

interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 22, 2010.

**Tracey L. Thompson,**

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

[FR Doc. 2010-3806 Filed 2-24-10; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-964, A-201-838]

#### Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* February 25, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Karine Gziryan (the People's Republic of China) or Joy Zhang (Mexico), AD/CVD Operations, Offices 4 and 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4081 or (202) 482-1168, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Postponement of Preliminary Determinations

On October 20, 2009, the Department of Commerce ("the Department") initiated the antidumping investigations of Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico. *See Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 42852 (October 27, 2009).

The notice of initiation stated that unless postponed the Department would issue the preliminary determinations for these investigations no later than 140 days after the date of initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended ("the Act"). The preliminary determinations were originally due no later than March 9, 2010. After being tolled for seven days, the preliminary determinations are currently due no later than March

16, 2010. *See Memorandum For The Record from Ronald Lorentzen, DAS for Import Administration, titled "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.*

On February 12, 2010, Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners"), made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determinations. The petitioners requested postponement of the preliminary determinations in order to ensure that the Department has adequate time to conduct a complete and thorough investigation of respondents in these proceedings.

Because there are no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determinations pursuant to section 733(c)(1)(A) of the Act to May 5, 2010, the 190th day from the date of initiation, when adjusted for the seven days referenced above. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless postponed.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 18, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-3881 Filed 2-24-10; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XT90

#### Takes of Marine Mammals Incidental to Specified Activities; Seabird and Pinniped Research Activities in Central California

**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 regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental

Harassment Authorization (IHA) to PRBO Conservation Science (PRBO), to incidentally harass, by Level B harassment only, four species of marine mammals during the specified activity.

**DATES:** This authorization is effective from February 19, 2010, through February 18, 2011.

**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. A copy of the application may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online 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:**

Jeannine Cody (301) 713-2289, ext. 113 or Monica DeAngelis, NMFS Southwest Region, (562) 980-3232.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or stock, for periods of not more than one year, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. 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. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public 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 October 13, 2009, from PRBO for the taking by harassment, of marine mammals incidental to conducting seabird and pinniped research operations in central California.

Seabird research activities involve censusing shorebirds; conducting observational and marking studies of breeding seabirds and viewing breeding seabirds from observation blinds. Pinniped research activities involve monitoring breeding northern elephant seals (*Mirounga angustirostris*) to determine attendance patterns; resighting previously-tagged elephant seals; and conducting weekly pinniped censuses.

The action area consists of the following four locations: Southeast Farallon Island (SEFI), West End Island (WEI), Año Nuevo Island (ANI), and Point Reyes National Seashore (PRNS). SEFI and WEI are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, California, and are located within the waters of the Gulf of the Farallones National Marine Sanctuary (NMS). ANI is located one-quarter mile (402 m) offshore of Año Nuevo Point in San Mateo County, CA, is part of the Año Nuevo State Reserve, and lies within the Monterey Bay NMS and the newly established Año Nuevo State Marine Conservation Area. PRNS is located 40 miles (64.3 km) north of San Francisco

Bay and lies within close proximity (6 mi, 9.6 km) of the Cordell Bank NMS.

Acoustic and visual stimuli generated by noise generated during boat landing operations, research activities (e.g., mark and recapture of seabirds, censusing of pinnipeds) and human presence (e.g., transiting in the vicinity of the haul out areas, resupplying field stations), may have the potential to cause the pinnipeds hauled out to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and PRBO has requested an authorization to take 5,000 California sea lions (*Zalophus californianus*); 418 Pacific harbor seals (*Phoca vitulina*); 253 northern elephant seals; and 20 Steller sea lions (*Eumetopias jubatus*) by Level B harassment.

#### Summary of the Final Report for the 2008 IHA

In compliance with the 2008 IHA, PRBO submitted a final report on the seabird and pinniped research activities conducted during the period of December 12, 2007 to December 11, 2008. A summary of that report follows.

Researchers at Southeast Farallon Island observed marine mammal takes during year round daily observations, bimonthly field station resupply trips, and murre observations at North Landing during the spring and summer. PRBO reported three takes of Steller sea lions, 39 takes of Pacific harbor seals, 45 takes of northern elephant seals, and 616 takes of California sea lions.

