

## THE UNITED ARAB EMIRATES

Manufacturer/exporter	Weighted-average margin (percent)
Flex Middle East FZE .....	4.05
All others .....	4.05

*Termination of Suspension of Liquidation*

The Department will also instruct CBP to terminate the suspension of liquidation for entries of PET Film from Brazil, the PRC, and the UAE entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination, and refund any cash deposits made and release any bonds posted between the publication of the Department's preliminary determinations on May 5, 2008, and the publication of the ITC's final determinations in the **Federal Register**.

This notice constitutes the antidumping duty orders with respect to PET Film from Brazil, the PRC, and the UAE, pursuant to section 736(a) of the Act. Interested parties may contact the Department's CRU, Room 1117 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders and amended determination are issued and published in accordance with sections 736(a), 735(e), and 777(i)(1) of the Act and 19 CFR 351.211(b).

Dated: November 5, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-26802 Filed 11-6-08; 11:15 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Marine Protected Areas Federal Advisory Committee; Public Meeting

**AGENCY:** National Ocean Service, NOAA, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of a meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in Monterey, California.

**DATES:** The meeting will be held Tuesday, November 18, 2008, from 8:30 a.m. to 5 p.m., Wednesday, November 19, from 8:30 a.m. to 5 p.m., and Thursday, November 20, from 8:30 a.m. to 12:30 p.m. These times and the

agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

**ADDRESSES:** The meeting will be held at the Monterey Bay Plaza Hotel, 400 Cannery Row, Monterey, California.

**FOR FURTHER INFORMATION CONTACT:** Lauren Wenzel, Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301-713-3100 x136, Fax: 301-713-3110); e-mail: [lauren.wenzel@noaa.gov](mailto:lauren.wenzel@noaa.gov); or visit the National MPA Center Web site at <http://www.mpa.gov>.

**SUPPLEMENTARY INFORMATION:** The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158 on MPAs. The meeting will be open to public participation from 4:15 p.m. to 5 p.m. on Tuesday, November 18, 2008, and from 8:35 a.m. to 9:30 a.m. on Thursday, November 20, 2008. In general, each individual or group will be limited to a total time of five (5) minutes. If members of the public wish to submit written statements, they should be submitted to the Designated Federal Official by November 14, 2008.

*Matters to be Considered:* The Committee will hear a panel presentation and discussion on ocean observations and marine protected areas, and will consider draft reports and recommendations from the Scientific and Technical Subcommittee and the Review and Evaluation Subcommittee. It will also hold elections for the position of chair and vice chair, and will hear presentations on the development of the national system of marine protected areas, including the nomination and gap analysis processes. Committee members and the public are also invited to attend a ceremony to mark the launch of the national system of marine protected areas. The Agenda is subject to change, and the latest version will be posted at <http://www.mpa.gov>.

Dated: November 4, 2008.

**Christopher C. Cartwright,**  
*CFO/CAO, NOAA's National Ocean Service.*  
[FR Doc. E8-26811 Filed 11-7-08; 8:45 am]

**BILLING CODE 3510-08-P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

RIN 0648-XJ24

## Small Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the Santa Barbara Channel, November 2008

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

**ACTION:** Notice; issuance of incidental take 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 Scripps Institute of Oceanography (SIO), for the take of marine mammals, by Level B harassment only, incidental to conducting a marine seismic survey in the Santa Barbara Channel, California, during November 2008.

**DATES:** Effective November 1, 2008, through November 31, 2008.

**ADDRESSES:** A copy of the IHA and the 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:** Jaclyn Daly or Howard Goldstein, 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 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 and 16 U.S.C. section 1362(18) 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 June 27, 2008, NMFS received an application from SIO for the taking, by Level B harassment only, of small numbers of 16 species of marine mammals incidental to conducting a twelve day, low-energy marine seismic

survey within the Santa Barbara Channel, CA, in November 2008. The funding for this research survey is provided by the National Science Foundation (NSF). The purpose of the research program is described in NMFS' notice of the proposed IHA (73 FR 50760, August 28, 2008).

#### Description of the Activity

The planned survey will involve one source vessel, the seismic ship R/V *Melville*, owned by the U.S. Navy and operated by SIO. The *Melville* is expected to depart San Diego and spend approximately 12 days conducting the survey and piston coring activities in November 2008. At three deeper-water sites outside state waters, a small 45-in<sup>3</sup> GI airgun will be used, but will likely be reduced to 25 or 35 in<sup>3</sup>. At two shallow-water sites that cross into California state waters, a 1.5-kJ electromechanical boomer or a 2-kJ electric sparker system will be used, depending on water depth and seafloor conditions, and depending on which source provides the highest resolution and best sub-seafloor signal penetration. The two systems will not operate concurrently and, in general, the boomer source likely will be preferred. As the boomer, sparker, or GI airgun are towed along the survey lines, a towed 72-channel, 450 m hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. All survey operations will take place in less than or equal to 1000 m water depth.

In addition to the GI airgun, sparker, and boomer, a towed chirp system, a multibeam echosounder (MBES), and a sub-bottom profiler (SBP) will be used at various times during the cruise. The chirp system will be used in tandem with the seismic sources, or will be used separately to locate optimal piston core sites, up to 4 hours at a time to a maximum of 8 10 hours per day. A 3.5-kHz SBP will be used to help verify seafloor conditions at possible coring sites, and will also be used in tandem with a MBES during transit to and from the Santa Barbara Channel area to collect additional seafloor bathymetric data. A more detailed description of the authorized action, including vessel and acoustic source specifications, is detailed in the proposed IHA notice (73 FR 50760, August 28, 2008).

#### Safety Radii

NMFS has established a 160dB re 1  $\mu\text{Pa}_{\text{rms}}$  behavioral harassment (Level B) threshold for both cetaceans and pinnipeds and a 190dB and 180 dB re 1  $\mu\text{Pa}_{\text{rms}}$  threshold for the potential onset of injury (Level A) for pinnipeds and cetaceans, respectively. Corresponding harassment and safety isopleths have been modeled for both shallow and deep water by Lamont-Doherty Earth Observatory of Columbia University (L-DEO) for a number of airgun configurations, including the size used during the SIO survey, 45 in<sup>3</sup> (Table 1). Airgun operations will occur only in depths of 100–1000 m; therefore the 12 m, 35 m, and 330 m radii are applicable.

TABLE 1. DISTANCES TO WHICH SOUND LEVELS  $\geq 190$ , 180, AND 160 DB RE 1  $\mu\text{Pa}_{\text{rms}}$  COULD BE RECEIVED FROM THE 45-IN<sup>3</sup> GI AIRGUN THAT WILL BE USED DURING THE SEISMIC SURVEYS IN THE SANTA BARBARA CHANNEL IN NOVEMBER 2008. DISTANCES ARE BASED ON MODEL RESULTS PROVIDED BY L-DEO.

Water Depth	Estimated Distances (m) at Received Levels		
	190 dB	180 dB	160 dB
>1000 m	8	23	220
100–1000 m	12	35	330

The boomer's source level is higher than that of the mini sparker thus the propagation distances for the boomer will be used for both types of sources. Received sound levels from the boomer to be used in this study (source level 209 dB) in shallow water have not been modeled or measured. However, Burgess and Lawson (2001) measured received sound levels from a boomer with a source level of 203 dB re 1  $\mu\text{Pa}_{\text{rms}}$  in water depths 12–14 m, and Greene (2006) measured received sound levels from a boomer with a source level of 188.8 dB re 1  $\mu\text{Pa}_{\text{rms}}$  in water depths 37–48 m, both in the Alaskan Beaufort Sea. Based on the spherical spreading model, distances to which sound levels  $\geq 190$ , 180, and 160 dB re 1  $\mu\text{Pa}_{\text{rms}}$  could be received from the boomer are 9, 28, and 280, respectively (Table 2).

TABLE 2. DISTANCES TO WHICH RECEIVED SOUND LEVELS  $\geq 190$ , 180, AND 160 dB RE 1  $\mu\text{Pa}_{\text{rms}}$  WERE MEASURED FOR TWO BOOMERS IN THE ALASKAN BEAUFORT SEA, AND DISTANCES PREDICTED BY A SPHERICAL SPREADING MODEL FOR THOSE SOURCES AND FOR THE BOOMER TO BE USED IN THE PROPOSED SURVEYS.

Boomer source level (dB re 1 micro Pa)	Estimated Distance (m) at Received Levels		
	190 dB	180 dB	160 dB
203 (measured)	< 1	2	22
203 (modeled)	4.5	16	140
188.8 (measured)	0.9	2.3	14.6
188.8 (modeled)	1	2.7	27.5
209 (this survey, modeled)	9	28	280

### Comments and Responses

A notice of receipt of SIO's application and proposed IHA was published in the **Federal Register** on August 28, 2008 (73 FR 50760). During the 30-day comment period, NMFS received comments from the Marine Mammal Commission (MMC). Following are the comments from the MMC and NMFS' responses.

*Comment 1:* The MMC recommends that the applicant be required to conduct all practicable monitoring and mitigation measures that reasonably can be expected to protect the potentially affected marine mammal species from serious injury.

*Response:* NMFS agrees with this recommendation and has required the applicant to conduct all practicable monitoring and mitigation measures that can reasonably be expected to protect affected marine mammal species from serious injury. The IHA requires that marine mammal visual observers (MMVOs) on the *Melville* make observations for 30 minutes prior to all seismic source operations and record the following information when a marine mammal is sighted: (i) species, group size, and 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 seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.); and behavioral pace; and

(ii) time, location, heading, speed, sea state, visibility, and sun glare- these data 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.

The IHA also requires sufficient mitigation requirements, implemented by the NMFS approved MMVOs, to ensure that no marine mammal is killed or experiences serious injury, including mandatory shut downs and delay of operations (e.g., mandatory shut down if a marine mammal is seen within or approaching the safety radius). See Mitigation section (below) for a complete list of mitigation requirements under this IHA.

*Comment 2:* The MMC recommends that operations be suspended immediately, pending review by NMFS, 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.

*Response:* NMFS agrees with this recommendation. The IHA does not authorize Level A harassment to marine mammals (i.e., serious injury or mortality). In addition, a condition is included in the IHA which state that in the unanticipated event that any cases of marine mammal injury or mortality in the vicinity of the seismic operations are judged to result from these activities, SIO will cease operating seismic sources and report the incident to the Office of Protected Resources, NMFS, immediately. Seismic operations will then be postponed until NMFS is able to review the circumstances and work with SIO to determine whether modifications in the activities are appropriate and necessary.

### Description of Marine Mammals in the Activity Area

A total of 32 marine mammal species are known to or may occur in the Santa Barbara Channel, including 18 odontocete species (dolphins and toothed whales), 8 mysticete species (baleen whales), 6 pinniped species (seals and sea lions), and the sea otter. Seven of the species that may occur in the project area are listed as endangered under the U.S. Endangered Species Act (ESA): the Pacific right, blue, humpback, sei, fin, and sperm whale and the Steller sea lion. The sea otter is under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and therefore is not considered further in this analysis. SIO requested and has been authorized to take 16 of the 32 marine mammals based on likelihood of encountering these species. This likelihood factor took into account temporal, spatial, and abundance data of each species, harassment radii, and specifics of the survey (e.g., survey design, seismic source specifications, etc.). The remaining 15 species under NMFS jurisdiction are not expected to be encountered during the survey and are not authorized to be taken.

Species authorized to be harassed, their habitat and abundance in the project area, and the authorized take levels are outlined in Table 3. 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 50760, August 28, 2007) and may be found in SIO's application.

TABLE 3. NUMBER OF ANIMALS AUTHORIZED TO BE TAKEN, BY SPECIES, IN THE IHA. CORRESPONDING HABITAT AND ABUNDANCE OF EACH SPECIES IS ALSO LISTED.

Species	Habitat	Abundance	Authorized Take
Humpback whale	Mainly nearshore waters and banks	>6000	2
Fin whale	Slope, mostly pelagic	13,620–18,680	2
Blue whale	Pelagic and coastal	1186	2
Sperm whale	Usually deep pelagic	24,000	8
Pygmy sperm whale	Deep waters off shelf	N.A.	9
Cuvier's beaked whale	Slope and pelagic	20,000	1
Offshore bottlenose dolphin	Offshore, slope, shelf	3257	3
Coastal bottlenose dolphin	Within 1 km of shore	323	
Striped dolphin	Off continental shelf	1,824,000	1
Short-beaked common dolphin	Shelf, pelagic, high relief	487,622	591
Long-beaked common dolphin	Coastal, high relief	1893	76
Pacific white-sided dolphin	Offshore, slope	931,000	14
Northern right whale dolphin	Slope, offshore waters	15,305	7
Risso's dolphin	Shelf, slope, seamounts	12,093	8
Dall's porpoise	Shelf, slope, offshore	57,549	4
California sea lion	Coastal, shelf	238,000	87
Harbor seal	Coastal	34,233	20

### Potential Effects on Marine Mammals

The effects of sounds from airguns might include one or more of the following: avoidance, tolerance, masking of natural sounds, behavioral disturbances, and at least in theory, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007). However, for this survey, it is unlikely there would be any cases of hearing impairment or any significant non-auditory physical or physiological effects given the small size of the seismic sources and mitigation. Also, behavioral disturbance is expected to be limited to relatively short distances.

SIO's application and NMFS' notice of the proposed IHA (73 FR 50760, August 28, 2007) included a detailed discussion of the potential effects of sounds from the single airgun, boomer, and sparker 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 marine mammals to seismic vessels can be found in SIO's

application and in Appendix A of the accompanying EA.

The notice of the proposed IHA also included a discussion of the potential effects of the MBES and SBP. Because of the narrow beam of the echosounder, directionality, and short pulse duration, NMFS believes it unlikely that marine mammals will be exposed to sound levels at or above those that have the potential to cause harassment from these sources. Further detail on impacts from these sources may be found in the proposed **Federal Register** notice and SIO's application.

### Estimated Take by Incidental Harassment

SIO's application and the notice of the proposed IHA (73 FR 50760, August 28, 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. A summary is included here.

All anticipated takes authorized by this IHA are Level B harassment only. Take calculations were based on maximum exposure estimates (based on maximum density estimates) vs. best estimates and are based on the 160-dB Level B harassment isopleth.

Harassment distances for the airgun are from a full sized chamber; however, the applicant has indicated that most likely the chamber size will be reduced to 25 in<sup>3</sup>. In addition, the sparker has a lower source level than the boomer. Regardless, isopleth distances from the boomer will be used while the sparker is operating. Given these considerations, the predicted number of marine mammals that might be exposed to sounds at or above 160 dB is likely an overestimate.

Numbers of animals authorized to be taken, by species, is outlined in Table 3. When compared to population estimates for each stock, take numbers for each species are considered small. For example, blue whale population abundance in the action area is 1,186 individuals and the applicant is requesting two animals to be taken. A complete list of abundance estimates for each species in outlined in Table 3 in the application.

### 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 50760, August 28, 2007) and can also be found in SIO's application and appendices in the accompanying EA. While impacts to fish and other marine mammal prey may occur, this is expected to be negligible given the short duration of the survey (approximately 12 days) and that a single low-energy airgun is being used. Seismic sound does not impact physical or chemical characteristics of the habitat (e.g., water temperature, nutrient availability, salinity). Therefore, 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 Visual Monitoring*

Vessel-based marine mammal visual observers (MMVOs) will be based on board the seismic source vessel, and they will watch for marine mammals and turtles near the vessel during seismic operations. MMVOs will also watch for marine mammals and turtles near the seismic vessel for at least 30 minutes prior to the start of seismic operations and after an extended shutdown. 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 seismic sources will be shut down when marine mammals are observed within or about to enter the designating safety zones.

#### *Reporting*

MMVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document any apparent disturbance reactions or lack thereof. Data will be used to estimate the numbers of mammals potentially "taken" by harassment. They will also provide information needed to order a shutdown of the airgun, boomer, or sparker when marine mammals are within or near the corresponding safety radii. When a 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 airguns or vessel (e.g., none, avoidance, approach, paralleling, etc. and including

responses to ramp-up), and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state or ramp-up, power-down, or full power), 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. A final 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 sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring and 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. More information on reporting requirements can be found in the proposed IHA **Federal Register** notice.

### Mitigation

Mitigation and monitoring measures implemented for the *Melville* cruise have been developed and refined during previous seismic surveys funded by NSF. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for other similar projects and on recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below.

Mitigation measures include (1) vessel speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) GI-airgun, boomer, or sparker shut down when a marine mammal is within or approaching the designated safety zones, and (3) delay starting seismic operations if a marine mammal is sighted within or approaching the safety zone; and (4) shut down at any range in the unlikely event that a North Pacific right whale is sighted. Two other standard mitigation measures airgun array power down and airgun array ramp up are not possible because only one, low-volume GI airgun, boomer, or sparker will be used for the surveys. Finally, avoidance of airgun operations over or near steep slopes or submarine canyons has become a standard mitigation measure, as these are places where beaked whales tend to

concentrate. However, no such bathymetric features exist in the study area; therefore, this mitigation measure is not applicable to these surveys.

#### *Speed or Course Alteration*

If a marine mammal is detected outside the safety zone but is likely to enter it based on relative movement of the vessel and the animal, then the vessel speed and/or course will be adjusted in the safest manner allowable to minimize the likelihood of the animal entering that zone. Major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays, but, in this case, because only one small source and a short (450-m) streamer will be used, this mitigation measure is practicable to enforce.

In addition, if concentrations of beaked whales are observed just prior to or during the airgun, boomer, or sparker operations, those operations will be moved to another location based on recommendations by the on-duty MMVO aboard the *Melville*.

#### *Shut-down and Delay Requirements and Procedures*

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

Following a shut down, seismic activity will not resume until the marine mammal or turtle has cleared the safety zone. In addition, if a marine mammal is sighted within or approaching the safety zone before seismic operations commence, a delay shall occur until that animal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it is visually observed to have left that zone; has not been seen within the zone for 15 min in the case of shallow diving odontocetes (i.e., dolphins, porpoise) and pinnipeds; or has not been seen within the zone for 30 min in the case of deeper diving cetaceans (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, and beaked whales).

In the unanticipated event that any cases of marine mammal injury or mortality are judged to result from these activities, SIO will cease operating seismic airgun operation and report the incident to the Office of Protected Resources, NMFS, and the Southwest

Regional Administrator, NMFS, immediately. Seismic operations will then be postponed until NMFS is able to review the circumstances and work with SIO to determine whether modifications in the activities are appropriate and necessary.

#### Endangered Species Act (ESA)

Pursuant to section 7 of the ESA, NSF has consulted with the NMFS, Office of Protected Resources, Endangered Species Division on this seismic survey. NMFS has also consulted internally pursuant to section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. NMFS has issued a Biological Opinion (BiOp), which concluded that the proposed action and issuance of an IHA are not likely to jeopardize the continued existence of blue, fin, humpback and sperm whales and green, leatherback, loggerhead, and olive ridley sea turtles. The BiOp also concluded that the proposed action would have no effect on critical habitat since none has been designated within the action area. An incidental take statement (ITS) has been issued for the take of blue, fin, humpback, and sperm whales and green, leatherback, loggerhead, and olive ridley sea turtles. Relevant Terms and Conditions of the ITS have been incorporated into the IHA.

#### National Environmental Policy Act (NEPA)

NSF prepared an Environmental Assessment of a Marine Geophysical Survey by the R/V *Melville* in the Santa Barbara Channel, November 2008. NMFS has adopted NSF's EA and issued a Finding of No Significant Impact for the issuance of the IHA.

#### Determinations

NMFS has determined that the impact of conducting a low-energy seismic survey in the Santa Barbara Channel in November may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers of 14 species of cetaceans and 2 species of pinnipeds. 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 negligible impact 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 it becoming potentially

injurious; (2) during airgun use, marine mammals would have to be closer than 35 m (114 ft) in waters 100–1000 m (the water depth for this survey) from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (3) during boomer or sparker use, marine mammals would have to be closer than 28 m (91 ft) from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (4) the likelihood that marine mammal detection ability by trained observers is good at those distances from the vessel; and (5) the incorporation of other required mitigation measures (i.e., shutdown and delay requirements, vessel course and speed alterations). As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment 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 a small percent of any of the estimated population sizes, and has been mitigated to ensure the least impact practicable through incorporation of the measures mentioned previously in this document. In addition, there will not be an unmitigable impact on subsistence uses because there are none in the action area.

#### Authorization

As a result of these determinations, NMFS has issued an IHA to SIO for conducting a marine geophysical survey in the Santa Barbara Channel, November 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 4, 2008.

**James H. Lecky,**

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

[FR Doc. E8–26721 Filed 11–7–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information

under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Patent and Trademark Financial Transactions.

*Form Number(s):* PTO–2038, PTO–2231, PTO–2232, PTO–2233, PTO–2234, PTO–2236.

*Agency Approval Number:* 0651–0043.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 49,795 hours annually.

*Number of Respondents:* 1,647,133 responses per year.

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*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Nicholas A. Fraser, e-mail:

*Nicholas.A.Fraser@omb.eop.gov.*

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