December 31, 1999 at the rates in effect at the time of entry. For those companies for which this review has been rescinded (Pastificio F.lli Pagani, Commercio-Rappresentanze-Export S.r.L., Tamma Industrie Alimentari di Capitanata. S.r.L., Molino e Pastificio, La Molisana Alimentari S.p.A., Arrighi S.p.A. Industrie Alimentari, Industria Alimentare Colavita, S.p.A., Isola del Grano S.r.L., Italpast S.p.A., Italpasta S.r.L., Labor S.r.L., Pastificio Guido Ferrara, Pastificio Campano, S.p.A., Indalco, Audisio Industrie Alimentari de Capitanata, S.p.A., and Pastificio Fabianelli, S.p.A., and Pastificio Di Martino Gaetano & F.lli s.r.l.), we will direct Customs to liquidate all entries between January 1, 1999 and December 31, 1999 at the rates in effect at the time of entry.

For all non-reviewed firms, we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy,* 61 FR 38544 (July 24, 1996) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 4, 2001.

Faryar Shiryard,

Assistant Secretary for Import Administration.

[FR Doc. 01–19624 Filed 8–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050701A]

Small Takes of Marine Mammals Incidental to Specified Activities; Shallow-water Hazard Activities in the Beaufort Sea

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of bowhead whales and other marine mammals by harassment incidental to conducting shallow hazard surveys in the central and eastern Alaskan Beaufort Sea, has been issued to BP Exploration (Alaska), Inc; ExxonMobil Production Co, a division of Exxon Mobil Corporation; and Phillips Alaska, Inc. (BP/EM/PAI), working as members of a study team referred to in their application as the North American Natural Gas Pipeline Group, and now known as the Alaska Gas Producers Pipeline Team.

DATES: Effective July 23, 2001, through September 30, 2001.

ADDRESSES: The application, authorization, monitoring plan, Biological Opinion, and a list of references used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713–2055, ext 128; Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

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

Permission may be granted if NMFS finds that the taking will have no more than 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 that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing IHAs under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On March 20, 2001, NMFS received an application from BP/EM/PAI requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting shallow hazards surveys during the open water season in the Beaufort Sea between Prudhoe Bay, AK and the United States/Canadian border. Weather permitting, the survey is expected to take place between approximately July 20 and September 1, 2001. A more detailed description of the work proposed for 2001 is contained in the application (BP/EM/PAI, 2001) which is available upon request (see **ADDRESSES**).

BP/EM/PAI plan to conduct a nearshore shallow hazards survey along a proposed natural gas pipeline route in the central and eastern Alaskan Beaufort Sea during the 2001 open-water season. The primary purpose of the survey is to acquire detailed data on sea bottom and

sub-bottom characteristics to support pipeline route selection, pipeline design, safe pipeline operation, and acquisition of pipeline right-of-way permits and a Federal Energy Regulatory Commission Certificate of Convenience and Public Necessity. A secondary purpose of the survey is to locate and document areas of potential archaeological significance along the proposed pipeline route as required by the Minerals Management Service (MMS) and other regulations. Two vessels will conduct the planned geophysical survey activities. In addition, a smaller support vessel will be used for resupply to enable the survey to be completed expeditiously. Water depths within the proposed pipeline route range from 20-60 ft (6.1-18.3 m).

The primary activity planned under this proposed IHA is a high-resolution shallow hazards pipeline route survey along a 500-m (1640-ft) wide strip from Prudhoe Bay to the Alaska/Canada border. This work would likely occur preceding the period when hunters from Nuiqsut and Kaktovik hunt for bowheads (usually between September 1st and October 15th). The shallow hazards survey will involve the use of acoustic energy sources of substantially lower power than airgun arrays used during marine seismic surveys. The acoustic recording of received signals from one of the shallow hazards sources will be accomplished using a mini-streamer hydrophone array towed by the source vessel.

To increase the probability of completing the survey in a single open-water season, two vessels will be used. One vessel will acquire sub-bottom data using piezoelectric and electromagnetic sub-bottom profiling systems along with side-scan sonar and single-beam bathymetric sonar (sub-bottom vessel). A second vessel will be devoted to seabottom survey activities, and will operate side scan sonar, single-beam bathymetric sonar, and multi-beam bathymetric sonar (multi-beam vessel). Each vessel will complete one round trip along the pipeline route. The sub-bottom vessel will transit the centerline, a parallel line offset 150 m (492 ft) to one side of the centerline, and cross-tie lines. The cross-tie lines will be spaced approximately 16 km (10 mi) and will be approximately 500 m (1640.4 ft) long. The multi-beam vessel will transit the centerline and a parallel line offset 150 m (492 ft) to the other side of the centerline. In the event that hard-bottom habitat with the potential to meet the Alaska Biological Task Force definition of Boulder Patch is encountered, the survey vessels will circle to the north or south of the planned route in an attempt to better define the sea floor anomaly and to locate an alternate route around the hard-bottom area. The precise bathymetric contour to be surveyed will be determined by BP/EM/PAI later, but BP/EM/PAI has determined that the pipeline corridor will be within the zone where water depth is 20 to 60 ft (6.1 to 18.3 m)(see Figure 1 in BP/EM/PAI's application).

The result of the two-vessel survey will be single coverage of the flanking lines and double coverage of the centerline. Both vessels are expected to operate at a towing speed of 3-5 knots and one will follow the other within a distance of approximately 7.4 km (4.6 mi), although operational considerations may necessitate altering this separation as the survey progresses. It is expected that each one-way survey transit time may take 7 to 10 days, or more, to complete. Wave and ice conditions may affect the specific timing of the survey. The entire shallow hazard survey may take 20 to 40 days.

To conduct the shallow hazards survey, a minisparker will be used in addition to a mid-frequency sub-bottom profiler and several high-frequency sonars. The sonars will include a side-scan sonar system, a multi-beam bathymetric sonar system and a single-beam bathymetric sonar system. The minisparker system would provide a frequency range of about 100 to 2500 Hz, with a typical resolution of one meter. Typical pulse repetition frequencies are one pulse every one-half to 2 seconds. Pulse duration is typically 0.1 to 1.0 milliseconds (ms) and the nominal source level is 198 dB (re 1 μPa (on a root-mean-square (rms) basis) (200 to 1000 Joules on an energy basis) depending on sub-bottom characteristics. A mid-frequency piezoelectric sub-bottom profiler operating at a range from 2 kHz to 16 kHz range will be used to obtain a high-resolution profile of the shallow sea bottom sediments. Typical pulse frequencies are approximately 12 pulses/sec, with pulse duration between 10 and 40 ms at an energy level of 200 to 800 Joules. The nominal source level is 210 dB re 1 μPa (peak) with an rms source level approximately 198 dB re 1 μPa. A dual-channel side scan sonar system will be used to acquire continuous images of the sea bottom. The source level for a typical side scan sonar system is approximately 228 dB (re 1 μPa (peak)). The normal operating frequency will be 105 kHz, but may on occasion operate at 390 kHz. The side-scan sonar will have a pulse rate of up to 7 pulses per second. Pulse duration could range from 0.01 ms to 0.1 ms. Information on the single- and multi-beam bathymetric sonars are provided in comment 2 later in this document.

Comments and Responses

On May 30, 2001 (66 FR 29287), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC), BP/EM/PAI, the Northern Alaska Environmental Center (on behalf of several environmental organizations)(NAEC), the Alaska Wilderness League (AWL), the Alaska Eskimo Whaling Commission (AEWC) and some private citizens. NMFS has not addressed in this document those comments and/or information that are contained in, and not in disagreement with, statements made in either the BP/EM/PAI application or the notice of proposed authorization (66 FR 29287, May 30, 2001).

Activity Concerns

Comment 1: BP/EM/PAI clarify several points in regard to its proposed shallow hazards survey. These are: (1) a boomer will not be used during the 2001 survey, (2) drilling or coring operations are not planned for the 2001 open-water season, and (3) a 43-ft (13.1-ft) utility support vessel, as mentioned previously, will be employed. The support vessel operations may include: medical evacuation or rescue, route reconnaissance, transport of replacement parts and personnel, and acoustical measurements.

Response: Thank you for providing this information. These modifications are reflected in this document.

Comment 2: BP/EM/PAI wrote to provide minor, additional information and corrections on the proposed acoustic sources. First, the rms of the mini-sparker is not 203 dB, as quoted in the proposed authorization document, but will be about 198 dB re 1 μPa.

Second, the sub-bottom profiler's frequency range will be from 2 to 16 kHz, not 2-15 kHz. The pulse repetition rate will be ca.12 pulses per second (vs 10) with a pulse duration 10 (not 0.1) to 40 ms. The nominal source level is 210 dB re 1 μPa (peak). Burgess and Lawson (2001) found that the rms levels for a similar sub-bottom profiler were ca.12 dB less than peak levels; therefore, the rms source level of the unit is probably about 198 dB re 1 μPa (rms). The signal is beamed, with a beam width varying from 10 to 20 degrees. Effective source levels for receivers outside the beam width will be lower. Also the tow depth in the application (and **Federal Register** notice) was in error. The correct figure

is 1.5 m (5 ft) (Burgess and Lawson, 2001).

Third, the side-scan sonars will normally operate at 105 kHz, but may, on infrequent occasions operate at 390 kHz (not 100 to 500 kHz noted in the IHA application, nor 200 to 500 kHz noted in the FR notice). The nominal source level will be 228 dB re 1 μPa (peak), not in rms as stated in the FR notice. The rms source level would be lower than 228 dB by some unknown amount. These source levels would apply only for a receiver in the narrow beam; effective source level would be substantially lower outside the beam.

Fourth, the 215 dB source level of the single-beam 200-kHz bathymetric sonar quoted from the manufacturer is likely a peak (or possibly peak-to-peak) level. Source levels are low and moderate power settings are 202 dB and 209 dB at peak levels. The corresponding rms levels would be lower by an unknown amount.

Fifth, the multi-beam source will operate at 240 kHz, which is within the 200-500 kHz range specified in the IHA application. The quoted 210 dB re 1 μPa source level is probably a peak level, not an rms level.

Response: Thank you for providing this information. Appropriate changes have been made where necessary in this document.

Comment 3: The NAEC state that the BP/EM/PAI project is an attempt to initiate the process of developing an offshore natural gas pipeline through the Beaufort Sea.

Response: As stated in the BP/EM/PAI small take application, the pipeline survey route is part of an overall environmental, technical, and economic evaluation of two alternate gas pipeline routes for delivery of Alaska North Slope natural gas via Canada to the lower 48 States market. The northern route comprises a marine segment from Prudhoe Bay to the Mackenzie Delta. One of the route alternatives for a gas pipeline from Alaska to the lower 48 states is called the Highway Route which originates at Prudhoe Bay and then follows the Trans-Alaska Pipeline corridor to about Delta junction. Then the route essentially follows the Alaska Highway corridor into Canada through the Yukon Territory and northern British Columbia into northern Alberta. From Alberta, various alternatives are being considered to transport the gas to lower 48 markets. Whether a pipeline is constructed is a matter for later determinations by other Federal agencies after completion of the National Environmental Policy Act (NEPA) process.

Comment 4: The AWL states that if multiple low-frequency (LF) sources are used, as contemplated, the decibel level of BP/EM/PAI's boomer/minisparker systems will increase substantially as the convergence of their respective sound waves will produce even more intense levels of sound.

Response: If sound waves (whether low-, mid- or high-frequency) converge, the sounds produced would not be more intense (greater) than would be if independent of, or not in convergence with, other sources. However, if in phase, these sound waves can result in lower attenuation, meaning that the sounds would be projected further with less loss of intensity. This is the physics for the U.S. Navy's Surveillance Towed Array Sensor System-Low Frequency Active (SURTASS LFA) sonar. For the BP/EM/PAI acoustic systems however, as stated in the BP/EM/PAI application, there will only be a single LF source used, so convergence is not possible. As explained by BP/EM/PAI in comment 1, the minisparker has been chosen as the LF sound source for this activity; a boomer will not be used.

Marine Mammal Impact Concerns

Comment 5: The AWL notes several concerns regarding bowhead whale abundance, distribution, and impacts that will result because the proposed seismic activity would take place during a period of up to 40 days prior to September 1 in the Alaskan waters of the central Beaufort Sea. Therefore, the Beaufort stock of bowhead whales is likely to be present during seismic testing.

Response: First, as noted in the proposed authorization document, the proposed activity is not a ''seismic survey'' but a shallow hazards survey. Seismic surveys utilize towed arrays having a number of high energy, low frequency (LF) sound sources (called airguns), while shallow hazard surveys use different types of low-energy sound sources. Acousticians have estimated the sounds from the minisparker, the acoustic device being used in this project that will have the largest zone of influence on marine mammals, will attenuate to 160 dB at about 155 m (508.5 ft) from the source. On the other hand, standard airgun arrays commonly used in the Alaskan Beaufort Sea, at similar water depth, would be expected to attenuate to 160 dB at approximately 1,800 m (5,905.5 ft). Therefore, impacts to marine mammals from the minisparker and other sonar sources would be less than expected during standard seismic surveys. The potential impacts from shallow hazards survey equipment on marine mammals, especially bowhead whales, is described elsewhere in this document.

Second, it is recognized by BP/EM/PAI and NMFS that bowhead whales may be in the Alaskan Beaufort Sea prior to September 1. This was described in the BP/EM/PAI application and adopted by NMFS in the proposed authorization Federal Register notice (66 FR 29287, May 30, 2001). However, the number of bowhead whales that might be within U.S. waters prior to September 1 are few in comparison to the numbers expected after September 1, 2001. It should be noted that BP/EM/PAI estimates that if the survey ends by August 31, between 42 and 1,601 bowheads could potentially incur a harassment to the noise. If the shallow hazards survey continues until September 15, 2001, NMFS estimates that approximately 943 bowheads would incur a harassment response.

Comment 6: The AWL believes that the base of biological and behavioral information (especially on long term effects of industrial noise), necessary for management decisions regarding potential impact on an endangered species by industrial activities, is not available either to NMFS or to the applicant in support of its petition.

Response: NMFS disagrees that the sufficient biological information regarding bowhead whales and other potentially affected marine mammals is not available. NMFS is required to make its determinations under section 101(a)(5)(D) of the MMPA on the best scientific information available. This information is available in several documents that are cited in the proposed authorization notice (66 FR 29287, May 30, 2001).

Comment 7: The NAEC believes that the BP/EM/PAI request fails to consider the cumulative impacts from all of the seismic projects that will take place in the Beaufort Sea this summer. The NAEC is aware that summer seismic testing will occur in the area from Camden Bay to Harrison Bay-an area that overlaps the study area proposed by BP/EM/PAI. Other activities that will add to the cumulative noise and visual impacts include the construction and installation of modules at Northstar, other potential seismic activities in the vicinity, and the normal Beaufort Sea barge traffic. The NAEC is concerned that these combined activities could have a considerable negative effect on ringed, spotted and bearded seals, polar bears, and beluga and bowhead whales and could negatively impact subsistence hunting by the Inupiat.

Response: Cumulative impacts were addressed by the Corps of Engineers in its final environmental impact statement

(EIS) for Northstar (Corps, 1999). In addition, NMFS has reviewed the cumulative impacts on marine mammals due to Northstar and seismic in its 1999 Environmental Assessment (EA) for that year's seismic activity. Finally, LGL Ltd (environmental research associates)(LGL) provided NMFS with a draft document that reviewed the cumulative impacts of conducting more than a single seismic survey during the open water season. Considering that shallow hazard surveys are often part of the open water seismic activity in the Beaufort Sea, NMFS believes that the cumulative impacts of shallow hazard surveys combined with other activities have been adequately addressed.

Comment 8: The AWL state that sounds propagate better at great depths, and, therefore, a bowhead whale will be more vulnerable to sound disturbance when deep underwater than when near the surface.

Response: While the statement is true, the shallow hazards survey is being conducted in shallow water in the Beaufort Sea; deep water propagation is unlikely to occur in water depths inhabited by bowhead whales in the Alaskan Beaufort Sea during their western migration. In addition, BP/EM/PAI are required to make acoustic measurements of all its sonars and sparker units to ensure that the estimated sound pressure levels (SPLs) are accurate.

Comment 9: BP/EM/PAI notes that, as discussed in the IHA application, the 200 to 240 kHz sounds from the single- and multi-beam sonars are above the frequency range audible to any marine mammals in the Beaufort Sea. The 105 kHz sounds from the main side-scan sonars are above the frequency range audible to any marine mammals in the Beaufort Sea, except for the few belugas that might be encountered in nearshore waters. Because the side-scan sonar signals are beamed (i.e., not omnidirectional), and because at 105 kHz, absorption by seawater will cause the sounds to attenuate by an additional 39 dB/km over and above the usual spreading losses (see Richardson *et al.*, 1995, p.73), impacts by the side-scan sonars are further reduced.

Response: NMFS concurs that harassment or injury takings of marine mammals in the Alaskan Beaufort Sea are unlikely if the sounds are above those frequencies within which an animal can hear.

Comment 10: BP/EM/PAI note that contrary to statements made in the Federal Register notice, that the 40- to 60-ft (12.2 to 18.3 m) depth contours are within the southern portion of the bowhead migration corridor. Also, the three species of seals covered by the IHA application can all occur anywhere within the 20 to 60 ft (6.1 to 18.3 m) depth zone.

Response: Thank you for providing this information. NMFS has made the appropriate changes in this document.

Comment 11: BP/EM/PAI clarify that, contrary to statements made in the Federal Register notice, if the shallow hazards survey operations continued into September, then it is possible that the survey route could pass through one or more local areas of concentrated feeding by bowhead whales. Feeding concentrations occur in some (not all) years at unpredicted sites within the 20- to 60-ft (6.1- to 18.3-m) zone (Richardson *et al.*(eds), 1987).

Response: NMFS has made the appropriate changes in this document and has taken this information into account when making its determinations under the MMPA.

Comment 12: The AWL notes that although sonar systems have been used for seismic testing for many years, recent developments, such as the beaked whale stranding incidents in the Kyparissiakos Gulf in the Mediterranean in 1996 and in the Bahamas in 2000, indicate that certain uses of sonar may kill or severely impact marine mammals, rather than merely changing behavioral patterns, masking sounds temporarily, or inflicting stress.

Response: We agree that certain sonars, because of the type and intensity of sounds used, have the potential to injure or kill marine mammals.

Comment 13: The AWL states that the sonar system used by the Navy, to which the impacts described in the previous comment reference, reportedly operates at levels up to 240 dB and at stated operating ranges between 100 Hz and 500 Hz.

Response: The AWL is confusing two different Navy sonars. While the Navy's SURTASS LFA sonar system operates between 100 Hz and 500 Hz, each of the 18 transmitters has a maximum SPL of 215 dB, not 240 dB. The sonar system used by several ships transiting the Bahamas Channel, and implicated in the Bahamas stranding incident in March, 2000, were standard, hull-mounted mid-frequency sonars with normal frequency ranges and power outputs of 3.5 and 7.5 kHz and 235 dB, respectively.

Comment 14: The AWL states that underwater 170 dB has been described as equivalent to 144 dB in air, which is comparable to a jet engine at full throttle, which emits 140 dB.

Response: A fully-loaded Boeing 747 jet aircraft, measured up-close at takeoff is approximately 150 dB (re 20 μPa); other aircraft may make more or less noise. To convert the in-air standard to the water standard used in this document (re 1 μPa), 62 dB needs to be added to the aerial standard (26 dB for the different sound reference levels, plus 36 dB for the specific impedance differences between air and water). By this conversion, the underwater equivalent of the 747 sound at takeoff is 150 dB + 62 dB = 212 dB. If the jet aircraft makes 140 dB of noise, the equivalent underwater level would be 202 dB, not 170 dB as stated.

Subsistence Concerns

Comment 15: BP/EM/PAI note that they have had several meetings with representatives of the AEWC to discus development of a Conflict Avoidance Agreement (CAA). BP/EM/PAI has reviewed drafts of a proposed agreement and are in the process of completing a final agreement which is expected to be executed in early July.

Response: Thank you for this information.

Comment 16: The AEWC strongly opposes the construction of a natural gas pipeline along the northern route, including the shallow hazard survey proposed by BP/EM/PAI. All 10 villages of the AEWC have signed a resolution to this effect on February 20, 2001. However, recognizing that the shallow hazard survey has already been permitted, the AEWC anticipates signing a CAA with BP/EM/PAI for the 2001 open water season and expects that the CAA will provide sufficient mitigation for any noise-related impacts to subsistence hunting as a result of the proposed shallow hazards survey.

Response: Thank you for this information. The AEWC has subsequently notified NMFS that the AEWC, and the whaling captains from the villages of Kaktovik and Nuiqsut, signed a CAA with BP/EM/PAI on this action.

Mitigation, Monitoring and Reporting Concerns

Comment 17: The MMC concurs with NMFS that the short-term impact of conducting the proposed shallow hazards survey in the Alaskan Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and pinnipeds and that the monitoring and mitigation measures proposed by BP/EM/PAI appear to be adequate to ensure that the planned surveys will not result in the mortality or serious injury of any marine mammals or have unmitigable adverse effects on the availability of marine mammals for taking by Alaska Natives for subsistence uses. Therefore, the

MMC recommends that the requested IHA be issued, provided that NMFS is satisfied that the monitoring and mitigation programs will be carried out as described in the application.

Response: Thank you for the comment. On June 5, 2001, NMFS convened a peer-review/stakeholders meeting in Seattle, WA to discuss the proposed monitoring and mitigation measures for this shallow hazards survey program. As a result of suggestions made by participants at this meeting, LGL revised the monitoring and mitigation program contained in the BP/EM/PAI application. The revised monitoring plan is available upon request (see **ADDRESSES**). A description of the monitoring and mitigation that will be required for this activity is described later in this document.

Although NMFS has no reason to believe that the monitoring and mitigation plans will not be carried out, a report on all activities under the IHA will be required to be submitted to NMFS within 90 days of completion of the planned survey. This report will be reviewed by NMFS to determine whether BP/EM/PAI fully complied with the terms and conditions of the IHA, including the monitoring and mitigation requirements.

Comment 18: The MMC questions however, whether there is a sufficient basis for concluding that the activity, combined with past and possible future activities, will not have non-negligible cumulative effects on any of the potentially affected marine mammal species or their availability to Alaska Natives for subsistence uses. Therefore, the MMC recommends (as in previous letters) that NMFS, if it has not already done so, assess whether the monitoring required as a condition of this and possible future IHAs will be adequate to detect possible non-negligible cumulative effects, and if not, what additional steps need to be taken to ensure that any such effects will be detected before they reach significant levels.

Response: The proposed shallow hazards survey is unlikely to have more than minimal behavioral effects on affected marine mammal species. If the survey period extends into the fall bowhead migration season, there may be some effect on those bowheads inshore but sounds would be unlikely to reach the main migration path for bowheads which is well offshore.

For cumulative effects from anthropogenic noise, NMFS believes that at a minimum, shipboard monitoring of the safety zone must continue to implement mitigation measures to protect marine mammals from potential injury. The Scientific Peer Review Workshop participants concluded previously that the current research and monitoring proposed by Western Geophysical for seismic surveys and by BPX for oil development at Northstar (see 66 FR 32321, June 14, 2001 and 65 FR 34014, May 25, 2000), coupled with existing projects to monitor bowhead population abundance (trends in abundance), is the best way currently available to obtain the information necessary to determine overall cumulative impacts from noise on bowhead whales. Existing projects include those by the North Slope Borough (spring bowhead census), the MMS autumn aerial survey, and the MMS-funded photo-identification of bowhead whales being conducted as part of a bowhead feeding study. Provided trends in bowhead abundance continue to be positive, NMFS presumes industrial development on the North Slope is not adversely affecting the bowhead population. Similar work is underway for ringed seals.

MMPA Concerns

Comment 19: The AWL claims that the taking of endangered species is governed by the MMPA, which requires that the Federal government observe a strict policy of species and habitat conservation.

Response: The taking of endangered species is governed by the Endangered Species Act (ESA); the taking of endangered marine mammals is governed by both the ESA and the MMPA. NMFS must comply with the requirements of both acts prior to issuance of authorizations to take marine mammals incidental to lawful maritime activities.

Comment 20: The AWL believes that the proposed activity would violate the MMPA since the proposed activity may deafen or even kill unknown numbers of the Beaufort Sea stock of bowhead whales. Thus, the AWL believes the BP/EM/PAI application does not support an affirmative finding of ''negligible impact.''

Response: For reasons provided in detail elsewhere in this document, NMFS has reviewed the best scientific information available on this issue, and has determined that use of low-intensity, minisparker, a mid-frequency sub-bottom profiler and several high-frequency sonars, including a side-scan sonar system, a multi-beam bathymetric sonar system, and a single-beam bathymetric sonar system will not result in more than small numbers of marine mammals being affected, have more than a negligible impact on bowhead whales or other species of marine mammals, nor have an unmitigable adverse impact on the subsistence harvesting of marine mammals. NMFS has determined that the acoustic devices proposed for use by this activity are of low intensity which are simply incapable of causing serious injury or mortality.

ESA Concerns

Comment 21: The AWL states that if the current application (by BP/EM/PAI) to take by seismic testing is granted, it will be granted for a period during NMFS' review of an ESA petition to designate critical habitat for bowhead whales in the Beaufort Sea in order to determine whether the Beaufort Sea area should be permanently protected from seismic testing. If NMFS grants the petition to take during the review period for the ESA petition to protect, it will defeat the entire purpose of its own review process.

Response: On May 22, 2001 (66 FR 28141), NMFS announced receipt of a petition from the Center for Biological Diversity and the Marine Biodiversity Protection Center to designate critical habitat for the Western Arctic stock of bowhead whales under the ESA. NMFS is currently reviewing this petition to determine whether designation of critical habitat is warranted. There is no provision under the ESA that activities that might impact critical habitat cease while a review is underway. However, Federally-permitted oil and gas exploration activities require consultation under section 7 of the ESA if endangered or threatened species might be taken. A consultation with the MMS was concluded on May 23, 2001. The finding of that consultation was that oil and gas exploration, and the issuance of small take authorizations under section 101(a)(5)(D) of the MMPA, are not likely to jeopardize the continued existence of any species under the jurisdiction of NMFS. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

NEPA Concerns

Comment 22: The NAEC believes that the offshore natural gas pipeline development project must undergo a complete EIS process, including scoping, prior to onset of the survey. Shallow hazard surveys should not be treated separately from the rest of the project or given a categorical exclusion from the complete NEPA process.

Response: NMFS disagrees. NEPA does not mandate ground- truth surveys be delayed until completion of NEPA. Information obtained during on-site evaluations, biological data gathering, and research are needed prior to

drafting an EIS in order for the document to contain the best scientific and cultural information obtainable, fully address alternatives, and make environmental impact analyses. The reason why NMFS considers issuance of a small take authorization for this activity as a Categorical Exclusion is provided later in this document (see NEPA).

Other Concerns

Comment 23: Several commenters noted that the Alaska State Legislature passed, and the Governor of Alaska signed into law, a bill prohibiting leases under the Right-of-Way Leasing Act on state land in or adjacent to the Beaufort Sea. The bill (SB 164) became effective on May 17, 2001. The intent of this new law is to specifically prohibit the placement of a natural gas pipeline in the Beaufort Sea. Thus, the NAEC notes, any application made by BP/EM/PAI for the study of such a route should summarily be denied as contrary to the laws of the State of Alaska.

Response: As explained in detail in the proposed authorization document and in this document, the proposed action before NMFS is not an authorization to take marine mammals incidental to construction of a natural gas pipeline, but rather an authorization to take marine mammals incidental to a shallow hazards survey. It is the pipeline construction that is prohibited by SB 164, not the shallow hazards survey.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several documents (Corps, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996) and is not repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (Balaena mysticetus), gray whales (Eschrichtius robustus), beluga (Delphinapterus leucas), ringed seals (Phoca hispida), spotted seals (Phoca largha) and bearded seals (Erignathus barbatus). Descriptions of the biology and distribution of these species and of others can be found in BP/EM/PAI (2001), NMFS (1999), Western Geophysical (2000) and several other documents (Corps, 1999; Lentfer, 1988; MMS, 1992, 1996; Ferrero *et al.*, 2000). Information on cetacean and pinniped hearing can be found in BP/EM/PAI (2001) and Richardson et al. (1995) and other sources. Please refer to these documents for additional information on marine mammals.

Potential Effects of Underwater Noise on Marine Mammals

The effects of underwater noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any human-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics, echolocation sounds of odontocetes, and environmental sounds such as surf noise; and (6) very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Disturbance by anthropogenic noise is the principal means of taking by this activity. Vessels may provide a potential secondary source of noise. In addition, the physical presence of vessels could also lead to non-acoustic effects on marine mammals involving visual or other cues. For a discussion on the anticipated effects of ships, boats, and aircraft on marine mammals and their food sources, please refer to the BP/EM/PAI application. Information on these effects is adopted by NMFS as the best information available on this subject.

The pulsed sounds produced by shallow hazards operations will be detectable to marine mammals some distance away from the area of the activity, depending on ambient conditions and the sensitivity of the receptor (Balla-Holden *et al.*, 1998; Greene, 1998; Burgess and Lawson, 2000). There are no available data on bowhead or beluga reactions to shallow hazards acoustic sources and limited data are available for seals. However, the planned types of shallow hazards and sub-bottom profiling equipment have lower source levels and higher frequencies than airgun arrays or even a single airgun. It is possible that the shallow hazards sources may disturb some marine mammals occurring in the area, but the radius of disturbance is expected to be significantly less than when an airgun array is used.

Whales that are approached by the survey vessels may react to the vessels. Reactions may include temporary interruption of previous activities and localized displacement (Richardson et al., 1985; Richardson and Malme, 1993). However, the reaction to the survey vessels should be reduced because the vessels will be traveling at relatively slow speed.

