attend the public hearing, and determined their facility could not accommodate a crowd of this size, as it would exceed the facility's capacity and security resources. On July 10, the Bren Center staff informed NOAA that they withdrew their agreement to serve as the site for the hearing, forcing NOAA to cancel the July 25 hearing date.

NOAA is currently looking at later dates for a hearing and alternative sites that are consistent with available resources. In the meantime, the public may submit written comments on the appeal from July 21 through August 4, the period established in NOAA's July 8 **Federal Register** notice. Specifically, written comments may be submitted by e-mail to *gcos.comments@noaa.gov* or by mail addressed to Thomas Street, NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Comments must be received by August 4, 2008.

A summary of relevant issues as well as additional background on the appeal appeared in the **Federal Register** notice of March 17, 2008, announcing the appeal, and may be found on the Internet at *http://www.ogc.doc.gov/czma.com.htm*. Questions should be directed to Thomas Street, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, or Stephanie Campbell, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, or *gcos.inquiries@noaa.gov*.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: July 18, 2008.

**Jeffrey S. Dillen,**

*Acting Assistant General Counsel for Ocean Services.*

[FR Doc. E8–16880 Filed 7–22–08; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG64**

### Small Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Seismic Survey in the Northeastern Pacific Ocean, June–July 2008

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

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

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the University of Texas, Institute for Geophysics (UTIG) for the take of marine mammals, by Level B harassment only, incidental to conducting a low-energy marine seismic survey in the northeastern Pacific Ocean during June–July, 2008.

**DATES:** Effective June 30, 2008, through July 31, 2008.

**ADDRESSES:** A copy of the IHA and application are available by writing 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. 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#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289.

**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.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. 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 approve or deny the authorization.

#### Summary of Request

On March 4, 2008, NMFS received an application from UTIG for the taking, by Level B harassment only, of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), a bathymetric and seismic survey program approximately 100 km (62 mi) off the Oregon coast in the northeastern Pacific Ocean during June-July, 2008. The purpose of the research program was outlined in NMFS' notice of the proposed IHA (72 FR 42045, August 1, 2007).

#### Description of the Activity

The seismic surveys will involve one vessel, the R/V *Thomas G. Thompson* (Thompson), which is scheduled to depart from Seattle, Washington on June 30, 2008 and return on July 19, 2008. The exact dates of the activities may vary by a few days because of weather conditions, scheduling, repositioning, streamer operations and adjustments, Generator-Injector airgun (GI gun) deployment, or the need to repeat some lines if data quality is substandard. The ultra-high resolution 3–dimensional (3–D) seismic surveys around the methane vent systems of Hydrate Ridge will take place off the Oregon coast in the northeastern Pacific Ocean. The overall

area within which the seismic surveys will occur is located between approximately 44° and 45° N. and 124.5° and 126° W. (Figure 1 in UTIG's application). The surveys will occur approximately 100 km (62 mi) offshore from Oregon in water depths between approximately 650 and 1,200 m (2,132 and 3,936 ft), entirely within the Exclusive Economic Zone (EEZ) of the U.S.

The seismic survey will image the subsurface structures that control venting. The vent systems control whether the methane is directly released into the ocean and atmosphere or stored in methane hydrate. Methane hydrate storage has the potential for rapid dissociation and release into the ocean or atmosphere. The subsurface structure that will be imaged will determine the mechanisms involved in methane venting. The results will be applicable to the numerous vent systems that exist on continental margins worldwide. The data will also be used to design observatories that can monitor and assess the methane fluxes and mechanisms of methane release that operate on Hydrate Ridge.

The *Thompson* will deploy two low-energy GI guns as an energy source (with a discharge volume of 40–60 $in^3$ for each gun or a total of 80–120 $in^3$), and a P-Cable system. The 12 m (39.5 ft) long P-cable system is supplied by Northampton Oceanographic Center in the U.K. The towed system will consist of at least 12 streamers (and possibly up to 24) spaced approximately 12.5 m (41 ft) apart and each containing 11 hydrophones, all summed to a single channel. The energy to the GI guns is compressed air supplied by a compressor on board the source vessel. As the GI guns are towed along the survey lines, the P-Cable system will receive the returning acoustic signals.

The seismic program will consist of three survey grids: two of the surveys each cover a 15 $km^2$ area and the third covers a 25 $km^2$ (see Figure 1 in UTIG's application). The line spacing within the three survey grids will either be 75 m (246 ft) (if 12 streamers are used) or 150 m (492 ft) (if 24 streamers are used). The total line km to be surveyed in the grids at the 75 m spacing is 975 km (605.8 mi), including turns. Water depths at the seismic survey locations range from 650 to 1,200 m (2,132 to 3,936 ft). Most (92 percent) of the survey will take place over intermediate (100–1,000 m) water depths; the remaining 8 percent will be in water deeper than 1,000 m. If time permits, an additional 300 line km will be surveyed along the outside edges of the three grids. The GI guns are expected to operate for a total of approximately 150 hours during the cruise. There will be additional seismic operations associated with equipment testing, start-up, and repeat coverage of any areas where initial data quality is sub-standard.

