



MARINE MAMMAL COMMISSION

2 April 2015

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910-3226

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application from Shell Gulf of Mexico Inc. (Shell), seeking an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA). Shell is seeking authorization to take small numbers of marine mammals by harassment incidental to ice overflight surveys in the Alaskan Beaufort and Chukchi Seas from 1 May 2015 to 30 April 2016. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 4 March 2015 notice (80 Fed. Reg. 11634) announcing receipt of the application and proposing to issue the authorization subject to certain conditions.

Some issues raised in previous Commission letters reflect ongoing concerns that apply more broadly to incidental take authorization applications, not just to this application from Shell. For example, the Commission has recommended numerous times that NMFS adjust density estimates used to estimate the numbers of potential takes by incorporating some measure of uncertainty¹ when available density data are either out of date or originate from other geographical areas and temporal scales, and that it formulate a policy or other guidance setting forth a consistent approach for how applicants should incorporate uncertainty in density estimates. The Commission would welcome the opportunity to work with NMFS as it develops such policies.

Background

Shell plans to conduct ice overflight surveys in the Beaufort and Chukchi Seas during spring (May–July) break-up and winter (November–April) freeze-up periods. The surveys would be conducted during daylight hours and would include a total of 4,630 km of tracklines. Shell has proposed 14 flights total: 5 fixed-wing and 1 helicopter flight during spring and 7 fixed-wing and 1 helicopter flight during winter.

NMFS's preliminary determination is that the proposed ice overflight surveys would result in a temporary modification in the behavior of small numbers of up to seven species of marine mammals, but that the total taking would have a negligible impact on the affected species or stocks. NMFS does not anticipate any take of marine mammals by death or serious injury. NMFS also believes that the potential for temporary or permanent hearing impairment from Shell's proposed

¹ Including using the maximum density when other measures of uncertainty are not provided.

overflight survey would be at the least practicable level because of the proposed mitigation measures. The mitigation, monitoring, and reporting measures include—

- (1) using trained protected species observers to record marine mammal sightings and other environmental information;
- (2) maintaining a 1.6-km radius when flying over areas where seals appear to be concentrated in groups of 5 or more individuals;
- (3) not landing on ice within 0.8 km of hauled-out seals or polar bears;
- (4) avoiding flying over polynyas and along adjacent ice margins;
- (5) reporting injured and dead marine mammals to NMFS's Office of Protected Resources and the Alaska regional stranding coordinator(s) using NMFS's phased approach and suspending survey activities, if appropriate; and
- (6) submitting field and technical reports and a final comprehensive report to NMFS.

The Commission understands that NMFS does not typically, or may never have, authorized the taking of cetaceans incidental to aerial overflights for purposes not associated with directed marine mammal research. The Commission understands that, since publication of the proposed IHA, NMFS has determined that overflight surveys will not affect cetaceans and thus takes of cetaceans would not need to be authorized. However, if this is not the case and NMFS intends to authorize the taking of cetaceans incidental to aerial overflights (absent any directed marine mammal research), the Commission recommends that NMFS develop criteria (e.g., based on aircraft type, aircraft speed, altitude, potential hovering/circling, and affected species or stocks) and guidance for determining when prospective applicants should request taking of cetaceans by Level B harassment from aircraft overflights.

Availability of marine mammals for subsistence

Shell has developed a plan of cooperation in consultation with North Slope communities outlining measures that it would implement to minimize any adverse effects on the availability of marine mammals for subsistence. That plan includes requirements to maintain the minimum approach distances and operational requirements outlined in the previous section, as well as (1) developing and implementing a communications plan before initiating overflight surveys, (2) employing local community liaison officers and/or subsistence advisors to provide consultation and guidance regarding whale migration and subsistence activities, and (3) engaging with local communities and subsistence groups to ensure no disturbance of whaling or other subsistence activities. Based on the survey design, the timing and location of the proposed overflight surveys, and the proposed mitigation measures, NMFS has preliminarily determined that the proposed taking would not have an unmitigable adverse impact on the availability of marine mammals for subsistence use by Alaska Natives.

Density estimates for bearded seals

The density estimates for bearded seals in the winter may need to be adjusted upward to account for year-round presence in at least portions of the survey area. Shell indicated in its application that bearded seals were not expected to be present in the survey area in large numbers during winter based on tagging studies. However, MacIntyre et al. (2013) detected bearded seal calls year-round in the Beaufort Sea just east of Barrow, with an increase in calls during winter and spring

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(December–June). Acoustic detections in the Chukchi Sea exhibited the same pattern with an increase in calls during winter (Jones et al. 2014). Although density estimates are not available for bearded seals in the winter because of a lack of aerial survey data at that time of year, it appears from the referenced acoustic monitoring studies that bearded seals are just as likely, or even more likely, to be present in the survey area in winter as in spring. Therefore, the Commission recommends that NMFS (1) use density estimates for bearded seals in winter that are either equal to or greater than spring bearded seal density estimates and (2) recalculate take estimates for bearded seals during winter, accordingly.

Peer review panel recommendations

The Commission understands that the peer review panel met during the public comment period for this notice to discuss Shell's marine mammal mitigation and monitoring plan. The recommendations of the panel will not be available until after the close of the comment period. If NMFS issues the incidental harassment authorization for the ice overflight surveys, the Commission recommends that NMFS incorporate the peer review panel's recommendations into the authorization.

I trust these comments will be helpful. Please let me know if you or your staff have questions with regard to this letter.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style.

Rebecca J. Lent, Ph.D.
Executive Director

Cc: Jon Kurland, National Marine Fisheries Service Alaska Regional Office

References

- Jones, J.M., B.J. Thyre, E.H. Roth, M. Mahoney, I. Sia, K. Mercurief, C. Jackson, C. Zeller, M. Clare, A. Bacon, S. Weaver, Z. Gentes, R.J. Small, I. Stirling, S.M. Wiggins, and J.A. Hildebrand. 2014. Ringed, bearded, and ribbon seal vocalizations north of Barrow, Alaska: Seasonal presence and relationship with sea ice. *Arctic* 67(2): 203-222.
- MacIntyre, K.Q., K.M. Stafford, C.L. Berchok, and P.L. Boveng. 2013. Year-round acoustic detection of bearded seals (*Erignathus barbatus*) in the Beaufort Sea relative to changing environmental conditions, 2008–2010. *Polar Biology* doi:10.1007/s00300-013-1337-1.



Shane Guan - NOAA Federal <shane.guan@noaa.gov>

I JUST CALLED Dr. Dupont Fwd: Opposing Permit for Shell Oil to Harass Marine Mammals [FR Doc No: 2015-04426]

1 message

swetepi334@aol.com <swetepi334@aol.com>
To: itp.guan@noaa.gov

Wed, May 6, 2015 at 10:32 AM

-----Original Message-----

From: Doreen Dupont <swetepi334@aol.com>

To: ITP.guan <ITP.guan@NOAA.gov>

Sent: Sun, Mar 29, 2015 3:05 pm

Subject: Opposing Permit for Shell Oil to Harass Marine Mammals [FR Doc No: 2015-04426]

Attn: Jolie Harrison Chief-Permits and Conservation Division

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
RIN 0648-XD732

COMMENTS SUBMITTED:

To NOAA:

Shell oil is fueled with audacity and used vague irrelevant statistics, largely, to make their case only. Shell Oil drilling in itself is unnecessary and dangerous to our heating environment and being that 3 of the animals anticipated to be harassed are protected. This entire study should be banned. Allowing (illegal) danger to our planet for commercial reasons is tantamount to treason.

This proposal starts by saying, "The aircraft to be used for the surveys are not currently under contract to Shell or a contractor to Shell." It then goes on to base all assumptions on particular aircraft speed and noise levels of that which they would like to use. This permit can not be given until exact aircraft to be used are known, already under contract with Shell, so that Shell can then talk about their speeds and noise levels. To allow these surveys without knowing exactly which aircraft are being used, down to the aircraft VIN numbers, leaves tremendous loopholes in which unanticipated damage can occur to the protected marine mammals, and all in the name of potential profit from Shell Oil drilling. Switch and bait is highly likely as such.

Aircraft are flying hundreds of feet about sea level and use Fujinon 7 X 50 binoculars for visual monitoring. Even if they are able to see a physically injured mammal, they do not always have to ground to investigate it. From that distance, with those binoculars, they are not going to be able to see injuries to feet of seals by getting scratched or crushed in a mad run to the water from fear from the sound. Even if the low estimates of animals was near accurate, by chance only, as so many factors have changed, and in the case of ringed seals in the winter, never counted, The plan does not allow for accurate detection of illegal harassment (injury) to ESA listed ringed seals and as such is entirely out of the realm of reason and law.

Illegal take, by injury from harassment from whales outside of water, will not be easily apparent by short fly overs. Should a whale matriarch develop injured hearing and echolocation capabilities, which the application maintains is unlikely but indeed possible if the whale breaches during the flyover/ and or chase of hunt, then the entire pod will be permanently damaged and this may indeed effect survival of it's species. Young whales may develop hearing problems and not be able to protect itself or hunt. Injuring one, injures the entire pod. Still the application says that it's unlikely whales will be out of the water, but give no assurances at all that Shell will suspend operations in any area that whales are surfacing. If there are any sightings what so ever of and ESA whale being at water surface this operation has to immediately cease at least until there is not sight of the pod. To not do should be considered reckless and should be prosecuted as illegal. There is nothing in the plan that protects whales out of water, other than Shell's promise of intent.

Shell Oil states and NMFS concurs that whales underwater and ice are afforded great dampening effects of the sounds of the aircrafts. Out of water, there would not be dampening and admittedly could cause hearing damage and disorientated behaviors. They anticipate there will be very few whales out of water based upon very old studies, the majority of which are well over 10 years old. With recent major shifts in ice shelves, melting and water temperature shifts, safe assumptions about protected whales and seals can not be made from such old stats. Although it is Shells' intention to avoid sites where native whaling is taking place, it is not assured that this will in fact play out and under such circumstances I would expect whales to be jumping out of water and as such, will be subject to loud sounds which could permanently damage their fine hearing and echolocation ability, and under shifting ice patterns due to global warming, there is no safe way of assuming this will not effect the ability of survival of the species, nor not end in illegal take.

There is not real protection afforded to Native sustenance other than Shell's say so to cooperate with them. There are no outside agencies overlooking NMFS. Any accidental take is to be reported to NFMS, not to NOAA. If Shell is not fully cooperative with Native hunters, who will the Natives be able to go to. It has previously been published that Shell executives have been known to schmooze local whale hunters to get them to cooperate with their own agenda.

In an attempt to charm the indigenous cultures of Alaska, a Shell oil company executive ate the raw meat of the endangered bowhead whale whenever it was offered to him, even though he didn't care for it. According to PBS, "At company-sponsored meetings with villagers, he passed out raffle tickets, bought trinkets and served food. Though he did not exactly develop a taste for it, he never turned down the local delicacy -- raw whale meat." "At the same time, Shell officials quietly urged local Eskimo business leaders to help sway the mayor. The company donated \$150,000 to Iliisagvik College to expand its Inupiaq language and Inupiat cultural studies program. It financed VHF marine-band radios and satellite phones for whaling crews and covered the costs of some village celebrations." -- The New York Times. Shell can not be trusted to self-report, to not have conflicts of interests with their own POC, nor the interests and safeties of the endangered protected Marine Mammals, not the native whalers. NOAA itself must more directly oversee such a dangerous and delicate plan. Not NMFS and the Stranding Network.

Ringed Seals are considered endangered under the ESA and the proposal says that "winter surveys for ringed seals have not been performed". Yet they assume minimal, or negligible risk to behavioral disturbances of this species, assuming that very few will be seen in flyovers. Data for this proposal is slippery and insufficient. Seals will panic to the sound of an airplane or helicopter overhead and in the panic may trample their babies, and or damage their feet with scrapes from their nails. Stampinging is not un heard of. Of the animals expected to be harassed by this maneuver, the vast majority anticipated are Endangered, covered by ESA Ringed Seals. This data submitted is biased and inaccurate and will likely result in greater than negligible. You can't estimate damages when no recent winter surveys have been performed.

I vehemently oppose you allowing the permit to go through, not only because of the non sensical excuses Shell affords about how they are sure they will do not physical damage, but Irrelevant to this initial low flying survey, this is only commercially based for profit preparation to drill for oil would be

catastrophic for our atmosphere and oceans already in crisis. This really needs to be stopped NOW. We have enough oil until 2050 in reserve and we are phasing it oil in favor of renewables to combat global warming. This study will hurt our environment and line private pockets only. It is inexcusably illegal and immoral.

Respectfully,
Doreen Dupont MD

Alaska Eskimo Whaling Commission
P.O. Box 570 • Barrow, Alaska 99723
(907) 852-2392 • Fax: (907) 852-2303 • Toll Free: 1-800-478-2392

April 2, 2015

VIA ELECTRONIC MAIL to: ITP.Guan@noaa.gov

Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 Silver Springs, MD 20910

**Re: Comments on Proposed Incidental Harassment Authorization for Shell Ice
Overflight Surveys in the Beaufort and Chukchi Seas, Alaska**

Dear Ms. Harrison,

On behalf of the Alaska Eskimo Whaling Commission (AEWC), thank you for the opportunity to comment on the proposed incidental harassment authorization (IHA) for Shell Gulf of Mexico Inc. (Shell) for take of marine mammals incidental to ice overflight surveys in the Beaufort and Chukchi Seas. We appreciate the opportunity to provide feedback to the National Marine Fisheries Service (NMFS) on the draft IHA and proposed statutory findings. As you know, the AEWC represents the eleven bowhead whale subsistence hunting villages of Barrow, Nuiqsut, Kaktovik, Point Hope, Wainwright, Kivalina, Wales, Savoonga, Gambell, Little Diomedes, and Point Lay. Our villages rely on the living resources of the Beaufort and Chukchi Seas for the majority of our food and for the continuation of our subsistence society and culture.

The whaling captains of our constituent villages formed the AEWC in 1980, for the purpose of protecting our bowhead whale resource and subsistence hunt. We carry out our responsibilities through locally delegated tribal authority and through federal authority delegated pursuant to the NOAA-AEWC Cooperative Agreement. Alaskan Native subsistence takes of marine mammals are exempt from the Marine Mammal Protection Act's (MMPA) moratorium on the take of marine mammals.¹ In addition, Congress has given our subsistence livelihood priority over other uses of the marine environment, requiring that other users mitigate the impacts of any activities with the potential to adversely affect the availability of our subsistence resources.²

¹ 16 U.S.C. § 1371(b)(1).

² 16 U.S.C. §§ 1371(b), (a)(5)(A)(i)(I), (a)(5)(D)(i)(II).

Each year we devote substantial resources toward negotiating a Conflict Avoidance Agreement (CAA) with oil and gas companies to mitigate the impacts of oil and gas exploration on our subsistence lifestyle and our way of life. Shell will be signing the 2015 CAA, and we want to express our deep appreciation for the company's willingness to engage with the AEWC in these important negotiations and to commit to ongoing work with the local community to ensure the protection of our subsistence traditions. Shell has worked closely with AEWC through the CAA Process, and its plans incorporate input from our whalers.

The following comments focus on the analysis NMFS provides in the Federal Register, which should be strengthened to improve the basis for the agency's findings with respect to impacts on subsistence.

The analysis in the Federal Register of potential impacts to subsistence uses should begin with a discussion of whether the operator has signed the CAA and, if so, what the CAA includes as mitigation measures for our subsistence activities. By setting forth that discussion - and by incorporating those mitigation measures into the IHA, along with the measures already discussed by NMFS - the agency provides itself a firm, rational basis to issue a "no unmitigable adverse impact" finding, as required by the MMPA.

The draft IHA for Shell incorporates mitigation measures from the CAA, including the use of Marine Mammal Observers and Inupiat Communicators,³ the Com-Centers and the General Communications Scheme,⁴ and Monitoring Plans.⁵

The proposed IHA should also include General Provisions for Avoiding Interference with Bowhead Whales or Subsistence Whale Hunting Activities.⁶ Specifically, the IHA should require that aircraft routes are planned so as to minimize any potential conflict with bowhead whales or bowhead subsistence whaling activities, not operate below 1,500 feet in areas of active whaling, and stay at least 5 miles in-land when traveling over land until taking a perpendicular route from land to the start of the offshore survey area.⁷ Shell's application, the Federal Register Notice, and the environmental assessment all note that aircraft will not operate below 1,500 feet in areas of active whaling, but the proposed IHA does not include this measure.⁸ The proposed IHA should include each of the requirements of Section 501 of the CAA in Section 8 of the proposed IHA.⁹

³ 2015 Open Water Season Programmatic Conflict Avoidance Agreement Section 201 [CAA]. This provision does not apply to aircraft but is a welcomed addition included in Shell's plans.

⁴ CAA Sections 202 and 203.

⁵ CAA Section 403.

⁶ CAA Section 501.

⁷ *Id.*

⁸ Application for Incidental Harassment Authorization for the Non-Lethal Taking of Whales and Seals in Conjunction with a Planned Ice Overflight Survey Program in the Chukchi and Beaufort Seas, Alaska May 2015 – April 2016 (rev. Jan. 2015) at 12-2; NMFS, Draft Environmental Assessment

For the Issuance of an Incidental Harassment Authorization for the Take of Marine Mammals by

In the environmental assessment (EA), NMFS should include, in its analysis of the effectiveness of mitigation measures, input from the Peer Review Panel. The EA should also specifically identify each of the planned operations for the Beaufort and Chukchi Seas during the 2015 open water season and address the potential cumulative effects of these activities. This is critical to protecting our subsistence uses as mandated by Congress in passing the Marine Mammal Protection Act.

Thank you again for the opportunity to comment on the proposed IHA for Shell. Please feel free to contact our office if you have any questions regarding our input.

Sincerely,



Mr. Arnold Brower, Jr.
Executive Director

cc: AEWB Commissioners

Harassment Incidental to Conducting Ice Overflight Surveys in the U.S. Chukchi and Beaufort Seas (Feb. 2015) at 29; Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Shell Ice Overflight Surveys in the Beaufort and Chukchi Seas, Alaska 80 Fed. Reg. 11398, 11411 (Mar. 3, 2015).

⁹ 80 FR at 11412.



Shell Exploration & Production Company

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April 1, 2015

Jolie Harrison
Chief, Permits and Conservation Division
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National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Via Overnight Delivery & Electronic Delivery (ITP.Guan@noaa.gov)

RE: Shell Gulf of Mexico Inc. Comments on 2015 Proposed Incidental Harassment Authorization, Ice Overflight Surveys in the Beaufort and Chukchi Seas

Dear Ms. Harrison,

This letter is intended to convey the comments from Shell Gulf of Mexico Inc. (Shell) on the Federal Register notice published by the National Marine Fisheries Service (NMFS) on March 3, 2015 (80 FR 11398) regarding the proposed issuance of an Incidental Harassment Authorization (IHA) for Shell's Ice Overflight Surveys in the Beaufort and Chukchi Seas during the 2015-2016 season. Please consider the following:

1) Page 11412 (7)(c) states:

The aircraft will not land on ice within 0.5 mi of hauled out pinnipeds or polar bears;

- Shell requests removal of the reference to Polar Bears, as they are not a NMFS trust species.

2) Page 11412 (11)(a) states:

The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) the name and type of vessel involved;

(iii) the vessel's speed during and leading up to the incident;

(iv) description of the incident;

(v) status of all sound source use in the 24 hours preceding the incident;

(vi) water depth;

(vii) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(viii) description of marine mammal observations in the 24 hours preceding the incident; (ix) species identification or description of the animal(s) involved;

(x) the fate of the animal(s); and

(xi) photographs or video footage of the animal (if equipment is available).

➤ This language reflects observations from a vessel.

- Shell request that language in item (ii) be adjusted to reflect aircraft as the platform of observation;
- removal of item (iii) that references the vessel's speed; and
- removal of item (v) as there are no additional sound sources aside from the aircraft.

Thank you,



Shell Exploration & Production Company
Alaska Venture Support Integrator, Manager