

**Finding of No Significant Impact for the Issuance of an
Incidental Harassment Authorization to
Statoil USA E&P Inc. to Take Marine Mammals by Harassment Incidental to
Conducting Open Water Shallow Hazards and Geotechnical Surveys
in the Chukchi Sea, Alaska**

National Marine Fisheries Service

Background

The National Marine Fisheries Service (NMFS) received an application from Statoil USA E&P Inc. (Statoil), for an incidental harassment authorization (IHA) under the Marine Mammal Protection Act (MMPA) for the take of marine mammals incidental to a shallow hazards survey in the Chukchi Sea off Alaska. Section 101(a)(5)(D) directs NMFS' to allow, upon request, the take of small numbers of marine mammals incidental to activities other than commercial fishing, provided that NMFS determines that the actions will have a negligible impact on the affected species or stocks of marine mammals, and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals for taking for subsistence uses, and sets forth permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takes.

In accordance with the National Environmental Policy Act (NEPA) and its implementing regulations and agency NEPA procedures, NMFS completed a *Supplemental Environmental Assessment for the Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Open Water Shallow Hazards Surveys by Statoil USA E&P Inc in the Chukchi Sea, Alaska* (SEA). This FONSI has been prepared to evaluate the significance of the impacts of NMFS' proposed actions and is specific to Alternative 2 in NMFS' 2010 *Environmental Assessment on the Issuance of Incidental Harassment Authorizations to Take Marine Mammals by Harassment Incidental to Conducting Open Water Seismic and Marine Surveys in the Chukchi and Beaufort Seas* (2010 EA), as the preferred alternative, and incorporated into the SEA by reference. Alternative 2 is entitled "Issuance of an IHA with Required Mitigation, Monitoring, and Reporting Measures." Based on NMFS' review of Statoil's proposed actions and the measures contained in Alternative 2, NMFS has determined that no significant impacts to the human environment would occur from implementing the Preferred Alternative.

Significance Review

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. §1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in

combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Fishery Conservation and Management Act and identified in fishery management plans?

Response: NMFS' proposed action (i.e., issuing an IHA to Statoil) would not cause substantial damage to the ocean and coastal habitats. Statoil's proposed shallow hazards survey would result in only short-term marine mammal exposure to seismic sounds (for a total of approximately 37 days, not including weather delays) within a limited area. To date, fish mortalities associated with seismic operations are thought to be slight. Behavioral changes in fish associated with sound exposures are expected to be minor (e.g., temporary abandonment of the ensonified area). Only a small portion (less than 0.003 percent of the Chukchi Sea) of the available foraging habitat would be subjected to sound pulses with received levels at or above 160 dB re 1 μ Pa at any given time. Therefore, impacts, if they were to occur, would add an incremental degree of adverse impacts to fish resources, but these impacts would not be significant.

EFH for five species of Pacific salmon (pink [humpback], chum [dog], sockeye [red], chinook [king], and coho [silver]) occurring in Alaska has been identified in the action area. The issuance of an IHA for Statoil's Chukchi Sea shallow hazards survey in 2011 is not anticipated to have any adverse effects on EFH.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: The issuance of the IHA will not have a substantial impact on biodiversity or ecosystem function within the affected areas. The impacts of the seismic survey itself on marine mammals are specifically related to the acoustic activities, and these are expected to be temporary in nature and not result in a substantial impact to marine mammals or to their role in the ecosystem. In accordance with the Preferred Alternative, NMFS will authorize the take, by Level B Harassment (temporary behavioral disturbance and displacement) only, of 13 species of marine mammal incidental to Statoil's activities. Neither injury nor mortality is anticipated and will not be authorized. Level B Harassment of marine mammals is not expected to affect biodiversity or ecosystem function.

During the survey operations, only a small fraction of the available habitat would be ensonified at any given time (i.e., the 160-dB radius extends only 2,250 m for Statoil's small airgun array). Disturbance to fish species would be short-term (i.e., most likely only hours to days), and fish would return to their pre-disturbance behavior once the seismic activity in a specific area ceases. Thus, the proposed surveys would have little, if

any, impact on the ability of marine mammals to feed in the area where airgun operations are conducted.

Little or no mortality to fish and/or invertebrates is anticipated. The Chukchi Sea open-water shallow hazards survey program is predicted to have minor to negligible adverse physical effects on the various life stages of fish and invertebrates. Though these effects do not require authorization under the IHA, the effects on these features were considered with respect to consideration of effects to marine mammals and their habitats, and NMFS finds that these potential adverse effects from the seismic survey on fish and invertebrates are not anticipated to have a substantial effect on biodiversity and/or ecosystem function within the survey area.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: Issuance of the IHA associated with the surveys is not expected to have a substantial adverse impact on public health or safety. The constant monitoring for marine mammals and other marine life during operations effectively eliminates the possibility of any humans being inadvertently exposed to levels of sound that might have adverse effects. As described in question 5 below, mitigation measures imposed by the IHA will ensure that the marine and seismic activities will not interfere with any fall 2011 subsistence bowhead whale hunts in the Chukchi Sea or any spring subsistence hunts in 2012. Although the conduct of the seismic survey may carry some risk to the personnel involved (i.e., boat or mechanical accidents during surveys), those personnel would be required to be adequately trained or supervised in performance of the underlying activity (i.e., the seismic survey) to minimize such risk to personnel.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: The proposed shallow hazards survey may result in some Level B Harassment (in the form of short-term and localized changes in behavior and short-term displacement from habitat) of small numbers, relative to the population sizes, of 13 species of marine mammals by Statoil. No injury or mortality is anticipated, and none will be authorized. Behavioral effects may include temporary and short-term displacement of marine mammals from within certain ensonified zones by acoustic equipment used for surveys (which are not expected to exceed the time of ensonification for an area), generally within 2,250 m from the airgun array operated by Statoil. The mitigation measures required for the activity are designed to minimize the exposure of marine mammals to sound and to minimize conduct of the activity in the vicinity of habitats that might be used by certain cryptic marine mammals (i.e., those that are more difficult to detect).

The following mitigation measures will be contained in the IHA: speed or course alteration when a marine mammal appears likely to enter the safety zone; power-down procedures when marine mammals are about to enter the safety zone; shutdown

procedures when marine mammals are detected in the safety zone while the airgun array is at full volume or during a power-down; and ramp-up procedures. Taking these mitigation measures into account, effects on marine mammals from the selected alternative are expected to be limited to avoidance of the area around the seismic operation and short-term behavioral changes, falling within the Marine Mammal Protection Act (MMPA) definition of “Level B harassment”. Because these mitigation measures will be included in the IHA proposed to be issued to Statoil, no marine mammal injury or mortality is anticipated. Numbers of individuals of all species taken are expected to be small, and the take is anticipated to have a negligible impact on the affected species or stock.

NMFS Office of Protected Resources initiated consultation under section 7 of the Endangered Species Act (ESA) with NMFS Alaska Regional Office (AKRO) on June 8, 2011. NMFS AKRO issued a biological opinion concluding that the proposed actions may adversely affect, but will not jeopardize the continued existence of species listed under the ESA or destroy or adversely modify their critical habitat in July 2011. The ESA-listed species that might be affected by this action are the bowhead, humpback, and fin whales.

Additional mitigation measures based on the Plan of Cooperation (POC)¹ will be required via the IHA to avoid conflicts between industry activities and the fall bowhead migration through the Chukchi Sea. The distribution of humpback and fin whales is considered extralimital in the Chukchi Sea, thereby causing NMFS to conclude that the probability of any humpback and fin whales being exposed to seismic sounds would be small. Even if humpback and fin whales are found to be within the project area, any effects would be limited to behavioral harassment.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: Neither issuance of the IHA nor Statoil’s proposed action will have a significant social or economic impact to commercial fishing or other activities that could potentially be affected by offshore seismic surveys. Since some behavioral harassment of marine mammals is anticipated, the impacts to subsistence needs and culture were fully analyzed in the supporting EA and SEA. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. The species hunted include: bowhead and beluga whales; ringed, spotted, ribbon, and bearded seals; walruses; and polar bears. (Note that walrus and polar bear are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS).) The importance of each of the various species varies among the communities and is based largely on availability. Bowhead and beluga whale hunting is the key

¹ A POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes is required to be submitted by an applicant pursuant to 50 CFR 216.104(a)(12). The POC specifies measures the applicant would take to minimize adverse effects on marine mammals where proposed activities may affect the availability of a species or stock of marine mammals for Arctic subsistence uses or near a traditional subsistence hunting area.

activity in the subsistence economies in and around the Chukchi Sea. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties. Harvesting of beluga whales generally occurs between April and July, and therefore is not expected in the area during the time of Statoil's proposed survey. Ringed seals are available year-round; however, the shallow hazards survey will not occur during the primary period when these seals are typically harvested (i.e., October through June). Thus, there is no reason to expect a conflict between seismic surveys and a subsistence harvest activity. Finally, the project area is not a primary hunting ground for bearded seals, so no conflict between the survey and a subsistence harvest activity would arise.

Therefore, NMFS has determined (based on the above stated reasons) that neither issuance of the IHA nor Statoil's proposed activities are likely to result in significant socioeconomic or cultural impacts. The scheduling of the proposed shallow hazards survey is expected to result in minimal, if any, conflict between the industry and subsistence users. As a result of these measures and the mitigation measures that will be implemented to reduce the potential for natural and physical effects, no significant social and economic impacts are expected.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: Although there is some lack of agreement within the scientific and stakeholder communities about the potential effects of noise on marine mammals, including in this instance, bowhead whales, there is not a substantial dispute about the size, nature, or effect of the proposed action. The existence of some disagreement was demonstrated by a National Research Council (NRC, 2005) report and by the lack of consensus among participants in the Marine Mammal Commission's Advisory Committee on Acoustic Impacts on Marine Mammals (MMC, 2006). Over the past several years, comments and concerns from industry, environmental organizations, and Native Alaskan groups have focused mainly on: (1) questions and concerns related to NMFS' compliance with the NEPA and the MMPA; and (2) criticism of the mitigation and monitoring measures proposed by NMFS and MMS. In reviewing these concerns (which are more specifically addressed in NMFS' final IHA determination, which will be publically available), NMFS believes that its actions are in full compliance with NEPA, the MMPA and the ESA. As noted elsewhere in this FONSI, NMFS is requiring, as proposed by Statoil, a detailed mitigation and monitoring program designed to gather additional data and reduce impacts on affected marine mammal stocks to the lowest level practicable. In addition, the oil industry will jointly implement, for the fourth year, a research program to gather additional data on the status of Arctic Ocean marine mammal populations.

Specific to Statoil's application, notices of receipt and request for 30-day public comment on the application and proposed authorization was published in the *Federal Register* on May 24, 2011 (76 FR 30110). During the comment period, NMFS received three comment letters from the following groups and organizations on the proposed

Statoil activities: the Marine Mammal Commission (Commission); the Alaska Eskimo Whaling Commission (AEWC); and Alaska Wilderness League, Center for Biological Diversity, Defenders of Wildlife, Earthjustice, Natural Resources Defense Council, Oceana, Pacific Environment, and Sierra Club. The comments mainly focused on the potential impacts to subsistence harvest and marine mammal noise exposure. As a result of the implementation of the required measures in the IHA, the industry will avoid significant sociocultural impacts. Little additional information that would augment or contradict the scientific basis for NMFS' determinations has been provided through public comment on the IHA, and NMFS continues to make its determinations under the MMPA based on the best available science. As a result, while NMFS believes that offshore oil and gas exploration and development in U.S. waters is of concern to certain members of the public, the activity proposed by Statoil in the offshore waters of the Chukchi Sea in the Arctic Ocean in 2011 is not highly controversial.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: No substantial impacts to park land, prime farmlands, wetlands, or wild and scenic rivers are anticipated as a result of issuing an IHA to Statoil as none of these unique areas are found in the action area. Similarly, as described in the response to question 1 above, no substantial impacts to EFH are expected. Bowhead whales are an important cultural resource to the Native Alaskan communities in the Arctic. Based on mitigation measures described in the EA, no substantial impacts to this cultural resource are expected.