In addition to the operations of the two GI guns and P-cable system, a Simrad EM300 30 kHz multibeam echosounder, and a Knudsen 12 kHz 320BR sub-bottom profiler will be used during the proposed cruise.

A more detailed description of the authorized action, including vessel and acoustic source specifications, was included in the notice of the proposed IHA (72 FR 42045, August 1, 2007).

*Safety Radii*

Received sound levels have been modeled by Lamont-Doherty Earth Observatory (L-DEO) for a number of airgun configurations, including one 45–$in^3$ GI gun, in relation to distance and direction from the airgun(s). The model does not allow for bottom interactions and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 190, 180, and 160 dB re 1 μPa (rms) are predicted to be received in deep (>1000–m, 3,280–ft) water are 8, 23, and 220 m (26.2, 75.5, and 721.8 ft), respectively and 12, 35, and 330 m (39.4, 115, and 1,082.7 ft), respectively for intermediate water depths (100–1000m, 328–3,280 ft). Because the model results are for a 2.5–m (8.2–ft) tow depth, the above distances slightly underestimate the distances for the 45–in3 GI gun towed at 4–m (13–ft) depth.

A general discussion of acoustic thresholds and safety radii, as well as further discussion of the modeling conducted by L-DEO, was included in the notice of the proposed IHA (72 FR 42045, August 1, 2007).

**Comments and Responses**

A notice of receipt of the UTIG application and proposed IHA was published in the **Federal Register** on May 23, 2008 (73 FR 30076). During the comment period, NMFS received comments from the Marine Mammal Commission (MMC) and the Center for Regulatory Effectiveness (CRE).

*MMC Comment:* The MMC states that because the applicant is requesting authority to take marine mammals by harassment only, NMFS should require that operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to the seismic survey. The MMC further recommends that any such suspension should remain in place until NMFS has: (1) reviewed the situation and determined that further mortalities or serious injuries are unlikely to occur; or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

*Response:* NMFS concurs with MMC's recommendations and has included a requirement to this effect in the IHA.

*CRE Comment:* The CRE states that it does not oppose the NMFS-issued IHA to UTIG because it does not believe that the proposed seismic activities will harm marine mammals. However, CRE requests that the IHA be consistent with the Council for Regulatory Effectiveness White Paper (CRE White Paper): The NMFS Should Regulate Seismic Under the Marine Mammal Protection Act in a Two-Tier Manner.

*Response:* NMFS concurs with CRE's that the UTIG's seismic activities will not harm marine mammals provided the described monitoring and mitigation measures are implemented and acknowledges the receipt of the CRE White Paper. The recommendations stated in the document will be reviewed and considered by the agency on the issuance of future regulations.

*CRE Comment:* The CRE White Paper recommends that the final IHA issued to UTIG for the proposed operations should use line transect analysis to estimate exposures including: (1) the number of line miles (or line kilometers) traversed, (2) estimated radial distance to edge of a safety, impact, or exclusion zone; and (3) the densities of marine mammals present. No models should be used to estimate exposures before the models meet Data Quality Act (''DQA'') guidelines; before they meet Council for Regulatory Environmental Modeling (''CREM'') guidelines; and before they pass external peer review. No models should be used before they have been demonstrated to be more reliable than the currently approved and used methodology: line transect analysis.

*Response:* UTIG's application was prepared for UTIG and NSF by LGL Ltd., Environmental Research Associates (LGL). In the application for the proposed seismic operations, LGL notes that it is using the line transect method to estimate marine mammal exposures and determine safety zones, it is not using the Acoustic Integration Model (AIM). AIM was developed and is proprietary to Marine Acoustics, Inc. This is consistent with applications for recent previous NSF-funded research seismic cruises conducted by Scripps Institution of Oceanography (SIO) and Lamont-Doherty Earth Observatory (L-DEO). The use of AIM is proposed for use by NSF in its Draft Programmatic

Environmental Impact Statement (Draft PEIS) for the R/V *Marcus Langseth*. NMFS expects the Draft PEIS will be released for public comment this summer. In that regard, AIM has been independently reviewed and found to be compliant with the Environmental Protection Agency's Council for Regulatory Environmental Modeling (CREM) (see *http://www.nmfs.noaa.gov/pr/pdfs/permits/lfa__aim__review.pdf* for more information on this model).

*CRE Comment:* The CRE White Paper recommends that the final IHA issued to UTIG for the proposed operations should use average density numbers to estimate marine mammal exposures to seismic.

*Response:* NMFS agrees that the best science available supports the use of average density estimates whenever possible. However, there may be situations where NMFS needs to use maximum density estimates. For example, if there are seasonal differences in abundance and distribution between dates when the marine mammal surveys were conducted and the dates for seismic data acquisition. Also, NMFS has stated several times in previous IHA authorizations, that the estimates for ''exposure'' do not mean that all animals will be harassed at the sound pressure level being calculated.

*CRE Comment:* The CRE White Paper recommends that the final IHA issued to UTIG for the proposed operations should explain that exposure to seismic does not necessarily equate to harassment and a taking under the MMPA. CRE explains that ''simple exposure to sound, or brief reactions that do not disrupt behavioral patterns in a potentially significant manner, do not constitute harassment or 'taking'. By potentially significant, CRE means 'in a manner that might have deleterious effects to the well-being of individual marine mammals or their populations.'' CRE would like this explanation factored into NMFS' use and discussion of Line Transect Analysis. Also, CRE would like the fact that ''whales do not sit still and therefore do not get the full dose of sound on every shot'' factored into exposure estimates.

*Response:* When marine mammals are exposed to very strong sound sources underwater, like pulses from seismic airguns, temporary or permanent hearing impairment due to threshold shifts is a possibility. Non-auditory physical effects or injuries may also theoretically occur, such as stress, neurological effects, bubble formation, and other types of organ or tissue damage (Cox *et al.* (2006), Southall *et al.* (2007); both as cited in UTIG's application (2008)). NMFS concurs that momentary behavioral reactions to a sound source such as an echosounder or seismic airgun pulse do not necessarily rise to the level of ''take'' by behavioral harassment. NMFS has stated several times in previous IHA authorizations, that the estimates for ''exposure'' do not mean that all animals will be harassed by the sound source. See UTIG's application for more information on estimating ''exposures'' and ''takes'' of marine mammals during the seismic operations. No explanation or justification for the statement ''whales do not sit still and therefore do not get the full dose of sound on every shot'' was provided and it is unclear how CRE expects NMFS to factor it in, therefore, NMFS cannot address this statement at this time.

*CRE Comment:* The CRE White Paper recommends that the final IHA issued to UTIG for the proposed operations should regulate the 180 dB at 500 m (1,640 ft) unless and until other levels are shown DQA compliant and necessary. These standards have been consistently applied in the Gulf of Mexico (GOM) and elsewhere without harm to marine mammals.

*Response:* Consistent with CRE's comment, NMFS is using the 180 dB isopleth to estimate take of cetaceans (and the 190 dB isopleth for pinnipeds) by Level A harassment and to determine a trigger for implementing mitigation, in regards to non-explosive sounds.

*CRE Comment:* The CRE White Paper recommends that the final IHA issued to UTIG for the proposed operations should require passive acoustic monitoring (''PAM'') if and when PAM is demonstrated to be accurate and reliable after public comment on the issue.

*Response:* In regard to the use of PAM, UTIG does not propose to use PAM for this seismic research activity on the *Thompson* as the safety zones for marine mammals are fairly small and easily visible to MMVO's. Still, it remains difficult to locate a marine mammal based solely upon its call and determining whether or not the animals is inside the safety zone. The use of PAM systems may be proposed to be used by an IHA or LOA applicant to assist in the detection and monitoring of vocalizing marine mammals in the study area of the seismic vessel due to distance of safety zones or viewing conditions (i.e., inclement weather and/or sea state conditions, or night-time). However, prior to allowing use of PAM under an IHA, the applicant would be required to validate its effectiveness for detecting those marine mammals expected to be encountered during the activity. Also, NMFS is currently developing guidelines for PAM systems.

*CRE Comment:* The CRE encourages NMFS to regulate seismics in the GOM and elsewhere through the promulgation of five-year rules. NMFS is urged to follow the Tier II recommendations of the CRE White Paper when developing seismic rules and Tier I recommendations when issuing individual IHAs in the absence of seismic rules.

*Response:* NMFS is currently preparing an Environmental Impact Statement for the issuance of five-year rules in a Letter of Authorization for seismic activities in the GOM. Also, NMFS will review and consider the recommendations stated in the CRE White Paper

**Description of Marine Mammals in the Activity Area**

Thirty-two marine mammal species, including 19 odontocete (dolphins and small and large toothed whales) species, seven mysticete (baleen whales) species, five pinniped species, and the sea otter, may occur or have been documented to occur in the marine waters off Oregon and Washington, excluding extralimital sightings or strandings (Table 1 here). Six of the species that may occur in the project area are listed under the U.S. Endangered Species Act (ESA) as Endangered, including sperm, humpback, blue, fin, sei, and North Pacific right whales. In addition, the southern resident killer whale stock is also listed as endangered, but is unlikely to be seen in the offshore waters of Oregon. The threatened northern sea otter is only known to occur in coastal waters and is not expected in coastal waters and is not expected in the project area (the sea otter is under the jurisdiction of the U.S. Fish and Wildlife Service).

