

Dated: July 26, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6-12470 Filed 8-1-06; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 072706C]

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States

**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; request for comments.

**SUMMARY:** NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Scott Baker on behalf of the North Carolina Sea Grant Extension Program. If granted, the EFP would authorize the applicant, with certain conditions, to collect limited numbers of black sea bass in South Atlantic Federal waters off the coast of North Carolina. The purpose of the study is to quantify fish size selectivity by sea bass pot type and determine regulatory discard mortality rates.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on September 18, 2006.

**ADDRESSES:** Comments on the application may be sent via fax to 727-824-5308 or mailed to: Mark Sramek, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701. Comments may also be submitted by E-mail. The mailbox address for providing E-mail comments is *Black.Sea.Bass@noaa.gov*. Include in the subject line of the E-mail document the following text: Comment on NC Sea Grant EFP Application. The application and related documents are available for review upon written request to the address above or the E-mail address below.

**FOR FURTHER INFORMATION CONTACT:** Mark Sramek, 727-824-5311; fax 727-824-5308; E-mail: *Mark.Sramek@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at

50 CFR 600.745(b) concerning exempted fishing.

According to the applicant, the North Carolina Sea Grant Extension Program receives federal funding through the National Sea Grant College Program, as well as state appropriations. Through research, education and outreach programs, North Carolina Sea Grant works with individuals, groups, government agencies and businesses to develop an understanding of the state's coastal environment and promote the sustainable use of marine resources.

The proposed collection for scientific research involves activities otherwise prohibited by regulations implementing the Fishery Management Plan for the Snapper-Grouper Fisheries of the South Atlantic Region (FMP).

The applicant requires authorization to harvest and possess black sea bass for scientific research activities during the period from October 1, 2006, through March 31, 2007. Specimens would be collected from Federal waters off the coast of North Carolina during the specified sampling period. Fish would be captured using standard and experimental modification designs to Council-approved sea bass pots used for the harvest of black sea bass in the South Atlantic region.

Three types of sea bass pots would be employed during the study: One standard-type pot constructed of 1.5-inch (3.8-cm) mesh with a 2-inch (5.1-cm) mesh back panel; a second, experimental-type pot constructed entirely of 2-inch mesh (5.1-cm) (both pot types are currently approved by the South Atlantic Fishery Management Council (Council) for commercial fishing for black sea bass); the third, control-type pot constructed entirely of 1.5-inch (3.8-cm) mesh with no escape vents. The purpose of the control-type pot is to provide an indication of the number and range of size classes of black sea bass present at each sample location. To avoid continued fishing activity and subsequent fish mortality in the event of lost pots, all three pot types will include a wire panel affixed with degradable fasteners. Control-type pots, as outlined above, will only be employed as part of this study and will not be utilized during normal commercial fishing operations. The study will employ a randomized fishing location design, or block, of three sea bass pots per block (one control-type, an experimental-type, and standard-type pots) within 10 blocks per trip.

Individual pots will be randomly placed approximately 10 to 30 meters apart within each block; a total of 13 sampling trips will be performed from October 1, 2006, through March 31, 2007. All

captured fish will be identified by species, measured, and released if undersized. Prior to release, the presence of barotraumatic effects on black sea bass will be recorded. No undersized fish will be retained in this study.

NMFS finds that this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to: Reduction in the number of sea bass pots to be employed; restrictions on the placement of sea bass pots; prohibition of the harvest of any fish with visible external tags; and specification of locations, dates, and/or seasons allowed for collection of particular fish species. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, consultations with the affected states, the Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws. The applicant requests a 6-month effective period for the EFP.

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

Dated: July 28, 2006.

**James P. Burgess,**

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

[FR Doc. E6-12411 Filed 8-1-06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 071906A]

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

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

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a barging operation within the U.S. Beaufort Sea has been issued to FEX

L.P. (FEX), a subsidiary of Talisman Energy, Inc., for a period of 1 year.

**DATES:** Effective from August 8, 2006 through August 7, 2007.

**ADDRESSES:** The authorization and application containing a list of the 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 the contact listed here. The application is also available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at this address.

**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, a 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), 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 with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

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

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

**Summary of Request**

On April 5, 2006, NMFS received an application from ASRC Energy Services, Lynx Enterprises, Inc. (AES Lynx) on behalf of FEX for the taking of several species of marine mammals incidental to the movement of two tugs towing barges in the U.S. Beaufort Sea. Marine barges would be transporting drilling rig(s), consumables, fuel, essential construction equipment and supplies from the West Dock Causeway to Cape Simpson or Point Lonely. Equipment would be staged and stored in preparation for the upcoming winter on-shore oil and gas drilling and testing season. Barges proposed for the marine lift from the West Dock Causeway include but are not limited to: Crowley Marine *Kavik River* and the *Sag River* (1,100 horsepower each) tugs, and *Bowhead Stryker* or *Garrett* (two engines x 220 horsepower each) barges or comparable class vessels. Additional barges and support vessels may be utilized as available and needed. Barges would be moving at a speed of about 5 - 6 knots. From West Dock Causeway, it would take approximately 17.5 hours one way for a barge to reach Point Lonely and 22 hours to Cape Simpson. FEX plans to start barging activities in the summer of 2006, would make every effort to avoid periods of bowhead whale fall westward migration and subsistence activities, and would complete the barging by September 1, 2006. Ice, weather conditions, and other possible operational considerations may affect the timing of the barge activity, resulting in some activities taking place beyond the scheduled target dates. If necessary, a late season barging effort may be required after September 1, 2006. FEX has entered a Conflict Avoidance Agreement (CAA) with the Alaska Eskimo Whaling Commission (AEWC) to obtain approvals from AEWC if barging activities occur during the

September 1 - October 15 subsistence whaling period. Operations to support winter on-shore drilling operations may include a winter trail on landfast sea ice. FEX has determined that this operation will not result in incidental takes of marine mammals.

**Comments and Responses**

A notice of receipt and request for 30-day public comment on the application and proposed authorization was published on June 13, 2006 (71 FR 34064). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (the Commission). The Commission recommends issuance of the IHA provided that

(1) All reasonable measures be taken to ensure the least practicable impact on the subject species, and

(2) The required mitigation and monitoring activities (i.e., the use of native advisors, the comprehensive training of all marine mammal observers, and on-board monitoring throughout the transit operations) are carried out as described in NMFS' June 13, 2006, **Federal Register** notice (71 FR 34064) and the application.

NMFS agrees with the Commission's recommendation and has incorporated these mitigation and monitoring measures in the IHA.

In its comments, the Commission noted that, although similar activities occur regularly in the areas occupied by marine mammals, not all organizations involved in those activities make an effort to obtain proper authorization. The Commission commends FEX and Talisman Energy, Inc., for seeking an authorization. In addition, the Commission commends the companies for discussing the proposed activities with Alaska native groups whose subsistence use of marine mammals could be affected.

**Description of Marine Mammals Affected by the Activity**

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including Western Arctic bowhead whales (*Balaena mysticetus*), Beaufort Sea stock of beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Only the bowhead whale is listed as endangered under the Endangered Species Act (ESA) and designated as "depleted" under the MMPA. The Western Arctic stock of bowhead whales has the largest population size among all 5 stocks of this species (Angliss and Lodge, 2004). A brief description of the distribution,

movement patterns, and current status of these species can be found in the FEX application. More detailed descriptions can be found in NMFS Stock Assessment Reports (SARs). Please refer to those documents for more information on these species. The SARs can be downloaded electronically from: <http://www.nmfs.noaa.gov/pr/sars/species.htm>. The FEX application is also available on-line (see ADDRESSES).

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

Level B harassment of marine mammals may result from the noise generated by the operation of towing vessels during barge movement. The physical presence of the tugs and barges could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between vessels and whales will be essentially zero due to the slow tow speed (5 - 6 knots) and visual monitoring by on-board marine mammal observers.

Marine mammal species with the highest likelihood of being harassed during the tug and barge movements are: beluga whales, ringed seals, and bearded seals.

Bowhead whales are not expected to be encountered in more than very small numbers during the planned period of time for the tug/barge movement because the most of them will be on their summer feeding grounds in the eastern Beaufort Sea and Amundsen Gulf of the Canadian waters (Fraker and Bockstoce, 1980; Sheldon and Rugh, 1995). A few transitory whales may be encountered during the transits. Beluga whales occur in the Beaufort Sea during the summer, but are expected to be found near the pack ice edge north of the proposed movement route. Depending on seasonal ice conditions, it is possible that belugas may be encountered during the transits.

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

#### **Numbers of Marine Mammals Expected to Be Taken**

The number of marine mammals that may be taken as a result of the tug/barge operation is unpredictable.

However, due to the small size of the area that the barging activities will cover, it is expected that only small numbers of marine mammals would be affected. Operations are scheduled to occur prior to the westward migration and associated subsistence bowhead whale hunts to purposely avoid any take of this species. Noise disturbance from vessels might qualify as harassment to marine mammals, but previous surveys have indicated little behavioral reaction from these animals to slow-moving vessels.

#### **Effects on Subsistence Needs**

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

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

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

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

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

While no impact is anticipated on the availability of marine mammal species and stocks for subsistence uses, FEX has entered a CAA with the AEWC for any of the barging activities that may occur during the subsistence whaling period from September 1 - October 15. The FEX's activities will comply with the CAA prior to the autumn bowhead hunt by the residents of Kaktovik (Barter Island), Nuiqsut (Cross Island) and Barrow Native villages. Ice, bad weather conditions, and other possible operational considerations may affect the timing of the barge activity and may require that some activities take place beyond the scheduled target dates.

#### **Mitigation and Monitoring**

FEX will mitigate any potential negative impacts from its barging operation by conforming with the CAA with native whalers and operations as per the Plan of Operations. Other mitigation measures include use of native subsistence advisor/marine mammal observers trained by qualified marine biologists and communications with subsistence whaling activities so as to avoid deflection or other disturbances to migrating mammals and subsistence hunting activities.

During all tug/barge operations, FEX will have on-board marine mammal monitors throughout the transit. As proposed in its application, FEX will conduct a visual monitoring program for assessing impacts to marine mammals during the barge transits. FEX will initiate a comprehensive training program for all potential marine mammal observers that includes learning the identification and behavior of all local species known to use the areas where FEX will be operating. This training would be conducted by professional marine biologists and experienced Native observers participating in the monitoring program.

The observer protocol will be to scan the area around vessels with binoculars of sufficient power. Range finding equipment will be supplied to observers in order to better estimate distances. Observers would collect data on the presence, distribution, and behavior of marine mammals relative to FEX activities as well as climatic conditions at the time of marine mammal sightings. Observations would be made on a nearly 24-hour basis.

#### Reporting

All monitoring data collected will be reported to NMFS on a weekly basis. FEX must provide a final report on 2006 activities to NMFS within 90 days of the completion of the activity. This report will provide dates and locations of all barge movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including numbers of each species observed, location (distance) of animals relative to the barges, direction of movement of all individuals, and description of any observed changes or modifications in behavior.

#### ESA Consultation

The effects of oil and gas exploration activities in the U.S. Beaufort Sea on listed species, which includes the proposed activity, were analyzed as part of a consultation on oil and gas leasing and exploration activities in the Beaufort Sea, Alaska, and authorization of incidental takes under the MMPA. A biological opinion on these activities was issued on May 25, 2001. The only species listed under the ESA that might be affected during these activities are bowhead whales. The effects of this IHA on bowhead whales has been compared with the analysis contained in the 2001 biological opinion. NMFS has determined that the effects of the current activity are consistent with the findings of that biological opinion, and, accordingly, NMFS has issued an Incidental Take Statement under section 7 of the ESA.

#### National Environmental Policy Act (NEPA)

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency (EPA) noted the availability of a Final Environmental Impact Statement (Final EIS) prepared by the U.S. Army Corps of Engineers under NEPA on Beaufort Sea oil and gas development at Northstar. NMFS was a cooperating agency on the preparation of the Draft and Final EISs, and subsequently, on

May 18, 2000, adopted the Corps' Final EIS as its own document. That Final EIS described impacts to marine mammals from Northstar construction activities, which included vessel traffic similar to the currently proposed action by FEX. Because the barging activity discussed in the Final EIS is not substantially different from the proposed action by FEX, and because no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, no additional NEPA analysis is required.

#### Conclusions

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

While the number of potential incidental harassment takes will depend on the year-to-year distribution and abundance of marine mammals in the area of operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the relocation route.

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

#### Determinations

NMFS has issued an IHA for the harassment of marine mammals incidental to FEX conducting a barging operation from West Dock, Prudhoe Bay Alaska, through the U.S. Beaufort Sea to

Cape Simpson or Point Lonely. This IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has determined that this activity would result in the harassment of small numbers of bowhead whales, beluga whales, ringed seals, bearded seals and spotted seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence.

#### Authorization

NMFS has issued an IHA to FEX L.P. to take small numbers of marine mammals incidental to conducting a barging operation within the U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 28, 2006.

**James H. Lecky,**

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

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## DEPARTMENT OF DEFENSE

### Department of the Army

#### Availability of the Record of Decision for the Construction and the Operation of a Battle Area Complex and a Combined Arms Collective Training Facility Within U.S. Army Training Lands in Alaska

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** The Army announces the availability of its Record of Decision (ROD) for the construction and operation of a Battle Area Complex (BAX) and a Combined Arms Collective Training Facility (CACTF) within U.S. Army training lands in Alaska, and the execution of routine, joint military training at these locations. On June 14, 2006, the Army published a notice of availability of its Final Environmental Impact Statement (EIS) that considered the environmental consequences of the proposed action and alternatives. The ROD was signed in July 2006 and was prepared pursuant to the National Environmental Policy Act (NEPA). The ROD explains and finalizes the Army's decision to proceed with construction and operation of the BAX and CACTF at Eddy Drop Zone. This decision was based on the analysis described in the Final EIS, supporting studies, and comments provided during formal comment and review periods.