DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070102D]

Small Takes of Marine Mammals Incidental to Specified Activities; Building Demolition Activities at Mugu Lagoon, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of pinnipeds by harassment incidental to the demolition and removal of buildings located at the entrance of Mugu Lagoon in Point Mugu, CA has been issued to the Department of Navy, Naval Base Ventura County (NBVC).

DATES: Effective September 26, 2002, until September 26, 2003.

ADDRESSES: The application and authorization are 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: Kenneth Hollingshead, (301) 713–2322, ext 128 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 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; 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.

Summary of Request

Pursuant to section 101(a)(5)(D), NMFS issued an IHA to NBVC on September 26, 2001, for the harassment of small numbers of marine mammals incidental to the demolition and removal of 12 buildings and associated infrastructures located at the entrance of Mugu Lagoon in Point Mugu, CA during a 1–year period (66 FR 50416, October 1, 2001). On April 10, 2002, NMFS received a letter from NBVC requesting that the IHA be re-issued for an additional year to allow the completion of building demolition and removal activities at Mugu Lagoon. These activities are summarized below.

Description of Activities

The demolition site encompasses a total area of approximately 8 acres (3.2 hectares (ha)) at the entrance of Mugu Lagoon in Point Mugu, CA. This proposed authorization is almost identical to that proposed in the October 3, 2001 (66 FR 50416) notice. The single difference is that the current proposal is only for completion of phase two of the demolition activities. Phase one activities, involving cleanup and removal of contaminated building materials, sand, and soil were completed in 2001 and a satisfactory marine mammal monitoring report covering this phase of the work was submitted to NMFS on December 21, 2001.

The second phase of the project, which is scheduled to begin upon completion of the harbor seal pupping season around August 1, 2002, will be the demolition and removal of the remaining structures using standard construction procedures and equipment. No explosives will be used during the project and demolition crews will work only during daylight periods. NBVC has requested a new authorization to ensure that all phase two activities are in compliance with the MMPA in case work is not completed within the 1–year time period of the authorization ending September 26, 2002. Specific construction equipment to be used during phase two will include: a 973 loader; a 450 Hitachi excavator; a 320 loader; a Case 621 loader; a 710 4–wheel-drive backhoe; a 545D skip loader; a 1000–gallon water truck; a dump truck; and a Bobcat loader. A more detailed description of the work proposed for 2002 is contained in the application (The Environmental Company and LGL Ltd., 2001) which is available upon request (see **ADDRESSES**).

Comments and Responses

On July 30, 2002 (67 FR 49289), NMFS published a notice of receipt and a 30–day public comment period was provided on the application and proposed authorization. A recommendation to issue the requested authorization was received from the Marine Mammal Commission. No other comments were received.

Description of Habitat and Marine Mammals Affected by the Activity

Mugu Lagoon is one of the largest salt marshes in southern California, encompassing approximately 350 acres (142 ha) of water and tidal flats. The beaches around the Mugu Lagoon entrance are used year-round by harbor seals (*Phoca vitulina*) for resting, molting, and breeding. The Navy reported a peak count of 361 adults in the Mugu Lagoon on June 6, 2000 (The Environmental Company and LGL Ltd., 2001). Two other pinniped species are known to occur infrequently in the area of the proposed activity during certain times of the year: northern elephant seals (*Mirounga angustirostris*) and California sea lions (*Zalophus californianus*). When present, these latter species haul out at the mouth of the lagoon and on Family Beach, located south of the demolition project area on the ocean side. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Hanan (1996), 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.

Isolated observations of cetaceans have occurred in the Mugu Lagoon area. Two gray whale (*Eschrichtius robustus*) strandings have been recorded (one 20 years ago and one in the early 1980s). There is also one recorded observation of a gray whale moving in and out of the entrance to Mugu Lagoon (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 2001). Sightings of Dall's porpoise (*Phocoenoides dalli*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis* or *D. capensis*), and pilot whale (*Globicephala macrorhynchus*) have been made within 3 nautical miles (nm) (5.6 kilometers (km)) of shore in the vicinity of Point Mugu (Koski *et al.* , 1998); however, none of these species would be expected to occur within the lagoon.

Potential Effects of Demolition Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the demolition and removal activities, as well as the increased presence of personnel, may cause short-term disturbance to pinnipeds hauled out closest to the work area. 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 the Point Mugu demolition project, sound levels from all equipment (except the concrete breaker used only during the first phase) drops to below 100 decibels, A-weighted (dBA) within 50 feet (ft)(15.2 meters (m)) of the source (CALTRANS, 2001).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) 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 concrete breaker during phase one, may elicit such a reaction. In addition, the movements of the large hydraulic arms of the backhoes or the Hitachi excavator may represent a ''looming'' visual stimulus to seals hauled out in close proximity. Seals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

Harbor seals that haul out in Mugu Lagoon have clearly habituated to very loud airborne sounds at this location, as well as to the presence of humans and vehicle movement along the road that passes through the demolition area. For instance, biologists observed harbor seal haul-out sites in Mugu Lagoon during repeated overflights of a F–14a Tomcat jet aircraft in full afterburner as it performed touch-and-go maneuvers at nearby Mugu airfield. No more overt reactions than a momentary elevation of the hind flippers of a single juvenile seal were observed (The Environmental Company and LGL Ltd., 2001). Based on Air Force data, the received sound levels at the Mugu Lagoon haul-out sites under the jet's flight path could have reached a sound exposure level of 117–121 dB re 20 micro-Pascal (Pa) during these maneuvers (from C. Malme, data in the USAF aircraft noise database). In areas where harbor seals are not exposed to regular aircraft noise or other acoustic stimuli, this type of reaction is not typical. For instance, Bowles and Stewart (1980) reported that harbor seals on San Miguel Island, CA reacted to low-altitude jet overflights with alert postures and often with rapid movement across the haul-out sites, especially when aircraft were visible.

For the purposes of their application, NBVC assumes that when behavioral patterns of pinnipeds are disrupted by the demolition activities, they will 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 pinnipeds, and the type of activity in which they are engaged. Startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may have adverse effects on individuals and are considered a ''take'' by NMFS because of the potential for injury or death. As described in this document, harbor seals in the Mugu Lagoon are exposed to noise levels far greater than those expected during the demolition activities described in NBVC's application, and there is no evidence that noise-induced injury or deaths have occurred. The effects of the demolition activities are expected to be limited to short-term and localized behavioral changes (The Environmental Group and LGL Ltd., 2001).

According to NBVC's 2001–2002 marine mammal monitoring report, seals present at the haul-out site responded to the front loader back-up alarm (measured at approximately 78 dBA) by raising their heads and looking toward the construction site. During sounding of the alarm, approximately 7 seals in the haul-out moved around the site, but did not enter the water. Shortly after the alarm stopped, the seals resumed their ''normal'' haul-out behavior. After this occurred, the back-up alarm was disengaged to minimize disturbance.

For a further discussion on the anticipated effects of the planned demolition activities on marine mammals in the area and their food sources, please refer to the application (The Environmental Company and LGL Ltd., 2001). Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Taken

NBVC estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	*Potential Harassment Takes 2002*
Harbor Seals*	288
Northern Elephant Seal*	8
California Sea Lion*	12

* Some individual seals may be harassed more than once

Effects of Demolition Activities on Marine Mammal Habitat

NBVC anticipates no loss or modification to the habitat used by marine mammal populations that haul out within the Mugu Lagoon. Demolition activities will occur on shore above the highest tide mark, and the demolition contractor will ensure that building refuse will not enter the waters of the lagoon (New World Technology, 2001). The tidal patterns in the lagoon and structure of the nearby sandy haul-out areas will not be altered by these shore-based demolition activities.

The pinnipeds that may be present in Mugu Lagoon leave the lagoon area to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998); therefore, it is not expected that the demolition activities will have any impact on the food or feeding success of these marine mammals.

Possible Effects of Demolition Activities on Subsistence Needs

There are no subsistence uses for these pinniped species 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 in the Mugu Lagoon are expected based on the relatively low levels of sound generated by the demolition equipment (i.e., 100 dBA within 50 ft (15.2 m) from the source) and the relatively short time period over which the project will take place (approximately 8 weeks). However, NBVC does expect that the demolition activities may cause disturbance reactions by some of the pinnipeds on the beaches. To reduce the potential for disturbance from visual and acoustic stimuli associated with the demolition project, NBVC will undertake a variety of mitigation measures. In addition to these measures to be taken by NBVC, the construction contractor has developed detailed work plans for the project, which emphasize that special consideration is required to minimize disturbances to the resident harbor seal population (New World Technology, 2001). In addition to not using explosives and only operating during daylight hours, NBVC will adopt the following mitigation measures:

(1) Prior to each day of demolition or removal activities, NBVC Point Mugu Environmental Division personnel will inspect the work site to ensure compliance with the construction contractor's work plan, and to assess the number and types of marine mammals that are occupying the lagoon. Depending on results of initial observations and subsequent planned activities, the NBVC personnel will decide each day whether marine mammal monitoring for the entire day is needed (see Monitoring section). Work will be suspended or conducted in another area in the event that a monitoring biologist or a member of the demolition crew sights a marine mammal hauled out in an area where there is a risk that the animal may come into physical contact with construction machinery or personnel.

(2) The demolition contractor will ensure that work areas are caution taped as a barricade against inadvertent entry of unauthorized personnel where physical barriers are not already present. Before start of the activities, demolition personnel will be advised of all marine mammal mitigation measures.

(3) Work outside of the fenced boundary on the lagoon side of the site will be minimized to the extent possible. Work within 100 feet (30.48 meters) of the lagoon will be done manually where possible (New World Technology, 2001).

(4) During excavations, tarps will be carefully placed over areas in such a way as to reduce ''flapping'' during installation by unfolding the tarps in sections as they are installed. The edges of the tarps will be held down and secured with sandbags and/or tent stakes to prevent movement of the tarp during windy conditions.

(5) To reduce sound levels in proximity to harbor seal haul-out sites, concrete slabs that form the bases of some buildings and the pools will be sectioned using concrete cutting saws, rather than the hydraulic concrete breaker, where possible.

Monitoring

As part of its original application, NBVC provided a proposed monitoring plan for assessing impacts to marine mammals from demolition activities in Mugu Lagoon. This monitoring will be entirely land-based and is designed to determine if there are disturbance reactions, to determine the area over which reactions occur, and to characterize harbor seal reactions to demolition sounds.

The monitoring program will continue to be conducted via direct visual observation. NBVC must conduct a minimum of twice-daily monitoring efforts during each day of demolition, and conduct all-day monitoring when marine mammals are present or when new procedures or equipment are employed relative to previous project activities. Marine mammal monitors are required to record a variety of information including: (1) Date and time, (2) weather, (3) tide state, (4) composition and locations of the haul-out groups of pinnipeds within the lagoon, (5) horizontal visibility (estimated by determining what the furthest visible object is relative to the interacting seals using known positions of local objects and accounting for obstructing terrain), and (6) occurrence, or planned occurrence, of any other military aircraft activity or other anthropogenic activities in or around the lagoon.

Through direct visual observation, the number of seals hauled out and haul-out locations will be documented during the demolition. After each day's demolition activities, the marine mammal monitor will again inspect the work site and record information about the marine mammals within the lagoon. This monitoring plan also provides data required to characterize the extent and nature of marine mammal takings.

Reporting

NBVC will provide an initial report to NMFS within 90 days after the demolition and removal activities cease. This report will provide dates and locations of demolition activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from demolition activities, this will be reported to NMFS immediately.

Endangered Species Act (ESA)

NBVC's activities will not affect any listed species. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

The Department of the Navy, following Council on Environmental Quality regulations (40 CFR 1500), has found that demolition and disposal involving buildings or structures neither on, nor eligible for, listing on the National Register of Historic Places and requiring removal of hazardous materials, are categorically excluded from further documentation under NEPA (32 CFR 775, Department of Navy Procedures for Implementing the National Environmental Policy Act). NBVC has prepared a Record of Categorical Exclusion for all phases of this demolition project.