Permanent hearing damage is not expected to occur during the project. It is not positively known whether the hearing systems of marine mammals very close to a shallow hazards acoustic source would be at risk of temporary or permanent hearing impairment, but temporary threshold shift is a theoretical possibility for animals within a few meters of the source, depending on the species, the equipment being used, and the marine mammal species involved (Richardson *et al.*, 1995). For that reason, monitoring the acoustic sources is warranted.

Planned monitoring and mitigation measures (described later in this document) are designed to detect marine mammals occurring near the shallow hazards sources, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment. Moreover, as bowhead whales are known to avoid an area many kilometers in radius around ongoing seismic operations (Miller *et al.*, 1998, 1999), bowheads will probably also avoid the planned shallow hazards operation, although not at such long range given the much lower level of the emitted sounds. Thus, at least in the case of baleen whales, the animals themselves are expected to remain far enough from a shallow hazards survey operation to avoid any possibility of hearing damage.

Masking effects on marine mammal calls and other natural sounds are expected to be limited in the case of bowhead and gray whales exposed to shallow hazards pulses. Although pulse repetition rates will be high during shallow-hazards surveys, the source

levels of those pulses will be considerably lower than during seismic surveys, and there will be little overlap in frequency with the predominant frequencies in bowhead calls. This will considerably reduce the potential for masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986; Greene, 1997; Greene et al., 1999). Bowheads are likely to continue calling in the presence of shallow hazard source pulses as well. In the case of bowhead whales, masking by shallow hazards sources will be limited because of the intermittent nature of shallow hazards survey pulses, their higher frequencies as compared with frequencies of bowhead calls, and their relatively low source levels. Masking effects are more likely to occur in the case of beluga whales, given that sounds important to them are predominantly at higher frequencies, including frequencies produced by some of the shallow hazards sources. However, the offshore distribution of beluga whales in the survey area and the rapid absorption of high-frequency sound in seawater will limit the exposure of belugas to shallow hazards pulses and thereby limit the likelihood of masking.

Behavioral Reactions of Cetaceans to Disturbance

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening. However, the actual radius of effect of noise on cetaceans is considerably smaller than the radius of detectability (Richardson *et al.*, 1995).

Reactions of cetaceans to a minisparker have not been reported. The source levels of this device is lower than the source level of a single airgun whose volume exceeds 10 in3, but the frequency range is broader. Both baleen and toothed whales sometimes move away from medium-frequency sonars and similar sources (Richardson *et al.*, 1995). If these avoidance effects do occur, the avoidance distances are expected to be substantially less (at least for bowhead and gray whales) than avoidance distances around an airgun array as used during seismic surveys. For example, sounds from an airgun array typically are above 160 dB (re 1 uPa (rms)) at distances out to a few kilometers. In contrast, sounds from a mini-sparker and sub-bottom profiler, as measured in the Beaufort Sea during 1997 and 2000, diminished below 160 dB within ranges of 155 m (508.5 ft), and less than 77 m (252.6 ft), respectively (Balla-Holden *et al.*, 1998; Burgess and Lawson, 2000). Those studies indicate that, at a range of 2 km (1.2 mi), the received levels would be around 135 dB (re 1 uPa (rms)) for the minisparker and below 120 dB (re 1 uPa (rms)) for the sub-bottom profiler. If migrating bowhead whales are as sensitive to these mid-frequency sources as they are to LF pulses from an airgun array, then avoidance might be evident at distances as much as 2 km (1.2 mi), at least at times when the minisparker is in use.

The side-scan, single-beam, and multi-beam sonars to be used in the shallow hazard survey will operate between 100 kHz and 390 kHz. These sounds are at frequencies above the expected hearing range of bowhead and gray whales. The 100-kHz side-scan sonar sounds (but not the 390 kHz sounds) would be within the hearing range of belugas (White *et al.*, 1978; Johnson *et al.*, 1989). Thus with the possible exception of the few belugas that might be exposed to the 100-kHz side-scan, these high-frequency pulses will be inaudible to cetaceans. The probability that belugas will be exposed to the side-scan sonar is low because belugas are infrequent in nearshore waters of the study area. Also, side-scan sonar sounds at 100 kHz will be rapidly absorbed by seawater and will not be detectable at long range. At 100 kHz, there are absorption losses of 36 dB/km (36 dB/0.62 mi) in addition to the usual spreading loss (Richardson *et al.*, 1995).

Behavioral Reactions of Pinnipeds to Disturbance

Reactions of arctic seals to a minisparker and/or sub-bottom profiler are not known in any detail. Ringed seals have been noted to react ''vigorously'' to survey vessels when shallow hazard sources were silent, and no seals were seen at distances closer than 70 m (229.6 ft) when sources were on during an earlier shallow hazards survey in the Beaufort Sea. However, it is believed that the seals were reacting more to the small airgun used in that survey, than to the GeoPulse bubble pulser (which is not being used in this activity).

The sounds emitted by the side-scan sonar will be largely or entirely inaudible to pinnipeds, as the frequencies (100 and 390 kHz) are well above the effective hearing range of pinnipeds.

Numbers of Marine Mammals Expected to be Taken

Incidental takes of marine mammals by harassment could potentially occur for the duration of the proposed activity (potentially July through September, 2001) during times when the shallow-hazard acoustic sources would be in operation. Seals are in the area throughout the period; few whales are likely to be in the Alaskan Beaufort Sea before late August.

Based on an analysis provided in its application, BP/EM/PAI estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Population Size	Harassment Takes in 2001	
		Possible	Probable
Bowhead	8,200	.....	.....
160 dB criterion	.....	42	3
2 km criterion	.....	1,601	285
Gray whale	26,000	<10	0
Beluga	39,258	250	<150
Ringed seal*	1-1.5 million	93	10
Spotted seal*	>200,000	<10	<2

Species	Population Size	Harassment Takes in 2001	
		Possible	Probable
Bearded seal*	>300,000	15	<15

* Some individual seals may be harassed more than once

Effects of Anthropogenic Noise and Other Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from shallow hazards activities are the principal concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise. The hunters are concerned about both displacement and skittish whales.

Nuiqsut and Kaktovik are the communities that are closest to the area of the proposed activity. Hunters from both villages harvest bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take two to four whales each season, while Kaktovik typically take 3 bowheads, with 4 bowheads taken when an ''unused strike'' is allocated from another village. Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principal field camp location for Nuiqsut whalers, is located immediately south of the potential pipeline route. Thus, the possibility and timing of potential shallow hazards activities in the Cross Island area requires BP/EM/PAI to provide NMFS with either a Plan of Cooperation with North Slope Borough residents or measures that have been or will be taken to avoid any unmitigable adverse impact on subsistence needs. BP/EM/PAI's application has identified those measures that will be taken to minimize any adverse effect on subsistence. In addition, the timing of shallow hazards activities have been addressed in a CAA with the Nuiqsut and Kaktovik whalers and the AEWC. The CAA is described in the BP/EM/PAI application.

The location of the proposed activity is south of the center of the westward migration route of bowhead whales, but there is some overlap. Localized disturbance to bowheads by shallow hazards sources and the vessels that deploy them could occur if the shallow hazards operations continue into the bowhead migration season. The proposed timing of the shallow hazards survey is not expected to overlap with the bowhead hunt at either Kaktovik or Cross Island. However, if the shallow hazards survey does continue into the bowhead migration season, as discussed previously in this document, the radius of potential disturbance will be much smaller than would be the case during a seismic survey, given the much reduced source levels of the sounds used for shallow hazards surveys. Shallow hazards operations are expected to begin in July and be completed by September, depending upon ice conditions. If possible, BP/EM/PAI expects the work to be completed by the end of August. Few bowheads approach the project area before the end of August, and whaling does not normally begin until after September 1. However, the mitigation measure adopted in previous years to restrict operations to areas west of Cross Island during the bowhead hunting season is not possible for this project because nearly all of this survey is located east of Cross Island.

Many Nuiqsut hunters hunt seals intermittently year round. During recent years, most seal hunting has been during the early summer in open water. In summer, boat crews hunt ringed, spotted, and bearded seals. The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island. This area does not overlap with the planned shallow hazards survey area and, therefore, is not expected to influence the seal hunt by Nuiqsut residents.

At Kaktovik, the planned shallow hazards survey during the summer has some potential to influence seal hunting activities, but any effects are expected to be negligible (BP/EM/PAI, 2001). During the open water season, both ringed and bearded seals are taken, along with an occasional spotted seal. Given the lower source levels of the shallow hazard sources, their radius of influence on seals is expected to be less than that of an airgun array even after allowing for the potentially greater sensitivity of seals to mid-frequency sounds. Therefore, it is unlikely that the shallow hazards survey would have more than a negligible impact on seals or subsistence hunting of seals.

Mitigation

The timing of the shallow hazards survey has been planned by BP/EM/PAI so that most or all of the survey will occur while there are few bowhead whales in the Alaskan Beaufort Sea, and thus would avoid or minimize overlap with bowhead hunting. BP/EM/PAI proposes to complete all three survey segments (centerline, north offset, and south offset) near Cross Island at the beginning of the survey period (July), well in advance of 1 September, 2001.

Safety zones will be established around each of the sources (except the multi-beam source because it is above the hearing frequencies of marine mammals) and monitored by marine mammal observers. Whenever a marine mammal is about to enter the safety zone appropriate for the species, the observer will ensure that each of the sources will be shut-down until the mammal leaves its safety zone. The safety zones proposed for this activity are as follows:

SOURCE	TOW DEPTH (m/ft)	WATER DEPTH (m/ft)	RMS RADII (in m/ft)	
			190 dB (Seals)	180 dB (Whales)
Minisparker	0.3/1	~6/20	6/20	18/59
Sub-bottom profiler	3/10	~13/43	3/10	8/26

Within the first 10 days of the survey's start, BP/EM/PAI will measure and analyze the sounds from the various sources, and, after consultation with NMFS, adjust the proposed safety radii, provided here, as necessary.

During night-time, floodlights may be employed to illuminate the safety zone, and night vision equipment will be available to facilitate observation. It should be noted that marine mammal monitoring will not be required for the multi-beam source vessel, only for the sub-bottom source vessel, since the sonar equipment that the multi-beam vessel will operate will emit sounds outside the frequency range at which those species of seals and whales expected in the area can hear well. Also, consistent with previous shallow hazards surveys, because of the lower-powered sources employed, no ramp-up procedure is proposed to be used for this activity.

Monitoring

The BP/EM/PAI will sponsor marine mammal and acoustical monitoring of its 2001 shallow hazards program. This monitoring will be similar to monitoring conducted in association with the 1997 and 2000 shallow hazards operations in the Beaufort Sea. BP/EM/PAI will not conduct an aerial monitoring program because the zones of acoustical influence are likely to be significantly smaller than those found for seismic airgun array operations in the Beaufort Sea.

The monitoring plan submitted to NMFS on March 20, 2001, was reviewed at a peer-review workshop held in Seattle, WA, on June 5, 2001. The monitoring plan was revised in accordance with that meeting and was submitted to NMFS on July 2, 2001. A copy of this monitoring plan is available upon request (see **ADDRESSES**). The monitoring plan has two components.

Vessel Monitoring

BP/EM/PAI will have a marine mammal observer aboard the sub-bottom source vessel to search for and observe marine mammals whenever the shallow hazards operations are in progress, and for at least 30 minutes prior to the planned start of operations. A total of 3 observers will be employed, consisting of two qualified biologists and an Inupiat Observer/Communicator with experience in this type of work. They will work in shifts usually no longer than 4 hours each to minimize observer fatigue. All marine mammal observations and shutdowns will be recorded in a standardized format, as done in previous acoustical surveys.

When mammals are detected within, or about to enter, the safety zone designated to prevent injury to the animals (see Mitigation), the survey crew leader will be notified so that shutdown procedures can be implemented immediately.