Researchers at Año Nuevo Island observed marine mammal takes during occasional visits for spring/summer seabird monitoring, and one field station resupply trip. For ANI, PRBO reported nine takes of Pacific harbor seals, 10 takes of Steller sea lions, 43 takes of northern elephant seals, and 430 takes of California sea lions.

PRBO did not conduct seabird research on PRNS during December 12, 2007 to December 11, 2008. Thus, they reported no data for this site.

In summary, the total number of potentially harassed marine mammals for all seabird and pinniped research activities were below the take limits as authorized in 2008 IHA. No dead or injured marine mammals were reported for any of the events. Accordingly, these monitoring results support NMFS' initial findings that PRBO's seabird and pinniped research activities will result in no more than Level B harassment of small numbers of marine mammals and that the effects will be limited to short-term behavioral changes.

#### Description of the Specified Activity

PRBO will conduct seabird and pinniped research activities on SEFI, WEI, ANI, and PRNS between February 19, 2010 and February 18, 2011. NMFS has provided a detailed overview of the activity in the notice of the proposed IHA (74 FR 61109, November 23, 2009). No changes have been made to the proposed activities.

#### Seabird Research

*Southeast Farallon Island (SEFI):* PRBO researchers will census, observe, and conduct marking studies of SEFI's seabird community year-round (approximately 1,080 visits annually). These activities will involve one or two researchers transiting to one of the island's two landings using a 14 to 18 feet (ft) (4.3 to 5.5 meters (m)) open motorboat. The researchers will hoist the motorboat onto the island using a derrick system. During the study, the researchers plan to visit the observation sites approximately one to three times per day for 15-minute (min) periods. From early April through early August, the observers will extend the duration of the work period from 15 min to two- to five-hour (hr) periods. Most intertidal areas of SEFI, where marine mammals are present, are rarely visited during the conduct of seabird research. In both locations (the North Landing and East Landing) the observers are located greater than 50 ft (15.2 m) above any pinnipeds which may be hauled out.

*Año Nuevo Island (ANI):* PRBO researchers will monitor seabird burrow nesting habitat quality and habitat restoration efforts year-round (approximately 30 visits annually). This activity involves two to three researchers accessing the island by a 12-ft (3.7 m) Zodiac boat. During the study, the researchers plan to monitor the seabirds (April through August); conduct restoration and monitoring activities (September through November); and carry out intermittent visits throughout the rest of the year. During the study, the researchers plan to visit the nesting boxes approximately once a week for 15 min. The landing area and the nesting boxes are located more than 50 ft (15.2 m) away from any pinniped haul out area.

*Point Reyes National Seashore (PRNS):* PRBO researchers will monitor seabird breeding and roosting colonies; conduct habitat restoration; remove non-native plants, monitor the intertidal areas, and maintain coastal dune habitat year round (approximately 18 visits annually). Seabird monitoring involves one or two researchers surveying the colonies using small boats (12 to 22 ft)

along the PRNS shoreline. A majority of the research occurs in areas where pinnipeds are not present.

#### *Pinniped Research*

*West End Island (WEI):* PRBO researchers in collaboration with the National Park Service conduct marine mammal research under NMFS Scientific Permit 373–1868. PRBO intends to survey breeding elephant seals on WEI between early December and late February. PRBO conducts approximately five surveys per year, each lasting approximately two hours. These surveys involve three observers moving approximately 1,500 ft (457.2 m) above pinniped colonies to census northern elephant seal areas. The researchers will transit adjacent to a Steller sea lion haulout area to reach the northern elephant seal colony and their journey will last approximately 30 min in duration.

#### *Field Station Resupply on SEFI*

PRBO will resupply the field station once every two weeks for a maximum of 26 visits per year. These visits to either the North Landing or East Landing will last one to three hours and involve launching of the boat with one operator along with two to four researchers assisting with the operations from land. At East Landing the primary landing site all personnel assisting with the landing will stay on the loading platform 30 ft (9.1 m) above the water. At North Landing, loading operations would occur at the water level in the intertidal areas.

NMFS expects that acoustic and visual stimuli resulting from these activities (resupply activities, boat approaches and departures, operation of the derrick system, and human presence) have the potential to disturb pinnipeds hauled out on SEFI, WEI, ANI, and PRNS.

#### **Comments and Responses**

NMFS published a notice of receipt of the PRBO application and proposed IHA in the **Federal Register** on November 23, 2009 (74 FR 61109). During the 30-day comment period, NMFS received a letter from the Marine Mammal Commission (Commission) which recommended that NMFS issue the requested authorization, provided that the required mitigation measures and monitoring are carried out (e.g., researchers speaking in hushed voices, use of observation blinds, postponing landing boats after pinnipeds have entered the water, and coordinating visits to the island) as described in NMFS' November 23, 2009 (74 FR 61109), notice of the proposed IHA and

the application. All measures proposed in the initial **Federal Register** notice are included in the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

*Comment 1:* The Commission further recommended that any IHA issued to PRBO for seabird and pinniped research activities specify that, if a death or serious injury of a marine mammal occurs that appears to be related to the research activities be suspended while the Service determines whether steps can be taken to avoid further injuries or deaths or until such taking has been authorized by regulations promulgated under section 101(a)(5)(A) of the MMPA.

*Response:* NMFS concurs with the Commission's recommendation and has included a requirement to this effect in the IHA. NMFS authorizes the applicant to take marine mammals by Level B harassment only.

#### **Marine Mammals Affected by the Activity**

The marine mammal species most likely to be harassed incidental to seabird and pinniped research activities are the California sea lion, Pacific harbor seal, the eastern Distinct Population Segment (DPS) of Steller sea lion, and the northern elephant seal on SEFI, WEI, ANI, and PRNS.

California sea lions, Pacific harbor seals, and northern elephant seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The eastern DPS of the Steller sea lion is listed as threatened under the ESA and is categorized as depleted under the MMPA. NMFS' discussion of these species is included in the notice of the proposed IHA (74 FR 61109, November 23, 2009). Refer to Caretta *et al.* (2008) and Angliss and Allen (2009) for information on these species at the following URLs: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf> and <http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2008.pdf>.

#### **Potential Effects of the Activities on Marine Mammals**

Level B harassment of pinnipeds has the potential to occur during approach to landing sites on SEFI, WEI, ANI, or PRNS due to acoustic and visual stimuli caused by the motorboat and the use of the derrick system. It is likely that the initial motorboat approach to the shore would cause a subset, or all of the marine mammals hauled out to depart the beach and flush into the water. The pinnipeds' movement into the water is

expected to be gradual due to the required, controlled boat approaches (see Mitigation) as well as behavioral habituation on the part of the animals to repeated boat trips throughout the day. During the sessions of boat activity, some animals may be temporarily displaced from the landing areas and either raft in the water or relocate to other haul outs.

Level B harassment also has the potential to occur as a result of acoustic and visual stimuli related to human presence. The only anticipated impacts would be temporary disturbances caused by the appearance of researchers near the pinnipeds. The potential disturbance might alter pinniped behavior and cause animals to flush from the area. Animals may return to the same site once researchers have left or go to an alternate haul out site, which usually occurs within 30 min (Allen *et al.*, 1985). Long term effects of this disturbance are unlikely, as very few breeding animals will be present in the vicinity of the proposed seabird research areas.

It is expected that any incidental disturbance to pinnipeds from seabird and pinniped research would have minimal, short-term effects and no long-term effects on the individuals. Incidental disturbance is believed to have minimal impacts because pinnipeds usually return to a site or a nearby site within 30 min upon conclusion of research activities (Allen *et al.*, 1985). Numerous IHAs and Letters of Authorizations issued under the MMPA, Incidental Take Statements issued under Section 10(a)(1)(b) of the ESA (e.g. 72 FR 124, January 3, 2007), and reports on more localized areas (e.g., Demarchi and Bentley, 2004) have analyzed the potential effects of incidental disturbance to pinnipeds from various sources. Based on these reports, the effects to pinnipeds appear, at the most, to displace the animals temporarily from their haul out sites. Based on previous monitoring reports from PRBO, maximum disturbance to Steller sea lions would result in the animals flushing into the water in response to presence of the researchers. It is not expected that pinnipeds would permanently abandon a haul-out site during PRBO's research, as precautions would be taken to not disturb the same haul-out site on frequent occasions.

No research would occur on pinniped rookeries; therefore, the potential for mother and pup separation or crushing of pups is negligible. In PRBO's final report of activities conducted between December 12, 2007 to December 11, 2008 for the 2008 IHA, they reported disturbing three Steller sea lions on

SEFI and 10 Steller sea lions on ANI during all surveys.

### Possible Effects of Activities on Marine Mammal Habitat

PRBO's seabird and pinniped research activities will not significantly affect the geology or the marine environment in and around SEFI, WEI, ANI, and PRNS. No impacts to marine mammal habitats used by northern elephant seals, Pacific harbor seals, northern elephant seals, or Steller sea lions that may haul-out on SEFI, WEI, ANI, and PRNS are anticipated.

### Mitigation and Monitoring

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse 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. To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, PRBO and/or its designees will undertake the following marine mammal mitigation measures and monitoring protocols:

(1) Abide by all of the Terms and Conditions listed in the Incidental Take Statement for NMFS' 2008 Biological Opinion.

(2) Abide by the Terms and Conditions of Scientific Research Permit 373-1868.

(3) Minimize the potential for disturbance (to the lowest level practicable near known pinniped haul outs by boat travel and pedestrian approach during pinniped and seabird research operations).

(4) Postpone beach landings on Año Nuevo Island only after any pinnipeds that might be present on the beach have entered the water.

(5) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed, with the first priority being avoiding the disturbance of Steller sea lions at haul-outs.

(6) Monitor for offshore predators and not approach hauled out Steller sea lions if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are seen in the area. If predators are seen, eastern DPS Steller sea lions must not be disturbed until the area is free of predators.

(7) Keep voices hushed and bodies low in the visual presence of pinnipeds.

(8) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(9) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(10) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and to coordinate research goals for Año Nuevo Island to minimize the number of trips to the island. Once on Año Nuevo Island, researchers would coordinate monitoring schedules so that areas near any pinnipeds would be accessed only once per visit.

(11) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(12) Have the lead biologist serve as an observer to evaluate incidental take and halt any research activities should the potential for incidental take be too great.

(13) Take notes of pinnipeds observed within the research area. The notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of pinnipeds that moved greater than one meter, and numbers of pinnipeds that flushed into the water.

NMFS conducted a formal section 7 consultation under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) in 2008. After issuance of the proposed 2010 IHA, NMFS reviewed the Terms and Conditions of the 2008 Biological Opinion (BiOp) which directed the PRBO researchers to monitor the offshore environment for predators such as great white sharks or killer whales before approaching hauled out Steller sea lions. If predators were seen, the researchers would halt operations until the area was deemed free of predators. NMFS deemed this mitigation measure appropriate for ensuring Steller sea lion safety in the study area and adopted this requirement into the 2010 IHA.

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 adverse 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 Año Nuevo: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to

minimize adverse impacts as planned; and (3) 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 or recommended by the public, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must 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 IHAs 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 action area.

*Draft Report:* PRBO will submit a draft final report to the Assistant Regional Administrator (ARA) for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 and to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East West Highway, SSMC3 13822, Silver Spring, MD 20910 within 90 days after the expiration of the IHA. This report must contain the following information: dates, location, species, the researcher's activity, behavioral state, numbers of pinnipeds that moved greater than one meter, and numbers of pinnipeds that flushed into the water, along with an executive summary. If NMFS decides that the draft final report needs no comments, the draft final report will be considered to be the final report.

*Final Report:* PRBO will submit a final report to the ARA for Protected Resources, Southwest Region and to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft final report.

In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, (which is highly unlikely), PRBO and/or its designees will immediately cease operations and report the incident,

within 48 hours, to the Southwest Region, Assistant Regional Administrator (ARA) for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4020; fax (562) 980-4027; and to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), phone (301) 713-2289.

#### **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 harassment is anticipated and authorized as a result of the seabird and pinniped research activities. Acoustic and visual stimuli generated by boat landings/departures, the operation of the derrick system, and noise generated during research activities and maintenance activities have the potential to cause the pinnipeds hauled out on SEFI, WEI, ANI, and PRNS to flush into the surrounding water or to cause a short-term behavioral disturbance. There is no evidence that the planned activities could result in injury or mortality. The required mitigation and monitoring measures will minimize any potential risk for injury or mortality.

NMFS estimates that a maximum of 5,000 California sea lions, 418 Pacific harbor seals, 253 northern elephant seals, and 20 Steller sea lions could be potentially affected by Level B harassment over the course of the IHA. This estimate is based on PRBO's previous research experiences conducted in the proposed research area and on marine mammal research activities in these areas. All of the potential takes are expected to be Level B behavioral harassment only. Because of the mitigation measures that will be required and the likelihood that some pinnipeds will avoid the area, injury or mortality to pinnipeds is neither expected nor requested.

#### **Negligible Impact and Small Numbers Analysis and 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.

As mentioned previously, NMFS estimates that a maximum of 5,000 California sea lions, 418 Pacific harbor seals, 253 northern elephant seals, and 20 Steller sea lions could be potentially affected by Level B harassment over the course of the IHA. These incidental harassment take numbers represent approximately one percent of the U.S. stock of California sea lion, 1.2 percent of the California stock of Pacific harbor seal, less than one percent of the California breeding stock of northern elephant seal, and 0.04 percent of the eastern DPS of Steller sea lion. For each species, these numbers are small relative to the population size.

No injuries or mortalities are anticipated to occur as a result of the PRBO's planned seabird and pinniped research activities, and none are authorized. Takes will be limited to Level B behavioral harassment over the course of the IHA.

Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the research activities. No mortality or injury is expected to occur, and due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting seabird and pinniped research on SEFI, WEI, ANI, and PRNS may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the seabird and pinniped research activities, may be made by these species to avoid the resultant boat landing/takeoff and visual disturbance from human presence, the availability of alternate areas within these areas and haulout sites, and the short and sporadic duration of the research activities, have led NMFS to determine that this action will have a negligible impact on California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions.

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 finds that the PRBO's planned seabird and pinniped research activities, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from seabird and pinniped research activities 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**

The Steller sea lion, eastern DPS is listed as threatened under the ESA and occurs in the research area. NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division conducted a formal section 7 consultation under the ESA. On November 18, 2008, NMFS issued a Biological Opinion (2008 BiOp) and concluded that the issuance of an IHA is likely to affect, but not likely to jeopardize the continued existence of Steller sea lions. NMFS has also issued an incidental take statement (ITS) for Steller sea lions pursuant to section 7 of the ESA. The ITS contains reasonable and prudent measures for implementing terms and conditions to minimize the effects of this take. NMFS has reviewed the 2008 BiOp and determined that there is no new information regarding effects to Steller sea lions; the action has not been modified in a manner which would cause adverse effects not previously evaluated; there has been no new listing of species or designation of critical habitat that could be affected by the action; and, the action will not exceed the extent or amount of incidental take authorized in the 2008 BiOp. Therefore, the proposed IHA does not require the reinitiation of Section 7 consultation under the ESA.

#### **National Environmental Policy Act (NEPA)**

To meet NMFS' NEPA requirements for the issuance of an IHA to PRBO, NMFS prepared an Environmental Assessment (EA) in 2007 that was specific to seabird and pinniped research activities on SEFI, WEI, ANI, and PRNS and evaluated the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from seabird

research in Central California. At that time, NMFS determined that conducting the seabird research would not have a significant impact on the quality of the human environment and issued a Finding of No Significant Impact (FONSI) and, therefore, it was not necessary to prepare an environmental impact statement for the issuance of an IHA to PRBO for this activity. In 2008, NMFS prepared a supplemental EA (SEA) titled "Supplemental Environmental Assessment For The Issuance Of An Incidental Harassment Authorization To Take Marine Mammals By Harassment Incidental To Conducting Seabird And Pinniped Research In Central California And Environmental Assessment For The Continuation Of Scientific Research On Pinnipeds In California Under Scientific Research Permit 373-1868-00," to address new available information regarding the effects of PRBO's seabird and pinniped research activities that may have cumulative impacts to the physical and biological environment. At that time, NMFS concluded that issuance of an IHA for the December 2008 through 2009 season would not significantly affect the quality of the human environment and issued a FONSI for the 2008 SEA regarding PRBO's activities. In conjunction with this year's application, NMFS has again reviewed the 2007 EA and the 2008 SEA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2008 FONSI. A copy of the EA, SEA, and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

#### Authorization

As a result of these determinations, NMFS has issued an IHA to PRBO to conduct seabird and pinniped research on Southeast Farallon Island, West End Island, Año Nuevo Island, and Point Reyes National Seashore in central California from February 19, 2010 through February 18, 2011, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 19, 2010.

**James H. Lecky,**

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

[FR Doc. 2010-3893 Filed 2-24-10; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

#### AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission (Commission).

**DATE AND TIME:** Thursday, March 25, 2010, commencing at 9 a.m. and ending at 3 p.m.

**PLACE:** Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Public meeting to examine the trading of futures and options in the precious and base metals markets, and to consider Federal position limits in the precious and base metals markets and related hedge exemptions on regulated futures exchanges, derivatives transaction execution facilities and electronic trading facilities.

#### CONTACT PERSONS AND ADDRESSES:

Written materials should be mailed to the Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC, 20581, attention Office of the Secretariat; transmitted by facsimile at 202-418-5521; or transmitted electronically to [metalshearing@cftc.gov](mailto:metalshearing@cftc.gov).

Reference should be made to "metals position limits." For questions, please contact Sauntia Warfield, 202-418-5084.

**SUPPLEMENTARY INFORMATION:** The Commission is undertaking a review of issues related to the trading of futures and options in the precious and base metals markets, and to consider Federal position limits in the precious and base metals markets and related hedge exemptions on regulated futures exchanges, derivatives transaction execution facilities and electronic trading facilities. In furtherance of that review, the Commission hereby announces that it will hold a public meeting on Thursday, March 25, 2010 from 9 a.m. to 3 p.m. at the Commission headquarters in Washington, DC. At this meeting the Commission will have oral presentations by panels of experts representing all segments of futures market participants and experts.

This meeting will generally focus on precious and base metals markets issues, including: the application of speculative position limits to address the burdens of excessive speculation in the precious and base metals markets; how such limits should be structured; how such limits should be set; the aggregation of positions across different

markets; and the types of exemptions, if any, that should be permitted. The focus will be on gold, silver and copper markets.

A transcript of the meeting will be made and entered into the Commission's public comment files, which will remain open for the receipt of written comments until April 30, 2010.

**Advanced Registration Requested:** Advanced registration for attending the metals meeting is requested. Please transmit full name and organization represented to [metalsmeetingregistration@cftc.gov](mailto:metalsmeetingregistration@cftc.gov), no later than March 18, 2010. Upon arrival on March 25, 2010, all attendees will be required to show valid, government-issued identification before being granted admittance. Unregistered attendees arriving on the day of the meeting will be seated on a space available basis. Overflow seating will be available for additional public viewing via live videocast. Registrants will be notified if attendance capacity has been met.

Issued in Washington, DC, on February 22, 2010 by the Commission.

**David Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010-3968 Filed 2-23-10; 11:15 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD-2010-OS-0019]

### U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

**ACTION:** Notice of proposed changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

**SUMMARY:** This notice announces the following proposed changes to Rules 21(b) and 21(b)(5)(G), and proposed new Rule 21A of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment.

**DATES:** Comments on the proposed changes must be received within 30 days of the date of this notice.

**ADDRESSES:** Comments may be submitted, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon,