

2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on October 3, 2003, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 3, 2003);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 18, 2003); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 6, 2003.

Caratina L. Alston,
United States Secretary, NAFTA Secretariat.
[FR Doc. 03-25632 Filed 10-8-03; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904, NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On October 3, 2003, the Government of Canada filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Second requests were filed on behalf of the Canadian Wheat Board, the Government of Saskatchewan, and the Government of Alberta, respectively. Panel review was requested of the final affirmative Countervailing Duty determination made by the United States Department of Commerce, International Trade Administration, respecting Certain Durum Wheat and Hard Red Spring Wheat from Canada. This determination was published in the **Federal Register**, (68 FR 52747) on September 5, 2003. The NAFTA Secretariat has assigned Case Number USA-CDA-2003-1904-05 to this request.

FOR FURTHER INFORMATION CONTACT:

Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

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Caratina L. Alston,
United States Secretary, NAFTA Secretariat.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090903C]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Survey in the Northwest Atlantic Ocean Near Bermuda

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

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

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic survey in

the Northwest Atlantic Ocean near Bermuda. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than November 7, 2003.

ADDRESSES: Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

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 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. Under Section 3(18)(A), 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; 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.

The term “Level A harassment” means harassment described in subparagraph (A)(i). The term “Level B harassment” means harassment described in subparagraph (A)(ii).

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 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 July 16, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey by the *R/V Maurice Ewing* within the Northwest Atlantic Ocean off the coast of Bermuda near the Bermuda Rise area, between 29° and 35° N and between 61° and 68° W, during November and early December 2003. These operations will take place within the Exclusive Economic Zone (EEZ) of Bermuda and adjacent international waters. Clearance to conduct the seismic survey in the foreign EEZ has been requested from Bermuda (U.K.). The purpose of this project is to determine what physical and chemical changes have been imparted to the tectonic plate as a result of the eruption of the Bermuda volcano. By understanding what portion of the uplift of the seafloor is caused by thermal (temporary) versus chemical (permanent) changes to the plate, it will be possible to predict the rate that volcanoes in the middle of plates will sink beneath the waves.

Description of the Activity

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*, which will conduct the seismic work. The *Maurice Ewing* will deploy an array of 20 airguns as an energy source, and a receiving system consisting of Ocean Bottom Hydrophones (OBH's), 96 sonobuoys, and/or a 6–km (3.2–nm)

towed hydrophone streamer. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. As the airgun array is towed along the survey lines, the towed hydrophone streamer or OBH's will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBH's and sonobuoys will be deployed by the *R/V Maurice Ewing*.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with on-board assistance from the scientists who have proposed the study. The survey will be conducted in the deep ocean depths (>1000 m or 3281 ft) of the Bermuda Rise. The survey program will consist of approximately 2400 km (1296 nm) of survey lines. There will be two intersecting seismic reflection and refraction lines, each approximately 600 km (324 nm) long. One line will be oriented north-south along a magnetic isochron, and the other line will be oriented east-west along the presumed track of the hotspot. The point of intersection of these two lines will be in close vicinity of Bermuda Island. Each of the two lines will be surveyed twice. Along each line, the upper crustal structure will be determined by acquiring multibeam sonar, multichannel seismic (MCS), and sonobuoy refraction data. Then, a linear array of OBH's will be deployed for refraction shooting. The specific configuration of the airgun array will differ between the MCS and OBH surveys (described later in this document). There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing hydrophones as the receiver system. In addition, sonobuoys and OBH's will also be used at times as the receiver system. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey. Seismic surveys will likely commence on November 6, 2003, and continue until the first week of December, 2003. Exact dates of the activity may vary by a few days due to

weather conditions of the need to repeat some lines if data quality is substandard.

