

then conducted a CBP inquiry. The result of the CBP inquiry affirmed Ta Chen and YUSCO's claims that there were no entries of subject merchandise during the POR.

Petitioners allege Ta Chen and YUSCO were affiliated with other Taiwanese companies during the POR. See Petitioners submission to the Department, dated August 21, 2003. However, the Department has preliminarily determined to rescind this administrative review absent evidence of any entries during the POR. The parties being reviewed in this case are Ta Chen and YUSCO, not the other parties which have been alleged to be affiliated with Ta Chen and YUSCO. Neither the petitioners nor any other party requested an administrative review of Ta Chen's or YUSCO's alleged affiliates. Therefore, absent entries, there is no reason for the Department to conduct an affiliation analysis. If the petitioners believe in future periods of review that other parties potentially affiliated with Ta Chen and YUSCO have exported subject merchandise to the United States, then a review covering those subsequent periods of reviews for those companies should be requested.

The Department is satisfied, after a review of information on the record, certification from YUSCO and Ta Chen of no exports to the United States during the POR and the inquiry on data from CBP, that there were no entries of Ta Chen and YUSCO's stainless steel plate in coils during the POR to the United States. Therefore, the Department is preliminarily rescinding this administrative review. The cash deposit rate for YUSCO will remain at 8.02 percent, for Ta Chen the cash deposit rate will remain at 10.20 percent, and for "all other" producers/exporters of the subject merchandise the cash deposit rate will remain at 7.39 percent, the rates established in the most recently completed segment of this proceeding. See *Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan*, 68 FR 63067 (November 7, 2003). Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to this preliminary rescission. Case briefs must be submitted within 30 days after the date of publication of this notice and rebuttal briefs, limited to arguments raised in the case briefs, must be submitted no later than 7 days after the time limit for filing case briefs. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 9, 2003.

**James J. Jochum,**  
Assistant Secretary for Import  
Administration.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 111403B]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys off the Northern Yucatan Peninsula in the Gulf of Mexico

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

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

**SUMMARY:** NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys off the northern Yucatan Peninsula in the Gulf of Mexico. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

**DATES:** Comments and information must be received no later than January 15, 2004.

**ADDRESSES:** Comments on the application should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at:

[http://www.nmfs.noaa.gov/prot\\_res/](http://www.nmfs.noaa.gov/prot_res/)

*PR2/Small\_Take/smalltake\_info.htm#applications*  
Comments cannot be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713-2322, ext 163.

#### 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."

Section 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).

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the

incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

### Summary of Request

On October 8, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the Gulf of Mexico off the northern Yucatan Peninsula. The Gulf of Mexico research cruise will be off the coast of the northern Yucatan Peninsula in an area extending between 21° to 22.5° N and 88° to 91° W from March 7, 2004 to April 4, 2004. The operations will partly take place in the Exclusive Economic Zone (EEZ) of Mexico.

The purpose of the project is to study the Chicxulub Crater. The Chicxulub Crater was formed 65 million years ago when a massive meteor crashed into the Yucatan Peninsula of Mexico leaving behind the crater with a diameter of about 150 km (93 mi). The well-known massive extinction event at the Cretaceous-Tertiary (K-T) boundary appears to have been caused, at least in part, by this impact. It is also the only large terrestrial impact crater with a well preserved topographic peak ring. The Chicxulub Crater is uniquely suited for a seismic investigation into the deformation mechanisms of large diameter impacts in general and the physical parameters of the K-T impact in particular. The goals are to: (1) Determine the direction of approach and angle of the Chicxulub impact through the collaborative seismic and modeling effort, (2) map the deformation recorded in the upper crust near the crater center that may yield important information about the kinematics of large bolide impacts, (3) image the peak ring and other morphologic features in the northwest quadrant of the crater to further understand the physical parameters of the Chicxulub impact structure, and (4) model the 3-D collapse of an asymmetric transient crater to help better understand the mechanics of large impact craters and to quantify the environmental effects of the K-T impact.

### Description of the Activity

The seismic survey will involve one vessel, the *R/V Maurice Ewing*. It will deploy an array of 20 airguns as an energy source, plus a 3 to 6-km (1.6 to 3.2 n.mi.) towed hydrophone streamer. As the airgun array is towed along the survey line, the towed hydrophone

streamer or Ocean Bottom Seismometers (OBSs) will receive the returning acoustic signals and transfer the data to the on-board processing system. Water depths within the study area range are less than 100 m (328 ft) and almost all of the survey will be conducted in water depths less than 50 m (164 ft).

The procedures to be used for the seismic study will be similar to those used during previous seismic surveys by LDEO in the equatorial Pacific Ocean (Carbotte et al., 1998, 2000). The proposed seismic surveys will use conventional seismic methodology, with a towed airgun array as the energy source and a towed hydrophone streamer and/or OBSs as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel.

During the airgun operations, the vessel will travel at 7.4–9.3 km/hr (4–5 knots), and seismic pulses will be emitted at intervals of 60–90 sec (OBS lines) and approximately 20 sec Multi-Channel Seismic profiles (MCS lines). The 20-sec spacing corresponds to a shot interval of about 50 m (164 ft). The 60–90 sec spacing along OBS lines is to minimize reverberation from previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The 20-airgun array will include airguns ranging in chamber volume from 80 to 850 in<sup>3</sup>. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft) across track by 9 m (30 ft) along track.

Along the selected lines, the OBSs will be positioned on the ocean bottom by the *Maurice Ewing*. After each line is shot, the *Maurice Ewing* will retrieve the OBSs, download the data, and refurbish the units before redeploying the OBSs along the next line that will be shot. During the Yucatan cruise, there will be three deployments of OBSs.

In addition to the operations of the airgun array, the ocean floor will be mapped continuously throughout the entire cruise with an Atlas Hydrosweep DS-2 multibeam 15.5-kHz bathymetric sonar, and a 3.5-kHz sub-bottom profiler. Both of these sound sources will be operated simultaneously with the airgun array.

The Atlas Hydrosweep is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and there are two deep-water modes: an Omni mode and a Rotational Directional Transmission mode (RDT).

The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom

topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5 kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1μPa, 800 watts, while nominal source output is 200 dB re 1 μPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwidth of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Additional information on the airgun arrays, bathymetric sonars, and sub-bottom profiler specifications is also contained in the application (see **ADDRESSES**) and in previous **Federal Register** notices (April 14, 2003, 68 FR 17909, and September 17, 2003, 68 FR 54421).

### Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Gulf of Mexico near the northern Yucatan Peninsula and its associated marine mammals can be found in the LDEO application and a number of documents referenced in the LDEO application, and is not repeated here. In the Gulf of Mexico near the Yucatan Peninsula, 29 marine mammal species are known to occur within the proposed study area. The species included in this application are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Sowerby's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), long-finned pilot whale (*Globicephala*

*melas*), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Seven of these species are listed as endangered under the U.S. Endangered Species Act (ESA): sperm, North Atlantic right, humpback, sei, fin, and blue whales, as well as West Indian manatee. Also, one species of pinniped, the hooded seal (*Cystophora cristata*), could potentially be encountered during the proposed seismic surveys. Additional information on most of these species is available at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html).

#### Potential Effects on Marine Mammals

NMFS' April 14, 2003, **Federal Register** notice (68 FR 17909) describes generally the anticipated effects of the Ewing's airguns and multibeam bathymetric sonar on marine mammals, including masking, behavioral disturbance, and potential hearing impairment and other physical effects. Possible effects of the sub-bottom profiler used in the projects are

described in the previously mentioned **Federal Register** notices (68 FR 44291, July 28, 2003). The LDEO application for operations in Yucatan also provides information on what is known about the effects of LDEO's planned seismic survey on marine mammals. Past **Federal Register** notices for other LDEO seismic surveys include July 28, 2003 (68 FR 44291), August 26, 2003 (68 FR 51240), September 12, 2003 (68 FR 53714), September 17, 2003 (68 FR 54421), and October 21, 2003 (68 FR 60086).

#### *Estimates of Take for the Northern Yucatan Peninsula Cruise*

NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1  $\mu$ Pa root-mean-squared (rms). The rms pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley et al. 1998, 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed

mitigation measures will minimize the possibility of Level A harassment. LDEO has calculated the "best estimates" for the numbers of animals that could be taken by level B harassment during the proposed seismic survey at the northern Yucatan Peninsula using data on marine mammal abundance from a previous survey region, as shown in the predicted RMS radii table.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 20-gun array planned to be used for this project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array, so it is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multibeam sonar.

The following table explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB.

Species	"Best Estimate" of the Number of Exposures to Sound Levels $\geq 160$ dB ( $\geq 170$ dB)	% of North Atlantic Population	"Maximum Estimate" of the Number of Exposures to Sound Levels $\geq 160$ dB ( $\geq 170$ dB)
PHYSETERIDAE			
Sperm whale	0	0	0
Dwarf/Pygmy sperm whale	0	0	0
ZIPHIIDAE			
Cuvier's beaked whale	0	0	0
Sowerby's beaked whale	0	0	0
Gervais' beaked whale	0	0	0
Blainville's beaked whale	0	0	0
DELPHINIDAE			
Rough-toothed dolphin	295 (85)	N.A.	443 (128)
Bottlenose dolphin	9107 (2631)	N.A.	13,660 (3946)
Pantropical spotted dolphin	436 (126)	<0.7	654 (189)
Atlantic spotted dolphin	988(285)	<1.8	1481 (428)
Spinner dolphin	26 (7)	<0.2 <sup>a</sup>	38 (11)
Clymene dolphin	0	0	0
Striped dolphin	0	0	0
Short-beaked common dolphin			
Long-beaked common dolphin			
Fraser's dolphin	6 (1)	N.A.	10(2)
Risso's dolphin	6 (1)	0	10(2)
Melon-headed whale	6 (1)	0.1 <sup>a</sup>	10(2)
Pygmy killer whale	0	0	0
False killer whale	359 (104)	N.A.	539 (156)
Killer whale	6 (1)	0.1	10(2)
Short-finned pilot whale	205 (59)	0	308 (89)
Long-finned pilot whale			
MYSTICETES			
North Atlantic right whale	0	0	0
Humpback whale	0	0	0
Minke whale	0	0	0
Bryde's whale	0	0	0
Sei whale	0	0	0

Species	"Best Estimate" of the Number of Exposures to Sound Levels $\geq 160$ dB ( $\geq 170$ dB)	% of North Atlantic Population	"Maximum Estimate" of the Number of Exposures to Sound Levels $\geq 160$ dB ( $\geq 170$ dB)
Fin whale	0	0	0
Blue whale	0	0	0
PINNIPED			
Hooded seal	0	0	0

<sup>a</sup>% of Gulf of Mexico population. N.A. = not available.

### Conclusions- Effects on Cetaceans

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

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

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes of the affected stocks. A maximum of 13660, 1481, and 654 bottlenose, Atlantic spotted, and pantropical spotted dolphins, respectively, (the most abundant delphinids in the proposed survey area) are expected to be exposed to seismic sounds greater than or equal to 160 dB. However, the best estimates for bottlenose, Atlantic spotted, and pantropical spotted dolphins are 9107, 988, and 436, respectively. This represents zero to 1.8 percent of the North Atlantic populations of these species based on population estimates. However, these dolphin species surveys have not been conducted for most of their range in the

North Atlantic Ocean and adjacent waters. Therefore the true percentages of the populations that might be exposed to seismic sounds greater than or equal to 160 dB are likely to be much less than 1.8 percent, as the population sizes and the zero to 1.8 percent are based on only a small fraction of their range and their actual population sizes are much larger.

In light of the type of take expected and the small percentages of affected stocks, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs, ramp-ups, and power-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

### Conclusions- Effects on Pinnipeds

Pinnipeds are not expected to be encountered during the proposed seismic survey at the northern Yucatan Peninsula in the Gulf of Mexico. However, a conservative estimate of a maximum of 5 hooded seals may be affected by a portion of the proposed survey in the Gulf of Mexico if they are encountered. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. If hooded seals were encountered, the proposed seismic survey would have, at most, a short-term effect on their behavior, falling within the definition of Level B harassment. The action would therefore have no more than a negligible impact on the affected species or stocks of pinnipeds.

### Mitigation

The following mitigation measures are proposed for the subject seismic surveys, provided that they do not compromise operational safety requirements: (1) Speed and course alteration; (2) power-down and shut-down procedures; and (3) ramp-up procedures. Mitigation also includes marine mammal monitoring in the

vicinity of the arrays. These mitigation measures are further described here.

These mitigation measures will incorporate use of established safety radii which are equal to 1.5 times the distance from the arrays where sound levels  $\geq 190$  and 180 dB re 1  $\mu$ Pa rms (the criteria for onset of Level A harassment for pinnipeds and cetaceans respectively) are predicted to be received. LDEO has modeled the sound pressure fields for the 20-gun array in relation to distance and direction from the airguns and predicts that the 190-dB and 180-dB distance from the airgun array will be 275 ft (902 m) and 900 ft (2935 m) respectively.

The directional nature of the 20-airgun array to be used in this project is also an important mitigating factor. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

### Speed and Course Alteration

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

#### Power-down and Shut-down Procedures

Airgun operations will be powered-down (or shut-down) immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate safety radius. If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. For the power-down procedure for the 20-gun array, one 80 in<sup>3</sup> airgun will continue to be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until any marine mammal has cleared the safety radius. The mammal has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales).

#### Ramp-up Procedure

When airgun operations with the 20-gun array commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or "ramped up" (also described as a "soft start"). Operations will begin with the smallest gun in the array (80 in<sup>3</sup>). Guns will be added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5-min period over a total duration of approximately 25 minutes. Throughout the ramp-up procedure, the safety zone for the full 20-gun array will be maintained. Given the presence of the streamer and airgun array behind the vessel, the turning rate of the vessel with trailing streamer and array is no more than five degrees per minute, limiting the maneuverability of the vessel during operations.

The "ramp-up" procedure will be required under the following circumstances. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the *Ewing* was towing the 20-

gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8-minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a "no shooting" period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun has been firing continuously during the interruption of seismic activity.

Comments on past proposed IHAs raised the issue of prohibiting nighttime operations as mitigation. However, this is not practicable due to cost considerations. The daily cost to the federal government to operate vessels such as *Ewing* is approximately \$33,000 to \$35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, it is possible that each trip would require an additional three to five days, or up to \$175,000 more, depending on average daylight at the time of work.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has determined that the proposed mitigation ensures that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns (at least one hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity. Therefore it is likely that the 20-gun array will not be ramped-up from a shut-down at night.

#### Marine Mammal Monitoring

LDEO must have at least two observers on board the vessel, and at least one must be an experienced marine mammal observer that NMFS approves. These observers will monitor marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime start-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down.

The observers will be on duty in shifts of no longer than 4 hours. The second observer must also be on watch part of the time, including the 30-minute periods preceding startup of the airguns and during ramp-ups. Use of two simultaneous observers will increase the likelihood that marine mammals near the source vessel are detected. LDEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are not on duty.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Maurice Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210° arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) will systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal is in or near the safety radii so that the required mitigation measures, such as course alternation and power-down or shut-down, can be implemented. If the airguns are powered or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be powered-down if marine mammals are observed in or

about to enter the safety radii. If the airguns are ramped-up at night, two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Comments on past proposed IHAs suggested that NMFS require the use of passive acoustic monitoring, which is generally more effective than visual observations. Shipboard passive acoustics would not allow those on board the vessel to determine a marine mammal's distance from the vessel through triangulation; the vessel operator could determine only that a marine mammal is some unknown distance from the vessel. In order to triangulate on the animal, a system similar to that used in the Gulf of Mexico Sperm Whale Seismic Study (SWSS) in May 2003 is necessary. That passive acoustical monitoring equipment is not the property of LDEO or the Ewing and is not available for the Yucatan cruises. LDEO is presently evaluating the scientific results of the passive sonar from the SWSS trip to determine whether it is practical to incorporate it into future seismic research cruises. NMFS expects a report on this analysis shortly.

#### Reporting

LDEO will submit a report to NMFS within 90 days after the end of the cruise, which is predicted to occur on or around April 4, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

#### ESA

Under section 7 of the ESA, the National Science Foundation (NSF), the agency funding LDEO, has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA. NSF has initiated consultation with the U.S. Fish and Wildlife Service on West Indian Manatees.

#### National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the northern Yucatan Peninsula surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

#### Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey at the northern Yucatan Peninsula in the Gulf of Mexico will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited or nonexistent.

#### Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic surveys at the northern Yucatan Peninsula in the Gulf of Mexico, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

#### Information Solicited

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

Dated: December 4, 2003.

**Phil Williams,**

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

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**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Secrecy and License To Export

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 17, 2004.

**ADDRESSES:** Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, (703) 308-7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; by e-mail at [susan.brown@uspto.gov](mailto:susan.brown@uspto.gov); or by facsimile at (703) 308-7407.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313-1450; by telephone (703) 308-5107; or by e-mail at [bob.spar@uspto.gov](mailto:bob.spar@uspto.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. When an invention is determined to be detrimental to national security, the Commissioner for Patents at the USPTO must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. If a secrecy order is applied to an international application, the application will not be forwarded to the