

accordance with sections 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: March 4, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA281

#### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a meeting of the Ad Hoc Reef Fish Limited Access Privilege Program Advisory Panel.

**DATES:** The meeting will convene at 1 p.m. on Monday, March 28, 2011 and conclude by 5 p.m. on Tuesday, March 29, 2011.

**ADDRESSES:** The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; *telephone:* (813) 348-1630.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; *telephone:* (813) 348-1630.

**SUPPLEMENTARY INFORMATION:** The Ad Hoc Reef Fish Limited Access Privilege Program Advisory Panel will meet to discuss charter for-hire days-at-sea and headboat individual fishing quota pilot programs, and, fishing communities in fisheries management.

Copies of the agenda and other related materials can be obtained by calling (813) 348-1630.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues

arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see ADDRESSES*) at least 5 working days prior to the meeting.

Dated: March 4, 2011.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011-5433 Filed 3-9-11; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA093

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

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Fish and Wildlife Service (USFWS) to take marine mammals, by harassment, incidental to a capture-recapture program of polar bears in the U.S. Chukchi Sea.

**DATES:** Effective March 14, 2011, through May 31, 2011.

**ADDRESSES:** A copy of the authorization, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, telephoning the contact listed below (*see FOR FURTHER INFORMATION CONTACT*), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/>

*incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

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

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including,

but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

### Summary of Request

NMFS received an application on November 4, 2010, from the USFWS for the taking, by harassment, of marine mammals incidental to a capture-recapture program of polar bears in the U.S. Chukchi Sea. NMFS reviewed the USFWS' application and identified a number of issues requiring further clarification. After addressing comments from NMFS, the USFWS modified its application and submitted a revised application on November 16, 2010.

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

### Description of the Specified Activity

In 2008, the USFWS started a capture-recapture program of polar bears in the Chukchi-Bering Seas to begin to obtain information on bear health, body condition, movement patterns, habitat use, and demography. This work was initiated in response to the need for information to inform management (particularly the setting of harvest quotas) under the U.S.-Russia treaty that was implemented in 2008, identify appropriate mitigation for oil and gas exploration activities in the Chukchi Sea lease sale area, and the need to better monitor this population due to the listing of polar bears as "threatened" under the Endangered Species Act (ESA). Each spring, the USFWS conducts a 6–8 week period of polar bear captures on the sea ice off the U.S. Chukchi Sea coastline. A fixed wing and a Bell 206 Long-ranger helicopter are flown 300 ft (91.4 m) above the sea ice to track and locate polar bears for capture. The flyover area to locate polar bears includes ice seal habitat, and ice seals are frequently encountered hauled out on the sea ice at breathing holes or cracks. Polar bear capture operations will occur daily, as weather permits, between mid-March and the first week of May 2011. The period of validity of the IHA is until the end of May 2011 (to allow for some flexibility in case of bad weather or other unforeseen delays).

During a typical capture season over the past 3 years, this has resulted in 28–30 flight days and less than 200 flight hours per season. These overflights at altitudes of approximately 300 ft (91.4 m) over sea ice where seals are hauled out may result in the Level B harassment of ringed and bearded seals. Additional details on the purpose and protocols for the polar bear capture-recapture program were contained in the Notice of Proposed IHA (76 FR 330, January 4, 2011). No changes have been made to the proposed activities.

### Comments and Responses

A Notice of Proposed IHA was published in the **Federal Register** on January 4, 2011 (76 FR 330) for public comment. During the 30-day public comment period, NMFS received one letter from the Marine Mammal Commission. No other organizations or private citizens provided comments on the proposed issuance of an IHA for this activity. The Marine Mammal Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures. NMFS has included all of the mitigation and monitoring measures proposed in the Notice of Proposed IHA (76 FR 330, January 4, 2011) in the issued IHA.

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

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

Ringed and bearded seals are the two species likely to be encountered during the proposed activity. On December 10, 2010, NMFS published a notice of proposed threatened status for

subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither species is considered depleted under the MMPA.

Information on the status, distribution, seasonal distribution, and abundance of ringed and bearded seals can be found in the NMFS Stock Assessment Reports (SARs) and the recently completed status reviews of the ringed and bearded seals. The 2009 and 2010 Draft Alaska SARs are available on the Internet at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2009.pdf> and [http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010\\_draft.pdf](http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010_draft.pdf), respectively. The ringed seal status review report by Kelly *et al.* (2010) can be found on the Internet at: <http://alaskafisheries.noaa.gov/protectedresources/seals/ice/ringed/statusreview10.pdf>. The bearded seal status review report by Cameron *et al.* (2010) can be found on the Internet at: <http://alaskafisheries.noaa.gov/protectedresources/seals/ice/bearded/statusreview10.pdf>. The Notice of Proposed IHA (76 FR 330, January 4, 2011) contained a brief overview on the distribution of ringed and bearded seals in the project area.

