Assessment

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.106(c)(1), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, is not less than 0.50 percent). With respect to Agro Dutch and Premier, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total entered value of the sales examined. For Weikfield, we do not have the actual entered value of its sales because this respondent is not the importer of record for some of its U.S. sales. Accordingly, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all of Weikfield's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on export prices.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent. This rate is the ''All Others'' rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—List of Issues

Company-Specific Comments

Agro Dutch

Comment 1: Treatment of Agro Dutch's Expenses for Returned Shipments as Direct or Indirect Expenses

Comment 2: Treatment of Inspection Expenses

Comment 3: Selling Expenses and Profit Ratio for Agro Dutch Constructed Value

Comment 4: Corrections to the Calculation of Agro Dutch Normal Value

Comment 5: Duty Absorption on Agro Dutch's Sales

Premier

Comment 6: Errors in Premier Margin Calculation

Weikfield

Comment 7: Corrections to Calcualtion of Weikfield Normal Value

[FR Doc. 04–19140 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081004A]

Incidental Take of Marine Mammals Incidental to Specified Activities; Taking of Harbor Seals Incidental to Wall Replacement and Bluff Improvement Projects at La Jolla, San Diego County, CA

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

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the City of San Diego, CA to take small numbers of marine mammals, by harassment, incidental to wall replacement and bluff improvement projects at La Jolla, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization to the City of San Diego, for 1 year.

DATES: Comments and information must be received no later than September 20, 2004.

ADDRESSES: You may submit comments on the application and proposed authorization, using the identifier 081004A, by any of the following methods:

- E-mail: *PR1.081004A@noaa.gov* - you must include the identifier 081004A in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.
- Hand-delivery or mailing of paper, disk, or CD-ROM comments: Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

To help us process and review your comments more efficiently, please use only one method. A copy of the application containing a list of references used in this document may be obtained by writing to the address above or by telephoning the contacts listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, NMFS, (301) 713–2322 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

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 regulations are issued.

Permission may be granted if the Secretary finds that the total 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 that 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.''

Subsection 101(a)(5)(D) of the MMPA established an expidited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of actions not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On May 27, 2004, NMFS received an application from the City of San Diego requesting an IHA for the possible harassment of small numbers of Pacific harbor seals (Phoca vitulina) incidental to cove wall replacement and bluff improvement projects at La Jolla, CA. The purpose of this bluff improvement project is to protect public access along the coast and to maintain public rights-of-way that have been adversely affected by coastal erosion, in a safe and publicly accessible condition. Bluff improvement measures address ongoing marine and subaerial erosion in six study sites, along with the removal of an aging wall above La Jolla Cove. Improvement measures are limited to remediation of only the upper portion of the bluff, allowing natural marine processes to continue unabated. Mitigation of marine erosion associated with splash and spray on the upper sloping portion of the coastal bluff will be limited to re-vegetation, primarily hydroseeding, and some limited container plants, along with a combination of both setting back and deepening the seaward edge of reconstructed sidewalks to provide some structural stiffness and increased stability, as both marine and sub-aerial processes continue to encroach upon bluff-top improvements. Key objectives of the site improvements are to protect lateral public access along the coast, increase public safety, minimize disturbance of the marine environment and its inhabitants, minimize disruption of public recreation and scenic vista opportunities, avoid disruption of public access to coastal areas, minimize visual impacts by re-vegetating manufactured slopes with native vegetation, avoid changes in runoff patterns, maintain pedestrian and vehicular travel around the construction sites, and avoid the use of rip rap. This activity does not include improvements to Children's Pool itself.

Measurement of Airborne Sound Levels

The following section is provided to facilitate an understanding of airborne and impulsive noise characteristics. Amplitude is a measure of the pressure of a sound wave that is usually expressed on a logarithmic scale with units of sound level or intensity called the decibel (dB). Sound pressure level (SPL) is described in units of dB re micro-Pascal (micro-Pa^2, or μPa); for energy, the sound exposure level (SEL), a measure of the cumulative energy in a noise event, is described in terms of dB re micro-Pa^2 -second; and frequency, often referred to as pitch, is described in units of cycles per second or Hertz (Hz). In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound.

For airborne noise measurements the convention is to use 20 micro-Pa as the reference pressure, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa and is the approximate threshold of human hearing. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html.*

Airborne sounds are also often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. When frequency levels are made to correspond to human hearing, they are referred to as being A-weighted or A-filtered. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting is often used in the analysis of high-amplitude noises like explosions, and corresponds to the relative response to the human ear to sound levels above 85 dB. C-weighting de-emphasizes ear frequency components of less than about 50 Hz. C-weight scaling is also useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms. For continuous noise like rocket launches, the important variables relevant to assessing auditory impacts or behavioral responses are intensity, frequency spectrum, and duration. In this document, whenever possible sound levels have been provided with A-weighting.

Project Description

The Children's Pool area at La Jolla, including Children's Pool Beach and Seal Rock, is a year-round haulout and rookery for harbor seals. Four of the six construction sites are close to where harbor seals may be hauled out, and therefore may result in the incidental harassment of harbor seals. All construction activities will begin no earlier than July 2004, and will end no later than January 1, 2005. Construction can occur on any site on weekdays between the hours of 8:30 am and 3:30 pm except on national holidays. Demolition and construction may take place simultaneously at all four sites. The duration of construction at any one of these four sites will be limited to six working days total. Demolition of each site is scheduled to last one day. Equipment required for demolition will include hand tools, backhoes, power saws, and pavement breakers and/or jackhammers. No explosives will be used during demolition. The City of San Diego estimates that the maximum received sound exposure level 100 ft (30.5 m) from demolition activities is approximately 90 dBA (re 20 micro-Pa2 -sec). The equipment involved in these activities will include a concrete mixer, power auger, and hand tools. The maximum received sound exposure level at 100 ft (30.5 m) from construction activities is estimated to be about 81 dBA (re 20 micro-Pa^2 -sec).

The entire Cove Wall Replacement and Bluff Improvement Project is expected to take 6 weeks or less. Summaries of the proposed improvements at each of the 4 sites that have a potential to harass harbor seals follows.

Site 55D

This site is located on the 700 block of Coast Boulevard, southeast of Children's Pool Beach. At this site, the existing post-and-board wall located on the slope will be removed. The area eroded by the abandoned storm drain will be filled with a reinforced geometric grid at a 1.5:1 slope. The proposed fill of approximately 20 cubic yds (15.3 cubic m) will extend approximately 14 ft (4.3 m) seaward of the existing corrugated metal pipe outlet, and the toe of the fill will terminate approximately 5 ft (1.5 m) from the edge of the sea cliff. The manufactured slope area will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 55F

This site is also located on the 700 block of Coast Boulevard, southeast of Children's Pool Beach. The existing 10 ft-wide (3 m) sidewalk will be removed and a new 10 ft-wide (3 m) sidewalk will be constructed a minimum of 8 ft (2.4 m) from the top of the existing slope. The new sidewalk will have a deepened structural edge 5 ft (1.5 m) in thickness to provide the structural capacity to span the rubble-filled sea cave below. To minimize runoff, the curb will be installed and the sidewalk will be cross-sloped 1.5% toward the street and away from the bluff top. The existing wood posts and metal rails will be removed and new wood posts and metal rails will be located at the outer edge of the relocated sidewalk. The face of the existing vertical slope will be trimmed back somewhat to improve surficial stability and assist in the establishment of a vegetative cover. The exposed slope area will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 57E

This site is located on the 800 block of Coast Boulevard, southwest of Jenner Street, adjacent to Seal Rock. The existing 5 ft-wide (1.5 m) sidewalk will be removed and a new 5 ft-wide (1.5 m) sidewalk with a deepened structural edge 5 ft (1.5 m) in thickness will be constructed. The existing wood posts and wood rails will be removed and new wood posts and wood rails will be located at the outer edge of the reconstructed sidewalk. The exposed slope areas will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 58A

Site 58A is located on the 900 block of Coast Boulevard, southwest of Ocean Street. The existing 10 ft-wide (3 m) sidewalk will be removed and a new 10 ft-wide (3 m) sidewalk with a deepened structural edge 5 ft (1.5 m) in thickness will be constructed. The existing wood posts and wood rails will be removed and new wood posts and wood rails will be located at the outer edge of the reconstructed sidewalk. The exposed slope areas will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Description of Habitat and Marine Mammals Affected by the Activity

The marine mammal species known to be present in the Children's Pool area is the harbor seal (Phoca vitulina). Harbor seals are widely distributed in the North Atlantic and North Pacific. In California, approximately 400–500 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan 1996).

In California, the population growth rate of harbor seals appears to be slowing, but remains positive. A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. The estimated population of harbor seals in California is 27,863 (NOAA Draft Stock Assesment Report, 2003), with an estimated minimum population of 25,720 for the California stock of harbor seals.

Recent population counts show that the harbor seal population in La Jolla is stable at approximately 150–200 seals. The most important birth month for this population is March (NOAA). In general, the pupping season occurs between early February to May, however some pups are born as early as late January. In 2001, 17 pups were born between February 12 and April 15; in 2002, 13 pups were born between February 2 and April 27; and in 2003, 16 pups were born between January 24 and April 2. In 2004, 26 pups were born between the end of January and the end of April, however only 20 of the 26 pups survived.

Additional information on harbor seals found in Central California waters can be found in Marine Mammal Stock Assessment Reports, which is available online at *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html.*

Marine Mammal Impacts

The applicant requests authorization for incidental taking, by Level B harassment only, of Pacific harbor seals. Level B Harassment may occur if hauled animals flush the haulout and/or move to increase their distance from construction-related activities, such as the presence of workers, noise, and vehicles. Short term impacts that could occur include possible temporary reduction in utilization of the beach or Seal Rock at Children's Pool. These short term impacts may result in a temporary reduced number of seals using the haul out sites during, and potentially past, the hours of construction. However, this area has become a tourist spot for viewing harbor seals, and the current population of seals utilizing the Children's Pool area is accustomed to human activities and regular noise levels from people and traffic along Coast Boulevard. Therefore, potential impacts from the project are expected to be minimal to none. The permanent abandonment of the Children's Pool area is also not anticipated because harbor seals have habituated to traffic noise. Depending on the disturbance, they may return to the haul-out site immediately, stay in the water for a length of time and then return to the haul-out, or temporarily haul-out at another site (NOAA, 1996).

Recent studies (Lawson *et al.*, 2002, and NAWS, 2002) show that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to launch sounds with sound exposure levels of 100 dBA (re 20 micro-Pa^2 -sec) or higher for California sea lions and northern elephant seals, and 90 dBA (re 20 micro-Pa^2 -sec) or higher for harbor seals. Therefore, it is expected that most received noise levels at the harbor seal haulouts will be below levels that are likely to cause disturbance. However, to date that remains unknown. As stated earlier, the maximum received levels at 100 ft away (30.5 m) from demolition and construction activities are expected to be about 90 dBA and 81 dBA, respectively. Sites 55D and 55F are closest to Children's Pool Beach. These sites are approximately 250 ft (76.2 m) from the beach haulout area used by the harbor seals. At that distance there should be little to no impact on the

seals. Sites 57E and 58A are closer to Seal Rock. 58A is almost 400 ft (122 m) from Seal Rock, and is not expected to cause any harassment of the seals hauled out on Seal Rock. 57E is the closest of the four to any of the haulout areas. This site is approximately 170 ft (51.8 m) from Seal Rock (dependant on tide), and about 350 ft (106.7 m) from Children's Pool Beach. At this distance, construction noise will have attenuated to low levels. However, special attention will be given to this site during construction and monitoring (see MONITORING).

Demolition of sidewalks at the top of the bluff slopes and excavation for the new sidewalks may result in some downhill movement of debris. Just prior to the construction necessitating its use, a debris fence will be installed parallel to and just below the bluff edge and held in place with stakes driven by hand using a large hammer. The expected debris would be soil or small pieces of concrete that could be removed by hand or shovel. Noise levels for installing the fence and removing debris trapped in it will be low and unlikely to harass harbor seals. The proximity of the sites will not enable debris to fall onto Seal Rock or the beach where the seals haul out.

Potential incidental harassment resulting from bluff stabilization construction may occur in all age classes and sexes of harbor seals present in the Children's Pool area. The number of harbor seals at Children's Pool Beach and Seal Rock varies throughout the year. For the population of seals occupying Children's Pool, the numbers of seals that haul out vary with season, tide, and time of day (Hubbs-SeaWorld Research Institute 1995–1997). More haulout area is available to be occupied during low tide. However, sometimes those animals that are on land will move higher up the beach to avoid the approaching tide and thus do not necessarily leave the haulout area. For the La Jolla area in general, a greater number of animals were seen hauled out in late afternoon or evening, regardless of the tide. In general, there is a decrease in counts in late summer through winter in La Jolla. The largest numbers of seals are seen during the molting/breeding season. Also, the number of seals hauled-out generally decreased during the first few calm days after a storm.

Peak numbers of harbor seal counts for the La Jolla area in general were 166 in June, 1996 and 172 in July, 1997 (H-SWRI, 1995–1997). These numbers were recorded at the peak of the breeding season, the typical time of maximum haulout. As stated earlier, the population in La Jolla is stable at approximately 150–200 seals. Population trends from 1999 revealed that the largest counts of seals hauled out on the beach were between January to May, with a peak in counts in June at Seal Rock. The maximum number of harbor seals using the Children's Pool haulout areas at one time can vary between 62 and 172 (H-SWRI, 1995–1997). Therefore, the maximum number that could be impacted would be 172. There is no anticipated impact from construction activities on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Although the seals in the area have become accustomed to the presence of tourists viewing the haulout site, the addition of construction workers, construction equipment (in particular the sudden noise of a jackhammer or power saw), and other project related activities could result in a temporary startle response when harbor seals may flush into the water. However, the likelihood of this occurring is very low, and with the implementation of mitigation measures, disturbance from construction-related activities is expected to have only a short term negligible impact to a small number of harbor seals. Demolition and construction work is not expected to result in injury or mortality because the proposed work restrictions and mitigation measures will minimize construction-related disturbance. At a maximum, short-term impacts are expected to result in a temporary reduction in utilization of haulout sites while work is in progress or until seals acclimate to the disturbance, and will not likely result in any permanent reduction in the number of seals at Children's Pool or at Seal Rock. NMFS preliminarily agrees with the City of San Diego that effects will be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

Mitigation

Several mitigation measures to reduce the potential for harassment from wall replacement and bluff improvement construction activities will be implemented under the proposed authorization. The primary mitigation measure is the minimization of days and times when construction can take place. Demolition will be limited to one day at each of the four sites, ensuring that the greatest possible noise levels will only occur for a short period of time. In addition, construction activities will not take place prior to 8:30 am and will not go beyond 3:30 pm. Harbor seals in this area are known to use haulout areas in greatest numbers in the afternoon. Since construction activities will be finished by 3:30 pm every day, this minimizes the number of harbor seals potentially disturbed. Disturbance to harbor seals has a more serious effect when seals are pupping or nursing, when aggregations are dense, and during the molting period. To ensure that construction activities are not overlapping with the pupping season, the contractor will coordinate with ''Friends of La Jolla Seals'' or Hubbs-SeaWorld Research Institute. Either of these organizations will confirm when the pupping season has come to an end, usually sometime in late June or early July 2004, after the last pup has been weaned. Once this is confirmed, construction activities may begin with the approval of NMFS. The pupping season for harbor seals begins in early February, however pregnant females are hauled out at Children's Pool in the weeks leading up to the pupping season, therefore all construction activity will be completed by the 1st of January, 2005. These proposed mitigation measures will reduce the potential for Level B incidental harassment takes and eliminate the potential for serious injury or mortality of Pacific harbor seals.

As mentioned, demolition of sidewalks at the top of the bluff slopes and excavation for the new sidewalks may result in some downhill movement of debris. Just prior to the construction necessitating its use, a debris fence will be installed parallel to and just below the bluff edge and held in place with stakes driven by hand using a large hammer. This ensures that demolition will result in a minimal amount of debris on Seal Rock or the nearby beach.

Monitoring

Harbor seal haulouts will be monitored periodically during construction activities. Monitoring will be conducted by a qualified biologist approved by NMFS. During all monitoring periods, the following information will be recorded: date, time, tidal height, maximum number of harbor seals hauled out, number of adults and sub-adults, number of females and males (if possible), and any observed disturbances to the seals. During periods of construction, a description of construction activities will also take place.

Prior to construction at each of the four sites, three full days of baseline monitoring will occur to assess harbor seal use of the haulouts before construction begins. Wall replacement and bluff stabilization activities will

begin with one day of demolition at each site. Monitoring at each site during demolition will start one hour before demolition begins, run all day, and will be completed no sooner than one hour after it ends.

Results from the pre-construction baseline monitoring will determine if mid-day monitoring is necessary during the days of construction following demolition. If it is determined that it is necessary and/or beneficial, monitoring will take place at each site during every day of construction starting one hour before construction begins each day and finishing one hour after it ends each day. For sites 55D, 55F and 58A, if it is determined that mid-day monitoring is not necessary, 2 two-hour monitoring sessions will occur each day of construction following demolition. The first session will begin one hour before the start of construction and end one hour after the start of construction, and then begin again one hour before the end of construction and end one hour after construction has finished for the day. Site 57E is the closest work site to Seal Rock, about 170 feet (51.8 m) away. At this distance, much of the construction noise will have attenuated to low levels. However, NMFS believes careful monitoring of this site is still warranted. Despite results from baseline monitoring, monitoring will take place at site 57E during every day of construction starting one hour before construction begins each day and finishing no earlier than one hour after construction ends each day.

Sound levels 100 feet (30.5 m) from each site will be recorded during all periods of monitoring. If at any time indications of a substantial disturbance to harbor seals resulting from construction activities are observed, and/or if sound levels are found to be above 90 dBA at a distance of 100 feet (30.5 m) from construction at any of the sites, the applicant will contact NMFS to provide this information. It will then be determined if any further mitigation or monitoring measures are needed, such as the installation of sound barriers. However, at this time NMFS does not propose requiring sound barriers because sound levels appear to be low at most, if not all, sites to even cause Level B behavioral harassment.

Reporting

A draft report will be submitted to NMFS Regional Administrator within 90 days after project completion. The final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft report will be considered to be the final report.

The City of San Diego is planning on sharing and comparing data collected as a result of these monitoring efforts with other interested parties, such as the Hubbs-Sea World Research Institute or Friends of La Jolla Seals. Monitoring work during this project may be conducted in collaboration with these groups as well.

Endangered Species Act (ESA)

NMFS does not expect any species listed under the ESA to be affected by the planned construction activities. However, NMFS will continue to review this action and will decide on whether consultation under section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA is necessary prior to making a final decision.

National Environmental Policy Act (NEPA)

On September 15, 2003, the City of San Diego completed an Environmental Impact Report (EIR) for the proposed La Jolla Cove Wall Replacement and Bluff Improvements Project. NMFS is reviewing this EIR and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impacts of wall replacement and bluff improvement activities, as described in this document and in the application for an IHA, should result in only the temporary modification in behavior by Pacific harbor seals. The City of San Diego believes the effects of demolition and construction are expected to be limited to short term and localized changes in behavior involving small numbers of pinnipeds. While behavioral modifications, including temporarily vacating onshore haulouts, may be made by the seals, 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 previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the City of San Diego for the potential harassment of small numbers of Pacific harbor seals, incidental to wall replacement and bluff improvement, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of Pacific harbor seals and will have no more than a negligible impact on this marine mammal stock.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: August 13, 2004.

Laurie K. Allen,

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

[FR Doc. 04–19054 Filed 8–19–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080904E]

Atlantic Highly Migratory Species; Exempted Fishing Permits

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

ACTION: Notice of receipt of a request for exempted fishing permits; request for comments.

SUMMARY: NMFS announces the receipt of a request for exempted fishing permits (EFPs) for conducting bycatch reduction research in the following regions of the Atlantic Ocean: North of Cape Hatteras, South of Cape Hatteras, and Gulf of Mexico (GOM). NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

DATES: Written comments on the proposed exempted fishing activity must be received no later than September 2, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Email: *ID080904E@noaa.gov*. Include in the subject line the following identifier: I.D.080904E.
- Mail: Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301)713–1917.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management