

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating

administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue

the final results of these reviews not later than November 30, 1998.

	Period to be reviewed
Antidumping Duty Proceedings	
South Korea: Circular Welded Non-Alloy Steel Pipe A-580-809 Hyundai Pipe Co., Ltd. Korea Iron & Steel Co., Ltd. SeAH Steel Corporation, Ltd. Shinbo Steel Co., Ltd.	11/1/96-10/31/97
The People's Republic of China: Fresh Garlic A-570-831 Fook Huat Tong Kee Pte. Ltd.	11/1/96-10/31/97
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
Singapore: Certain Refrigeration Compressors C-559-001	4/1/96-3/31/97

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1-2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 17, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 080897A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of Pacific harbor seals and possibly California sea lions by harassment incidental to seismic retrofit construction of the Richmond-San Rafael Bridge, San Francisco Bay, CA (the Bridge) has been issued to the California Department of Transportation (Caltrans) for a period of 1 year.

DATES: This authorization is effective from December 16, 1997, through December 15, 1998.

ADDRESSES: The application, authorization, and environmental assessment (EA), and a list of references used in this document are available by writing to the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or the Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, or by telephoning one of the following contacts.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of

Protected Resources, NMFS, (301) 713-2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (562) 980-4016.

SUPPLEMENTARY INFORMATION:**Background**

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

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

Section 101(a)(5)(D) of the MMPA provides an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as: ≥...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) 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.

Subsection 101(a)(5)(D) provides 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 small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue, or deny issuance of, the authorization.

Summary of Request

On July 7, 1997, NMFS received an application from Caltrans, requesting an authorization for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge. Accordingly, NMFS published a notice in the **Federal Register** on September 3, 1997 (62 FR 46480), requesting comments on NMFS' proposal to authorize Caltrans, under section 101(a)(5)(D) of the MMPA, to take, by harassment, small numbers of marine mammals incidental to seismic retrofit construction of the Bridge.

The Bridge will be seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to begin in December 1997 and extend through December 2001. A detailed description of the work planned is contained in Caltrans' 1996 Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project. Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. The construction duration for the seismic retrofit of foundation and towers on Piers 52 through 57 will be approximately 7 to 8 months. Because of work restrictions and mitigation measures, the seismic retrofit construction in this area is expected to be completed within two authorized work periods.

As the seismic retrofit construction between Piers 52 and 57 may potentially result in disturbance of pinnipeds at

Castro Rocks, an MMPA authorization is warranted.

Comments and responses

A notice of receipt of the application and proposed authorization was published on September 3, 1997 (62 FR 46480), and a 30-day public comment period was provided on the application and proposed authorization. In addition a press release was issued on September 10, 1997, and a public notice was published in a newspaper of general circulation in the San Francisco Bay area. During the comment period, comments were received from the Marine Mammal Commission (MMC), Caltrans, and the California Law Project (CLP). Information on the activity and authorization request that are not subject to reviewer comments can be found in the proposed authorization notice and is not repeated here.

Comments on MMPA Authorizations

Comment 1: CLP was of the opinion that the purpose and intent of the IHA provision in section 101(a)(5)(D) of the MMPA is to allow incidental marine mammal taking when the harassment will be "short-term and non-lethal." Because neither the Caltrans application nor the EA made clear that the seismic retrofit project would have "short-term and non-lethal" impacts to harbor seals, a section 101(a)(5)(D) authorization under the MMPA would be inappropriate. CLP notes that the project would extend beyond the 1-year time limit specified in section 101(a)(5)(D) and that subsequent renewals would be necessary. CLP notes that Congress intended that projects of this length (up to 5 consecutive years) be permitted under the more protective provisions of section 101(a)(5)(A).

Response: NMFS does not agree. When implementing section 101(a)(5)(D) in 1994, the House of Representatives noted: "It is not the Committee's intent to weaken any of the existing standards which protect marine mammals and their habitats from incidental takes under this section. However, the Committee recognizes that the regulatory agencies must be afforded some procedural flexibility in order to streamline the review of authorizations under this section." (H. Rept. 103-439, 103rd Congress, 2nd Sess., pp. 29, 30.) Provided the taking is not expected to result in the serious injury or mortality of marine mammals, a section 101(a)(5)(D) authorization is appropriate. That issue is addressed below.

The U.S. Congress did not intend to limit incidental harassment authorizations to activities that would

take place in a single year or less, only that the authorization would be valid for no more than 1 year. After that period, the activity participants could reapply. This interpretation of the statute is supported by the statement "The Committee notes that, in some instances, a request will be made for an authorization identical to one issued in the previous year. In such circumstances, the Committee expects the Secretary to act expeditiously in complying with the notice and comment requirements." (H. Rept. 103-439, 103rd Congress, 2nd Sess., p. 29.)

Comment 2: CLP believes that without more protective mitigation, injury or mortality of harbor seals could occur, and, therefore, the use of an IHA may be inappropriate because no serious injury or death would be authorized.

Response: NMFS disagrees that the issuance of an IHA under section 101(a)(5)(D) is inappropriate for this project. In the IHA, NMFS is requiring Caltrans to expand several of its mitigation measures to further decrease the potential for serious injury or mortality of harbor seals during construction activities (see Comments on Mitigation and Mitigation Measures). Moreover, the monitoring and reporting programs have been greatly expanded (see Monitoring and Reporting sections). NMFS expects the mitigation requirements of the IHA to preclude harbor seals from serious injury or mortality and will result in the least practicable impact to harbor seals from construction activities. *Comment 3:* CLP recommends that NMFS require that Bridge retrofit construction be halted if any "harmful disturbance" occurs during the pupping or molting season.

Response: NMFS will not be requiring Caltrans to stop work if certain threshold seal disturbances are observed because certain construction operations cannot be stopped in progress without jeopardizing the structural integrity of the Bridge and NMFS does not expect incidental harassment of harbor seals from construction activities to have more than a negligible impact on the harbor seal population. Nevertheless, if any unauthorized marine mammal taking (serious injury or mortality) occurs as a result of seismic retrofit construction activities, Caltrans will be subject to the penalties of the MMPA. NMFS will, however, reevaluate the appropriateness of the IHA before Caltrans reapplies for a new IHA next year, based on required reports (see Reporting section).

Comment 4: CLP concludes that harbor seals that inhabit San Francisco Bay (SFB) are a "population stock" under the MMPA and believes NMFS

should consider the impacts of the retrofit construction relative to the SFB population stock.

Response: NMFS disagrees that the best available information indicates that harbor seals that inhabit SFB are a "population stock" under the MMPA. Studies have shown that adult harbor seals in SFB have a high degree of site fidelity as indicated by (1) high occurrence of red pelaged seals in SFB; (2) organochlorine containment levels are higher in harbor seals that haul-out in SFB; and (3) limited movement of adult harbor seals tagged in SFB to nearby coastal areas. Nevertheless, data are not available that demonstrate that harbor seal pups born at haul-out sites in SFB return to breed and pup at the same site where they were born. Thus, at this time, scientists do not know whether pups born in SFB show the same degree of site fidelity as adults or whether they utilize other haul-outs either within SFB or in nearby coastal areas when they mature. Studies of adult harbor seals tagged in SFB indicate that the level of movement to nearby coastal areas (20 percent) (Kopec and Harvey 1995, Harvey and Torok 1994) would be sufficient to preclude isolation if those seals were breeding with seals found along the coast (Harvey, J., Moss Landing Marine Laboratory, pers. commun., November 1997). Moreover, genetic studies have not been conducted to determine whether seals in SFB have unique genetic variation or genotypes. In contrast, NMFS has separated harbor seals within inland waters of Washington as a population stock under the MMPA based on (1) extremely low mixing with coastal harbor seals, (2) pollutant loads, (3) fishery interactions, (4) existence of unique haplotypes in inland Washington harbor seals, and (5) differences in mean pupping dates. The best available information does not demonstrate that harbor seals in SFB are a unique biological population (Harvey, J., pers. commun., 1997; Allen, S., NPS, pers. commun., November 1997; Hanan, D., CDFG, pers. commun., November 1997). For these reasons, NMFS does not consider harbor seals in SFB to be a population stock under the MMPA.

Under section 117 of the MMPA, NMFS is required to prepare stock assessment reports (SARs) for every marine mammal stock that occurs in U.S. waters. NMFS has convened two expert working groups (NMFS and Non-NMFS scientists/managers) to draft guidelines for preparing SARs (Barlow *et al.* 1995, Wade and Angliss 1997). Furthermore, SARs are available for public review and comment and are reviewed by regional scientific review

groups (all non-NMFS scientists). Using these guidelines and in consultation with the Pacific Scientific Review Group, NMFS published a SAR that considers harbor seals that occur in California as a separate population stock (Barlow *et al.* 1995). This SAR reports a population abundance estimate of 34,554 harbor seals. This stock of harbor seals is not considered "depleted" or "strategic" under the MMPA or listed as an endangered or threatened species under the Endangered Species Act. For these reasons, NMFS is considering the impact of seismic retrofit construction of the Bridge on the California harbor seal stock.

Harbor Seal Concerns

Comment 5: CLP believes the **Federal Register** notice's statement "evidence to date has not indicated that anthropogenic disturbances have resulted in increased mortality to harbor seals" in 62 FR 46480 (September 3, 1997), is incorrect as several studies document this. The Boles and Stewart (1980) study merely describes behavior patterns consistent with one found with Bay harbor seals and does not support a finding that human disturbance does not result in serious harm or mortality.

Response: In retrospect, NMFS believes the statement made was too broad and it should reflect that, to date, studies have not indicated that airborne anthropogenic noise has resulted in increased harbor seal mortality. NMFS would be interested in specific harbor seal studies that indicate otherwise. It should be recognized that most of this information is from studies on the impact of noise from rocket launches and sonic booms on harbor seals and sea lions in the California Channel Islands and, in the past, has been mostly qualitative. Upcoming studies have been redesignated to be more quantitative.

Comment 6: CLP states that there is no evidence that seals will adapt to construction, and harbor seals have abandoned sites in SFB. Harbor seals hauling-out in areas of frequent but non-threatening disturbances show a relatively higher tolerance for such events when compared with more isolated areas where disturbance is rare. Observations of harbor seals at Castro Rocks found that seals flush easily in response to human disturbance.

Response: NMFS agrees that there is no scientific evidence that demonstrates harbor seals will acclimate to disturbance from construction activities. NMFS also believes that seals are likely to acclimate to activities they perceive as non-threatening. Although harbor seal colonies have abandoned haul-out sites in SFB, colonies also have

acclimated to various levels of human activity. In particular, despite the regular exposure to traffic noises from the Bridge, vessel traffic from commercial activities at the Chevron Long Wharf, and vessel traffic from recreational boating and commercial shipping in the area, harbor seals continue to haul-out, pup, breed, and molt at Castro Rocks. For these reasons, NMFS believes that harbor seals at Castro Rocks may acclimate to certain seismic retrofit construction activities if they perceive these activities as non-threatening.

Comment 7: CLP believes that seal counts by Caltrans personnel during June 1994/1996 misrepresent the number of pups using Castro Rocks.

Response: Presentation of the seal counts by Caltrans personnel during June 1994 and 1996 was not intended to establish the period in which pups are born at Castro Rocks. The best available information indicates that in SFB harbor seal pups are first observed in mid-March, peak numbers of pups are observed in early May, and by the first week of June, the majority of the pups are weaned (Kopec, D., Romberg Tiburon Centers, pers. commun., November 1997; (i.e., Kopec 1997)).

Comment 8: The statement in the **Federal Register** notice (62 FR 46480, September 3, 1997) that "haul-out groups are temporary, unstable aggregations" does not accurately represent the current knowledge of harbor seal population dynamics. Seals in SFB show strong site fidelity.

Response: The statement is from Sullivan (1982) and is not refuted by Kopec and Harvey (1995). However, because harbor seals show strong site fidelity (Kopec and Harvey 1995, Stewart and Yochem 1994), the statement may be misleading.

Comment 9: The finding of Bowles and Stewart (1980) referenced in the **Federal Register** notice (62 FR 46480) that "harbor seals tendency to flee...decreased during the pupping season," does not support the claim that young seals are protected from "...the startle response of the herd."

Response: Reviewing the referenced source, NMFS has determined that there is no evidence that harbor seals are less sensitive to disturbance during the pupping season than at other times. This agrees with Kopec's observations (Kopec 1997). See Mitigation Measures.

Comments on Mitigation Measures

Comment 10: CLP had several concerns regarding NMFS' conclusions on the impact of disturbance on molting harbor seals and the appropriateness of Caltrans' proposed work closure period

(February 1–June 30). For example, CLP believes there is no scientific evidence to support the conclusion in the **Federal Register** notice (62 FR 46480, September 3, 1997) that harbor seals have evolved adaptive mechanisms to deal with natural disturbance from predators and seabirds during the molt. CLP states this is supported by the behavior of harbor seals to haul out in very isolated locations precisely to avoid disturbance, and it is not factual to suggest that seabirds cause seals to flush into the water. Existing as they do at the top of the food web, CLP states, harbor seals using Castro Rocks have no natural predators. CLP states that the very sensitive molting season of seals using Castro Rocks extends to at least early or mid-August. Caltrans' application and the EA failed to adequately assess the project's impacts to molting seals during July and August. For these reasons, CLP recommended that the Closure Period be extended to include the entire molt.

Response: The process of molting is an important and energetically demanding part of a seal's annual cycle (Leatherwood *et al.* 1992). While on land, harbor seals bask in the sun to warm their body surface and promote flow of blood to the skin which is essential for new hair growth. While little is known about the effect of disturbance on molting harbor seals, energetic costs are probably higher for seals that spend more time in the water during the molt since a seal's metabolic rate increases in the water (DeLong, R., NMFS, pers. commun., November 1997). Nevertheless, NMFS believes that it is likely that harbor seals have evolved adaptive mechanisms to deal with exposure to the water during the molt for the following reasons. First, on some harbor seal haul-outs during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Second, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose their all their hair at one time. Finally, due to the large amount of time hauled-out harbor seals allocate to scanning their environment, it is likely that terrestrial predation was an important selection pressure during the early evolution of harbor seal behavior (Da Silva and Terhune 1988) and could be the reason why hauled-out harbor seals appear to be so sensitive to disturbance. Disturbance would not have been isolated to only non-molting seasons and thus, harbor seals most likely

evolved mechanisms to tolerate exposure to water during the molt. Some harbor seal colonies in California continue to be subject to disturbance from wildlife such as seabirds (Hanan, D. pers. commun., 1997) and human activities. If the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the molt (DeLong, R., pers. commun. 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site-fidelity during the molt, some seals were observed molting at other nearby haul-outs.

The primary objectives of the Kopec and Harvey (1995) study was to determine the population dynamic and movements, investigate the concentration of pollutants, and assess the health of harbor seals within and near SFB. Although the number of molting seals was recorded during most field observations, molt observations were incidental to Kopec and Harvey's (1995) primary census counts (Kopec 1997). Thus, although Kopec and Harvey (1995) refer to the "reproductive/molting" period at Castro Rocks as occurring between March-July, no data are presented to support this conclusion. Moreover, they report that "In San Francisco Bay, pupping occurs from March to May, and molt in June. This corresponds with the greatest number of harbor seals counted in * * * Castro Rocks." For these reasons, NMFS concluded that the proposed Closure Period (February 1-June 30) would encompass all of the pupping and breeding season, and nearly the entire harbor seal molting season at Castro Rocks.

Recently available unpublished information indicates that the peak number of actively molting harbor seals occurs in early July at Castro Rocks (Kopec 1997), which coincides with the peak of the molt for harbor seals near and within SFB (S. Allen, pers. commun., 1997). By early August, only five to seven percent of the seals are actively molting at Castro Rocks (Kopec 1997).

Based on new information on harbor seals molting at Castro Rocks, NMFS has expanded the Closure Period to include the entire month of July (see Mitigation Measures). The modified Closure Period (February 15 - July 31) is designed to encompass the entire harbor seal pupping and breeding seasons and nearly the entire molting season at Castro Rocks (see Mitigation Measures). This represents a period of five and one-half months in which no work may be

conducted on the substructure, towers, or superstructure between Piers 52 and 57, inclusive (please see related comment 11 below). Any harbor seals that are still molting when work begins after the Closure Period are likely to utilize other SFB haul-out sites if they are substantially disturbed by construction activities in the area (DeLong, R., pers. commun., 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Expanding the Closure Period further would result in another season of work near Castro Rocks and in prolonged disturbance to seals utilizing Castro Rocks. The Closure Period could be expanded during the second year of the project if monitoring results indicate that impacts may be greater than negligible.

Comment 11: CLP believes that the proposed seasonal restrictions are not sufficient to protect seals during the earlier pupping and nursing season because work will be allowed to continue on the superstructure and could negatively impact seals during the spring pupping and summer molting seasons. Furthermore, CLP notes that the IHA notice contradicts the EA's superstructure seasonal closure period. For these reasons, CLP recommends that the work closure area include a prohibition on superstructure work between Piers 52 and 57.

Response: NMFS agrees and, as mentioned in comment 10 above, has modified the Closure Period to include all retrofit construction activities on the substructure (e.g., piers), towers, and superstructure between Pier's 52 and 57, inclusive (see Mitigation Measures). Since the Closure Period has been expanded to include nearly the entire molting season (see above), NMFS has modified the Closure Period to begin on February 15, instead of February 1. In SFB, harbor seal pups are first observed in mid-March, peak numbers of pups are observed in early May, and, by the first week of June, all pups are weaned (Kopec and Harvey 1995). Thus, the Closure Period will include the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas. As mentioned previously, imposing a 6-month Work Closure Period (i.e., February 1–July 31) would likely result in another season of work near Castro Rocks and in prolonged disturbance to seals at Castro Rocks.

Comment 12: The CLP believes that the size of Caltrans' proposed exclusion zone around Castro Rocks is arbitrary and inconsistent with both the existing scientific literature or reported reactions and actual observations of disturbance behavior at Castro Rocks. For these

reasons, CLP recommends that the exclusion zone be expanded to a minimum of 200 m (656 ft) on all sides of Castro Rocks and that the zone be expanded if monitoring indicates seals are adversely effected by boats traveling outside the zone boundaries.

Response: The purpose of the exclusion zone is to establish an area around Castro Rocks in which retrofit construction activity will be prohibited during the pupping, breeding, and the majority of the molting season (the Work Closure Period) to minimize the impacts to seals during the sensitive periods of their life cycle. Caltrans originally proposed that the exclusion zone be located between the Bridge center line, between Piers 52 and 57, and extend to 200 ft (61 m) south of the most southwestern portion of Castro Rocks.

Reactions of harbor seals to disturbance depends upon the distance of the activity to the seal, type of the activity (e.g., boat traffic, aircraft overflights, loud sounds, etc.), phase of seal life cycle (e.g., pupping season, non-pupping season), and the history of disturbance the colony has previously experienced. Depending on the activity, a wide range of seal "reaction distances" have been reported in the literature (e.g., 30–1,800 m (98–5900 ft)). In an adjacent SFB estuary, Bolinas Lagoon, 81 percent of disturbances (boats, hikers, dogs) were within 100 and 200 m (328 and 656 ft) of a harbor seal haul-out (Swift and Morgan 1993). Although seals at Castro Rocks have habituated to background traffic noise from the Bridge, they respond to unusual noises, such as hammering, truck horns, back-up signal beeps, work boats, and other human activity on the Bridge (Kopec, D., letter to CLP, dated October 3, 1997).

NMFS agrees that the exclusion zone should be expanded to further minimize the impact of seismic retrofit construction activities during the Closure Period. For this reason, NMFS is requiring Caltrans to greatly expand the northern boundary of the exclusion zone. For example, the northern boundary has been extended from the Bridge center line to 250 ft (76.2 m) north of the most northern tip of Castro Rocks (approximately 200 ft (61 m)) north of the Bridge center line). An expansion of this boundary further north is impractical due to the need for a safe navigation corridor north of the Bridge for work vessel access to construction staging areas near the east end of the Bridge. The southern boundary of the exclusion zone will be 250 ft (76.2 m) south of the southern tip of Castro Rocks. Due to the location of

this boundary relative to the Bridge (600 ft/183 m), it is unlikely that the unrestricted area further south would be practicable for use during construction (e.g., corridor to a staging area on the south side of the Bridge). Any further expansion of the southern boundary would encroach onto waters outside Caltran's control (e.g., right-of-way) and could affect Chevron's oil pier operations further south. The eastern boundary will be 300 ft (91.4 m) east of the eastern tip of Castro Rocks, and the western boundary will be 300 ft (91.4 m) west of the western tip of Castro Rocks. Similarly, any further expansion of these boundaries would encroach onto waters outside Caltrans' control. Caltrans will minimize vessel traffic in the exclusion zone when conducting construction activities during the Work Period. For these reasons, NMFS believes these boundaries will have the least practicable impact on the California harbor seal population.

Comment 13: Caltrans recommends that the prohibition on pile installation and the limitation on maximum noise levels to 86 DBA re 20 uPa at 50 m between 7 p.m. and 7 a.m. be modified to the hours between 9 p.m. and 7 a.m.. Caltrans states that this is necessary to allow for the Bridge retrofit contractor to use two working shifts instead of one shift. Caltrans also recommends removing the 24-hr construction noise limitation near Castro Rocks during the pupping/molting restriction period because no work will be conducted between Piers 52 and 57, inclusive on the substructure, towers, or superstructure during this period.

Response: NMFS agrees. Although the night time restriction for pile installation and maximum noise levels was originally developed by Caltrans to minimize human residential noise disturbance, NMFS is also requiring night time restrictions because it believes that it could protect seals at Castro Rocks if they change their hauling-out patterns from daytime to night time. NMFS has modified the time period for this requirement from 7 p.m.-7 a.m. to 9 p.m.-7 a.m. because restricting this mitigation measure further would allow only one work shift, would likely result in another season of work near Castro Rocks, and thus, would result in prolonged disturbance to seals utilizing Castro Rocks (see Mitigation Measures). NMFS also agrees that the 24-hr. noise limitation near Castro Rocks is no longer necessary due to all work ceasing on the substructure, towers, and superstructure on Pier's 52–57, inclusive, during the pupping, breeding, and majority of the molting season.

Comment 14: CLP recommends that NMFS require Caltrans to conduct certain offsite mitigation that will enhance the protection of alternative haul-out sites, many of which are under pressure from human disturbance. Such mitigation might take the form of education signs or posters at haul-outs and other locations to reduce potential for human disturbance.

Response: NMFS believes that the mitigation measures imposed under the IHA will effectively mitigate the activity to the lowest level practicable and still allow the project to continue near to schedule. As a result, additional off-site mitigation measures are unwarranted. NMFS believes that mitigation banking is appropriate only under those circumstances when the impact cannot be mitigated onsite.

Monitoring and Reporting Concerns

Comment 15: CLP believes that the proposed monitoring plan is inadequate and should be replaced by a comprehensive, quantitative monitoring program. CLP recommends that the IHA establish upper limits of disturbance beyond which the source construction activity is curtailed. CLP believes the IHA should require continuous site monitoring and immediate reporting that, when triggered, will temporarily halt construction activity near Castro Rocks and will impose additional mitigation.

Response: NMFS has significantly expanded the requirements of the monitoring program that must be implemented by Caltrans under its IHA (see Monitoring). For example, the monitoring program includes pre-construction monitoring of Castro Rocks (e.g., baseline information) and frequent monitoring each week within the Work Period to document the effects of construction activities on harbor seals at Castro Rocks. The monitoring of at least one alternative haul-out site in SFB is also required to evaluate whether harbor seals at Castro Rocks could be hauling out at other sites in SFB as a result of construction. Monitoring will also occur during the Closure Period to evaluate whether construction activities are disturbing the seals during their pupping, breeding and molting periods. Moreover, night time censusing of harbor seals will occur during the Closure Period and Work Period at Castro Rocks to evaluate whether harbor seal haul-out behavior may be affected by construction activities during these periods. NMFS believes this improved monitoring program will be sufficient to collect appropriate data to adequately evaluate the biological impact of

construction activities on Castro Rocks harbor seals.

Comment 16: CLP suggested that enhanced protection and monitoring of other, limited, haul-out sites in SFB are critical to monitoring measures and must be implemented under National Environmental Policy Act (NEPA) and MMPA.

Response: In the IHA, NMFS is requiring Caltrans to simultaneously monitor at least one other harbor seal haul-out site in SFB to document potential changes in harbor seal population dynamics in SFB from seismic retrofit construction disturbance of seals at Castro Rocks.

NEPA Concerns

Comment 17: CLP states that NMFS must comply with NEPA, which is the statute requires the preparation of an environmental impact statement (EIS) where a Federal project may have a significant adverse impact on the environment.

Response: NMFS is issuing the IHA in compliance with NEPA. After assessing the effects of the Bridge project (undertaken with the mitigation measures) on marine mammals in an EA, NMFS found that issuance of the IHA will not have a significant effect on the human environment. Accordingly, an EIS was not prepared.

For the Bridge project as a whole, the lead Federal agency is the Federal Highway Administration (FHA). On August 15, 1997, the FHA determined that the retrofit project is categorically excluded from NEPA. In that determination, the FHA stated that the retrofit project does not have a significant effect on the human environment.

In addition, Caltrans determined that the retrofit project is statutorily exempt from the California Environmental Quality Act (CEQA) under section 180.2 of the Streets and Highways Code and section 2180(b)(4) of the Public Resources Code.

Comment 18: CLP states that CLP believes that an EIS must be prepared, unless the project is "fully mitigated," to avoid "devastating impacts" (e.g., abandonment) on the future viability of Castro Rocks as a harbor seal haul-out site and adversely affecting the population stock that relies on Castro Rocks.

Response: NMFS does not agree that abandonment of Castro Rocks as a haul-out site is likely from the seismic retrofit construction of the Bridge, provided Caltrans undertakes the mitigation measures required in the IHA. NMFS expects that the short-term impact of construction to have a temporary mod-

ification in behavior by harbor seals at Castro Rocks and possibly by some California sea lions. At worst, disturbance from construction activities is expected to cause the harbor seals to haul-out at night at Castro Rocks (Kopeck, D., letter to CLP, dated October 3, 1997), or to utilize alternative haul-out sites in the SFB for a short period (Harvey, J., 1997, pers. commun.). Therefore, NMFS expects the impacts from the seismic retrofit construction of the Bridge to have no more than a negligible impact on the California harbor seal population and does not expect harbor seals to permanently abandon Castro Rocks as a rookery or haul-out. With the mitigation measures NMFS is requiring, the Bridge project is expected to result in minimal disturbance to harbor seals at Castro Rocks.

Mitigation Measures

To limit incidental harassment to the lowest practicable level, NMFS will require Caltrans to implement the following mitigation measures. First, Caltrans must cease seismic retrofit construction work from February 15 to July 31 on the Bridge substructure, towers, and superstructure between Pier's 52 and 57, inclusive (Closure Period). Seismic retrofit work may occur from August 1 to February 14 on the Bridge substructure, towers, and superstructure between Pier's 52 and 57, inclusive (Work Period). Second, no water craft associated with construction activities will be deployed during the year within the "exclusion zone" except when construction equipment is required for seismic retrofit construction between Piers 52 and 57, inclusive, and within the Work Period. Vessel traffic will be minimized in the exclusion zone when construction activities are occurring during the Work Period. The boundary of the exclusion zone is rectangular in shape (1700 ft by 800 ft (518.2 m by 244 m)) and completely encloses Castro Rocks and Pier's 52-57, inclusive. The northern boundary of exclusion zone will be located 250 ft (76.2 m) from the most northern tip of Castro Rocks, and the southern boundary will be located 250 ft (76.2 m) from the most southern tip of Castro Rocks. The eastern boundary will be located 300 ft (91.4 m) from the most eastern tip of Castro Rocks, and the western boundary will be located 300 ft (91.4 m) from the most western tip of Castro Rocks. This exclusion zone will be restricted as a controlled access area and will be marked off with buoys and warning signs for the entire year. Lastly, between 9 p.m. and 7 a.m., no piles may be installed on the Bridge, and

construction noise may not exceed 86 DBA re 20 uPa at 50 ft (15 m).

Summary of Monitoring

NMFS will require Caltrans to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. Caltrans will monitor at least one additional harbor seal haul-out within SFB to evaluate whether harbor seals use alternative hauling-out areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (August 1 - February 14) and the Closure Period Phase (February 15 - July 31). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between Pier's 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior once a day for a period of five consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior at the alternative San Francisco Bay harbor seal haul-out at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS proposes to require under a second authorization that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week, the monitor will conduct an additional harbor seal census after midnight.

Reporting

Caltrans will provide weekly reports to the Southwest Regional Administrator, NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults and sub-adults, number of females/males, number of redcoats, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure level measurements made at the haulout will also be provided.

A draft interim report must be submitted to the Southwest Regional Administrator on August 1, 1998. A draft final report must be submitted to the Southwest Regional Administrator within 90 days after the expiration of Caltrans Incidental Harassment Authorization. A final report must be submitted to the Southwest Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report.

NEPA

NMFS has prepared an EA that concludes that the impacts of Caltrans' seismic retrofit construction of the Bridge will not have a significant impact on the human environment. A copy of the EA is available upon request (see ADDRESSES).

Conclusions

NMFS has determined that the short-term impact of the seismic retrofit construction of the Bridge, as described above, will result, at worst, in the temporary modification in behavior by harbor seals and possibly by some California sea lions. While behavioral modifications, including temporarily vacating the haul-out, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above.

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA) of small numbers of Pacific harbor seals and possibly of California sea lions; would not have an unmitigatable adverse impact on the availability of these stocks for subsistence uses; and would result in

the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued. For the above reasons, NMFS has issued an IHA for a 1-year period beginning on the date noted above (see EFFECTIVE DATES) for the incidental harassment of harbor seals and California sea lions by the seismic retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, California, provided the above mentioned monitoring and reporting requirements are incorporated.

Dated: December 16, 1997.

Hilda Diaz-Soltero,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121797A]

Atlantic Coastal Fisheries Cooperative Management Act; Meeting

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

ACTION: Coordination meeting.

SUMMARY: NMFS and the U.S. Fish and Wildlife Service (USFWS) will hold a joint meeting to discuss coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act (Pub. L. 103-206) and the Atlantic Striped Bass Conservation Act (Pub. L. 102-103).

DATES: The meeting will convene on Thursday, January 15, 1998, at 10:00 a.m. and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESSES: National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Anne Lange, Intergovernmental and Recreational Fisheries, NMFS 8484 Georgia Avenue, Silver Spring, MD 20910. Telephone: (301) 427-2014.

SUPPLEMENTARY INFORMATION: NMFS-USFWS hold semi-annual coordination meetings established under a Memorandum of Understanding to develop and implement a program to support interstate fishery management efforts associated with the Atlantic

Coastal Fisheries Cooperative Management Act. The main agenda items for this meeting are discussion of the 1996-1997 Workplan; an update on implementation of the Atlantic Coast Cooperative Statistics Program; status of cooperative coastal/citizen tagging efforts; distribution of FY1998 Atlantic Coastal Act funds; a 1998 striped bass workshop; Striped Bass Act reauthorization; and ASMFC Fishery Management Plan work for 1998.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Lange (see FOR FURTHER INFORMATION CONTACT) at least 7 days prior to the meeting date.

Dated: December 17, 1997.

Richard Schaefer,

Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service.

[FR Doc. 97-33473 Filed 12-22-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121597B]

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing applications.

SUMMARY: NMFS publishes for public review and comment summaries of applications submitted by the Government of Estonia and the Government of Lithuania requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 1998 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, (617) 231-0422;