The *R/V Maurice Ewing* will be used as the source vessel. It will tow the 20-airgun array and a streamer containing hydrophones along predetermined lines. During seismic acquisition, the vessel will travel at 4–5 knots (7.4–9.3 km/hr). During the MCS survey, the airgun array to be used will consist of 20 2000-psi Bolt airguns. The standard 20-gun array will include airguns ranging in chamber volume from 80 to 850 in³, with a total volume of 8,575 in³. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft) (across track) by 9 m (30 ft) (along track). Seismic pulses will be emitted at intervals of approximately 20 seconds. The 20-sec spacing corresponds to a shot interval of about 50 m (164 ft). After the line has been surveyed using MCS, the hydrophone streamer will be retrieved and OBH's will be deployed. During the OBH refraction survey, an augmented 20-gun array will be used and configured for a total volume of approximately 11,000 in³ by changing smaller gun chambers for larger volume chambers (ranging from 145 to 875 in³) after the completion of the MCS reflection lines. Seismic pulses will be emitted at intervals of 240 seconds during OBH acquisition. LDEO believes that even though the augmented 20-gun array will have a total air discharge volume of approximately 2400 in³ more than the standard 20-gun array, this will not significantly increase the source output since the number of guns has a greater effect on source output than discharge volume.

The dominant frequency components for both airgun arrays is 0 – 188 Hz. The standard 20-airgun array (MCS survey) will have a peak sound source level of 255 dB re 1 μ Pa or 262 dB peak-to-peak (P-P), and will be towed at a depth of 7.5 m (24.5 ft). The augmented 20-airgun array (OBH survey) will have a peak sound source level of 256 dB re 1 μ Pa or 263 dB P-P, and will be towed at a depth of 9.0 m (29.5 ft). Because the actual source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the directional nature of the sound from the airgun array, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS-

2 multibeam 15.5-kHz bathymetric sonar, and a 3.5-kHz sub-bottom profiler will also be operated along with the multi-beam sonar. These mid-frequency sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first is a shallow-water mode when water depth is <400 m (1312.3 ft). The source output is 210 dB re 1 μ Pa-m rms and a single 1-millisecond pulse or "ping" per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in athwartship. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes. The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237-dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisecond) gaps between the pulses for successive 30-degree segments. The total duration of the "ping", including all 5 successive segments, varies with water depth but is 1 millisecond in water depths <500 m (1640.5 ft) and 10 millisecond in the deepest water. For each segment, ping duration, is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The "ping" interval during RDT operations depends on water depth and varies from once per second in <500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5-kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause. Most of the energy in the sound pulses emitted by this multi-beam sonar is at

mid-frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 μ Pa, 800 watts, while nominal source output is 200 dB re 1 μ Pa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwidth of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Along the two selected seismic lines, data will first be acquired using multibeam sonar, multichannel seismic, and sonobuoys. A total of 96 sonobuoys will be available, and the *Ewing* system allows two sonobuoys to be recorded at any time. The sonobuoy profiles will be analyzed during the MCS shooting and streamer recovery on each line. The preliminary results from the sonobuoy refraction will be used to plan the OBH deployment pattern on the subsequent deep refraction survey. Twenty OBH's will be deployed for each line.

Additional information on the airgun arrays, Atlas Hydrosweep, and sub-bottom profiler specifications is contained in the application, which is available upon request (see ADDRESSES).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Northwest Atlantic Ocean and its associated marine mammals can be found in a number of documents referenced in the LDEO application as well as in the LDEO application itself, and is not repeated here. Approximately 32 species of cetaceans may be found within the proposed study area near Bermuda. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), True's beaked whale (*Mesoplodon mirus*), Gervais' beaked whale (*Mesoplodon europaeus*), Sowerby's beaked whale (*Mesoplodon bidens*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), Pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Fraser's dolphin (*Lagenodelphis hosei*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), long-finned pilot whale (*Globicephala melas*), short-

finned pilot whale (*Globicephala macrorhynchus*), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and the blue whale (*Balaenoptera musculus*). Another three species are known to occur just outside of the study area and are not likely to be seen within the study area - the northern bottlenose whale (*Hyperoodon ampullatus* (not usually found south of Nova Scotia)),

the white-beaked dolphin (*Lagenorhynchus albirostris* (does not normally occur south of Cape Cod)), and Fraser's dolphin (*Lagenodelphis hosei* (usually found further south)). Pinnipeds are unlikely to be seen in the study area although vagrants of grey (*Halichoerus grypus*) and hooded (*Cystophora cristata*) seals could occur. Additional information on most of these species is contained in Caretta et al. (2001, 2002) which is available at: http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.

Potential Effects on Marine Mammals

The sound pressure fields for the standard and augmented 20-gun arrays have been modeled by LDEO, in relation to distance and direction from the airguns. As determined by the models, the pressure fields are similar for both the 8575 in³ and the 11,000 in³ arrays. Table 1 in the application (LDEO Bermuda 2003) shows the maximum distances from both 20-airgun array configurations where sound levels of ≥ 190 , 180, 170, and 160 dB re 1 μ Pa (rms) are predicted to be received:

20-Airgun Array Volume	Predicted RMS Radii in meters/ft			
	190 dB	180 dB	170 dB	160 dB
8575 in ³	275/902	900/2953	2600/8531	9000/29,529
11,000 in ³	300/984	925/3035	2900/9515	9200/30,185

An earlier notice of an LDEO application and proposed IHA was published in the **Federal Register** on April 14, 2003 (68 FR 17909). That notice described, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects. That information is not repeated here. In addition, details on acoustic sources from, and possible effects of, the sub-bottom profiler, which was not used in the project described in the April 14, 2003, notice, were described on July 28, 2003 (68 FR 44294). The subject LDEO Bermuda application also provides information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO.

Estimates of Take by Harassment for the Bermuda Cruise

As described previously (68 FR 17909, April 14 2003), animals subjected to sound levels ≥ 160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment. However, the 160-dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and dolphins and pilot whales generally appear to be more tolerant of strong sounds than are most baleen whales. Delphinidae have their best hearing in the higher frequencies and are unlikely to be as sensitive as the mysticete whales to the low frequency of the airgun array. Therefore, they are less likely to experience Level B harassment at 160 dB. A more likely threshold for onset of Level B harassment in response to seismic sounds is at about 170 dB.

The estimates of takes by harassment are based on the number of marine mammals that might be exposed to seismic sounds ≥ 160 dB re 1 μ Pa (rms) by operations with the 20-airgun array planned for the project. Taken from year-round marine mammal density aerial survey data that has been summarized by geographic location and calendar season (CETAP 1982), LDEO used densities for the "Entire Atlantic Stratum" during the autumn period to estimate the numbers of marine mammals that are likely to be present in the proposed survey area near Bermuda. These densities are probably overestimates of the numbers that are likely to be present, because much of the proposed seismic survey area is farther from shore, in greater water depths, and in generally much less productive waters. Because the CETAP (1982) surveys were conducted from an airplane, few beaked whales were seen or identified, and densities of beaked whales were estimated to be zero during the autumn surveys. More than likely there are small numbers of beaked whales in the proposed survey area throughout the year, so LDEO used the mean density for the entire year to estimate the densities of beaked whales that might be present.

Except for beaked whales, LDEO used its best estimate of density to compute a best estimate of the number of marine mammals that may be exposed to seismic sounds ≥ 160 dB re 1 μ Pa (rms) (NMFS' current criterion for onset of Level B harassment). The best density estimates were multiplied by the linear extent of the proposed survey (1200 km or 648 n.mi. for each of the 8575 and approximately 11,000 in³ arrays) and by twice the 160-dB safety radius around

the applicable 20-airgun arrays to estimate the "best estimate" of the numbers of animals of each species that might be exposed to sound levels ≥ 160 dB re 1 μ Pa (rms) during the proposed seismic survey program.

Based on this method, Table 3 in the LDEO application gives the best estimates, as well as maximum estimates, of densities for each species or species group of marine mammal that might be exposed to received levels ≥ 160 dB re 1 μ Pa (rms), and thus potentially taken by Level B harassment during seismic surveys in the proposed study area of the Northwest Atlantic Ocean near Bermuda. It is assumed that the 20-airgun array would be used for all surveys but that air volume would be 8575 in³ for half of the survey and approximately 11,000 in³ for half of the survey.

Delphinidae would account for 94 percent of the overall estimate for potential taking by harassment (i.e., 10,292 of 10,910), with short-beaked common dolphins (3941) and pilot whales (3345) believed to account for about 71 percent of all delphinids in the area of the proposed seismic survey, and with smaller numbers of bottlenose dolphins (1871), Risso's dolphins (858), and striped dolphins (277) accounting for most of the remaining 29 percent. While there is no agreement regarding any alternative "take" criterion for dolphins exposed to airgun pulses, if only those dolphins exposed to ≥ 170 dB re 1 μ Pa (rms) were to be affected sufficiently to be considered taken by Level B harassment, then the best estimate for common dolphins would be 1191 rather than 3941 during the Bermuda Rise cruise, and for pilot whales it would be 1011 instead of

3345. These are based on the predicted 170-dB radius around the 20-airgun arrays (2600 m or 8530 ft for the 8575 in³ array and 2900 m or 9514 ft for the approximately 11,000 in³ array), and are considered to be more realistic estimates of the number of these species that may be disturbed. Therefore, the total number of animals likely to be harassed is considerably lower than the 10,910 animals that LDEO has estimated in Table 3 (LDEO Bermuda 2003).

Conclusions-Effects on Cetaceans

The proposed airgun array configurations are larger than those used in many seismic projects; however, shot intervals are longer than during many surveys and so marine mammals will be exposed to fewer seismic pulses than during many other similar seismic surveys. The pulse interval for the 8575 in³ gun array is 20 seconds and is 240 seconds for the 11,000 in³ array.

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 n.mi.) and occasionally as far as 20–30 km (10.8–16.2 n.mi.) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 n.mi.) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans. LDEO's best estimate is that 501 fin whales, or 1.1 percent of the estimated North Atlantic fin whale population (IWC 2003) will be exposed to sound levels ≥ 160 dB re 1 μ Pa (rms) and potentially affected during the proposed cruise near Bermuda. In light of all these factors, these potential takings by Level

B harassment are expected to have no more than a negligible impact on the affected species or stock.

Larger numbers of odontocetes may be affected by the proposed activities, but the population sizes of the main species also are larger and the numbers potentially affected are small relative to the population sizes. 38 sperm whales or 0.3 percent of the estimated North Atlantic sperm whale population would receive seismic sounds ≥ 160 dB. Similarly, only 78 beaked whales from the 5 beaked whale species may be affected by the proposed activities. This is 2.4 percent of the estimated total of all 5 species of beaked whales (3196) that occur along the northeast coast of the U.S. Because the CETAP (1982) surveys were conducted from an airplane, few beaked whales were seen, or at least identified, and densities of beaked whales were estimated to be zero during the autumn surveys. However, LDEO believes there are probably small numbers of beaked whales in the proposed survey area throughout the year, so LDEO used the mean density for the entire year to estimate the densities of beaked whales that might be present during autumn. Most of the proposed seismic survey area is outside of the area for which this 3196 estimate was made, and only a very small part of beaked whale habitat in the North Atlantic was included in the estimate. Thus the actual estimate is more than likely much larger than 3196, and the percentage of animals that might receive seismic sounds ≥ 160 dB during the proposed cruise is believed to be less than 1 percent of the 3196 estimated North Atlantic population of the 5 species of beaked whales.

The best estimate of the total number of common dolphins, pilot whales, bottlenose dolphins, Risso's dolphins and striped dolphins that might be exposed to ≥ 160 dB re 1 μ Pa (rms) in the proposed survey area near Bermuda are 3941, 3345, 1871, 858 and 277, respectively. Of these, about 1191, 1011, 565, 259 and 84, respectively might be exposed to ≥ 170 dB. These figures are <0.1 to <1.1 percent of the North Atlantic population estimates of these species. However, the actual population sizes are much larger than the estimates so the percentage of the various populations that might be affected are considerably lower than the <0.1 to <1.1 percent mentioned above. The values based on the ≥ 170 dB criterion are believed to be a more accurate estimate of the number potentially affected.

Mitigation measures such as controlled speed, look-outs, non-pursuit, ramp-ups, and power- and shut-down procedures when within defined

ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions-effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered during the proposed seismic survey near Bermuda. However, a few stray hooded and grey seals could be encountered. The best estimate of the numbers of each of the more common (but unlikely) species that might be taken by Level B harassment is no more than two and is most likely zero. It is estimated that a maximum of 10 pinnipeds (five for each species) may be affected by the proposed seismic surveys. None of the pinniped species is considered endangered or vulnerable.

No pinnipeds regularly occur in the proposed survey area and thus none are expected to be encountered. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. Taking these factors into account, impacts are expected to be no more than negligible.

Mitigation

For the proposed seismic operations in the Bermuda Rise area in 2003, LDEO will use a 20-airgun array. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward.

The sound pressure fields have been modeled by LDEO in relation to distance and direction from the standard and augmented 20-gun array as shown in Figures 5 and 6, respectively (LDEO Bermuda 2003). Since the sound pressure fields around both configurations of the 20-gun array are similar, the marine mammal safety radii for the augmented 20-gun array will be used for the duration of the cruise. The radius around the augmented 20-gun array where the received level would be 180 dB re 1 μ Pa (rms) (the level for onset of Level A harassment applicable to cetaceans) is estimated as 925 m (3035 ft). The radius around the augmented 20-gun array where the received level would be 190 dB re 1 μ Pa (rms), (the level for onset of Level A harassment applicable to

pinnipeds), is estimated as 300 m (984 ft).

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO proposes to power-down the seismic source if marine mammals are observed within the proposed safety radii. Also, LDEO proposes to use a ramp-up procedure when commencing operations using the 20-gun array. Ramp-up will begin with the smallest gun in the array (80 in³ for the standard array and 145 in³ for the augmented array), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5-minute period over a total duration of about 25 minutes. Please refer to LDEO's application for more detailed information about the mitigation measures that are an integral part of the planned activity.

Operational Mitigation

The directional nature of the airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

Proposed Safety Radii

Received sound levels have been modeled for the 20-gun array. Based on the modeling, estimates of the 190-, 180-, 170-, and 160-dB re 1 μ Pa (rms) distances (safety radii) for these arrays have been provided previously in this document.

Airgun operations will be suspended immediately when cetaceans are seen within or about to enter the appropriate 180-dB (rms) radius, or if pinnipeds are seen within or about to enter the 190-dB (rms) radius. These 180- and 190-dB criteria are consistent with guidelines listed for cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS. A calibration study was conducted prior to these surveys to determine the actual radii corresponding to each sound level. These actual radii will be implemented for this study. Until then, or if those measurements appear defective, LDEO will use a precautionary 1.5 times the modeled 180-dB (cetaceans) and 190-dB (pinnipeds) radii predicted by the model as the safety radii.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed seismic survey program, provided that doing so will not compromise operational safety requirements: (1) Speed or course alteration; (2) power-down procedures; (3) shut-down procedures; and (4) ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or power-down of the airguns.

Power-down and Shut-down Procedures

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. A power-down involves decreasing the number of airguns in use such that the radius of the 180-dB zone is decreased to the extent that marine mammals are not in the safety radii. A power-down may also occur when the vessel is moving from one seismic line to another.

For the power-down procedure, one airgun (either 80 or 145 in³) will be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until the marine mammal has cleared the safety radii. The animal has cleared the safety radii if it is visually observed to have left the safety radii, or if it has not been seen within the radii for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

If a cetacean is detected close to the airgun array during a power-down,

modeled safety radii for a single gun will be maintained. If the standard 20-gun array is used, the single gun that will be firing is 80 in³, and for the augmented array, it is 145 in³. The safety radii for the larger 145 in³ gun will be used for mitigation purposes. Since no calibrations have been done to confirm the modeled safety radii for this single gun, conservative (1.5 times the safety radius) radii will be used: 48 m or 158 ft (the conservative radius is 72 m or 236 ft) for cetaceans, and 17 m or 56 ft (the conservative radius is 26 m or 85 ft) for pinnipeds. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. Airgun operations will not resume until the marine mammal is outside the safety radius.

Ramp-up Procedure

A "ramp-up" procedure will be followed when the airgun array begins operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed of about 4 knots or 7.4 km/hr), the *Maurice Ewing* would travel 900 m (3117 ft) in about 8 minutes and a ramp-up would be required after a power-down or shut-down period lasting 8 minutes or longer if the *Ewing* tows a 20-airgun array. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots. During the ramp-up procedures, the safety zone for the full-gun array will be maintained.

If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up of airgun operations and during the subsequent ramp-up procedures. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun was operating during the interruption of seismic survey operations.

Monitoring and Reporting

LDEO proposes to conduct marine mammal monitoring of its 2003 seismic program near Bermuda in order to satisfy the anticipated requirements of the IHA.

Vessel-based Visual Monitoring

At least two vessel-based observers dedicated to marine mammal observations will be stationed aboard LDEO's seismic survey vessel for the seismic survey near Bermuda. At least one experienced marine mammal observer will be on duty aboard the seismic vessel, and observers will be

appointed by LDEO with NMFS concurrence. Observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected.

It is proposed that one or two marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress during daylight hours, and if feasible, observations will also be made during periods without seismic activity. Two observers will monitor for marine mammals near the seismic source vessel for at least 30 minutes prior to and during all daylight airgun operations including ramp-ups, after an extended shut-down, and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety radii, where there is a possibility of Level A harassment. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. At least one marine mammal observer will be on "standby" at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night. Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. The 30-minute observation period is only required prior to commencing seismic operations following a shut-down of the 20-gun array for more than 1 hour. After 30 minutes of observation, the ramp-up procedure will be followed.

The *R/V Maurice Ewing* is a suitable platform for marine mammal observations. Observers will watch for marine mammals from the highest practical vantagepoint on the vessel, which is either the bridge or the flying bridge. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc for each observer. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The proposed monitoring plan is summarized later in this document. The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available

(ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will be powered-down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius or until the specified intervals (15 or 30 min) have passed without a re-sighting.

Reporting

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, 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 seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) 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 mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

Results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun power-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) 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 seismic program in the Bermuda Rise area. The end of the seismic program is predicted to occur on or about December 9, 2003. The report will describe the operations that were conducted and the marine mammals that were detected near the operations, and will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90-day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways. The draft report will be considered the final report unless comments and suggestions are provided by NMFS within 60 days of its receipt of the draft report.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

The National Science Foundation has prepared an EA for the Bermuda Rise survey. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see ADDRESSES).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting a seismic survey program in the Bermuda Rise

portion of the Northwest Atlantic Ocean will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is 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 low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program will not take place in or near subsistence hunting areas.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic survey program in the Bermuda Rise portion of the Northwest Atlantic Ocean, provided the proposed mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: October 3, 2003.

Laurie K. Allen,

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

[FR Doc. 03-25639 Filed 10-08-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100603A]

North Pacific Fishery Management Council; Notice of Public Meeting

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

ACTION: Meeting of the North Pacific Fishery Management Council's Scallop Plan Team.

SUMMARY: The Scallop Plan Team will meet October 29–30, 2003, at the NMFS Sustainable Fisheries Conference Room in Juneau, AK. You may call in on the conference line at 907-586-7977.

DATES: The meeting will meet on October 29–30, 2003, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the NMFS, 709 W 9th Avenue, Juneau, AK 99801.

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

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff, Phone: 907-271-2809.

SUPPLEMENTARY INFORMATION: Agenda – (1) Membership and Officers (2) Draft Terms of Reference for Scallop Plan Team (3) Review Status of Stocks and Stock Assessment and Fishery Evaluation report (4) Discuss updating the Scallop Fishery Management Plan (5) Update on Alaska Board of Fisheries regulation changes from the 2003 meeting (6) New Business.

Although other non-emergency issue not on the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Council will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been informed of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907-271-2809 at least 7 working days prior to the meeting date.

Dated: October 06, 2003.

Richard W. Surdi,

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

[FR Doc. 03-25642 Filed 10-8-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100303A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Joint meeting of the South Atlantic Council's Habitat Advisory Panel and Coral Advisory Panel (AP).

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Habitat AP and Coral AP to further the Council's integrated process to update Essential Fish Habitat information and consider ecosystem-based management through the development of a Fishery Ecosystem Plan for the South Atlantic Region.

DATES: The joint meeting will take place October 22 and 23, 2003.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC, 29407; phone: 800-334-6660 or 843-571-1000.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, S.C., 29407; phone 843-571-4366 or 866-SAFMC-10; FAX 843-769-4520.

SUPPLEMENTARY INFORMATION: Meeting participants will meet from 1 until 5 p.m. on October 22, 2003, and again from 8:30 a.m. until 5 p.m. on October 23, 2003. Items for discussion at the joint meeting include: (1) a summary of the workshop process to facilitate revision of Essential Fish Habitat (EFH) and EFH Habitat Areas of Particular Concern (EFH-HAPC) designations and development of a South Atlantic Fishery Ecosystem Plan; (2) deepwater coral habitat research and protection; (3) habitat policy statement review and development; (4) review of regulations protecting EFH and any remaining fishing and non-fishing activities impacting habitat; and (5) research and monitoring needs to refine the designation and protection of EFH and EFH-HAPCs and to support ecosystem-based management.

Although non-emergency issues not contained in this notice may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically