

to 200 individuals per year of the orders Cetacea (all species) and Pinnipedia (with the exception of walrus) from yet to be determined locations outside the U.S. All samples will be imported for diagnostic testing to determine the causes of outbreaks or unusual natural mortalities, investigations into the ecology of diseases in free-ranging animals, or unexpected mortalities in captive populations. All biological specimens will originate from animals found deceased in nature, collected opportunistically during the animals' capture by other researchers possessing permits for such activities, or from specimens legally held in captivity outside the U.S.A. No live animals will be taken from the wild for research. The permit is issued for a period of five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 17, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9-17543 Filed 7-22-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ41

Western Pacific Fishery Management Council; Partially Closed Meeting

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

ACTION: Notice of partially closed meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Sea Turtle Advisory Committee (STAC) in Honolulu, HI. A portion of the meeting will be closed to the public.

DATES: The STAC meeting will be held on Wednesday, August 5, 2009 through Thursday, August 6, 2009, from 8:30am to 5:30pm. The portion of the meeting held from 9:30am to 5:30pm on Wednesday, August 5, 2009 will be closed to the public.

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808)522-8220.

FOR FURTHER INFORMATION CONTACT:

Kitty M. Simonds, Executive Director; telephone: (808) 522-8220.

SUPPLEMENTARY INFORMATION: The STAC will review the Council's sea turtle conservation program and other relevant activities, and produce recommendations for future program activities. The meeting will be closed to the public from 9:30am to 5:30pm on Wednesday, August 5, 2009 to discuss confidential employment and other internal administrative matters, in accordance with Section 302 (j)(3)(A)(ii) of the Magnuson-Stevens Fishery Conservation and Management Act. All other portions of this meeting will be open to the public.

Agenda

8:30 a.m. Wednesday, August 5, 2009

1. Introduction and Approval of the Agenda
 2. Review of Recommendations from the 4th STAC Meeting
 3. Overview of Council Projects
 - 4.-9. STAC Discussion on Contracts and Other Internal Administrative Matters (Closed Sessions)
- 8:30 a.m. Thursday, August 6, 2009*
10. Fishery Impacts Offset Analysis
 11. Update of Sea Turtle Interactions in Hawaii-based Fisheries
 12. Updates from STAC Members: Ongoing Projects and Recent Developments
 13. Overview of Agency Activities
 14. Top 20 Research Questions to Inform Marine Turtle Conservation
 15. Funding Priorities for the next 5 years
 16. Council Project Proposal Protocol
 17. Recommendations from the STAC
 18. Next meeting and meeting wrap-up

The order in which agenda items are addressed may change. The Committee will meet as late as necessary to complete scheduled business.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522-8220 (voice) or (808)522-8226

(fax), at least five days prior to the meeting date.

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

Dated: July 20, 2009

Tracey L. Thompson,

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

[FR Doc. E9-17511 Filed 7-22-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ29

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Boom Exercise Drills at Point Mugu, California

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

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

SUMMARY: NMFS received an application from Naval Base Ventura County (NBVC) Point Mugu for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to boom deployment exercises at Point Mugu, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to NBVC Point Mugu to take, by Level B harassment only, one species of marine mammal during the specified activity.

DATES: Comments and information must be received no later than August 24, 2009.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *PR1.0648-XQ29@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for

example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT:

Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, ext 156, or Monica DeAngelis, Southwest Regional Office, (562) 980-3232.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), 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. 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 the authorization.

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"].

Summary of Request

NMFS received an application on May 12, 2009, from NBVC Point Mugu for the taking, by harassment, of marine mammals incidental to boom exercise drills at Point Mugu, California. As part of the NBVC Spill Response Program, boom deployment methods in the area contingency plan (US Coast Guard, 2007) need to be tested to ensure response plans for spills are effective and can realistically be achieved. This will also provide training to spill responders, giving them the required training to successfully deploy the booms in the event of an oil spill. The activity will occur within Mugu Lagoon within NBVC Point Mugu. Watercraft operating in the project area will likely affect seals by causing them to disperse from haul-out sites into the adjacent waters. No harassment by acoustic disturbance is anticipated from the boom exercise drill. NBVC Point Mugu requested an authorization to take harbor seals (*Phoca vitulina*) by Level B harassment.

Description of the Specified Activity

As part of the NBVC Spill Response Program, boom deployment methods in the area contingency plan (US Coast Guard, 2008) need to be tested to ensure response plans for spills can realistically be achieved. This will also provide training to spill responders, giving them the required training to successfully deploy the booms in the event of an oil spill. To protect Mugu Lagoon from offshore oil-spills, the boom needs to be deployed near the mouth of the estuary to keep offshore oil from entering sensitive estuarine habitat. The booms will be attached to zodiac watercraft, and the vessels will cross the estuary and anchor the boom on the north and south side of the estuary. Booming strategies were tested in September 2008, where it became evident that the strategy proposed in

2008 could not be accomplished due to strong currents and the fact that the boom was not placed at a wide enough angle. A new boom deployment strategy will now be tested (which includes increasing the angle at which the boom is placed in relation to the current); however, this changes the location of the activity and requires the boom to be situated within a regular harbor seal haul-out.

The following task descriptions provide an overview of the activities associated with the program. The purpose of this exercise is to develop response strategies that will provide the best possible protection for the lagoon in the event of an oil spill. SUPSALV will deploy the Salvage Skimmer Systems in Mugu Lagoon at the request of NBVC in order to attempt to validate booming strategies for sensitive site protection at Mugu Lagoon. Strategies are listed in the Area Contingency Plan and NBVC Oil and Hazardous Substance Integrated Contingency Plan. The exercise will be conducted by SUPSALV personnel on an annual basis. Once booming strategies prove effective, it is likely training will then occur on a biennial basis.

Specific training and exercise goals include: (1) safety; (2) equipment mission and inventory overview; (3) equipment mobilization, operation, and demobilization; (4) command, control, and communications in coordinating a response in the waters of Mugu Lagoon; (5) boat handling training in shallow water with currents; and (6) site support equipment training. The overall objective of the exercise is for all participants to increase the proficiency of personnel involved in providing oil spill response through the application of hands-on equipment mobilization, deployment, and demobilization. The major objective is to demonstrate that their equipment is adequately maintained for emergency deployments and that the personnel receive training in how to operate the equipment under emergency oil spill response conditions.

The boom exercise drill will occur annually during the month of September; however, training may need to be rescheduled for October or November (or possibly even later), depending on availability of SUPSALV staff. Therefore, NMFS is proposing to make the IHA (if issued) effective from September through January (before the start of pupping season). The exercise will last 5 days. Only days 2 through 4 have the potential to disturb harbor seals. Provided next is a description of what activities will occur on each day of the exercise.

Day 1—Equipment Staging:

Equipment such as the boom and boats staged in area. There is no anticipated disturbance to marine mammals associated with this portion of the activity. Equipment includes two zodiac boats, concrete anchors, and approximately 1000 ft (328 m) of boom.

Days 2–4—Perform Exercise: The boats are launched into the water. The tide will likely be high, as it is difficult to navigate boats in the estuary during low or mid-level tides. If harbor seals are hauled out in the area close enough to the boom location that seals would likely be disturbed by placement of the boom, the boat will slowly move toward the seals to have them slowly move into water, rather than spooking seals if boats move quickly towards seals to deploy the boom. The determination whether seals need to be moved before beginning the exercise will be determined by base biologists who will be monitoring the exercise. Once seals move into the water, boats will return to shore to attach the boom. One side of the boom will be anchored on shore. Boats will then pull the boom out into the water pulling the boom across the estuary (see Figure 2 in NBVC Point Mugu's application). The boom will then be anchored on the other side of the estuary. Boats will be used to hold the boom against the current until successfully in place and holding with anchors. If the boom placement is successful, boats would likely return to shore and monitor the boom to ensure it is stable. The boom will be left in place during the change in the tides to ensure its ability to withstand current and tide changes. If the boom anchors break free, boats would have to re-enter the water, secure the boom, and re-anchor in the same location or an alternate location if the previous booming location proved unattainable.

Day 5 – Remove Equipment:

Equipment such as the boom and boats will be removed from the proposed action area. There is no anticipated disturbance to marine mammals from this portion of the activity.

The activity will occur in Mugu Lagoon, within NBVC Point Mugu. The base consists of 4,490 acres (1,817 hectares [ha]) along the Pacific coast, located approximately 50 mi (80 km) northwest of Los Angeles (see Figure 1 in NBVC Point Mugu's application). Mugu Lagoon is the largest coastal wetland in southern California, with approximately 2,200 acres (890 ha) of jurisdictional wetlands. The lagoon is composed of two long arms projecting out from a broader central basin, running parallel to the coast. The proposed action site is bounded by the

Santa Monica Mountains to the east, the Oxnard Plains to the north, two duck-hunting clubs to the northwest, and Ormond Beach wetlands to the west. The opening to the lagoon migrates and is delineated by a large boulder rip-rap seawall to the west and a highly dynamic sand spit to the east. Large surf conditions are common, and 2 to 4 knot (3.7 to 7.4 km/hr) currents should be expected during flood and ebb tides. Mugu Lagoon has been designated as an area of special significance as the estuary is home to many sensitive species. Federally listed species found in the estuary include the light-footed clapper rail, the western snowy plover, the California least tern, the California brown pelican, and the endangered plant, salt marsh bird's beak. State listed species also include the Belding's savannah sparrow and the peregrine falcon. Mugu Lagoon is also used by thousands of migrating and wintering shorebirds and waterfowl. However, there are no threatened or endangered species listed under the Endangered Species Act (ESA) in the proposed boom exercise drill area.

Mugu Lagoon was classified as an Environmentally Sensitive Site by the Local Area Committee, which is comprised of the US Coast Guard and the Office of Spill Prevention and Response. These provisions are stated in the Area Contingency Plan (4–790–A). Also listed are recommended site strategies to protect resources from oil spills, although recommended and approved, they have not been validated, accomplishable and tested. NBVC is responsible for implementing these strategies as described in the plan when a threat of an offshore spill is present. This exercise will attempt to prove the efficacy of the Area Contingency Plan strategies, as well as recommend more realistic strategies that will provide protection to the wetland and the wildlife that live in it.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the only marine mammal species that will likely be affected by the activity and that are found in the immediate area of the proposed boom drill exercise. The mudflats within Mugu Lagoon are used for resting, molting, and breeding of harbor seals. Mugu Lagoon is one of the few mainland pupping sites, with 60 pups born in 2008. The harbor seal is not listed as threatened or endangered under the ESA, and the California stock, members of which occur in the Mugu Lagoon, is not considered a strategic stock under the MMPA.

Two other pinniped species are known to occur very infrequently in the general area of the proposed activity: northern elephant seals (*Mirounga angustirostris*) and California sea lions (*Zalophus californianus*). When present, these latter species haul out usually on the coastal beaches, located south of the project area on the ocean side of the barrier beach (see Figure 2 in the NBVC Point Mugu's application) and not within the estuary. Occasionally, sea lions may enter the estuary; however most sightings have been of suspected injured or sick sea lions. Due to the rarity of these two pinniped species within the project area, these species are not discussed further in this proposed IHA **Federal Register** notice.

Isolated incidents of cetacean observations have occurred in the Mugu Lagoon area outside of the area affected by the proposed activity. In March 2008, a Risso's dolphin (*Grampus griseus*) stranded on Family Beach (see Figure 3 in NBVC Point Mugu's application). In January 2007, a young gray whale (*Eschrichtius robustus*) stranded temporarily at the mouth of the lagoon. Records include an additional gray whale that beached itself on Family Beach approximately 28 years ago. Around 1995, a gray whale was observed moving in and out of the lagoon mouth entrance (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 2001). Sightings of Dall's porpoise (*Phocoenoides dalli*), bottlenose dolphin (*Tursiops truncatus*), and common dolphin (*Delphinus spp.*) could occur in nearby coastal waters, and pilot whales (*Globicephala macrorhynchus*) have been sighted within 3 nm (5.6 km) of shore in the vicinity of Point Mugu (Koski *et al.*, 1998). However, no cetacean species are expected to occur within the estuary and, therefore, are not expected to be disturbed by this proposed activity. Consequently, these species are not discussed further in this proposed IHA **Federal Register** notice.

NBVC Point Mugu has compiled information on the abundance, status, and distribution of harbor seals in Mugu Lagoon from surveys that they have conducted every month from April 1992 through February 2009, with the exception of 1998, when counts were made only during the period from June through August and from NMFS Stock Assessment Reports (SARs). This information may be viewed in NBVC Point Mugu's application (see **ADDRESSES**). Additional information is available in the NMFS SARs, which are available on the internet at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf>.

Potential Effects on Marine Mammals

The boom exercise activities within Mugu Lagoon will introduce boats into the estuary, which are not allowed under normal conditions. It is anticipated that as the boats approach the seals (within approximately 200 ft [61 m]), seals will likely enter the water for safety. It is anticipated that seals located further away from the water (i.e., further up on the haul-out site) will move closer to the water in order to be able to move quickly into the water if needed.

Harbor seals hauled out on shore can be disturbed by passing hikers, recreational vehicles, and small boats. This has been noted in many areas, including the western U.S. and Alaska, eastern Canada, and western Europe (e.g., Bowles and Stewart, 1980; Reijnders, 1981; Renouf *et al.*, 1981; Allen *et al.*, 1984; Osborn, 1985; Brasseur, 1993; Suryan, 1993; Swift and Morgan, 1993). Harbor seals spent more time scanning and less time sleeping in areas with human disturbance and occasional hunting (Terhune, 1985). In the absence of hunting or active harassment, habituation likely occurs (Awbrey, 1980; Bonner, 1982; Thompson, 1992; Brasseur, 1993).

Startle responses or stampedes are not expected to occur, as boats will be visible and will slowly approach the haul-out sites, allowing the seals to see the approaching vessels in advance of their arrival at the haul-out site. This will provide time for individual seals to either move towards or enter the water for safety if necessary. It is anticipated that the seals will move further east down the mudflats or closer towards the mouth of the estuary to avoid the disturbance associated with the presence of the boats and the boom.

Although this booming location is used year-round as a haul-out site for harbor seals, impacts to seals as a result of the activity are expected to be minimal and short-term in nature. Impacts are expected to be limited to Level B behavioral harassment. The training exercise will likely displace harbor seals from the immediate proposed activity area, resulting in hauled out seals moving into the water when watercraft (zodiacs) are placing or maintaining the boom in close proximity to hauled out seals. As there are additional mudflats to haul-out on away from the exercise area, seals will likely move to those sites and use as a haul-out during the boom exercise. Additionally, since a majority of the booming activity will occur during high-tides when zodiacs are able to navigate in the estuary, very few seals should be

displaced, as mudflats would be inundated and most seals would be in the estuarine waters or out foraging. No injury or mortality of harbor seals is anticipated as a result of this activity.

Anticipated Effects on Habitat

During the period of the proposed activity, harbor seals may use various haul-outs around the margin of the Mugu Lagoon as places to rest and molt. Any young-of-the-year that are present will be weaned and independent individuals. The seals do not feed when hauled out in the lagoon. The seals leave Mugu Lagoon to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998), therefore it is not expected that the boom exercise activities will have any impact on the food or feeding success of these seals. Thus, the proposed boom exercise is not expected to cause significant impacts on habitats used by seals in Mugu Lagoon or on the food sources that these seals utilize.

Additionally, no loss or modification of the habitat used by harbor seal populations that haul out within Mugu Lagoon is expected. Boom placement would not result in any permanent modifications to the habitat utilized by the seals. The tidal patterns in the lagoon and structure of the nearby sandy haul-out areas will not be altered by these proposed boom exercise activities.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The following mitigation measures are proposed to be included in the IHA: (1) The exercise will occur outside of the harbor seal pupping season of February through April; (2) If seals are hauled out within the exercise area before commencement of the exercise, a boat will move slowly towards the animals in order to have them move slowly into the water in order to avoid stampedes into the water; (3) A boat will remain active in the immediate area during most of the day to reduce the chances of seals hauling out in the exercise area during low activity periods. This would minimize the number of seals likely

disturbed should activity levels need to be increased; (4) If the boom placement appears to be holding successfully, then boats will refrain from movement to reduce any additional disturbance events; and (5) The majority of the boom deployment exercise activities will occur at high tide when fewer harbor seals are expected to be on the haul-outs.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

NBVC biologists will monitor the haul-out areas during the exercise to document and characterize any observed responses by harbor seals to the boom exercise drill. The monitoring will be designed to determine if there are disturbance reactions and to determine how many seals are disturbed by boat activity. Every 2 hours (0700–

1600), biologists will count seals hauled out using a spotting scope and identify haul-out locations. Regarding data to be recorded about the seals present, at a minimum, biologists must record numbers and sex of each age class (if determinable), movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement, and description of reactions. NMFS will review the qualifications of each biologist and approve their selection in advance of the proposed activities.

