

between NMFS and the Aleut Communities. The permit authorizes incidental disturbance of northern fur seals (*Callorhinus ursinus*) on St. Paul Island, Alaska, during (1) disentanglement events, (2) the collection of biological samples from dead stranded and subsistence hunted marine mammals, and (3) haulout and rookery observations, monitoring, and remote camera maintenance. Samples may be exported to researchers studying the decline of northern fur seals. Steller sea lions (*Eumetopias jubatus*) and harbor seals (*Phoca vitulina*) may be disturbed during the course of these activities. The permit also authorizes research-related mortality of northern fur seals.

The permit holder is requesting the permit be amended to include authorization for harassment of additional Steller sea lions and harbor seals on St. Paul, St. George, Otter, and Walrus Islands, and Sea Lion Rock, all of the Pribilof Island group in the Bering Sea. The request is to annually harass the following during collection of scat samples to be used for characterizing the diet of marine mammals in the region: 100 adult female Steller sea lions, 500 adult male Steller sea lions, 1400 juvenile male Steller sea lions, 100 male and female Steller sea lion pups, 100 adult female harbor seals, 100 adult male harbor seals, 100 male and female juvenile harbor seals, and 100 male and female harbor seal pups. The amendment would be valid for the duration of the permit, which expires on August 31, 2014.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement (PEIS) for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit amendment would not have a significant adverse impact on the human environment.

As established under the Preferred Alternative, NMFS proposes to authorize annual cumulative research-related mortality (under this permit in combination with any others for research on Steller sea lions) of up to 15 percent of the Potential Biological Removal levels for each stock. These annual allowances would include observed and unobserved mortalities, and be calculated based on the nature of the research. The numbers of research-related mortalities permitted for this amendment may be higher or lower than those requested by the applicant, based

on NMFS calculations using the methods outlined in the PEIS.

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 28, 2010.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA093

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Polar Bear Captures

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received an application from the U.S. Fish and Wildlife Service (USFWS) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to a capture-recapture program of polar bears in the U.S. Chukchi Sea. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the USFWS to take, by Level B harassment only, two species of marine mammals during the specified activity.

**DATES:** Comments and information must be received no later than February 3, 2011.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is [ITP.Nachman@noaa.gov](mailto:ITP.Nachman@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.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application 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 also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, ext 156.

#### 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.

Authorization for incidental takings 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 (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by 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 the authorization.

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"].

### Summary of Request

NMFS received an application on November 4, 2010, from the USFWS for the taking, by harassment, of marine mammals incidental to a capture-recapture program of polar bears in the U.S. Chukchi Sea. NMFS reviewed the USFWS' application and identified a number of issues requiring further clarification. After addressing comments from NMFS, the USFWS modified its application and submitted a revised application on November 16, 2010. The November 16, 2010, application is the one available for public comment (*see ADDRESSES*) and considered by NMFS for this proposed IHA.

In response to the need for information on the Chukchi-Bering Seas polar bear population, the USFWS initiated a capture-based research program starting in 2008 on the sea ice off the Chukchi Sea coastline. Captures occur on the sea ice up to 100 mi (161 km) offshore of the Alaskan coastline between Shishmaref and Cape Lisburne (see Figure 1 in the USFWS' application). Take of ice seals may occur when the helicopter flies over the seals hauled out on the ice. The USFWS has requested to take ringed and bearded seals by Level B harassment only.

### Description of the Specified Activity

In 2008, the USFWS started a capture-recapture program of polar bears in the Chukchi-Bering Seas to begin to obtain information on bear health, body condition, movement patterns, habitat use, and demography. This work was initiated in response to the need for information to inform management (particularly the setting of harvest quotas) under the U.S.-Russia treaty that was implemented in 2008, identify appropriate mitigation for oil and gas

exploration activities in the Chukchi Sea lease sale area, and the need to better monitor this population due to the listing of polar bears as "threatened" under the Endangered Species Act (ESA). To date there has never been an estimate of the size or status (*e.g.* increasing, decreasing, or stable) of this population, and minimal research has been conducted to understand the population's status or response to declining sea ice habitat. Estimates of human-caused removal for this polar bear population are high (100–200/yr in Russia and 30/yr in the U.S.), and sea ice loss has occurred at one of the highest rates in the circumpolar arctic. There is concern over the current status of this population due to these threats.

Each spring, the USFWS conducts a 6–8 week period of polar bear captures on the sea ice off the U.S. Chukchi Sea coastline. A fixed wing and a Bell 206 Long-ranger helicopter are flown 300 ft (91.4 m) above the sea ice to track and locate polar bears for capture. The flyover area to locate polar bears includes ice seal habitat, and ice seals are frequently encountered hauled out on the sea ice at breathing holes or cracks. To capture polar bears, the aircraft flies immediately over the target bear for several minutes to administer a dart. Capture locations are carefully chosen for the safety of the bear and never include areas where ice seals occur. However, during flights to locate bears for capture at least some of the ice seals that are encountered exhibit behavioral responses. Responses can include looking up at the aircraft and/or entering the crack or breathing hole at which they are hauled out. Encounters may be with the same individuals repeatedly or may represent different individuals. With the exception of habitats near the USFWS' base location on the coast, flights rarely occur repeatedly over the same areas. The USFWS monitor the prior week's tracklogs to ensure that they continue to search new habitat each day, which likely results in few individuals being disturbed repeatedly during the course of the proposed activities.

Polar bear capture operations will occur daily, as weather permits, between mid-March and the first week of May 2011. The period of validity of the proposed IHA will be until the end of May 2011 (to allow for some flexibility in case of bad weather or other unforeseen delays). During a typical capture season over the past 3 years, this has resulted in 28–30 flight days and less than 200 flight hours per season. Captures occur on the sea ice up to 100 mi (161 km) offshore of the Alaskan coastline between Shishmaref

and Cape Lisburne. Figure 1 in the USFWS' application depicts the flight paths for the 2009 and 2010 seasons. These overflights at altitudes of approximately 300 ft (91.4 m) over sea ice where seals are hauled out may result in the Level B harassment of ringed and bearded seals.

### Description of Marine Mammals in the Area of the Specified Activity

The Chukchi Sea supports a diverse assemblage of marine mammals, including: Bowhead, gray, beluga, killer, minke, humpback, and fin whales; harbor porpoise; ringed, ribbon, spotted, and bearded seals; narwhals; polar bears; and walrus. However, during the time period of the USFWS' proposed activity, none of the cetacean species are anticipated to be in the proposed project area. Additionally, ribbon and spotted seals are not anticipated to be found in the proposed project area. These species tend to range further south in the Bering Sea and Bristol Bay during the March to May timeframe proposed for activity by the USFWS. During the last 3 years of flights for this polar bear capture program, the USFWS has not seen any ribbon or spotted seals. Because these two species and the cetacean species mentioned here are not found in the Chukchi Sea during this time of year, they are not considered further in this proposed IHA notice. The polar bear and walrus are managed by the USFWS and are not considered further in this proposed IHA notice.

Ringed and bearded seals are the two species likely to be encountered during the proposed activity. On December 10, 2010, NMFS published a notice of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither species is considered depleted under the MMPA.

Ringed seals are circumpolar and are found in all seasonally ice covered seas of the Northern Hemisphere, as well as in certain freshwater lakes. The ringed seal has been divided into several subspecies. The one most likely to occur in the proposed project area is the Arctic subspecies (*Phoca hispida hispida*). They range throughout the Arctic Basin and southward into adjacent seas, including the southern Bering Sea. Throughout most of its range, Arctic ringed seals do not come ashore but rather use sea ice as a substrate for resting, pupping, and molting. Pups normally are born in subnivean lairs (snow caves) on the sea

ice in late winter to early spring. Subnivean lairs provide refuge from air temperatures too low for survival of ringed seal pups. Lairs also conceal ringed seals from predators, an advantage especially important to the small pups that start life with minimal tolerance for immersion in cold water. When forced to flee into the water to avoid predators, the pups that survive depend on the subnivean lairs to subsequently warm themselves. Ringed seal movements during the subnivean period typically are quite limited, especially where ice cover is extensive. In much of the Arctic, pupping occurs in late March through April, but the timing varies with latitude. Ringed seals in the Bering and Chukchi seas typically molt from mid-May to early July. Although a reliable minimum population estimate is not currently available for the Alaska stock of ringed seals because current reliable estimates of abundance are not available, Allen and Angliss (2010) note a population of approximately 249,000 individuals when the results from Frost *et al.* (2002) and Bengtson *et al.* (2005) are combined.

Bearded seals have a circumpolar distribution south of 85° N. latitude, extending south into the southern Bering Sea in the Pacific and into Hudson Bay and southern Labrador in the Atlantic. Bearded seals also occur in the Sea of Okhotsk south to the northern Sea of Japan. Two subspecies of bearded seals are recognized: *Erignathus barbatus nauticus* inhabiting the Pacific sector, and *Erignathus barbatus barbatus* often described as inhabiting the Atlantic sector (Rice, 1998). Throughout most of their range, adult bearded seals are seldom found on land. Bearded seals are closely associated with sea ice, particularly during the critical life history periods related to reproduction and molting, and they can be found in a broad range of different ice types. The whelping season for bearded seals in the Bering and Chukchi Seas appears to occur between March and May with a peak in April. There is currently no reliable minimum population estimate of the Alaska stock of bearded seals because current reliable estimates of abundance are not available (Allen and Angliss, 2010). However, estimates from the 1970s and 1980s of the Bering-Chukchi population of bearded seals range from 250,000 to 300,000 (Popov, 1976 cited in Allen and Angliss, 2010; Burns, 1981 cited in Allen and Angliss, 2010).

Information on the status, distribution, seasonal distribution, and abundance of ringed and bearded seals can be found in the NMFS Stock

Assessment Reports (SARs) and the recently completed status reviews of the ringed and bearded seals. The 2009 and 2010 Draft Alaska SARs are available on the Internet at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2009.pdf> and [http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010\\_draft.pdf](http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010_draft.pdf), respectively. The ringed seal status review report by Kelly *et al.* (2010) can be found on the Internet at: <http://alaskafisheries.noaa.gov/protectedresources/seals/ice/ringed/statusreview10.pdf>. The bearded seal status review report by Cameron *et al.* (2010) can be found on the Internet at: <http://alaskafisheries.noaa.gov/protectedresources/seals/ice/bearded/statusreview10.pdf>.

#### Potential Effects of the Specified Activity on Marine Mammals

Potential effects to marine mammals could involve both acoustic and non-acoustic effects. It is uncertain if the seals react to the sound of the helicopter or to its physical presence flying overhead. Pinnipeds are able to hear both in-water and in-air sounds. However, they have significantly different hearing capabilities in the two media. For this proposed activity, only in-air hearing capabilities will be potentially impacted. The functional hearing range for pinnipeds in-air is 75 Hz to 30 kHz (Southall *et al.*, 2007). Richardson *et al.* (1995) note that dominant tones in noise spectra from both helicopters and fixed-wing aircraft are generally below 500 Hz. Kastak and Schustermann (1995) state that the in-air hearing sensitivity is less than the in-water hearing sensitivity for pinnipeds. In-air hearing sensitivity deteriorates as frequency decreases below 2 kHz, and generally pinnipeds appear to be considerably less sensitive to airborne sounds below 10 kHz than humans. There is a dearth of information on acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson *et al.*, 1995) and to NMFS' knowledge, there has been no specific documentation of temporary threshold shift (TTS), let alone permanent threshold shift (PTS), in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions.

Typical reactions of hauled out pinnipeds to aircraft that have been observed include looking up at the aircraft, moving on the ice or land, entering a breathing hole or crack in the ice, or entering the water. Both ringed and bearded seals hauled out on the ice have been observed diving into the water when approached by a low-flying aircraft or helicopter (Burns and Harbo,

1972, cited in Richardson *et al.*, 1995; Burns and Frost, 1979, cited in Richardson *et al.*, 1995). Several of these reactions have been observed by USFWS scientists that have participated in this proposed study in past years. Richardson *et al.* (1995) note that responses can vary based on differences in aircraft type, altitude, and flight pattern. Additionally, a study conducted by Born *et al.* (1999) found that wind chill was also a factor in level of response of ringed seals hauled out on ice, as well as time of day and relative wind direction.

Born *et al.* (1999) determined that 49% of ringed seals escaped (i.e., left the ice) as a response to a helicopter flying at 492 ft (150 m) altitude. Seals entered the water when the helicopter was 4,101 ft (1,250 m) away if the seal was in front of the helicopter and at 1,640 ft (500 m) away if the seal was to the side of the helicopter. The authors noted that more seals reacted to helicopters than to fixed-wing aircraft. The study concluded that the risk of scaring ringed seals by small-type helicopters could be substantially reduced if they do not approach closer than 4,921 ft (1,500 m).

In 2000, Blackwell *et al.* (2004) conducted a study to measure impacts of pipe-driving sounds on ringed seals at Northstar Island, an oil production island in the Beaufort Sea. During that study, the authors found that after 55 hours of observation, the 23 ringed seals that were observed exhibited little or no reaction to any industrial noise except an approaching Bell 212 helicopter. [It should be noted that a Bell 212 helicopter is larger and considerably noisier than the Bell 206 helicopter proposed for use during the USFWS' project.] Twelve of the 23 seals were observed during helicopter overflights. Of those 12 individuals, one showed no reaction to the helicopter. Of the remaining 11 individual ringed seals, 10 increased their vigilance and looked at the helicopter, and one departed its basking site. That one individual entered the water when the helicopter circled over its hauled out position at a distance of approximately 328 ft (100 m; Blackwell *et al.*, 2004).

Based on the available data and studies described here, any ringed or bearded seals found in the vicinity of the proposed project are only anticipated to have short-term behavioral reactions to the helicopter flying overhead. Those animals that do dive into a breathing hole or crack in the ice are anticipated to return to the ice shortly after the helicopter leaves the area, as the aircraft generally stays within the same area less than seconds.

Hearing impairment (*i.e.*, TTS or PTS) of pinnipeds hauled out on the ice is not anticipated as a result of the USFWS' proposed activity because pinnipeds will likely either dive into breathing holes or the water through cracks in the ice before the helicopter would be close enough to cause such an effect. The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document, which should further reduce effects (*see* the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections).

#### Anticipated Effects on Habitat

The USFWS' proposed activity is not anticipated to have any temporary or permanent effects on the habitat of ringed and bearded seals. The aircraft lands on various areas on the sea ice a few times per day when bears are captured. This makes no modification to the habitat, and landings are always well away from any ice seals in the area. The proposed activity is not expected to result in any physical damage to marine mammal habitat or to prey species upon which they depend. Additionally, while some seals may cease hauling out on the ice and enter a breathing hole or crack in the ice at the time the helicopter flies overhead, it is anticipated that the individuals will return to hauling out on the ice shortly after the aircraft passes. Overall, the proposed activity is not expected to cause significant impacts on habitats used by the marine mammal species in the proposed project area or on the food sources that they utilize.

#### Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The following mitigation measures are proposed to be included in the IHA (if issued). Protocols for flights will include maintaining a 1 mi (1.61 km) radius when flying over areas where seals are concentrated in groups of 5 or more, such as cracks or areas of thin ice with multiple breathing holes, except when needed to do so for safety reasons. USFWS will not land on ice within 0.5

mi (0.8 km) of a hauled out seal. USFWS will also fly at altitudes higher than 300 ft (91.4 m) when closer to shore, unless personnel safety prohibits flying at this lower altitude, as polar bears are less likely to be found within 30 mi (48 km) of the coast. This will reduce impacts to seals hauled out on ice closer to shore but at the same time will not jeopardize the objectives of the proposed project.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. Proposed measures to ensure availability of such species or stock for taking for certain subsistence uses is discussed later in this document (*see* "Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses" section).

#### Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

The USFWS will have two biologists and one pilot onboard the helicopter during each flight. During the course of

the capture efforts, USFWS will devote a staff member to monitoring the number of seals encountered and species continuously throughout the flights, with the exception of when they are following polar bear tracks or have initiated a polar bear capture. In addition, USFWS will conduct dedicated monitoring over 1 hour time periods daily and record age group (when possible, but at a minimum pups vs. adult females; adult male bearded seals can be identified) and the type of reaction (*i.e.*, tracking helicopter, moving on ice, entering water, *etc.*). The other biologist and the pilot will continue searching for polar bears to capture. These flights will continue to occur at 300 ft (91.4 m) altitude. Surveys will occur on days that vary in weather conditions since the number of seals encountered greatly depends on weather, including temperature, cloud cover, and wind speed.

USFWS will submit a report to NMFS within 90 days of completing the activity. The report will include a description of the activities that were conducted, the methods and results of the ice seal monitoring, marine mammal sightings, estimates of the number of seals encountered, and seal reactions to the activity.

#### Estimated Take by Incidental 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]. Only take by Level B behavioral harassment is anticipated to occur as a result of the USFWS' proposed polar bear capture-recapture program. Anticipated take of marine mammals is associated with either the sound or presence of the helicopter overhead (or both). No injury or mortality is anticipated, and no takes by injury or mortality are proposed to be authorized.

Based on results of the last 3 years of conducting the polar bear capture-recapture program, the USFWS estimates that they may have had as many as 1,000 encounters with ringed seals and 200 encounters with bearded seals annually. The USFWS estimates that the number of seals that may be taken by harassment is 500 ringed seals

and 100 bearded seals. This is based on their estimate of the number of seals encountered during previous work over the past 3 years and the research of Born *et al.* (1999) in which approximately 50% of all seals responded to helicopters at a similar altitude. It is possible that the same seal can be taken by harassment multiple times during the course of the 6–8 weeks needed to complete the proposed activity. Age and sex of the seals are not always known, but likely include all sex and age classes. Female ringed and bearded seals give birth on the sea ice between mid-March and May (the timeframe for this proposed activity).

NMFS proposes to authorize the take of 500 ringed seals and 100 bearded seals during the course of the proposed activity. This is based on the approximate number of individual animals that may be in the proposed activity area and the study by Born *et al.* (1999), which found that about half of the observed ringed seals escaped (*i.e.*, left the ice) as a response to a helicopter flying at 492 ft (150 m) altitude. The take estimates presented in this section of the document do not take into consideration the mitigation and monitoring measures described earlier in this document that are proposed for inclusion in the IHA (if issued).

#### **Negligible Impact and Small Numbers Analysis and Preliminary Determination**

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.” In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of the USFWS’ proposed polar bear capture-recapture program. Takes will be limited to Level B behavioral harassment over a 6–8 week period from mid-March to early May. As stated previously, NMFS estimates that 1,000 ringed seal and 200 bearded seal takes may occur as a result of the proposed activity. It is possible that some individual animals may be taken more than once during the course of the activity. However, with the exception of habitats near the USFWS’ base location

on the coast, flights rarely occur repeatedly over the same areas. The USFWS monitors the prior week’s tracklogs to ensure that they continue to search new habitat each day, which likely results in few individuals being disturbed repeatedly during the course of their activities.

The ringed seal breeding and pupping seasons occur during the same time as the proposed action. Mating occurs primarily under the ice in late April and early May. Females give birth to a single pup in a subnivalian lair on the landfast or pack ice from mid-March to mid-April. The bearded seal breeding season typically occurs from about mid-March to mid-June. Mating occurs in the water. In the Chukchi Sea and Bering Strait (the location of this proposed action), the bearded seal pupping season typically occurs in late April, but it can occur anytime between mid-March and early May. Since mating occurs either under the ice or in the water, typical reactions of seals to helicopter overflights (*e.g.*, leaving the ice, entering lairs) while hauled out on the ice would not occur. The animals would already be off of the exposed ice.

The USFWS’ proposed activity is not expected to have significant, negative effects on pupping in the area. Ringed seals nurse their pups in the subnivalian lairs. Therefore, the mother/pup pairs would not be out on the ice when the helicopter flies overhead during nursing. Bearded seals nurse their pups on the ice. However, detailed studies on bearded seal mothers show they forage extensively, diving shallowly (< 33 ft, 10 m) and spend only about 10% of their time hauled out with pups and the remainder nearby at the surface or diving (Holsvik, 1998; Krafft *et al.*, 2000). Despite the relative independence of mothers and pups, their bond is described as strong, with females being unusually tolerant of threats in order to remain or reunite with pups (Krylov *et al.*, 1964; Burns and Frost, 1979; Hammill *et al.*, 1994; Lydersen *et al.*, 1994). Therefore, it is not expected that the USFWS’ proposed activities will have major impacts during the ringed or bearded seals’ pupping seasons.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on

subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). While it is possible that flights could occur on consecutive days, the flight schedule is weather dependent. Additionally, even if flights do occur on consecutive days, it is unlikely that the flight paths will be identical on consecutive days. Therefore, it is unlikely that hauled out seals will be exposed to the overflights on consecutive days. Moreover, since the helicopters only remain overhead for a few seconds at any one location, impacts lasting minutes to even hours are not expected.

On December 10, 2010, ringed and bearded seals were proposed for listing as threatened under the ESA (75 FR 77476; 75 FR 77496). Neither species is designated as depleted under the MMPA.

Although a reliable minimum population estimate is not currently available for the Alaska stock of ringed seals, the 2009 NMFS SAR notes a population of approximately 249,000 individuals (Allen and Angliss, 2010). There is no reliable minimum population estimate of the Alaska stock of bearded seals at this time. However, estimates from the 1970s and 1980s of the Bering-Chukchi population of bearded seals range from 250,000 to 300,000 (Popov, 1976 cited in Allen and Angliss, 2010; Burns, 1981 cited in Allen and Angliss, 2010). The take estimates represent 0.2% of the Alaska stock of 249,000 ringed seals and 0.04% of the Alaska stock of 250,000 bearded seals. These estimates represent the percentage of each species or stock that could be taken by Level B harassment if each animal is taken only once.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the helicopter flights during the USFWS’ polar bear capture-recapture program will result in the incidental take of small numbers of marine mammals, by Level B behavioral harassment only, and that the total taking from the USFWS’ proposed activities will have a negligible impact on the affected species or stocks.

#### **Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

##### *Relevant Subsistence Uses*

The disturbance and potential displacement of marine mammals by

sounds from the USFWS' proposed activities are the principal concerns related to subsistence use of the area. Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and beluga whales, ringed, spotted, and bearded seals, walrus, and polar bears. [As mentioned previously in this document, both the walrus and the polar bear are under the USFWS' jurisdiction.] The importance of each of these species varies among the communities and is largely based on availability.

The subsistence communities in the Chukchi Sea that have the potential to be impacted by the USFWS' proposed action include Point Hope and Kivalina. During the spring months that the USFWS' capture work is proposed to be conducted both of these communities hunt bowhead whales and ice seals. Hunting for both bowhead whales and ice seals typically occurs within 15 mi (24 km) or less of the community, according to local residents. At Point Hope, hunters have informed the USFWS that they hunt only to the west and south of Point Hope.

#### *Potential Impacts to Subsistence Uses*

NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 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 the 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.

Noise and general activity during the USFWS' proposed polar bear program have the potential to impact marine mammals hunted by Native Alaskans. The helicopter overflights have the potential to disturb hauled out pinnipeds by causing them to vacate the area, which could potentially make the animals unavailable to subsistence hunters if the animals do not return to the area.

#### *Plan of Cooperation (POC)*

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. Over the past 3 years, as part of this work, the USFWS regularly consults extensively with local communities to identify temporal and spatial no fly zones. These no fly zones occur in areas of subsistence activities. In consultation with local residents, the USFWS has determined that flying to the north and northwest of Point Hope would not interfere with subsistence activities. Therefore, the USFWS will restrict flights to avoid the areas 15 mi (24 km) to the south and west of Point Hope and within a 15 mi (24 km) radius of Kivalina. The majority of the USFWS' polar bear work occurs greater than 30 mi (48 km) offshore, which also minimizes the potential for flights to affect availability of ice seals to local hunters. The USFWS holds two meetings in Point Hope each year (the community in closest proximity to much of the work). For 2011, the USFWS has agreed with local whaling captains and community leaders to have regular, weekly communications to identify no fly zones and ensure that flight paths do not intersect areas of subsistence activity. The USFWS also regularly communicates with the community of Kivalina, although polar bears tend not to be concentrated in close proximity to this community, thus flight paths tend to occur well away from subsistence use areas.

#### *Unmitigable Adverse Impact Analysis and Preliminary Determination*

NMFS has preliminarily determined that the USFWS' polar bear capture-recapture program will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This preliminary determination is supported by the information contained in this document and the POC contained in the USFWS' application (see **ADDRESSES**). The USFWS has agreed to certain no fly zones prior to beginning their activities. Additionally, the USFWS will meet regularly with subsistence use leaders in both Point Hope and Kivalina to redefine the no fly zones throughout the season, if necessary. There will be no impacts to beluga hunting, as this project occurs well before the summer beluga hunts in the Chukchi Sea. Lastly, the majority of the USFWS' flight tracks will occur much further offshore than

the typical sites for subsistence sealing during the mid-March to early May time period.

Based on the measures contained in the USFWS' POC, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined preliminarily that there will not be an unmitigable adverse impact on subsistence uses of marine mammals from the USFWS' proposed polar bear capture-recapture program.

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

The Arctic subspecies of ringed seal and the Beringia distinct population segment of bearded seals are currently proposed for listing under the ESA. Pursuant to section 7(a)(4) of the ESA, NMFS' Permits, Conservation and Education Division will work with NMFS' Endangered Species Division to determine if a conference is necessary for these proposed species.

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

NMFS is currently conducting an analysis, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of this proposed IHA.

#### **Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to helicopter flights during the USFWS' polar bear capture-recapture program in the U.S. Chukchi Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 28, 2010.

**P. Michael Payne,**

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

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **Notice of Advisory Committee Meeting Date Change**

**AGENCY:** Missile Defense Agency (MDA), DoD.

**ACTION:** Notice.

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**SUMMARY:** On Tuesday, December 28, 2010 (75 FR 81589) the Department of Defense announced meeting date changes to the closed meetings of the