Additional information regarding the status and distribution of the marine mammals in the area and how the densities were calculated was included in the notice of the proposed IHA (73 FR 30076, May 23, 2008) and may be found in UTIG's application.

| Species | Habitat | Abundance[1] | Avg Density[4] | Max Density[4] | Number of Exposures |
|---|---|---|---|---|---|
| **Mysticetes** | | | | | |
| North Pacific right whale (Eubalaena japonica) * | Inshore, occasionally offshore | N.A.[2] | 0 | 0 | 0 |
| Humpback whale (Megaptera novaeangliae) * | Mainly nearshore waters and banks | 1391 | 0.69 | 1.50 | 1 |
| Minke whale (Balaenoptera acutorostrata) | Pelagic and coastal | 1015 | 0.68 | 1.1 | 2 |
| Sei whale (Balaenoptera borealis) * | Primarily offshore, pelagic | 56 | 0.13 | 0.5 | 0 |
| Fin whale (Balaenoptera physalus) * | Continental slope, mostly pelagic | 3279 | 0.95 | 1.3 | 1 |
| Blue whale (Balaenoptera musculus) * | Pelagic and coastal | 1744 | 0.19 | 0.4 | 1 |
| **Odontocetes** | | | | | |
| Sperm whale (Physeter macrocephalus) * | Usually pelagic and deep seas | 1233 | 1.39 | 3.4 | 2 |
| Pygmy sperm whale (Kogia breviceps) | Deep waters off the shelf | 247 | 1.24 | 2.8 | 4 |
| Dwarf sperm whale (Kogia sima) | Deep waters off the shelf | N.A. | 0 | 0 | 0 |
| Cuvier's beaked whale (Ziphius cavirostris) | Pelagic | 1884 | 0 | 0 | 0 |
| Baird's beaked whale (Berardius bairdii) | Pelagic | 228 | 1.64 | 4.1 | 2 |
| Blainville's beaked whale (Mesoplodon densirostris) | Slope, offshore | 1247[3] | 0 | 0 | 0 |
| Mesoplodon sp (unidentified) | Slope, offshore | 1247[3] | 0.66 | 2.9 | 4 |
| Hubb's beaked whale (Mesoplodon carlhubbsi) | Slope, offshore | 1247[3] | 0 | 0 | 0 |
| Stejneger's beaked whale (Mesoplodon stejnegeri) | Slope, offshore | 1247[3] | 0 | 0 | 0 |
| Offshore bottlenose dolphin (Tursiops truncatus) | Offshore, slope | 5,065 | 0.04 | 0 | 0 |
| Striped dolphin (Stenella coeruleoalba) | Off continental shelf | 13,934 | 0.04 | 0.1 | 0 |
| Short-beaked common dolphin (Delphinus delphis) | Shelf and pelagic, seamounts | 449,846 | 14.14 | 35 | 49 |
| Pacific white-sided dolphin (Lagenorhynchus obliquidens) | Offshore, slope | 59,274 | 24.84 | 33.2 | 46 |
| Northern right whale dolphin (Lissodelphis borealis) | Slope, offshore waters | 20.362 | 19.39 | 26.7 | 37 |
| Risso's dolphin (Grampus griseus) | Shelf, slope, seamounts | 16,066 | 12.91 | 17.3 | 24 |
| False killer whale (Pseudorca crassidens) | Pelagic, occasionally inshore | N.A. | 0 | 0 | 0 |
| Killer whale (Orcinus orca) | Widely distributed | 466 (offshore) | 1.62 | 2.7 | 4 |
| Short-finned pilot whale (Globicephala macrorhynchus) | Mostly pelagic, high-relief topography | 304 | 0 | 0 | 0 |

| Species | Habitat | Abundance[1] | Avg Density[4] | Max Density[4] | Number of Exposures |
|---|---|---|---|---|---|
| Harbor porpoise (Phocoena phocoena) | Coastal and inland waters | 37,745 (OR/WA) | 0 | 0 | 0 |
| Dall's porpoise (Phocoenoides dalli) | Shelf, slope, offshore | 99,517 | 150.17 | 250.9 | 349 |
| **Pinniped**s | | | | | |
| Northern fur seal (Callorhinus ursinus) | Pelagic, offshore | 721,935[2] | 10 | 100 | 139 |
| California sea lion (Zalophus californianus californianus) | Coastal, shelf | 237,000-244,000 | N.A. | N.A. | 0 |
| Steller sea lion (Eumetopias jubatus) * | Coastal, shelf | 47,885(Eastern U.S.) | 6 | N.A. | 1 |
| Harbor seal (Phoca vitulina richardsi) | Coastal | 24,732 (OR/WA) | 4 | N.A. | 0 |
| Northern elephant seal (Mirounga ngustirostris) | Coastal, pelagic when migrating | 101,000 (CA) | N.A. | N.A. | 0 |

Table 1. Species expected to be encountered (and potentially harassed) and their densities in the survey area during UTIG=s NE Pacific Ocean cruise. The far right column indicates the number of exposures expected under the IHA.
N.A. B Data not available or species status was not assessed.
* Species are listed as threatened or endangered under the Endangered Species Act.
[1] Abundance given for U.S., Eastern North Pacific, or California/Oregon/Washington Stock, whichever is included in the 2005 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.* 2006), unless otherwise stated.
[2] Angliss and Outlaw (2005).
[3] All mesoplodont whales
[4] Density is ι/1000 km$^2$

**Potential Effects on Marine Mammals**

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004). To avoid injury, NMFS has determined that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 µPa (rms). Given the small size of the GI guns (two 40–60 in$^3$ GI gun) planned for the present project and the required mitigation and monitoring measures, effects are anticipated to be considerably less than would be the case with a large array of airguns. It is very unlikely that there would be any cases of temporary or, especially, permanent hearing impairment or any significant non-auditory physical or physiological effects. Also, behavioral disturbance is expected to be limited to relatively short distances.

The notice of the proposed IHA (73 FR 30076, May 23, 2008) included a discussion of the effects of sounds from airguns on mysticetes, odontocetes, and pinnipeds, including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. Additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels can be found in Appendix A (e) of UTIG's application.

The notice of the proposed IHA also included a discussion of the potential effects of the multibeam echosounder and sub-bottom profiler. Because of the shape of the beams and the power of the multibeam echosounder and sub-bottom profiler, NMFS believes it unlikely that marine mammals will be exposed to the multibeam echosounder and sub-bottom profiler at levels at or above those likely to cause harassment.

**Estimated Take by Incidental Harassment**

The notice of the proposed IHA (73 FR 30076, May 23, 2008) included an in-depth discussion of the methods used to calculate the densities of the marine mammals in the area of the seismic survey and the take estimates. Additional information was included in UTIG's application.

All anticipated ''takes by harassment'' authorized by this IHA are Level B harassment only, involving temporary changes in behavior. Take calculations were based on maximum exposure estimates (based on maximum density estimates) as opposed to best estimates and are based on the 160–dB isopleth of a larger array of airguns. Given these considerations, the predicted number of marine mammals that might be exposed to sounds 160 dB may be somewhat overestimated.Extensive systematic aircraft- and ship-based surveys have been conducted for marine mammals offshore of Oregon and Washington (Bonnell *et al.*, 1992; Green *et al.*, 1992, 1993; Barlow, 1997, 2003; Barlow and Taylor, 2001; Calambokidis and Barlow, 2004; Barlow and Forney, 2007). Some of the most comprehensive and recent density data available for cetacean species off slope and offshore waters of Oregon are from the 1996 and 2001 NMFS SWFSC ''ORCAWALE'' ship surveys as synthesized by Barlow (2003). The surveys were conducted from late July to early November (1996) or early December (2001). They were conducted up to approximately 556 km (346 mi) offshore from Oregon and Washington. In 2005, NMFS SWFSC ''CSCAPE'' ship survey assessed the abundance and distribution of marine mammals along the U.S. West Coast and California Current pelagic ecosystem. Systematic, offshore, at-sea survey data for pinnipeds are more limited. The most comprehensive such studies are reported by Bonnell *et al.* (1992) and Green *et al.* (1993) based on systematic aerial surveys conducted in 1989 1990 and 1992, primarily from coastal to slope waters with some offshore effort as well.

Ten species of odontocete whales, four species of mysticete whale, and two species of pinnipeds are expected to be harassed. Since the take estimates authorized in this IHA are no more than 0.02 percent of any cetacean species and no more than 0.0002 percent of any pinniped species found along or offshore of the Oregon coast, NMFS believes that the estimated take numbers for these species and stocks are both small relative to the worldwide abundance and population of these affected species.

Table 2 (see below) outlines the species, estimated stock population (minimum and best), and estimated percentage of the stock exposed to seismic impulses in the project area. Additional information regarding the status, abundance, and distribution of the marine mammals in the area and how the densities were calculated was included in Table 1 (see above), the notice of the proposed IHA (73 FR 30076, May 23, 2008) and may be found in UTIG's application.

| Species | Estimated Min. Pop'n of Stock | Estimated Best Pop'n of Stock | % of Stock Pop'n Exposed to Sound Levels > 160 dB |
|---|---|---|---|
| **Mysticetes** | | | |
| North Pacific right whale (Eubalaena japonica) * | N.A. | N.A. | 0 |
| Humpback whale (Megaptera novaeangliae) * | 1,158 | 1,391 | 0.0009 |
| Minke whale (Balaenoptera acutorostrata) | 544 | 898 | 0.004 |
| Sei whale (Balaenoptera borealis) * | 27 | 43 | 0 |
| Fin whale (Balaenoptera physalus) * | 2,541 | 3,279 | 0.0008 |
| Blue whale (Balaenoptera musculus) * | 1,005 | 1,186 | 0.001 |
| **Odontocetes** | | | |
| Sperm whale (Physeter macrocephalus) * | 1,719 | 2,265 | 0.001 |
| Pygmy sperm whale (Kogia breviceps) | N.A. | 247 | 0.02 |
| Dwarf sperm whale (Kogia sima) | N.A. | N.A. | 0 |
| Cuvier's beaked whale (Ziphius cavirostris) | 1,234 | 2,171 | 0 |
| Baird's beaked whale (Berardius bairdii) | 203 | 313 | 0.007 |
| Blainville's beaked whale (Mesoplodon densirostris) | N.A. | N.A. | 0 |
| Mesoplodon sp (unidentified) | 576 | 1,024 | 0.004 |
| Hubb's beaked whale (Mesoplodon carlhubbsi) | N.A. | N.A. | 0 |
| Stejneger's beaked whale (Mesoplodon stejnegeri) | N.A. | N.A. | 0 |
| Offshore bottlenose dolphin (Tursiops truncatus) | 2,295 | 3,257 | 0 |
| Striped dolphin (Stenella coeruleoalba) | 9,165 | 13,934 | 0 |
| Short-beaked common dolphin (Delphinus delphis) | 392,687 | 487,622 | 0.0001 |
| Pacific white-sided dolphin (Lagenorhynchus obliquidens) | 20,441 | 25,233 | 0.002 |
| Northern right whale dolphin (Lissodelphis borealis) | 16,417 | 20,362 | 0.002 |
| Risso's dolphin (Grampus griseus) | 9,947 | 12,093 | 0.002 |
| False killer whale (Pseudorca crassidens) | N.A. | N.A. | 0 |
| Killer whale (Orcinus orca) | 331 | 422 | 0.01 |
| Short-finned pilot whale (Globicephala macrorhynchus) | 123 | 245 | 0 |
| Harbor porpoise (Phocoena phocoena) | 27,705 | 37,745 | 0 |

| Species | Estimated Min. Pop'n of Stock | Estimated Best Pop'n of Stock | % of Stock Pop'n Exposed to Sound Levels > 160 dB |
|---|---|---|---|
| Dall's porpoise (Phocoenoides dalli) | 43,425 | 57,549 | 0.008 |
| **Pinnipeds** | | | |
| Northern fur seal (Callorhinus ursinus) | 709,881 | 721,935 | 0.0002 |
| California sea lion (Zalophus californianus californianus) | 141,842 | 238,000 | 0 |
| Steller sea lion (Eumetopias jubatus) * | 44,584 | 54,989 | 0.00002 |
| Harbor seal (Phoca vitulina richardsi) | 22,380 | 24,732 | 0 |
| Northern elephant seal (Mirounga ngustirostris) | 74,913 | 124,000 | 0 |

Table 2. Species expected to be encountered (and potentially harassed) during UTIG=s NE Pacific Ocean cruise. The far right column indicates the percentage of stock exposed to sound levels greater than or equal 160 dB.
* Species are listed as threatened or endangered under the Endangered Species Act.

**Potential Effects on Habitat**

A detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates, was included in the notice of the proposed IHA (73 FR 30076, May 23, 2008). Based on the discussion in the proposed IHA and the nature of the activities (small airgun array and limited duration), the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks.

**Monitoring**

Vessel-based marine mammal visual observers (MMVOs) will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during all daytime GI gun operations and during start-ups of the gun at night. MMVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of GI gun operations. When feasible, MMVOs will also make observations during daytime periods when the seismic system is not operating for comparison of animal abundance and behavior. Based on MMVO observations, the airgun will be shut down when marine mammals are observed within or about to enter a designated exclusion zone (EZ; safety radius). The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

MMVOs will be appointed by the academic institution conducting the research cruise, with NMFS Office of Protected Resources concurrence. At least one MMVO will monitor the EZ during daytime GI gun operations and any nighttime startups. MMVOs will normally work in shifts of 4 hours duration or less. The vessel crew will also be instructed to assist in detecting marine mammals.

The *Thompson* is a suitable platform for marine mammal observations. Two locations are likely as observation stations onboard the *Thompson*. At one station on the bridge, the eye level will be approximately 13.8 m (45.3 ft) above sea level and the location will offer a good view around the vessel (approximately 310 degrees for one observer and a full 360 degrees when two observers are stationed at different vantage points). A second observation site is the 03 deck where the observer's eye level will be approximately 10.8 m (35.4 ft) above sea level. The 03 deck offers a view of 330 degrees for two observers. MMVOs will repair to the enclosed bridge during any inclement weather.

Standard equipment for MMVOs will be 7 x 50 reticule binoculars and optical range finders. At night, night-vision equipment will be available. Observers will be in wireless communication with ship officers on the bridge and scientists in the ship's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or GI guns shut down.

MMVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document any apparent disturbance reactions. Data will be used to estimate the numbers of mammals potentially ''taken'' by harassment. It will also provide the information needed to order a shutdown of the GI guns when a marine mammal is within or near the EZ. When a mammal sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the GI guns or seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data accuracy will be verified by the MMVOs at sea, and preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility and to NSF weekly or more frequently. MMVO observations will provide the following information:

(1) The basis for decisions about shutting down the GI guns.

(2) Information needed to estimate the number of marine mammals potentially ''taken by harassment, which must be reported to NMFS.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

**Mitigation**

Mitigation and monitoring measures proposed to be implemented for the proposed seismic survey have been developed and refined during previous

SIO and L-DEO seismic studies and associated EAs, IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for other SIO and L-DEO projects. The measures are described in detail below.

The number of individual animals expected to be approached closely during the proposed activity will be small in relation to regional population sizes. With the proposed monitoring and shut-down provisions (see below), any effects on individuals are expected to be limited to behavioral disturbance and will have only negligible impacts on the species and stocks.

Mitigation measures that will be adopted will include: (1) vessel speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) GI guns shut down, (3) GI guns ramp up, and (4) minimizing approach to slopes and submarine canyons, if possible, because of sensitivity of beaked whales. Another standard mitigation measure airgun array power down is not possible because only two, low-volume GI guns will be used for the surveys.

*Speed or Course Alteration* – If a marine mammal is detected outside the EZ but is likely to enter it based on relative movement of the vessel and the animal, then if safety and scientific objectives allow, the vessel speed and/or direct course will be adjusted to minimize the likelihood of the animal entering the EZ. Major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays but are possible in this case because only two GI guns and a short (12–m, 39.4–ft) P-Cable streamer system will be used. If the animal appears likely to enter the EZ, further mitigative actions will be taken, i.e., either further course alterations or shut down of the airgun.

*Shut-down Procedures* – If a marine mammal is within or about to enter the EZ for the two GI guns, it will be shut down immediately. Following a shut down, GI gun activity will not resume until the marine mammal is outside the EZ for the full array. The animal will be considered to have cleared the EZ if it: (1) is visually observed to have left the EZ; (2) has not been seen within the EZ for 10 minutes in the case of small odontocetes and pinnipeds; or (3) has not been seen within the EZ for 15 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

*Ramp-up Procedures* – If no marine mammals have been observed while undertaking previously mentioned monitoring and mitigation measures, the airgun array may be ramped-up at no greater than 1 GI-gun per 5–minute interval or approximately 6 dB per 5–minute period. Ramp-ups shall occur at the commencement of seismic operations, and, anytime after the airgun array has been shut down for more than 4 minutes.

*Minimize Approach to Slopes and Submarine Canyons* – Although sensitivity of beaked whales to airguns is not known, they appear to be sensitive to other sound sources (mid-frequency sonar; see UTIG's application). Beaked whales tend to concentrate in continental slope areas and in areas where there are submarine canyons. Avoidance of airgun operations over or near submarine canyons has become a standard mitigation measure.

**Reporting**

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and the marine mammals that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

**ESA**

Pursuant to Section 7 of the ESA, the NSF has consulted formally with NMFS for this action since take of listed species is anticipated and authorized. NMFS has also formally consulted internally pursuant to Section 7 of the ESA on the issuance of an IHA under Section 101(a)(5)(D) for this activity. NMFS Section 7 biologists issued a Biological Opinion, which concluded that the endangered humpback, blue, fin, and sperm whales, and the threatened eastern population of Steller sea lion are not likely to be jeopardized by the proposed seismic survey. Other endangered and threatened cetacean species were also considered by risk that individuals of these species would be adversely affected is reduced to discountable levels because of the: (1) type and short time frame of the proposed activity (single airgun source with nominal source level (peak to peak) of 237 dB re 1 μPa executed for a short period of time (3 survey sites, no more than a total of approximately 150 hours of seismic activity, during a three week period); (2) unlikelihood of encountering listed species in the action area during the time of the proposed project; and/or (3) monitoring and minimization measures to be implemented as part of the proposed project.

**National Environmental Policy Act (NEPA)**

NSF prepared an Environmental Assessment (EA) of a Planned Low-Energy Marine Seismic Survey by the Scripps Institution of Oceanography in the Northeast Pacific Ocean, September 2007. NMFS has adopted NSF's EA and issued a Finding of No Significant Impact for the issuance of the IHA. NMFS has also conducted a separate NEPA analysis and prepared a Supplemental EA prior to the issuance of the IHA.

**Determinations**

NMFS has determined that the impact of conducting the seismic survey in the northeast Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers of seventeen species of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks. 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 action.

This determination is supported by: (1) the likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) the fact that cetaceans would have to be closer than either 104 m (341 ft) in intermediate depths or 69 m (226 ft) in deep water (180 dB) and pinnipeds would have to be closer than 30 m (98.4 ft) in intermediate depths or 20 m (65.6) in deep water from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing TTS or PTS (180 dB for cetaceans and 190 dB for pinnipeds); and (3) the likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel. As a result, no take by injury or death is anticipated or authorized and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the required mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, less than a percent of any of the estimated population sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to UTIG for conducting a low-energy seismic survey in the northeast Pacific Ocean during June-July, 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 17, 2008.

**James H. Lecky,**

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

[FR Doc. E8–16845 Filed 7–22–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

**[Docket No.: PTO–P–2008–0024]**

### Scope of Foreign Filing Licenses

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** Applicants and registered patent practitioners are reminded that the export of subject matter abroad pursuant to a license from the United States Patent and Trademark Office (USPTO), such as a foreign filing license, is limited to purposes related to the filing of foreign patent applications. Applicants who are considering exporting subject matter abroad for the preparation of patent applications to be filed in the United States should contact the Bureau of Industry and Security (BIS) at the Department of Commerce for the appropriate clearances.

**DATES:** *Effective Date:* July 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mike Carone, Supervisory Patent Examiner, Technology Center 3600, by telephone at (571) 272–6873.

**SUPPLEMENTARY INFORMATION:** The USPTO has become aware that a number of law firms or service provider companies located in foreign countries are sending solicitations to U.S. registered patent practitioners offering their services in connection with the preparation of patent applications to be filed in the United States. Applicants and registered patent practitioners are reminded that the export of subject matter abroad pursuant to a license from the USPTO, such as a foreign filing license, is limited to purposes related to the filing of foreign patent applications. Applicants who are considering exporting subject matter abroad for the preparation of patent applications to be filed in the United States should contact the Bureau of Industry and Security (BIS) at the Department of Commerce for the appropriate clearances. *See* MPEP § 140 (8th ed., Rev. 5, Aug. 2006). The BIS has promulgated the Export Administration Regulations (EAR) governing exports of dual-use commodities, software, and technology, including technical data, which are codified at 15 CFR Parts 730–774. Furthermore, if the invention was made in the United States, technical data in the form of a patent application, or in any form, can only be exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign patent application, after compliance with the EAR or following the appropriate USPTO foreign filing license procedure. *See* 37 CFR 5.11(c). A foreign filing license from the USPTO does not authorize the exporting of subject matter abroad for the preparation of patent applications to be filed in the United States.

The Commissioner for Patents has been delegated the authority for controlling exports of technology for purposes of the filing of patent applications in foreign countries. *See* 15 CFR 734.3(b)(1)(v) and 734.10(b) and 35 U.S.C. 184. The USPTO grants foreign filing licenses in accordance with USPTO regulations. *See* 37 CFR Part 5. The scope of a foreign filing license granted by the USPTO is set forth in 37 CFR 5.15. Applicants and registered patent practitioners are also advised that foreign filing licenses (for the filing of a patent application in a foreign country) do not authorize the export of any technology that is not specifically submitted to the USPTO as part of a U.S. patent application or a petition for a foreign filing license. For example, the USPTO has received short abstracts, PowerPoint® slides and even titles of inventions as the disclosure for which a foreign filing license is requested. Although the USPTO will usually process such requests, any foreign filing license granted under 37 CFR 5.15(a) or 5.15(b) on such short description may not authorize filing abroad the ultimate resulting patent applications and may not authorize any additional material added after the initial foreign filing license request. Such additional material that was not submitted to the USPTO for its review may be deemed to have altered ''the general nature of the invention in a manner which would require such application to be made available for inspection under such section 181.'' *See* 35 U.S.C. 184. The USPTO has established a Licensing and Review Web page on its Web site that includes frequently asked questions regarding foreign filing licenses and related matters. This Web page is located at *http://www.uspto.gov/web/offices/pac/dapp/opla/lr/licensing_review.htm.*

This notice does not change existing law or regulations. Thus, while the notice is effective on July 23, 2008, this notice does not excuse or otherwise affect the legal consequence of a failure to comply with existing law or regulations that occurred prior to July 23, 2008.

Information regarding the EAR may be obtained from the BIS Web site at *http://www.bis.doc.gov.* Questions regarding the EAR should be directed to the BIS's Outreach and Educational Services Division at (202) 482–4811.

Dated: July 16, 2008.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E8–16830 Filed 7–22–08; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR Agreement)

July 18, 2008.

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

**EFFECTIVE DATE:** July 23, 2008.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) has determined that certain twill fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.