

been seen within the EZ for 10 minutes in the case of small odontocetes and pinnipeds; or (3) has not been seen within the EZ for 15 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

The 10- and 15-min periods specified in (2) and (3), above, are shorter than would be used in a large-source project given the small 180 and 190 dB (rms) radii for the two GI guns. GI gun operations will be able to resume following a shut-down during either the day or night, as the relatively small exclusion zone(s) will normally be visible even at night (see section VIII of UTIG's application).

*Minimize Approach to Slopes and Submarine Canyons* – Although sensitivity of beaked whales to airguns is not specifically known, they appear to be sensitive to other sound sources (e.g., mid-frequency sonar; see section IV of UTIG's application). Beaked whales tend to concentrate in continental slope areas, and in areas where there are submarine canyons. Avoidance of airgun operations over or near submarine canyons where practicable has become a standard mitigation measure, but there are no submarine canyons within or near the study area. Also, airgun operations are not planned over slope sites during the proposed survey.

### Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of the marine mammals that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, all marine mammal and turtle sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

### ESA

Under section 7 of the ESA, the NSF has begun informal consultation on this proposed seismic survey. NMFS will also consult informally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of the IHA.

### National Environmental Policy Act (NEPA)

NSF prepared an Environmental Assessment (EA) of a Planned Low-Energy Marine Seismic Survey by the Scripps Institution of Oceanography in the Northeast Pacific Ocean, September 2007. NMFS adopted NSF's 2007 EA and will conduct a separate NEPA analysis and prepare a Supplemental EA, prior to making a determination on the issuance of the IHA.

### Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the seismic survey in the northeast Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers of ten species of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply to this proposed action as there are no subsistence users within the geographic area of the proposed project.

For reasons stated previously in this document, this determination is supported by: (1) the likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) the fact that marine mammals would have to be closer than either 104 m (341.1 ft) in intermediate depths or 69 m (226.3 ft) in deep water from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; and (3) the likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel. As a result, no take by injury or death is anticipated and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, less than a few percent of any of the estimated population sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to UTIG for conducting a low-energy seismic survey in the northeastern Pacific Ocean during June-July, 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 16, 2008.

**James H. Lecky,**

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

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### COMMODITY FUTURES TRADING COMMISSION

#### Energy Markets Advisory Committee Meeting

This is to give notice that the Commodity Futures Trading Commission's Energy Markets Advisory Committee will conduct a public meeting on Tuesday, June 10, 2008. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 from 1 p.m. to 4:30 p.m. The purpose of the meeting is to discuss energy market issues. The meeting will be chaired by Walter L. Lukken, who is Acting Chairman of the Commission and Chairman of the Energy Markets Advisory Committee.

The agenda will consist of the following:

- (1) Call to Order and Introduction;
- (2) Current Market and Regulatory Developments;
- (3) Market Transparency;
- (4) Energy Market Best Practices;
- (5) Discussion of Future Meetings and Topics;
- (6) Adjournment.

The meeting is open to the public. Any member of the public who wishes to file a written statement with the committee should mail a copy of the statement to the attention of: Energy Markets Advisory Committee, c/o Acting Chairman Walter L. Lukken, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Acting Chairman Lukken in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact Erin Shaw at 202-418-5078.

Issued by the Commission in Washington, DC on May 19, 2008.

**David A. Stawick,**

*Secretary of the Commission.*

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Notice of Availability of the Final Environmental Impact Statement (FEIS) for the Proposed Potash Corporation of Saskatchewan Phosphate Mine Continuation Near Aurora, in Beaufort County, NC

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (COE), Wilmington District, Regulatory Division has been reviewing the request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from Potash Corporation of Saskatchewan Phosphate Division (PCS) for the continuation of its phosphate mining operation near Aurora, Beaufort County, NC. PCS proposes to undertake an approximately 11,909 acre mine expansion into an approximately 15,100 acre project area surrounding its current mining operation. This expansion would occur over a 37 year period and would impact approximately 4,135 acres of waters of the United States including wetlands adjacent to The Pamlico River, South Creek and Durham Creek. The Notice of Availability of the Draft Environmental Impact Statement (DEIS) for this action was published in the **Federal Register** on Friday, October 20, 2006 (71 FR 61962). The Notice of Availability of Supplement I of the DEIS (SDEIS) was published in the **Federal Register** on Tuesday, November 6, 2007 (72 FR 62634).

**DATES:** Written comments on the Final EIS will be received until July 9, 2008.

**ADDRESSES:** Comments and questions regarding the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. *ATTN:* File Number 2001-10096, Post Office Box 1890, Wilmington, NC 28402-1890. Copies of the Final EIS, the DEIS and the SDEIS can be reviewed on the

Wilmington District Regulatory homepage at, <http://www.saw.usace.army.mil/wetlands/regtour.htm>, or contact Ms. Thelma Hemingway (910) 251-4789, to receive written or CD copies.

#### FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and FEIS can be directed to Mr. Tom Walker, Project Manager, Regulatory Division, telephone: (828) 271-7980, extension 222.

#### SUPPLEMENTARY INFORMATION:

1. Project Description. The PCS Aurora facility includes an open pit mining operation that supplies phosphate ore to its onsite manufacturing facilities producing sulfuric acid, phosphoric acid, purified acid, liquid fertilizer, superphosphoric acid, diammonium phosphate, defluorinated phosphate, animal feed and solid fertilizers. Phosphate mining activities began at this site in 1965. On August 27, 1997, PCS was issued a Department of the Army permit to impact 1,268 acres of waters and wetlands to continue its mining operation into the current mine area. This action is more fully described in the August, 1996 Final Environmental Impact Statement for the Texasgulf Inc. Mine Continuation. PCS is nearing the end of the current mining area and is seeking to continue its mining operation into its adjacent property.

2. Proposed Action. On November 2, 2000, PCS applied for Department of the Army authorization pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act to continue its phosphate mining operation into an adjacent tract on the Hickory Point peninsula (the NCPC Tract) adjacent the Pamlico River and South Creek once reserves are depleted under the existing permitted area. The applicant's stated purpose and need for this project is to continue mining its phosphate reserve in an economically viable fashion. More specifically, the applicant's stated purpose and need is to implement a long-term systematic and cost-effective mine advance within the project area for the ongoing PCS mine operation at Aurora, NC.

The Corps circulated a Public Notice describing this application on January 2, 2001 (Action ID No. 200110096). PCS elected to further reduce proposed impacts to waters of the U.S. in response to comments on this Public Notice and submitted a revised permit application on August 13, 2001, for a 15-year mine continuation within the NCPC Tract. The Corps circulated a second Public Notice on October 4, 2001, describing the revised application.

The Corps, in considering reasonable alternatives and potential cumulative impacts, determined that the applicant would need to develop alternatives that include mining in areas other than the NCPC Tract and/or mining in multiple locations. On September 8, 2005, the applicant presented the Corps with an applicant preferred holistic plan for mining the entire project area. This plan, and a range of holistic alternatives were fully described in the DEIS and SDEIS.

By letter dated April 25, 2008, the applicant requested that its application be modified to request a permit for an approximately 11,909-acre mine advance through 15,100 acre project area that would impact approximately 4,135 acres of waters of the U.S. including wetlands. Waters and wetlands in the proposed impact area are more specifically described in the following table:

#### Proposed Impacts:

1. Creeks/Open Water	7 acres.
1a. Perennial Streams.	13,385 linear feet.
1b. Intermittent Streams.	15,903 linear feet.
2. Brackish Marsh Complex.	0 acres.
3. Bottomland Hardwood Forest.	73 acres.
4. Herbaceous Assemblage.	333 acres.
5. Scrub-Shrub Assemblage.	445 acres.
6. Pine Plantation .....	641 acres.
7. Hardwood Forest .....	1,075 acres.
8. Mixed Pine-Hardwood Forest.	910 acres.
9. Pine Forest .....	353 acres.
10. Pocosin/Bay Forest	264 acres.
11. Sand Ridge Forest	22 acres.
10. Ponds .....	11 acres.
Total .....	4,135 acres.

4. Alternatives. A full range of reasonable alternatives have been identified and evaluated through the scoping process. A complete description of all alternatives carried forward for detailed study is disclosed in Section 2 of the FEIS.

5. Scoping Process. A public scoping meeting was held on February 28, 2001, and an interdisciplinary Review Team (Review Team) comprised of representatives from other state and federal regulatory and commenting agencies, environmental advocacy groups, the applicant, and CZR Incorporated (CZR) (third party consultant to the Corps in accordance with RGL-05-08). The purpose of the Review Team is to identify major issues to be addressed in the EIS and to provide input on potential alternatives to be explored and potentially evaluated. As appropriate, the COE will