Where data are available and sufficient, NMFS has attempted to identify other areas where aggregations of bowheads are known to occur and where feeding aggregations repeatedly have been observed. Where analyses identified areas where effects to bowheads potentially could be significant, NMFS has identified monitoring and mitigation measures to reduce the potential for such impacts to non-significant levels. For the Chukchi Sea, such mitigation includes prohibiting the generation of seismic sounds when an aggregation of 12 or more bowhead or gray whales are sighted within a 160 dB isopleth distance from an acoustic source.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: NMFS has reviewed the 90-day marine mammal monitoring and mitigation reports submitted for the 2008 open-water seismic and site clearance and shallow hazards surveys conducted by Shell, BP Exploration (Alaska) Inc. (BP), PGS Onshore Inc., and ConocoPhillips Alaska Inc. (Aerts *et al.*, 2008; Hauser *et al.*, 2008; Brueggeman, 2009; Ireland *et al.*, 2009), the 2009 shallow hazards and site clearance surveys by Shell (Ireland *et al.*, 2010), and the 2010 open-water shallow hazards and 3D seismic surveys conducted by Shell and Statoil, respectively (Blees *et al.* 2011; Reiser *et al.* 2011). Based on the results of these studies collectively, NMFS concludes that the

previous monitoring and mitigation measures prescribed in these marine mammal take authorizations were effective. In addition, actual take of marine mammals by Level B harassment was generally lower than expected due to the implementation of monitoring and mitigation measures. No Level A harassment (injuries included) or mortality was observed or suspected as a result of the operations. Therefore, effects on the human environment are not highly uncertain and do not involve unique or unknown risks.

It should be noted, however, that more information is needed about the potential effects of disturbance from single vessels and multiple seismic vessels operating concurrently to the health of bowhead whale females and young calves and to the next year's reproductive potential of adult females. There is a current lack of scientific data about the effects of sound on the hearing of mysticete whales, particularly very young calves. In the past, appropriate and practicable mitigation measures have been required which were aimed at gathering additional data on these species while also reducing the potential for adverse effects on bowhead whales, especially cow/calf pairs. In the SEA, NMFS again reviewed this information and determined that, because no other companies would be conducting a seismic survey within the Chukchi Sea in 2011, impacts to bowhead whales, especially cow/calf pairs, are likely to be reduced appreciably in comparison to previous years when multiple surveys have been conducted in a single season. A determination has been made that it is impracticable for Statoil to monitor a 120-dB zone during its activities because the safety zone is too large to be monitored from the vessel and would need to be monitored by aerial surveys. It is not practical to use airplanes due to lack of adequate landing facilities and the prevalence of fog and other inclement weather in that area, thereby resulting in human safety concerns. However, NMFS will require Statoil to monitor a 160-dB safety zone for the presence of aggregations of bowhead and gray whales from the source vessel during the shallow hazards survey in 2011.

9) Is the proposed action related to other actions with individually insignificant but cumulatively significant impacts?

Response: Within the U.S. Arctic Ocean there are other Federal actions, such as oil-and-gas exploration and production (BP's Northstar facility) and MMS (now the Bureau of Ocean Energy, Management, Regulation, and Enforcement) Lease Sales in the U.S. Chukchi and Beaufort Seas. However, these activities are temporally dispersed and use appropriate mitigation designed to reduce impacts on marine life to the lowest level practicable. Finally, heavy ship traffic does not occur in this area. Statoil's activities will only occur for approximately 37 days; will take only small numbers of each species by behavioral disturbance; and are not expected to result in injury or mortality. While it is possible that some animals may experience multiple behavioral disturbance incidents due to the planned conduct of other actions in the larger Arctic Ocean, the potential for multiple, cumulative impacts to marine mammals is considered remote due to the distance between actions, the short term nature of anticipated behavioral effects, and the separation in time from any disturbance due to past activities. In addition, since mitigation and monitoring measures are in place or would be required for all actions that

require MMPA take authorization, each action's effects would be managed to ensure the least practicable adverse impact to marine mammal species or stocks.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historic resources?

Response: The proposed shallow hazards survey will occur offshore in the Chukchi Sea, therefore, it is not likely, directly or indirectly, to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, as none are known to exist in the action area.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: The primary concern regarding the introduction or spread of a non-indigenous species from the proposed shallow hazards survey is through ballast water exchange. Statoil is responsible for ensuring that its ships are in compliance with all international and U.S. national ballast water requirements to prevent the spread of a non-indigenous species. Therefore, neither NMFS's issuance of the IHA nor Statoil's proposed survey is expected to result in the introduction or spread of non-indigenous species, as all international and national preventive measures would be implemented.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: The proposed action will not set a precedent for future actions with significant effects or represent a decision in principle about future actions. To ensure compliance with statutory and regulatory standards, NMFS' actions under section 101(a)(5)(D) of the MMPA must be considered individually and be based on the best available information, which is continuously evolving. Moreover, each action for which an incidental take authorization is sought must be considered in light of the specific circumstances surrounding the action, and mitigation and monitoring may vary depending on those circumstances. In addition, the SEA evaluated the potential effects of seismic survey activities that could occur in the 2011 open-water (ice-free) season. Regarding bowhead whales, there is extensive history and a regulatory and procedural structure to evaluate the effects of seismic survey noise on bowhead whales and other marine mammal species. For these reasons, a finding of no significant impact for this action, and for NMFS's issuance of an IHA, may inform the environmental review for future projects but would not establish a precedent or represent a decision in principle about a future consideration.

13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: NMFS does not expect the actions to violate any Federal law or requirements imposed for the protection of the environment, as responsibilities under Section 7 of the ESA have been fulfilled (see response to question 4 above) and the action itself would result in issuance of the IHA in compliance with all standards required in the MMPA.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: There are other seismic survey activities around the world that may impact marine mammals, but most are dispersed both geographically and temporally (Gulf of Mexico, North Sea, West Africa), are relatively short-term in nature, and most vessels either currently use, or will likely use in the future, standard mitigation and monitoring measures to minimize impacts to marine life. The action will not target any marine species, but may affect certain non-target species, such as cetaceans and pinnipeds in the area, particularly bowhead and gray whales. Only one other survey is proposed to occur in the Arctic Ocean in 2011: the University of Alaska Geophysics Institute in the Arctic Ocean between September and October 2011. However, there will be no overlap of the ensonified areas between the two surveys since they are dispersed geographically in space and time. In order to avoid, and if not possible, minimize, adverse effects, NMFS is requiring Statoil to implement mitigation measures, such as monitoring exclusion zones to prevent injury; ramp-up; and power-down and shutdown procedures when marine mammals are observed just outside or inside the safety zones. These mitigation measures further reduce the potential for cumulative adverse effects. The surveys would also not be expected to have a substantial cumulative effect on any fish or invertebrate species. Although some loss of fish and other marine life might occur as a result of being in close proximity to the airguns, this loss is not expected to be significant. Due to the relatively large habitat area for marine mammals (and other marine species) in the Arctic Ocean and the small area of the Chukchi Sea that is of interest for conducting the marine and seismic surveys, the relatively short time that seismic operations will be in the area (approximately end of July to end of October), the dispersed nature of marine mammals (particularly pinnipeds), the relatively low density of all marine mammal species in this part of the Arctic, avoidance behavior by some species (e.g., bowheads and belugas) to the activity area, and the implementation of mitigation measures, NMFS believes that the proposed action will not result in cumulative adverse effects that could have a substantial effect on marine mammals or other marine species.

DETERMINATION

In view of the information presented in this document and the analyses contained in the supporting *Supplemental Environmental Assessment for the Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Open Water Shallow Hazards Surveys by Statoil USA E&P Inc in the Chukchi Sea, Alaska*, prepared by NMFS, it is hereby determined that the issuance of an IHA to Statoil for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting open-water shallow hazards survey in the Chukchi Seas, Alaska, in accordance with Alternative 2 in NMFS' 2010 EA incorporated into the SEA by reference, will not significantly impact the quality of the human environment, as described above and supported by NMFS' 2010 EA and 2011 SEA. In addition, all beneficial and adverse impacts of the proposed actions have been analyzed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.



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Date