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

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

documentation of temporary threshold shift (TTS), let alone permanent threshold shift (PTS), in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions.

The Notice of Proposed IHA (76 FR 330, January 4, 2011) contained a full discussion of the typical reactions of hauled out pinnipeds to aircraft flying overhead. Typical reactions of hauled out pinnipeds to aircraft that have been observed include looking up at the aircraft, moving on the ice or land, entering a breathing hole or crack in the ice, or entering the water. Based on the available data and studies described in the Notice of Proposed IHA (76 FR 330, January 4, 2011), any ringed or bearded seals found in the vicinity of the project are only anticipated to have short-term behavioral reactions to the helicopter flying overhead. Those animals that do dive into a breathing hole or crack in the ice are anticipated to return to the ice shortly after the helicopter leaves the area, as the aircraft generally stays within the same area less than seconds. Hearing impairment (*i.e.*, TTS or PTS) of pinnipeds hauled out on the ice is not anticipated as a result of the USFWS' activity because pinnipeds will likely either dive into breathing holes or the water through cracks in the ice before the helicopter would be close enough to cause such an effect. The inclusion of the mitigation measures described later in this document (see the "Mitigation" section) are anticipated to reduce impacts even further.

#### Anticipated Effects on Habitat

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

#### Mitigation

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

The following mitigation measures are included in the IHA. Protocols for flights include maintaining a 1 mi (1.61 km) radius when flying over areas where seals are concentrated in groups of 5 or more, such as cracks or areas of thin ice with multiple breathing holes, except when needed to do so for safety reasons. USFWS will not land on ice within 0.5 mi (0.8 km) of a hauled out seal. USFWS will also fly at altitudes higher than 300 ft (91.4 m) when closer to shore, unless personnel safety prohibits flying at this lower altitude, as polar bears are less likely to be found within 30 mi (48 km) of the coast. This will reduce impacts to seals hauled out on ice closer to shore but at the same time will not jeopardize the objectives of the project.

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

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

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. Measures to ensure availability of such species or stock for taking for certain

subsistence uses is discussed later in this document (*see* "Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses" section).

#### Monitoring and Reporting

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

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

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

#### Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has

the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated to occur as a result of the USFWS' polar bear capture-recapture program. Anticipated take of marine mammals is associated with either the sound or presence of the helicopter overhead (or both). No injury or mortality is anticipated, and no takes by injury or mortality are authorized.

Based on results of the last 3 years of conducting the polar bear capture-recapture program, the USFWS estimates that they may have had as many as 1,000 encounters with ringed seals and 200 encounters with bearded seals annually. The USFWS estimates that the number of seals that may be taken by harassment is 500 ringed seals and 100 bearded seals. This is based on their estimate of the number of seals encountered during previous work over the past 3 years and the research of Born *et al.* (1999) in which approximately 50% of all seals responded to helicopters at a similar altitude. It is possible that the same seal can be taken by harassment multiple times during the course of the 6–8 weeks needed to complete the proposed activity. Age and sex of the seals are not always known, but likely include all sex and age classes. Female ringed and bearded seals give birth on the sea ice between mid-March and May (the timeframe for this activity).

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

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

NMFS has defined “negligible impact” in 50 CFR 216.103 as “\* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” In making a negligible impact determination, NMFS considers a variety of factors, including but not

limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of the USFWS' polar bear capture-recapture program. Takes will be limited to Level B behavioral harassment over a 6–8 week period from mid-March to early May. As stated previously, NMFS estimates that 1,000 ringed seal and 200 bearded seal takes may occur as a result of the activity. It is possible that some individual animals may be taken more than once during the course of the activity. However, with the exception of habitats near the USFWS' base location on the coast, flights rarely occur repeatedly over the same areas. The USFWS monitors the prior week's tracklogs to ensure that they continue to search new habitat each day, which likely results in few individuals being disturbed repeatedly during the course of their activities.

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

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

with pups (Krylov *et al.*, 1964; Burns and Frost, 1979; Hammill *et al.*, 1994; Lydersen *et al.*, 1994). Therefore, it is not expected that the USFWS' activities will have major impacts during the ringed or bearded seals' pupping seasons.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). While it is possible that flights could occur on consecutive days, the flight schedule is weather dependent. Additionally, even if flights do occur on consecutive days, it is unlikely that the flight paths will be identical on consecutive days. Therefore, it is unlikely that hauled out seals will be exposed to the overflights on consecutive days. Moreover, since the helicopters only remain overhead for a few seconds at any one location, impacts lasting minutes to even hours are not expected.

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

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

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the

mitigation and monitoring measures, NMFS finds that the helicopter flights during the USFWS' polar bear capture-recapture program will result in the incidental take of small numbers of marine mammals, by Level B behavioral harassment only, and that the total taking from the USFWS' activities will have a negligible impact on the affected species or stocks.

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

#### Relevant Subsistence Uses

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

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

#### Potential Impacts to Subsistence Uses

NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as:

\* \* \* an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing

physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

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

#### Plan of Cooperation (POC)

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

#### Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS has determined that the USFWS' polar bear capture-recapture program will not have an unmitigable adverse impact on the availability of species or stocks for taking for

subsistence uses. This determination is supported by the information contained in this document and the POC contained in the USFWS' application (see ADDRESSES). The USFWS has agreed to certain no fly zones prior to beginning their activities. Additionally, the USFWS will meet regularly with subsistence use leaders in both Point Hope and Kivalina to redefine the no fly zones throughout the season, if necessary. There will be no impacts to beluga hunting, as this project occurs well before the summer beluga hunts in the Chukchi Sea. Lastly, the majority of the USFWS' flight tracks will occur much further offshore than the typical sites for subsistence sealing during the mid-March to early May time period.

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

#### Endangered Species Act (ESA)

The Arctic subspecies of ringed seal and the Beringia distinct population segment of bearded seals are currently proposed for listing under the ESA. Section 7(a)(4) of the ESA requires a conference on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4 of the ESA or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. NMFS, Office of Protected Resources, Permits, Conservation and Education Division determined, after discussion with NMFS, Alaska Regional Office, that the issuance of an IHA to the USFWS for the take of ringed and bearded seals incidental to the proposed polar bear capture-recapture program will not jeopardize the continued existence of either species because of the low level of impact that is anticipated.

#### National Environmental Policy Act (NEPA)

On March 3, 2011, NMFS released an EA and issued a FONSI for this action. NMFS determined that issuance of this IHA would not significantly impact the quality of the human environment; therefore, preparation of an Environmental Impact Statement was not required for this action. NMFS' EA and FONSI are available upon request (see ADDRESSES).

**Authorization**

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

Dated: March 4, 2011.

**James H. Lecky,**

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

[FR Doc. 2011-5526 Filed 3-9-11; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF DEFENSE****Department of the Army****Intent To Grant an Exclusive License for a U.S. Government-Owned Invention**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7 (a)(1)(i) and 37 CFR 404.7 (b)(1)(i), announcement is made of the intent to grant an exclusive, revocable license for the invention claimed in the patent application PCT/US2009/060850, filed October 15, 2009, entitled, "Clinical Decision Model," to DecisionQ Corporation, with its principal place of business at 1010 Wisconsin Avenue, Suite 310, Washington, DC 20007-3680.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, *Attn:* Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702-5012.

**FOR FURTHER INFORMATION CONTACT:** For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619-6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619-7808, both at telefax (301) 619-5034.

**SUPPLEMENTARY INFORMATION:** Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (*see ADDRESSES*).

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2011-5461 Filed 3-9-11; 8:45 am]

**BILLING CODE 3710-08-P**

**DEPARTMENT OF DEFENSE****Department of the Navy****Notice of Availability of Government-Owned Inventions; Available for Licensing**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is a CRADA Subject Invention, jointly-made under NCRADA-NAWCWDCL-03-111, and is assigned to Reynolds Systems, Inc. The United States Government, as represented by the Secretary of the Navy, has an undivided interest in this invention. U.S. Patent No. 7,661,362: Energetic material initiation device utilizing exploding foil initiated ignition system with secondary explosive material.

**ADDRESSES:** Requests for copies of the inventions cited should be directed to Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555-6106 and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Seltzer, Ph.D., Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555-6106, telephone 760-939-1074, FAX 760-939-1210, *E-mail:* [michael.seltzer@navy.mil](mailto:michael.seltzer@navy.mil).

**Authority:** 35 U.S.C. 207, 37 CFR 404.7.

Dated: March 3, 2011.

**D. J. Werner,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2011-5569 Filed 3-9-11; 8:45 am]

**BILLING CODE 3810-FF-P**

**DEPARTMENT OF EDUCATION****Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the

public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 9, 2011.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 7, 2011.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision.

*Title of Collection:* Annual Progress Report for the Title III Alternative Financing Program Under the Assistive Technology Act of 1998.

*OMB Control Number:* 1820-0662.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually.