by vessel operations and movements; (5) impacts on water and air quality; (6) changes in the

socioeconomic environment; (7) impacts to threatened and endangered species; (8) risks of oil spills and their potential impacts on area fish and wildlife resources; (9) incorporation of traditional knowledge in the decision-making process; and, (10) a description of any potential marine mammal mitigation and monitoring measures and an analysis of their potential effectiveness.

### PEIS Alternatives

NMFS will explore and evaluate a reasonable range of alternatives in the Draft PEIS, including the proposed action and the no-action alternative. At this time, NMFS has identified 7 alternatives for this action: (1) No seismic-survey permits issued for geophysical exploration activities (No Action); (2) seismic surveys for geophysical-exploration activities would be permitted with existing Alaska OCS G&G (geological and geophysical) exploration stipulations and guidelines; (3) seismic surveys for geophysical exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines but would include additional protective measures for marine animals, including a 120-dB monitored safety and/or exclusion zone for marine mammals; (4) seismic surveys for geophysical-exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines and additional protective measures for marine animals, including a 160-dB-monitored safety and/or exclusion zone for marine mammals; (5) seismic surveys for geophysical-exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines but would include additional protective measures for marine animals, including 160-dB- and 120-dB monitored safety and/or exclusion zones for marine mammals (Alternatives 3 and 4 combined); (6) seismic surveys for geophysical exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines but would include additional protective measures for marine animals, including a 180/190-dB exclusion zone for marine mammals to prevent acoustic injury; and, (7) seismic surveys for geophysical exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines but would include additional protective measures for marine animals, including a 180/190-dB exclusion zone and 160-dB and 120-dB monitored

safety and/or exclusion zones for marine mammals (Alternatives 5 and 6 combined). Alternative 7 was the Selected Alternative by MMS and NMFS in the 2006 PEA. No identification of a preferred or selected alternative has been made at this time.

### Identified Draft PEIS Mitigation and Monitoring Measures

The alternatives in the Draft PEIS will address a suite of potential mitigation and monitoring measures, including:

(1) *Exclusion/Safety Zones*—A 180/190 dB rms isopleth exclusion zone from the sound source that must be free of marine mammals before the survey can begin and must remain free of mammals during the survey. The purpose of an exclusion zone is to protect marine mammals from Level A harassment (injury/harm); the purpose of a safety zone is to prevent interruption of critical natural behaviors that, if significantly disrupted, could result in population level effects, or to avoid an unmitigable adverse impact on subsistence resources. The 180 dB (Level A harassment-injury) applies to cetaceans and walrus and 190 dB (Level A harassment-injury) applies to pinnipeds, other than walrus.

(2) *Monitoring exclusion/safety zones*—Trained marine mammal observers (MMOs) and Inupiat hunters monitor the area around the survey vessel for the presence of marine mammals to maintain a mammal free exclusion zone, monitor for avoidance, or take behaviors. Visual observers monitor the exclusion zone to ensure that marine mammals do not enter the exclusion zone for at least 30 minutes prior to ramp up, during the conduct of the survey, or before resuming seismic-survey work.

(3) *Shut-down/power-down*—The seismic array must be shut-down or powered-down until the exclusion zone is free of marine mammals. All MMOs have the authority to, and will, instruct the vessel operators to immediately stop or de-energize the airgun array whenever a marine mammal is seen within the exclusion zone.

(4) *Ramp-up*—Ramp up is the gradual introduction of sound to deter marine mammals from potentially damaging sound intensities and from approaching the exclusion zone. This technique involves the gradual increase (usually 5–6 dB per 5-minute increment) in emitted sound levels, beginning with firing a single airgun and gradually adding airguns over a period of at least 20–40 minutes, until the desired operating level of the full array is obtained. Ramp-up procedures may begin after MMOs ensure the absence of

marine mammals for at least 30 minutes within the exclusion zone.

(5) *Field Verification*—Before conducting the survey, the operator must verify the radii of the exclusion zone within real-time conditions in the field. This provides for a more accurate exclusion-zone radii rather than relying on modeling techniques before entering the field.

(6) *Aerial Surveys*—Aerial surveys are flown in advance of initiating seismic surveys and related ice-breaking activities over an area that includes the area to be surveyed.

(7) *Temporal/Spatial/Operational Restrictions*—Dynamic management approaches to avoid or minimize acoustic exposure, such as temporal or spatial limitations are based on the presence of a marine mammal in a particular place or time, or during a particularly sensitive behavior (such as feeding or maternal care). In the past, these restrictions have included: (a) A prohibition on surveys in the Chukchi Sea spring-lead system before July 1; (b) under specific circumstances to protect migrating bowhead cow/calf pairs, the standard 180-dB exclusion zone for cetaceans is extended to a monitored 120-dB safety zone; (c) under specific circumstances to protect feeding aggregations of bowhead and/or gray whales, the standard 180-dB exclusion zone for cetaceans is extended to a monitored 160-dB safety zone.

(8) *Dedicated aerial and/or vessel surveys*—As appropriate, dedicated aerial and/or vessel surveys are conducted in the Beaufort and Chukchi seas during the fall bowhead whale migration period to detect migrating bowhead cow/calf pairs, and concentrations of feeding bowhead and gray whales.

#### Comments

The NMFS requests comments from state, local, and tribal governments; Native Alaskan organizations; Federal agencies; environmental and fish and wildlife organizations; the oil and gas industry; other interested organizations and parties in order to assist in the preparation of a Draft PEIS for the Arctic Ocean OCS Seismic Surveys. In particular, NMFS requests comments on the scope of issues and range of alternatives that should be considered in the Draft PEIS.

Additional opportunities for public review and comment will be provided when the Notice of Availability of the Draft PEIS is published in the **Federal Register**. After release of the Draft PEIS, MMS and NMFS intend to hold public information meetings in Anchorage,

Barrow, Kaktovik, Nuiqsuk, Wainwright, Point Lay and Point Hope.

Dated: November 7, 2006

**James H. Lecky,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 111406A]

#### Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

**ACTION:** Notice of receipt of an application for an exempted fishing permit.

**SUMMARY:** This notice announces receipt of an application for an exempted fishing permit (EFP) from the Aleut Enterprise Corporation (AEC). If granted, this permit would be used to support a project to assess pollock abundance in a portion of the Aleutian Islands subarea and to test the feasibility of managing pollock harvest at a finer temporal and spatial scale using near real-time acoustic surveying. The project is intended to promote the objectives of the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) by improving the use of pollock in the Aleutian Islands subarea.

**ADDRESSES:** Copies of the EFP application and the environmental assessment (EA) are available by writing to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh. The EA also is available from the Alaska Region, NMFS Web site at <http://www.fakr.noaa.gov/index/analyses/analyses.asp>.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907-586-7228 or [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR

parts 600 and 679. The FMP and the implementing regulations at §§ 679.6 and 600.745(b) authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

NMFS received an application for an EFP from the AEC. The purpose of the EFP is to support a project to assess pollock abundance in a portion of the Aleutian Islands subarea and to test the feasibility of managing pollock harvest at a finer temporal and spatial scale using near real-time acoustic surveying. The goal of the project is to improve the use of Aleutian Islands pollock. NMFS currently does not have the resources to conduct acoustic surveys of Aleutian Islands subarea pollock. This project has been developed in cooperation with stock assessment scientists at the NMFS Alaska Fisheries Science Center. The acoustic and biological information from the project would provide a baseline assessment of pollock biomass and distribution in the area that may be fished by small vessels from Adak, Alaska. This information also would be used to determine if the local aggregations of pollock are stable enough during the spawning season to allow for fine-scale spatial and temporal management. Additionally, genetic samples would be collected for stock structure analysis. Better information may lead to improved conservation and harvest management at finer spatial and temporal scales for the Aleutian Islands subarea pollock. Improved harvest management of the Aleutian Islands subarea pollock is needed based on the high uncertainty in the stock structure and the potential effects of the fishery on Steller sea lion populations.

The western distinct population segment (DPS) of Steller sea lions occurs in the Aleutian Islands subarea and is listed as endangered under the Endangered Species Act (ESA). Critical habitat has been designated for this DPS, including waters within 20 nautical miles (nm) of haulouts and rookeries (50 CFR 226.202) and in the Segum Foraging Area. Pollock is a principal prey species of Steller sea lions.

The U.S. Congress, in Section 803 of the Consolidated Appropriations Act of 2004 (Public Law 108-199), required that the directed fishing allowance of pollock in the Aleutian Islands subarea be allocated to the Aleut Corporation. Only fishing vessels approved by the Aleut Corporation or its agents are allowed to harvest this allowance. To harvest the fish, the Aleut Corporation is allowed to contract only with vessels under 60 feet (18.3 m) length overall