Each sector must be adequately represented, and the intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the HMS AP. Criteria for membership include one or more of the following: (1) Experience in the HMS recreational fishing industry; (2) experience in the HMS commercial fishing industry; (3) experience in fishery-related industries (*e.g.*, marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, national, or international organization representing marine fisheries; or environmental, governmental, or academic interests dealing with HMS.

Five additional members on the HMS AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

C. Meeting Schedule

Meetings of the HMS AP will be held as frequently as necessary but are routinely held twice each year in the spring and fall. The meetings may be held in conjunction with public hearings.

Dated: October 15, 2010.

Emily H. Menashes,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ60

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Eastern Tropical Pacific Ocean, October Through November 2010

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Scripps Institution of Oceanography (SIO), a part of the University of California, to take small numbers of marine mammals, by harassment, incidental to conducting a marine geophysical survey in the eastern tropical Pacific Ocean (ETP), October through November, 2010.

DATES: Effective October 19, 2010, through November 30, 2010.

ADDRESSES: A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. The following associated documents are also available at the same Internet address: SIO's application, the Environmental Assessment (EA) prepared by NMFS, and the finding of no significant impact (FONSI). The NMFS Biological Opinion will be available online at: *http://www.nmfs.noaa.gov/pr/consultation/opinions.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws or Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289.

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 population stock, 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 May 28, 2010 from SIO for the taking, by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the ETP. SIO, with research funding from the U.S. National Science Foundation (NSF), plans to conduct a marine seismic survey in the ETP, from October through November 2010.

SIO plans to use one source vessel, the R/V *Melville* (*Melville*), with a seismic airgun array to conduct a geophysical survey in the ETP. In addition to the operations of the seismic airgun array, SIO intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey. The purpose of this project is to better understand how marine sediments record paleo-oceanographic information.

Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be behaviorally disturbed in a manner that NMFS considers to be Level B harassment. This is the principal means of marine mammal taking associated with these activities and SIO has requested an authorization for the incidental take, by Level B harassment only, of up to 21 species of marine mammals. These species include: Bryde's whale; blue whale; sperm whale; humpback whale; Cuvier's beaked whale; Blainville's beaked whale; pygmy beaked whale; gingko-toothed beaked whale; rough-toothed dolphin; bottlenose dolphin; pantropical spotted dolphin; spinner dolphin; striped dolphin; Fraser's dolphin; short-beaked common dolphin; Risso's dolphin; melon-headed whale; pygmy killer whale; false killer whale; killer whale; and short-finned pilot whale. Blainville's beaked whale, pygmy beaked whale, and gingko-toothed beaked whale are hereafter grouped as *Mesoplodon* sp., as these species are expected to be encountered only infrequently and are difficult to distinguish from one another.

Description of the Specified Activity

The *Melville* is expected to depart Puntarenas, Costa Rica, on October 19, 2010, and spend approximately fifteen days conducting seismic surveys, ten days collecting water and core samples, and approximately two days in transit, arriving at Arica, Chile, on November 14, 2010. The proposed survey will encompass the area from approximately 8° N–12° S and 80–91° W, off the coasts of Costa Rica, Panama, Colombia, Ecuador, and Peru, in the high seas and within the Exclusive Economic Zones (EEZs) of Costa Rica, Panama, Colombia, and Ecuador. At each of four sites (see Figure 1 of SIO's application), seismic operations will be conducted for approximately two days, and each water sampling and coring station will be occupied for one to two days. SIO will operate the *Melville* to deploy an airgun array and tow a hydrophone streamer to complete the survey. Some minor deviation from these dates is possible, depending on logistics and weather. Therefore, NMFS plans to issue an authorization that extends to November 30, 2010.

The *Melville* will deploy a pair of low-energy generator-injector (GI) airguns as an energy source at a depth of 2 m (each with a discharge volume of 45 in^3), plus either of two towed hydrophone streamers, one 725 m (2,378.6 ft) long with 40 channels, and the other 350 m (1,148.3 ft) long with 16 channels. Hydrophone streamers are towed at adjustable depth to afford best reception of returning seismic signals, depending upon surface conditions, but are typically towed at approximately 10 m. The energy to the GI airgun is compressed air supplied by compressors onboard the source vessel. As the GI airgun is towed along the survey lines, the receiving systems will receive the returning acoustic signals. The study (*e.g.,* equipment testing, startup, line changes, repeat coverage of any areas) will take place in waters deeper than 1,000 m (3,280 ft). All planned geophysical data acquisition activities will be conducted by SIO with on-board assistance by the scientists who have proposed the study. The Chief Scientist is Dr. Franco Marcantonio of Texas A&M University. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

NMFS outlined the purpose of the program in a previous notice for the proposed IHA (75 FR 54095, September 3, 2010). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including vessel and acoustic source specifications, the reader should refer to the aforementioned proposed IHA notice.

Several errors found in the notice for the proposed IHA (75 FR 54095, September 3, 2010) have been corrected in this document. These errors are as follows:

- The notice for proposed IHA referenced 40, 16, and 12 channel hydrophone streamers. The 12 channel streamer was referenced in error; 40 and 16 channel streamers will be utilized as discussed in this document.
- Several errors were corrected with regard to exposure estimates and the resulting take authorization (see Estimated Take of Marine Mammals by Incidental Harassment and Table 2 of this document).
  - Take estimate for sperm whales (*Physeter macrocephalus*) was presented as 23 due to a calculation error and has been revised to 22.
  - Take estimate for striped dolphins (*Stenella coeruleoalba*) was presented as six, due to the erroneous use of Fraser's dolphin (*Lagenodelphis hosei*) density estimates. Take estimate, as well as density estimate, for striped dolphin has been corrected to 192.
  - Exposure estimates and take authorization numbers have been corrected for several species by rounding up rather than down. As there can be no portion of an individual in estimating take, NMFS has rounded up in all cases where exposure estimates have some non-negligible portion of a whole (see Table 2 in this document).

Comments and Responses

A notice of receipt of the SIO application and proposed IHA was published in the **Federal Register** on September 3, 2010 (75 FR 54095). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission). The public comments can be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their comments and NMFS' responses.

Comment 1: The Commission recommends that NMFS require the applicant to use location-specific environmental parameters to re-estimate safety zones and then recalculate associated exposures. The Commission further suggests that the applicant should be required to use in-situ measurements to verify and, if need be, refine the safety zones prior to or at the beginning of the survey, and that the applicant should be required to determine actual exposures based on refined safety zones, sightability, and relevant detection functions.

Response: NMFS is confident in the peer-reviewed results of the Lamont-Doherty Earth Observatory seismic equipment calibration studies which, although viewed as conservative, are used to determine cruise-specific exclusion zones and which factor into exposure estimates. With the expected low density of marine mammals, combined with the remote, deep-water survey location, NMFS has determined that the exclusion zones identified in

the IHA are appropriate for the survey and that additional field measurement is not necessary at this time. While exposures of marine mammals to acoustic stimuli are difficult to estimate, NMFS is confident that the levels of take authorized herein are estimated based upon the best available scientific information and estimation methodology. The safety zones used to estimate exposure are appropriate and sufficient.

Comment 2: The Commission recommends that NMFS provide additional justification for its preliminary determination that the planned monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified safety zones.

Response: As discussed in the proposed rule, combined with the fact that a portion of marine mammals would be expected to avoid exposure to the higher levels of sound present within the designated safety zone, as well as the comparatively small size of the safety zone, NMFS believes that the planned monitoring program will be sufficient to, with reasonable certainty, minimize the exposure of marine mammals to sound within the identified exclusion zones (EZ). This monitoring, along with the required mitigation measures, will help ensure the authorized taking effects the least practicable adverse impact on the affected species or stocks and will have a negligible impact on the affected species or stocks. Until proven technological advances are made, nighttime mitigation measures during operations include combinations of the use of protected species observers (PSOs) and night vision devices. In the event of a complete shut-down of the airgun array, for mitigation or repairs, airgun operations will be suspended until nautical twilight-dawn (when PSOs are able to clear the EZ). Airgun operations will not begin until the entire EZ radius is visible for at least 30 minutes.

Comment 3: The Commission recommends that NMFS propose to SIO that it revise its study design to include collection of meaningful baseline data on the distribution and behavior of marine mammals.

Response: The purpose of this cruise is for marine geophysical research, not to conduct a dedicated marine mammal research survey. Extending or altering the survey is not practicable from either an operational or research standpoint for the applicant. Due to the remote location of the survey and the length of time needed to conduct the requested research, there may be little time left for the vessel to operate without the need for refueling and servicing.

During the cruise, there will be significant amounts of transit time pre- and post-survey during which PSOs will be on watch (*e.g.,* prior to and after the seismic portions of the survey). The collection of this observational data by PSOs may provide meaningful baseline data on marine mammals, but it is unlikely that the information would result in any statistically robust conclusions for this particular seismic survey. As the monitoring program is currently devised, one PSO (at minimum) will be on watch not only during all daylight airgun operations, or start-up of airguns at any time, but at all times when effective observation is possible. Any further revisions of study design are impractical.

In addition, SIO is not responsible for the study design. Through a cooperative agreement with the NSF, SIO is the operator of the *Melville,* which hosts the field research program. The study is designed by the Principal Investigator and is submitted to NSF as a proposal for funding consideration and subsequently reviewed by a merit review panel. This study was selected based on its scientific merits, and extension or modification of the field component would require scientific justification and NSF approval and potentially further merit review.

Comment 4: The Commission recommends that NMFS extend the monitoring period to at least one hour before initiation of seismic activities and at least one hour before the resumption of airgun activities after a power-down because of a marine mammal sighting within a safety zone.

Response: As the Commission points out, several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes, however, for the following reasons NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the start-up of airguns: (1) In most cases PSOs are making observations during times when seismic sources are not being operated and will actually be observing prior to the 30 min observation period anyway, (2) the majority of the species that may be exposed do not stay underwater more than 30 minutes, and (3) if deep-diving individuals happened to be in the area in the short time immediately prior to the pre-start-up monitoring and if an animal's maximum underwater time is 45 min, there is only a one in three chance that the last random surfacing would be prior to the beginning of the required 30 min monitoring period.

Also, seismic vessels are moving continuously (because of the long, towed array) and NMFS believes that unless the animal submerges and follows at the speed of the vessel (highly unlikely, especially when considering that a significant part of their movements is vertical [deep-diving]), the vessel will be far beyond the length of the safety radii within 30 min, and therefore it will be safe to resume acquisition. Finally, due to the nature of the seismic source to be used during the survey, power-down (as mentioned in the Commission's comment) will not be used as a mitigation measure.

In addition, mitigation measures are required to be "practicable." NMFS believes that the framework for visual monitoring will (1) be effective at spotting almost all species for which take is requested; and (2) that imposing additional requirements, such as those suggested by the Commission, would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zones. The Commission's recommendation would cause additional impact on the science mission, limiting acquisition opportunity without dramatically increasing overall effectiveness of visual monitoring.

Comment 5: The Commission recommends that NMFS continue to require ramp-up and power-down procedures as a mitigation measure pending the outcome of a meeting to discuss these procedures.

Response: NMFS will continue to require ramp-up and power-down procedures as mitigation measures, when applicable, unless or until these measures are proven to be ineffective or other measures are proven to be more effective.

Comment 6: The Commission recommends that NMFS not include detailed information and analyses for species that are not expected to be in the proposed survey area in future **Federal Register** notices.

Response: NMFS agrees that detailed information and analyses for species that are not expected to be in the proposed survey area should not be included in **Federal Register** notices. NMFS considers the information included in the **Federal Register** notice of proposed IHA (75 FR 54095, September 3, 2010) in this case to be necessary justification for determinations to not authorize take for certain species.

In closing, NMFS is planning to meet with the Commission to further discuss the broad issues raised in their

comments, which relate to more than just the IHA contemplated here.

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

Forty-three species of marine mammals, including 29 odontocetes, 7 mysticetes, 6 pinnipeds, and the marine sea otter (*Enhydra lutris*), are known to occur in the ETP. Of these, 21 cetacean species are likely to occur in the proposed survey areas in the ETP during October-November (see Table 2 in this document), and are considered further here. Three of these cetacean species are listed under the Endangered Species Act (ESA) as Endangered: The sperm (*Physeter macrocephalus*), humpback (*Megaptera novaeangliae*), and blue (*Balaenoptera musculus*) whales.

NMFS has presented a more detailed discussion of the status of these stocks and their occurrence in the ETP in the notice of the proposed IHA (75 FR 54095, September 3, 2010).

Potential Effects on Marine Mammals

Summary of Potential Effects of Airgun Sounds

Level B harassment of cetaceans has the potential to occur during the seismic survey due to acoustic stimuli caused by the firing of airguns, which introduces sound into the marine environment. The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

The notice of the proposed IHA (75 FR 54095, September 3, 2010) included a discussion of the effects of sounds from airguns on mysticetes and odontocetes, including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. Additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels can be found in SIO's application and NMFS' EA. The notice of the proposed IHA also included a discussion of the potential effects of the multibeam echosounder (MBES) and the sub-bottom profiler (SBP). Because of the shape of the beams of these sources and their power, NMFS believes it unlikely that marine mammals will be exposed to either the MBES or the SBP at levels at or above those likely to cause harassment. Further, NMFS believes that the brief exposure of cetaceans to a few signals from the multi-beam bathymetric sonar system is not likely to result in the harassment of marine mammals.

Anticipated Effects on Marine Mammal Habitat

A detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates was included in the proposed IHA (75 FR 54095, September 3, 2010). Based on the discussion in the proposed IHA notice and the nature of the activities (limited duration), the authorized operations are not expected to result in any permanent impact on habitats used by marine mammals, including the food sources they use. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

Mitigation

In order to issue an incidental take authorization (ITA) under sections 101(a)(5)(A) and (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 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 (where relevant).

Mitigation and monitoring measures to be implemented for the seismic survey have been developed and refined during previous SIO seismic studies and associated EAs, IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of procedures required by past IHAs for other similar projects and on best practices recommended in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below.

Mitigation measures to be implemented by SIO during the survey include (1) visual monitoring by protected species observers (discussed later in this document), (2) establishment of an exclusion zone (EZ), (3) speed or course alteration, provided that doing so will not compromise operational safety requirements, (4) GI airgun shut down procedures, and (5) ramp-up procedures. Although power-down procedures are often standard operating practice for seismic surveys, they will not be used here because powering down from two airguns to one airgun would make only a small difference in the 180-dB safety radius. The difference is not enough to allow continued one-airgun operations if a mammal came within the safety radius for two airguns.

Exclusion Zones—As discussed previously in this document, NMFS has determined that for acoustic effects, using acoustic thresholds in combination with corresponding safety radii is an effective way to consistently apply measures to avoid or minimize the impacts of an action. Thresholds are used to establish a mitigation shut-down, or exclusion, zone, i.e., if an animal enters an area calculated to be ensonified above the level of an established threshold, a sound source is shut down.

As a matter of past practice and based on the best available information at the time regarding the effects of marine sound, NMFS estimates that Level A harassment from acoustic sources may occur when cetaceans are exposed to levels above 180 dB re 1 μPa (rms) level. NMFS also considers 160 dB re 1 μPa (rms) as the criterion for estimating the onset of Level B harassment from acoustic sources producing impulse sounds, as in this seismic survey.

Empirical data concerning the 180– and 160–dB distances have been acquired based on measurements during the acoustic verification study conducted by L–DEO in the northern Gulf of Mexico from May 27–June 3, 2003 (Tolstoy *et al.,* 2004). The empirical data indicate that, for this survey, the assumed 180– and 160–dB radii are 40 m (131.2 ft) and 400 m (1,312.3 ft), respectively (see Table 1 in this document).

TABLE 1—PREDICTED DISTANCES TO WHICH SOUND LEVELS ≥190, 180 AND 160 DB RE 1 μPA (RMS) MIGHT BE RECEIVED FROM TWO 45 IN^3 GI AIRGUNS THAT WILL BE USED DURING THE SEISMIC SURVEYS IN THE EASTERN TROPICAL PACIFIC OCEAN DURING OCTOBER–NOVEMBER 2010

[Distances are based on model results provided by L–DEO.]

Source and volume	Tow depth (m)	Water depth	Estimated Distances at Received Levels (m)	
			180 dB	160 dB
Two GI airguns, 45 in^3 each	2	Deep (>1,000 m)	40	400

Speed or Course Alteration—If a marine mammal is detected outside the EZ but is likely to enter it based on relative movement of the vessel and the animal, and if safety and scientific objectives allow, the vessel speed and/or course will be adjusted to minimize the likelihood of the animal entering the EZ. In the event that safety and/or scientific objectives do not allow for alteration of speed and/or course as a needed mitigation measure, shut-down procedures will still be utilized (see below). Major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays but are possible in this case because only a small source and short streamers will be used.

Shut-down Procedures—If a marine mammal is detected by PSOs outside the EZ but is likely to enter the EZ, and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the EZ, the airgun array, MBES, and SBP will be shut down before the animal is within the EZ. Likewise, if a marine mammal is already within the EZ when first detected, the airgun array, MBES, and SBP will be shut down immediately. Following a shut down, seismic activity will not resume until the marine mammal has cleared the EZ. The animal will be considered to have cleared the EZ if it (a) is visually observed to have left the EZ, or (b) has not been seen within the EZ for 15 min in the case of small odontocetes, or has not been seen within the EZ for 30 min in the case of mysticetes and large odontocetes, including sperm and beaked whales.

Ramp-up Procedures—A ramp-up procedure will be followed when the GI airguns begin operating after a specified period without GI airgun operations. It is proposed that, for the present cruise, this period would be approximately 1–2 min. This period is based on the 180–dB radii for the GI airguns (see Table 1 in this document) in relation to the planned speed of the *Melville* while shooting. Ramp-up will begin with a single GI airgun (45 in^3). The second GI airgun (45 in^3) will be added after 5 min. During ramp up, the PSOs will monitor the exclusion zone, and, if marine mammals are sighted, a shut-down will be implemented as though both GI airguns were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp-up will not commence. If one GI airgun has operated, ramp-up to full power will be permissible at night or in poor visibility on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single GI airgun and could move away if they choose. A ramp-up from a shut-down may occur at night, but only when the entire EZ is visible, and it has been determined from the pre-ramp up watch that the EZ is clear of marine mammals. Ramp-up of the GI airguns will not be initiated if a marine mammal is sighted within or near the applicable EZ during day or night.

NMFS has carefully evaluated the applicant's proposed mitigation 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.

Monitoring and 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.

SIO will sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the IHA. SIO's Monitoring Plan is described below this section and was planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. SIO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical.

Vessel-Based Visual Monitoring

Three protected species observers (PSOs) will be based aboard the seismic source vessel for the duration of the cruise and will watch for marine mammals near the vessel during daytime airgun operations and during start-up of airguns at any time. Watches will be conducted by at least one observer 100% of the time during seismic surveys in daylight hours. Daylight observation by at least one observer will continue during non-seismic periods, as long as weather conditions make observations meaningful, for comparison of sighting rates and animal behavior during periods with vs. without airgun operations. PSOs will be appointed by SIO with NMFS concurrence after a review of their qualifications.

The *Melville* is a suitable platform for marine mammal observations. The observer platform is located one deck below and forward of the bridge (12.46 meters (40.88 ft) above the waterline), affording a relatively unobstructed 180-degree forward view. Aft views can be obtained along the port and starboard decks. During daytime hours, the observer(s) will scan the area systematically using reticulated 25 × 150 big-eye binoculars and 7 × 50 hand-held binoculars to determine bearing and distance of sightings. A clinometer is used to determine distances of animals in close proximity to the vessel. Hand-held fixed rangefinders and distance marks on the ship's side rails are used to measure the exact location of the safety zone. Laser rangefinders, which have proven to be less reliable for open water sighting, are also provided. During darkness, night-vision equipment will be available. The PSOs will be in wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or GI airgun shut down.

Before commencing seismic operations during daylight hours, two observers will maintain a 360-degree watch for all marine mammals for at least 30 minutes prior to the start of seismic operations after an extended shutdown of the airguns (1–2 minutes, depending on vessel speed). If no marine mammals are observed within the EZ during this time, the observers will notify the seismic personnel of an "all clear" status. Watch periods are scheduled as a 2-hour rotation. The observers continually scan the water from the horizon to the ship's hull, and forward of 90 degrees from the port and starboard beams. Based on PSO observations, the GI airgun(s) will be shut down (as described earlier in this document) when marine mammals are detected within or about to enter a designated EZ that corresponds to the 180-dB re 1 μPa (rms) isopleth. The PSOs will continue to maintain watch to determine when the animal(s) are outside the EZ, and airgun operations will not resume until the animal has left that EZ. The predicted distance for the 180-dB EZ is listed in Table 1 earlier in this document. Seismic operations will resume only after the animals are seen to exit the safety radius or after no further visual detection of the animal for 15 minutes (for small odontocetes and pinnipeds) or 30 minutes (for mysticetes and large odontocetes, including beaked whales).

The bridge officers and other crew will be instructed to alert the observer on watch of any suspected marine mammal sighting. If needed, the bridge will be contacted in order to maneuver the ship to avoid interception with approaching marine mammals.

PSO Data and Documentation

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document reactions or lack thereof. Data will be used to estimate numbers of animals potentially "taken" by harassment (as defined in the MMPA). They will also provide information needed to order a shutdown of the seismic source when a marine mammal is within or near the EZ. When a sighting is made, the following information about the sighting will be recorded:

- Species, group size, and age/size/sex categories (if determinable); behavior when first sighted and after initial sighting; heading (if consistent), bearing and distance from seismic vessel; sighting cue, apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.); and behavioral pace; and
- Time, location, heading, speed, activity of the vessel, sea state, visibility, cloud cover, and sun glare.

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

All observations, as well as information regarding seismic source shutdown, will be recorded in a standardized format. Data collection procedures are adapted from the line-transect protocols developed by the SWFSC for their marine mammal abundance research cruises. A laptop computer is located on the observer platform for ease of data entry. The computer is connected to the ship's Global Positioning System, which allows a record of time and position to be made at 3-minute intervals and for each event entered (such as sightings, weather updates and effort changes). Data accuracy will be verified by the PSOs at sea and preliminary reports will be prepared during the field program and summaries forwarded to the SIO's shore facility and to NSF weekly or more frequently. PSO observations will provide the following information:

- The basis for decisions about shutting down the airgun arrays;
- Information needed to estimate the number of marine mammals potentially "taken by harassment", which will be reported to NMFS;
- Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; and
- Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

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

All injured or dead marine mammals (regardless of cause) will be reported to NMFS as soon as practicable. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive), and photo or video, if available.

Estimated Take of Marine Mammals by Incidental Harassment

With respect to the activities described 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].

All anticipated takes will be by Level B harassment, involving temporary changes in behavior. The mitigation and monitoring measures described herein are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury or mortality is considered remote. However, as noted earlier, there is no specific information demonstrating that injurious or lethal "takes" would occur even in the absence of the planned mitigation and monitoring measures. The sections here describe methods to estimate "take by Level B harassment" and present estimates of the numbers of marine mammals that might be affected during the proposed seismic program. The estimates of "take" are based on data collected in the ETP by NMFS SWFSC during 12 ship-based cetacean and ecosystem assessment surveys

conducted during July–December from 1986–2006.

It is assumed that, during simultaneous operations of the seismic sources and the other sources, any marine mammals close enough to be affected by the MBES or SBP would already be affected by the seismic sources. However, whether or not the seismic sources are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (e.g., narrow downward-directed beam) and other considerations described above, such as the unlikelihood of being exposed to the source at higher levels and the fact that it would likely only be for one or two pulses. Such reactions are not considered to constitute "taking" (NMFS, 2001). Therefore, no additional allowance is included for animals that might be affected by sound sources other than the seismic sources (*i.e.,* airguns).

Extensive systematic ship-based surveys have been conducted by NMFS SWFSC for marine mammals in the ETP. SWFSC has recently developed habitat modeling as a method to estimate cetacean densities on a finer spatial scale than traditional line-transect analyses by using a continuous function of habitat variables, *e.g.,* sea surface temperature, depth, distance from shore, and prey density (Barlow *et al.,* 2009). The models have been incorporated into a web-based Geographic Information System (GIS) developed by Duke University's Department of Defense Strategic Environmental Research and Development Program (SERDP) team in close collaboration with the SWFSC SERDP team (Read *et al.,* 2009). The GIS was used to obtain densities for the 10 cetaceans in the model (Bryde's whale, blue whale, *Mesoplodon* spp., rough-toothed, bottlenose, pantropical spotted, spinner, striped, and short-beaked common dolphins, and short-finned pilot whale) in each of eight areas: The four proposed survey areas (see Figure 1 in SIO's application), and corridors 1° wide and centered on the tracklines between the survey areas and from the southernmost survey area to the EEZ of Peru. For species sighted in SWFSC surveys whose sample sizes were too small to model density (sperm whale, humpback whale, Cuvier's beaked whale, Fraser's dolphin, Risso's dolphin, melon-headed, pygmy killer, false killer, and killer whales), SIO used densities from the surveys conducted during summer and fall 1986–1996, as summarized by Ferguson and Barlow (2001). Densities were calculated from Ferguson and Barlow (2003) for 5° x 5° blocks that include the proposed survey areas and corridors. Those blocks included 27,275 km (16,947.9 mi) of survey effort in Beaufort sea states 0–5 and 2,564 km (1,593.2 mi) of survey effort in Beaufort sea states 0–2. Densities were obtained for an additional eight species that were sighted in one or more of those blocks.

Oceanographic conditions, including occasional El Nino and La Nina events, influence the distribution and numbers of marine mammals present in the ETP, resulting in considerable year-to-year variation in the distribution and abundance of many marine mammal species (Escorza-Trevino, 2009). Thus, for some species, the densities derived from recent surveys may not be representative of the densities that will be encountered during the proposed seismic survey.

Table 3 in SIO's application gives the average (or "best") and maximum densities for each species of cetacean likely to occur in the study area, *i.e.,* species for which densities were obtained or assigned. These densities have been corrected for both detectability and availability bias by the study authors. Detectability bias is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias refers to the fact that there is less than 100 percent probability of sighting an animal that is present along the survey trackline. The estimated numbers of individuals potentially exposed are presented next based on the 160-dB re 1 µPa (rms) Level B harassment criterion for all cetaceans. It is assumed that marine mammals exposed to airgun sounds at that level might change their behavior sufficiently to be considered "taken by harassment".

It should be noted that the following estimates of "takes by harassment" assume that the surveys will be undertaken and completed; in fact, the planned number of line-kilometers has been increased to accommodate lines that may need to be repeated, equipment testing, etc. As is typical on offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated EZ will result in the shutdown of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160-dB re 1 µPa (rms) sounds are precautionary and probably overestimate the actual numbers of marine mammals that might be taken. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely. There is some uncertainty about the representativeness of the data and the assumptions used in the calculations presented here. However, the approach used here is believed to be the best available approach.

The number of different individuals that may be exposed to GI airgun sounds with received levels ≥160 dB re 1 µPa (rms) on one or more occasions was estimated by considering the total marine area that would be within the 160-dB radius around the operating airgun array on at least one occasion, along with the expected density of animals in the area. The proposed seismic lines do not run parallel to each other in close proximity, which minimizes the number of times an individual mammal may be exposed during the survey; in this case, an individual could be exposed 1.01 times on average. The numbers of different individuals potentially exposed to ≥160 dB re 1 µPa (rms) were calculated by multiplying the expected species density, times the anticipated area to be ensonified to that level during GI airgun operations.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by "drawing" the applicable 160-dB buffer (see Table 1 in this document) around each seismic line, and then calculating the total area within the buffers. Areas where overlap occurred (because of intersecting lines) were included only once when estimating the number of individuals exposed.

Applying the approach described here, approximately 4,340 km^2 (1,675.7 mi^2) would be within the 160-dB isopleth on one or more occasions during the surveys. In calculating exposure estimates, this figure was increased by 25% (*i.e.,* to 5,425 km^2) in order to account for the potential need to re-survey lines or other contingency. This approach does not allow for turnover in the mammal populations in the study area during the course of the survey. That might underestimate actual numbers of individuals exposed, although the conservative distances used to calculate the area may offset this. In addition, the approach assumes that no cetaceans will move away or toward the trackline as the *Melville* approaches in response to increasing sound levels prior to the time the levels reach 160 dB. Another way of interpreting the estimates that follow (Table 2 in this document) is that they

represent the number of individuals that are expected (in the absence of a seismic program) to occur in the waters that will be exposed to ≥160 dB re 1 μPa (rms). The take estimates presented here do not take the proposed mitigation measures into consideration and thus are likely to be overestimates.

TABLE 2—THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 160 DB DURING SIO'S PROPOSED SEISMIC SURVEY IN THE EASTERN TROPICAL PACIFIC OCEAN IN OCT–NOV 2010. THE PROPOSED SOUND SOURCE IS A PAIR OF GI AIRGUNS. RECEIVED LEVELS ARE EXPRESSED IN DB RE 1 μPA (RMS) (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). SEE TABLES 2–4 IN SIO'S APPLICATION FOR FURTHER DETAIL.

Species	Number of individuals exposed (best) [1]	Approx. % regional population (best) [2]	Take authorization
Mysticetes			
Bryde's whale (*Balaenoptera edeni*)	3	0.02	3
Blue whale (*Balaenoptera musculus*)	**2	0.05	2
Humpback whale (*Megaptera novaeangliae*)	**2	[3] NA	2
Odontocetes			
Sperm whale (*Physeter macrocephalus*)	22	0.09	22
Cuvier's beaked whale (*Ziphius cavirostris*)	10	0.05	10
Mesoplodon sp. (unidentified)	**2	<0.01	**2
Rough-toothed dolphin (*Steno bredanensis*)	9	0.01	*15
Pantropical spotted dolphin (*Stenella attenuata*)	**68	0.01	*131
Spinner dolphin (*Stenella longirostris*)	21	<0.01	*109
Bottlenose dolphin (*Tursiops truncatus*)	**83	0.02	**83
Striped dolphin (*Stenella coeruleoalba*)	192	<0.01	192
Fraser's dolphin (*Lagenodelphis hosei*)	6	<0.01	*440
Short-beaked common dolphin (*Delphinus delphis*)	777	0.02	777
Pygmy killer whale (*Feresa attenuata*)	**4	0.01	*30
Melon-headed whale (*Peponocephala electra*)	**16	0.03	*258
Risso's dolphin (*Grampus griseus*)	**56	0.05	**56
False killer whale (*Pseudorca crassidens*)	**3	0.01	*11
Killer whale *(Orcinus orca*)	5	0.05	5
Short-finned pilot whale (*Globicephala macrorhynchus*)	**35	0.01	**35

* Requested take authorization increased from 'best' exposure estimate to mean group size as reported in Ferguson *et al.* (2006).
** Rounded-up, where proposed IHA (75 FR 54095, September 3, 2010) presented figures rounded down. See Description of the Specified Activity in this document for discussion.
[1] Best (mean) estimate density are from Table 3 of SIO's application. Humpback whale estimates calculated independently using methodology described previously.
[2] Regional population size estimates are from Table 2 in the proposed IHA (75 FR 54095, September 3, 2010).
[3] Southern Hemisphere population sizes are poorly understood. However, the number of individuals potentially exposed is low relative to regional population.

Negligible Impact and Small Numbers Analysis

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 21 species of marine mammals (including three species categorized as *Mesoplodon* sp.) could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than one percent) relative to the population size.

No takes by (Level A harassment), serious injury, or mortality are anticipated to occur as a result of the SIO's marine geophysical survey, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities, and these takes are not expected to occur in a place that is of specific biological importance to marine mammals, such as in a known breeding, calving, or feeding area, as no such times or places are known for the project location or time. If such a place, previously unknown, does exist in the project area, NMFS would still anticipate that the impacts would be negligible due to their temporary nature in space and time. Due to the nature, degree, and context of the behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

For reasons stated previously, the specified activities associated with the survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that cetaceans would have to be closer than 40 m (0.025 mi) in deep water when the full array is in use at a 2 m (6.6 ft) tow depth from the vessel to be exposed to levels of sound

believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 400 m (0.25 mi) in deep water when the full array is in use at a 2 m (6.6 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel;

(5) The incorporation of other required mitigation measures (*i.e.,* ramp-up, shut-down, temporal and spatial avoidance, and additional mitigation measures); and

(7) The relatively limited duration and geographically widespread distances of the seismic survey (approximately 15 days).

As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the monitoring and mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (see Table 2) is estimated to be small, less than one percent of any of the estimated population sizes based on the data disclosed in Table 2 of this notice, and has been mitigated to the lowest level practicable through incorporation of the monitoring and mitigation measures mentioned previously in this document. Also, there are no known important reproductive or feeding areas in the action area.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine geophysical survey in the ETP, October through November 2010, 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 operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led NMFS to determine that this action will have a negligible impact on the species in the specified geographic region.

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 SIO's planned 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 the marine geophysical survey 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

Of the 21 species of marine mammals that may occur in the survey area, three are listed as endangered under the ESA, including the humpback, blue, and sperm whales. Under Section 7 of the ESA, NSF had initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this seismic survey. NMFS' Office of Protected Resources, Permits, Conservation and Education Division, also initiated formal consultation under Section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion (BiOp) evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, consistent with the requirements for mitigation and monitoring set forth in the IHA, authorizing incidental take. On October 15, 2010, NMFS concluded formal Section 7 consultation with itself and issued a BiOp which concluded that the proposed action and issuance of the IHA are not likely to jeopardize the continued existence of the humpback, blue, and sperm whales and leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles. The BiOp also concluded that designated critical habitat for these species does not occur in the action area and would not be affected by the survey. SIO must comply with the Relevant Terms and Conditions of the Incidental Take Statement corresponding to NMFS' BiOp issued to both NSF and NMFS' Office of Protected Resources.

National Environmental Policy Act (NEPA)

To meet NMFS' National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) requirements for the issuance of an IHA to SIO, NMFS has prepared an Environmental Assessment (EA) titled "*Issuance of an Incidental Harassment Authorization to the Scripps Institution of Oceanography to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey off of Central and South America in the Eastern Tropical Pacific Ocean, October-November 2010*". This EA incorporates by reference the NSF's Environmental Analysis Pursuant To Executive Order 12114 (NSF, 2010) and an associated report (Report) prepared by LGL Limited Environmental Research Associates (LGL) for NSF, titled, "*Environmental Assessment of a Marine Geophysical Survey by the R/V Melville in the Pacific Ocean off Central and South America, October-November 2010*" (LGL, 2010) by reference pursuant to 40 Code of Federal Regulations (CFR) 1502.21 and NOAA Administrative Order (NAO) 216–6 § 5.09(d). NMFS' EA analyzes the direct, indirect and cumulative environmental impacts of the specified activities on marine mammals including those listed as threatened or endangered under the ESA. NMFS also evaluated and considered comments provided by the public in finalizing the EA and addressing the intensity of impacts to marine mammals

The NMFS has made a Finding of No Significant Impact (FONSI) and, therefore, will not prepare an environmental impact statement for the issuance of an IHA to SIO for this activity. The EA and the NMFS FONSI for this activity are available upon request (see **ADDRESSES**).

Determinations

NMFS has determined that the impact of conducting the specific seismic survey activities described in this notice and the IHA request in the specific geographic region in the eastern tropical Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, NMFS proposes to issue an IHA to SIO for conducting a marine geophysical survey in the eastern tropical Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Dated: October 15, 2010.

Helen M. Golde,

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

[FR Doc. 2010–26547 Filed 10–20–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ53

Taking and Importing of Marine Mammals

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

ACTION: Notice; annual affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of El Salvador under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by El Salvadorian-flag purse seine vessels or purse seine vessels operating under El Salvadorian jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of El Salvador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The affirmative finding renewal is effective from April 1, 2010, through March 31, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–3230; fax 562–980–4027.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Republic of El Salvador or obtained from the IATTC and the Department of State and has determined that El Salvador has met the MMPA's requirements to receive an annual affirmative finding renewal.

After consultation with the Department of State, the Assistant Administrator issued the Republic of El Salvador's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by El Salvadorian-flag purse seine vessels or purse seine vessels operating under El Salvadorian jurisdiction. This annual renewal of El Salvador's affirmative finding will remain valid through March 31, 2011.

Dated: October 15, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–26652 Filed 10–20–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS), Mississippi Barrier Island Restoration, Mississippi Coastal Improvements Program (MsCIP) for Hancock, Harrison, and Jackson Counties, MS

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) to the MsCIP Comprehensive Plan and Integrated Programmatic EIS, prepared in June 2009, which evaluated comprehensive water resource improvements associated with hurricane and storm damage risk reduction, shoreline erosion, salt water intrusion and fish and wildlife preservation in three coastal counties of Mississippi. As described in the Comprehensive Plan, the SEIS will address potential impacts associated with the comprehensive restoration of the Mississippi barrier islands. These actions are related to the consequences of hurricanes in the Gulf of Mexico in 2005 and will be used as a basis for ensuring compliance with the National Environmental Policy Act (NEPA).

ADDRESSES: Questions about the proposed action and the DSEIS should be addressed to Mr. Larry Parson, or Dr. Susan Ivester Rees, Planning and Environmental Division, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Parson, (251) 694–3139 or e-mail at *larry.e.parson@usace.army.mil* or Dr. Susan Ivester Rees, (251) 694–414, or e-mail at *susan.i.rees@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Hurricane Katrina made landfall in Mississippi on August 29, 2005 causing catastrophic damage to lives, property, and natural resources throughout coastal Mississippi. In response, the U.S. Congress directed the Secretary of the Army through the Corps of Engineers (the Corps) to conduct an