Extension of Time Limit for Final Results

We find that it is not practicable to complete the final results of this review within the original time limits. First, the Department intends to verify the responses of Hynix and the Government of Korea (GOK) in November 2007. Second, the petitioner has raised several complex issues during this administrative review. For example, based on new factual information, the petitioner asked the Department to reconsider the timing of the benefit of a previously countervailed debt–to-equity swap. The petitioner also alleged in this review that Hynix received countervailable benefits from a duty reduction program on imports of equipment for factory automation. Because of the verification and the complexity of these issues, it is not practicable to complete this review by the original deadline of January 8, 2008. Therefore, the Department is extending the time limit for completion of the final results to not later than March 10, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.[1]

Dated: September 25, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–19433 Filed 10–1–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB73

Taking of Marine Mammals Incidental to Specified Activities; Open Water Seismic Operations in Cook Inlet, Alaska

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

ACTION: Notice of issuance of two incidental harassment authorizations.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that Incidental Harassment Authorizations (IHAs) to take marine mammals, by harassment, incidental to conducting seismic operations in the northwest portion of Cook Inlet, Alaska, have been issued to Union Oil Company of California (UOCC) and Marathon Oil Company (MOC) for a period between September and November, 2007.

DATES: The authorization for UOCC is effective from September 26 until November 15, 2007; and the authorization for MOC is effective from October 1 until November 30, 2007.

ADDRESSES: A copy of the application, IHA, Environmental Assessment (EA), supplemental Environmental Assessment (SEA), and a list of references used in this document may be obtained by writing 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 (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137, 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 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 either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking 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 small numbers 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 Requests

On March 30, 2007, NMFS issued an IHA to UOCC under the authority of Section 101(a)(5)(D) of the MMPA, to take by harassment small numbers of Cook Inlet beluga whales (*Delphinapterus leucas*), Steller sea lions (*Eumetopias jubatus*), Pacific harbor seals (*Phoca vitulina richardsi*), harbor porpoises (*Phocoena phocoena*), and killer whales (*Orcinus orca*) incidental to conducting open water seismic operations in northwestern Cook Inlet, Alaska, between May 1 and June 15, 2007 (72 FR 17118, April 6, 2007). However, as a result of ice conditions in Cook Inlet during spring 2007, UOCC was unable to begin seismic operations planned for May. As a result, on May 17, 2007, UOCC requested that NMFS change the effective date of its IHA to the time period September 4 through November 15, 2007.

On May 15, 2007, MMFS received an application from MOC requesting an IHA for the harassment of small numbers of Cook Inlet beluga whales, Steller sea lions, Pacific harbor seals, harbor porpoises, and killer whales incidental to conducting open water seismic operations in portions of Cook Inlet, Alaska for the period from October 1 to November 30, 2007.

Both proposed operations use an ocean–bottom cable (OBC) system to conduct seismic surveys. OBC seismic surveys are used in waters that are too

[1] We note that Saturday, March 8, 2008, is 180 days after September 10, 2007, the publication date for the preliminary results. When a deadline falls on a weekend, the Department's practice is to use the next business day as the appropriate deadline. See Notice of Clarification: Application of ≥Next Business Day≥ Rule for Administrative Determination Deadlines Pursuant to the Act, 70 FR 24533 (May 10, 2005).

shallow for the data to be acquired using a marine–streamer vessel or too deep to have static ice in the winter. This type of seismic survey requires the use of multiple vessels for cable layout/pickup, recording, shooting, and possibly one or two vessels smaller than those used in streamer operations. The utility boats can be very small, in the range of 10 – 15 m (33 – 49 ft). A detailed description of the open water seismic surveys using OBC system was published in the **Federal Register** on January 5, 2007 (72 FR 536), and is not repeated here.

The proposed operations would be active 24 hours per day, but the airguns would only be active for 1 – 2 hours during each of the 3 – 4 daily slack tide periods. The source for the proposed OBC seismic surveys would be a 900–in^3 BOLT airgun array situated on the source vessel, the *Peregrine Falcon*. The array would be made up of 2 sub–arrays, each with 2, 3–airgun clusters separated by 1.5 m (4.9 ft) off the stern of the vessel. One cluster will consist of 3, 225–in^3 airguns and the second cluster will have 3, 75–in^3 airguns. During seismic operations, the sub–arrays will fire at a rate of every 10 – 25 seconds and focus energy in the downward direction as the vessel travels at 4 – 5 knots (4.6 – 5.8 mph). Source level of the airgun array is 249 dB re 1 microPa at 1 m (0 – peak), and the dominant frequency range is 8 – 40 Hz.

The geographic region for the seismic operation proposed by UOCC remains the same as published in the previous **Federal Register** notice (72 FR 536), which is in the northwestern Cook Inlet, paralleling the shoreline offshore of Granite Point, and extending from shore into the inlet to an average of about 1.6 km (1 mi).

The geographic region for the activity proposed by MOC encompasses a 68.51 km^2 (26.45 square miles) area in lower Cook Inlet on the eastern shore, paralleling the shoreline for about 15.2 km (9.5 mi) and extending from shore into the inlet an average of about 6.1 km (3.8 mi). The approximate boundaries of the region of the proposed project area are 61°09′N, 151°30′W; 61°12′N, 151°34′W; 61°17′N, 151°25′W; and 60°16′N, 151°21′W. There are no major rivers flowing into the open water seismic project area. Water depths range from 0 to 15 m (48 ft), with most of the area less than 7.3 m (24 ft) deep. The proposed seismic operations would begin as early as October 1 and end by November 30, 2007.

Comments and Responses

A notice of receipt and request for public comment on the applications and proposed authorizations was published on August 10, 2007 (72 FR 45014). During the 30-day public comment period, NMFS received the following comments from the Marine Mammal Commission (Commission), the Humane Society of the United States (HSUS), ConocoPhillips Alaska Inc. (CPAI), and one private citizen.

Comment 1: The Commission recommends that NMFS issue the IHA to MOC subject to various monitoring and mitigation stipulations. The Commission states that the seismic survey area proposed by MOC appears to be well to the south of the area that is used by Cook Inlet beluga whales during the period in question. And because a considerable portion of the survey is on land and the marine area to be surveyed is close to shore in shallow water, the Commission believes that the survey activities are not likely to lead to significant disturbance of beluga whales or other marine mammals.

Response: NMFS agrees with the Commission's comments and recommendation that the IHA be issued to MOC subject to various monitoring and mitigation measures.

Comment 2: The Commission recommends that NMFS defer changing the timing of the authorization for the UOCC survey until NMFS can demonstrate a clear temporal separation in the distribution of beluga whales and the seismic operations to ensure that beluga whales are not being taken in unanticipated ways or numbers and that any effects will, indeed, be negligible. The Commission expresses its concern that the requested delay in the UOCC project appears to increase the possibility that beluga whales will be in the survey area during the period in question.

Response: NMFS has conducted extensive research and analyses before making its determination that the proposed seismic surveys by UOCC will have no more than a negligible impact on marine mammal species and stocks in the area. As stated in the **Federal Register** notice for the proposed issuance of the IHAs (72 FR 45014, August 10, 2007), NMFS is aware of the relative more frequent use by beluga whales in Granite Point during the proposed UOCC seismic surveys. Therefore, as an additional measure of marine mammal monitoring, NMFS requires that UOCC conduct aerial monitoring of Cook Inlet beluga whales in the vicinity of the project area during seismic surveys between September and November to ensure that beluga whales are not being taken in unanticipated ways or numbers and that any effects will be negligible (see Monitoring Section later in this document).

Comment 3: CPAI urges NMFS to issue the IHAs to UOCC and MOC. CPAI states that seismic and other projects conducted over the 40 year span of oil and gas exploration and development in Cook Inlet demonstrate the industry's ability to operate, with minimal impacts, in a challenging environment. CPAI states that continued Cook Inlet exploration and development is needed to provide jobs and energy for South–Central Alaska's economy.

Response: Comments noted. As stated in this document, IHAs shall be granted to UOCC and MOC if NMFS finds that incidental taking of marine mammals will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

Comment 4: The HSUS urges NMFS to deny the IHAs per its comments provided in February 2007 on NMFS' proposed IHA issuance to CPAI and UOCC's seismic surveys in Cook Inlet. The HSUS states that impacts from this sort of noise is dangerous for the fragile stocks of marine mammals in Cook Inlet.

Response: NMFS disagrees. NMFS has addressed HSUS's previous comments in its **Federal Register** notice for the issuance of two IHAs to CPAI and UOCC (72 FR 17118, April 6, 2007). The HSUS did not provide any scientific data or references to support its claim as the airgun noises in the proposed seismic surveys are ''dangerous'' to the marine mammal stocks in Cook Inlet. Detailed analyses of underwater noise, especially those from airguns, and impacts to marine mammals are provided in various documents related to the proposed projects. These include (1) **Federal Register** notice for the issuance of IHAs to CPAI and UOCC (72 FR 17118, April 6, 2007), (2) **Federal Register** notice for the proposed issuance of IHAs to UOCC and MOC (72 FR 45014, August 10, 2007), (3) an EA for the CPAI and UOCC seismic surveys, and (4) the draft SEA for the UOCC and MOC seismic surveys. All these analyses, which are supported by extensive scientific research and data, point out that the proposed seismic surveys in Cook Inlet will have negligible impacts on marine mammal species and stocks in Cook Inlet.

Comment 5: A private citizen expresses her concerns that there is a threat of serious injury and mortality to

marine mammals from the proposed seismic surveys.

Response: As described in detail in a **Federal Register** notice (72 FR 45014) published on August 10, 2007, and in the draft SEA for the proposed action, NMFS has performed a thorough analysis on the levels of potential impacts to Cook Inlet beluga whales and four other species of marine mammals as a result of seismic operations in the upper Cook Inlet. Based on this analysis, which is supported by the best available scientific information, NMFS has come to the conclusion that only a few beluga whales, Pacific harbor seals, harbor porpoises, and killer whales may be taken incidental to seismic surveys, by no more than Level B harassment, and that such taking will have a negligible impact on such species or stocks.

No take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of strict monitoring and mitigation requirements in the IHA. Please refer to the **Federal Register** notice (72 FR 45014, August 10, 2007) and the SEA for a detailed description of the analysis.

Description of the Marine Mammals Potentially Affected by the Activity

Marine mammal species potentially occurring within the proposed action area include Cook Inlet beluga whales, Steller sea lions, Pacific harbor seals, harbor porpoises, and killer whales. Among these species, only the Steller sea lion is listed as endangered under the ESA, and it is also designated as depleted under the MMPA. The Cook Inlet beluga whale is designated as depleted under the MMPA. General information for these species can be found in Angliss and Outlaw (2007), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2007.pdf*. A more detailed description of these species and stocks within Cook Inlet is provided in the January 5, 2007, **Federal Register** (72 FR 536) and is not repeated here.

Potential Effects on Marine Mammals and Their Habitat

Seismic surveys using acoustic energy may have the potential to adversely impact marine mammals in the vicinity of the activities (Gordon *et al.*, 2004). The sound source levels (zero to peak) associated with the OBC seismic survey can be as high as 233 – 240 dB re 1 microPa at 1 m. However, most energy is in the low–frequency spectra below 250 Hz and is directed downward (Richardson *et al.*, 1995), and the short duration of each pulse limits the total energy. Received levels within several kilometers typically exceed 160 dB re 1 microPa (Richardson *et al.*, 1995), depending on water depth, bottom type, ice cover, etc. Although relatively high levels of airgun pulses and frequencies above 500 Hz were detected at certain depths of water much further away during the Sperm Whale Seismic Study's controlled exposure experiments conducted in the Gulf of Mexico (DeRuiter *et al.*, 2006; Madsen *et al.*, 2006), this was probably due to the existence of convergence zones where long–range refraction occurred in a much deeper ocean with a critical depth and sufficient depth excess (Urick, 1983; Etter, 2003). Within the proposed project areas in Cook Inlet, where average water depth is less than 15 m (50 ft), no convergence zone can exist.

Intense acoustic signals from seismic surveys have been known to cause behavioral alteration 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.

The proposed surveys would use a 900–in^3 BOLT airgun array consisting of 3, 225–in^3 airguns and 3, 75–in^3 airguns. Acoustic measurements of the airgun array were obtained using calibrated, high–resolution Ocean Bottom Hydrophone recorders in April 2007 in Cook Inlet by JASCO Research Ltd (JASCO). The results show that the nominal ranges to the decibel thresholds 190, 180, and 160 dB re 1 microPa rms, computed using the 90 percent fit equation, are 140, 454, and 3,027 m (or 459, 1,490, and 9,931 ft), respectively (Collins *et al.*, 2007).

The seismic surveys would introduce acoustic energy into the water column and no objects would be released into the environment. The survey vessels would travel at a speed of 4 – 5 knots and the two projects would be conducted in a small area of Cook Inlet for a short period.

There is relatively limited knowledge about the potential impacts of seismic energy on marine fish and invertebrates that are marine mammal prey. Available data suggest that there may be physical impacts on eggs and on larval, juvenile, and adult stages of fish at very close ranges (within meters) to a 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. Although 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 approaching seismic impulses (Engås *et al.*, 1996). Based on the foregoing, 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 approximately 11 beluga whales and 3 harbor porpoises could be taken by behavioral harassment by the proposed UOCC seismic surveys, and approximately 26 whales and 6 porpoises by the proposed MOC seismic surveys. Thus a total of 37 Cook Inlet beluga whales out of a population of 302 whales could be harassed incidentally by the two proposed seismic operations from September to November, 2007, if no mitigation and monitoring measures are implemented. This represents 12.1 percent of the population. This number is based on the animal density, length of track planned, and the assumption that all animals will be harassed at distances where noise at received level is at and above 160 dB re 1 microPa rms. Beluga whale density (0.03 whale/km^2) was calculated by dividing the population (302) by 50 percent of the surface area of Cook Inlet (19,863 km^2, or 7,672 mi^2), assuming their distribution is limited to the upper portion of the Inlet (Hobbs *et al.*, 2005). The number of beluga whales that could be taken by both proposed seismic projects is calculated by multiplying the whale density by the total length of the track lines (57 km or 35.4 mi for UOCC and 146 km or 90.7 mi for MOC) and by twice the 160 dB isopleths range (3.0 km). This estimate is conservative as it assumes that all animals exposed to

seismic impulses over 160 dB re 1 microPa would be harassed and disturbed. As the majority of acoustic energy of low frequency airgun impulses falls outside the beluga whale's most sensitive hearing range (Richardson *et al.*, 1995), it is most likely that only a portion of whales within the 160 dB re 1 microPa isopleth would be disturbed. In addition, it is also possible that many of the animals would be habituated to this level of acoustic disturbances. Furthermore, mitigation measures, including the ramp–up requirement during the initiation of the seismic operations (see below) should eliminate most, if not all, startle behavior from animals near the proposed project area. Therefore, NMFS believes that the actual number of Level B harassment takes of Cook Inlet beluga whale would be much lower than the estimated 37 whales.

There are no similar population surveys for harbor seals, harbor porpoises, Steller sea lions, and killer whales conducted within the proposed project area. However, based on an abundance survey of harbor porpoises within the entire Cook Inlet (Dahlheim *et al.*, 2000), it is estimated that the population density of harbor porpoise in the entire Inlet is 0.0072 animal per km^2. Based on this density data, NMFS estimates that about 9 harbor porpoises out of a population of 30,506 porpoises could be harassed incidentally by the two proposed seismic operations from September to November, 2007. This number of take represents less than 0.03 percent of harbor porpoises that could be taken by Level B harassment.

Average counts were used to estimate take instead of density for harbor seals, since count data were available (Boveng *et al.*, 2005a; 2005b) but density data were not. Although no seals were counted in the vicinity of the proposed project areas, it is likely a small number of seals transit through the project areas in the fall. In order to account for seal occurrence in the proposed project areas, the count (1 – 10) at the location (Anchor Point) nearest to the MOC project area was used as the basis for calculating take. This count was quadrupled to account for seals in the water for both proposed project areas, since it is the conservative estimate of take, it is more likely to be high than low. Therefore, the estimated take of the Gulf of Alaska stock of harbor seals is 40 seals, which represent approximately 0.14 percent of the total population (29,175, Angliss and Outlaw, 2007).

There are no density estimates available for Steller sea lions, harbor porpoises, and killer whales with in Cook Inlet. However, their appearance in Upper Cook Inlet is rare and none of these species were sighted in the upper Inlet during the 2004 survey (Rugh *et al.*, 2005). Therefore, NMFS concludes that the estimated takes of harbor seals and killer whales within the proposed project areas are significantly lower than those of beluga whales and harbor seals, and that it is unlikely there will be any incidental take of Steller sea lions as a result of the proposed seismic projects.

Effects on Subsistence Needs

Tyonek, which is predominately a Dena'ina Athabaskan community, is approximately 6.4 km (4 mi) east of the eastern boundary of the proposed UOCC project area, and is about 100 km (62 mi) north of the proposed MOC project area. While it is the only village that hunts beluga whales, Alaska natives unaffiliated with a Cook Inlet community who have moved to the region and visited the region also have historically harvested beluga whales in the Inlet (Mahoney and Shelden, 2000). The role of marine mammals in the subsistence economy of Tyonek and other Alaska natives has been diminished by the almost complete elimination of the harvest of Cook Inlet beluga whales because of their greatly reduced stock size. In recent years, Tyonek natives harvested one beluga whale per year and occasionally harbor seals (Huntington, 2000), but their primary source of red meat is moose (Foster, 1982). Salmon and other fish also contribute substantially to their subsistence diet (Foster, 1982). The Tyonek village announced (April 16, 2007) that they would not harvest any belugas in 2007 due to the status of the population.

In addition, the project areas are not important subsistence areas for other subsistence species of marine mammals (harbor seals). Tyonek native subsistence activities have become focused closer to the village as more non–natives utilize and occupy traditional subsistence areas, combined with harvest regulation restrictions of beluga whales, changes in the abundance and distribution of subsistence resources, and other factors.

Therefore, the proposed projects will have no significant effects on subsistence use of marine mammals in the proposed project areas.

Mitigation

The following mitigation measures are required under the IHAs that were issued to UOCC and MOC for conducting seismic operations in Cook Inlet. NMFS believes that the implementation of these mitigation measures will: (1) result in the least practicable impact on marine mammal species or stocks and their habitat; and (2) ensure that no unmitigable adverse impacts on the availability of marine mammals species or stocks for subsistence harvest would result.

Time and Frequency

Seismic operations will be limited from September to late November in small portions of Cook Inlet. During the seismic operations, airguns would only be active for 1 – 2 hours during each of the 3 – 4 slack tide periods, with the vessel moving at a speed of 4 – 5 knots (4.6 – 5.8 mph).

Establishment of Safety Zones

The IHA holders will establish a 454–m (1,490–ft) radius safety zone for cetaceans and a 140–m (459–ft) radius safety zone for pinnipeds for the seismic operations. These safety zone radii are based on empirical measurements conducted by JASCO on the same airgun array operated in Cook Inlet, where the received sound pressure levels (SPL) attenuated to 180 dB and 190 dB re 1 microPa rms, respectively.

Safety zones will be surveyed and monitored prior to, during, and after the airgun seismic operations. A detailed description of marine mammal monitoring is described in the Monitoring and Reporting section below.

Speed and Course Alteration

If a marine mammal is detected outside the safety radius and based on its position and the relative course of travel is likely to enter the safety zone, the vessel's speed and/or direct course may, when practicable and safe, be changed to avoid the impacts to the animal. The marine mammal's activities and movements relative to the seismic and support vessels must be closely monitored to ensure that the animal does not (1) approach the safety radius, or (2) enter the safety zone. If either of these scenarios occurs, further mitigation measures must be taken (i.e., either further course alterations or power down or shut down of the airgun(s)).

Power–down Procedures

A power down involves decreasing the number of airguns in use so that the radius of the 180– or 190–dB zone is decreased to the extent that marine mammals are not in the safety zone. During a power–down, one airgun is operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic guns in the area.

If a marine mammal is detected outside the safety zone but is likely to enter the safety zone, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the airguns must be powered down before the animal is within the safety zone.

Shut–down Procedures

A shut–down occurs when all airgun activity is suspended. The operating airgun(s) must be shut down if a marine mammal approaches the applicable safety zone and a power down still would not likely to keep the animal outside the newly adjusted smaller safety zone. The operating airgun(s) must also be shut down completely if a marine mammal is found within the safety zone during the seismic operations. The shut–down procedure should be accomplished within several seconds (of a ''one shot'' period) of the determination that a marine mammal is within or about to enter the safety zone.

Following a shut–down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal is considered to have cleared the safety zone if it is visually observed to have left the safety zone, or if it has not been seen within the safety zone for 30 minutes.

Ramp–up Procedures

Although marine mammals will be protected from Level A harassment by establishment of a safety zone at SPL levels of 180 and 190 dB re 1 microPa rms for cetaceans and pinnipeds, respectively, monitoring and mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, and to further reduce Level B harassment by startling marine mammals with a sudden intensive sound, UOCC and MOC will implement ''ramp–up'' when starting up airgun arrays. Ramp–up will begin with the smallest airgun in the array that is being used for all subsets of the 6–gun array. Airguns will be added in a sequence such that the source level in the array would increase at a rate no greater than 6 dB per 5 minutes. During the ramp–up, the safety zone for the full 6–airgun system would be maintained.

Night–time Operations

During night–time operations when the safety zone cannot be visually inspected, a single airgun will operate by firing every one minute whenever regular acquisition airgun operations are not occurring to keep marine mammals at a safe distance. If, during these non–recording times, this airgun is inactive for more than 30 minutes, operations will cease and all airguns will be shut down until the safety zone can be visually inspected and monitored for the absence of marine mammals.

Monitoring

Vessel–based Monitoring

Vessel based monitoring will be conducted by at least two qualified NMFS–approved MMOs. Reticle binoculars (e.g., 7 x 50 Bushnell or equivalent) and laser range finders (Leica LRF 1200 laser range finder or equivalent) would be standard equipment for the monitors.

Vessel–based MMOs will begin marine mammal monitoring at least 30 minutes prior to the planned start of airgun operations and during all periods of airgun operations. MMOs will survey the safety zone to ensure that no marine mammals are seen within the zone before a seismic survey begins. If marine mammals are found within the safety zone, seismic operations will be suspended until the marine mammal leaves the area. If a marine mammal is seen above the water and then dives below, the operator would wait 30 minutes, and if no marine mammals are seen by the MMOs in that time it will be assumed that the animal has moved beyond the safety zone. Observations will also be conducted during all ramp–up procedures to ensure the effectiveness of ramp–up as a mitigation measure. When feasible, observations will also be made during transits, moving cable, and other operations when airguns are inactive.

Data for each distinct marine mammal species observed in the proposed project area during the period of the seismic operations will be collected. Numbers of marine mammals observed, species identification if possible, frequency of observation, the time corresponding to the daily tidal cycle, their location relative to the airgun sound field's safety zone, and any behavioral changes due to the airgun operations will be recorded and entered into a custom database using a notebook computer. The accuracy of the data entry would be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel–based observations will provide: (1) basis for real–time mitigation (airgun shut–down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Aerial Monitoring

In addition to vessel monitoring, seismic surveys that will be conducted off Granite Point between September and November by UOCC are also required to conduct aerial monitoring, due to the relative more frequent use by beluga whales in the area (Hobbs *et al.*, 2005). The aerial surveys will: (1) collect and report data on the distribution, numbers, movement and behavior of marine mammals near the seismic operations on the westside of Cook Inlet between Tyonek and Trading Bay, with special emphasis on beluga whales; (2) advise operating vessels as to the presence of marine mammals in the general area of operation; and (3) support regulatory reporting related to the estimation of impacts of seismic operations on marine mammals.

The aerial monitoring area will be centered on the UOCC project area plus a buffer for detecting belugas before or after they pass through the project area. The boundary for the aerial survey extends approximately 4 mi (6.4 km) east and west of the project area, between Tyonek and Trading Bay (directly east of the Trading Bay State Game Refuge boundary), and 0.25 mi (0.4 mi) from the water's edge, which will vary depending on tide levels. The size of the survey area provides a design for observing whales before and during exposure to seismic sounds.

Aerial monitoring will be conducted from a single engine helicopter, which will fly a single transect line paralleling the shoreline along the coast in the project area. The aerial survey will begin from the northeast end and finish at the southwest end of the transect. This pattern will be flown unless observation conditions (glare, etc) require flying from southwest to northeast. The helicopter operations will be based out of Beluga or Shirleyville. The helicopter will fly at 1,500 ft (457 m), due to glide path

needs, and at a ground speed of 60 knot (111 km/h). This altitude should prevent disturbance of marine mammals and birds by the helicopter noise.

Helicopter monitoring will be conducted at a frequency that reflects the monthly occurrence of belugas in the project area (LGL, 2006). The helicopter will be flown once per week from the time the seismic operations begin until the project is completed. However, if beluga whales are observed by helicopter or boat in or near the project area, survey flights will be conducted daily until whales are not observed for two consecutive days. Once belugas are no longer observed for two consecutive days, surveys will again be flown once per week until the project ends.

Aerial monitoring will fly 1 – 2 transects shortly before and one half of the survey transect will be flown once during seismic operations, whenever possible, in a given day. Half transects are limited in duration to prevent noise interference with seismic data acquisition. Half transect flight directions will be determined by the relative position of activities to the helicopter landing location.

To the extent consistent with applicable aviation regulation, aerial surveys will be conducted under the following conditions: (1) when the pilot considers it safe to do so; (2) during daylight hours; (3) during good viewing conditions (ceiling height above 1,500 ft (457 M) and Beaufort Sea States below 4; and (4) during periods allowed by regulatory agencies. Flights will also be oriented to minimize sun glare on the observer.

One NMFS–approved MMO will be on the helicopter observing and recording marine mammals, covering the 180° view in front of the helicopter. Space will be made available on the helicopter for NMFS staff to participate in surveys when possible.

Data from aerial monitoring will be recorded on the species, number, group size, location (latitude/longitude), time, date, direction and angle from helicopter as determined by using a clinometer. Data will also be collected on tide, real time positions (latitude/longitude) of seismic survey vessel, shooting, and vessel activities. Observation conditions will be recorded at the start and finish of each survey or whenever conditions change. Data will be recorded on ceiling height, Beaufort Force, glare, and weather (snow, fog, etc.). All information collected during the marine mammal survey and/or reported to the vessel will be recorded on a field form. The information will be included with real time data on seismic activity (boat location, shooting, activities).

Reporting

Reports from aerial and land–based monitoring will be faxed or e–mailed to NMFS Anchorage Field Office on a daily basis.

Reports from UOCC and MOC will be submitted to NMFS within 90 days after the end of the respective projects. The reports will describe the operations that were conducted, the marine mammals that were detected near the operations, and provide full documentation of methods, results, and interpretation pertaining to all monitoring. The reports will also include estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

National Environmental Policy Act (NEPA)

In March 2007, NMFS prepared a final EA on the issuance of IHAs to ConocoPhillips Alaska, Inc and UOCC to take marine mammals by harassment incidental to conducting seismic operations in upper Cook Inlet, Alaska. A Finding of No Significant Impact statement was issued on March 30, 2007. The proposed seismic operations in this document are similar to those covered in the March 2007 Final EA, with the only exception of project time frames, location, and the levels of estimated marine mammal takes. Therefore, NMFS has prepared a draft SEA which incorporates by reference the March 2007 Final EA, providing an analysis of project time frames, location, and potential environmental impacts, for public comments. During the 30-day public comment period NMFS did not receive any comments on the draft SEA. Subsequently, NMFS finalized the draft SEA and on September 24, 2007, issued a Finding of No Significant Impact on the proposed project.

Endangered Species Act (ESA)

Consultation under section 7 of the ESA was conducted for the proposed issuance of UOCC and MOC's IHAs. As a result of that consultation, NMFS Anchorage Field Office concurred that the proposed seismic activities are not likely to adversely affect listed species or critical habitat.

Determinations

NMFS has determined that small numbers of beluga whales and harbor porpoises may be taken incidental to seismic surveys, by no more than Level B harassment. In addition, NMFS has determined that small numbers of Pacific harbor seals and killer whales, if present within the vicinity of the proposed activities, could be taken incidentally, by no more than Level B harassment and that such taking would result in no more than a negligible impact on such species or stocks. Although there are no estimated take numbers for Steller sea lions, harbor seals, or killer whales available due to their rare occurrence within the project areas, given the infrequent occurrence of these species (if at all), NMFS believes that any take of harbor seals and killer whales would be significantly lower than those of beluga whales and harbor porpoises. NMFS also believes it is unlikely that there would be any take of Steller sea lions due to their rare occurrence within the proposed project areas.

While behavioral modifications, including temporarily vacating the area during the project period, may be made by these species to avoid the resultant visual and acoustic disturbance, NMFS nonetheless finds that this action would result in no more than a negligible impact on these marine mammal species and/or stocks. NMFS also finds that the proposed action will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses.

In addition, no take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Authorization

NMFS has issued IHAs to UOCC and MOC for the potential harassment of small numbers of Cook Inlet beluga whales, harbor porpoises, harbor seals, and killer whales incidental to conducting seismic operations in the northwestern Cook Inlet in Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 26, 2007.

Helen Golde

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

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