

Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. *Nonprocurement Debarment and Suspension*. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

ii. *Drug-Free Workplace*. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. *Anti-Lobbying*. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. *Anti-Lobbying Disclosures*. Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

8. *Lower Tier Certifications*. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF-LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

9. *False Statements*. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

10. *Intergovernmental Review*—Applications under this program are not

subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

11. *Buy American-Made Equipment and Products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms reference in this notice are cleared under OMB Control No. 0348-0043, 0348-0044, 0348-0040, and 0348-0046 pursuant to the Paperwork Reduction Act.

Dated: June 7, 1996.

Jerome S. Morse,
Director, Resource Management and
Planning, Staff, Trade Development.
[FR Doc. 96-15013 Filed 6-12-96; 8:45 am]
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National Oceanic and Atmospheric Administration

[I.D. 051496A]

Small Takes of Marine Mammals Incidental to Specified Activities; Haro Strait Oceanographic Experiment

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 to take small numbers of marine mammals by harassment incidental to conducting a physical oceanography experiment in Haro Strait, Puget Sound, WA has been issued jointly to Prof. Henrik Schmidt of the Department of Ocean Engineering, and Mr. Patrick Miller of the Department of Biology, Massachusetts Institute of Technology (MIT), Cambridge, MA.

EFFECTIVE DATE: This authorization is effective from June 10, 1996, to July 5, 1996.

ADDRESSES: The application, authorization, and environmental assessment (EA) are available from the following office: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of

Protected Resources at 301-713-2055, or Brent Norberg, Northwest Regional Office at 206-526-6733.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS 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 regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

The MMPA Amendments of 1994 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 (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) 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.

New 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 31, 1996, NMFS received a complete application from MIT requesting an authorization for the harassment of small numbers of marine mammals incidental to conducting a physical oceanography experiment that uses sound to study the flow field and mixing processes in Haro Strait, in the San Juan Island Archipelago (Puget Sound) WA, just south of Stuart Island (48°39'00" N, 123°11'00" W).

The experiment, which will be from June 10 through July 5, 1996, for a total of 26 days, is scheduled to take advantage of the extreme ebb tides that

occur only twice a year. The species of marine mammals requested for incidental harassment are as follows: Harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), and harbor seal (*Phoca vitulina*). Additional species that are rare or only occasionally seen in the area at the time of the experiment may include: Minke whale, elephant seal, Pacific white-sided dolphin, northern sea lion, California sea lion, humpback whale, and gray whale. General information on these species can be found in Barlow *et al.* 1995 (NOAA Tech. Mem. NMFS-SWFSC-219). More specific information on marine mammals species in Puget Sound waters, and a description of the physical oceanography experiment can be found in the application and in an EA, which are available upon request (see ADDRESSES).

A notice of receipt of the application and the proposed authorization was published on March 28, 1996 (61 FR 13847) and a 30-day public comment period was provided on the application and proposed authorization. Additional information on the mitigation and monitoring program was provided on April 9, 1996 (61 FR 15785). During the comment period and subsequent to its closure, several letters were received. Other than information necessary to respond to comments, additional information on the activity and authorization request can be found in the above-mentioned Federal Register documents and does not need to be repeated here.

Comments and Responses

Authorization Concerns

Comment: Do not permit this experiment.

Response: NMFS would like to make clear that it does not authorize the project, only the incidental harassment of marine mammals occurring as a result of this project. Not issuing a permit does not necessarily terminate the project.

Comment: Because there are too many unknowns as to the impacts on their sonar, hearing and feeding habits, the research permit should be denied.

Response: The requested authorization is for an exemption to the MMPA's prohibition on taking for the harassment of small numbers of marine mammals incidental to conducting a specified activity within a specified geographic region. This is an authorization issued under section 101(a)(5)(D) of the MMPA, not for a scientific research permit under section 104 of the MMPA. To prohibit incidental takings that occur while

conducting activities otherwise allowed by law would be to deny an exemption that is authorized by the MMPA provided the best scientific information and evidence available indicates that the take is incidental, only small numbers of marine mammals are taken, and the impact on marine mammals and their habitat is negligible.

Comment: The purpose of the project would be to negatively impact marine life, specifically and intentionally to cause harassment or harm; sounds are being broadcast to determine if it will affect marine mammals; and sounds are being transmitted to see if they can withstand the noise.

Response: As stated in the proposed authorization, the project is a physical oceanography project that uses various sound sources to study the flow field and mixing processes in Haro Strait, Puget Sound, WA. It is not a research project designed to study the effects of sound on marine mammals. However, an extensive mitigation and monitoring program, as required under section 101(a)(5)(D) of the MMPA, has been designed as part of this project to assess impacts of sounds that may potentially harass marine mammals and to ensure that these impacts are the lowest level practicable. Therefore, in addition to providing information on the physical oceanographic processes in Haro Strait, the experiment will also provide information and data on the effects of high frequency sounds on marine mammals.

Comment: Sounds would cause harm to a variety of ocean mammals and other sea creatures.

Response: The proposed authorization analyzed potential impacts and the mitigation measures proposed to reduce these potential impacts on marine mammals to the lowest level practicable. These impacts are also analyzed in the EA prepared for this authorization. Based upon the best scientific information available, NMFS has determined that this physical oceanography project would have only a negligible impact on the stocks of marine mammals in the Haro Straits area. While statutorily authorized under the MMPA, the potential to cause Level A harassment (injury) to marine mammals is considered unlikely, provided planned mitigation and monitoring measures that have been proposed by the applicant are incorporated.

Comment: Sound may damage the hearing of marine mammals.

Response: The proposed authorization provided detailed analyses on the potential for auditory damage to marine mammals from the various sound

sources that will be used by this experiment. Calculations indicate that marine mammals would need to be closer than .25 m of the long-base-line transponders in order to potentially receive hearing damage; for other sources, animals would need to be even closer. However, the applicant presumes that the near-field effects might cause the distance to be slightly greater (but less than 1 m), than calculated by spherical spreading alone. As a result, NMFS and the applicant believe that there is virtually no possibility of inflicting permanent hearing damage on any marine mammals.

Comment: Marine mammals (especially killer whales) already endure an unacceptable amount of noise pollution and harassment due to depth finders, boat/tanker traffic, and whale-watching expeditions. NMFS should consider assessing whether sounds to be used in the proposed experiment, combined with sounds from other sources, could have non-negligible effects on marine mammals.

Response: NMFS notes that, even with various sources of anthropogenic sources of noise in the marine environment, the southern resident community of killer whales in Puget Sound has increased 40 percent since 1976. However, activities and the potential impact of unregulated noise from these activities on marine mammals are of concern to NMFS. The monitoring measures planned in conjunction with this short-term oceanography project may provide some insight into behavioral responses by marine mammals to high frequency sounds.

Habitat Exclusion Concerns

Comment: The marine mammals may be negatively affected to the point where they vacate the area of the experiment. This will have a very negative effect on the animals, depriving them of their natural and normal foraging area. Also, by forcing marine mammals from their habitats would result in competition with other species over scarce food.

Response: The only marine mammal species that might be affected by habitat exclusion are the harbor porpoise and killer whale. As a result, a monitoring program will be implemented that will involve suspension of the experiment, recovery of species abundance in the area and termination if habitat exclusion continues. Please refer to the earlier Federal Register notices (61 FR 13847, March 28, 1996 and 61 FR 15785, April 9, 1996) for detailed discussion on the mitigation measures planned to address this concern.

Comment: The sound would impact an area far wider than suggested, given the rock faces, steep pitches and water mass interactions in Haro Straits.

Response: The applicant has provided detailed analyses of the attenuation of these sources, using spherical and cylindrical models and factoring in propagation loss. Without providing scientific information or references to support the comment, NMFS is unable to analyze the veracity of this comment.

Comment: If this experiment should somehow affect the orcas in that they decide to move out of the area for a number of days the whale watching industry would be economically affected. The marine mammals are the natural resource that the whalewatching industry relies upon to exist.

Response: Since NMFS does not authorize the project, only the harassment of marine mammals incidental to the activity, the economic impact on the commercial whale watch industry is not within the scope for consideration under the MMPA. However, as noted in the application and in the previous notices, the experiment will contain mitigation and monitoring measures that will avoid to the extent possible habitat exclusion by harbor porpoise and killer whales.

Comment: During June and July, resident orcas have superpods in that area with the intent of mating. If this experiment should thwart the superpod mating, the results will not be clear to us now but could affect the future of the resident pods.

Response: According to the information available to NMFS, there are approximately 90 resident killer whales in the southern community and 45 transient animals. Based upon Olesiuk *et al.* (1990) and Bain (pers. comm. to B. Norberg, May 1996), there appears to be a bimodal calving period for killer whales which would indicate that successful breeding is mostly taking place from April to mid-June and again in Sept/Oct. This bi-modal period, the short-term of the research project (June 10–July 5) and the mitigation measures imposed to protect killer whales, indicates that this comment does not appear to warrant additional mitigation measures be imposed on the experiment.

Comment: The experiment should be done in winter months (so the whalewatching industry would be unaffected).

Response: As discussed in the proposed authorization, the experiment, which will be from June 10 through July 5, 1996, is scheduled to take advantage of the extreme ebb tides that occur only twice a year. This time of the year

would also benefit from spring freshwater flows. The winter alternative is unacceptable to the applicant and NMFS, because weather conditions at that time of the year would make operations extremely difficult and would make marine mammal monitoring virtually impossible.

Monitoring Concerns

Comment: There would not be any independent monitoring. The researchers would be basically policing themselves, because the person in charge of monitoring impacts is also employed by Woods Hole.

Response: There is no requirement under the MMPA that monitoring be independent of the activity. As noted in the proposed authorization, the applicant is a faculty member of the Department of Ocean Engineering, MIT, while the person conducting the monitoring is in the Department of Biology, MIT. Because the monitoring program under this activity is more complex than most, NMFS has determined that both participants should be covered under the authorization. In addition to a monitoring team, the applicants have established an advisory board for monitoring this activity's impacts on marine mammals. These advisors are scientists operating in Haro Strait and are from the Friday Harbor Whale Museum, the University of Victoria, the University of Washington, and the Canadian Department of Fisheries and Oceans, none are from MIT. The applicants have agreed to follow the recommendations of the scientific oversight committee in scheduling activities.

Comment: The sound source must be monitored at all times during these tests with assurances that it will be halted if any marine mammals are observed having behavioral changes or injuries.

Response: NMFS agrees. Please refer to the notice of proposed authorization (61 FR 13847, March 28, 1996) where this issue was addressed in detail.

National Environmental Policy Act Concerns

Comment: An Environmental Impact Statement must be prepared prior to authorization.

Response: In the notice of proposed authorization (61 FR 13847, March 28, 1996), NMFS announced that it had conducted a review of the potential impacts on marine mammals from the issuance of an incidental harassment authorization to MIT and determined that there would be no more than a short-term, negligible impact on marine mammals from the issuance of the

harassment authorization. For that reason, NMFS determined that issuance of an incidental harassment authorization to MIT was categorically excluded (CE) (as defined in 40 CFR 1508.4) from the preparation of either an environmental impact statement or an EA under the National Environmental Policy Act and section 6.02.c.3(i) of NOAA Administrative Order 216–6 for Environmental Review Procedures (published August 6, 1991). However, as a result of the comments received on this application, NMFS has reviewed the conditions under which it considered the incidental harassment authorization to MIT to be a CE and has determined that, because of the lack of public perception on the effects of high frequency noise on marine mammals, an EA should be prepared to address these concerns. Based upon that EA, the Assistant Administrator has determined that issuance of this authorization will not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. The EA is available upon request (see ADDRESSES).

Conclusions

Based upon the information provided in this notice, the two notices of proposed authorization, and in an EA on this matter,

NMFS has determined that the short-term impact on marine mammals from conducting a physical oceanography experiment between June 10 and July 5, 1996, using high-frequency sound to study the flow field and mixing processes in Haro Strait, Puget Sound, WA, will result in a negligible impact on marine mammals. This impact is expected to be limited to a short-term modification in behavior by certain species of marine mammals. While behavioral modifications may be made by these species to avoid noise, this behavioral change is expected to have only a negligible impact on the animals. However, the mitigation and monitoring measures that are part of the authorization will provide additional protection to ensure that the project's impact on marine mammals is at the lowest level practicable. NMFS has also determined that this experiment will not have an unmitigable adverse impact on the availability of this stock for subsistence uses.

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, will not have an unmitigable 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.

Authorization

For the above reasons, NMFS has issued an incidental harassment authorization for approximately 30 days between June 10 and July 5, 1996 for the above described experiment provided the above mentioned mitigation, monitoring and reporting requirements are undertaken.

Dated: June 7, 1996.

Patricia A. Montanio,
Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 96-15060 Filed 6-12-96; 8:45 am]

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[I.D. 060796C]

Endangered Species; Permits

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

ACTION: Issuance of modification 3 to permit 900 (P770#66), modification 2 to permit 946 (P770#68), and modification 1 to permit 905 (P45L).

SUMMARY: Notice is hereby given that NMFS has issued modifications to permits that authorize takes of Endangered Species Act-listed species for the purpose of scientific research, subject to certain conditions set forth therein, to the Coastal Zone and Estuarine Studies Division of the Northwest Fisheries Science Center, NMFS at Seattle, WA (CZESD) and the National Biological Service at Cook, WA (NBS).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (503-230-5400).

SUPPLEMENTARY INFORMATION: The modifications to permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish

and wildlife permits (50 CFR parts 217-222).

Notice was published on February 27, 1996 (61 FR 7241) that an application had been filed by CZESD (P770#66) for modification 3 to scientific research permit 900. Modification 3 to permit 900 was issued on June 5, 1996. Permit 900 authorizes CZESD a direct take of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and an incidental take of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with three scientific research studies. For modification 3, CZESD is authorized to supplement their annual take of ESA-listed fish associated with Study 1, a dam and reservoir passage survival study, with juvenile, ESA-listed, Snake River spring/summer chinook salmon captured as an indirect take by NBS under the authority of scientific research permit 817. Permit 817 authorizes NBS takes of ESA-listed juvenile fish associated with a fall chinook salmon study. In addition, CZESD is authorized a take of ESA-listed juvenile fish associated with an additional project designed to evaluate the new surface collector at Lower Granite Dam on the Snake River in WA and to release the ESA-listed juvenile fish to be captured and handled for Study 1 in the free-flowing Snake River upstream of Lower Granite Reservoir. Modification 3 is valid for the duration of Study 1 of the permit. Study 1 of permit 900 expires on December 31, 1998.

Notice was published on February 27, 1996 (61 FR 7241) that an application had been filed by CZESD (P770#68) for modification 2 to scientific research permit 946. Modification 2 to permit 946 was issued on June 4, 1996. Permit 946 authorizes CZESD takes of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with two survival studies related to barge transportation. For modification 2, CZESD is authorized an increase in their takes of juvenile, endangered, Snake River sockeye salmon to adjust for an increase in the anticipated annual juvenile sockeye salmon outmigration numbers. Annual sockeye salmon outmigration numbers are expected to be higher due to greater

numbers of smolt releases in and near Redfish Lake from the Idaho Department of Fish and Game's captive broodstock program. Modification 2 is valid for the duration of the permit. Permit 946 expires on December 31, 1999.

Notice was published on February 29, 1996 (61 FR 7776) that an application had been filed by NBS (P45L) for modification 1 to scientific research permit 905. Modification 1 to permit 905 was issued on June 6, 1996. Permit 905 authorizes a direct take of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) and an indirect take of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with four dam and reservoir passage survival studies on the Snake River. For modification 1, NBS is authorized to expand their sampling locations to include all of the Snake River dams and McNary Dam on the Columbia River. The sampling location expansion is needed to acquire the desired sample size of juvenile ESA-listed fish currently authorized to be taken for electrophoretic genetic research. NBS is also authorized to capture, handle, and release a greater number of ESA-listed juvenile fish: 1) to obtain non-lethal tissue samples from run-at-large juvenile spring chinook salmon and fall chinook salmon yearlings for genetic analysis, and 2) to acquire non-lethal gill samples from juvenile fall chinook salmon for a new study designed to relate passage survival to physiological development. Modification 1 is valid for the duration of the permit. Permit 905 expires on December 31, 1996.

Issuance of the modifications, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permits, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: June 7, 1996.

Robert C. Ziobro,
Acting Chief, Endangered Species Division,
Office of Protected Resources, National Marine Fisheries Service.

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