NBVC will establish a land-based monitoring program to assess effects on the harbor seals hauled out in the estuary. This monitoring will occur at the area during the entire period when boats are in the water. The monitoring will be conducted via direct observation. Through this method, seal reactions, as indicated by numbers of seals hauled out and haul-out locations, will be documented during the planned exercise. This monitoring will also provide data required to characterize the extent and nature of "taking". The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring in the same region. NBVC Point Mugu is prepared to discuss coordination of its monitoring program with other entities that may be conducting related work insofar as this is practical and desirable. As standard procedure, shore count data will be made available to NMFS staff.

NBVC Point Mugu Environmental Division personnel will survey the exercise area prior to activities to count the number of seals and to identify locations before the exercise begins. These marine mammal monitors will also ensure that the proposed mitigation measures (described in the previous section of this document) are being implemented. The biological monitor will make observations as the exercise activities commence and continue to make observations while activities are underway. Depending on results of these initial observations and subsequent planned activities, NBVC's monitors will decide each day whether monitoring for the entire day is needed. If the boom is in place and holding, and there is no need for boats to re-enter the water, then no monitoring will be conducted, other than surveys every 2 hours. If boats again are required to enter the proposed exercise area, biologists will be called and return immediately to the drill site. NBVC anticipates that monitoring will occur throughout the first morning, and if the boom is placed successfully, the site

will be visited once every 2 hours to conduct a survey, until it is decided to pull the boom.

In addition to recording specific biological information described earlier in this section, the marine mammal monitors will record a variety of other information which will include: (1) Date and time of the activity; (2) tidal state (the number of hours before or after peak flood tide; exact times for local high tides will be determined by consulting relevant tide tables); (3) weather condition; (4) horizontal visibility; (5) occurrence, or planned occurrence of any other event that might result in behavioral reactions by seals within the lagoon and therefore affect numbers hauled out (such as unusual military aircraft activity or other anthropogenic activities in or around the lagoon); (6) current state of the exercise (i.e., boom being placed, remains in place); and (7) approximate distance of boat from seals when seals react and enter the water.

NBVC will prepare and submit to the NMFS Office of Protected Resources and NMFS Southwest Regional Office a draft report describing the activities that were conducted, marine mammal monitoring work and results, and other information as described in the preceding paragraphs 90 days after the activities cease or after expiration of the IHA, whichever occurs first. This report would include all monitoring results from each annual exercise event. This report will summarize the results of the activities, summarize seal behavioral observations, and estimate the amount and nature of "take" of seals by harassment or in other ways. It will also provide locations and numbers of seals hauled out away from the exercise area. The 90-day report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. If a freshly dead or seriously injured pinniped is found during activity monitoring surveys, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS Southwest Regional Office.

Estimated Take by Incidental 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]. Only take by Level B behavioral harassment is anticipated as a result of the boom exercise drills. The presence of the boats in the water approaching the haul-out sites have the potential to startle hauled out harbor seals and cause them to enter the water and relocate to other haul-outs closer to the mouth of the lagoon or outside of the lagoon. Although there will be increased boat activity in the area of these haul-out sites, vessel strikes of pinnipeds are not expected to occur, as boats will be approaching at very slow speeds in order to reduce startle reactions by the animals. There is no evidence that the planned activities could result in serious injury or mortality. The mitigation and monitoring measures proposed to be implemented (mentioned earlier in this document) during the exercise will minimize any potential risk to injury or mortality.

The Navy estimates the number of hauled out seals within the lagoon using census data obtained during ground-based surveys of the lagoon by staff of the Point Mugu Environmental Division. These data are described in Section III of NBVC Point Mugu's application and provide the most detailed and recent counts of harbor seals (and other marine mammal species) in the proposed activity area.

Most sex and age classes of harbor seals can be found on the mudflats within the lagoon during the booming exercise, although in reduced numbers at certain times due to foraging patterns, tidal state, and adverse weather. Sex and age will not be able to be determined, with exception of possible young of the year still identifiable by their smaller size. Females will not be in reproductive condition due to the timing of the exercise (i.e., September). The peak number of harbor seals hauled out at NBVC Point Mugu during 2008 was 446 adults in mid-June, although there is large day-to-day variation in these counts.

To estimate the likely potential numbers of harbor seals that might be hauled out within the lagoon during the September period of the proposed activity, the Navy calculated using the low counts in September from 2003–2008, as low counts are usually associated with higher tides when the activity is planned to occur. The mean number of low counts is 57 seals (see Table 1 in this document). Take would be expected at the beginning of the exercise as boats are put into the water and seals would be slowly moved off

the haul-out. Using mean low numbers for the month of September since 2003, 57 seals could be disturbed and move into the water each time the boats are launched (days 2–4). Seals would likely move to a mudflat away from the boom exercise activity. However once boats are finished deploying the boom and boats return to shore, seals may return to mudflats in the immediate area. In the event the applicant needs to return to the water to check or adjust the boom, there is a possibility there could be another displacement of seals from the mudflats in the project area. The applicant has projected that it may be necessary to return to the site three times during the day, meaning that there would be three opportunities for seals to return to the exercise area each day (57 seals x 3 movements x 3 days), which would equal 513 individual displacement events (i.e., takes). If the boom placement is successful, it would likely lead to fewer disturbance events. However, if the boom placement is problematic, this could result in additional disturbance events. Moreover, these numbers are likely overestimations of actual take estimates, as harbor seal counts are not conducted during high tide events due to low numbers of seals.

TABLE 1. SEPTEMBER HARBOR SEAL SURVEY RESULTS FROM 2003–2008

Year	Mean # Hauled Out	Low Count	High Count
2003	124	36	217
2004	153	11	266
2005	197	88	369
2007	162	107	200
2008	174	42	284
Average	162	57	267

* no survey data available for September 2006

The maximum number of displacements are based on the high counts of seals recorded within the estuary during the last five years (2003 to 2008) for the month of September. The mean high count over those years is 267 seals (see Table 1 in this document). Therefore, with three potential disturbance events, the number of takes could equal as many as 2,403 (267 x 3 x 3). The Navy believes that far less than that might actually be taken by harassment during each training exercise, since it is unlikely that these higher counts would be recorded at high tide when the activity is planned to occur. Therefore, based on these considerations, NMFS is proposing to authorize 513 takes of harbor seals by Level B behavioral

harassment incidental to NBVC Point Mugu's proposed boom exercise drill.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

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." In making a negligible impact determination, NMFS considers: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of NBVC Point Mugu's proposed boom exercise drills, and none are proposed to be authorized by NMFS. Takes will be limited to Level B behavioral harassment over a 3 day period in the month of September (which may possibly slip to October or November, depending on contractor availability). As mentioned previously, NMFS estimates that 513 harbor seal takes may occur as a result of the proposed activity. It is possible that some individual animals may be taken more than once if the animal returns to the site on one of the later days of the exercise.

There is no habitat of significance for this species. While Mugu Lagoon is one of the few mainland pupping sites for harbor seals, the activity will occur outside of the harbor seal pupping season of February through April. While these haul-out sites are used for resting throughout the year, few (if any) seals are expected to be found on the haul-outs during the drill because the activity will occur at high tide when most animals are in the water. Additionally, there are other haul-out sites in other parts of the lagoon that seals can use during the exercise. The proposed activity is not expected to impact rates of recruitment or survival of harbor seals since no mortality (which would remove individuals from the population) or injury are anticipated to occur. Only short-term Level B behavioral harassment is anticipated to occur over a very short period of time (maximum of 3 days), occurring at very limited times of the day. Additionally, the proposed activity would occur at a time of year when breeding does not occur.

Harbor seals are not listed as threatened or endangered under the

ESA. Additionally, the California stock of harbor seals is not listed as depleted under the MMPA. Survey counts conducted by NBVC Point Mugu Environmental Division staff indicate that numbers of harbor seals have increased with an average of 83 seals in 1992 to an average of 231 seals in 2006.

The most recent SAR for the California stock of harbor seals provides a population estimate of 34,233 individuals (Carretta *et al.*, 2009). The take estimate of 513 individuals represents 1.5 percent of the stock size. This estimate does not take into account that survey data is collected during lower tides when more animals are likely to be present on the haul-out sites and the fact that three events may not need to occur per day on each of the three days. Therefore, it is estimated that 1.5 percent of the California stock of harbor seals will be taken by Level B behavioral harassment during the planned exercise if no animals are taken more than once.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that NBVC Point Mugu's boom deployment exercise will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the boom deployment exercise will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

NMFS is currently conducting an analysis, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to

authorize the take of harbor seals incidental to NBVC Point Mugu's boom deployment exercises at Point Mugu, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 17, 2009.

James H. Lecky,

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

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BILLING CODE 3510-22-S

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Center on Accessible and Supported Electronic Text To Improve Mathematics Achievement for Students With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327H.

DATES:

Applications Available: July 23, 2009.

Deadline for Transmittal of

Applications: August 24, 2009.

Deadline for Intergovernmental Review: September 1, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program are to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description of educational materials that are appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Center on Accessible and Supported Electronic Text to Improve Mathematics Achievement for Students With Disabilities.

Background:

IDEA and the Elementary and Secondary Education Act of 1965, as amended (ESEA), require increased accountability for the academic performance of students with disabilities. IDEA requires that students with disabilities participate in the general education curriculum to the maximum extent possible, and ESEA establishes the expectation that all students, including students with disabilities, will achieve proficiency on grade-level academic content. However, students with disabilities, on average, continue to demonstrate lower levels of academic performance when compared to their non-disabled peers. According to the 2007 National Assessment of Educational Progress, 40 percent of fourth graders with disabilities scored below "Basic" in mathematics compared to 16 percent of non-disabled students (Lee, Grigg, & Dion, 2007). Recently, the National Mathematics Advisory Panel (2008) called for more coherent and rigorous mathematics instruction focused on the higher-level mathematics skills needed for postsecondary education and the workplace of the future. Accordingly, it is necessary both to close the performance gaps for students with disabilities and to find new approaches for including students with disabilities in challenging curriculum reforms in mathematics.

Educators can address these challenges by using technology tools that expand access to the general education curriculum and improve academic achievement for all students. Electronic text (i.e., text and graphics in a form that can be stored, manipulated, and displayed by a computer) is one such technology tool. Electronic text can be used to provide students with access to challenging academic instruction and can incorporate a variety of instructional supports to facilitate and extend learning (Higgins & Boone, 2001; Rose & Meyer, 2002; Stahl, 2004). Anderson-Inman (2004) described different types of supportive resources that can be added to electronic text, such as resources that provide: Assistance in visualizing information, a condensed view of information, enrichment that supplements required learning, and tools for learning in collaboration with others.

In 2005, the Office of Special Education Programs (OSEP) funded,

through a five-year cooperative agreement, the National Center for Supported Electronic Text (NCSET). NCSET investigated, at seven research sites across the country, how supported electronic text affected students with disabilities' reading comprehension of content area material. Initial NCSET findings suggest that supported text can be effective in improving reading comprehension and content area learning. The following Web site provides more information on NCSET: <http://ncset.uoregon.edu/>.

The effectiveness of supported electronic text in improving mathematics learning has not yet been explored and is not in the research plans for NCSET. We propose to address the lack of research on the types of electronic text supports that could facilitate learning in mathematics because of the potential benefits these supports could offer students with disabilities.

As electronic text and other electronic media become more prevalent in schools, they are likely to play an increasing role in mathematics instruction. (Stevenson, 2006; Simba Information, 2008). Moreover, based on what we have learned to date on the effectiveness of supported electronic text in improving the reading comprehension of students with disabilities, we believe that supported electronic text has the potential for facilitating learning mathematics for students with disabilities. For example, learning in mathematics involves acquiring new vocabulary and concepts, applying previous learning to new learning, and constructing meaning from text, which are learning processes for which electronic supports have been developed and studied. Additional research is needed on the use of electronic supports for processes specific to mathematics learning such as interpreting word problems and solving them arithmetically, achieving automaticity in basic mathematics facts, and becoming proficient in complex, multi-step computational procedures (Bryant, Bryant & Hammill, 2000). In addition, electronic supports may also be used to improve access to mathematics content and mathematics learning for students with visual impairments where learning involves understanding visual stimuli (e.g. graphs, diagrams, and geometric shapes).

For all of these reasons, OSEP is establishing a priority for a research center that will explore the effectiveness of supported electronic text in mathematics learning for students with disabilities.