

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-X142

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received a request from United Launch Alliance (ULA) for a one-year authorization to take small numbers of marine mammals by harassment incidental to *Delta Mariner* operations, cargo unloading activities, harbor maintenance dredging, and kelp habitat mitigation activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize ULA to take, by Level B harassment, small numbers of several species of pinnipeds at south VAFB beginning August 2008.

DATES: Comments and information must be received no later than August 4, 2008.

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 email comments is PR1.0648X142@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 the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

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

FOR FURTHER INFORMATION CONTACT:

Jeannine Cody or Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, or Monica DeAngelis, NMFS Southwest Region, (562) 980-3232.

SUPPLEMENTARY INFORMATION:**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by United States 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 for incidental takings shall 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 certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

"...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA 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 for certain categories of 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 small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On February 18, 2008, NMFS received an application from ULA requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in even smaller numbers. Incidental Harassment Authorizations (IHAs) were issued to The Boeing Company, now ULA, on May 15, 2002 (67 FR 36151, May 23, 2002), May 20, 2003 (68 FR 36540, June 18, 2003), May 20, 2004 (69 FR 29696, May 25, 2004), May 23, 2005 (70 FR 30697, May 27, 2005), June 20, 2006 (71 FR 36321, June 26, 2006), and June 21, 2007 (72 FR 34444, June 22, 2007) each for a 1-year period. No work and, therefore, no monitoring was conducted under the 2007 IHA. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point).

Specified Activities

Delta Mariner off-loading operations and associated cargo movements will occur a maximum of 3 times per year. The *Delta Mariner* is a 312-ft (95.1-m) long, 84-ft (25.6-m) wide steel hull ocean-going vessel capable of operating at an 8-ft (2.4-m) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the *Delta Mariner*. Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the common booster core (CBC) from the vessel requires use of an elevating platform transporter (EPT), an additional source of noise with sound levels measured at approximately 85 decibels (dB) A-weighted (re 20 microPascals at 1-m) 20 ft (6.1 m) from the engine exhaust when the engine is running mid-speed (Acentech, 1998). Procedures require two short (approximately 1/3 second) beeps of the horn prior to starting the ignition. The sound level of the EPT horn ranged from 62-70 dB A-weighted at 200 ft (60.9 m) away, and 84-112 dB A-weighted at 25 ft (7.6 m) away. Containers containing flight hardware items will be towed off the *Delta Mariner* by a tractor tug that generates a sound level of

approximately 87 dB A-weighted at 50 ft (15.2 m) while in operational mode. Total docking and cargo movement activities is estimated to be approximately 14 to 18 hours in good weather.

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing up to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 43–81 dB A-weighted at 250 ft (76.2 m). Dredge operations, from set-up to tear-down, would continue 24-hr a day for 3 to 5 weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2008 is contained in the application which is available upon request (see **ADDRESSES**) and in the Final U.S. Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Marine Mammals Affected by the Activity

Pacific Harbor Seals

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent estimate of the Pacific harbor seal population in California is 31,600 seals. Since 1990 there has been no net population growth along the mainland or the Channel Islands. The decrease in population growth rate has occurred at the same time as a decrease in human-caused mortality and may indicate that the population has reached its environmental carrying capacity (Carretta *et al.*, 2007). The total population of harbor seals on VAFB is now estimated to be 1,099 (maximum of 515 seals hauled out at one time on south VAFB) based on sighting surveys and telemetry data (SRS Technologies, 2003).

The daily haul-out behavior of harbor seals along the south VAFB coastline is primarily dependent on time of day. The highest number of seals haul-out at south VAFB between 1100 through 1600 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high

swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at a site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 250 ft (76.2 m) west of the south VAFB harbor and on rocks outside the harbor breakwater where ULA will be conducting *Delta Mariner* operations, cargo loading, dredging activities, and reef enhancement. The maximum number of seals present during the 2001 dredging of the harbor was 23 (averaging 7 per observation period), and the maximum number hauled out during the 2002 wharf modification activities was 43, averaging 21 per day when tidal conditions were favorable for hauling out. Dredging and reef enhancement did not occur from 2003–2007. The harbor seal pupping site closest to south VAFB harbor is Rocky Point, approximately 1 mi (1.61 km) north of the harbor. However, harbor seals have been reported to haul-out on the coast at Sudden Ranch, approximately 0.5 mi (0.8 km) south of the harbor.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt, which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

California Sea Lions

During the wharf modification activity in June–July 2002, California sea lions were observed hauling out on the breakwater in small numbers (up to 6 individuals). Although this is considered to be an unusual occurrence and is possibly related to fish schooling in the area, ULA included sea lions in the request.

California sea lions range from British Columbia to Mexico. The most recent

population estimates for the California sea lions range from 237,000 to 244,000 individuals (Carretta *et al.*, 2007).

Between 1975 and 2001, the population growth rate was 5.4–6.1 percent. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island (SMI), with the population ranging from 2,235 to over 17,000. The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. At least 100 sea lions can be observed during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. In 2003, at least 145 sea lions were observed at Rocky Point, including five pups that did not survive due to abandonment shortly after birth. This was thought to be an El Nino effect, as there had never been any previously reported sea lion births at VAFB (Thorson, 2003).

Each year, small groups of sea lions have been observed heading south along the VAFB coastline in April and May (Tetra Tech, 1997). Starting in August, large groups of sea lions can be seen moving north, in groups varying in size from 25 to more than 300 (Roest, 1995). This concurs with established migration patterns (Reeves *et al.*, 1992; Roest, 1995). Juvenile sea lions can be observed hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997). Starving and exhausted sub-adult sea lions are fairly common on central California beaches during the months of July and August (Roest, 1995).

During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to SMI and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest population on land occurs in September and October during the post-breeding dispersal, although many of the sea lions,

particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

Other Marine Mammals

Other marine mammal species are rare to infrequent along the south VAFB coast during certain times of the year and are unlikely to be harassed by ULA's activities. These four species are: the northern elephant seal, the northern fur seal (*Callorhinus ursinus*), Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lion (*Eumetopias jubatus*). Northern elephant seals may occur on VAFB but do not haul out in the harbor area. Northern fur seals, Guadalupe fur seals, and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and distribution of these species can be found in the NMFS Stock Assessment Reports at <http://www.nmfs.noaa.gov/pr/sars/>, as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). Please refer to those documents for information on these species.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations, dredging, and kelp habitat mitigation and the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out on the beach and rocks near south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Based on the measured sounds of construction equipment, such as might be used during ULA's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dBA of noise would be approximately 72 dBA at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The EPT produces approximately 85 dBA, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately 1/3 of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84–112 dBA at 25 ft (7.6 m) away and 62–70 dBA at 200 ft (61 m) away. The highest

measurement was taken from the side of the vehicle where the horn is mounted. Ambient background noise measured approximately 250 ft (76.2 m) from the beach was estimated to be 35–48 dBA (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

According to the MMPA and NMFS implementing regulations, if harbor activities disrupt the behavioral patterns of harbor seals or sea lions, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause injury or mortality to marine mammals.

On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water of hundreds of animals, may rise to the degree of Level A harassment and could result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or at pupping sites could potentially lead to takes by injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor because on average the number of harbor seals hauled out near the site is less than 30 individuals, and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report (ENSRI, 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to fishing activities, which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks, and there was only one incident of a head alert reaction.

The report from the December 2002 dredging activities show that the number of Pacific harbor seals ranged from 0 to 19, and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts, although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application, NMFS 2005 Environmental Assessment (EA), and ENSR International's 2001 Final EA.

Numbers of Marine Mammals Expected to be Harassed

ULA estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen twice a day, and using a maximum total of 73 operating days in 2008–2009, NMFS estimates that a maximum of 767 to 1,570 Pacific harbor seals may be subject to Level B harassment out of a total estimated population of 31,600. These numbers are small relative to this population size (2.4–5 percent).

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day. Based on the above-mentioned calculation, NMFS believes that a maximum of 219 California sea lions may be subject to Level B harassment out of a total estimated population of 240,000. These numbers are small relative to this population size (less than 0.1 percent). Up to 10 northern elephant seals (because they may be in nearby waters) may be subject to Level B harassment out of a total estimated

population of 101,000. These numbers are small relative to this population size (less than 0.01 percent).

Possible Effects of Activities on Marine Mammal Habitat

ULA does not anticipate any loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

ULA anticipates unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, ULA will mitigate for the removal of kelp habitat by placing 150 tons of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a diameter of about 2 ft (0.61 m) and each weighing about 1 ton (907 kg). The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. ULA plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

Proposed Mitigation Measures

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, ULA proposes to undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling pinnipeds at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods

of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of ULA's activities (see Monitoring).

(6) The *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks, and the vessel will reduce speed to 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and mooring dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Proposed Monitoring Measures

As part of its 2002 application, Boeing, now ULA, provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for this IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Monitoring results from previous years of these activities have been reviewed and incorporated into the analysis of potential effects in this document, as well as the take estimates.

Reporting

ULA will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, ULA will provide

a report to NMFS within 90 days. This report will provide dates, times, durations, and locations of specific activities, details of pinniped behavioral observations, and estimates of numbers of affected pinnipeds and impacts (behavioral or other). In addition, the report will include information on the weather, tidal state, horizontal visibility, and composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

Endangered Species Act (ESA)

This action will not affect species listed under the ESA that are under NMFS' jurisdiction. VAFB formally consulted with the U.S. Fish and Wildlife Service in 1998 on the possible take of southern sea otters during Boeing's, now ULA, harbor activities at south VAFB. A Biological Opinion was issued in August 2001, which concluded that the EELV Program is not likely to jeopardize the continued existence of the southern sea otter, and no injury or mortality is expected. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

National Environmental Policy Act

In 2001, the United States Air Force (USAF) prepared an EA for Harbor Activities Associated with the Delta IV Program at VAFB. In 2005, NMFS prepared an EA supplementing the information contained in the USAF EA and issued a Finding of No Significant Impact on the issuance of an IHA for Boeing's, now ULA, harbor activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). ULA's proposed activities and impacts for 2007–2008 are expected to be within the scope of NMFS' 2005 EA and FONSI.

Preliminary Conclusions

NMFS proposes to issue an IHA to ULA for harbor activities related to the Delta IV/EELV to take place at south VAFB over a 1-year period. Issuance of this IHA would be contingent upon adherence to the proposed mitigation, monitoring, and reporting requirements described in this FR notice. NMFS has preliminarily determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including:

transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation, would result in Level B harassment only of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals; and would have a negligible impact on the affected species. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this proposed action. Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ULA for the Delta IV EELV Program, provided that the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 27, 2008.

James H. Lecky,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XI68

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for renewal of an authorization to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OB) in California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization

to CALTRANS to incidentally take, by harassment, small numbers of these species of pinnipeds and cetaceans during the next 12 months.

DATES: Comments and information must be received no later than August 4, 2008.

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, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.0648-XI68@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the 2001 application, the 2008 renewal request, the January 2005 Marine Mammal and Acoustic Monitoring report, and the August 2006 Hydroacoustic Measurements report may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT:

Shane Guan, NMFS, (301) 713-2289, ext 137, or Monica DeAngelis, NMFS, (562) 980-3232.

SUPPLEMENTARY INFORMATION:

Background

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

Permission shall 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 certain subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA 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 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 March 3, 2008, CALTRANS submitted a request to NOAA requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OB, in San Francisco Bay (SFB), California. An IHA was issued to CALTRANS for this activity on May 2, 2007 and it expired on May 1, 2008 (72 FR 25748, May 7, 2007). However, no pile driving activities were conducted during that period. In the March 3 request, CALTRANS states that it has scheduled pile driving for 2008 - 2009, which CALTRANS intended to begin in June 2008. A detailed description of the SF-OB project was provided in the November 14, 2003 (68 FR 64595) **Federal Register** notice of IHA and is not repeated here. Please refer to that **Federal Register** notice.

On June 2, 2008, CALTRANS provided an update on the proposed pile driving activities planned for the 2008 season. In its update, CALTRANS states that pile driving for the 2008 construction would be driving the 42 - 48 in (0.17 - 0.19 m) diameter temporary piles, as opposed to the 5.9 - 8.2 ft (1.8 - 2.5 m) diameter permanent piles. Therefore, the noise from pile driving of these temporary piles would be far less than from previous pile driving