

(2). Stone Energy Corporation of Lafayette, LA, 70505, on March 19, 2003;

(3). ExxonMobil Production Company of New Orleans, LA, 70161, on March 19, 2003;

(4). Amerada Hess Corporation, 500 Dallas Street, Houston, Texas, 77002, on April 9, 2003;

(5). Hunt Oil Company, P.O. Box 727, Scott, Louisiana, 70583, on April 9, 2003;

(6). Samedan Oil Company, 350 Glenborough, Suite 240, Houston, Texas, 77067-3299, on April 17, 2003;

(7). W&T Offshore Inc., 3900 North Causeway Boulevard, One Lakeway Center, Suite 1200, Metairie, Louisiana, 70002, on April 17, 2003; and

(8). Burlington Resources, 400 N. Sam Houston Parkway E., Suite 1200, Houston, Texas, 77060-3593, on April 28, 2003.

Dated: Apr 30, 2003.

**Laurie K. Allen,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D.121902A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Installation of a New Floating Dock at the U.S. Coast Guard Pier, Monterey, CA

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

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the United States Coast Guard (USCG) to take small numbers of California sea lions and possibly Pacific harbor seals by harassment incidental to the installation of a new floating dock at 100 Lighthouse Avenue in the city and county of Monterey, CA.

**DATES:** This authorization is effective from April 30, 2003, through April 29, 2004.

**ADDRESSES:** A copy of the application may be obtained by writing to Christina Fahy, Protected Species Division,

National Marine Fisheries Service - Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or by telephoning the contact listed here.

**FOR FURTHER INFORMATION CONTACT:** Christina Fahy, Southwest Regional Office, NMFS, (562) 980-4023 or Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713-1401 x163.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

Permission may 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 and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 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. 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"].

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS

must either issue or deny issuance of the authorization.

#### Summary of Request

On August 16, 2002, NMFS received a letter and application from the USCG, requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*), incidental to the installation of a new floating dock in Monterey, CA.

The installation of a new floating dock is needed to provide better and safer access to an 87 ft (26.6 m) Coastal Patrol Boat, *USCGC Hawksbill* (*Hawksbill*). Currently, the *Hawksbill* moors at a fixed wharf which does not meet the USCG's minimum standards for mooring a patrol boat. The tidal range causes severe chafing to the mooring lines and difficulties with the access gangway. The Coast Guard estimates that the cost of mooring line replacement is approximately \$10,000 a year. When the patrol boat is at the dock, a crewmember is required to be continually present to adjust mooring lines and the gangway about every 40 minutes. The *Hawksbill* has a 10-person crew, which is not designed to have one person awake the entire night while in port. Finally, several locally produced gangways, mounted from the wharf, have failed to give adequate access to the *Hawksbill* during the entire tidal cycle. The installation of a floating dock will eliminate the excessive cost to mooring lines and gangway replacement and any unnecessary burden on the crew.

#### Comments and Responses

A notice of receipt of the application and proposed authorization was published on February 6, 2003 (68 FR 6116), and a 30-day public comment period was provided on the application and proposed authorization. The only comments received were from the Marine Mammal Commission (Commission). They stated,

The Commission concurs with the Service's preliminary determination of the short-term impact of conducting the proposed activities will result, at most, in a temporary modification in behavior, including temporarily vacating haulout areas, by California sea lions and Pacific harbor seals, and, as such, is expected to have a negligible impact on the animals. The Commission also concurs that the mitigation measures proposed by the applicant and the monitoring that would be required by the Service appear to be adequate to ensure that the planned activities will not result in the mortality or serious injury of any marine mammal. The Commission therefore recommends that the requested incidental harassment authorization be issued, provided

that the Service is satisfied that the monitoring and mitigation programs will be carried out as described in the application and in the Service's **Federal Register** notice. The Service should also advise the Coast Guard that California sea otters inhabit waters in Monterey area and that an incidental taking authorization from the Fish and Wildlife Service to cover this species may also be needed.

On October 19, 2001, the USCG requested consultation from the U.S. Fish and Wildlife Service (FWS) on the southern sea otter (*Enhydra lutris nereis*) and the brown pelican (*Pelicanus occidentalis*). FWS responded on December 21, 2001, stating, "Based on the information provided in the concurrence request, and given the full implementation of the avoidance measure contained in this request, we concur with your determination that the project is not likely to adversely affect the southern sea otter and the brown pelican. Consequently, further consultation pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended, is not required."

#### **Description of Habitat and Marine Mammals Affected by the Activity**

A description of the Monterey Bay ecosystem and its associated marine mammals can be found in the USCG application (USCG 2002).

#### *Marine Mammals*

General information on California sea lions, harbor seals and other marine mammal species found in central California waters can be found in Caretta et al. (2001) which is available at: [http://www.nmfs.noaa.gov/prot\\_res/readingrm/MMSARS/2002PacificSARs.pdf](http://www.nmfs.noaa.gov/prot_res/readingrm/MMSARS/2002PacificSARs.pdf)

The marine mammals likely to be found in the project area are limited to the California sea lion and harbor seal. The California sea lion primarily uses the central California area to feed during the non-breeding season. California sea lions are regularly observed in the Monterey Harbor area in the autumn, winter, and into the early spring. They regularly haul out on the USCG Jetty. No pupping occurs in the project area.

A small number of harbor seals are also expected to be found in the project area. Harbor seals are distributed throughout the west coast of California. In Monterey Harbor, harbor seals haul out on a rocky outcropping located approximately 300 m (984 ft) inshore of the proposed project site. Harbor seals do not pup at this site, although several pupping sites are located around the Monterey Peninsula within 3 to 20 km (1.9 to 12.4 mi) of the project site.

#### **Potential Effects on Marine Mammals**

It is possible that California sea lions and harbor seals swimming in the project vicinity during pile driving may be subject to elevated sound pressure levels that could produce a temporary shift in the animal's hearing threshold. Construction and human activity around the site could also potentially result in behavioral changes in nearby pinnipeds. California sea lions and harbor seals may temporarily cease normal activities, such as feeding, or pop their heads up above water in response to the noise. They may also be curious and choose to investigate the project site. However, existing evidence shows that most marine mammals tend to avoid loud noises and will likely move away from the project site (Richardson et al., 1995). Disturbance from these activities is expected to have a short-term negligible impact to a number of sea lions and harbor seals. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

During the installation of the floating dock, California sea lion incidental harassment is expected to occur on a daily basis upon initiation of the pile driving. Sea lions are also likely to be initially harassed by the barge tender moving the barge into place. If the animals no longer perceive construction noise and activity as being threatening, they are likely to resume their regular hauling out behavior. The number of sea lions disturbed will vary daily, but animals in the water near the project site or hauled out closest to the project site are more likely to be disturbed than animals hauled out at the farther end of the jetty. Based on past ground surveys, the number of California sea lions that may potentially be harassed could range from 200 to 400, and possibly as many as 600 animals may move each day as a result of the project activities.

Whether harbor seals, reacting to construction noise and associated activity, will move away from the rock outcropping is unknown. While seals are generally thought to be less tolerant of human activities than sea lions, the location of their haulout from the project site may be far enough away that disturbances may be less likely. Seals that are swimming near the project site may be harassed during construction activity, especially pile driving, and may swim away from the immediate area. Less than 20 harbor seals are expected to use the rocky outcroppings within the Monterey harbor during the project period. During aerial surveys

from 1997 to 1999, the maximum number of harbor seals recorded on the rocky outcropping within the Monterey harbor was 15 animals.

#### **Potential Effect on Habitat**

The activity will take place on a part of the Monterey USCG pier that is not used directly by any marine mammal species. Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the rock jetty at the end of the USCG pier by California sea lions and perhaps of the nearby rocky outcropping by Pacific harbor seals while work is in progress or until pinnipeds acclimate to the disturbance. This will not likely result in any permanent reduction in the number of sea lions or seals at these haulouts. Sea lions are regularly disturbed by boats and human activities in Monterey Harbor. In addition, approximately 4–5 m (13.1–16.4 ft) above the harbor seal haul-out, there is a busy bike path and pedestrian walkway. Seals are frequently disturbed year-round due to their proximity to the bike path, particularly during the daytime. The abandonment of either haulout is not anticipated since existing foot traffic, commercial and recreational boating, and human activity currently occurring within the area have not caused long-term abandonment.

Therefore, other than the potential, short-term abandonment by California sea lions and harbor seals of part of their existing haulouts in Monterey Harbor during floating dock installation, no impact on the habitat or food sources of marine mammals are likely from this project.