In accordance with section 6.01 of 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 the NBVC's request for an IHA and its Site Work/Final Survey Plan, that the proposed issuance of this IHA to NBVC 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 this analysis, the action of issuing an IHA for these activities meets the definition of a ''Categorical Exclusion'' as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Determinations

Based on the evidence provided in the application and this document, NMFS has determined that the effects of the planned demolition activities will have no more than a negligible impact on pinniped species and stocks. NMFS has determined that the short-term impact of conducting demolition and removal activities at the entrance of Mugu Lagoon in Point Mugu, California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species to avoid the acoustic and visual stimuli resulting from demolition and removal activities, previous observations of the responses of pinnipeds to loud military overflights and regular human activities near the Mugu Lagoon haul-out sites have not shown injury, mortality, or extended disturbance.

Due to the localized nature of these activities, the number of potential harassment takings of harbor seals, northern elephant seals, and California sea lions 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 will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near Mugu Lagoon during the period of demolition activities.

Authorization

Accordingly, NMFS has issued an IHA to NBVC for demolition and building removal activities to take place in Mugu Lagoon, CA during a 1–year period provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: September 18, 2002.

David Cottingham,

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

[FR Doc. 02–24245 Filed 9–23–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of a Final Damage Assessment and Restoration Plan and Environmental Assessment for Natural Resource Injuries and Service Losses Associated With the Fort Lauderdale Mystery Oil Spill in Florida

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that a document entitled, ''Final Damage Assessment and Restoration Plan and Environmental Assessment for the Fort Lauderdale Mystery Oil Spill'' (Final DARP/EA) is available. This document has been prepared by the state and Federal natural resource trustee agencies (Florida Department of Environmental Protection, FDEP, and the National Oceanic and Atmospheric Administration, NOAA) to address natural resource injuries and resource service losses resulting from a mystery oil spill in the Fort Lauderdale area. This Final DARP/EA presents the trustees' assessment of the natural resource injuries and service losses and their final plan to compensate for those losses by restoring natural resources and services. The trustees provided the public an opportunity to comment on a public review Draft DARP/EA. The Draft DARP/EA was released on June 24, 2002 and was announced in local newspapers and the **Federal Register** (June 24, 2002; 67 FR 42538). The trustees received two public comments on the Draft DARP/EA, both were in support of one of the restoration projects. As a result, there are no significant changes in the evaluation or selection of restoration projects since the Draft DARP/EA.

ADDRESSES: Requests for copies of the Final DARP/EA should be directed to Tony Penn of NOAA, 1305 East West Highway, Station 10218, Silver Spring, MD 20910, e-mail: *tony.penn@noaa.gov.* The Final DARP/EA is also available electronically at *http://www.darp.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact: Tony Penn, at (301) 713–3038 x197, e-mail: *tony.penn@noaa.gov.*

SUPPLEMENTARY INFORMATION: On Tuesday morning, August 8, 2000, oil tar balls and oil mats were observed on beaches in the area of Fort Lauderdale, Florida. Within the next few days, approximately 20 miles of high-use recreational beaches, from North Miami Beach northward to near Pompano Beach (primarily Broward County beaches), were oiled; some were closed for cleaning. The origin of the oil is unknown. The United States Coast Guard, the lead response agency for the incident, classified the spill as medium, and the trustees have estimated the amount of oil stranded on the shoreline to be approximately 15,000 gallons.

Natural resources or their services impacted as a result of the incident include threatened and endangered sea turtles and their habitats, marine surface waters and their biota including fish, birds, and recreational use of beaches. Response actions removed the majority of the shoreline oil within a few days of oiling. These response actions did not prevent natural resource impacts from occurring nor did these actions restore or rehabilitate natural resource and service injuries that resulted from the incident.

Natural resource trusteeship authority is designated according to section 1006(b) of OPA, Executive Order 12777, October 22, 1991 (56 FR 54757), and Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300. Federal trustees are designated by the President, and state trustees by the Governor. Acting on behalf of the public as trustees for the living and non-living resources in the coastal and marine environments of Florida, the National Oceanic and Atmospheric Administration and the Florida Department of Environmental Protection, are responsible for assessing injuries to trust resources resulting from oil spill incidents, and for developing and implementing a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of injured natural resources and their services.

Pursuant to section 1002(a) of OPA, each party responsible for a vessel or facility from which oil is discharged, or