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Dated: November 30, 2001.

**Scott Gudes,**

*Acting Under Secretary for Oceans and Atmosphere/Administrator and Deputy Under Secretary*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 112101B]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Repairs at the Carpinteria Oil and Gas Processing Facility, Carpinteria, 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 (*Phoca vitulina richardsi*) by harassment incidental to repairs at the Carpinteria Oil and Gas Processing Facility in Carpinteria, CA., has been issued to Venoco, Inc.

**DATES:** Effective from November 28, 2001, until November 28, 2002.

**ADDRESSES:** The application, Wildlife Protection Plans, Project Execution Plans, and IHA are available by writing to Donna Wieting, Chief, Marine

Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225.

**FOR FURTHER INFORMATION CONTACT:** Simona P. Roberts, (301) 713-2322, ext. 106 or Christina Fahy, (562) 980-4023.

#### 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, notice of a proposed authorization is provided to the public for review.

Authorization may be granted if NMFS finds, based on the best available scientific evidence, that the taking will have a negligible impact on the marine mammal species or stock(s). Negligible impact is defined in regulation (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".

##### Summary of Request

On June 17, 2001, NMFS received an application from Venoco, Inc., the owner and operator of the Carpinteria Oil and Gas Processing Facility in Carpinteria, CA, requesting an IHA for the take of small numbers of Pacific harbor seals incidental to repair of gas pipeline supports and pier pilings at Casitas Pier.

On October 24, 2001, Venoco notified NMFS that the project had been modified such that only repairs to the gas pipeline supports and not the pier were to be made. In addition, Venoco revised its original Project Execution Plan and Wildlife Protection Plan to better address the issue of acoustic harassment. A detailed description of the work proposed for 2001 is contained in the revised Project Execution Plan, which are available upon request (see ADDRESSES).

Venoco plans to complete all repair activities in a three-week period. However, to account for potential weather and logistical delays and reduce further paperwork, the IHA will be issued for a full 1-year period (November 2001–November 2002).

## Comments and Responses

On September 12, 2001 (66 FR 47453), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from the Santa Barbara County Energy Division, the California Coastal Commission, the City of Carpinteria, and a private citizen.

### Cumulative Impact Concerns

Comment 1: The California Coastal Commission recommended that the authorization address the potential for cumulative impacts from chronic disturbances to the Pacific harbor seal rookery located near the gas pipeline and the possibility that additional disturbances such as the proposed activity could cause the seal rookery to permanently abandon this location.

**Response:** Based on previous observations conducted in the vicinity of the gas pipeline and pier, as well as daily observations made by the Carpinteria Seal Watch, there is no evidence that chronic disturbances, such as people walking along the beach, are negatively impacting the Pacific harbor seals hauling out on the beach over the long-term (Seagars, 1986; Howorth, 1995). From information provided by Howorth (1995), the most negative disturbance to date, resulting in haul-out abandonment, has been not from direct disturbance by humans but rather from disturbance and pup injury and predation by a coyote. Based on these previous documented observations at Carpinteria and nearby haul-out sites, there is very low probability that the harbor seals will completely abandon the Carpinteria haul-out site as a result of Venoco's repair activities. While there is evidence from other haul-out sites in San Francisco Bay that seals will abandon haul-out sites during chronic daytime disturbance, the San Francisco Bay seals did not completely abandon the site and continued to use the site during nighttime hours when there was no disturbance (Paulbitsky, 1975; Risebrough *et al.*, 1980).

Biologically, the primary concerns of harbor seal haul-out site abandonment are physiological stress resulting from the inability to find alternate haul-out sites and the inability to find alternate haul-out sites for pupping and molting. In the Carpinteria case, there are two alternate haul-out sites in the vicinity; offshore rocks west of the beach and off Carpinteria Beach State Park. Harbor seals have been observed hauling out in these locations after having been disturbed on the beach (Sadler, 1976;

Rambo, 1978; Bowland, 1978; Carpinteria Seal Watch records; Howorth, 1995). In order to minimize disturbance to the Carpinteria site as much as possible all activities undertaken by Venoco will be subject to the mitigation conditions in the IHA, which are designed to reduce the sights and sounds associated with human presence. Further, there will be no access to the beach from December 1–May 31, pursuant to the City of Carpinteria's Municipal Code, eliminating potential disturbance from Venoco's activities during the pupping season.

#### *Mitigation, Monitoring and Reporting Concerns*

*Comment 2:* The County of Santa Barbara, Energy Division and the California Coastal Commission both recommended that NMFS require safety zones and ramp-up procedures for the pile driving operations occurring near the harbor seal haul-out area to address the potential for acoustic harassment and injury. Specifically, the County of Santa Barbara recommended that NMFS' mitigation requirements follow previous conditions imposed by the California Coastal Commission for work necessary to stabilize two leaking oil wells located in the surf zone, including designating a 500-foot (152-meter) safety zone around pile driving activity, an initial ramp up period at the commencement of pile driving activities, and scheduling of pile driving activities during periods of low tides to the maximum extent feasible.

*Response:* Under the IHA, Venoco must establish a 500-foot (152-meter) buffer zone around each of the pile driving sites. If any marine mammal is sighted within this 500-foot (152-meter) zone immediately prior to planned commencement of driving, pile driving must not occur until marine mammals have left the area. In addition, pile driving must not commence unless the buffer zone can be monitored for a minimum of 15 minutes immediately prior to the start-up of the pile driving episode. Due to the characteristics of the sounds produced by these pile-driving operations, NMFS does not support an initial ramp-up period during Venoco's repairs. Pile driving in a different sediment type (i.e., clay) than at Carpinteria has shown that instituting an initial ramp-up period at the commencement of pile-driving activities may lengthen the period of time and necessitate higher energy levels to adequately drive the piles, thus increasing the amount of time marine mammals are exposed to increased sound levels (California Department of

Transportation, 2001). Until there is better data on the operational requirements of ramping-up pile driving activities in varying sediment types, NMFS will not require ramp-up for any pile-driving activity. In contrast, NMFS does support an initial ramp-up period at the commencement of seismic and shallow-hazard surveys.

NMFS found no scientific or anecdotal evidence that scheduling pile driving activities only during periods of low tides would reduce the disturbance to seals while they are hauled out. On the contrary, the greatest number of harbor seals observed hauled out at the Carpinteria site was in the month of September during an early morning low tide (Horworth, 1995). Clearly the tide cycles, as well as still undetermined environmental variables, play a significant role in harbor seal haul out behavior; however, Howorth (1995) noted that the most prevalent cause of natural disturbance to the Carpinteria haul out site was from waves striking the beach and washing over seals on the rising tides. If pile driving activities occurred during this rising tide phase, it may be very difficult for monitors to determine a causal relationship between seals entering the water, environmental variables, and repair activities. In order to gather more information on the relationship between harbor seal behavior, environmental factors, and the repair activities, the IHA requires the collection and reporting of the following information: tide height, sea state, weather conditions, type of repair activity being conducted, and harbor seal observations (including number and age ranges present and behavior).

*Comment 3:* The California Coastal Commission recommended that the authorization require the presence of one or more onsite biological monitors with the authority to suspend project operations if marine mammals are observed within or enter into established safety zones or if it is determined that impacts to marine mammals are greater than those authorized in the IHA.

*Response:* All IHA's require the presence of one or more onsite biological monitors, with relevant marine mammal experience and approved by NMFS, to document marine mammal presence and any disturbances. These monitors have the authority to suspend activities that are in violation of the conditions set out in the IHA.

*Comment 4:* The City of Carpinteria requested that the City's Municipal Code governing access to the city beach from December 1-May 31 each year be made part of the conditions of the

proposed authorization. The City supports NMFS' proposals to condition the authorization so that all noise, sudden movement, and unnecessary personnel be minimized in or adjacent to the project site.

*Response:* NMFS has made the Municipal Code part of the IHA conditions by restricting work on the pipeline and other activities occurring on the beach or surf zone within 750 ft (230 m) of the harbor seal haul-out from December 1–May 31.

*Comment 5:* The private citizen who commented volunteers with the Carpinteria Seal Watch. This commentator protested the application for takings and requested that NMFS condition the authorization so that: (1) work would not occur between November 30 and May 31, (2) work would not occur during the molting season, (3) work would be ceased if the seals are not returning in "usual" numbers during the evening hours after the workday, and (4) monitoring biologist(s) would consult with Carpinteria Seal Watch representatives to discuss daily observations and data collection.

*Response:* The IHA issued by NMFS restricts work on the pipeline and other activities occurring on the beach or surf zone from December 1–May 31. However, based on previous harbor seal observations there is no scientific or anecdotal evidence to support restricting work during the molting season (SRS Technologies, 2001). Scientific research and monitoring studies carried out on haul-out sites on Vandenberg Air Force Base in California from 1997 through 2001 have shown that molting Pacific harbor seals entering the water because of disturbance from rocket launches are not adversely affected in their ability to molt and do not become subject to thermo-regulatory stress. Until similar site-specific research is carried out on the Carpinteria haul-out, NMFS accepts the Vandenberg evidence as the best scientific information available on the behavior of the California stock of Pacific harbor seals during molting. While on average the greatest number of harbor seals haul out during the molting season (starting in May and continuing through the summer), this is confounded at the Carpinteria site by a September estimate of 364 seals during an early morning low tide (Horworth, 1995). Clearly, not only molting and pupping, but tide cycle, as well as still undetermined environmental variables, play a significant role in harbor seal haul-out behavior.

Given this difficulty in determining the underlying natural factors involved

in harbor seal haul-out behavior, NMFS cannot assume that in all cases a failure of seals to return to the beach during the evening hours after work has finished is a direct result of the daytime work activities. However, in order to mitigate for disturbances that could result from Venoco's activities, the IHA is conditioned such that if the biological monitor(s) have direct evidence that work activities during the day resulted in 100 percent haul-out abandonment with no return to the haul-out site after work has ceased for a full 48-hour period, then the monitor must notify Venoco, and Venoco must contact NMFS to discuss appropriate changes to the mitigation plan.

NMFS agrees that the Carpinteria Seal Watch data will be an important contribution to the overall monitoring of the marine mammal impacts of Venoco's activities. In addition, the Seal Watchers provide an invaluable service in educating the public about the potential for human activities to negatively impact the harbor seals and their haul-out habitat. The biological monitor(s) will consult with Seal Watch representatives at the beginning and end of Venoco's repair activities to share observational data.

#### **Description of Marine Mammals and Habitat Potentially Affected by the Activity**

Harbor seals generally are non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Scheffer and Slipp, 1944; Fisher, 1952; Bigg, 1969, 1981). They haul out on rocks, reefs, beaches, and drifting glacial ice, and feed in marine, estuarine, and occasionally fresh waters. Harbor seals have also displayed strong fidelity for haulout sites (Pitcher and Calkins, 1979; Pitcher and McAllister, 1981). The eastern Pacific harbor seal has an estimated population of 285,000 individuals distributed along the entire west coast of North America from the Pribilof and Aleutian Islands in Alaska to Baja, CA.

In Carpinteria, Pacific harbor seals haul out year round. This area is one of two along the mainland coast of southern California that is readily accessible to the public. The other haul out is in La Jolla, CA. There are four other sizable haul outs along the mainland coast of Santa Barbara County, one at Naples, one at Point Conception, and two at Vandenberg Air Force Base. However, unlike the Carpinteria haul out, these sites are on private land and not readily accessible to the public.

