

Department of Commerce by the Islander East Pipeline Company (Consistency Appeal of Islander East Pipeline Company, L.L.C.).

**DATES:** The hearing is scheduled to begin at 9:30 a.m. on November 5, 2003. Speaker registration begins at 8:30 a.m. on the day of the hearing. Public comments on the appeal must be received by November 20, 2003.

**ADDRESSES:** The public hearing and speaker registration will be held at the Omni New Haven Hotel, 155 Temple Street, New Haven, Connecticut. Written comments may be submitted at the hearing. All e-mail comments on issues relevant to the Secretary's decision of this appeal may be submitted to

[IslanderEast.comments@noaa.gov](mailto:IslanderEast.comments@noaa.gov).

Apart from the hearing, comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record are available at the Internet site <http://www.ogc.doc.gov/czma.htm> and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal are to be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, Connecticut.

**FOR FURTHER INFORMATION CONTACT:** Branden Blum, Senior Counselor, via email at [gcos.inquiries@noaa.gov](mailto:gcos.inquiries@noaa.gov), or at 301-713-2967, extension 186.

**SUPPLEMENTARY INFORMATION:** The Islander East Pipeline Company filed an administrative appeal with the Department of Commerce, pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, asking that the Secretary of Commerce (Secretary) override the State of Connecticut's (State) objection to Islander East's proposed natural gas pipeline. The pipeline would extend from near North Haven, Connecticut, across the Long Island Sound to a terminus in Suffolk County (Long Island), New York. Connecticut's objection is based on the project's potential effects on the natural resources or land and water uses of Connecticut's coastal zone.

On February 4, 2003, NOAA published a notice in the **Federal Register** announcing that it would hold a public hearing concerning the Islander East appeal at a location to be determined in the State of Connecticut. See 68 FR 5620. The notice also indicated the hearing was expected to be held in the Spring of 2003. Subsequently, proceedings in the appeal

were temporarily halted at the request of one or both parties in order to accommodate settlement negotiations and then to allow the State of Connecticut to reconsider its objection to the pipeline project. On August 19, 2003, a **Federal Register** notice advised that processing of the appeal had resumed and that details concerning the previously announced public hearing would be forthcoming. See 68 FR 49760. This notice provides scheduling information for the hearing.

The hearing, to be held on November 5, 2003, will begin at 9:30 a.m. at the Omni New Haven Hotel, and continue throughout the day with afternoon and evening sessions. Intermissions are expected near noon and in the late afternoon (approximately 4:30 p.m.). In addition, a temporary recess may be scheduled for periods when all registered speakers have had an opportunity to testify. Typically the evening session is crowded, and it is suggested that, if possible, speakers attend the morning or afternoon sessions. Speakers must register on the day of the hearing, on site, at the hotel. Registration of speakers will begin at 8:30 a.m. Each organization that registers should expect to receive a total of five minutes for its representatives to present oral comments. Individuals from the general public who register will receive approximately three minutes to speak. Speakers will be recognized in the order in which they register (a first-come-first-serve basis), alternating between individuals from the general public and those representing organizations. A specific period is also expected to be designated during the morning and afternoon sessions for remarks by elected officials.

Written comments may be submitted to NOAA at the hearing by any person in attendance. For submissions at the hearing, we request, but do not require, that you provide three copies for inclusion into the administrative record. Apart from the hearing, written comments may be submitted by e-mail to [IslanderEast.comments@noaa.gov](mailto:IslanderEast.comments@noaa.gov) or forwarded via mail to NOAA's Office of the General Counsel for Ocean Services. Comments must be submitted by November 20, 2003, the close of the public comment period. Comments will be made available to the parties; they are also expected to be posted on the Department of Commerce's CZMA appeals Web site at <http://www.ogc.doc.gov/czma.htm>.

This hearing is being held to obtain information on issues the Secretary will likely consider in deciding Islander East's appeal. A summary of relevant issues as well as additional background

on the appeal appears in a January 24, 2003 **Federal Register** notice announcing the filing of the appeal (see 68 FR 3513), a copy of which can be found on the Internet at <http://www.ogc.doc.gov/czma.htm>.

Questions concerning the hearing may be sent via e-mail to [gcos.inquiries@noaa.gov](mailto:gcos.inquiries@noaa.gov) or made by telephone to 301 713-2967, extension 186.

Dated: September 26, 2003.

**James R. Walpole,**

*General Counsel.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 032603B]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Taking of California Sea Lions, Pacific Harbor Seals and Northern Elephant Seals Incidental to Research Surveys at San Nicolas Island, Ventura County, 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 marine mammals, by harassment, incidental to the assessment of black abalone populations at San Nicolas Island (SNI), CA, has been issued to Dr. Glenn R. VanBlaricom, Ph.D.

**DATES:** Effective from September 18, 2003, through September 17, 2004.

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

**FOR FURTHER INFORMATION CONTACT:** Sarah Hagedorn, Office of Protected Resources, NMFS, (301) 713-2322, ext 117; or Christina Fahy, Southwest Regional Office, NMFS, (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 marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines "harassment" as:

...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

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

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of 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 9, 2003, NMFS received a letter from Glenn R. VanBlaricom,

Ph.D., Washington Cooperative Fish and Wildlife Research Unit, requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends over time in black abalone populations at permanent study sites. Population trend data for black abalone populations are important and needed for several reasons. First, the reintroduction of sea otters to SNI since 1987 raises the possibility of conflict between sea otter conservation and abalone populations because abalones are often significant prey for sea otters. Second, the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992, has resulted in dramatically increased rates of abalone mortality at the island. Third, California populations of black abalones have been recently designated as a candidate species for listing pursuant to the Endangered Species Act of 1973 (ESA) (as amended). The concern is that the combined effects of sea otter predation and abalone withering syndrome, following several decades during which black abalones may have been over-harvested in commercial and recreational fisheries, may cause reduction of black abalone populations to the point where risk of extinction increases. Long-term abalone population trend data from SNI is needed to determine if drastic population declines continue, and if extinction risk becomes high.

## Specified Activities

Additional information of the work proposed is contained in the application, which is available upon request (see **ADDRESSES**).

## Comments and Responses

On June 25, 2003 (68 FR 37799) NMFS published a notice of receipt of application, with a 30-day comment period. That notice described the activity and anticipated effects on marine mammals. That information is not repeated here. During the 30-day comment period, comments were received from the Marine Mammal Commission (Commission).

*Comment 1:* The Commission concurs with NMFS' preliminary determination that, given the mitigation measures proposed by the applicant, the short-term impact of the subject research will result in no more than the temporary modification of behavior by California sea lions, Pacific harbor seals, and northern elephant seals. It is not clear,

however, based on the information in NMFS' **Federal Register** notice and the application, whether sea otters could be disturbed by the proposed research, and, if so, whether a separate authorization is being sought from the Fish and Wildlife Service to cover such taking.

*Response:* Sea otters are not expected ashore during the time periods when the research activities would be conducted. If sea otters are sighted ashore during the abalone research, then the IHA holder (Dr. VanBlaricom) would follow similar procedures in place for other listed marine mammals. As a result of this requirement in the IHA, NMFS determines that the activity will not affect California sea otters.

*Comment 2:* The Commission believes that NMFS' preliminary determinations are reasonable, provided NMFS is satisfied that the proposed monitoring program is sufficient to detect the effects of the proposed research activities, including any mortality and/or serious injury that results from startle responses, or stampedes. NMFS' **Federal Register** notice states that no takings by injury and/or death are anticipated as a result of the proposed activities. The Commission notes, however, that while the proposed mitigation measures are expected to reduce the possibility of injury or death of animals, the potential for such taking remains. Consequently, the Commission recommends that any authorization issued to the applicant specify that, if a mortality or serious injury of a marine mammal occurs which appears to be related to the abalone research, further research activities be suspended while NMFS determines whether steps can be taken to avoid further injuries or mortalities or until such taking can be authorized by regulations promulgated under section 101(a)(5)(A) of the MMPA.

*Response:* In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of serious injury or death to hauled animals is very low.

One exception to the low risk of marine mammal injury or mortality associated with abalone research would be if disturbances occur during breeding season, as it is possible that mothers and dependent pups may become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups may

increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed. Trampling increases the risk of injury or death to the pups.

NMFS concurs that all research activities be suspended, and that NMFS immediately be notified, in the case that mortality or serious injury to a marine mammal occurs which appears to be related to the abalone research. The following required mitigation measures will both reduce the possibility of incidental harassment takes and lower the possibility of serious injury or mortality.

#### Mitigation

Researchers will be judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone researchers, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be reoccupied by any hauled marine mammals that were disturbed by the presence of abalone researchers. NMFS will be notified immediately and all research activities will be suspended in the case that mortality or serious injury to a marine mammal occurs which appears to be related to the abalone research.

Researchers will avoid visiting those black abalone study sites with resident pinnipeds during periods of breeding and lactation from February through October. During these periods of time, abalone research activities will be confined to black abalone sites where pinniped breeding and post-partum nursing does not occur.

Researchers will limit visits to site 8 to the period from November through January, and suspend research activities and immediately vacate any areas upon which Guadalupe fur seals are hauled out or that California sea otters are occupying.

#### Monitoring

Dr. Glenn VanBlaricom and associates will conduct marine mammal monitoring during abalone surveys in order to verify that the taking of marine mammals, by harassment, incidental to abalone research surveys, will have a negligible impact on marine mammal stocks and to ensure that these harassment takings are at the lowest level practicable.

Currently, all biological research activities at SNI are subject to approval

and regulation by the Environmental Planning and Management Department (EPMD), US Navy. The US Navy owns SNI and closely regulates all civilian access to and activity on the island, including biological research. Therefore, monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center. Also, ongoing long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Monitoring requirements in relation to Dr. VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD, allowing transmittal of this information to appropriate agencies and personnel.

#### Reporting

A draft final report must be submitted to the Regional Administrator, and the Director, Office of Protected Resources, NMFS, within 60 days after the conclusion of the year-long field season. A final report must be submitted to the Regional Administrator and the Director, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

#### Endangered Species Act (ESA)

NMFS has determined that the abalone research activities and the accompanying IHA will not have an effect on species listed under the ESA. Therefore, consultation under Section 7 was not required.

#### National Environmental Policy Act

In accordance with the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has 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) and the

content and analysis of Dr. VanBlaricom's request for an IHA, that the proposed issuance of this IHA to Dr. VanBlaricom 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, the action of issuing an IHA for these activities meets the definition of a "Categorical Exclusion" and is exempted from further environmental review.

#### Determinations

NMFS has determined that the impact of abalone research, as described in this document, in the earlier **Federal Register** notice published on June 25, 2003 (68 FR 37799), and in the application for an IHA, should result, at worst, in the temporary modification in behavior by California sea lions, Pacific harbor seals and northern elephant seals. The effects of abalone research surveys on SNI are expected to be limited to short term and localized changes in behavior involving relatively small numbers of pinnipeds. While behavioral modifications, including temporarily vacating onshore haulouts, may be made by these species to avoid the presence and nearness of abalone researchers, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of mitigation measures.

#### Authorization

NMFS has issued an IHA to Dr. Glenn R. VanBlaricom to take small numbers of Pacific harbor seals, California sea lions and Northern elephant seals for a 1-year period incidental to abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements described in this document are undertaken.

Dated: September 23, 2003.

**Laurie K. Allen,**

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

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