

SUMMARY: The Department of Commerce (the "Department") has determined that a request for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC"), received on August 21, 2006, meets the statutory and regulatory requirements for initiation. The period of review ("POR") of this new shipper review is February 1, 2006, through July 31, 2006.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2312.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on certain preserved mushrooms from the PRC was published in the **Federal Register** on February 19, 1999. See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999).¹ On August 31, 2006, pursuant to 19 CFR 351.214(c), the Department received a new shipper review request from Guangxi Jisheng Foods, Inc. ("Jisheng"). Jisheng certified that it is both the producer and exporter of the subject merchandise upon which the request for a new shipper review is based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930 as amended ("the Act"), and 19 CFR 351.214(b)(2)(i), Jisheng certified that it did not export certain preserved mushrooms to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Jisheng certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported certain preserved mushrooms to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Jisheng also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR

351.214(b)(2)(iv), Jisheng submitted documentation establishing the following: (1) the date on which Jisheng first shipped certain preserved mushrooms for export to the United States and the date on which the certain preserved mushrooms were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment;² and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted CBP database queries to confirm that Jisheng's shipment of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Jisheng's request meets the threshold requirements for initiation of a new shipper review for the shipment of certain preserved mushrooms from the PRC it produced and exported. See *Memo to the File from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: New Shipper Review Initiation Checklist*, dated September 26, 2006.

The POR for this new shipper review is February 1, 2006, through July 31, 2006. See 19 CFR 351.214(g)(1)(i)(B). The Department intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and final results of this review no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act. Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: September 22, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083106B]

Small Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Seismic Surveys in the South Pacific Ocean

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

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

SUMMARY: NMFS has received an application from the Scripps Institution of Oceanography (SIO), a part of the University of California, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic survey in the South Pacific Ocean (SPO). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to SIO to incidentally take, by harassment, small numbers of several species of cetaceans for a limited period of time in December 2006, and January 2007.

DATES: Comments and information must be received no later than October 30, 2006.

ADDRESSES: Comments on the application should be addressed to: Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed here. The mailbox address for providing email comments is PR1.083106B@noaa.gov. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application (containing a list of the references used in this document) may be obtained by writing to this address or by telephoning the contact listed here and are also available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha>.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713-2289, ext 128.

SUPPLEMENTARY INFORMATION:

¹ Therefore, a request for a new shipper review based on the semiannual anniversary month, August, was due to the Department by the final day of August 2006. See 19 CFR 351.214(d)(2).

² Jisheng made no subsequent shipments to the United States, which the Department corroborated using data from U.S. Customs and Border Protection ("CBP").

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

Authorization shall 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 that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings 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 established 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. Except with respect to certain activities 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].

Section 101(a)(5)(D) establishes 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 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 24, 2006, NMFS received an application from SIO for the taking, by harassment, of several species of marine mammals (see Marine Mammals Affected by this Activity later in this document) incidental to conducting a

low-energy marine seismic survey program during December 2006 and January 2007 in the SPO. SIO plans to conduct a seismic survey at several sites in the SPO (as illustrated in Figure 1 in SIO's application) as part of the Integrated Ocean Drilling Program (IODP).

The purpose of the research program is to conduct a piston/ gravity coring, magnetic, and seismic survey program at 12 sites in the SPO. The results will be used to (1) document the metabolic activities, genetic composition, and biomass of prokaryotic (principally unicellular organisms without a cell nucleus) communities in the subseafloor sediments with very low total activity; (2) quantify the extent to which those communities may be supplied with harvestable energy by water radiolysis, a process independent of the surface photosynthetic world; and (3) survey broad characteristics of subseafloor communities and habitats in this region, in order to refine the planning and objectives of a specific IODP drilling proposal.

Included in the research planned for 2006 is the use of multi-beam and Chirp techniques to map the seafloor, and high-resolution seismic methods to image the subsea floor. The seismic survey is required to locate optimal piston/gravity- coring sites.

The seismic surveys will involve one vessel. The source vessel, the *R/V Roger Revelle*, will deploy a pair of low-energy Generator-Injector (GI) airguns as an energy source (each with a discharge volume of 45 in³), plus a 800-m (1476-ft) long, 48-channel, towed hydrophone streamer. As the airguns are towed along the survey lines, the receiving system will receive the returning acoustic signals.

The *Revelle* is scheduled to depart from Apia, Samoa, on or about December 7, 2006, and to arrive at Dunedin, New Zealand, on or about January 17, 2007. The program will consist of approximately 1930 km (1042 nm) of surveys, including turns. Water depths within the seismic survey areas are 3200–5700 m (10499–18701 ft). The surveys will be conducted entirely in international waters. The GI guns will be operated on a small grid for about 6–10 hours at each of 12 sites during approximately December 10, 2006, to January 13, 2007. There will be additional seismic operations associated with equipment testing, start-up, and repeat coverage of any areas where initial data quality is sub-standard.

All planned geophysical data acquisition activities will be conducted by SIO scientists who have proposed the study. The vessel will be self-contained,

and the crew will live aboard the vessel for the entire cruise.

In addition to the operations of the GI guns, a 3.5-kHz sub-bottom profiler, passive geophysical sensors to conduct magnetic surveys, and a Kongsberg-Simrad EM-120 multi-beam sonar will be used continuously throughout the cruise.

The energy to the airguns is compressed air supplied by compressors on board the source vessel. Seismic pulses will be emitted at intervals of 6–10 seconds (sec.). At a speed of 5–8 knots (9.3–14.8 km/h), the 6–10 sec. spacing corresponds to a shot interval of approximately 15.5–41 m (51–135 ft).

The generator chamber of each GI gun, the one responsible for introducing the sound pulse into the ocean, is 45 in³. The larger (105 in³) injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The two 45/105 in³ GI guns will be towed 8 m (26.2 ft) apart side by side, 21 m (68.9 ft) behind the *Revelle*, at a depth of 2 m (6.6 ft).

General-Injector Airguns

The *Revelle*'s 2 GI-airguns will be used during this proposed program. These GI-airguns have a zero to peak (peak) source output of 230.7 dB re 1 microPascal-m (3.4 bar-m) and a peak-to-peak (pk-pk) level of 235.9B (6.2 bar-m). However, these downward-directed source levels do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined airguns in the airgun array. The actual received level at any location in the water near the airguns will not exceed the source level of the strongest individual source and actual levels experienced by any organism more than 1 m (3.3 ft) from any GI gun will be significantly lower. In this case, that will be about 224.6 dB re 1 microPa-m peak, or 229.8 dB re 1 microPa-m peak-to-peak (pk-pk).

Further, the root mean square (rms) received levels that are used as impact criteria for marine mammals (see Richardson *et al.*, 1995) are not directly comparable to these peak or pk-pk values that are normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. For example, a measured received level of 160 dB rms in the far field would typically correspond to a

peak measurement of about 170 to 172 dB, and to a pk-pk measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.* 1998, 2000). The precise difference between rms and peak or pk-pk values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for an airgun-type source.

The depth at which the sources are towed has a major impact on the maximum near-field output, because the energy output is constrained by ambient pressure. The normal tow depth of the

sources to be used in this project is 2.0 m (6.6 ft), where the ambient pressure is approximately 3 decibars. This also limits output, as the 3 decibars of confining pressure cannot fully constrain the source output, with the result that there is loss of energy at the sea surface. Additional discussion of the characteristics of airgun pulses is provided in SIO application and in previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)).

Received sound levels have been modeled by Lamont-Doherty Earth Observatory (L-DEO) for a number of airgun configurations, including two

45-in³ Nucleus G-guns, in relation to distance and direction from the airguns. The L-DEO model does not allow for bottom interactions, and is therefore most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 190, 180, and 160 dB microPascal-m (rms) are predicted to be received are shown in Table 1. Because the model results are for the G guns, which have more energy than GI guns of the same size, those distances are overestimates of the distances for the 45 in³ GI guns.

TABLE 1. DISTANCES TO WHICH SOUND LEVELS 190, 180, AND 160 DB RE 1 MICROPA (RMS) MIGHT BE RECEIVED FROM TWO 45-IN G GUNS, SIMILAR TO THE TWO 45-IN³ GI GUNS THAT WILL BE USED DURING THE SEISMIC SURVEY IN THE SOUTH PACIFIC OCEAN DURING DECEMBER, 2006 AND JANUARY, 2007. DISTANCES ARE BASED ON MODEL RESULTS PROVIDED BY L-DEO.

Water depth	Estimated Distances at Received Levels(m)		
	190 dB	180 dB	160 dB
>1000m	10	40	400

Empirical data concerning the 180- and 160- dB distances have been acquired based on measurements during the acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from May 27 to June 3, 2003 (Tolstoy *et al.*, 2004). Although the results are limited, the data showed that radii around the airguns where the received level would be 180 dB re 1 μ Pa (rms), the safety criterion applicable to cetaceans (NMFS, 2000), varies with water depth. Similar depth-related variation is likely in the 190-dB distances applicable to pinnipeds. Correction factors were developed for water depths 100 – 1000 m (328 – 3281 ft) and less than 100 m. As the proposed SIO survey will occur in water depths of 3200–5700 m (10499–18701 ft), correction factors are not relevant here.

The empirical data indicate that, for deep water (greater than 1000 m (3281 ft)), the L-DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004). However, to be precautionary pending acquisition of additional empirical data, SIO proposes that the safety radii during airgun operations in deep water will be the values predicted by L-DEO's model (Table 1). Therefore, the assumed 180- and 190-dB radii are 40 m (131 ft) and 10 m (33 ft), respectively.

Bathymetric Sonar and Sub-bottom Profiler

A description of the Kongsberg-Simrad EM120 multi-beam sonar and the sub-bottom profiler onboard the *Revelle* can be reviewed in the SIO application. These descriptions have also been provided previously (see 71 FR 6041, February 6, 2006 and 71 FR 14839, March 24, 2006) and do not need to be repeated here.

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses was provided in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)) and is not repeated here. Reviewers are encouraged to read these earlier documents for additional information.

Marine Mammals Affected by the Activity

Forty species of cetacean, including 31 odontocete (dolphins and small- and large-toothed whales) species and nine mysticete (baleen whales) species, are believed by scientists to occur in the SPO in the proposed seismic survey area. Detailed information on these species is contained in the SIO application and the National Science Foundation (NSF) EA which are available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha>. Table 2 in both the SIO application and NSF EA summarizes the habitat, occurrence, and regional population estimate for these

species. The following cetacean species may be affected by this low-intensity seismic survey: Sperm whale, pygmy and dwarf sperm whales, southern bottlenose whale, Arnoux's beaked whale, Cuvier's beaked whale, Shepherd's beaked whale, mesoplodont beaked whales (Andrew's beaked whale, Blainville's beaked whale, ginkgo-toothed whale, Gray's beaked whale, Hector's beaked whale, spade-toothed whale, strap-toothed whale), melon-headed whale, pygmy killer whale, false killer whale, killer whale, long-finned pilot whale, short-finned pilot whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, spinner dolphin, striped dolphin, short-beaked common dolphin, hourglass dolphin, Fraser's dolphin, Risso's dolphin, southern right whale dolphin, spectacled porpoise, humpback whale, southern right whale, pygmy right whale, common minke whale, Antarctic minke whale, Bryde's whale, sei whale, fin whale and blue whale.

Five species of pinnipeds could potentially occur in the proposed seismic survey area: southern elephant seal, leopard seal, crabeater seal, Antarctic fur seal, and the sub-Antarctic fur seal. All are likely to be rare, if they occur at all, as their normal distributions are south of the SIO survey area. Outside the breeding season, however, they disperse widely in the open ocean (Boyd, 2002; King, 1982;

Rogers, 2002). Only three species of pinniped are known to wander regularly into the SIO survey area: the Antarctic fur seal, the sub-Antarctic fur seal, and the leopard seal (Reeves *et al.*, 1999). Leopard seals are seen as far north as the Cook Islands (Rogers, 2002).

Potential Effects on Marine Mammals

As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound

levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The SIO application and two previous SIO IHA notices (71 FR 6041, February 6, 2006, and 71 FR 14839, March 24, 2006) provide information on what is known about the effects on marine mammals of the types of seismic operations planned by SIO. The types of effects considered in these documents are (1) tolerance, (2) masking of natural sounds, (2) behavioral disturbance, (3) potential hearing impairment, and (4) other non-auditory physical effects. This information is incorporated herein. Please refer to these documents for information and analyses on potential impacts to marine mammals by seismic activities.

Summarizing from these analyses, given the relatively small size of the airguns planned for the present project, SIO and NMFS believe it is very unlikely that there would be any cases of temporary or permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to distances less than 400 m (1312 ft) from the seismic source. This is the zone calculated for 160 dB or the onset of Level B (behavioral) harassment. As a result, acoustic effects are anticipated to be considerably less than would be the case with a large array of airguns.

Possible Effects of Mid-frequency Sonar Signals

A multi-beam bathymetric sonar and a sub-bottom profiler will be operated from the source vessel essentially continuously during much of the planned survey. Details about these sonars and potential effects on marine mammals (masking, behavioral response, hearing impairment and other physical effects) have been provided in the SIO application and by NMFS previously (see 71 FR 6041, February 6, 2006, and 71 FR 14839, March 24, 2006) and are not repeated here. This information is incorporated herein by citation. Please refer to these documents for information and analyses on potential impacts to marine mammals by these mid-frequency sonar activities.

Estimates of Take by Harassment for the SPO Seismic Survey

Although information contained in several documents cited and summarized in SIO's application indicates that injury to marine mammals from seismic sounds potentially occurs at sound pressure levels significantly higher than 180 and 190 dB, NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 microPa rms. The rms level of a seismic pulse is typically about 10 dB less than its peak level and about 16 dB less than its pk-pk level (Greene, 1997; McCauley *et al.*, 1998; 2000a). Given the small zone of impact due to the low-energy seismic sources and the proposed mitigation and monitoring for this survey (see Mitigation and Monitoring later in this document), all anticipated effects involve, at most, a temporary change in behavior that may constitute Level B (behavioral) harassment, and no injury or mortality is likely. The proposed mitigation measures will essentially eliminate the possibility of Level A harassment or mortality. As described later, SIO has calculated the "best estimates" for the numbers of animals that could be taken by Level B harassment during the proposed SPO seismic survey using data on marine mammal density (numbers per unit area) and estimates of the size of the affected area, as shown in the predicted RMS radii table (see Table 1).

The Level B harassment estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels at or higher than 160 dB, the criterion for the onset of Level B harassment, by operations with the 2 GI-gun array planned to be used for this project. The anticipated zones of influence of the multi-beam sonar and sub-bottom profiler are less than that for the airguns, so it is assumed that during simultaneous operations of these instruments that any marine mammals close enough to be affected by the multi-beam and sub-bottom profiler sonars would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar. Also, given their characteristics (described in SIO's application and analyzed by NMFS in previous SIO authorizations), no Level B harassment takings are considered likely when the multibeam and sub-bottom profiler are operating but the airguns are silent.

SIO notes that it is difficult to make accurate, scientifically defensible, and

observationally verifiable estimates of the number of individuals likely to be subject to low-level harassment by the noise from SIO's GI guns. There are many uncertainties in marine mammal distribution and seasonally varying abundance, and in local horizontal and vertical distribution; in marine mammal reactions to varying frequencies and levels of acoustic pulses; and in perceived sound levels at different horizontal and oblique ranges from the source.

The best estimate of the potential number of exposures to received levels equal to, or greater than, 160 dB re 1 microPa (rms) was calculated by SIO by multiplying the expected density of the species/stock; times the anticipated total line-kilometers of operations with the 2 GI guns (including turns and additional buffer line km to allow for repeating of lines due to equipment malfunction, bad weather, etc.), times the cross-track distances within which received sound levels are predicted to be 160 dB or greater.

For the 2 GI guns, that cross track distance is 2x the predicted 160-dB radii of 400 m (1312 ft) in water depths greater than 1000 m (3281 ft). Based on

that method, SIO obtained the "best" and "maximum" estimates of the number of marine mammal exposures to airgun sounds 160 dB re 1 microPa (rms) and higher for each of the ecological provinces using the reported average and maximum densities from Tables 3 and 4 in SIO's application. The two estimates were then added to give total estimated exposures. The estimates show that very small numbers of the five endangered large whale species may be exposed to such noise levels (Table 5). SIO's best estimates for these species are one exposure each for the sperm whale, southern right whale, sei whale, and fin whale. The vast majority of the best estimate for exposures to seismic sounds 160 dB and higher would involve delphinids. Best estimates of the number of exposures of cetaceans, in descending order, are bottlenose dolphin (292 exposures), rough-toothed and spotted dolphin (80 exposures each), and southern right whale dolphin (73 exposures). SIO believes that based on the empirical calibration data collected in the Gulf of Mexico for 2 GI guns in deep water, actual 160-dB distances in deep water are likely to be less than predicted

(Tolstoy *et al.*, 2004) and, therefore, the predicted numbers of marine mammals that might be exposed to sounds 160 dB or greater may be somewhat overestimated.

While data regarding distribution, seasonal abundance, and response of pinnipeds to seismic sonar is sparse, NMFS believes the *Revelle* is unlikely to encounter any of the four pinniped species that live, for at least part of the year, in SIO's proposed survey area because of the decreased likelihood of encountering them in the very deep water, the relatively small area proposed to be ensonified, and the likely effectiveness of the required mitigation measures in such a small area.

Table 2 provides the best estimate of the numbers of each species that could be exposed to seismic sounds equal to, or greater than, 160 dB and the number of marine mammals requested to be taken by Level B harassment. A detailed description on the methodology used by SIO to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in SIO's application for the SPO survey.

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TABLE 2. Estimates of the possible numbers of marine mammal exposures to the different sound levels, and the numbers of different individuals that might be exposed, during the proposed SIO seismic surveys in the South Pacific Ocean during December-January, 2006. (Specific Geographic Regions—SPSG = South Pacific Subtropical Gyre; SSTC = South Subtropical Convergence Province (Longhurst, 1998)).

Species	Number of Exposures to Sound Levels				Number of Individuals Exposed to Sound Levels ≥ 160 dB (rms)			
	Best Estimate		Maximum Estimate		Best Estimate		Maximum	
	SPSG	SSTC	Total	SPSG	SSTC	Total	Pop'	SPSGSSTC Total
Delphinidae								
Rough-toothed dolphin	37	44	80	70	44	114	0.03	69 43 112
Bottlenose dolphin	73	21	8	292	140	219	0.07	138 216 354
Pantropical spotted dolphin	37	44	80	70	44	114	0.01	69 43 112
Spinner dolphin	7	22	29	14	22	36	0.00	14 22 35
Striped dolphin	7	22	29	14	22	36	0.00	14 22 35
Common dolphin	7	22	29	14	219	233	0.00	14 216 230
Hourglass dolphin	7	22	29	14	22	36	0.01	14 22 35
Fraser's dolphin	22	22	44	42	22	64	0.01	41 22 63
S'tern r't-whale dolphin	7	66	73	14	66	80	NA	14 65 79
Risso's dolphin	7	22	29	14	109	123	0.02	14 108 122
Melon-headed whale	0	0	1	2	0	2	0.00	2 0 2
Pygmy killer whale	1	0	1	3	0	3	0.00	3 0 3
False killer whale	1	0	2	5	1	6	0.00	5 1 5
Killer whale	0	0	1	2	1	3	0.00	2 1 3
Short-finned pilot whale	1	0	1	5	0	5	0.00	5 0 5
Long-finned pilot whale	0	0	1	2	2	3	0.00	2 2 3
Odontocetes								
Physeteridae								
Sperm whale	0	1	1	1	2	4	0.00	1 2 4
Pygmy sperm whale	3	1	5	16	4	20	NA	16 4 19
Dwarf sperm whale	0	0	0	0	0	0	0	0 0 0
Ziphiidae								
Southern bottlenose whale	0	1	1	0	2	2	0.00	0 2 2
Arnoux's beaked whale	0	0	0	0	1	1	0	0 1 1
Cuvier's beaked whale	0	0	1	1	1	2	0.00	1 1 2
Shepard's beaked whale	0	0	0	0	0	1	N/A	0 0 1
Andrew's beaked whale	0	0	0	0	0	1	N/A	0 0 1
Blainville's beaked whale	0	0	1	1	1	2	NA	1 1 2

Taking into account the small size and the relatively low sound output of the 2 GI-gun array to be used, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a small area around the seismic operation and short-term changes in behavior, falling within the MMPA

definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations.

Based on the 160-dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds of 160 dB re 1 microPa (rms) or greater represent from 0 to approximately 0.07 percent of the regional SPO species populations (Table 2). In the case of endangered balaenopterids, it is likely that no more than 1 humpback, sei, or fin whale will be exposed to seismic sounds 160 dB re 1 microPa (rms) or greater, based on estimated densities of those species in the survey region. Therefore, SIO has requested an authorization to expose up to 1 individual of each of these species to seismic sounds of 160 dB or greater during the proposed survey given the possibility of encountering one or more groups. Best estimates of blue whales are that no individuals would be potentially exposed to seismic pulses with received levels 160 dB re 1 microPa (rms) or greater (Table 2).

Higher numbers of delphinids may be affected by the proposed seismic surveys, but the population sizes of species likely to occur in the survey area are large, and the numbers potentially affected are small relative to population sizes (Table 2). As a result, NMFS believes that the seismic survey proposed by SIO will result in only small numbers of cetaceans being harassed incidental to conducting that activity.

Mitigation measures such as controlled speed, course alteration, observers, ramp ups, and shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions, and minimize any effects on hearing. In all cases, the effects are expected to be short-term, with no lasting adverse biological consequence. In light of the type of effects expected and the small percentages of affected stocks of cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of cetaceans.

Effects on Pinnipeds

Five pinniped species may be encountered at the survey sites, but their distribution and numbers have not been documented in the proposed survey area. In all likelihood, these species will be in southern feeding areas during the period for this survey. However, to ensure that the SIO project remains in compliance with the MMPA in the event that a few pinnipeds are

encountered, SIO has requested an authorization to expose up to 3–5 individuals of each of the five pinniped species to seismic sounds with rms levels 160 dB re 1 microPa or greater. Therefore, the proposed survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. As is the case for cetaceans, the short-term exposures to sounds from the two GI-guns are not expected to result in any long-term consequences for the individuals or their populations and the activity is expected to have no more than a negligible impact on the affected species or stocks of pinnipeds.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur at somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances from the source. Also, many of the fish that might otherwise be within the injury-zone are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the approaching seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μ Pa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to

repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish.

Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the airgun's shock wave. These animals have an exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

There is no known legal subsistence hunting for marine mammals in the SPO, so the proposed SIO activities will not have any impact on the availability of these species or stocks for subsistence users.

Proposed Mitigation

For the proposed seismic survey in the SPO, SIO will deploy 2 GI-airguns as an energy source, each with a discharge volume of 45 in³. The energy from the airguns is directed mostly downward. The directional nature of the airguns to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels

expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the small size of these airguns is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS policy of encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives.

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), would be implemented for the subject seismic surveys if the Secretary issues an IHA: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2) shut-down procedures; and (3) ramp-up procedures.

Speed and Course Alteration

If a marine mammal is detected outside its respective safety zone (180 dB for cetaceans, 190 dB for pinnipeds) and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course will, when practical and safe, be changed to avoid the mammal in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the marine mammal appears likely to enter the safety zone, further mitigative actions will be taken (i.e., either further course alterations or shut down of the airguns).

Shut-down Procedures

Although power-down procedures are often standard operating practice for seismic surveys, power-down is not proposed to be used for this activity because powering down from two guns to one gun would make only a small difference in the 180- or 190-dB radius—probably not enough to allow continued one-gun operations if a marine mammal came within the safety radius for two guns.

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the GI-guns will be shut down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be shut down immediately.

Following a shut down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it: (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales.

During airgun operations following a shut-down whose duration has exceeded these specified limits, the airgun array will be ramped-up gradually.

Ramp-up Procedure

A ramp-up procedure will be followed when the airguns begin operating after a period without airgun operations. The two GI guns will be added in sequence 5 minutes apart. During ramp-up procedures, the safety radius for the two GI guns will be maintained.

During the day, ramp-up cannot begin from a shut-down unless the entire 180-dB safety radius has been visible for at least 30 minutes prior to the ramp up (i.e., no ramp-up can begin in heavy fog or high sea states).

During nighttime operations, if the entire safety radius is visible using vessel lights and night-vision devices (NVDs) (as may be the case in deep and intermediate waters), then start up of the airguns from a shut down may occur, after completion of the 30-minute observation period.

Comments on past IHAs raised the issue of prohibiting nighttime operations as a practical mitigation measure. However, this is not practicable due to cost considerations and ship time schedules. If the *Revelle* was prohibited from operating during nighttime, each trip could require an additional several days to complete.

If a seismic survey vessel is limited to daylight seismic operations, efficiency would also be much reduced. For seismic operations in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys; reduction in the total number of seismic cruises annually due to longer cruise durations; a need for additional vessels to conduct the seismic operations; or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

Marine Mammal Monitoring

SIO must have at least three visual observers on board the *Revelle*, and at least two must be an experienced marine mammal observer that NMFS has approved in advance of the start of the SPO cruise. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations, during any nighttime start-ups of the airguns, and at night whenever daytime monitoring resulted in one or more shut-down situations due to marine mammal presence. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after a shut-down.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. *Revelle* bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are on stand-by and not required to be on watch at all times.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. The observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the GI-airguns are shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be powered-down or shut-down if marine mammals are observed in or about to enter the safety radii. However, a biological observer must be on standby at night and available to assist the bridge watch if

marine mammals are detected at any distance from the *Revelle*. If the 2 GI-airgun is ramped-up at night (see previous section), two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using either deck lighting or NVDs that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Post-Survey Monitoring

In addition, the biological observers will be able to conduct monitoring of most recently-run transect lines as the *Revelle* returns along parallel and perpendicular transect tracks (see inset of Figure 1 in the SIO application). This will provide the biological observers with opportunities to look for injured or dead marine mammals (although no injuries or mortalities are expected during this research cruise).

Passive Acoustic Monitoring (PAM)

Because of the very small zone for potential Level A harassment, SIO has not proposed to use the PAM system during this cruise.

Summary

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has preliminarily determined that the proposed mitigation and monitoring ensures that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array; if ramp-up is required, two marine mammal observers will be required to monitor the safety radii using shipboard lighting or NVDs for at least 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible.

Reporting

SIO will submit a report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during December, 2006 and January, 2007. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal

sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

During the recent SIO cruise to the Louisville Ridge (71 FR 6041, February 6, 2006), there were 5 sightings of marine mammals. All observed marine mammals were non-evasive of the research vessel and its activities. Only one sighting occurred while the seismic source was active. The animal's closest approach to the ship was greater than 2 km (1.08 nm), well outside the 40 m (131.2 ft) safety radius for the seismic source used on that cruise. For additional information please see the Louisville Ridge cruise report (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha>).

Endangered Species Act (ESA)

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

National Environmental Policy Act (NEPA)

The NSF made a Finding of No Significant Impact (FONSI) determination on November 3, 2005 (70 FR 68102, November 9, 2005), based on information contained within its EA (see 70 FR 39346, July 7, 2005, for public availability), that implementation of a low-energy seismic survey in the SPO is not a major Federal action having significant effects on the environment within the meaning of NEPA. The NSF determined, therefore, that an environmental impact statement would not be prepared.

NMFS noted that the NSF had prepared an EA for a previous SIO 2-GI airgun survey in the SPO and made this EA available upon request (70 FR 60287, October 17, 2005). In accordance with NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other

alternatives. Accordingly, NMFS adopted the NSF EA under 40 CFR 1506.3 and made its own FONSI. The NMFS FONSI also took into consideration additional mitigation measures that are not in NSF's EA. Therefore, because the actions described in that EA are similar in context and intensity to the current proposed activity, it is not necessary for NMFS to issue a new EA, a supplemental EA or an environmental impact statement for the proposed issuance of an IHA to SIO for this activity. A copy of the EA and previous FONSI for this activity is available upon request. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the SPO may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this preliminary determination is supported by: (1) the likelihood that, given advance notice through relatively slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying before it becomes potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be well within 100 m (328 ft) of the vessel even in shallow water; and (4) the likelihood that marine mammal detection in the safety zone by trained observers is close to 100 percent during daytime and remains high at night to the short distance from the seismic vessel. As a result, no take by injury or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and would be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program will not interfere with any known legal subsistence hunts, since seismic operations will not take place in subsistence whaling and sealing areas

and will not affect marine mammals used for subsistence purposes.

Proposed Authorization

NMFS proposes to issue an IHA to SIO for conducting an oceanographic seismic survey in the SPO, 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 marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Dated: September 22, 2006.

James H. Lecky,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062206A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Notice of Receipt of Application; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy for an authorization under the Marine Mammal Protection Act (MMPA) to take marine mammals, by harassment, incidental to conducting operations of Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar from August 16, 2007 through August 15, 2012. In order to promulgate regulations and issue annual Letters of Authorization (LOAs) to the Navy, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals, will not have an unmitigable impact on the availability of the species or stock(s) for subsistence uses, and must prescribe the means of mitigating the potential impact to the lowest level practicable. NMFS invites comment on the application and

suggestions on the content of any future regulations.

DATES: Comments and information must be postmarked no later than October 30, 2006.

ADDRESSES: Comments on the application should be addressed to: P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing e-mail comments is PR1.062306A@noaa.gov. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. Please use only one method for commenting.

A copy of the Navy's 2007 MMPA application and the current SURTASS LFA sonar monitoring report may be obtained by writing to the above address, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or at: http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications. A copy of the Navy's Draft Supplemental Environmental Impact Statement (Draft SEIS) may be downloaded at the following URL: <http://www.surtass-lfa-eis.com/Impactstate05.htm>

Documents cited in this notice may also be viewed, by appointment, during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, at 301-713-2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) 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) if certain findings are made and regulations are issued.

An authorization may be granted for periods of 5 years or less 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; if regulations are prescribed setting forth the permissible methods of taking and other means of effecting the least practicable impact on affected species, stocks and its habitat; and, the requirements pertaining to the monitoring and reporting of such taking.

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." With respect to military readiness activities, the MMPA defines "harassment" as:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Summary of Request

On May 12, 2006, NMFS received an application from the U.S. Navy requesting an authorization under section 101(a)(5)(A) of the MMPA for the taking of marine mammals by harassment incidental to employment of the SURTASS LFA sonar system during training, testing, and routine military operations for a period of time not to exceed 5 years, beginning on August 16, 2007. The proposed action is the U.S. Navy's use of the SURTASS LFA sonar in ocean waters excluding any areas necessary to prevent 180-decibel (dB) sound pressure level (SPL) or greater within a specific geographic range from shore, in offshore biologically important areas during biologically important seasons, and in areas necessary to prevent greater than 145-dB SPL at known recreational and commercial dive sites. The SURTASS LFA sonar program will operate a maximum of 4 ship systems in those regions in which SURTASS LFA sonar could potentially operate. During employment of the SURTASS LFA sonar system, acoustic signals will be introduced into the water column that could potentially affect marine mammals. Because marine mammals may be harassed due to noise disturbance incidental to the employment of the SURTASS LFA sonar system during training, testing, and routine military operations, an authorization under section 101(a)(5)(A) of the MMPA is warranted. A copy of the Navy's MMPA application is available for public review (see **ADDRESSES**).

Background

On July 16, 2002, NMFS published a final rule (67 FR 46712) for the taking of marine mammals incidental to operations of SURTASS LFA sonar and, on August 16, 2002 issued an LOA to the *R/V Cory Chouest*. The preamble to