Acoustical Monitoring

Acoustical measurements of sounds emitted by the shallow hazards sources will be obtained by vessel-based hydrophones. A vessel-based acoustical measurement program is proposed to be conducted for a few days early in the program. The main objective will be to measure the levels and other characteristics of the horizontally propagating sound from the minisparker, and sub-bottom profiler. The sources will be measured at various distances and directions from the source. Routine vessel sounds, made by BP/EM/PAI vessels, will also be recorded for any vessels whose sounds have not been recorded previously.

Reporting

BP/EM/PAI will provide an initial report on the 2001 shallow hazards activity to NMFS within 90 days of the completion of the shallow hazards program. This report will provide dates and locations of shallow hazards operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final draft technical report will be provided by BP/EM/PAI within 20 working days of receipt of the document from the contractor, but no later than April 30, 2002. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks and will reflect suggestions and recommendations made during peer review.

Consultation

Under section 7 of the ESA, NMFS completed consultation with MMS on the oil and gas exploration and associated activities in the Alaskan Beaufort Sea on May 25, 2001. This consultation includes a review of seismic and related noise sources used by the oil and gas industry. The finding of that consultation was that oil and gas activities in the Alaskan Beaufort Sea, and the issuance by NMFS of a small take authorization for oil and gas activities, are not likely to jeopardize the continued existence of the bowhead whale. In formulating this opinion, NMFS used the best available information, including information provided by MMS, recent research on the effects of oil and gas activities on the bowhead whale, and the traditional knowledge of Native hunters and the Inupiat along Alaska's North Slope. A copy of the Biological Opinion issued as a result of this consultation is available upon request (see **ADDRESSES**).

NEPA

In conjunction with the 1996 notice of proposed authorization (61 FR 26501, May 28, 1996) for open water seismic operations in the Beaufort Sea, NMFS released an Environmental Assessment (EA) that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. No comments were received on that document and, on July 18, 1996, NMFS concluded that neither implementation of the proposed authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the Alaskan Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. As a result, the preparation of an environmental impact statement on this action is not required by section 102(2) of NEPA or its implementing regulations.

In 1999, NMFS determined that a new EA was warranted based on the proposed construction of the Northstar project, the collection of data from 1996 through 1998 on Beaufort Sea marine mammals and the impacts of seismic activities on these mammals, and the analysis of scientific data indicating that bowheads avoid nearshore seismic operations by up to about 20 km (12.4 mi). Accordingly, a review of the impacts expected from the issuance of an IHA has been assessed in the EA, and NMFS determined in 1999, that there would be no more than a negligible impact on marine mammals from the issuance of the harassment authorization that year and that there will not be any unmitigable impacts to subsistence communities, provided the mitigation measures required under the authorization were implemented. As a result, NMFS determined in 1999 that neither implementation of the authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. Since this proposed action falls into a category of actions that do not individually or cumulatively have a significant impact

on the human environment as determined through the 1999 EA, this action is categorically excluded from further NEPA analysis (NOAA NAO 216-6).

Determinations

Based on the evidence provided in the application, the EA, and this document, and taking into consideration the comments submitted on the application and proposed authorization notice, NMFS has determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization to BP/EM/PAI and that there will not be any unmitigable adverse impacts to subsistence communities. NMFS has determined that the short-term impact of conducting shallow hazards surveys in the Alaskan Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of shallow hazard survey operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed shallow hazards activity in waters generally too shallow and distant for most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries or mating grounds are known to occur within or near the planned area of operations during the season of operations. However, there may be some overlap with areas of concentrated feeding as mentioned previously in this document.

Because bowhead whales are east of the activity area in the Canadian Beaufort Sea until late August/early September, shallow hazard survey activities in the Alaskan Beaufort Sea are not expected to impact subsistence hunting of bowhead whales prior to that date. Using the expected density of whale abundance that could be subject to acoustic harassment from this work, the intensity and frequency of the sound source, and the equivalent received sound levels for this equipment when compared to a seismic array, a maximum of 1,601 bowhead whales could be incidentally harassed between the effective date of this authorization and September 30, 2001. This represents the estimated number of whales which would occur within 2 km of the source. The actual duration of the survey and the proximity of these operations to the bowhead fall migration corridor are likely to reduce this estimate substantially. Additionally, this estimate considered the distribution of the 1997 fall bowhead migration; a year in which the axis of the migration corridor was close to shore. The AGPPT estimates the most probable level of take as 285 bowhead whales. However, NMFS acknowledges that, should weather conditions delay survey work into September and survey work occur in deeper waters (e.g. over the 60 foot isobath rather than the 40 foot contour as expected), the higher estimate could be approached. Therefore, NMFS believes an appropriate estimate of take for this work may be established as the average between these estimates, or 943 animals. NMFS believes that no bowheads will be killed or seriously injured by BP/EM/PAI's activity and accordingly has not authorized takings by injury or mortality.

Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs have been the subject of consultation between BP/EM/PAI and subsistence users. This CAA, which consists of three main components: (1) Communications, (2) conflict avoidance, and (3) dispute resolution, has been concluded for the 2001 open-water seismic season.

Also, while shallow hazard surveys in the Alaskan Beaufort Sea have the potential to influence seal hunting activities by residents of Kaktovik, because the zone of influence on seals by shallow hazard survey sources is expected to be small (less than a few hundred meters in diameter), and because the village of Nuiqsut conducts its major sealing during the summer months off the Colville Delta, west of the proposed survey area, NMFS believes that BP/EM/PAI's shallow hazards survey will not have an unmitigable adverse impact on the availability of ringed, bearded and spotted seals needed for subsistence.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of bowhead whales, gray whales, beluga whales, and ringed, spotted and bearded seals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to BP/EM/PAI for the herein described shallow hazards survey during the 2001 open water season in the Alaskan Beaufort Sea provided the mitigation, monitoring, and reporting requirements described in this document and in the IHA are undertaken.

Dated: July 23, 2001.

Wanda L. Cain,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072701G]

Marine Mammals; File No. 1012–1647

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Robert B. Griffin, Ph.D., Center for Marine Mammal and Sea Turtle Research, Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236, has applied in due form for a permit to take Atlantic spotted dolphins (Stenella frontalis) and bottlenose dolphins (Tursiops truncatus) for purposes of scientific research over a five year period.

DATES: Written or telefaxed comments must be received on or before September 5, 2001.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.