Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 89–3A018.''

Outdoor Power Equipment Institute, Inc.'s (''OPEI'') original Certificate was issued on March 19, 1990 (55 FR 11041, March 26, 1990) and previously amended on April 20, 1990 (55 FR 21766, May 29, 1990); and July 12, 1990 (55 FR 29398, July 19, 1990). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Outdoor Power Equipment Institute, Inc. (''OPEI''), 341 South Patrick Street, Alexandria, Virginia 22314.

Contact: Laurence J. Lasoff, Counsel, Telephone: (202) 342–8530.

Application No.: 89–3A018.

Date Deemed Submitted: September 16, 1997.

Proposed Amendment: OPEI seeks to amend its Certificate to:

1. Add the following company as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Excel Industries, Inc., Hesston, Kansas; and

2. Delete as ''Members'' the following companies: Engineering Products Company, Inc., Waukesha, Wisconsin; E-Z Rake, Inc., Lebanon, Indiana; Falls Products Inc., Geona, Illinois; Merry Tiller, Inc., Birmingham, Alabama; NOMA Outdoor Product, Inc., Jackson, Tennessee; Roto-Hoe Company, Newbury, Ohio; Sarlo Power Mowers, Inc., Fort Myers, Florida; Snapper Power Equipment, McDonough, Georgia; and Trailmate, Inc., Sarasota, Florida.

Dated: September 26, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–26066 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070197A]

Small Takes of Marine Mammals Incidental to Specified Activities; Oil and Gas Exploration Drilling 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 marine mammals by harassment incidental to conducting oil exploration drilling activities in Camden Bay, Beaufort Sea in waters off Alaska has been issued to ARCO Alaska, Inc. (ARCO).

DATES: This authorization is effective from September 25, 1997, through September 1, 1998.

ADDRESSES: The application and monitoring plan, authorization, and environmental assessment (EA) are available by writing to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

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

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking 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.''

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters, including requirements for peer-review of a monitoring program and a plan of cooperation between the applicant and affected subsistence users. For additional information on the procedures followed for this

authorization, please refer to that document.

Summary of Request

On May 30, 1997, NMFS received an application from ARCO requesting a 1-year authorization for the possible harassment of small numbers of several species of marine mammals incidental to moving a Concrete Island Drilling System (CIDS) from Prudhoe Bay to Camden Bay, Alaska and drilling an oil exploration well at that location during the winter, 1997/98. Essentially, the project has several stages as summarized below: (a) Deballast the bottom-founded Global Marine Drilling Co. ''Glomar Beaufort Sea #1'' CIDS and move it to the well site in Camden Bay on or about August 15, 1997; (b) Transport drilling supplies, materials and other equipment to the CIDS. Transport fuel from Canada to the site; (c) Warm shutdown mode until such time as ice in Camden Bay is fully formed (estimated to be around November 1, 1997). Crew change via helicopter during this and succeeding times; (d) Drilling operations after ice formation on or around November 1, 1997 (drilling and well testing operations may occur from that date through mid-May 1998); (e) Cold shutdown mode from completion of drilling and well testing operations until around July 1, 1998; and (f) Towing CIDS from Camden Bay by tug boats to Prudhoe Bay or another location.

A more detailed description of the work planned is contained in the application and is available upon request (see **ADDRESSES**). Moving the CIDS from Prudhoe Bay began on August 16, 1997. The barging of fuel, equipment and supplies will be completed on or before August 31, 1997.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on July 15, 1997 (62 FR 37881), and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, comments received were from the Marine Mammal Commission (MMC), the Alaska Eskimo Whaling Commission (AEWC) and North Slope Borough (NSB), ARCO, Greenpeace Alaska (Greenpeace) and the Trustees for Alaska (Trustees). ARCO's comments which addressed contents in the EA are not discussed further in this document. Information on the activity and authorization request that are not subject to reviewer comments can be found in the proposed authorization notice and is not repeated here. Issues outside either the scope of the IHA process or on the impacts on marine mammals and/or subsistence needs for marine mammals are not addressed in this document.

Negligible impact concerns

Comment 1: Trustees believe that NMFS fails to adequately discuss scientific information which found significant effects from disturbance on whales and other marine mammals. They believe NMFS provided little information in the notice and EA not found in ARCO's application.

Response: The MMPA requires NMFS to use the best scientific information available when determining whether an activity will have a negligible impact on marine mammals (see the definition of negligible impact above or in 50 CFR 216.103). Extensive monitoring of impacts of oil exploration activities on marine mammals and analyses of the results from those studies have been conducted over the past two decades. This information has also been summarized elsewhere (*e.g.*, Richardson *et al.* (1995b) on noise impacts). The EA also summarizes this information and incorporates other documentation by reference. Because the best scientific information to date available to NMFS indicates that oil and gas exploration activities in the Beaufort Sea are not having more than a negligible impact on marine mammals, and because Trustees and other commenters have not provided scientific information to the contrary, an incidental harassment authorization appears warranted.

NMFS does not contradict commenters' position that bowhead whales and other marine mammals may be harassed by noise from aircraft, tugboats and oil drilling operations. However, the MMPA allows a take by harassment if certain findings are made and certain conditions are met. NMFS believes the level of incidental harassment by the ARCO activity will not adversely affect the species or stocks of marine mammals through effects on annual rates of recruitment or survival. Therefore, the taking is considered negligible.

Marine mammal concerns

Comment 2: Greenpeace and Trustees both note that NMFS has failed to fully consider the impacts to the bowhead whale population. They believe NMFS should assess impacts from the first arrivals in the western Beaufort Sea and not just on impacts after August 31.

Response: NMFS agrees and has modified the EA to address this concern. However, NMFS notes that the bowhead whale numbers referenced by Trustees as passing the Camden Bay site are overstated. Moore and Clark (1991) estimated in 1981 through 1983, up to 500 (range 0–500) bowheads may be offshore the Barter Island region; however, no whales were sighted west of that region prior to September 1 during those years. Most sighted bowheads were still in Canadian waters. While NMFS notes that in general, bowhead whales migrate westward through the Alaskan Beaufort Sea from late August to late October, only a portion of the population has been estimated as migrating during this time period. Other bowheads are either undetectable to observers (*i.e.*, under the ice), migrated prior to surveys commencing, or did not migrate to the Canadian Beaufort Sea. As a result of ARCO's agreement with the AEWC to complete moving activities and barge traffic prior to September 1, NMFS believes the majority of the bowhead population will not hear noise emanating from the CIDS because of their presence in the Canadian Beaufort Sea.

Most westward migrating bowheads sighted are in water ranging from 20 to 50 m (65–165 ft) deep (Ljungblad *et al.* 1984). Scientific evidence indicates that bowhead whale distribution appears to be strongly influenced by ice (but see information provided by Traditional Knowledge discussed below). In heavy ice years, bowheads tend to migrate in deeper water (> 60 m (> 197 ft)), while in light ice years, a larger proportion sighted are found in shallow water (<40 m (< 131 ft)) (NMFS 1996). A few may occur close to shore. Therefore, there is some potential that bowhead whales may be incidentally harassed while the CIDS is being towed westward and the supply activities prior to August 31. However, these numbers are considered to be small and the impact negligible. Additional information on this issue can be found in the EA.

Comment 3: Trustees note that NMFS does not provide a specific date for start-up of drilling, nor when the spring bowhead whale migration period begins (when the CIDS should not be moved), nor does it prohibit drilling operations from the CIDS during this period, if drilling takes longer than expected.

Response: NMFS notes that it is unaware whether ice-up needs to be complete prior to the CIDS commencing drilling. Therefore, recognizing that bowhead whales may be migrating westward through the offshore and nearshore Camden Bay area through late October, and drilling during this period of time could result in additional harassment takes that have not been considered in the negligible take analysis, NMFS has conditioned the IHA so that drilling activities prior to

November 1, 1997, are not covered by the IHA and any incidental harassment of bowheads resulting from an early start-up is a violation of the IHA and the MMPA.

During the springtime eastward migration bowheads are presumed to first arrive offshore Camden Bay in late April to early May. This migration is also presumed to occur through the end of June. Because the leads through the ice at this time are usually well offshore (and the reason there is not a springtime subsistence hunt at Nuiqsuk and Kaktovik), no incidental harassment takings are presumed to occur from drilling activities. However, in order to ensure bowhead migration is not impeded by anthropogenic noise, a condition of the IHA prohibits any oil and gas exploration activity in the spring leads, including drilling or vessel noise. If on-site drilling activities are projected to continue into the time bowheads enter offshore Camden Bay, prior to modifying the IHA, NMFS will require submission and implementation of a revised monitoring program to ensure that bowheads will not be seriously affected by drilling activities while moving through the spring leads. In accordance with NMFS regulations, any modification of an IHA that does not involve emergency action to protect marine mammals is subject to a 30-day public comment period. For that reason, a request for an amendment to the IHA, and the accompanying monitoring plan will need to be provided to NMFS no later than March 1, 1998.

If the CIDS remains under the control of, or under contract to ARCO after completion of the drilling operation, the IHA authorizes the harassment of bowheads and other marine mammals incidental to moving the CIDS to another site after the last bowhead migration pulse has completed its eastward migration. If necessary, NMFS will make a determination that the migration is complete and will notify interested parties.

Comment 4: Greenpeace states that the impacts of industrial noise associated with exploratory drilling activities during the bowhead migration have not been adequately evaluated by NMFS.

Response: Other than towing the CIDS and tug/barge traffic, no other activities related to the CIDS operation is anticipated to have an impact on bowhead whales. Impacts on bowheads from vessel noise was discussed in the EA.

Comment 5: Trustees note that NMFS fails to make clear that the drill site is located in significant ringed seal habitat and that seals undergoing stresses such as reproduction (taking place during drilling activities) may be more vulnerable to the effects of contaminants or disturbance. Trustees also notes that NMFS fails to discuss impacts from seismic activities and vehicle traffic.

Response: The biology, abundance and distribution of ringed seals and other pinnipeds were addressed in the EA. The EA notes that some reduction in density of ringed seals within an area of approximately 2.3 nmi (3.7 km) of the CIDS could be expected. However, considering winter-time ringed seal densities of between 2–6 ringed seals/nm^2, few ringed seals should be affected by the CIDS, whose noise disturbance zone is limited to less than 1 nm. Because drilling operations will begin on or around November 1, 1997, well prior to ringed seals establishing birth lairs, and continue through mid-May 1998, ringed seal pupping, (which starts in early April), is unlikely to take place in the vicinity of the CIDS. Therefore, NMFS expects few ringed seals would be affected and that impact will result, at worst, in some displacement. Considering the extensive habitat available to ringed seals and the size of the Alaskan ringed seal population, displacement would not result in more than a negligible impact on the species.

Incidental harassment for either seismic activities or vehicle traffic over ice has not been requested by ARCO, is not being authorized, and is not anticipated by the applicant, except for the latter in emergency situations, such as an oil spill. NMFS notes however, that the incidental taking by this type of activity is the subject of a separate rulemaking action (see 62 FR 42737, August 8, 1997).

Environmental concerns

Comment 6: Trustees believe that the impacts to the Alaska National Wildlife Refuge (ANWR) have been ignored by NMFS. One of their concerns is that, to avoid impacts to marine mammals, helicopters would be required to fly over land. However, this would increase the magnitude and extent of impacts to the wilderness.

Response: NMFS believes no more than a negligible impact will accrue to marine habitats of importance to marine mammals in the waters offshore of ANWR from the wintertime CIDS operation. Once the CIDS is in place and supplied prior to September 1, noise from the CIDS will be limited to generators operating in the warm shutdown mode, and possibly some noise from helicopters supplying the CIDS prior to beginning drilling. Oil drilling noises will not occur until ice-up is complete. Other than small numbers of seals and polar bears (for which the U.S. Fish and Wildlife Service has issued a small take authorization), marine mammals will be unaffected (but see comment 7 below regarding potential for oil spills and comment 8 regarding drilling muds). Impacts relating to issuance of an IHA were addressed in NMFS' EA, other impacts were addressed in the final Environmental Impact Statement (FEIS) for the Beaufort Sea Lease Sale 144 (BSLS 144) and an EA prepared by the Minerals Management Service (MMS) for ARCO's activities.

ARCO will be required to comply with appropriate MMS and ANWR regulations regarding aircraft overflights. Also to mitigate noise levels for marine mammals, NMFS has conditioned the IHA to require aircraft to remain at an altitude of 1,000 ft (305 m) until within 0.5 nm (926 m) of the CIDS, whenever the weather ceiling allows such heights.

Comment 7: Both Greenpeace and Trustees expressed deep concern over the possibility of an oil spill in the vicinity of ANWR. There was concern that in the event of a crude oil blowout, harm to the marine mammals which reside on the barrier islands and in other habitats along the ANWR shoreline would be devastating.

Trustees noted that the relief well plan calls for ice roads and support activities with ANWR. This is unacceptable.

Response: When making a negligible impact determination, NMFS finds that a negligible impact determination may be appropriate if the probability of occurrence is low, but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, NMFS evaluates the risks involved and the potential impacts on marine mammal populations and habitat.

NMFS recognizes that there is still considerable disagreement as to the effects of an oil spill on bowhead whales and other marine mammals in the Alaskan Beaufort Sea. MMS used Oil Spill Risk Analysis modelling to estimate the impacts of a worst-case spill on bowhead whales and concluded that this event would result in the mortality of a few individuals with expected recovery to the species' overall population level in 1 to 3 years. However, some data on the anatomy and migratory behavior of bowhead whales suggest that impacts from a large oil spill could pose a grave threat to this species, especially if substantial

amounts of oil got into the lead system during the spring migration (Albert 1981, Shotts *et al.* 1990). NMFS notes however, that to date no blowouts have occurred during drilling 81 exploratory wells in Alaskan waters as of 1994 (MMS 1996). As analyzed in more detail in MMS' EA and based upon information provided in that document and the FEIS for BSLS 144, NMFS has determined that the potential for a significant oil spill from a single exploration activity site (as contrasted to an oil production site on which oil spill probabilistic analyses are based), and the potential therefore for significant impacts on marine mammals inhabiting the offshore and nearshore waters of Camden Bay, is negligible.

NMFS notes that ARCO's Oil Spill Contingency Plan has been modified to eliminate all references to relief well planning involving construction on, or movement through, ANWR, including its lagoons.

Comment 8: Both Greenpeace and Trustees believe NMFS fails to give meaningful consideration to impacts associated with chronic discharges of contaminants (drilling muds, cuttings, biocides, oil) associated with exploratory drilling operations. Greenpeace believes routine and accidental discharges are substantial.

Response: The discharge of anthropogenic materials from oil platforms, (such as drilling muds, discharged materials and produced water) is regulated by the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System. A permit for oil exploration activities has been issued by EPA for this activity. While drilling muds are relatively non-toxic and the metals associated with drilling muds are virtually unavailable for bioaccumulation by marine organisms (Neff 1987), other anthropogenic materials could potentially harm bowhead whales by reducing or contaminating their food resources if found in sufficient quantities. The feeding strategy of bowhead whales could lead to ingestion of oil from oil-contaminated food, if the prey organisms accumulate petroleum hydrocarbons in their tissue. The effect of pollutants including heavy metals on the planktonic organisms (copepods, euphasiids) on which these whales feed is relatively unknown, but may result in either direct mortality or sublethal effects that inhibit growth, longevity and reproduction. If planktonic crustaceans have the ability to detoxify hydrocarbons, these hydrocarbons are less likely to persist and biomagnify in the bowhead whale. The National Research Council (1985) concluded that the risks to most outer continental shelf (OCS) benthic communities from exploratory drilling discharges are small and result primarily from physical benthic effects. In addition, the relatively small area of these discharges further limits their impact in the Beaufort Sea marine environment.

NMFS has modified its EA to address this concern.

Subsistence concerns

Comment 9: The AEWC has concerns that any major noise-producing activities, including those by ARCO, that occur in the vicinity of a village's subsistence hunt or in the ''upstream'' migration path of the bowhead whales have the potential to interfere with the bowhead subsistence hunt. As a result, the AEWC has requested that all Fall open-water industrial activities with the potential to interfere with the Fall bowhead whale subsistence hunt cease as of August 31, 1997. If the CIDS is not on location at the specified and represented time by ARCO, then the AEWC insists that an approved open water Conflict and Avoidance Agreement (CAA) must be in place prior to the IHA being issued. If the CAA is signed before NMFS issues an IHA, then the AEWC agrees with NMFS that the potential impacts should be sufficiently mitigated to warrant issuance of an IHA with no further mitigation requirements. If the CAA is not signed, the AEWC recommends additional specified mitigation measures. Greenpeace states that no operations should continue east of Cross Island after the end of August.

Response: NMFS has been informed that a CAA between the AEWC and ARCO has been concluded. As part of that agreement, ARCO has agreed to cease all activities in the vicinity of the CIDS, including barge transport of supplies after August 31, 1997. Once the bowhead whale hunt has concluded, activities can continue as scheduled and discussed in the application and proposed authorization.

Comment 10: Greenpeace asserts that the proposed action will have a significant impact on the bowhead whale and Inupiat communities that depend on the bowhead whale for subsistence. Because the impacts of the industrial noise associated with the exploratory drilling activities during the bowhead migration have not been adequately evaluated by NMFS, NMFS must deny ARCO's IHA application.

Response: Impacts to bowhead whales from oil exploration activities were addressed above, in the EA, and in the notice of proposed authorization. NMFS has used the best scientific information available, along with Traditional Knowledge, to assess impacts of vessel, aircraft, and overwinter drilling activities on marine mammals. NMFS believes that a signed CAA supports NMFS determination that there will not be an unavoidable adverse impact on the availability of a species or stock for taking for subsistence needs.

Traditional knowledge concerns

Comment 11: Trustees believe NMFS has ignored valid and relevant scientific information-known through Traditional Knowledge of Native Alaskans-which contradict conclusions that oil industry operations will have a negligible impact. Greenpeace notes that the whaling captains have presented compelling evidence that bowheads are displaced from their migratory route and feeding areas by seismic and drilling operations. Greenpeace also believes that NMFS has dismissed the subtle behavioral effects on bowhead whales (*e.g.* spookiness) that whaling captains discuss.

Response: Traditional Knowledge provides information that industrial noise is detectable to bowhead whales at greater underwater distances than empirical scientific information has shown, and that bowheads will deflect from industrial noise, such as seismic airgun noise (up to 30–35 nmi from the airgun array), at great distances. Traditional Knowledge has been added as appropriate to the EA as requested by the AEWC on July 17, 1997.

NMFS does not dismiss information on behavioral effects from industrial noise on bowheads. These issues are discussed whenever relevant (see for example, NMFS 1996 [1]). Because ARCO's application noted that activities potentially affecting bowhead whales would not take place during the time when the major portion of the stock migrates through the Beaufort Sea, and therefore, no adverse effects on subsistence takings would occur, lengthy discussion on behavioral effects was unnecessary.

Monitoring

Comment 12: Greenpeace finds that ARCO's 1997 proposed monitoring plan is not scientifically rigorous enough to determine impacts to Arctic pinnipeds and cetacean species. Greenpeace contends that ARCO's quasi-scientific experimental design of the monitoring program is aimed at trying to prove that exploratory and other disturbing

[1] NMFS. 1996. Environmental Assessment: Request by BP Exploration (Alaska) Inc. for an Incidental Harassment Authorization to Allow the Incidental Take of Marine Mammals in the Beaufort Sea During the 1996 Northstar Seismic Exploration Program.

activities will have a negligible impact on the marine mammal populations.

Response: Section 101(a)(5)(D)(ii)(III) of the MMPA mandates a monitoring program to assess impacts to marine mammals by the activity. NMFS has stated previously that a monitoring program should be appropriate to determine the distribution and behavioral responses of potentially affected species of marine mammals before, during, and after exposure to the activities. NMFS believes that timing of each phase of ARCO's activity has mitigated affects on marine mammals to the lowest extent practicable. While additional monitoring can certainly be required under the IHA, NMFS must weigh the information value of such monitoring with costs for conducting the monitoring. If costs outweigh benefits, then NMFS believes the monitoring may not be practical, unless extenuating circumstances exist, such as ongoing subsistence harvests, or critically endangered species are present. An example of unnecessary monitoring includes repeating transmission loss tests for a CIDS during oil drilling activities, even though bowhead whales will not be in the vicinity of the CIDS when it is active.

Comment 13: Greenpeace believes NMFS must require a comprehensive monitoring plan that is fully subjected to independent peer design and review.

Response: Section 101(a)(5)(D)(ii)(III) requires an IHA to prescribe, where applicable, the requirements for independent peer-review of monitoring plans for activities where the proposed activity may affect the availability of a species or stock for taking for subsistence purposes. A signed CAA between the AEWC and the activity participants provides NMFS with documentation that the proposed activity will not have an unavoidable adverse impact on the availability of a species or stock for taking for subsistence needs. ARCO's proposed activity was discussed at the Peer-Review Workshop in Seattle on July 17, 1997, with the AEWC. In addition, the monitoring plan has been reviewed by scientists of NMFS and the MMC. The Scientific Director of the MMC, an independent reviewer, was of the opinion that the monitoring plan is adequate to verify that only small numbers of marine mammals are taken, that the taking is by harassment only, and that the impacts on the affected species and stocks are negligible. A similar assessment has been made by NMFS scientists who have reviewed the monitoring plan.

If at any time NMFS believes that the incidental harassment process would benefit from peer-review, it will promptly conduct this review. For example, if ARCO's oil drilling activities continue into the spring or summer, NMFS will require ARCO to provide a revised monitoring plan. That plan will be independently peer-reviewed to ensure that impacts to bowhead whales are adequately assessed.

Comment 14: Greenpeace states that NMFS must require ARCO to employ a full array of bottom-mounted hydrophones and deploy sonobuoys to accurately measure bowhead and other marine mammal vocalizations and ambient noise. The monitoring plan must be designed to substantiate the ''zone of influence,'' however distant.

Response: NMFS disagrees. Under the IHA, during drilling activity phase the harassment of bowhead whales is not authorized. As noted in the application, no drilling will occur prior to complete ice-up, at which time bowhead whales will be in the Bering Sea, and drilling will cease prior to springtime bowhead migration. If, as mentioned in comment 3, drilling activities were to extend into late spring, 1998, and bowheads enter the Camden Bay area, NMFS would require ARCO to request an amendment to its IHA. Included in that request would be a modified monitoring plan.

Substantiating the zone of influence during wintertime for bowheads is viewed by NMFS as unnecessary in light of the above statement. Substantiating a zone of influence for seals would require disruptive research on seals in lairs which, while likely valuable research, is unnecessarily intrusive on the animals when implemented as a monitoring tool. Because of the potential for an increase in Arctic wintertime drilling and seismic work over the next few years, NMFS encourages MMS to fund additional studies on ringed seal behavior and effects from industrial development.

Authorization concerns

Comment 15: Greenpeace and Trustees were concerned about the adequacy of time for NMFS to give adequate recognition to public comments.

Response: As noted by this document, NMFS believes that it has given proper review of all public comments.

Comment 16: ARCO believes that the operational restrictions set out in the IHA are not necessary because no takes of marine mammals are anticipated. For example, ARCO notes that September 1 is only a target date for completing the CIDS supply.

Response: NMFS presumes that the operational restrictions refer to the mitigation measures proposed in the earlier notice. NMFS notes however, that activities that proceed prior to, or after, the dates ARCO has suggested for each phase of the project, may potentially harass marine mammals, especially activities that may affect bowhead migration in the spring leads. The potential for the incidental harassment of marine mammals having a more than negligible impact on marine mammals during these alternative times has simply not been evaluated at this time. As a result, incidental takings outside the periods specified cannot be authorized. NMFS notes however, that once the NSB has secured its whaleboats for the season, and notifies ARCO of this fact, ARCO may continue resupply of the CIDS via barges.

Cumulative impact concerns

Comment 17: Trustees and Greenpeace believe NMFS ignores the cumulative impacts from oil exploration and development in the Arctic. Trustees provide a statement from one whaling captain that bowheads no longer enter Camden Bay due to industrial activity.

Response: NMFS has not ignored the cumulative impact from oil and gas exploration on marine mammals or their habitat. Due to distances between oil and gas exploration activities, NMFS does not expect a cumulative impact in 1997. NMFS has identified two oil and gas exploration activities in the Central and Eastern U.S. Beaufort Sea this year, a seismic survey by BP Exploration (Alaska) and the proposed activity. Other than the potential for the CIDS being towed within proximity to the seismic survey during mid-August, and the resulting noise if the seismic array is operating at the time, no cumulative impacts are anticipated. In 1990, NMFS determined that in any one year between 1990 and 1995 in the Beaufort and Chukchi Seas, there may be between 2 and 5 drilling units operating in Federal waters and two drilling units in state waters. In addition up to 17,000 seismic trackline miles in the Beaufort and Chukchi Seas would be conducted over the five years. On July 16, 1990 (55 FR 29207), NMFS determined that this level of industrial activity would not result in more than a negligible impact on marine mammals. No new information has been provided since that time to require a reassessment of cumulative impacts.

Traditional Knowledge indicates that oil exploration deflects whales further offshore, making them less accessible to whalers. While agreeing with this observation, NMFS notes that because no major oil and gas exploration activities have taken place in Camden

Bay since 1993, if bowhead whales are not following historic migratory routes (according to Traditional Knowledge), then one or more factors must be influencing their migration. These include: Ice conditions, food distribution and/or abundance, or conditioning by bowhead whales to the previous noise events. NMFS notes that a similar migratory modification has been made by California gray whales in their southward migration along the California coast in order to avoid recreational and commercial vessel traffic south of Pt. Conception.

National Environmental Policy Act (NEPA) concerns

Comment 18: Trustees noted that the site-specific impacts of drilling a well in the proposed Warthog area on marine mammals were not addressed in BSLS 144 FEIS, nor in ARCO's exploration plan or oil spill contingency plan. Trustees believe that NMFS' IHA documentation fails to acknowledge the potential effects addressed in ARCO's Oil Spill Contingency Plan.

Response: MMS released an EA that discusses ARCO's planned scope of work in Camden Bay, alternatives to those activities, and the impacts to the human environment from the proposed action and alternatives.

Impacts of potential oil spills resulting from exploration activities on BSLS 144 were addressed in that Lease Sale's FEIS and in MMS' 1997 EA. To the extent that those impacts affect marine mammals and their habitat, appropriate parts have been incorporated by reference in NMFS' EA. Incorporation by reference is provided by Council on Environmental Quality regulations (40 CFR 1502.21).

Comment 19: Greenpeace and Trustees believe that the proposed action will have a ''significant effect on the human environment'' and therefore NMFS needs to prepare an environmental impact statement (EIS) on the action. Greenpeace notes that ARCO proposes to introduce major sources of industrial noise and pollution to a pristine and ecologically significant area off the ANWR. Because the operations associated with, and subsequent exploratory drilling will affect species and habitats that the ANWR is designed to protect, NMFS must prepare a full EIS.

Response: NMFS disagrees. Commenters have not provided scientific information that the impact would be more than negligible (*i. e.*, significant). Since NMFS must analyze a request for an IHA to determine whether the proposed activity has no more than a negligible impact on a species or stock of marine mammals and does not have an unmitigable adverse impact on subsistence users, it believes that the issuance of a small take authorization only requires the preparation of an EA and not an EIS. In this case, the agency found through preparing an EA that the proposed action will not significantly affect the quality of the human environment thus making a finding of no significant impact. If the EA results in this finding, no additional documents are required by NEPA (NOAA Directives Manual 02–10).

Comment 20: Greenpeace notes the alleged inadequacies of the draft EIS on BSLS 144, especially as it relates to marine mammals and habitat-use patterns. Greenpeace references a review of BSLS 144 by the MMC.

Response: NMFS notes that the MMC comments were submitted in response to a draft EIS prepared by MMS for BSLS 144. Appropriate modifications and a response to MMC comments were provided in the FEIS. In addition, NMFS reviewed BSLS 144 under section 7 of the Endangered Species Act (ESA), and concluded formal consultation on November 16, 1995. The finding of that consultation was that, based on the Arctic Regional Biological Opinion, oil exploration activities under BSLS 144 is not likely to jeopardize the continued existence of listed species under its jurisdiction.

NMFS also notes that ringed seal and other marine mammal biology, distribution and abundance, and impacts were provided in its EA on the proposed action.

Other concerns

Comment 21: Greenpeace and Trustees believe that issuance of an IHA will violate the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451–1464). The CZMA provides that a Federal agency may not issue a license or permit to conduct an activity that affects a state's coastal zone before a state concurs with the license applicant's certification that the activity will be consistent with the provisions of the state's plan.

Response: ARCO submitted the necessary information to the State of Alaska in order to evaluate the consistency of ARCO's activities with Alaska's coastal zone management plan (ACZMP). The State has worked with ARCO to address the State's coastal management concerns regarding ARCO's proposed activities in the Beaufort Sea. In managing Alaska's coastal zone, and in its evaluation of ARCO's proposed activities, the State must balance the competing objectives and purposes of the ACZMP. It is NMFS' understanding that the State has expressed no outstanding concerns regarding the consistency of ARCO's proposed activities with the enforceable policies of the ACZMP. An authorization to drill will not be provided to ARCO by MMS until ARCO has received the State's consistency determination.

Comment 22: Trustees contend that an Alaska Native Interest Land Claims Act (ANILCA) section 810 study is required. They believe that because the IHA is a required aspect of the decision regarding use of OCS lands for drilling, and the proposed oil industry activities could also harm the availability and use of ANWR lands for subsistence and cause a restriction of subsistence uses, and ANILCA study is necessary.

Response: The U.S. Supreme Court ruled in March 1987 that, by ANILCA's plain language, section 810 applies only to Federal lands within the State of Alaska's boundaries. ANILCA defines ''public lands'' to mean federal lands situated ''in Alaska,'' a phrase which has a precise geographic/political meaning that can be delineated with exactitude to include coastal waters to a point three miles from the coastline, where the OCS commences. Therefore, an ANILCA section 810 analysis/report is not required for ARCO's Warthog project.

Comment 23: Greenpeace and Trustees both believe ARCO, in deballasting the CIDS and moving the drilling unit to Camden Bay prior to receiving an authorization under the MMPA is in violation of the MMPA because marine mammals will be significantly affected by the action. In addition, NMFS, by not enforcing the MMPA and prohibiting the movement, has also violated the MMPA and the Administrative Procedure Act.

Response: NMFS disagrees. NMFS believes that such an instruction is not authorized by the MMPA, since under the MMPA NMFS authorizes only the taking of marine mammals incidental to that activity, not the activity itself. However, initiating an action that might result in a taking of a marine mammal without an authorization under the MMPA places that activity in jeopardy of violating the MMPA moratorium on taking marine mammals.

This issue was the subject of a District Court action by Greenpeace. On August 21, 1997, a U.S. District Court Judge for the District of Columbia disallowed Greenpeace's request to the Court for a Temporary Restraining Order to require NMFS to stop ARCO's moving the CIDS to Camden Bay.

Consultation

Under section 7 of the ESA, NMFS has completed consultations on the issuance of this authorization.

NEPA

In conjunction with the notice of proposed authorization, NMFS released a draft EA that addresses the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. Comments received on the draft EA, while leading to an improved EA, did not provide sufficient information that implementation of either the proposed action or the alternatives to that action would have a significant effect on the human environment. Therefore, as a result of the findings made in the EA, NMFS has concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding, an EIS will not be prepared. A copy of the EA is available upon request (see **ADDRESSES**).

Conclusions

NMFS has determined that the short-term impact of exploration drilling and related activities in the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of pinnipeds, and possibly some individual bowhead or beluga whales. While behavioral modifications may be made by these species of marine mammals to avoid the resultant noise from tugs either towing the CIDS or transporting supplies, or due to drilling activities, 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 activity area, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are in the Canadian Beaufort Sea until late August/early September, moving the CIDS during August will not impact subsistence hunting of bowhead whales. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs was the subject of consultation between ARCO and subsistence users. As a result of discussions between the two parties, a Conflict and Avoidance Agreement has been concluded. This Agreement consists of three main components: (1) Communications, (2) conflict avoidance, and (3) dispute resolution.

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, will 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) have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to ARCO Alaska for the above described oil exploration drilling activities in Camden Bay, Beaufort Sea, AK, provided the mitigation, monitoring and reporting requirements described in the authorization are undertaken.

Dated: September 25, 1997.

Patricia A. Montanio,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the consolidation, automation, and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Alamosa, CO Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Pueblo and Grand Junction Weather Forecast Offices (WFOs);

(2) Alpena, MI WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future North Central Lower Michigan WFO;

(3) Houghton Lake, MI WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future North Central Lower Michigan and Grand Rapids WFOs;

(4) Kalispell, MT WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Missoula WFO;

(5) Lander, WY WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Riverton WFO;

(6) Norfolk, NE WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Omaha and North Platte WFOs;

(7) Sault Ste. Marie, MI WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future North Central Lower Michigan and Marquette WFOs;

(8) Scottsbluff, NE WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Cheyenne and North Platte WFOs;

(9) Sheridan, WY WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Billings and Riverton WFOs; and

(10) St. Cloud, MN WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Minneapolis and Aberdeen WFOs.

In accordance with Pub. L. 102–567, the public will have 60 days in which to comment on these proposed consolidation, automation, and closure certifications.

DATES: Comments are requested by December 1, 1997.

ADDRESSES: Requests for copies of the proposed consolidation, automation and closure packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. L.