

The direct and indirect effects sections of the EIS will present the impacts of each identified alternative on the human environment. Major issues are likely to include: the impact of subsistence and commercial fisheries removals on this stock, the impacts of regulated harvests on the subsistence needs, traditional and cultural values of Alaskan Natives, and co-management of the subsistence harvest under section 119 of the MMPA.

### Public Involvement

Scoping is an open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action. A principle objective of this process is to identify a range of reasonable management alternatives that, with analysis, will provide a clear basis for distinguishing between the alternatives and selecting a preferred alternative.

Scoping meetings will be held on the Pribilof Islands, AK, and in Anchorage, AK. Dates have not been set at this time and will follow the cessation of the 2003 subsistence harvest. Times and locations of the scoping meetings will also be published in a subsequent notice.

Dated: June 11, 2003.

**Donna Wieting,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 031203A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

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

**ACTION:** Notice of issuance of 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) to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolvable Expendable Launch Vehicle (EELV) at South Vandenberg Air Force Base, CA

(VAFB) has been issued to The Boeing Company (Boeing).

**DATES:** Effective from May 20, 2003, until May 20, 2004.

**ADDRESSES:** A copy of the IHA and/or the application is available by writing to Ms. Kaja Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky, (301) 713-2322, ext. 163 or Christina Fahy, (562) 980-4023.

### SUPPLEMENTARY INFORMATION:

#### Background

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

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than 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 taking 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 January 28, 2003, NMFS received an application from Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in smaller numbers. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA, and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point). An Incidental Harassment Authorization (IHA) was issued to Boeing on May 20, 2002 and remains in effect for a one-year period (see 67 FR 36151, May 23, 2002).

### Specified Activities

Additional information of the work proposed for 2003 is contained in the application, which is available upon request (see **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

### Comments and Responses

On April 9, 2003 (68 FR 17351), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. That notice described the activity and anticipated effects on marine mammals. Comments were received from Boeing which requested that the mitigation measure be modified to allow for the continuation of activities while seals are present. As the Notice stated, the rocks near the VAFB harbor are not typically used by large numbers of harbor seals nor is there pupping: "...on average the number of harbor seals hauled out near the site is less than 30 and there is no pupping at nearby sites" (68 Fed. Reg. 17351 at 17353). The monitoring that was performed for the VAFB harbor dredging during the fall of 2001 and

winter of 2002 established that seals routinely hauled out on the adjacent rocks during ongoing activities within the harbor. On several occasions, these seals flushed, apparently due to activities on the dock or in the harbor. However, when they did leave the rocks during low tide they would quickly return or be replaced by other individuals in the same resting place. This quick return to the original haulout suggests that the response was short term and transient. Boeing's experience last year with the dredging and other harbor activities, however, also demonstrated that stopping work when seals are present on the adjacent rocks can have a considerable impact to schedules and costs. The data collected during last year's harbor activities, which is documented in the application for the IHA, supports the conclusion reached by NMFS in the proposed IHA that the occasional flushing of a limited number of seals from the rocks while harbor activities are underway has minimal impact on the species. Accordingly, Boeing requests that the IHA provide that the continuation of activities at VAFB harbor is authorized while seals are present even in the event of flushing seals.

NMFS concurs that continuation of activities would have a minimal impact on pinnipeds and has thus modified the mitigation measures contained in the authorization to allow for continuation of activities while seals are present. The mitigation measures still require marine mammal monitoring during all Boeing activities in the harbor and reporting of any possible disturbance of the harbor seals associated with those activities.

### Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any

flushing or other behaviors as a result of Boeing's activities.

(6) The Delta Mariner and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed 1.5 to 2 knots once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and its mooring dolphins at less than 0.75 knot.

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

### Monitoring

As part of its application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

### Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS 120 days prior to the expiration of this Authorization or within 120 days after the expiration of this Authorization if a new Authorization is not being requested. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these

activities, this will be reported to NMFS immediately.

### Consultation

This action will not affect those marine mammal species listed under the Endangered Species Act (ESA), that are under the jurisdiction of NMFS, as these species are not expected to haulout on VAFB and thereby potentially be affected through harassment and fleeing from the haulout. No other marine species listed under the ESA will be affected by Boeing's harbor activities related to the Delta IV/EELV at VAFB. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001. Southern sea otters were discussed in these documents and FWS recognized that Boeing will restore sea otter habitat (i.e., kelp beds) in the vicinity of the harbor to replace kelp destroyed during dredging. In addition, the FWS noting that VAFB has committed to a southern sea otter monitoring program designed to detect the presence and possible disturbance at the VAFB harbor area during dredging activities.

### NEPA

In accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined, based on the content and analysis of Boeing's request for an IHA, and the Final EA for Harbor Activities Associated with the Delta IV Program at VAFB (ENSRI, 2001) that the proposed issuance of this IHA to Boeing by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Impacts are not expected to be outside the scope of that EA. Therefore, this action meets the definition of a "Categorical Exclusion" and is exempted from further environmental review.

### Determinations

NMFS had determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation will result in the harassment of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals; would have no more negligible impact on these marine mammal stocks; and would not have an

unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and therefore will not be affected. While behavioral modifications may be made by those pinniped species ashore in order to avoid the resultant acoustic and visual stimuli from the activity, there is no potential for large-scale movements, such as stampedes, since harbor seals, California sea lions, and elephant seals haul out in small numbers near the site (maximum number of harbor seals hauled out in one day estimated at 43 seals, averaging at 21 seals per day, maximum number of California sea lions hauled out in one day is estimated at six). The effects of Boeing's harbor activities are expected to be limited to short-term and localized behavioral changes.

Due to the localized nature of these activities, the number of marine mammals potentially taken by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels expected at the site. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

#### Authorization

NMFS has issued an IHA to Boeing for harbor activities related to the Detla IV/EELV program at south VAFB for a 1-year period. A copy of this IHA is available upon request (see **ADDRESSES**). The issuance of this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: June 10, 2003.

**Donna Wieting,**

*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. 061203I]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Steel Drilling Caisson through the Beaufort Sea from Cross Island, McCovey Prospect to Herschel Island, Yukon Territory

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

**ACTION:** Notice of receipt of application and proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received a request from EnCana Oil and Gas (USA) Inc. (EnCana) for an authorization to take small numbers of marine mammals by harassment incidental to movement of a Steel Drilling Caisson (SDC) from Cross Island, McCovey Prospect, AK through the Beaufort Sea to Herschel Island in the Yukon Territory and for associated activities in the Beaufort Sea. If there is a problem with this location for the SDC, the U.S. Outer Continental Shelf waters north of West Dock has been named as the backup location. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize EnCana to incidentally take, by harassment, small numbers of bowhead whales, beluga whales, ringed seals, bearded seals, and spotted seals in the above mentioned areas during August 2003 through January 2004 for SDC preparation, movement, refueling, and removal of equipment. The incidental take of polar bears and walrus from EnCana's planned activities are not covered by this proposed incidental harassment authorization, as these species are under jurisdiction of the U.S. Fish and Wildlife Service (USFWS). EnCana is applying for a Letter of Authorization from the USFWS for potential takes of polar bear and Pacific walrus.

**DATES:** Comments and information must be received no later than July 18, 2003.

**ADDRESSES:** Comments on the application should be addressed to Kaja Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

#### FOR FURTHER INFORMATION CONTACT:

Kimberly Skrupky, (301) 713-2322, ext 163 or Brad Smith, (907) 271-3023.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than 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 taking are set forth.

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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 May 14, 2003, NMFS received an application from EnCana requesting an authorization for the harassment of