

**SUPPLEMENTARY INFORMATION:** These EFPs are requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity.

NMFS issued an EFP to Dynasty Marine Associates, Inc., in Marathon, FL, effective March 3, 1998, for the collection of a maximum of 3 sandbar sharks, 19 nurse sharks, 22 lemon sharks, 14 sand tiger sharks, and 10 bull sharks for the purposes of public display. Dynasty Marine Associates, Inc., now intends to collect an additional 17 sandbar sharks, 10 tiger sharks, and 20 scalloped hammerhead sharks for public display by using a single hook and line as well as a short longline not consisting of more than 50 hooks. Fishing will occur in the Florida Bay and in the Atlantic Ocean off the middle Florida Keys area, off New Jersey, and off Maryland. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time. The applicant also requested that the EFP authorize collection of Atlantic sharpnose sharks, managed under the small coastal management unit; however, as the commercial season for small coastal sharks has not closed to date, this species may be possessed legally by obtaining a Federal commercial shark permit, and an EFP is not required.

Shore Lab, Inc., in Brandon, FL, intends to collect 12 sand tiger sharks for public display and education by using 10 bucket rigs, each of which includes a single hook and crab line that allows a shark to swim in a horizontal arc around the swivel line. Fishing will occur in the Atlantic Ocean off New Jersey. Issuance of an EFP is necessary, according to the applicant, because possession of sand tiger sharks is prohibited.

The New Jersey State Aquarium, in Camden, NJ, intends to collect a maximum of four tiger sharks, five sandbar sharks, four dusky sharks, and five sand tiger sharks for public display and research by rod and reel as well as by a short longline consisting of no more than 50 hooks. Fishing will occur in the Atlantic Ocean from Massachusetts to Florida. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested that the EFP authorize collection of Atlantic thresher and mako sharks,

managed under the pelagics management unit; however, as the commercial season for pelagic sharks has not closed to date, these species may be possessed legally by obtaining a Federal commercial shark permit, and an EFP is not required.

The National Aquarium in Baltimore, Inc., in Baltimore, MD, intends to collect a maximum of five sandbar sharks, one dusky shark, and one sand tiger shark for public display and research by two bottom set longlines, each approximately 400 meters in length and consisting of no more than 40 hooks. Fishing will occur in the Atlantic Ocean off New Jersey. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also intends to tag and release captured sharks, collect blood samples for hematological analyses, and return to the Delaware Bay five captive sandbar sharks and possibly one sand tiger shark.

Eric Pederson and Grady Sullivan, in Marathon, FL, intend to collect a maximum total of 40 sharks for public display by rod and reel, cast net, and single hook block lines. Shark species collected may include bull sharks, sand tiger sharks, lemon sharks, sandbar sharks, blacktip sharks, tiger sharks, and nurse sharks. Fishing will occur in Federal waters off New York, Virginia, North Carolina, South Carolina, Georgia, and Florida, as well as in the Chesapeake Bay. Issuance of an EFP is necessary, according to the applicant, because the commercial season for large coastal sharks is closed for long periods of time and because possession of sand tiger sharks is prohibited. The applicant also requested an EFP to collect sawfish; however, as NMFS does not regulate sawfish at this time, no EFP is necessary to collect this species in Federal waters.

The proposed collections for public display involve activities otherwise prohibited by regulations implementing the Fishery Management Plan for Sharks of the Atlantic Ocean. The applicants require authorization to fish for and to possess large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

Based on a preliminary review, NMFS finds that these applications warrant further consideration. A final decision on issuance of EFPs will depend on the submission of all required information, NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and

on any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 29, 1998.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 98-14873 Filed 6-3-98; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 050198C]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Tatoosh Island, WA Storage Tank Removal Project

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

**ACTION:** Notice of proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from the U.S. Coast Guard's Civil Engineering Unit, Oakland, CA (U.S. Coast Guard) for authorization to take small numbers of California sea lions, Pacific harbor seals, and Steller sea lions by harassment incidental to removing three underground storage tanks (USTs) and one or two above-ground storage tanks (ASTs) at the Cape Flattery Light Station on Tatoosh Island, Callam County, WA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the U.S. Coast Guard to incidentally take, by Level B harassment, small numbers of seals and sea lions in the above-mentioned area after September 1, 1998.

**DATES:** Comments and information must be received on or before July 6, 1998.

**ADDRESSES:** Comments on the application should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application, and/or a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, Office of Protected Resources at 301-713-2055,

or Brent Norberg, Northwest Regional Office at 206-526-6733.

#### 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 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.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and 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 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."

Subsection 101(a)(5)(D) of the Marine Mammal Protection Act 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. The MMPA now defines "harassment" as:

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

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

##### Summary of Request

On April 27, 1998, NMFS received a request from the U.S. Coast Guard for authorization to take small numbers of

California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and Steller sea lions (*Eumetopias jubatus*) by harassment incidental to removing three USTs and one or two ASTs at the Cape Flattery Light Station on Tatoosh Island, Callam County, WA.

The expected impact on marine mammals will be from the noise created by the arrival and departure of heavy-lift, tandem-rotor helicopters. Heavy-lift helicopters will be used to sling equipment and materials to and from the project. The most common heavy-lift helicopters commercially available in the Pacific Northwest are the Boeing 234 Chinook and Vertol 107-II.

Large equipment and materials will be slung 30 to 50 ft below the helicopter, depending upon the load's dynamics. Personnel, small equipment, and supplies will be carried internally. Materials removed from the site will include two 500-gallon (1,892.5-ltr) USTs, a 1,000-gallon (3,785-ltr) UST, contaminated water (estimated at 2,000 gallons (7,570 ltrs), contaminated soil (estimated at 15 cubic yards (11.5 m<sup>3</sup>), a 33,000-gallon (124,905-ltr) AST, and possibly a 2,000-gallon (7,570-ltr) AST.

Removal of the USTs and ASTs will take place over a 3-week period commencing on or about September 1, 1998. During approximately 4 days of work during that 3-week period, helicopters will make approximately 23 trips to and from the site. It should be noted that this activity is required by 40 CFR part 280 subpart G, Out-of-Service UST Systems and Closure and is necessary to protect the environment from leaking UST/ASTs.

##### Description of Marine Mammals Affected by the Activity

California sea lions, Pacific harbor seals, and Steller sea lions are the three species expected to be impacted by the UST and AST removal. Information additional to the information provided here can be found in Barlow *et al.* (1995, 1997).

##### Harbor Seal

The harbor seal is the most abundant pinniped in Washington State with 319 haulouts in the state. They are present all year, but peak harbor seal abundance on land occurs from May through July or August, followed by a sharp decline in abundance in the fall and winter. Along the coast of Washington, pupping occurs in May/June. Pups are weaned at approximately 4 weeks, and nursery sites are then abandoned.

Studies of harbor seal populations in the Northwest suggest a growth rate of approximately 7.0 percent for the

population from 1978 to 1993, slowing somewhat from 1991 to 1993 to approximately 3.7 percent (Huber *et al.*, 1995). In 1993, the Washington population was estimated at over 34,000 (Huber, 1995). Harbor seals are common throughout the waters of the Strait of Juan de Fuca; 200 harbor seals are estimated to be on Tatoosh Island during September (Pat Gearin, pers. comm).

##### California Sea Lion

The population of California sea lions ranges from Mexico to Vancouver Island (NMFS, 1992, 1997). Along Washington's outer coast, the greatest number of sea lions is present in October and November. A spring peak in numbers occurs offshore Oregon as animals from British Columbia and Washington pass Oregon and northern California as they return to rookeries in southern California.

Since nearing extinction in the early part of this century, their numbers have increased at approximately 5 percent per year (Barlow *et al.*, 1995). In the U.S., they breed during July after pupping in late May to June, primarily in the Channel Islands of California. Nearly all animals in Washington are non-breeding males. Few females and no pups have been sighted, so the breeding stock of this species will not be affected by the activity. California sea lions migrate northward into, and remain in, Washington waters from September until June. Southward migration peaks in Washington in March and April.

Population estimates for the species range from 167,000 to 188,000 (Barlow *et al.*, 1997). The number of California sea lions on Tatoosh Island during September is estimated at 50 (Pat Gearin, NMML, pers. comm).

##### Steller Sea Lion

The Steller sea lion has been divided into two groups along a line in the western Gulf of Alaska. In 1990, the entire sea lion population was listed as threatened under the Endangered Species Act (ESA) because of pronounced declines in the western group.

Breeding begins uniformly throughout the sea lion's range in mid-May, and the highest pup counts occur in early July (Bonnell *et al.*, 1992). These mammals prefer the outer coast of Washington and the Strait of Juan de Fuca, especially in late fall (Bonnell *et al.*, 1992). This species is common throughout most of the area, especially near the entrance to the Strait of Juan de Fuca. Hill *et al.* (1997) estimate the population size for the eastern stock of this species at

23,900. As many as 300 Steller sea lions have been found using Tatoosh haulouts during the time the project will occur (Gearin and Jeffries, 1996).

#### Potential Effects on Marine Mammals

The noise from the helicopters passing overhead is likely to startle any pinnipeds ashore at the time and result in their leaving the land for the water. Safety concerns will dictate the direction of arrival and departure but it is likely that many flights will be sufficiently close to one or more haulouts that pinnipeds ashore at the time will flee to the water. Hovering, which causes the most noise, will be limited to the time it takes to unslung the equipment at the UST/AST removal site on the top of the island. Except for helicopter operations, all other activities associated with the UST/AST removals will take place either on the mainland or on top of the island and should have no effect on the seals and sea lions.

There are four haulout sites on or near Tatoosh Island, which is part of the Makah Nation. These sites are used by Steller sea lions, Pacific harbor seals, and California sea lions.

Seals and sea lions haul out onto dry land for various biological reasons, including sleep (Kriebler and Barrette, 1984; Terhune, 1985), predator avoidance, and thermoregulation (Barnett, 1992). For example, harbor seals spend most of the evening and nighttime hours in the ocean (Bowles and Stewart, 1980), and hauled-out seals spend much of their daytime hours in apparent sleep (Kriebler and Barrette, 1984; Terhune, 1985). In addition to sleep, seals and sea lions apparently leave the ocean to avoid aquatic predators and excessive heat loss to the sea water (Barnett, 1992).

However, the advantages of hauling out are counterbalanced by dangers of the terrestrial environment, including predators. Because of these opposing biological forces, haulout groups are often temporary, unstable aggregations (Sullivan, 1982).

The size of the haulout group is thought to be an anti-predator strategy (da Silva and Terhune, 1988). By increasing their numbers at a haulout site, seals (and sea lions) optimize the opportunities for sleep by minimizing the requirement for individual vigilance against predators (Kriebler and Barrette, 1984). This relationship between seals and their predators is thought to have represented a strong selection pressure for startle behavior patterns (da Silva and Terhune, 1988). As a result, harbor seals, which have been subjected to extensive predation and hunting, rush into the water at the slightest alarm

(Arseniev, 1986) unless they have become habituated to the disturbance (Lagomarsino, pers. comm.).

Startle response in harbor seals can vary from a temporary state of agitation by a few individuals to the complete abandonment of the beach area by the entire colony. Normally, when harbor seals are frightened by noise or by the approach of a boat, plane, human, or potential predator, they will move rapidly to the relative safety of the water. Depending upon the severity of the disturbance, seals may return to the original haulout site immediately, stay in the water for some length of time before hauling out, or haul out in a different area. When disturbances occur late in the day, harbor seals may not haul out again until the next day.

The total number of incidental harassment takes to the seals and sea lions is estimated by the applicant at 12,650. The number by species is: Stellers, 6,900; harbor seal, 4,600; and California sea lions, 1,150. This estimate uses the maximum potential number of animals (550) and 23 flights. The U.S. Coast Guard believes the number should be significantly less because each flight may not have the same impact on each haulout. It is also likely that, as the noise impacts continue, animals will temporarily leave the haulout for other haulouts rather than return only to be driven away again.

#### Mitigation

Because access to Tatoosh Island is limited to small boats and foot traffic, use of helicopters is the only identified means to remove the UST/ASTs. The U.S. Coast Guard has scheduled the work to avoid the pupping and molting season for harbor seals.

NMFS proposes to require the helicopters remain at the greatest altitude practicable prior to landing on Tatoosh Island, to attain the greatest altitude practicable at time of takeoff, and to avoid direct overflights of the haulouts.

#### Monitoring and Reporting

During any time that helicopter activities are undertaken, monitoring is proposed to be conducted by a minimum of one trained biologist who is approved in advance by NMFS. Observations will be made at the haulout site nearest the planned flight path of the helicopter. If neither seals nor sea lions are ashore at the time of the flight, observations will be made at the next nearest haulout site. The U.S. Coast Guard will provide a report to NMFS within 120 days of the completion of the project. This report will provide dates and locations of

operations, details of marine mammal sightings, including the number of pinnipeds, by species and haulout location, that fled from the beach because of helicopter activities, the number returning subsequent to the disruption, and estimates of the amount and nature of all takes by harassment.

#### Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an incidental harassment authorization. Consultation will be concluded upon completion of the comment period and taking into consideration those comments received on the proposed issuance of an authorization.

#### Conclusions

NMFS has preliminarily determined that the short-term impact of four days of helicopter flights over Tatoosh Island is expected to result in a temporary reduction in utilization of the haulout as seals and sea lions leave the beach for the safety of the water. Helicopter activity is not expected to result in any reduction in the number of harbor seals, California sea lions, or Steller sea lions, and these species are expected to continue to occupy the same area. This behavioral change is expected to have a negligible impact on the animals. Additionally, there will not be any impact on the habitat itself.

#### Proposed Authorization

NMFS proposes to issue an incidental harassment authorization to the U.S. Coast Guard for possible Level B harassment of small numbers of California sea lions, Pacific harbor seals, and Steller sea lions. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of each of these species of marine mammals and would have no more than a negligible impact on these marine mammal stocks.

#### Information Solicited

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

Dated: May 29, 1998.

**Patricia A. Montanio,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 98-14872 Filed 6-3-98; 8:45 am]

BILLING CODE 3510-22-F