

one gray whale per day of pile driving. Upon further consultation with NMFS Southwest Regional Office, NMFS is proposing to include harbor porpoise as a species potentially taken by pile driving, due to the recorded, albeit infrequent, sightings of harbor porpoises within San Francisco Bay.

The Exploratorium estimates an average of three piles would be driven in a single day. Given 69 piles in total, pile driving would occur for approximately 23 days over the life of the project. Therefore, NMFS is proposing to authorize annual take, by Level B harassment only, of 38 Pacific harbor seals, 19 California sea lions incidental to the Exploratorium's pile driving activities. Due to the infrequent, but potential presence of harbor porpoise and gray whales in the area, NMFS is also proposing to authorize the take of 28 harbor porpoise and five gray whales, annually, based on consultation with the NMFS Southwest Regional Office, NMFS. These numbers are conservative and indicate the maximum number of animals expected to occur within the Level B harassment isopleth (1,900 m). Estimated and proposed level of take of each species is less than one percent of the affected stock population and therefore is considered small in relation to the population numbers previously set forth. The most recent harbor seal counts estimate the California stock of Pacific harbor seals at 34,233 individuals and the population appears to be stabilizing at what may be their carrying capacity. The abundance of the U.S. stock of California sea lions is estimated to be 238,000 individuals and the stock is approaching carrying capacity. Any harbor porpoises encountered during the Exploratorium relocation project would likely be part of the San Francisco-Russian River stock which has an estimated abundance of 9,189 animals and has steadily increased since 1993 (although the increase is not statistically significant). Lastly, the most recent 2008 stock assessment report estimated the Eastern North Pacific gray whale stock to be approximately 18,813 individuals with an increasing population trend over the past several decades.

#### 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."

NMFS has determined that the impact of pile driving within the

Exploratorium's action area, as described in this notice and the IHA application, may result in the 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 use is not implicated for this action.

For reasons stated previously in this document, the specified activities associated with relocation of the Exploratorium are not likely to cause TTS, PTS, or other non-auditory injury, serious injury, or death to affected marine mammals because of the following:

- (1) The fact that sound pressure levels from vibratory pile driving in San Francisco Bay will not exceed 180 dB rms;
- (2) The limited use of an impact hammer during pile driving;
- (3) The use of sound attenuation devices (e.g., wood block, bubble curtain) during all impact hammering;
- (4) The monitoring requirements during all impact pile driving and during vibratory pile driving two full days per week; and
- (5) The incorporation of other required mitigation measures (i.e., shut-down, soft-starts).

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 required 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 pile driving activities, the number of potential Level B incidental harassment takings is estimated to be small (less than one percent) relative to the estimated population sizes and has been mitigated to the lowest level practicable through incorporation of the monitoring and mitigation measures previously addressed in this document. No known foraging sites occur around Piers 15/17 and the closest pinniped haul out area is 3 km away.

#### Impact on Availability of Affected Species for Taking for Subsistence Uses

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

#### Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area; therefore, ESA consultation on issuance of the proposed IHA was not required. However, other ESA-listed species under NMFS' jurisdiction do occur within the action area. On May 28, 2010, the NMFS Southwest Regional Office concluded Section 7 and EFH consultation with the U.S. Army Corps of Engineers (Corps) on issuance of a Corps permit to the Exploratorium. Both parties concurred that adequate measures are in place to avoid, minimize, mitigate, or otherwise offset adverse effects to EFH.

#### National Environmental Policy Act (NEPA)

On October 15, 2010, NMFS released an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Exploratorium relocation project. NMFS determined that issuance of the IHA would not significantly impact the quality of the human environment and that preparation of an Environmental Impact Statement was not required.

Dated: October 14, 2010.

**James H. Lecky,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XZ46

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

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

**ACTION:** Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), is soliciting public comment on an EFP application submitted by Wallace & Associates on behalf of Truex Enterprises. The proposed EFP would extend a previously authorized EFP for an additional year to continue testing the

safety and efficacy of harvesting surfclams and ocean quahogs from the Atlantic surfclam and ocean quahog Georges Bank (GB) Closure Area using a sampling protocol developed by State and Federal regulatory agencies and endorsed by the U.S. Food and Drug Administration (FDA). The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Surfclam and Ocean Quahog regulations and Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. The subject EFP would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for an exemption from the Atlantic surfclam and ocean quahog GB Closure Area. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments must be received on or before November 12, 2010.

**ADDRESSES:** Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is [NERO.EFP@noaa.gov](mailto:NERO.EFP@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: "Comments on 2011 GB PSP Closed Area Exemption." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on 2011 GB PSP Closed Area Exemption." Comments may also be sent via facsimile (fax) to (978) 281-9135.

**FOR FURTHER INFORMATION CONTACT:** Anna Macan, Fishery Management Specialist, phone 978-281-9165. Copies of supporting documents referenced in this notice are available from Anna Macan, Fishery Management Specialist, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at <http://www.nero.noaa.gov/sfd/clams>.

**SUPPLEMENTARY INFORMATION:** The applicant, Wallace & Associates, of Cambridge, MD, requests on behalf of Truex Enterprises, a renewal of their current EFP, which is due to expire on December 31, 2010, to allow the catch and retention for sale of Atlantic

surfclams from within the Atlantic surfclam and ocean quahog GB Closure Area. The GB Closure Area is located east of 69°00' W. long. and south of 42°20' N. lat and has been closed since May 25, 1990, due to the presence of a toxin (saxotoxins) that cause Paralytic Shellfish Poisoning (PSP). Due, in part, to the inability to test and monitor this area for the presence of PSP, this closure was made permanent through Amendment 12 to the FMP in 1999.

The primary goal of the proposed study is to test the efficacy of the sampling protocol that was developed by State and Federal regulatory agencies to test for presence of saxotoxins in shellfish, and thus has been in a trial period through previous EFPs since 2006. This protocol would facilitate the harvest of shellfish from waters susceptible to Harmful Algal Blooms, which produce the saxotoxins, but that are not currently under rigorous water quality monitoring programs by either State or Federal management agencies. A copy of the protocol is available from the NMFS Northeast Region Web site: <http://www.nero.noaa.gov/sfd/clams>.

The proposed project would continue to conduct a trial for the sampling protocol in an exemption zone within the larger 1990 GB Closure Area with one fishing vessel. The exemption zone would not include any Northeast multispecies or essential fish habitat year-round closure areas. This proposed exempted fishing activity would occur during the 2011 calendar year, using surfclam quota allocated to Truex Enterprises under the Federal individual transferable quota program. The applicant has estimated a harvest of 200,000 bushels (1,606,250 L) of surfclams from the exemption area. The exemption area has been tested in cooperation with the FDA from 2006 to the present.

The applicant has obtained endorsements for the EFP and the sampling protocol from the States of Rhode Island, New Jersey, and Delaware, the States in which it intends to land and process the product harvested under the EFP. Each State is responsible for regulating the molluscan shellfish industry within its jurisdiction and ensuring the safety of shellfish harvested within or entering its borders. The sampling protocol and the pilot project that would be authorized by this EFP have also since been endorsed by the executive board of the Interstate Shellfish Sanitation Conference.

The applicants may request minor modifications and extensions to the EFP throughout the course of research. EFP modifications and extensions may be granted without further public notice if

they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

In accordance with NOAA Administrative Order (NAO) 216-6, a Categorical Exclusion or other appropriate National Environmental Policy Act document would be completed prior to the issuance of the EFP. Further review and consultation may be necessary before a final determination is made to issue the EFP. After publication of this document in the **Federal Register**, the EFP, if approved, may become effective following the public comment period.

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

Dated: October 22, 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-XA005

#### North Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council's (NPFMC) Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) Groundfish plan teams will meet in Seattle, WA.

**DATES:** The meetings will be held November 15-19, 2010. The meetings will begin at 9 a.m. on Monday, November 15, and continue through Friday November 19.

**ADDRESSES:** The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Observer Training Room (GOA Plan Team) and Traynor Room (BS/AI Plan Team), Seattle, WA.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

**FOR FURTHER INFORMATION CONTACT:** Jane DiCosimo or Diana Stram, NPFMC; telephone: (907) 271-2809.

**SUPPLEMENTARY INFORMATION:** The plan teams will prepare and review the stock