



Alaska Eskimo Whaling Commission

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May 31, 2012

VIA ELECTRONIC MAIL TO ITP.guan@noaa.gov

Ms. Tammy Adams
Acting Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Springs, MD 20910

Re: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort Sea, Alaska. 77 Fed. Reg. 25830 (May 1, 2012)

Dear Ms. Adams:

Thank you for the opportunity to submit comments on the proposal of the National Marine Fisheries Service (NMFS) to issue an incidental harassment authorization (IHA) to BP Exploration (Alaska), Inc. (BP). 77 Fed. Reg. 25830 (May 1, 2012). These comments are submitted on behalf of the Alaska Eskimo Whaling Commission (“AEWC”). The AEWC represents the eleven bowhead whale subsistence hunting villages of Barrow, Nuiqsut, Kaktovik, Pt. Hope, Pt. Lay, Wainwright, Kivalina, Wales, Savoonga, Gambell, and Little Diomedede.

The AEWC was formed by the whaling captains of our constituent villages in 1980 for the purpose of protecting our bowhead whale resource and subsistence hunt. We carry out responsibilities through locally delegated tribal authority and through federal authority delegated pursuant to the NOAA-AEWC cooperative agreement. Alaskan Native subsistence takes of marine mammals are exempt from the Marine Mammal Protection Act’s (MMPA) moratorium on the take of marine mammals. 16 U.S.C. § 1371(b)(1). In addition, Congress has given our subsistence livelihood priority over other uses of the marine environment, requiring that other users mitigate the impacts of any activities with the potential to adversely affect the availability of our subsistence resource. 16 U.S.C. §§ 1371(b), (a)(5)(A)(i)(I), (a)(5)(D)(i)(II).

Each year the AEWC devotes considerable resources toward negotiating a Conflict Avoidance Agreement (CAA) with oil and gas companies to mitigate the adverse impacts of oil and gas exploration on our subsistence hunt for the bowhead whale. The bowhead whale subsistence hunt is the most important subsistence activity carried out by our communities, and through the subsistence hunt we provide irreplaceable food for our communities and continue our ancient traditions and culture. The CAA process has proved to be essential in striking the important balance between the protection of existing, subsistence-based uses of the Arctic and the more recent interest in the energy resources of the Outer Continental Shelf. The CAA process provides the means for the whaling captains to agree on how OCS activities should be conducted in order to protect the bowhead whale and its habitat for the benefit of our communities, who have been in the Arctic since time immemorial.

Our understanding is that BP intends to conduct 3D seismic surveys in Simpson Lagoon in the Beaufort Sea. Using a total of three sources vessels, BP proposes to survey a total of 110 mi², including 46 mi² inside the barrier islands and 36 mi² outside the barrier islands in water depths of 3 to 45 ft. To prevent against potential impacts to the bowhead whale migration and the subsistence hunt, no airgun operations would take place in the area north of the barrier islands after August 25, 2012, although BP's contractor may retrieve geophones from the surf zone during this time frame.

As discussed in the Federal Register notice, BP has signed the 2012 CAA with the Alaska Eskimo Whaling Commission (AEWC), which includes specific time and spatial restrictions designed to prevent against impacts to our subsistence activities. Although we believe that BP's proposed activities and the information presented in the Federal Register notice are consistent with the commitment made by BP in signing the CAA, we believe that clarification is required.

First, the activities proposed by BP are governed by Section 502(a)(2)(A) of the CAA, entitled "Limitations on Geophysical Activity in the Beaufort Sea." From Pt. Storkerson to Thetis Island, an area that includes Simpson Lagoon, BP is not to conduct geophysical activity inside the barrier islands prior to July 25th. Outside the barrier islands, no geophysical activity is allowed from August 25th until the end of the fall bowhead whale hunting activities for the village of Nuiqsut.

The Federal Register notice appears consistent with these requirements but is not clear on the limitation on geophysical activity inside the barrier islands prior to July 25th. The notice states that the "planned start date of seismic data acquisition offshore of the barrier islands is July 1, 2012." 77 Fed. Reg. at 25832. The public notice, however, does not identify or discuss the planned start date for seismic activity *inside* the barrier islands, nor does it discuss the limitations on these activities that BP agreed to in signing the CAA. Furthermore, the draft of the IHA included in the federal register notice also fails to identify the restriction on activities inside the barrier islands prior to July 25, 2012. 77 Fed. Reg. at 25854. The draft IHA similarly discusses only the August 25th restriction for activities outside the barrier islands. We therefore request that NMFS include in the

IHA the condition that BP is authorized to operate inside the barrier islands after July 25th, as set forth in the CAA.

Apart from this clarification, the notice and draft IHA appear consistent with the CAA, and we therefore concur in NMFS' determination that BP's proposed seismic activities are not likely to have an unmitigable adverse impact on subsistence activities. As we discussed in our recent comments on the draft environmental impact statement, we believe that the process utilized in this case, whereby BP and AEWG first negotiate the CAA and then NMFS publishes a proposed IHA and statutory findings, facilitates cooperation between the local community and offshore operators while also conserving the resources of the agency by supporting the participation of AEWG and its whaling captains in management decisions. NMFS should consider incorporating an alternative based off of the CAA process into the final EIS, as we requested in our comments, and this IHA provides an example of how the process can and should function properly to the benefit of the local community, offshore operators, and the federal government.

We also concur that BP has fulfilled the requirement to submit to the agency a plan of cooperation (POC). 50 C.F.R. § 216.104(a)(12). By signing the CAA, BP has fully complied with the regulations regarding a POC with respect to potential impacts to the subsistence hunt of bowhead whales.

Finally, we wish to provide comments on the peer review report. We thank NMFS for publishing the peer review report and also for the discussion of how the agency incorporated those recommendations into its proposed decision, which was included in the Federal Register notice. These steps are critical to providing transparency and promoting the local community's understanding of the agency's decisionmaking process under the Marine Mammal Protection Act. We strongly encourage NMFS to continue this approach with all future IHA applications.

In terms of the specific recommendations from the peer review, we generally agree with the statements and conclusions of the panel. In particular, we concur with the concerns expressed by the panel regarding the use of Marine Mammal Observers (MMOs), the limitations in using and interpreting data collected by MMOs, and the importance of documenting those limitations and including sightability curves in follow-up reports. We also concur with the peer review panel's conclusion that the reliability of correction factors is unknown, which renders conclusions on the number of animals affected potentially unreliable if supported only by MMO data. Because of the limitations in data collected by MMOs, we concur with the peer review panel that BP should use additional acoustic monitoring to collect data on marine mammal behavior in the project area. NMFS's public notice states that the agency decided against including acoustic monitoring in BP's plan because there was no time to do so, but we frankly find that reasoning to be somewhat questionable because the issue of acoustic monitoring has been on the table for many years. In any event, the agency is now clearly aware that both the scientific community and the local community recommend additional acoustic monitoring to document impacts to marine mammal behavior, and there should be no

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reason that project timing should interfere in implementation of these monitoring provisions in the future.

Thank you again for the opportunity to comment on the NMFS's public notice and proposed IHA with respect to BP's proposed 2012 seismic activities in Simpson Lagoon in the Beaufort Sea. Please do not hesitate to contact our office if you have any questions regarding our comments.

Sincerely,

A handwritten signature in blue ink that reads "Johnny L. Aiken". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

Johnny Aiken
Executive Director