In Carpinteria, peak numbers are reached during the pupping season (late

February through March) and molting season (summer months). The pups born at these sites are weaned in 4 to 6 weeks, so nearly all pups are independent by the end of May. Twenty to 30 pups are usually born there each year (Howorth, 1995, 1998). A peak abundance count made during the 1998 pupping season was 345 seals (Howorth, 1998).

The project site is adjacent to a small beach used by harbor seals as a haul-out and rookery area. Harbor seals continue to use this area despite pier activity and human presence (Howorth, 1995, 1998). Two-hundred and sixty-five feet (ft) (81 meters (m)) east of Casitas Pier, a small sandy beach and offshore rock area marks the western limits of the local harbor seal haul outs.

California sea lions (*Zalophus californianus*) do occasionally haul out on the beach or rocks adjacent to the project site. However, such individuals are usually not healthy and are taken to the Santa Barbara Marine Mammal Center (Howorth, 1995, 1998).

Bottlenose dolphins (*Tursiops truncatus*) and the eastern North Pacific gray whale (*Eschrichtius robustus*) have been reported near the project site (Howorth, 1995, 1998). Both species, when sighted near the project site, have consistently avoided the pier. Years of data from previous projects and from the Carpinteria Seal Watch have not observed any instances of cetaceans within the project area.

#### **Potential Effects on Marine Mammals and their Habitat**

Potential harassment may result from noise generated by repair activities to the pipeline as well as from the physical presence of people and machinery on the beaches.

Seals may be disturbed and leave the beach when pile driving activities are underway; however, previous monitoring has shown that all seals returned once activities had ceased (Venoco, 2001).

#### **Number of Marine Mammals Potentially Harassed**

During repair work carried out by Venoco an estimated 364 Pacific harbor seals have the potential to be incidentally harassed. This number is the maximum count documented by Howorth (1995, 1998) during the summer molting season.

#### **Mitigation**

Mitigation measures described in this section have been designed to reduce the potential for harassment and eliminate the potential for incidental

injury and mortality due to repair activities.

If operationally feasible, all repairs will take place during daylight hours in a three-week period before the annual harbor seal pupping period and while the beach is open to the public. During this period few, if any, seals are present on shore because beachwalkers, dogs, joggers, kayakers, and others frequent the beach during daylight hours. During November, early storms and currents erode the sand covering the rocks and reefs, which will also reduce the amount of excavation necessary to expose the base of the pier pilings.

Work on pilings closest to the haul-out site will be conducted at the beginning of the project and only during low tides (American Marine Corp., 2000). Therefore, any potential for disturbing harbor seals would be limited to times of low tide or approximately 4 hours each 24-hour period.

To reduce the potential for acoustically and visually disturbing the seals, mitigation measures include: establishment of a 500-foot (152-meter) buffer zone around each of the pile driving sites; equipping the diving air compressor, trucks, and equipment motors with quiet mufflers; disconnecting backup alarms on trucks; securing all lines, floats, cables, etc. used in handling materials to the pier or removing them from the site; instruction of all personnel on avoidance of rapid or sudden movements, shouting, throwing objects or other actions that could startle the seals; allowing only the minimum number of people needed to perform the work on the beach; insuring divers stay submerged while performing their tasks; and using hand-held radio for verbal communications from the pier or other project site to divers or workers.

Successful implementation by Venoco and their contractors of additional mitigation measures specified by NMFS in the IHA are designed to further reduce the potential for adverse impacts on Pacific harbor seals in the area.

#### **Monitoring**

Issuance of the IHA requires Venoco to monitor the impact of pile driving and other repair activities on harbor seals. Monitoring will be conducted by one or more NMFS-approved biologists. As part of the IHA monitoring requirements, Venoco will notify the designated on-site biological monitor(s) at least 30 minutes before a pile driving session begins and if there are unexpected changes to the work plan. In addition, monitoring information should be collected a minimum of 1 hour before the work day begins, a minimum of 15 minutes prior to

planned pile driving sessions, during pile driving sessions, and for a minimum of 1 hour after pile driving or other work is completed.

On-site biological monitor(s) are required to collect the following information related to harbor seals: (1) date; (2) time of arrival/departure of monitor(s) and work crew; (3) number of harbor seals on the beach; (4) number of harbor seals in the water; (5) number of adults, subadults, and pups; (6) number of molting seals; (7) disturbance reactions observed; and (8) Concurrently, the monitor(s) will record type of repair activity (including specific equipment used), location of activity, and duration of activity. The monitor(s) will also collect the following information related to environmental conditions: (1) date; (2) time; (3) cloud cover; (4) visibility; (5) wind direction; (6) wind velocity; (7) swell direction; (8) swell height; and (9) tidal stage. The presence of other marine mammal species on the beach and in the water is also a requirement.

The NMFS-approved biological monitor has the authority under the IHA to prevent pile driving operations from commencing if a harbor seal pup is sighted on the beach. If a harbor seal pup is sighted after pile driving has begun, then the monitor is required to notify Venoco, who must stop pile driving as soon as operationally practicable and consult immediately with NMFS' Southwest Regional Office.

### Reporting

During periods of operation, Venoco will provide weekly reports to NMFS' Southwest Regional Administrator, including a summary of the previous week's monitoring activities and an estimate of the number of seals that may have been disturbed as a result of repair activities. A description of the repair activities at the time of observation will also be provided.

An interim report must be submitted to the Southwest Regional Administrator on or about July 30, 2001. This report will contain a description of the methods, results, and interpretation of all monitoring tasks. A draft final report is due 90 days after expiration of the IHA. If comments are received from the Regional Administrator on the draft final report, then the final report must be submitted to the Southwest Regional Administrator within 30 days after receiving comments. If no comments are received from the Southwest Regional Administrator, the draft final report will be considered the final report.

### Endangered Species Act (ESA) Consultation

This proposed authorization would not allow the take of any species listed as endangered or threatened under the ESA; therefore, no ESA Section 7 consultation was necessary for issuance of the IHA.

### Coastal Zone Management Act Consistency

On November 19, 2001, the California Coastal Commission issued a conditioned emergency permit to Venoco, Inc. to begin repair activities on the Carpinteria pipeline. The determination to issue an emergency permit was based on the conclusion of the Commission that an imminent threat to the nearby seal haul-out and the marine environment will exist if repairs to the pipeline are not made due to inadequate support of the pipeline during the winter storm season. The Commission's emergency permit contains conditions similar to NMFS' IHA designed to prevent the "take" of marine mammals during the course of Venoco's activities. All of the marine mammal conditions were added to the Coastal Commission's permit in close consultation with NMFS.

### Conclusions

NMFS has determined that the impact of conducting repair activities at the Carpinteria Oil and Gas Processing Facility in Carpinteria, CA, will have a negligible impact on Pacific harbor seal stocks in California. While behavioral modifications may be made by individuals to avoid the resultant noise and activities, the avoidance of the area is not reasonably expected to, and is not reasonably likely to, adversely affect the annual rates of recruitment or survival of the stock.

The number of potential harassment takings is estimated to be small. In addition, no take by injury or death is anticipated, and the potential for such taking will be avoided through the incorporation of the mitigation measures mentioned in this document and in the IHA. Haul-out sites, rookeries, mating grounds, areas of concentrated feeding, and other areas of special significance for harbor seals within or near the planned area of operations will be avoided in order to minimize any potential impacts.

### Authorization

NMFS has issued an IHA for repair activities at the Carpinteria Oil and Gas Processing Facility in Carpinteria, CA from November 28, 2001, until November 28, 2002, provided the mitigation, monitoring, and reporting

requirements defined by NMFS in the IHA are implemented successfully. NMFS has determined that the proposed activity would result in the harassment of only small numbers of Pacific harbor seals and would have a negligible impact on stocks of harbor seals in California waters.

Dated: December 3, 2001.

**David Cottingham,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
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### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

#### Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 4, 2001.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.ustreas.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002