

granted to the Association for the Administration of Rice Quotas, Inc. ("AARQ") on March 3, 2004. Notice of issuance of the original Certificate was published in the **Federal Register** on January 28, 1998 (63 FR 4220).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number), or by e-mail at oitca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2004).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the grounds that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 97-00003, was issued to AARQ on January 21, 1998 (63 FR 4220, January 28, 1998) and last amended November 19, 2002 (68 FR 8739, February 25, 2003).

AARQ's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)): Itochu International Inc., New York, New York (a subsidiary of Itochu Corporation, Tokyo, Japan); and Veetee Rice Inc., Springfield, Virginia (a subsidiary of Veetee Investments, Nassau, Bahamas).

2. Change the listing of the following Members: "California Commodity Traders, LLC, Robbins, California, and its affiliate American Commodity Company, LLC, Robbins, California" to read "American Commodity Company, LLC, Robbins, California"; "Cargill Americas, Inc., Wayzata, Minnesota" to read "Cargill Americas, Inc., Coral Gables, Florida"; "ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Voorhees, New Jersey" to read "ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary,

Alliance Grain, Inc., Marlton, New Jersey"; "Gulf Pacific, Inc., and its subsidiaries, Gulf Pacific Rice Co., Inc., and Gulf Rice Milling, Inc., Houston, Texas" to read "Gulf Pacific Rice Co., Inc., Gulf Rice Milling, Inc., Houston, Texas, and Harvest Rice, Inc., McGehee, Arkansas (each a subsidiary of Gulf Pacific, Inc., Houston, Texas)"; "Rickmers Rice USA, Inc., St. Louis, Missouri" to read "Rickmers Rice USA, Inc., Knoxville, Tennessee"; "Sunshine Rice, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprise, Inc.)" to read "KD International Trading, Inc., Stockton, California (a subsidiary of Sunshine Business Enterprises, Inc.)"; and "Uncle Ben's Inc., Greenville, Mississippi" to read "Masterfoods USA a Mars, Incorporated Company, Greenville, Mississippi."

The effective date of the amended certificate is December 4, 2003. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 11, 2004.

Jeffrey A. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 04-6072 Filed 3-17-04; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.031204E]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Southern Gulf of California

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 Scripps Institution of Oceanography (Scripps), a part of the University of California, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys in the southern Gulf of California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments

on its proposal to issue a one-year incidental harassment authorization (IHA) to Scripps.

DATES: Comments and information must be received no later than April 19, 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. The mailbox address for providing e-mail comments is PR2.Scripps@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: I.D. 031204E. A copy of the application containing a list of the references used in this document may be obtained by writing to this address, by telephoning the contact listed here or at: 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 December 8, 2003, NMFS received an application from Scripps 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 southern Gulf of California. The Gulf of California research cruise will be in an area extending between 22° to 26.5° N and 106° to 110° W from approximately April 22, 2004 to May 17, 2004. The operations will partly take place in the Exclusive Economic Zone (EEZ) of Mexico.

The purpose of the seismic survey is to improve the understanding of the tectonic history of the Gulf of California, and especially of how the transition from continental rifting to seafloor spreading occurred. This includes understanding the relationship between seafloor structures in the deep water of the Gulf and structures that have been mapped on land (mostly in Baja California Sur) and in shallow coastal waters. The data will be used to test alternative tectonic models of how continental rifting and shearing during the initial separation of the Baja California peninsula from the rest of Mexico determined the present pattern of seismically-active faults and volcanically-active spreading centers. The southern part of the Gulf was selected for this work because it is

adjacent to the field areas previously studied and because the seafloor sediments is generally thinner than further north, allowing better resolution of seabed structure.

Description of the Activity

The seismic survey will involve one vessel, the *R/V Roger Revelle* (under a cooperative agreement with the U.S. Navy, owner of the vessel). The *Roger Revelle* will deploy two airguns as an energy source, plus a single (450 m or 1,476.4 ft) towed streamer of hydrophones to receive the returning acoustic signals, that can be retrieved. The survey will take place in water depths greater than 400 m (1320 ft).

The procedures to be used for the seismic study will be similar to those used during previous seismic surveys by Scripps in the eastern tropical Pacific Ocean (68 FR 60916, October 24, 2003). The proposed seismic surveys will use conventional seismic methodology, with a pair of low-energy Generator-Injector (GI) airguns as the energy source and a towed hydrophone streamer as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. In addition to the operation of the airgun array, a multi-beam sonar, 3.5 kHz sub-bottom profiler and passive geophysical sensors (gravimeter and magnetometer) will be operated during the seismic profiling, and continuously throughout the seismic survey cruise.

During the airgun operations, the vessel will travel at 11.1 km/hr (6 knots) and seismic pulses will be emitted at intervals of 6 to 10 sec. The 6 to 10-sec spacing corresponds to a shot interval of about 18.5 to 31 m (161 to 102 ft). The GI gun that will be responsible for introducing the sound pulse into the ocean is 45 in. A larger (105 in) injector chamber injects air into the previously-generated GI airgun bubble to maintain its shape, and does not introduce more sound into the water. The two guns will be towed 8 m (26.2 ft) apart side by side, 21 m (68.9 ft) behind the *Roger Revelle*, at a depth of 2 m (6.6 ft).

In addition to the operations of the airgun array, the ocean floor will be mapped continuously throughout the entire cruise with a Kongsberg-Simrad EM-120 multibeam sonar, and a 3.5-kHz sub-bottom profiler. Both of these sound sources will be operated simultaneously with the airgun array.

The Kongsberg-Simrad is mounted on the hull of the *Roger Revelle*. It images the seafloor over a 120 to 140 degree-wide swath, using short (15 sec) transmit pulses with a 10 to 20 sec

repetition rate and an 11.25 to 12.60 kHz frequency sweep.

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 multibeam sonar. The energy from the sub-bottom profiler is directed downward by a 3.5 kHz transducer mounted in the hull of the *Roger Revelle*. 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 beam width is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 μPa, 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).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Gulf of California near the and its associated marine mammals can be found in the Scripps application and a number of documents referenced in the Scripps application, and is not repeated here. In the Gulf of California, 33 marine mammal species are known to occur within the proposed study area. The cetacean species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Pygmy beaked whale (*Mesoplodon peruvianus*), Perrin's beaked whale (*Mesoplodon perrini*), Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (*Stenella longirostris*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), 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), North Pacific right whale (*Eubalaena japonica*), gray whale (*Eschrichtius robustus*), 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. Also, three species of pinnipeds, the California sea lion (*Zalophus californianus*), Guadalupe fur seal (*Arctocephalus townsendi*), and northern elephant seal (*Mirounga angustirostris*) could potentially be encountered during the proposed seismic surveys. One of these species, the Guadalupe fur seal, is listed as endangered under the ESA. Additional information on most of these species is available at: http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html

Potential Effects on Marine Mammals

NMFS' August 26, 2003, **Federal Register** notice for a Scripps survey (68 FR 51240) describes the anticipated effects of the *Roger Revelle's* airguns, multibeam sonar, and the sub-bottom profiler on marine mammals, including masking, behavioral disturbance, and potential hearing impairment and other physical effects. The Scripps application for the subject IHA for operations in the Gulf of California also provides information on what is known about the effects of Scripps's planned seismic survey on marine mammals.

Estimates of Take for the Southern Gulf of California Cruise

NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 µPa 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. Scripps has calculated the "best estimates" for the numbers of animals that could be taken by level B harassment during the proposed seismic survey in the Gulf of California using

data on marine mammal abundance from a previous survey region. The predicted RMS zone of influence radii are 510 m (1673 ft), 54 m (177 ft), and 17 m (56 ft), for 160, 180, and 190 dB, respectively.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than or equal to 160 dB, the criterion for the onset of Level B harassment, by operations with the two GI 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 best estimate of the numbers of each species that would be exposed to seismic sounds greater than or equal to 160 dB.

| Species | "Best Estimate" of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB) | Regional Population Size |
|-----------------------------|--|--------------------------|
| <i>Physeteridae</i> | | |
| Sperm whale | 6 | 26053 |
| Dwarf sperm whale | 87 | 11200 |
| Pygmy sperm whale | 15 | N/A |
| <i>Ziphiidae</i> | | |
| Cuvier's beaked whale | 57 | 20000 |
| Baird's beaked whale | 0 | N/A |
| Pygmy beaked whale | 0 | N/A |
| <i>Delphinidae</i> | | |
| Bottlenose dolphin | 893 (306) | 243500 |
| Spinner dolphin | 6 (2) | 1651100 |
| Spotted dolphin | 1022 (351) | 2059100 |
| Pacific white-sided dolphin | 0 | 93100 |
| Striped dolphin | 227 (78) | 1918000 |
| Common dolphin | 1212 (416) | 3090000 |
| Fraser's dolphin | 0 | N/A |
| Risso's dolphin | 902 (309) | 175800 |
| Melon-headed whale | 0 | N/A |
| Pygmy killer whale | 0 | 38900 |
| False killer whale | 0 | 38800 |
| Killer whale | 0 | 8500 |
| Short-finned pilot whale | 34 (12) | 160200 |
| <i>Mysticetes</i> | | |
| Humpback whale | 1 | 1177 |
| Minke whale | 0 | N/A |

| Species | "Best Estimate" of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB) | Regional Population Size |
|------------------------|--|--------------------------|
| Bryde's whale | 17 | 13000 |
| Sei whale | 0 | N/A |
| Fin whale | 10 | 1851 |
| Blue whale | 0 | 1400 |
| <i>Pinniped</i> | | |
| Guadalupe fur seal | 2 | 127000 |
| Northern elephant seal | 2 | 13000 |
| California sea lion | 50 | 209000 |

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. The small size of the two GI airguns used in this project will restrict the exposure to strong noise to much closer distances relative to the source vessel. The predicted radii from the source vessel are 54 m (177 ft) for 180 dB and 17 m (56 ft) for 190 dB.