#### **Mitigation**

Several mitigation measures to reduce the potential for harassment from installation of the floating dock will be implemented by USCG as part of their activity. General restrictions are as follows: the work will be performed during daylight hours only so that potential impacts can be detected more easily and steps can be taken to avoid them; shouting, loud noises, fast movements, and other activities that would disturb the haul-out sites will be minimized (considering human safety concerns foremost); the number of people and the amount of equipment on the USCG pier in close proximity to the sea lion haulout will be restricted to the minimum required to effectively perform the work; all equipment will be kept on the west side of the USCG pier and, as much as possible, out of sight of the sea lion haulout site; a NMFS-approved biological monitor will be on site at all times during the project

operations to monitor marine mammal disturbances and to advise personnel on ways to minimize or avoid disturbances.

General restrictions during pile driving will include: no piles will be driven between the hours of 5 p.m. and 8 a.m. Based on a recommendation from NMFS, the USCG will avoid exposing pinnipeds to unsafe noise levels (190 dB re 1 microPascal-m). Given the acoustic monitoring from pile driving exercises for the Noyo River Bridge, the USCG will establish an initial safety zone of 50 m (164.0 ft) around the pile-driving site. The marine mammal monitor will scan the safety zone for 5 minutes continuously just prior to pile driving to determine whether marine mammals are present. Pile driving will not begin until the safety zone is clear. If an animal is in the safety zone before initiation of the pile driving activity on any given work day, operations will be delayed until the animal has moved a safe distance away. If an animal enters the safety zone while pile driving is occurring, operations will be stopped immediately until the animal has moved beyond the range of the safety zone. In consultation with NMFS, the safety zone may be increased if animals beyond 50 m (164.0 ft) show excessive behavioral changes in response to pile driving operations. If pile driving stops for less than 45 minutes, another 5-minute scan will not be necessary; if it stops for longer than 45 minutes, another scan will be performed.

In order to provide further protection to pinnipeds hauled out near the project area, the USCG will also "dry fire" the hammer prior to operating at full capacity. A "dry fire" occurs when the hammer is raised and dropped with no compression of the pistons, an action which produces approximately 50 percent of the maximum in-air noise level, or 45–55 dB (re 20 microPascal-m). This dry-firing should allow pinnipeds in the area to voluntarily move from the area and should expose fewer animals to loud sounds both underwater and above water.

### Monitoring

NMFS will require the USCG to monitor the impact of the floating dock installation activities on California sea lions and harbor seals in Monterey Harbor. Monitoring will be conducted by one or more NMFS-approved monitors.

In general, the marine mammal monitor(s) will record the date and time of arrival and departure of the monitor and work crew. The monitor will also conduct counts of sea lions on the jetty and counts of pinnipeds in the water

near the project site every hour, commencing one hour before the start of project activity each day and ending 15 minutes after all project activities have ceased. Data on size classes and sex (when possible) of sea lions on the jetty will be collected. Counts of harbor seals will be obtained at the beginning and the end of each work day. If possible, data on size class and sex of animals will be collected. The monitor(s) will also collect information on disturbance reactions, including the number of animals disturbed and the source (including type, location, timing, and duration of disturbance). The monitor will also record environmental conditions, including date, time, cloud cover, visibility, wind direction and velocity, swell direction and height, and tides.

During pile driving operations, the monitor will monitor the 50-meter safety zone, as described above (see Mitigation). The safety zone will be marked with temporary buoys in order to facilitate monitoring efforts.

### Reporting

The USCG will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of California sea lions and harbor seals that may have been disturbed as a result of floating dock installation activities. These reports will include data collected during daily monitoring.

A draft report must be submitted to the Regional Administrator within 60 days after the conclusion of the project. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft report will be considered to be the final report.

### Endangered Species Act

Under section 7 of the Endangered Species Act, NMFS has determined that there will be no effect on listed species under NMFS jurisdiction. In addition, the USCG requested consultation with the FWS on October 19, 2001, for the southern sea otter and the brown pelican. The FWS concurred with the determination that the proposed installation of a floating dock at the U.S. Government Breakwater, Sation Monterey, is not likely to adversely affect the southern sea otter or the brown pelican.

### National Environmental Policy Act

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an Environmental Assessment (EA) on May 9, 1995, that addressed the impacts on the human environment from the issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). In addition, this proposed action, including pile driving, will use pile driving equipment that is less intense and will, therefore, have a lower impact on the marine environment than pile driving equipment used in other surveys for which EAs and resulting FONSI have been prepared previously. This IHA also qualifies for a categorical exclusion under NOAA Administrative Order 216–6. Therefore, a new EA is not required and a new one will not be prepared.

### Conclusions

NMFS has determined that the short-term impact of the floating dock installation, as described in this document and in USCG (2002), should result, at worst, in the temporary modification in behavior by California sea lions and Pacific harbor seals. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury or by death is anticipated, and harassment takes will be at the lowest level practicable due to the incorporation of the mitigation measures mentioned previously in this document.

Since NMFS is assured that the taking would not result in more than the incidental harassment of small numbers of California sea lions and Pacific harbor seals or would not have an unmitigatable adverse impact on the availability of these stocks for subsistence uses and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued. For the above reasons, NMFS has issued an IHA for a 1-year period beginning on the date noted above (see DATES) for the incidental harassment of California sea lions and harbor seals by the installation of a floating dock in Monterey, California, provided the above mentioned monitoring and reporting requirements are incorporated.

Dated: Apr 30, 2003.

**Laurie K. Allen,**

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

[FR Doc. 03-11377 Filed 5-6-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 050103D]

#### Marine Mammals; File No. 881-1710

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

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that the Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664, (Shannon Atkinson, Ph.D., Principal Investigator) has applied in due form for a permit to take harbor seals (*Phoca vitulina*) for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before June 6, 2003.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249.

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson or Amy Sloan, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

To better investigate potential causes of the decline of harbor seals in the Gulf of Alaska, the ASLC is restructuring their captive population to represent young, healthy seals from genetic stocks affected by the Gulf of Alaska decline. To accomplish this, eight recently weaned harbor seals will be captured from the wild over a two to three year period in the Gulf of Alaska for long-term holding and research at the ASLC. Seals will be captured in nets and

transported in kennels to the ASLC for permanent captivity. A maximum of 30 capture attempts will occur per year. During seal capture attempts in the wild, up to 20 seals may incidentally be caught in nets and released, and up to 100 seals may be incidentally disturbed at the haul-out sites. Weaned female pups captured for permanent captivity will be sampled in the wild as follows: sedation or anesthesia; body mass, morphometrics, and 3D photogrammetry; blood, blubber, whisker, and skin samples; body composition; flipper tagging and microchip implant; ultrasound; fecal and urine collection; skin and mucosal swabs; endoscopy; and disease screening. Two accidental mortalities per year are requested during activities conducted in the wild and during transport.

Once at the ASLC, the following will be performed on the harbor seals: monthly health assessments (as described in sampling above); hormone challenge experiments twice yearly; weights and measurements taken up to daily; blood sampling up to once a week; fecal and urine sampling 12 times a year, with dietary markers used four times per year; blubber ultrasound up to daily; bio-electrical impedance once a month; total blood volume determination once a month; deuterium oxide administration and blood sampling once per month; feeding trials four times a year; mucosal swabs, saliva collection, examination of external genitalia up to three times per week; blubber biopsies up to eight times per year; video, photographic, radiographic, digital, and thermal imaging as needed; anesthesia and sedation as deemed necessary by the attending veterinarian. Up to two research-related mortalities per year are requested for the harbor seals once held at ASLC.

This study investigates the importance of lipids in the diets of harbor seals and the long-term effects of high and low lipid diets on the growth, development, maturity, and health of seals. The ASLC proposes to measure a suite of growth and health parameters for seals fed a mixed species diet that differ only with the presence of high and low fat herring and test whether seals that are lean due to lower dietary lipids show, relative to the seals fed a higher lipid diet: (1) Decreased growth rates; (2) delayed reproduction; (3) altered ovulation times; (4) endocrine or immune system function that may adversely affect reproduction or survival; (5) different seasonal or age-related physiological responses affecting digestive efficiency and lipid storage. The following types of samples will be

collected from each of the eight harbor seals held at ASLC: blood, blubber, whisker, skin, urine, feces, and skin and mucosal swabs. The applicant has requested a five-year permit.

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

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 1, 2003.

**Stephen L. Leathery,**

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

[FR Doc. 03-11375 Filed 5-6-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

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

*Title:* Patent Processing (Updating).

*Form Number(s):* PTO/SB/08a/08b/ 21/22/23/24/24A/25/26/27/30/31/32/ 35/36/37/42/43/61/62/63/ 64/64a/67/ 68/91/92/96/97, PTO-2053-A/B, PTO-