

such merchandise was classifiable under item numbers 155.2025, 155.2045, 155.3000 and 183.05 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under item numbers 1701.11.05, 1701.11.10, 1701.11.20, 1701.11.50, 1701.12.05, 1701.12.10, 1701.12.50, 1701.91.05, 1701.91.10, 1701.91.30, 1701.99.05, 1701.99.1090, 1701.99.5090, 1702.90.05, 1702.90.10, 1702.90.20, 2106.90.42, 2106.90.44, 2106.90.46 of the Harmonized Tariff Schedule ("HTS"). Specialty sugars are exempt from the scope of this finding. On December 7, 1987, two interested parties, the United States Beet Sugar Association and the United States Cane Sugar Refiners' Association, requested a scope review of blends of sugar and dextrose, a corn-derived sweetener, containing at least 65 percent sugar. The merchandise is currently imported under HTS item number 1701.99.00. On June 21, 1990, the Department issued a final scope clarification memorandum, which determined that such blends are within the scope of the finding, and that imports of such blends from the Community are subject to the corresponding countervailing duty.

#### Analysis of Comments Received:

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated July 28, 2005, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit, room B-099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Final Results of Review

The Department finds that revocation of the countervailing duty finding on sugar from the Community would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy likely

to prevail if the finding were revoked is 21.73 cents per pound.

#### Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 28, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5-4189 Filed 8-3-05; 8:45 am]

BILLING CODE 3510-DS-S

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 072205I]

##### Environmental Impact Statement for the Santa Clara Valley Water District Fisheries and Aquatic Habitat Collaborative Effort

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

**ACTION:** Notice of intent to conduct public scoping and prepare an Environmental Impact Statement

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the National Marine Fisheries Service (NMFS) proposes to serve as the lead agency under NEPA in the preparation of a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the following project/proposed action: Adoption and implementation of the "Settlement Agreement Regarding Water Rights of the Santa Clara Valley Water District On Coyote, Guadalupe, and Stevens Creeks," (Settlement Agreement), the State Water Resources Control Board's approval of modifications of the Santa Clara Valley Water District's (District) appropriative water rights to allow for implementation

of the Settlement Agreement with supporting findings and implementation of those modifications, the District's adoption of a Conservation Plan (CP), NMFS's issuance of an incidental take permit (ITP) to the District, the U.S. Fish and Wildlife Service's (USFWS) issuance of an ITP to the District, the U.S. Army Corps of Engineers' (Corps) issuance of a permit to the District, and the California Department of Fish and Game's issuance of an incidental take permit or consistency determination to the District. The project/proposed action is also known as "FAHCE" (Fisheries and Aquatic Habitat Collaborative Effort). The NMFS is the lead agency for this EIS, and the USFWS and the Corps are cooperating agencies. The District, a local public water agency, is the lead agency under the California Environmental Quality Act (CEQA). A similar notice is being published by the District in accordance with CEQA. Comments and participation in the scoping process are encouraged.

**DATES:** Written and oral comments may be submitted at a public scoping meeting scheduled for Tuesday, August 9, 2005, from 7 to 9 p.m. at the Santa Clara Valley Water District Board Room located at 5750 Almaden Expressway, San Jose, CA 95118. In addition, written comments may be submitted on or before September 15, 2005.

**ADDRESSES:** Address comments and requests for information related to preparation of the EIS/EIR, or requests to be added to the mailing list for this project/proposed action, to Gary Stern, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404; facsimile (707)578-3435. Comments may be submitted by e-mail to the following address: [Gary.Stern@noaa.gov](mailto:Gary.Stern@noaa.gov). In the subject line of the e-mail, include the document identifier: FAHCE - EIS/EIR. Comments and materials received will be available to public inspection, by appointment, during normal business hours at the above addresses.

**FOR FURTHER INFORMATION CONTACT:** Gary Stern, San Francisco Bay Region Team Leader at NMFS, Santa Rosa Area Office, (707) 575-6060.

#### SUPPLEMENTARY INFORMATION:

##### Background

The NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The NMFS expects to take action on an Endangered Species Act (ESA) section 10(a)(1)(B) permit application anticipated from the District. Therefore, the NMFS is seeking public input on the scope of the

required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and implementing regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the ESA as to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1532(19)). Harm is defined by the USFWS to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). NMFS' definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727; November 8, 1999).

Section 10 of the ESA contains provisions for the issuance of an ITP to non-Federal landowners for the take of endangered and threatened species, provided that all permit issuance criteria are met, including the requirement that the take is incidental to otherwise lawful activities, and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the NMFS and USFWS for approval, a CP containing a strategy for minimizing and mitigating the take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate monitoring and funding for the CP will be provided.

The project/proposed action arises from a complaint filed by Guadalupe-Coyote Resource Conservation District on July 11, 1996, alleging that the District's operations on Guadalupe River, Coyote Creek, and Stevens Creek were adversely affecting fish and their habitat. The District answered the complaint, denying its allegations. In an innovative strategy for resolving the issues raised in the complaint and to provide for long-term planning on these three watersheds and preservation of the District's water resources to serve its customers, trustee public agencies and interested public groups participated in facilitated settlement negotiations, identified as the Fish and Aquatic Habitat Collaborative Effort (FAHCE).

The FAHCE process culminated successfully in the Settlement Agreement, finalization and implementation of which requires NEPA and CEQA compliance. The

Settlement Agreement is expressly conditioned on prior compliance with NEPA and CEQA, and all applicable resource agency approvals of the measures that will implement the Settlement Agreement, and will not become effective unless and until all specified conditions precedent are satisfied.

To adopt and implement the Settlement Agreement and pursue regulatory certainty of its existing and future water supplies, the District is seeking an ITP that would provide long-term assurances for the reliability of water supplies. The District needs an ITP because some of its activities have the potential to take listed species.

As the primary water management agency for Santa Clara County, California, the District has constructed and currently operates and maintains a system of local reservoirs, flood control channels, groundwater recharge facilities, and water conveyance facilities in the Santa Clara Valley, and serves an area of approximately 1,300 sq mi (3,367 sq km) with a population of 1.8 million. It acts as the county's water wholesaler and flood protection agency, serving as the steward for the streams and creeks, underground aquifers and District-built reservoirs within the county.

#### **Project/Proposed Action**

The ITP application is related to the operation and maintenance of District reservoirs and other water operations/facilities in the Guadalupe River, Coyote Creek, and Stevens Creek watersheds in Santa Clara County, California (covered activities). The Settlement Agreement forms the basis for covered activities in the ITP application. The Settlement Agreement provides for actions to be taken during four phases, the beginning dates of which are tied to the Effective Date of the Settlement Agreement (the date upon which all parties to the Settlement Agreement have executed it following NEPA/CEQA review and receipt of all regulatory approvals).

The first three phases of the Settlement Agreement each would allow 10 years to implement specified measures. The fourth phase would carry forward the measures in perpetuity. Each of the initial three phases would include distinct management objectives and measures to achieve the overall management goals. The overall management goals are to restore and maintain healthy steelhead and salmon populations as appropriate to each of the three watersheds by providing suitable spawning and rearing habitat within each, and to provide adequate passage for adult steelhead and salmon

to reach suitable spawning and rearing habitat and for out-migration of juveniles.

The Settlement Agreement provides that the proposed measures would be implemented in an adaptive manner in order to effectively mitigate any adverse impacts on the steelhead and Chinook salmon fisheries as well as red-legged frog. An Adaptive Management Team would be formed to oversee the implementation of the Settlement Agreement measures, including identification of the measures to be included in phases two, three and four, and initially would include representatives of all parties to the Settlement Agreement.

The District has informed NMFS of its proposal to submit a conservation plan (CP) and application for an ITP under section 10(a)(1)(B) of the ESA. Activities that the District may propose for incidental take permit coverage include:

1. *Phase One (first 10 years) measures common to Coyote Creek, Guadalupe River and Stevens Creek watersheds would include the following:*

a. Re-operation of reservoirs in accordance with specified criteria for flood releases, fish passage and other non-emergency operations and maintenance; expansion of the District's appropriate water rights to include preservation and enhancement of public trust resources as a beneficial use; and operation of the District's reservoirs to ensure that both stream water depth and stream water temperature are adequate to support the various life stages of the two salmonid species.

b. Removal or remediation of Priority 1 District-owned barriers to salmonid migration and use of reasonable best efforts, including up to 50 percent cost sharing, to remove or remediate Priority 1 barriers owned by others; and periodic evaluation and determination of whether other barriers interfere with the timely achievement of the management objectives for each of the three watersheds.

c. Implementation of a Fish Habitat Restoration Plan to enhance spawning habitats for steelhead and salmon in the three watersheds.

d. Implementation of a program to enhance rearing habitats for steelhead and Chinook salmon, including tree planting, placement of large organic (woody) debris, channel modifications including berms, and riparian canopy enhancement.

e. Implementation of a program to identify stream reaches where geomorphic functions necessary for channel maintenance or formation (e.g., hydraulic runoff, bedload transport, channel migration, riparian vegetation

succession) are impaired; and evaluation of the feasibility of restoring such geomorphic functions to enhance fish passage to suitable spawning and rearing habitats, followed by development and implementation of feasible pilot projects to restore geomorphic functions.

f. Development and adoption of general guidelines, applying environmentally sensitive techniques, to maintain or enhance geomorphic functions, riparian conditions and bank stabilization projects undertaken by other persons.

2. *Phase One (first 10 years) measures for the Coyote Creek System would also include:*

a. Maintenance of habitat for steelhead and Chinook salmon.

b. Operation of a Cold Water Management Zone for approximately 5 miles (8 km) below Anderson Dam.

c. Preparation of a Coyote Creek Facilities Plan, including evaluation of Laguna Seca groundwater remediation and the restoration of the Metcalf Ponds.

d. Development of a cooperative operations agreement on Cherry Flat Reservoir with the City of San Jose.

e. Development of a feasibility study of a track and truck operation at Anderson Reservoir.

3. *Phase One (first 10 years) measures for the Guadalupe River System would also include:*

a. Maintenance of habitat for steelhead and Chinook salmon.

b. Operation of a Cold Water Management Zone on Guadalupe Creek below Guadalupe Dam to confluence with Guadalupe River.

c. Operation of a management zone for Chinook salmon on Alamos Creek and Calero Creek below Calero and Almaden Reservoirs.

d. Operation of a management zone for Chinook salmon in Los Gatos Creek from Camden Ave. to the confluence with the Guadalupe River.

e. Preparation of a facilities plan for Alamos Creek.

4. *Phase One (first 10 years) measures for the Stevens Creek System would also include:*

a. Maintenance of habitat for steelhead.

b. Operation of a Cold Water Management Zone below Stevens Creek Reservoir.

c. Installation of a multi-post outlet at Stevens Creek Dam to allow for the management of temperature in the cold water management zone.

d. Development of a feasibility study of a track and truck operation at Stevens Creek Reservoir.

5. *Phase Two (second 10 years) measures for Coyote Creek watershed would include the following, as needed:*

a. Extension of the distribution of suitable habitat for salmon and steelhead up to an approximate additional five miles (8 km) below Anderson Dam; or up to 10 miles (16 km) above Anderson Reservoir or Coyote Reservoir, as feasible.

b. Modification of water releases from Anderson Reservoir.

c. Relocation of the Coyote Percolation Facility off-stream.

d. Removal or remediation of Priority No. 2 District-owned barriers.

e. Use of recycled or other urban water to augment flows in Coyote Creek.

f. Implementation of a trap and truck operation to relocate adult steelhead into upper watershed habitat above Anderson or Coyote Reservoirs and to assist in smolt out-migration.

6. *Phase Two (second 10 years) measures for Guadalupe River watershed would include the following, as needed:*

a. Extension of the distribution of fishery habitat for steelhead in Alamos Creek up to an approximate additional three miles (5 km) above Almaden Reservoir, or below either Calero Reservoir or Almaden Reservoir to its confluence with Lake Almaden, as feasible.

b. Removal or remediation of Priority No. 2 District-owned barriers.

c. Use of recycled or other urban water to augment flows in the Guadalupe main stem or its tributaries.

d. Implementation of a trap-and-truck operation to relocate adult steelhead into upper watershed habitat above Almaden Reservoir.

e. Construction of a bypass channel or other modification necessary to isolate Alamos Creek and Guadalupe River from Lake Almaden.

f. Removal or modification of Almaden Reservoir to allow for unimpeded access to upper watershed habitat.

7. *Phase Two (second 10 years) measures for Stevens Creek watershed would include the following, as needed:*

a. Extension of the distribution of suitable habitat for salmon and steelhead up to an approximate additional five miles (8 km) above Stevens Creek Reservoir or an additional two miles (3 km) below Stevens Creek Reservoir, as feasible.

b. Removal or remediation of Priority No. 2 District-owned barriers.

c. Use of recycled or other urban water to augment flows in Stevens Creek.

d. Implementation of a trap-and-truck operation to relocate adult steelhead into upper watershed habitat above Stevens Creek Reservoir.

8. *Phase Three (third 10 years) measures for Coyote Creek watershed*

would be those measures not implemented in Phase Two, as needed to achieve the overall management objectives.

9. *Phase Three (third 10 years) measures for Guadalupe River watershed* would be those measures not implemented in Phase Two but needed to achieve the overall management objectives. Periodic review would be conducted on reaches within Los Gatos Creek below Lexington Reservoir to identify opportunities for additional measures that may be implemented in Phases Two and Three, specifically to increase access to salmonid spawning or juvenile rearing habitat.

10. *Phase Three (third 10 years) measures for Stevens Creek watershed* would be to extend habitat into suitable tributaries or above Stevens Creek Reservoir. Additional measures not implemented in Phase Two would be implemented as needed to achieve the overall management objectives.

11. *Phase Four (long term) measures for all watersheds* would be the continuation of prior actions, including the District's continued operation of its reservoirs to provide in-stream flows as needed to achieve the overall management objectives as long as the District continues to appropriate water pursuant to its water rights; long-term monitoring would continue; and maintenance of facility improvements and other non-flow measures would continue.

The geographic areas to be covered by the proposed CP and ITP are located in Santa Clara County, California. More information on the geographic area can be found at an Internet site maintained by the District: [http://www.valleywater.org/Water/Watersheds\\_-\\_streams\\_and\\_floods/Taking\\_care\\_of\\_streams/FAHCE/index.shtml](http://www.valleywater.org/Water/Watersheds_-_streams_and_floods/Taking_care_of_streams/FAHCE/index.shtml).

Under NEPA, a reasonable range of alternatives to a proposed action must be developed and considered in the NMFS' environmental review. The NMFS is currently in the process of developing alternatives for analysis, and have considered analyzing the following:

*Alternative 1: No Action* – Under the No Action Alternative, an ITP would not be issued by NMFS or USFWS, there would not be a commitment to implement the CP (although it is expected that improvements will be made on an uncertain schedule), and ESA assurances under section 10 would not be provided to the District;

*Alternative 2: Flow Adjustments (Only) Alternative* – This alternative would include modified District reservoir operations and maintenance

and activities, but with no additional actions to enhance and preserve habitats and fisheries.;

*Alternative 3: Flow Adjustments and Removal of District Owned Barriers Alternative* – This alternative would be limited to flow adjustments and removal of District-owned stream barriers.;

*Alternative 4: Accelerated Recycled Water Investigations Alternative* – This alternative would include all of the actions described in the Settlement Agreement as well as beginning a program for bringing recycled water to the base of the dams to conserve potable water supplies. The program would include investigation of the feasibility of supplying recycled water to new customers along the length of the pipeline.

*Alternative 5: Use of Other Water Supplies to Augment Flow Alternative* – This alternative would include the use of other water supplies (e.g. imported water or consolidated water rights from District retailers) to augment flow alternatives.

*Alternative 6: Flow to the Bay Alternative* – This alternative would establish a year-round “live stream” flow to the Bay using one or more of the following water supplies: flow to the bay with local water supplies; flow to the bay with other raw water sources to augment flows; and/or flow to the bay with treated recycled water to augment flows.

*Alternative 7: Maximize the Wetted Zone Over the Long Term Alternative* – This alternative would be in contrast to standard methods that emphasize temperature control through cold-water management. This alternative includes existing operations and maintenance with flow ramping modifications and emphasizes the behavioral and physiological adaptations of fish. This alternative recognizes that there will be potential dry years and emphasizes the application of Adaptive Management principles.

*Alternative 8: Natural Conditions Alternative* – This alternative analyzes the removal of all the District’s dams in the Coyote Creek, Guadalupe River, and Stevens Creek watersheds with restoration to pre-dam conditions.

*Alternative 9: Hatchery Alternative* – This alternative considers the use of Federal, State of California or privately owned hatcheries to provide hatchery fish to the Coyote Creek, Guadalupe River, and Stevens Creek watersheds with costs paid by the District.

*Alternative 10: Raise Dam face Alternative* – This alternative analyzes the effects of raising the dam faces on the Coyote Creek, Guadalupe River, and Stevens Creek watersheds to increase

the cold water supply to benefit fisheries.

*Alternative 11: Extend Timetable for Implementing Phases One through Three* – This alternative analyzes the effects of extending the time period for implementing Phases One through Three by an additional 5 years each to provide the District additional time to provide the funding necessary for implementation. Under this alternative, none of the measures included in each phase would be modified. Only the timing would change.

Additional project/proposed action alternatives may be developed based on input received from this and future scoping during development of the EIS/EIR.

#### **NMFS, USFWS, and Corps Actions**

Under the project/proposed action, the effects of covered activities on covered species are expected to be minimized and mitigated through the CP. Species for which the District seeks ITP coverage include two ESA-listed threatened species (Central California Coast steelhead and California red-legged frog) and one unlisted species (Central Valley fall-run Chinook salmon) that may be affected by the District’s adoption and implementation of the Settlement Agreement.

To obtain an ITP, the District must prepare a CP that meets the issuance criteria established by NMFS and USFWS (50 CFR 17.22 and 222.307). Federal approval of an ITP and associated CP require environmental review under the NEPA. The NMFS and District will complete an EIS/EIR evaluating the environmental effects of the District’s operations under the proposed Settlement Agreement and CP. As a Cooperating Agency, USFWS may also use the EIS analysis for purposes of supporting a decision as to whether to issue an ITP to the District based on the CP.

The District is expected to apply to the Corps for permits pursuant to section 404 of the Clean Water Act (CWA) for some actions included in the project/proposed action. As a Cooperating Agency, the Corps may use the EIS analysis for purposes of supporting the decision whether to issue permits to the District under section 404 of the CWA.

#### **Non-Federal Actions**

The District will request that the State Water Resources Control Board (SWRCB) (a) approve modifications to the District’s water rights as necessary to implement the measures contemplated by the Settlement Agreement, and (b) adopt certain specific findings with

respect to the District’s operations and maintenance on Stevens Creek, Guadalupe River and Coyote Creek. The SWRCB cannot approve modification of the District’s appropriative water rights as necessary to implement the Settlement Agreement, or make any of the requested findings, without an environmental document certified under CEQA. The SWRCB will be a responsible agency for the EIS/EIR.

As a joint lead agency, the District cannot implement the provisions of the Settlement Agreement or undertake actions authorized by its modified water rights without first certifying the EIS/EIR in compliance with CEQA.

#### **Scoping for the EIS/EIR**

The NMFS provides this notice to: (1) advise other agencies and the public of our intentions; and (2) obtain suggestions and information on the scope of issues to include in the EIS/EIR. The NMFS and District have scheduled a public scoping meeting scheduled for Tuesday, August 9, 2005, at 7 to 9 p.m. at the Santa Clara Valley Water District Board Room located at 5750 Almaden Expressway, San Jose, CA 95118. Written and oral comments may be submitted at this public scoping meeting. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all significant issues are identified.

The NMFS and District request that comments be as specific as possible. In particular, we request information regarding: the direct, indirect, and cumulative impacts that implementation of the proposed CP could have on endangered and threatened and other covered species, and their communities and habitats; other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; funding issues; existing environmental conditions in Stevens Creek, Guadalupe River, and Coyote Creek watersheds in Santa Clara County; other plans or projects that might be relevant to this proposed project; and minimization and mitigation efforts.

In addition to considering potential impacts on listed and other covered species and their habitats, the EIS/EIR could include information on potential impacts resulting from alternatives on other components of the human environment. These other components could include air quality, water quality and quantity, geology and soils, cultural resources, socioeconomic resources, vegetation, and environmental justice.

Comments or questions concerning this proposed action and the

environmental review should be directed to the NMFS at the addresses or telephone numbers provided above (see **ADDRESSES**). All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

The environmental review of this project/proposed action will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500-1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Dated: July 28, 2005.

**Walter L. Wadlow,**

*Acting Chief Executive Officer, Santa Clara Valley Water District, Santa Clara, California.*

Dated: July 29, 2005.

**Donna Wieting,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 05-15448 Filed 8-3-05; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 020405A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Survey off the Aleutian Islands in the North Pacific Ocean

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

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic seismic surveys in the Aleutian Island area has been issued to Lamont-Doherty Earth Observatory (L-DEO).

**DATES:** Effective from July 18, 2005 through July 17, 2006.

**ADDRESSES:** The application and authorization are available by writing to Steve Leathery, Chief, Permits, Conservation and Education Division,

Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed here and are also available at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Small\\_Take/smalltake\\_info.htm#applications](http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications).

Documents cited in this notice can be viewed by appointment during regular business hours at the address provided here.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713-2289, ext 128.

#### 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 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.

An authorization may 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 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 December 23, 2004, NMFS received an application from L-DEO for the taking, by harassment, of several species of marine mammals incidental to conducting a low-energy, shallow-penetrating seismic survey and scientific rock dredging program around the Aleutian Islands. The purpose of the proposed study is to examine the east-to-west change in the angle of the convergence of the Pacific-North America plates, which implies systematic westward decreases in the rate of subduction and sediment delivery to the Aleutian trench. The Aleutian Island Arc is the only island arc where systematic changes in physical aspects of the subduction system have been well correlated with magma output rates and with the geochemistry of the melts that the system produces. Despite its potential importance, studies of volcanism in the Aleutians are lacking. In particular, the western Aleutians (west of Adak Island) are now playing a key role in the evolving view of subduction magma genesis, yet it remains a poorly studied area. Few volcanic rock samples are available from that area, and it has not been studied substantially at sea.

In addition to an emphasis on magma genesis and its relationship to tectonics, volcanism in the Aleutians and southern Alaska is important because it is known to present a hazard to air traffic. However, the seismic and geochemical studies proposed by L-DEO are not directly hazard-related. They are aimed at understanding the deep-level processes that underlie the volcanic eruptions, and are thus relevant to the broad goals of understanding volcano behavior and hazard assessment in the Aleutians and elsewhere.

#### Description of the Activity

The seismic survey will involve one vessel, the *R/V Thomas G. Thompson* (*Thompson*). The *Thompson* replaces the *R/V Kilo Moana* that was originally proposed for use during this survey. The *Thompson* will deploy one Generator-injector (GI) airgun as an energy source (discharge volume of 105 in<sup>3</sup>), plus a towed hydrophone streamer up to 300 m (984 ft) long, or possibly as short as