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. The best estimates for common, spotted, Risso's, and bottlenose dolphins are 1212, 1022, 902, and 893, respectively, which are the

most abundant cetaceans in the proposed survey area. These best estimates represent only 0.039, 0.050, 0.513, and 0.367 percent of the regional populations for each of these species. For other odontocetes, numbers exposed to greater than 160 dB will be smaller.

In light of the type of take expected and the relatively small numbers of affected cetaceans, 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

California sea lions are the most likely pinniped species to be encountered during the proposed seismic survey in the southern Gulf of California. It is estimated that 50 sea lions may be exposed to noise levels greater than 160 dB during the proposed survey. It is unlikely that northern elephant seals or Guadalupe fur seals will be encountered. If members of either of those species are encountered, they will be extralimital individuals. A precautionary estimate of 2 northern elephant seals and 2 Guadalupe fur seals may be encountered. The proposed seismic survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbances are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

In light of the type of take expected and the relatively small numbers of affected pinnipeds, 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.

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) ramp-up and shut-down procedures; (3) no start up at night; (4) avoidance of any state or national parks by at least 10 km (6.2 mi); (5) avoidance of sea lion rookeries by at least 10 km (6.2 mi); and (6) operation of airguns only in water greater than 400 m (1312 ft) deep. 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 17 m (56 ft) and 54 m (177 ft) from the arrays where sound levels ≥ 190 and 180 dB re 1 μPa rms (the criteria for onset of Level A harassment for pinnipeds and cetaceans respectively) are predicted to be received. The small size of the two GI airguns to be used in this project is also an important mitigating factor. The airguns will each be 45 in3.

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.

Shut-down Procedures

Airgun operations will be 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 of 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 shut-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 shut-down immediately.

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 2-GI airguns first start or 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"). Guns will be added in sequence such that the source level of the array will increase in steps over a 5-min period. Throughout the ramp-up procedure, the safety zone will be maintained.

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.

Other Mitigation Factors

In order to keep take numbers to the lowest level practicable, the seismic survey vessel will avoid by at least 10 km (6.2 mi) the two protected areas, Loreto Bay National Park and Cabo Pulmo Marine Park, and four California sea lion rookeries that are near the seismic survey area while shooting the GI guns. The GI guns will not be fired in water depths less than 400 m (1312 ft) because noise levels may be higher due to reverberation between the seafloor and the surface. Scripps will also not start-up the GI guns at night and will only ramp-up if one gun has been maintained.

Scripps is confident that they will be able to effectively visually monitor the 180 dB safety radii at night. 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. NMFS believes that marine mammals will have sufficient notice of a vessel approaching with operating GI 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.

Marine Mammal Monitoring

Scripps must have at least four observers on board the vessel, and at least one must be an experienced marine mammal observer that NMFS approves. At least two 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. Use of two simultaneous observers will increase the likelihood that marine mammals near the source vessel are detected. Scripps 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 observers will watch for marine mammals from the second level on the vessel, which is approximately 10.4 m (34 ft) above the waterline which allows for a 240-degree view. From the bridge of the *Roger Revelle*, the observer's eye level will be approximately 15 m (49 ft). 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 range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Big Eye binoculars will also be mounted from the bridge of the *Roger Revelle*. 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 alteration 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.

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).

Reporting

Scripps will submit a report to NMFS within 90 days after the end of the cruise, which is predicted to occur on or around May 17, 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, NMFS 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.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the southern Gulf of California 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.

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the southern Gulf of California 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 Scripps for conducting seismic surveys in the southern Gulf of California, 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: March 12, 2004.

Phil Williams,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031204D]

Marine Mammals; File No. 1042-1736

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Animal Training and Research, International, Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, (Jennifer Hurley, Ph.D., Principal Investigator), has applied in due form for a permit to obtain up to four stranded, releasable California sea lions (*Zalophus californianus*) and up to two stranded, releasable Pacific harbor seals (*Phoca vitulina*) for the purposes of public display.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 19, 2004.

ADDRESSES: The application 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 (301-713-2289); and