Exporter/Manufacturer	Weighted-Average Margin
Universal Ferro and Allied Chemicals, Ltd.	20.53%
All Others	17.74%
Kazakhstan	
Alloy 2000, S.A.	247.88%
Kazakhstan-Wide	247.88%
Venezuela	
Hornos Electricos de Venezuela, S.A.	24.62%
All Others	24.62%

This notice constitutes the antidumping duty orders with respect to silicomanganese from India, Kazakhstan, and Venezuela, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of Act and 19 C.F.R. 351.211.

Dated: May 17, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–13007 Filed 5–22–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–804]

Sulfanilic Acid From Hungary: Postponement of Final Determination and Extension of Provisional Measures of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final antidumping duty determination and extension of provisional measures: Sulfanilic acid from Hungary.

SUMMARY: The Department of Commerce is postponing the final determination of the antidumping duty investigation of sulfanilic acid from Hungary. This postponement is made pursuant to section 735 (a)(2) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. Suspension of liquidation will be extended accordingly.

EFFECTIVE DATE: May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney at (202) 482–1778, AD/CVD Enforcement, Office 1, DAS Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Postponement of Final Determination and Extension of Provisional Measures

On April 26, 2001, the Department of Commerce, (''the Department'') issued its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Hungary,* 67 FR 30358 (May 6, 2002) (''*Preliminary Determination*''). The *Preliminary Determination* notice indicated that the final determination would be made by not later that 75 days after the date of the *Preliminary Determination.*

Pursuant to section 735(a)(2) of the Tariff Act of 1930, as amended (''the Act''), on May 13, 2002, Nitrokemia 2000 Rt. (''Nitrokemia 2000''), the sole participating respondent in this investigation, requested that the Department postpone its final determination to no later than 135 days after the date of publication of the preliminary determination in the **Federal Register**.[1] Nitrokemia 2000 further requested that the Department extend to not more than six months the application of the provisional measures prescribed under paragraphs (1) and (2) of section 733(d) of the Act. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), because (1) the preliminary determination in this case is affirmative, (2) the request for postponement was submitted in writing by an exporter who accounts for a significant proportion of exports of the subject merchandise in this investigation, and (3) no compelling reason for denial exists,[2] we are postponing the final determination until not later than 135 days after the publication of the preliminary determination in the **Federal Register** (*i.e.,* until not later than September 18, 2002). Suspension of liquidation will be extended accordingly.

This extension is in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2).

[1] Nitrokemia had previously requested a postponement of the final determination on April 8, 2002. However, that request was subsequently withdrawn on April 11, 2002.

[2] We note that, in response to Nitrokemia's original request for postponement of the final determination, on April 12, 2002, the petitioner submitted a letter objecting to Nitrokemia's request. The petitioner objected because, in light of the alignment of the concurrent countervailing duty investigation with the instant proceeding, Nitrokemia would not have to deposit countervailing duties once the provisional measures period in that investigation expires. However, we did not consider this objection to constitute a compelling reason to deny Nitrokemia's request for a postponement.

Dated: May 17, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–13009 Filed 5–22–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041602B]

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/Evolved 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, 2002, until May 20, 2003.

ADDRESSES: The application is available by writing to Donna Wieting, 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: Simona Perry, (301) 713–2322, ext. 106 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, 2001, NMFS received an application from the 30th Space Wing on behalf of Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals, and other marine mammal species, incidental to harbor activities related to the Delta IV/EELV, including: wharf modification, transport vessel operations, cargo movement activities, and harbor maintenance dredging. The harbor where activities will take place is on south VAFB approximately 4 kilometers (km) (2.5 miles, mi) south of Point Arguello, CA, and approximately 1.6 km (1 mi) north of the nearest marine mammal pupping site (i.e., Rocky Point).

Specified Activities

Modifications to the existing wharf are needed to accommodate the specially designed transport vessel, the Delta Mariner, that will be used for delivering the Delta IV/EELV's common booster core (CBC). These modifications involve removing portions of the wharf surface, re-surfacing the wharf with concrete and stainless steel rub-rails, and construction of a ramp on the seaward portion of the wharf. Equipment to be used includes: a skip-loader, concrete saw, concrete ready-mix truck, and dump truck. Measured noise levels of equivalent heavy equipment ranged from 61 dB A-weighted (quietest measurement from clamshell dredge measurement) to 81 dB A-weighted (loudest measurement from roll-off truck transporter) at a distance of 76.2 meters (m) (250 feet, ft). (Acentech, 1998). These wharf modifications will take approximately 6 weeks.

Delta Mariner CBC off-loading operations and associated cargo movement activities will occur a maximum of 6 times per year, with the first Mariner visit scheduled for spring of 2002 and the first off-load operation for August 2002. The Delta Mariner is a 95.1 m (312 ft) long, 25.6 m (84 ft) wide steel hull ocean-going vessel capable of operating at a 2.4 m (8 ft) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the Mariner. Sources of noise from the Delta Mariner vessel include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the CBC from the Mariner requires use of an Elevating Platform Transporter (EPT). The EPT is an additional source of noise, with sound levels measured at a maximum of 82 dB A-weighted 6.1 m (20 ft) from the engine exhaust (Acentech, 1998). EPT operation procedures require 2 short (approximately 1/3 seconds) beeps of the horn prior to starting the ignition. At 60.9 m (200 ft) away, the sound level of the EPT horn ranged from 62–70 dB A-weighted. Containers containing flight hardware items will be towed off the Mariner by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 15.2 m (50 ft) while in operational mode. Total time of Mariner docking and cargo movement activities is estimated at between 14 and 18 hours in good weather.

To accommodate the Delta Mariner, the harbor will need to be dredged to a working depth of approximately 3.0 m (10 ft) mean lower low water level plus a 0.61 m (2 ft) over-dredge. Dredging of the harbor will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 61–81 dB A-weighted at 76.2 m (250 ft). Dredge operations, from set-up to tear-down, would continue 24-hours a day for 3–5 weeks. The frequency of maintenance dredging will be based on fill rate surveys conducted periodically during the first year following the initial dredge to determine the sedimentation rate. Boeing expects maintenance dredging would likely be required every 2–3 years.

A more detailed description of the work proposed for 2002 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 (ENSRI, 2001).

Comments and Responses

On March 4, 2002 (67 FR 9702), NMFS published a notice of receipt and a 30–day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC), Boeing, The Otter Project, and two private citizens. NMFS has not addressed in this document those comments and/or information that are contained in, and not in disagreement with, statements made in either the Boeing application or the notice of proposed authorization (67 FR 9702, March 4, 2002).

Activity Concerns

Comment 1: Has any work actually begun on this application (meaning physical work at the harbor) without NMFS benefit of public comment?

Response: None of the actions covered in the permit application have begun.

Comment 2: Why hasn't the noise from the jackhammer been included in Boeing's application?

Response: Boeing's application includes an initial list of equipment required for the wharf modification that was requested from the construction contractor. A jackhammer was not listed on this initial list. The contractor has since informed Boeing that a jackhammer will be required for approximately a week. National Institute for Occupational Safety and Health (NIOSH) data shows that a jackhammer will generate between 102-111 dB measured at the operator's ear.

Comment 3: Where was the EPT noise level of 85 dB measured from? What is the noise level when the EPT engine is under a load condition? Is the EPT engine diesel, gasoline, or powered by some other source?

Response: The EPT noise level of 85 dB was measured less than 6.1 m (20 ft) from the engine exhaust. The measurement provided in the application was the noise level of the EPT with the engine revved. The engine runs at a constant speed with power to the drive train regulated by a hydraulic pump. The noise level of the EPT under load would be comparable to, but not precisely the same as, the noise measurements provided. The engine powering the EPT is a Diesel engine, manufactured by Daimler Chrysler AG (Mercedes), model OM442A, 340 HP. It conforms to 2000 U.S. EPA California and Canada regulations for large non-road compression-ignition engines. It is certified to be operated on diesel fuel.

Comment 4: Is the ''tractor tug'' electric, diesel, or gasoline powered? Is the tractor tug actually the roll-off truck transporter listed in the application? Define the ''operational mode'' of the ''tractor tug.'' For example, what is the noise level when the ''tractor tug'' engine is under a load condition?

Response: The tractor tug is more accurately referred to as a standard diesel truck tractor. It has yet to be purchased, but the selected manufacturer is Peterbilt. The noise level will meet OSHA standards. Operational mode is the condition of operation under a load. The noise level under a load condition under load would be comparable to but not precisely the same as the noise measurements provided in the application.

Comment 5: How much dredge material will be generated? Where is the National Environmental Policy Act (NEPA) documentation to support placement of this dredged material?

Response: 3,000–5,000 cubic yards of dredge material will be generated. All dredge activities, including the maintenance dredging, were described and evaluated in the final Environmental Assessment (EA) for Harbor Activities at VAFB, dated July 2001. In the future, dredged material will either be used for beach replenishment at a site about 3.2 km (2 mi) south of the harbor, or will be used to refill an old quarry at Point Pedernales (Honda Point) back to its original profile. Beach replenishment would entail placing the sediments in the shallow sub-tidal where it will be re-entrained in the long-shore current.

Comment 6: Who makes the determination that the crew and captain of the Delta Mariner are capable of approaching and successfully mooring at the wharf? Will the same crew and captain that the tug boats accompany for these first few visits be present for all other visits?

Response: Both captain and vessel are licensed by the United States Coast Guard (USCG). The USCG also issues the Certificate of Inspection that gives a vessel the operational endorsement for conducting ''voyages'' in the Coastwise Registry. This includes the necessary arrival and departure from wharves or docks.

The captains and crew of the Delta Mariner were selected by their professional skill and experience operating large tankers on the U.S. West Coast. The captains will have been operating the Mariner for over 2 years prior to visiting VAFB harbor during the latter half of 2002. The experience of the captains and the crew operating the Mariner includes constrained inland water passages and open ocean voyages over a wide spectrum of environmental conditions.

Foss, the tug boat company, is aware that greater caution is required for mooring and cargo operations at VAFB than at other Delta IV ports. Foss will put safety before schedule and approach the VAFB wharf in weather, tide, and sea conditions that reduce risk. After the first arrival of the Delta Mariner at the VAFB harbor, Foss intends to have a captain aboard the vessel that has previously called at VAFB.

Foss will use tug boats local to the ports of Hueneme or Los Angeles requesting officers with VAFB harbor experience. Neither Foss nor Boeing can control who is assigned to operate the tug boat, but it is not a sound business decision to send the inexperienced operator.

Comment 7: Where are the noise contour charts of the 10-fold increase to the ambient background to support the application?

Response: The EPT horn maximum noise level is 112 dB. A jackhammer maximum noise level is 111 dB. Ambient noise measured at the VAFB harbor is between 35 and 48 dB on a typical day (ENSRI, 2001). Given that 35 dB x 10 = 350 and 48 dB x 10 = 480, 112 dB is only 2–3 times higher than the measured ambient background noise.

Comment 8: Regarding the initial dredging, is the responsible entity NMFS (for the initial dredging details listed in the public notice but not in the application), VAFB or Boeing? If NMFS authorizes Boeing as stated in the **Federal Register**, then will NMFS issue a separate authorization to VAFB for the VAFB harbor maintenance dredging? Based on the NEPA documents referenced, who has responsibility as the action proponent for the actions listed in the application?

Response: In accordance with agreements signed by the Air Force and Boeing, Boeing is responsible for payment of all fines or penalties imposed as a result of administrative or judicial enforcement actions or citizens' suits for violations of federal, state, or local laws or regulations arising out of the conduct or activities related to the agreement. Boeing is the action proponent.

Comment 9: Is the previous harbor dredging required to support April 2002 operations? If so, was there an incidental harassment authorization application for this initial dredging?

Response: The previous dredging was to allow for the delivery of the launch table, an oversized steel structure that is part of the launch pad. The launch table was built in Washington State and moved down the coast by barge, as it was far too large to go by road. It required the use of the VAFB harbor and resulted in the 2001 dredging. There was no application for a marine mammal incidental harassment authorization since NMFS was of the opinion at the time that MMPA coverage was not necessary for the dredging operation because few marine mammals were likely to occur in the project area and harassment was unlikely. However, to ensure that NMFS' opinion was correct, monitoring was required during initial dredging, and this monitoring showed that there were small numbers of harbor seals hauled out on rocks 180 m (591 ft) from the dock. Since these seals could potentially be harassed by harbor activities, Boeing decided to apply for the requisite MMPA authorization.

Comment 10: Has NMFS unilaterally determined these initial dredging requirements to support Delta Mariner operations in the absence of any request in the application? Is NMFS asking the public to comment on an action in an application that has already begun without NMFS authorization?

Response: NMFS was of the opinion at the time of initial dredging that a permit was not necessary for the operation. None of the actions covered in Boeing's authorization application have begun.

Marine Mammal Impact Concerns

Comment 11: Is leaving out impacts on the dolphins mentioned in the application an oversight on the part of NMFS or a technical deficiency of the application?

Response: The dolphins referenced in the application are a cluster of concrete piles topped with a bollard and used for mooring a vessel.

Comment 12: Where is the scale navigational chart showing current depths, proposed depths for the initial dredging (if included in this application), area to be dredged, and location of seal haul-outs? At what distance are the marine mammals expected to be during these periods of vessel activity in harbor)?

Response: This application does not include the initial dredging. As addressed in Comment 9, there was no MMPA authorization during initial dredging. The application contains a photo with an outline of the dredge area. This same photo also indicates where the harbor seals haul out during low tide. The distance is 180 m (591 ft) from the main seal haul-out to the southern edge of the dock.

Comment 13: Where are the analyses to address air quality impacts on marine mammals from the operation of the Delta Mariner, the heavy equipment involved with wharf modifications, and the heavy equipment involved with launch vehicle/cargo handling? Where are the impact analyses on marine mammals to support Delta Mariner discharges from shipboard hotel services as well as the typical in-port maintenance that is conducted?

Response: Analysis of air quality in general was addressed in the Supplemental EIS, dated March of 2000. However, this air quality analysis did not address potential impacts to marine mammals. There will be no discharge from shipboard hotel service or in-port maintenance while the Delta Mariner is in the harbor. The Delta Mariner will be making deliveries, and will minimize time spent at VAFB.

Comment 14: Where are the analyses of the resultant harassment associated with loss of bottom flora and fauna in the food chain for marine mammals, impacts on water quality (e.g., turbidity, pollutants), and other potentially adverse impacts in this application to support the conclusions cited in the public notification that there is at worst only temporary modification to behavior?

Response: As discussed in other responses, the re-dredging activity will be limited to those areas that had been dredged in the past. Based on studies conducted over the past two decades and cited in the EA (ENSRI, 2001), benthic resources in the dredge footprint consist of small infaunal invertebrates. Harbor seals foraging in the area around the harbor do not feed on these small organisms directly. Fish that could feed on these organisms and that could be a potential food source for the seals are sufficiently wide ranging that they would not be substantially affected by this temporary loss of a food source. The benthic community has developed over the past 18 years since the current harbor configuration was created. Because this community is adapted to this very dynamic environment of moving sands, it is expected to recover quickly after dredging events. Thus, the continued periodic dredging of the harbor is not expected to directly or indirectly affect the food resources of the adjacent seals.

Comment 15: Based on recent NMFS concerns over US Navy, commercial, and private water-borne noise issues and their significant adverse affects on marine mammals, where are the analyses to address water-borne noise impacts from the operation of the Delta Mariner in such shallow water, the heavy equipment involved with wharf modifications, and the heavy equipment involved with vehicle/cargo handling?

Response: There have been very few studies on the effects of water-borne noise from dredging or other construction operations on marine mammals. NMFS is currently in the process of determining safety criteria for marine species exposed to underwater sound, including impulsive and continuous noise. Until the agency publishes these criteria, however, NMFS has preliminarily determined that marine mammals may risk incurring a temporary threshold shift when exposed to underwater impulsive sound pressure levels of 180 dB re 1 micro-Pa for cetaceans and 190 dB re 1 micro-Pa for pinnipeds. Marine mammals have also shown behavioral changes when exposed to impulse sound pressure levels of 160 dB re 1 micro-Pa and continuous sound pressure levels of 120 dB. NMFS does not believe that the underwater noise emanating from this project will be loud enough to harm marine mammals in the area. However, harbor seals may be temporarily displaced from the area due to a combination of disturbances: auditory exposure to underwater sound, and the visual exposure to boats, heavy equipment and people.

Comment 16: The MMC suggests that NMFS consider providing authorization for the disturbance of a small number of individuals of other marine mammal species that are uncommon, yet could possibly be disturbed, in the south VAFB area, including California sea lions, northern elephant seals, and northern fur seals.

Response: NMFS, in considering MMC's suggestion, has reviewed previous authorizations issued to VAFB as well as monitoring reports submitted as part of the reporting requirements of these authorizations. Based on review of these reports, NMFS has concluded that this IHA to Boeing should include authorization to incidentally harass small numbers of California sea lions, northern elephant seals, and northern fur seals. This conclusion is based on reports that California sea lions haul out in small numbers on South Rocky Point (approximately 3 km or 1.9 mi from the boat dock area) and Point Sal (northern limit of VAFB) during the fall, and that northern elephant seal pups and juveniles sporadically haul out for short periods during the spring on both north and south VAFB. According to the IHA issued to Boeing, a maximum of 10 California sea lions, 10 northern elephant seals, and five northern fur seals may be incidentally harassed during Boeing's harbor activities on south VAFB.

Habitat Concerns

Comment 17: What impact will the placement of dredged materials have on marine mammals?

Response: Beach replenishment with dredged materials would entail placing the sediments in the shallow sub-tidal where it will be re-entrained in the long-shore current. Because marine mammals do not use this beach for hauling out, there will be no impacts from this disposal option. Disposal of dredged materials at Honda Point would entail activities essentially the same as those covered in the Final EA of July 2001. Regardless of which action is taken, the proper Air Force approval forms will be submitted to the 30th Space Wing for review, and a Supplemental EA for this activity will be prepared if it is deemed necessary.

Comment 18: Where are the elevation drawings showing the ramp modification with respect to typical tidal fluctuations, particularly high tides where the lower ramp may induce haul out of marine mammals onto it?

Response: Marine mammals do not currently use the wharf as a high tide haul-out location. Only 0.19 m (7.5 in) are being removed from the overall height of the wharf, which is unlikely to make the surface low enough to induce marine mammals to start using it for a high tide haul-out site. Based on the as-built drawings, the surface of the dock is approximately +12 ft (+3.7 m) mean lower, low water (MLLW). Since maximum high tides in the harbor are no more than about 8 ft (2.4 m) MLLW, harbor seals would be unable to and have not been observed to haul out on the dock.

Cumulative Impacts

Comment 19: What is the cumulative impact of harassing these marine

mammals over this extended period of time (14 hours) over repeated potential haul-out periods?

Response: Over 14 hours there are usually only two low tide periods and whether seals do or do not haul-out near the dock depends on how high the low tide is and how low the high tide is. For example: On a given day at VAFB, there was a low tide at 07:52 PST at -0.03 ft (-0.009 m)(seals could haul-out), high tide at 14:43 PST at 2.96 ft (0.9 m)(seals can not haul-out), low tide at 18:45 PST at 2.33 ft (0.7 m)(seals can not haul-out), and high tide at 01:22 PST at 4.68 feet (1.4 m)(seals can not haul-out). Out of this period of 17.5 hours there were only 2 low tides but only one low tide that seals would be able to haul-out at the harbor. Some seals may leave and haul-out someplace else or not come back until the next day. Depending on the tides, some seals may haul-out again after the initial disturbance from the vessel. Because the vessel operations are only for 14 hours on 1 day, it is expected that the seals will continue to use that site as they did during the dredging operations so there should be no cumulative impact problems.

Mitigation and Monitoring Concerns

Comment 20: Has NMFS unilaterally determined more detailed mitigation measures than are found in the application? If additional information was provided to NMFS to supplement the original application, why wasn't the application modified and the additional information resubmitted in a more accurate and complete application?

Response: The mitigation measures proposed in the **Federal Register** notice of March 4, 2002, follow mitigation NMFS has previously incorporated into IHAs for similar activities to ensure that marine mammal takes remain negligible. NMFS saw no reason to have such information re-submitted by the applicant.

Comment 21: How is NMFS dealing with the unanswered question associated with timing of harbor activities (with breeding, molting, or pupping seasons) and the inconsistent treatment of this issue in the mitigation plan?

Response: Harbor seals do not typically breed, molt, or pup in the south VAFB area where Boeing will be conducting harbor activities. The nearest pupping site is at Rocky Point, approximately 1.6 km (1 mi) north of the project area. However, the IHA monitoring plan requires Boeing to observe and record the age class and gender of all marine mammals before, during, and after harbor activities in order to verify that no breeding, molting, or pupping takes place in the project area.

Comment 22: The MMC recommends that NMFS, if it has not already done so, assess whether the monitoring required as a condition of this and possible future incidental harassment authorizations will be adequate to detect possible non-negligible cumulative effects and, if not, what additional steps need to be taken to ensure that any such effects will be detected before they reach significant levels.

Response: NMFS believes that the monitoring requirements, along with the requirement of all IHA holders to report their monitoring results in a timely manner, will allow NMFS to assess the potential for cumulative effects on marine mammals and modify the conditions of the authorization if necessary.

Comment 23: Boeing requests that the mitigation measures proposed by NMFS in the **Federal Register** on March 4, 2002 (67 FR 9702), be modified to allow for the continuation of activities while seals are present, as this is consistent with NMFS' conclusion that there will be no more than a negligible impact on these marine mammals as a result of harbor activities.

Response: NMFS concurs 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.

MMPA Concerns

Comment 24: In the event of untoward impacts, injury to marine mammals, or violations of the permit which entity is held accountable and legally liable?

Response: In accordance with agreements signed by the Air Force and Boeing, Boeing is responsible for payment of all fines or penalties imposed as a result of administrative or judicial enforcement actions or citizens' suits for violations of federal, state, or local laws or regulations arising out of the conduct or activities related to the agreement.

Comment 25: Does VAFB have carte-blanche authorization to perform maintenance dredging at anytime for as long as it deems necessary?

Response: No, NMFS is not granting VAFB ''carte-blanche'' to perform maintenance dredging anytime for as long as it deems necessary. First, this authorization will be issued to Boeing not VAFB. And, second, the incidental harassment authorization is only valid for 1 year and must be re-applied for annually. Boeing is responsible for re-application and subsequent maintenance dredging.

National Environmental Policy Act (NEPA) Concerns

Comment 26: Why hasn't NMFS challenged the legal sufficiency of the segmented actions of the NEPA analysis/documents referenced as supporting this application when in fact the cumulative actions (particularly those that will be conducted concurrently) in the application are not those analyzed in the NEPA analyses/documents?

Response: Before issuance of incidental harassment authorizations under the MMPA, NMFS must ensure that the environmental impacts of its decision to issue or deny such authorizations are in compliance with NEPA. A programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996) stated that for issuance of an IHA, NMFS must first determine that the taking (by harassment) would not result in any serious injury or death to a marine mammal, would have no more than a negligible impact on marine mammals and their habitat, and would not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Therefore, NMFS' decision-making process for IHA issuance or denial independently and separately analyzes factors similar to those suggested under section 6.01 of National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999) for determining the significance of agency actions for the purposes of NEPA. On a case-by-case basis, NMFS determines whether the issuance of an IHA will individually or cumulatively have a significant impact on the quality of the human environment.

NMFS has responsibility for insuring that its own actions are in compliance with NEPA. Except in regards to how Federal actions may impact resources protected under the MMPA, Endangered Species Act, or other marine resource laws and regulations, NMFS has no authority over the actions of other Federal agencies. NMFS reviewed all NEPA documents related to Boeing's request for a marine mammal authorization and found that these documents were sufficient to satisfy the

requirements of its decision-making process.

Boeing's January 28, 2001, request for an incidental harassment authorization was specifically for the incidental and unintentional take of marine mammals during a one-year period of harbor activities and does not account for future maintenance dredging and other operations in the harbor. Incidental takes of marine mammals as a result of these future activities must be covered under subsequent authorizations that Boeing must request and NMFS must send out for public comment.

Endangered Species Act Concerns

Comment 27: Possible impacts to the southern sea otter population have been overlooked and may need to be addressed. Decision on the incidental take permit request received by NMFS should be coordinated with U.S. Fish and Wildlife Service (FWS) officials to insure that impacts to southern sea otters are adequately addressed. In addition, applicants for marine mammal incidental take permits should be encouraged to apply for consultation and permits through both agencies.

Response: Because the southern sea otter is designated threatened under the Endangered Species Act and management authority for this marine mammal species lies with FWS, VAFB initiated a formal Section 7 consultation with the FWS in 1998 on Boeing's harbor activities. A Biological Opinion was written and Incidental Take Statement 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 noted 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. NMFS expects Boeing to fulfill its obligations for sea otter habitat restoration and cooperate in VAFB's southern sea otter monitoring program.

Description of Habitat and Marine Mammals Affected by the Activity

The only marine mammal species likely to be harassed incidental to harbor activities at south VAFB is the Pacific harbor seal (*Phoca vitulina richardsi*). The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney *et al.*, 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals on VAFB is now estimated to be 1,040 (775 on south VAFB) based on sighting surveys and telemetry data (SRS Technologies 2001).

The daily haul-out behavior of harbor seals along the south VAFB coastline is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out on rocks outside the harbor breakwater where Boeing will be conducting wharf modification, Delta Mariner operations, cargo loading, and dredging activities. The maximum number of seals present during past dredging of the harbor was 23, with an average of 7 seals sighted per day. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1.6 kilometers (km) (1 mile, mi) north.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance by a space vehicle launch or another source are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

Three other marine mammal species are known to occur infrequently along the south VAFB coast during certain times of the year and are unlikely to be harassed by Boeing's activities. These three species are: the California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*) and northern fur seal (Callorhinus ursinus). Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). Please refer to those documents for information on these species.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the wharf modifications, Delta Mariner and off-loading operations, and dredging, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound levels from all equipment drops to a maximum level of 95 dB A-weighted within 15.2 m (50 ft) of the sources. In contrast, the ambient background noise measured approximately 76.2 m (250 ft) from the beach was estimated to be 35–48 dB A-weighted (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset may be analogous to a ''looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens et al., 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures may elicit such a reaction. In addition, the movements of cranes and dredges may represent a ''looming'' visual stimulus to marine mammals hauled out in close proximity. Marine mammals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

According to the MMPA, when harbor activities disrupt the behavioral patterns of marine mammals, they are considered to be taken by harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, then there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the marine mammals, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to result in disruption of behavioral patterns, such

as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and will not cause serious injury or mortality to marine mammals. On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may have adverse effects on individuals and would be considered a take by harassment due to disruption of behavioral patterns. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites, could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, since on average the number of marine mammals hauled out near the site is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes (i.e., Level B harassment).

For a further discussion of the anticipated effects of the planned activities on marine mammals in the area, please refer to the application and ENSRI's 2001 Final EA. Information in the application and referenced sources is adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Harassed

Boeing estimates that a maximum of 30 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 7 seals sighted during previous dredging operations in the harbor. Using the maximum and average number of seals hauled out per day, assuming that half of the seals will use the site at least twice, assuming that half of the seals hauled out will react to the activities, and using a maximum total of 83 operating days in 2002–2003, NMFS calculates that between 623 and 145 Pacific harbor seals may be subject to Level B harassment, as defined in 50 CFR 216.3. Although not likely to be present at the south VAFB harbor, NMFS is also authorizing the incidental harassment of 10 California sea lions, 10 northern elephant seals, and 5 northern fur seals and requires that marine mammal monitors note the presence and behavior of these marine mammal species in the project area.

Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals that haul out near the south VAFB harbor. The harbor seal haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals in the area to reproduce.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals, California sea lions, northern elephant seals, and northern fur seals in California waters, and, thus, there are no anticipated effects on subsistence needs.

Mitigation

No pinniped mortality and no significant long-term effect on the stocks of pinnipeds hauled out near south VAFB harbor are expected based on the relatively low levels of sound generated by the equipment to be used during Boeing's harbor activities (maximum level of 95 dB A-weighted within 50 ft (15.2 m)) and the relatively short time periods over which the project will take place (totaling approximately 83 days). However, Boeing expects that the harbor activities may cause disturbance reactions by some of the harbor seals hauled out on the adjacent beach and rocks. 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 marine mammals at night.

(2) Activities should 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 marine mammals are present.

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

(5) A qualified marine mammal observer will visually monitor marine mammals on beaches 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.

(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 marine mammals 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 marine mammals during all harbor activities. During nighttime activities, the harbor area will be lit and the monitor will use a night vision scope. Monitoring activities will consist of:

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

(2) Conducting and recording observations on harbor seals in the vicinity of the harbor for the duration of activities occurring when tides are low enough for harbor seals to haul out (+ 2 ft. or less).

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

As required by the MMPA, this monitoring plan will be subject to a review by technical experts prior to formal acceptance by NMFS.

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 within 90 days. This report will provide dates and locations of specific activities, details of marine mammal behavioral observations, and estimates of the amount and nature of all takes of marine mammals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from these activities, this will be reported to NMFS immediately.

Consultation

Boeing has not requested the take of any listed species nor is any take of listed species expected. Therefore, NMFS has determined that a section 7 consultation under the Endangered Species Act is not required at this time.

Although sea otters are not within the jurisdiction of NMFS, VAFB formally consulted with FWS in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was written and Incidental Take Statement 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 noted 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 National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined based on a programmatic NEPA assessment conducted on the impact of NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996), 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. Therefore, based on analysis of all relevant environmental documents, this action is exempted from further environmental review and meets the definition of a ''Categorical Exclusion'' as defined under NOAA Administrative Order 216–6.

Determinations

NMFS has determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: wharf modification, transport vessel operations, cargo movement activities, and harbor maintenance dredging, will result, at worst, in a temporary modification in behavior by Pacific harbor seals. California sea lions, northern elephant seals, and northern fur seals, while not likely to occur in the project area, may potentially experience the same temporary modification in behavior if they wander into the project area. While behavioral modifications may be made by these species to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since pinniped species haul out in such small numbers near the site (maximum number of Pacific harbor seals hauled out in one day estimated at 30 seals). The effects of the harbor activities are expected to be limited to short-term and localized behavioral changes. Therefore, NMFS concludes that the effects of the planned activities will have no more than a negligible impact on marine mammals.

Due to the localized nature of these activities, the number of potential takings 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 and will be entirely avoided through the incorporation of appropriate mitigation measures. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

In summary, NMFS has determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, northern elephant seals, and northern fur seals; would have no more than a 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.

Authorization

NMFS has issued an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south Vandenberg Air Force Base, CA, (VAFB) over a 1–year period. The issuance of this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: May 15, 2002.

David Cottingham,

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

[FR Doc. 02–13020 Filed 5–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051602E]

Endangered Species; File No. 1346

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Thomas McCormick (Principal Investigator), Channel Islands Marine Resource Institute (CIMRI), P.O. Box 1627, Port Hueneme, California 93044, has been issued a permit to take white abalone (*Haliotis sorenseni*) for purposes of scientific research and enhancement.

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

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Jennifer Skidmore (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 31, 2001, notice was published in the **Federal Register** (66 FR 45971) that a request for a scientific research permit to take species listed above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Holder was issued five-year permit to maintain captively bred white abalone for scientific research and enhancement at the CIMRI Hatchery. Research Activities include feeding studies, propagation studies and studies identified as goals for the long term recovery of the white abalone. The action only covers the propagation of animals collected before June 28, 2001.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 17, 2002.

Eugene T. Nitta,

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

[FR Doc. 02–13019 Filed 5–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 020515123–2123–01]

RIN 0660–XX15

Notice, Public Safety Communications Interoperability Summit

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of public meeting.