

promote uniformity among the states in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices and other practices used in trade and commerce.

The following are brief descriptions of some of the significant agenda items that will be considered along with other issues at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments and where they will finalize recommendations for NCWM consideration and possible adoption at its Annual Meeting to be held July 12 to 16, 2009, in San Antonio, Texas. The Committees may withdraw or carryover items that need additional development.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44)." Those items address weighing and measuring devices used in commercial applications, that is, devices that are normally used to buy from or sell to the public or used for determining the quantity of product sold among businesses.

Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality" and NIST Handbook 133 "Checking the Net Contents of Packaged Goods."

This notice contains information about significant items on the NCWM Committee agendas, but does not include all agenda items. As a result, the following items are not consecutively numbered.

NCWM Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

General Code

*Item 310-1. G-S.8. Provision for Sealing Electronic Adjustable Components, G-S.8.1. Access to Calibration and Configuration Adjustments, and G-S.8.2.—*The S&T Committee will consider a proposal to add new requirements to G-S.8. intended to improve the security of access to the calibration and other configuration features on weighing or measuring devices. The purpose of the

proposal is to ensure that prohibited features cannot be activated or that the accuracy of the device is altered after an official applies security seals or approved means of providing security.

*Item 310-5. G-T.1. Acceptance Tolerances—*The S&T Committee will consider a proposal to amend regulations that specify when officials are to apply acceptance tolerances to weighing and measuring devices after service personnel or users have made metrological adjustments and resealed the instrument. The proposed amendment would require that officials apply acceptance tolerances if they test the device within 30 days following any adjustment that relates to the accuracy or other performance characteristic of a device.

Scales Code

*Item 320-3. S.1.7. Automatic Zero-Setting Mechanism (AZSM)—*The S&T Committee will consider a proposal to define the acceptable operating parameters of the zero-setting functions used on some electronic weighing devices. These functions automatically maintain a scale's indications at zero when no load is on the device. Existing NIST Handbook 44 requirements prohibit some of the zero-setting functions found on weighing devices designed and sold for use in other countries when those devices are used in commercial applications in the U.S. marketplace. The proposal will closely align the U.S. requirements with international recommendations published by the International Organization for Legal Metrology (OIML).

Liquid-Measuring Devices Code

*Item 330-1. Temperature Compensation for Liquid-Measuring Devices Code.—*This is a proposal to add provisions to Handbook 44 to allow retail motor-fuel dispensers to be equipped with the automatic means to deliver product with the volume compensated to a reference temperature. (See also Item 232-1 below under the Laws and Regulations Committee)

NCWM Laws and Regulations Committee

The following items are proposals to amend NIST Handbook 130:

Method of Sale of Commodities Regulation

*Item 232-1. Automatic Temperature Compensation for Petroleum Products.—*The L&R Committee will consider several proposals that would allow temperature compensation to be made on sales of engine fuels at the

retail level. Most of the proposals would allow compensation to be performed only if certain information is provided to consumers and other conditions are met by the seller.

*Developing Item 270-7. Method of Sale and Engine Fuel Quality Requirements for Hydrogen.—*The L&R Committee will consider a proposal to establish a uniform method of sale for hydrogen when it is offered for sale at the retail level as a vehicle fuel. A separate proposal to identifying preliminary minimum fuel quality standards will also be reviewed.

*Developing Item 270-8. Wood Flavoring Chips.—*The L&R Committee will consider a proposal to revise the current method of sale regulation on flavoring chips by adding guidance on the appropriate units of measure to be used on small packages.

Uniform Engine Fuel and Automotive Lubricants Regulation

*Item 237-1. Gasoline and Gasoline Oxygenate Blends.—*The Fuel and Lubricants Subcommittee of the L&R Committee will present a proposed revision to the requirements that certain blends must meet under NIST Handbook 130.

The following item is a proposal to amend NIST Handbook 133 "Checking the Net Contents of Packaged Goods":

*Item 260-1. Wet Tare Testing.—*The L&R Committee will review a proposed editorial revision to the tare procedures in NIST Handbook 133 to advise handbook users that effective October 9, 2008, the USDA regulations no longer permit wet tare procedures to be used in verifying the net quantity of contents of packages of meat and poultry that bear a USDA inspection seal.

Dated: December 15, 2008.

Patrick Gallagher,

Deputy Director.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XL67

Incidental Takes of Marine Mammals During Specified Activities; On-ice Marine Geophysical and Seismic Operations in State/OCS Waters of the U.S. Beaufort Sea off Alaska

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

ACTION: Notice of a proposed marine mammal incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from CGGVeritas (Veritas) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by Level B harassment, incidental to conducting an on-ice marine geophysical research and seismic survey in the U.S. Beaufort Sea from February to May, 2009. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposed IHA for these activities.

DATES: Comments and information must be received no later than January 20, 2009.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *PR1.0648-XL67@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet 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 the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, NMFS, (301) 713-2289.

SUPPLEMENTARY INFORMATION:

Background

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

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 subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact. 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" in 16 USC 1362(18)(A) 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 October 6, 2008, NMFS received a letter from Veritas requesting an IHA. The requested IHA would authorize the take, by Level B harassment, of small numbers of ringed seals (*Phoca hispida*) incidental to conducting on-ice seismic surveys, north and northwest of Thetis Island in State/OCS waters in the Beaufort Sea. The energy source for the proposed activity will be Vibroseis. Data acquisition will begin mid-February and continue until the end of May. During late February and early March, ice checking activities and aerial scouting may take place to determine survey and safe access to locate a temporary field camp location and access to the program area to conduct operations. Additional information on the on-ice seismic project is contained in the application,

which is available upon request (see **ADDRESSES**).

Specified Activities

Veritas plans to conduct a three-dimensional (3D) seismic survey north and northwest of Thetis Island in OCS waters in the Beaufort Sea using Vibroseis. As presently scheduled, the seismic surveys will occur from approximately February 15th to May 31st, 2009, although surveys are likely to end earlier in May. With the Vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The Vibrators move to the beginning of the line, and recording begins. The Vibrators move along a source line, which will be at some angle to a sensor line. The Vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles.

In a typical survey, each vibrator will vibrate up to four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g., 220 ft or 67 m in most applications) and repeats the process. In a typical 16-18-hour day, a survey will complete 4 to 10 linear miles (6 to 16 km) in 2D seismic operations and 15 to 40 linear miles (24 to 64 km) in a 3D seismic operation.

The seismic survey activities will require a temporary field camp located near the work site. A Cat Train facility on skis or rubber tracks that is fully contained and self sufficient will be located on grounded ice beside the access route out to the program site. Camp locations will be chosen based on ice conditions and safety of access to ice. Camp will generally consist of 35-40 sled trailers which includes: crew housing, office units, kitchen and dining facilities, laundry and medical facilities, generators, fuel storage and mechanical work spaces.

Camp locations will be chosen based on access trail conditions and grounded ice forecasting near to the prospect. It is highly likely that Veritas' camp locations will be near and south of Thetis Island to support the camp. Re-supply for fuel and provisions to the camp will be supported out of Oliktok Pt. The route between the camp and Oliktok Pt. is on grounded ice or areas with less than 10 ft (3 m) of water below the ice; of which neither condition is expected to support ringed seals.

The seismic survey will consist of either laying recording cables with geophones on the frozen sea ice or placing receivers (hydrophones) below the ice surface through drilled holes in

attempts to provide the best mitigation of seismic noise (i.e., a 'flex wave') in a shallow marine environment; using Vibroseis techniques as the source of energy to acquire the seismic data. If ice depths are greater than 7 ft (2.1 m), receivers will be laid on the frozen sea ice but if ice depths are less, then holes will be drilled and hydrophones will be located in the water.

Seismic operations will be conducted utilizing 5–10 wheeled/tracked vibrators supported by Trucker SnoCats and Veritas' Challenger 95 recording cable transport vehicles. A Challenger 95 or Trucker SnoCat vehicle will travel along a pre-surveyed and groomed route and lay receiver cable lines that extend between 3–10 miles long (4.8–16 km). Receiver (i.e., geophone) lines will be spaced approximately 984–1,312 ft (approximately 300 to 400 m) apart; geophones/hydrophones would be located every 98–180 ft (30–55 m) along each of these lines. Ten to fifteen receiver lines will be placed on the ground at any one time all interconnected to a recording device known as a "recorder." Vibrators will include a 14,400 lb (6,545 kg) GVW wheeled mini-vibrator (capable of 12,000 ft-lbs of force). Mini-Vibe (Vibroseis) vehicles will then move along a pre-determined groomed route most often nearly perpendicular to the recording lines. Positioning of the cables, Vibroseis, and recording vehicles all use Tiger Nav technology; a specialized navigation and positioning software. The Tiger Nav system integrates with GPS and Inertial Technology with Real Time Positioning, Stake-less Source, Receiver Surveying, and Vehicle Tracking. The Vibrators (usually 3 to 4 that travel together) move to a pre-determined GPS point location and begin vibrating in a synchrony via a radio signal. The Vibrators will vibrate the usual 2 to 4 times at each location, move up to the next location about 98–180 ft (30–55 m) and continue the vibrating technique until the end of the line. This activity will occur two lines at a time.

Veritas utilizes satellite imagery, existing bathymetry, drill grids, and

ground penetrating radar (GPR) to interpret ice integrity for proper planning. It should be noted that while GPR data are extremely accurate on fresh water it does have limitations on sea ice. To offset any inefficiency of these systems on sea ice, Veritas utilizes a grid system of drilled holes to verify and/or replace GPR data that may be questionable. To support Vibroseis and recording vehicle units, an ice thickness of at least 4–6 ft (1.2–1.8 m) is required. The 3D program area will exist within the boundary map in Figure 1 of Veritas' application.

Proposed Dates, Duration, and Location of Specified Activity

Veritas' proposed survey would occur for a period of three months (February 15 through May 31, 2009). On-ice seismic operations are ordinarily confined to this three month period since ice is sufficiently thick (4–6 ft or 1.2–1.8 m) to safely support the equipment. The geographic region of activity on ice encompasses a 141 square mile (366 km²) program area extending across the Beaufort Sea from point of entry from the northwest corner at approximately N 70°44.149, W 150°53.010 to the northeast corner at approximately N 70°46.138, W 150°06.865 to the southeast corner at approximately N 70°33.400, W 149°36.272 to the southwest corner at N 70°31.699, W 150°19.417 (see Figure 1 of Veritas' application). Water depths range from 4–60 ft (1.2–18 m) in the proposed program area. Depths of water extending south of the islands are less than 10 ft (3 m) based on bathymetry charts.

Description of Marine Mammals and Habitat Affected in the Activity Area

Several marine mammal species are known to or could occur in the Beaufort Sea off the Alaska coastline (see Table 1 below). The ringed seal is the only species of marine mammal managed by NMFS that may be present in the project area during the on-ice seismic program. Ringed seals are not listed under the Endangered Species Act (ESA) or designated as depleted under the

MMPA. Other marine mammal species managed by NMFS that seasonally inhabit the Beaufort Sea, but are not anticipated to occur in the project area during the on-ice seismic program, include the bowhead whale, gray whale, beluga whale, narwhal, bearded seal, and spotted seal. Polar bears and infrequently Pacific walrus also occur in the Beaufort Sea, but they are not addressed further, since they are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). Veritas has initiated consultation and requested a Letter of Authorization from USFWS regarding polar bears. The bowhead whale is listed as Endangered and the polar bear is listed as Threatened under the U.S. ESA. The bearded, spotted, and ringed seals are candidates for listing under the ESA and status reviews have been initiated for each species. Bowhead and beluga whales migrate considerably north of the project area in east-west oriented lead systems during spring (Moore and Reeves, 1993). A very small number of bearded seals may inhabit the Beaufort Sea in spring, mainly in the offshore pack ice (Moulton *et al.*, 2001; Moulton and Elliott, 2000; and Moulton *et al.*, 2000; Burns, 1981; Burns and Frost, 1979; Burns and Harbo, 1972). Since bearded seals are normally found over 20–100 nmi (37–185 km) from shore in broken ice (Angliss and Outlaw, 2008) that is unstable for on-ice seismic operations, bearded seals are not expected to be encountered during on-ice seismic operations. Some spotted seals arrive in the Beaufort Sea from the Chukchi Sea from July until September where they haul out on land part of the time, but also spend extended periods at sea (Rugh *et al.*, 1997; Lowry *et al.*, 1998). The marine mammals that occur in the proposed on-ice seismic survey area belong to four taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), phocids (seals), and carnivores (polar bears). Table 1 below outlines the marine mammal species and their habitat in the region of the proposed project area.

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE U.S. BEAUFORT SEA OFF OF ALASKA.

| Species | Habitat | ESA ¹ |
|--|----------------------|------------------|
| Mysticetes | | |
| Bowhead whale (<i>Eubalaena glacialis</i>) | Pack ice and coastal | EN |
| Gray whale (<i>Eschrichtius robustus</i>) | Coastal, lagoons | NL |
| Odontocetes | | |

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE U.S. BEAUFORT SEA OFF OF ALASKA.—Continued

| Species | Habitat | ESA ¹ |
|---|----------------------------------|------------------|
| Beluga whale (<i>Delphinapterus leucas</i>) | Offshore, coastal, and ice edges | NL |
| Narwhal (<i>Monodon monceros</i>) | Offshore, ice edge | NL |
| Pinnipeds | | |
| Bearded seal (<i>Erignathus barbatus</i>) | Pack ice | NL |
| Spotted seal (<i>Phoca largha</i>) | Pack ice | NL |
| Ringed seal (<i>Phoca hispida</i>) | Landfast and pack ice | NL |
| Pacific Walrus (<i>Odobenus rosmarus divergens</i>) | Ice, coastal | NL |
| Carnivora | | |
| Polar bear (<i>Ursus maritimus marinus</i>) | Ice, coastal | T |

¹ U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed

Ringed Seal

Ringed seals have a circumpolar distribution, which is closely associated with sea ice. Ringed seals are found throughout the Bering, Chukchi, and Beaufort Seas (Angliss and Outlaw, 2008). They are the most abundant and widely distributed seal in the Beaufort Seas (King, 1983).

Ringed seals occupy fast ice and offshore pack ice during winter and spring (Burns, 1970; Stirling *et al.*, 1982; Finley *et al.*, 1983; Frost *et al.*, 2004). Frost *et al.* (2004) conducted aerial surveys of ringed seals on fast and pack ice during late May and early June 1996–1999 between Pt. Barrow and Kaktovik (156°30' and 143°42' W) in the Beaufort Sea within 25 miles (40 km) of shore. The survey area was divided into four east west sectors (B1–B4) with one sector (B2) encompassing the project area. Seal densities ranged from 0.81 seals/km² in 1996 to 1.17 seals/km² in 1999 across all sectors. Densities were generally lower in the fast ice (0.57–1.14 seals/km²) than the pack ice (0.92–1.33 seals/km²). Seal densities in sector B2 ranged from 0.61 to 1.10 seals/km², indicating seal use in the project area vicinity was below the average; however the sample size (n=3) for the upper end of the range of the estimate was too small to be reliable. Seal use of the fast ice and pack ice were similar (0.69–0.68 seals/km²) in the project vicinity for the one year (1999) both ice types were surveyed and there was sufficient sample size. In addition, the estimates were below the average estimate for the overall area indicating seal density is lower in the region of the project area on average. In all cases, ringed seal densities were much lower than in the eastern Chukchi Sea, where ringed seal

densities averaged 1.91 seals/km² (range 0.37–16.32) in 1999 and 1.62 seals/km² (range 0.42–19.4) in 2000 (Bengston *et al.*, 2005). No recent data are available for seal densities during the proposed time of the on-ice seismic program during March or April.

Ringed seals maintain breathing holes in the ice and occupy lairs in accumulated snow (Smith and Stirling, 1975). Pups are born in late March and April in lairs that seals excavate in snowdrifts and pressure ridges. During the breeding and pupping season, adults on fast ice (floating fast-ice zone) usually move less than individuals in other habitats; they depend on a relatively small number of holes and cracks in the ice for breathing and foraging. During nursing (4–6 weeks), pups usually stay in the birth lair. Alternate snow lairs provide physical and thermal protection when the pups are being pursued by their primary predators, polar bears and Arctic foxes (Smith *et al.*, 1991 cited in USDI MMS, 2003). As the day length and temperature increase in spring, increasing numbers of ringed seals haul out on the surface of the ice near breathing holes or lairs (Frost *et al.*, 2004). This hauling out or basking is associated with the annual molt, which occurs in May to July. During summer, ringed seals are found on ice remnants dispersed throughout open water areas of the Beaufort Sea (Burns *et al.*, 1980 cited in USDI MMS, 2003); Smith, 1987). The primary prey of ringed seals is Arctic cod, saffron cod, shrimps, amphipods, and euphausiids (Kelly, 1988; and Reeves *et al.*, 1992 cited in USDI MMS 2003). Ringed seals are a major resource that subsistence hunters harvest in Alaska (USDI MMS, 2003).

A reliable estimate for the entire Alaska stock of ringed seals is currently not available. A minimum estimate for the eastern Chukchi and Beaufort Sea is 249,000 seals, including 18,000 for the Beaufort Sea (Angliss and Outlaw, 2008). The actual numbers of ringed seals are substantially higher, since the estimate did not include much of the geographic range of the stock, and the estimate for the Alaska Beaufort Sea has not been corrected for animals missed during the surveys used to derive the abundance estimate (Angliss and Outlaw, 2008). Estimates could be as high or approach the past estimates of 1–3.6 million ringed seals in the Alaska stock (Frost, 1985; Frost *et al.* 1988).

NMFS anticipates that no ringed seals will be injured or killed during the on-ice seismic surveys with incorporation of the described proposed mitigation and monitoring measures. Seals are expected to avoid the immediate area around the proposed on-ice seismic operations and are not expected to be subject to potential hearing damage from exposure to underwater or in-air sounds. The specific objective of Veritas' monitoring and mitigation plan is to ensure that no seals are in the immediate area during the proposed on-ice seismic activities. Because of the circumstances and the proposed mitigation and monitoring requirements discussed in this document, NMFS believes it highly unlikely that the proposed activities would result in injury (Level A harassment), serious injury or mortality of ringed seals, however, they may temporarily avoid the area where the proposed seismic activities may occur. Veritas has requested the incidental take of 76 ringed seals for the proposed action.

The requested take is approximately 0.42 percent of the estimated Beaufort Sea population, and 0.03 and 0.008 percent of the estimated minimum Chukchi and Beaufort Sea population and Alaska stock, respectively. NMFS has determined that the number of requested incidental takes for the proposed action is small relative to population estimates, of ringed seals.

Further information on the biology and local distribution of these species and others in the region can be found in Veritas' application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: <http://www.nmfs.noaa.gov/pr/species/>

Potential Effects of Activities on Marine Mammals

All anticipated takes would be "takes by harassment," involving short term, temporary changes in behavior. The mitigation measures to be applied will minimize the possibility of injurious takes. The estimates of take are based on the most recent data obtained during ringed seal surveys conducted within the geographic area of the planned operations by Frost *et al.* (2004). The actual density during the on-ice seismic program may be lower, since surveys conducted by Frost *et al.* (2004) were in May and June when seals may have been more concentrated on fast ice and pack ice remnants than in March or April, when most of the on-ice seismic program will occur.

Several aspects of the on-ice seismic program that were considered to not cause a take are briefly discussed below. Seismic activities in water depths below 10 ft (3 m) (south of Thetis and Flaxman Islands) were excluded from the estimated take since few if any seals inhabit water less than 10 ft during winter-spring. The water typically freezes to or near the bottom at this depth and supports few food resources (Miller *et al.*, 1998; Link *et al.* 1999). In addition, helicopter flights were excluded from the estimated take, since they would occur when seals would be using lairs and not basking on the ice, and altitude (1,000 ft or 304 m) should reduce any disturbance to ringed seals in lairs. The insulating capacity of snow used to build the lair adds another level of protection to seals from helicopter noise even if a helicopter has to fly at a lower altitude due to weather conditions. As has been reported (Amstrup, 1993; Blix and Lentifer, 1992) for polar bear dens, snow sufficiently attenuates the sound of helicopter to a level not likely to disturb ringed seals in lairs.

There is a remote chance that pup mortality could occur if any of these animals were nursing and displacement was protracted. However, it is highly unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities and the typical movement patterns of ringed seal pups among different holes as reported by Lydersen and Hammill (1993). Similarly, Kelly and Quakenbush (1990) observed that radio-tagged seals used as many as four lairs spaced as far as 11,273 ft (3,437 m) apart, with mean distances for males equaling 6,550 ft (1,997 m) and for females 2,079 ft (634 m). In addition, seals have multiple breathing holes. Pups may use more holes than adults (mean 8.7), but the holes are generally closer together (Lydersen and Hammill, 1993). Holes have been found as far apart as 0.56 miles (0.9 km). The pattern of use indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given these considerations combined with the small proportion (less than 1 percent) of the population potentially disturbed by the proposed activity, impacts are expected to be negligible for the ringed seal population.

The anticipated impact of seismic activities on the species or stock of ringed seals is expected to be negligible for the following reasons:

- The activity area supports a small proportion (less than 1 percent) of the ringed seal population in the Beaufort Sea.
- Seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous, for reasons of safety and because of normal operational constraints.
- The sounds from energy produced by Vibrators used during on-ice seismic programs typically are at frequencies well below (1,000 Hz) those used by ringed seals to communicate. Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong if any masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.
- There has been no reported major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988; Frost *et al.*, 2004). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals after the 2004 on-ice seismic operations

in Harrison Bay or near Northstar development. Studies at Northstar have shown a continued presence of ringed seals through winter and creation of new seal structures (Williams *et al.*, 2001; Moulton *et al.*, 2003). The scale of activities at the Northstar development is magnitudes greater than the proposed on-ice seismic operations.

- Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quackenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones in an ongoing natural occurrence, with or without human presence. Link *et al.* (1999) compared ringed seal densities between areas with and without Vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in Vibroseis' area), suggesting other factors beyond the seismic activity likely influenced seal use patterns.

Consequently, a wide variety of natural factors influence this pattern of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability, and predators, as well as ring seal behavior and population dynamics.

Consequently, the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. NMFS came to a similar finding in an Environmental Assessment of on-ice seismic activity in the Beaufort Sea, where it was concluded that effects of behavioral changes are expected to be negligible (NMFS, 1998). The effects of the proposed on-ice seismic operations fall within the MMPA definition of Level B harassment.

Possible Effects of Activities on Marine Mammal Habitat

The proposed seismic operation will not cause any permanent impact on habitats and the prey used by ringed seals. All surface activities will be on the sea ice, which will break-up and drift away following spring break-up and reform in the fall. Any spills on the ice would be small in size and cleaned up before completing the operations. Similarly, all materials from the camp and seismic activities will be removed from the site before completion of operations. Areas containing ice

conditions suitable for lairs will be avoided by the seismic crews to prevent any destruction of the habitat. Seismic survey crews do not place energy sources over observed seal hoes or lairs, nor do they typically operate along pressure ridges or near the edge of the land fast ice where seal structures are often located. The operation should have no effect on the prey of ringed seals, since physical disturbances will be on the sea ice and not the ocean bed. Consequently, there will be no need for restoration of the habitat used by ringed seals.

The only losses of or modifications to ringed seal habitat from on-ice seismic operations are the temporary change of the surface ice associated with removal of ice and snow along survey lines and camps. In all cases, the modification involves a very small proportion of the total area of habitat available to ringed seals. Because seismic operations tend to avoid rough, deformed and broken ice, cracks, and areas near the edge of the landfast ice, they also avoid the preferred habitat of ringed seals. Disturbed habitat is often restored by periodic storms. Furthermore, since the ice and snow are restored annually by the melting and reformation of sea ice, no impact to habitat would last beyond spring breakup. Consequently, on-ice seismic activities will have a negligible impact on the local ringed seal population and their habitat.

Number of Marine Mammals Expected to be Incidentally Taken by the Proposed Activity

NMFS estimates the incidental take of ringed seals could be up to 76 animals for (0.42 percent of the estimated population in the Beaufort Sea) the proposed action, including all sex and ages, while in or near lairs or breathing holes. The estimate was derived by multiplying the density estimate (0.69 per km² in fast ice, which is where the proposed seismic operation will occur) by the size of the project area (141.3 miles² or 366 km²) and then reducing the estimate by 70 percent to account for the percentage of time ringed seals spend in lairs. Kelly (1988) reported that ringed seals spend 12–30 percent of their time in lairs from March to early June. The estimate reflects the design of the seismic program relative to reported distances seals respond to on-ice seismic activities. Burns and Kelly (1982) and Kelly *et al.* (1988) concluded that localized displacement of ringed seals in close proximity (within 492 ft or 150 m) to seismic lines does occur, but the overall displacement was insignificant. The design of the program is to space the lines 984 ft (300 m) apart

which would presumably expose all seals between the lines to on-ice seismic operations. However, localized displacement would likely be temporary and short-term as reported by Burns and Kelly, particularly since on-ice seismic operations are not stationary, but highly mobile and noise levels are below the primary hearing range of seals (Richardson *et al.*, 1995). Moreover, disturbance is not likely to have any effect on the population as a whole because of: (1) limited area of seismic surveys relative to the total ringed seal habitat in the Arctic Ocean; (2) avoidance by seismic operators of optimal seal habitat (areas of extensive pressure ridging and snow accumulation) due to safety and operational constraints; (3) the relatively large size of the ringed seal population in the Beaufort Sea and throughout Alaska; and (4) the lack of scientific evidence of on-ice seismic activity negatively affecting the reproductive viability or distribution of the ringed seal population.

In addition, NMFS expects that the actual take by Level B harassment from the proposed on-ice seismic survey will be much lower than the estimates due to the implementation of the proposed mitigation and monitoring measures discussed below. Therefore, NMFS believes that any potential impacts to ringed seals to the proposed on-ice seismic operations would be insignificant, and would be limited to distant and transient exposure.

Potential Impact of the Proposed Activity on Subsistence Uses

Under the MMPA, NMFS must determine that an activity would not have an unmitigable adverse impact on the subsistence needs for marine mammals. While this includes usage of both cetaceans and pinnipeds, the primary impact by seismic activities is expected to be impacts from seismic operations on ringed seals. In 50 CFR 216.103, NMFS has defined unmitigable adverse impact as:

An impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The on-ice seismic survey is not expected to cause seals to abandon/avoid hunting areas, directly displace subsistence users, or place physical

barriers between the seals and the subsistence hunters. The proposed action should have a negligible impact on the availability of ringed seals since hunting for subsistence purposes occurs primarily south of the planned project area and mainly during the summer open water season. No physical barriers will be placed between the seals and subsistence hunters during Veritas' proposed activities. See below for more information on Veritas' proposed activities and Plan of Cooperation that is anticipated to have a negligible effect on subsistence users and seals. This determination may require that the IHA contain additional mitigation and monitoring measures in order for this decision to be made.

The number of individual ringed seals likely to be exposed to on-ice seismic operations is expected to be relatively low. Effects on most individual seals are expected to be limited to localized and temporary displacement (Level B harassment). No greater than a negligible impact is anticipated on the species or stock or the availability of the species for subsistence uses. Moreover, any effects on ringed seal habitat are expected to be temporary and localized. No rookeries, areas of concentrated feeding or mating, or other areas of special significance to marine mammals occur in or near the planned seismic operation area.

Nevertheless, all activities will continue to be conducted to assure the least practical adverse impact on the species, habitat, and availability for subsistence uses. For example, as required under current regulations, all activities will be conducted as far as practicable from any observed ringed seal or ringed seal lair and no energy source will be placed over an observed ringed seal lair as per 50 CFR 216.113. Similarly, only Vibrator-type energy-source equipment shown to have similar or lesser effects will be used as per 50 CFR 216.113(a)(1). Veritas will also provide training for the seismic crews so they can recognize potential areas of ringed seal lairs and adjust the seismic operations accordingly. There have been no injuries or deaths of seals, and no more than temporary displacement of seals by on-ice seismic operations since NMFS instituted regulations. Consequently, the history of the industry has been one of responsible operations of on-ice seismic activities relative to seals, their habitat, and use by subsistence hunters in Alaska.

To further ensure that on-ice seismic operations have the least practicable impact on the species, habitat and subsistence use, Veritas will continue to work with NMFS, other Federal

agencies, the State of Alaska, Native communities of Barrow and Nuiqsut, and Inupiat Community of the Arctic Slope (ICAS) to assess measures to further minimize any impact from seismic activity. In addition, a Plan of Cooperation will be developed between Veritas and Nuiqsut to assure that seismic activities do not interfere with subsistence harvest of ringed seals. Furthermore a survey using trained dogs will be completed to identify active seal holes/ birthing lairs or hole/lair habitats so they can be avoided by seismic operations to the greatest extent practicable. If trained dogs are not available, potential habitat will be identified by trained marine mammal biologists based on the characteristics of the ice (i.e., deformation, cracks, etc.).

Plan of Cooperation

Where the proposed activity would take place in or near a traditional Arctic subsistence hunting area and/or may affect the availability of a species or stock or marine mammal for Arctic subsistence uses, regulations at 50 CFR 216.104(a)(12) require the IHA applicant to submit a plan of cooperation or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses.

Veritas will be working with the village of Nuiqsut and the Kuukpiik Subsistence Oversight Panel to develop a proposed plan for circulation prior to their community meetins. Veritas will also be working with the Alaska Eskimo Whaling Commission, the North Slope Borough Wildlife Department and Planning Department during this process. The ICAS and the Native Village of Barrow (NVB) will receive a visit to address each board of Veritas' activities. Veritas will conduct a community meeting in Nuiqsut during the month of December to hear comments from the community. Veritas will be using subsistence representatives to help with monitoring prior to operations and during their operations as subsistence observers. Subsistence representatives/observers on the crew will be responsible for communicating directly with the Village of Nuiqsut.

Residents of the Village of Nuiqsut are the primary subsistence users in the activity area. Nuiqsut subsistence hunters may hunt year-round (including the winter and spring); however in more recent years most of the harvest of ringed seals has been in the summer during the open water period instead of the more difficult hunting of seals using holes and lairs during winter and spring

(McLaren, 1958; Nelson, 1969). The most important area for Nuiqsut hunters is off the Colville River Delta in Harrison Bay, between Fish Creek and Pingok Island, which is largely south of the project area. Seal hunting occurring in this area before spring break-up is by snow machine, and by boat during summer. Subsistence patterns are reflected in the harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 (92 percent) ringed seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 (74 percent) ringed seals were taken from June to August (Brower and Opie, 1997). Consequently, on-ice seismic operations should have a negligible effect on the availability of ringed seals since hunting occurs primarily south of the project area and mainly during summer.

Crews, and the helicopter pilot will be required by Veritas to avoid hunters and locations of any seals being hunted in the activity area, whenever possible, to further minimize any effect of seismic operations on the availability of seals for subsistence. For the reasons stated above and with the proposed mitigation and monitoring measures described below, the on-ice seismic survey is not expected to cause seals to abandon/ avoid subsistence hunting areas, directly displace subsistence users, and place physical barriers between the marine mammals and the subsistence hunters.

Proposed Mitigation and Monitoring

Ringed seal pupping occurs in lairs from late March to mid-to-late April (Smith and Hammill, 1981). The following mitigation and monitoring measures are proposed for the subject on-ice seismic operations. A survey using experienced field personnel and trained seal lair sniffing dogs will be conducted by Veritas in areas where water depths exceed 10 ft (3 m) to locate and map (GPS) potential seal structures along the planned survey routes. Few, if any, seals inhabit ice-covered waters below 10 ft due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water. The seal structure survey will be conducted to ensure that seals, particularly pups, are not injured by equipment. If possible, structures will be categorized by size, structure, and odor to ascertain whether structure is a birth lair, resting lair, resting lair of rutting male seals, or a breathing hole. The locations of all seals and seal structures will be plotted and mapped using GPS and will be used to assist seismic survey crews in avoiding seal

structures. Surveys will be conducted 492 ft (150 m) to each side of the survey routes so that locations of marked seals and seal structures are protected by a conservative distance (exclusion zone). Actual width of route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs locating seal structures. During active seismic Vibrator source operations, the 492 ft exclusion zone will be monitored for entry by any marine mammals. As mentioned previously, potential seal structures will be identified by trained marine mammal biologists based on the characteristics of the ice (i.e., deformation, cracks, etc.) if trained dogs are not available. Activities will be conducted as far as practicable from any observed ringed seal lair or breathing hole and no energy source will be placed over the seal structure. In addition, NMFS proposes to require applicant's vehicles to avoid any pressure ridges, ice ridges, and ice deformation areas where seal structures are likely to be present.

If additional activities will be ongoing in the Beaufort Sea during the 2009 spring season, Veritas will coordinate its monitoring programs with other industries if applicable. Monitoring and reporting of the on-ice seismic operations will follow the requirements listed under 50 CFR 216.114.

On-ice operations have been conducted in the Beaufort Sea region for over 25 years and, during this time, there have been no noticeable adverse impacts on the ringed seal population or the availability of the species for subsistence uses. Moreover, any effects on seal habitat have been temporary and localized. However, to further ensure that there will be no adverse effects resulting from on-ice operations, Veritas will continue to cooperate with NMFS, MMS, other appropriate federal agencies, the State of Alaska, the North Slope Borough, ICAS, and Nuiqsut community to coordinate research opportunities and assess all measures that can be taken to eliminate or minimize any impacts from these activities.

Proposed Reporting

NMFS proposes to require an annual draft report that must be submitted to NMFS within 90 days of completing the year's activities. The monitoring report would contain a summary of information gathered pursuant to the monitoring requirements set forth in the IHA, including detailed descriptions of observations of any marine mammal, by species, number, age class, and sex if possible, that is sighted in the vicinity

of the proposed project area; description of the animal's observed behaviors, and the activities occurring at the time. A final report must be submitted to the Regional Administrator and Chief of the Permits, Conservation, and Education Division within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

ESA

For the reasons already described in this **Federal Register** Notice, NMFS has determined that the described proposed on-ice seismic activities and the accompanying IHA are not anticipated to have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. Since ESA-listed species are not expected to be adversely affected by the proposed activities and the issuance of an IHA by NMFS under section 101(a)(5)(D) of the MMPA to Veritas, NMFS has determined that a section 7 consultation is not necessary. The ringed seal, which is the only species of marine mammal under NMFS jurisdiction likely to occur in the proposed action area, is a candidate species for consideration for listing under the ESA and a status review has been initiated.

National Environmental Policy Act (NEPA)

The information provided in the Final Programmatic Environmental Assessment (EA) on the Arctic Ocean Outer Continental Shelf Seismic Surveys 2006 prepared by the Minerals Management Service (MMS) in June 2006 led NMFS to conclude that implementation of either the preferred alternative or other alternatives identified in the Environmental Assessment (EA) would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. The proposed action discussed in this document is different from the previous actions and new NEPA documentation will be prepared by NMFS for the proposed action. A copy of the EA will be available upon request (see **ADDRESSES**).

Preliminary Determinations

Based on Veritas' application, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described on-ice seismic operations will result, at most, in a temporary modification in behavior by small numbers of ringed seals. The effect of the proposed on-ice seismic surveys is expected to be limited to

short-term and localized behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, the number of marine mammals, relative to the population size, potentially taken by harassment is small. In addition, no take by injury or death is anticipated, and take by Level B harassment will be at the lowest level practicable due to incorporation of the proposed monitoring and mitigation measures mentioned previously in this document. NMFS has further preliminarily determined that the anticipated takes will have a negligible impact on the affected species or stock of marine mammals. No injury (Level A harassment), serious injury, and/or mortality will be authorized for marine mammals. Also, the potential effects of the proposed on-ice seismic survey project during 2009 will not have an unmitigable adverse impact on subsistence uses of this species due to the Plan of Cooperation and mitigation and monitoring measures.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Veritas for the harassment of small numbers (based on populations of the species and stock) of ringed seals incidental to conducting on-ice seismic surveys in the U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Sought

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 15, 2007.

James H. Lecky,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XM26

Marine Mammals; File No. 14186

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Sea World Inc., 9205 South Park Center Loop, Suite 400, Orlando, FL 32819 [Brad Andrews, Responsible Party], has applied in due form for a permit take two non-releasable Guadalupe fur seals (*Arctocephalus townsendi*) with the option of holding up to six non-releasable furs seals at any given time for purposes of enhancement.

DATES: Written, telefaxed, or e-mail comments must be received on or before January 20, 2009.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <http://apps.nmfs.noaa.gov/index.cfm>, and then selecting File No. 14186 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 14186.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended